



STATE OF DELAWARE
DEPARTMENT OF NATURAL RESOURCES
AND ENVIRONMENTAL CONTROL

OFFICE OF THE
SECRETARY

89 KINGS HIGHWAY
DOVER, DELAWARE 19901

PHONE: (302) 739-9000
FAX: (302) 739-6242

Secretary's Amended and Superseding Order No. 2011 - W - 0009

**Re: APPLICATION OF ASHBURN HOMES INCORPORATED FOR A PERMIT TO
CONSTRUCT AN ON-SITE WASTEWATER TREATMENT AND DISPOSAL SYSTEM
TO SERVE THE LANDINGS SUBDIVISION NEAR LEIPSIC, KENT COUNTY**

Date of Issuance: March 22, 2011
Effective Date: March 22, 2011

Under the authority granted the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") under Chapter 60 and Delaware's Regulations Governing On-site Wastewater Treatment and Disposal Systems, the following findings, reasons and conclusions are entered as an Amended and Superseding Order of the Secretary.

Whereas, Secretary's Order No. 2011-W-0009 (the "Original Order") was issued and became effective on January 31, 2011. The Original Order denied Ashburn Homes' (the "Applicant") request for a permit to construct an on-site wastewater treatment and disposal system ("OWTDS") to serve its proposed residential development called "The Landings at Leipsic"; and,

Whereas, the Original Order cited, among other things, concerns about localized flooding which could impact the functionality of the proposed OWTDS; and

Whereas, on February 28, 2011, the Applicant submitted a request for re-consideration of the Original Order with supporting documents; and,

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Whereas, subsequent analysis has determined that the proposed development is eligible to connect to existing public waste water infrastructure via the creation of a sewer extension through the Hazel Farms subdivision, which would eliminate the need for the proposed OWTDS entirely and minimize the opportunity for discharge of pollution; and,

Whereas, the Applicant has indicated its willingness to construct a connection to the public waste water system at its expense, rather than build a new OWTDS, and has agreed to offer existing units in the Snowlands development on septic systems the opportunity to connect to the public waste water system at Applicant's expense; and,

Whereas, the current regulations governing the permitting of OWTDS do not include specific provisions to ensure full consideration of the impacts of flooding and emerging environmental challenges, such as sea-level rise, on proposed projects, and DNREC intends to address and remedy those deficiencies during the next regulatory revision process; and,

Whereas, the Applicant has agreed to avoid placing any dwelling units within the hundred-year floodplain and to adopt best storm water management practices to mitigate potential future harm from flooding challenges; and,

Whereas, the Applicant has agreed to protect on-site wetlands by placing certain marshlands located upon the subject property into a conservation easement in an effort to further reduce potential harm from flooding challenges and provide quality habitat for waterfowl; and,

Therefore, the Original Order is hereby withdrawn and the Applicant's request for a construction permit for a large on-site wastewater treatment plant to serve The Landings is hereby granted by this Amended and Superseding Order (the "Amended Order"), subject to the following terms and conditions:

1. The Applicant must file and diligently pursue, using best efforts, an application for a Sanitary Sewer District ("SSD") extension pursuant to Chapter 180 of the Kent County Code, in order to connect the Landings subdivision to Kent County's public sewer system and avoid the construction of the proposed OWTDS;

2. In an effort to reduce the environmental footprint and risks associated with existing individual on-site septic systems already serving the residential dwellings located along Fast Landing Road (known as the "Snowlands Subdivision"), the Applicant will offer, in writing, the owners of said dwellings the opportunity to connect, at Applicant's expense, to the SSD extension. All owners accepting such offer will be connected at Applicant's expense. The capacity of the SSD extension shall be limited so as to serve only the total number of dwelling units planned to be constructed in The Landings plus the number of existing homes in the Snowlands Subdivision.;

3. If the SSD application is approved by Kent County with no conditions beyond or in addition to those contained in this Order or the September 10, 2009 Kent County Regional Planning Commission Business Meeting Minutes, then the project would receive public sanitary sewer service and the OWTDS would not be constructed. If the SSD application is not so approved by Kent County, however, on or before July 1, 2011, the Applicant is then, and only then, entitled to proceed with construction of the proposed OWTDS;

4. Should it be necessary to construct the OWTDS, none of the proposed residential dwelling units to be served by the OWTDS are to be located within the limits of the 100-year floodplain as mapped by FEMA Federal Insurance Rate Maps;

5. Should it be necessary to construct the OWTDS, no part of the disposal area for the proposed OWTDS is to be located below the 9 foot mean sea-level contour;

6. The site development will utilize best practices for storm water management, in consultation with DNREC Division of Watershed Stewardship;

7. The Applicant shall place all marshlands located on the subject property into a perpetual conservation easement, to ensure that all marshlands are protected and maintained as a refuge for waterfowl and other marshland wildlife;

8. The Applicant shall grant a perpetual access easement providing for public access to Naudain Cemetery and establish a mechanism for upkeep and maintenance of the Naudain Cemetery in perpetuity;

9. The Applicant shall withdraw and dismiss, with prejudice, EAB Appeal No. 2011-01, on or before March 22, 2011;

10. The Applicant shall withdraw and dismiss, with prejudice, Ashburn Homes, Inc. v. Collin P. O'Mara, C.A. No.: K11C-02-015 JTV on or before March 22, 2011;

11. The Department shall provide notice of this Order to the persons affected by this Order, as determined by the Department, including those who participated in the hearing process. In addition, the Department will place a Notice of this Order in a newspaper of general circulation.



Collin P. O'Mara
Secretary