

COUNTY COUNCIL

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Sussex County

DELAWARE
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SUSSEX COUNTY COUNCIL

AGENDA

JANUARY 28, 2020

10:00 A.M.

Call to Order

Approval of Agenda

Approval of Minutes

Reading of Correspondence

Public Comments

Presentation by Bill Andrew, President & CEO, Delaware Electric Cooperative

Todd Lawson, County Administrator

1. Administrator's Report

10:30 a.m. Public Hearing

Memorandum of Understanding (MOU) between Sussex County and DelDOT regarding the process of land use applications.

Grant Requests

1. Eastern Shore AFRAM Festival for MLK Day of Celebration
2. Greater Millsboro Chamber of Commerce for Stars & Stripes Celebration
3. Cape Henlopen Educational Foundation for Teacher Grant Program

Introduction of Proposed Zoning Ordinances

Council Members' Comments

Executive Session – Personnel pursuant to 29 Del.C. §10004(b)



Possible Action on Executive Session Items

1:30 p.m. Public Hearings

Conditional Use No. 2199 filed on behalf of OA-Rehoboth, LLC

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR MULTI-FAMILY (224 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 18.793 ACRES, MORE OR LESS” (lying on the south side of John J. Williams Highway (Route 24) approximately 0.29 mile east of Warrington Road) (Tax I.D. No. 334-12.00-127.01 and 127.10) (911 Address: Not Available)

Change of Zone No. 1900 filed on behalf of Michael P. Justice, Trustee

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 16.1 ACRES, MORE OR LESS” (lying on the west side of Parker House Road, approximately 0.35 mile south of Beaver Dam Road) (Tax I.D. No. 134-16.00-51.00) (911 Address: None Available)

Change of Zone No. 1901 filed on behalf of Mary and Victor Rico

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM-DENSITY RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED AND LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 0.927 ACRES, MORE OR LESS” (lying on the east side of Sunset Lane on the north side of John J. Williams Highway (Route 24) approximately 0.28 mile northeast of Camp Arrowhead Road) (Tax I.D. No. 234-7.00-100.00) (911 Address: 20797 Sunset Lane, Lewes)

Conditional Use No. 2200 filed on behalf of Mary and Victor Rico

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A MR MEDIUM-DENSITY RESIDENTIAL DISTRICT) FOR MULTI-FAMILY (7 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED AND LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY CONTAINING 0.927 ACRES, MORE OR LESS” (lying on the east side of Sunset Lane on the north side of John J. Williams Highway (Route 24) approximately 0.28 mile northeast of Camp Arrowhead Road) (Tax I.D. No. 234-7.00-100.00) (911 Address: 20797 Sussex Lane, Lewes)

Adjourn

Sussex County Council meetings can be monitored on the internet at www.sussexcountyde.gov.

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on Tuesday, January 21, 2020 at 4:45 p.m., and at least seven (7) days in advance of the meeting.

This Agenda was prepared by the County Administrator and is subject to change to include the addition or deletion of items, including Executive Sessions, which arise at the time of the Meeting.

Agenda items may be considered out of sequence.

###

Memorandum of Understanding (MOU) between Sussex County and DeIDOT

The MOU describes the coordination process between Sussex County and DeIDOT regarding the process of land use applications.

2019
SUSSEX COUNTY/DELAWARE DEPARTMENT OF TRANSPORTATION
MEMORANDUM OF UNDERSTANDING
FOR LAND DEVELOPMENT COORDINATION

WHEREAS, Title 9, Section 6962 of the *Delaware Code* “Highway Capacity” obligates Sussex County to “establish an agreement with the Department of Transportation to provide a procedure for analysis by the Department of Transportation (“DeIDOT”) of the effects on traffic of each rezoning application; and

WHEREAS, This Memorandum of Understanding is intended to comply with the foregoing requirements of Title 9, Section 6962 of the Delaware Code; and

WHEREAS, Land development has the potential to impact adjacent highways and Sussex County and DeIDOT recognize that an analysis of the effects upon traffic is important in all types of land use decisions (Residential Planned Communities, Major Subdivisions, Conditional Uses) and not just rezoning applications; and

WHEREAS, The 2018 Sussex County Comprehensive Plan promotes greater coordination between DeIDOT and Sussex County in land use decisions; and

WHEREAS, Sussex County is solely responsible for land use decisions in Sussex County; and

WHEREAS, the DeIDOT is responsible for the operation, maintenance, and construction of State-maintained roads as well as the regulation of all entrance and roadway improvements required as part of new development; and

WHEREAS, it is the desire of Sussex County and DeIDOT to coordinate land development with transportation needs.

NOW, THEREFORE,

BE IT RESOLVED that Sussex County Council and DeIDOT hereby adopt the following Memorandum of Understanding:

DEFINITIONS

COMMITTED OFF-SITE IMPROVEMENTS – Road improvements for the benefit of safety and/or capacity that are generally beyond the limits of the site entrance and frontage that are required to be built by an approved land development project. Such improvements do not include auxiliary lanes that serve the site entrance, but may include roadway widening along the frontage of the site.

FEE IN LIEU - DeIDOT regulations define an Area Wide Study Fee that, under certain conditions, DeIDOT may accept when it would otherwise require a TIS. The fees accepted are used by DeIDOT to subsidize the preparation of studies of larger areas than a TIS would normally address; they are not used to build improvements. Payment of the fee does not relieve a developer of responsibility to build or contribute toward transportation.

LEVEL OF SERVICE (LOS) - A quantitative stratification of a performance measure or measures representing how well a transportation facility or service operates from a traveler's perspective. For each type of facility or service there are six levels of service, ranging from A to F, with A representing the best operating condition and F the worst operating conditions. Except as may be specified by DeIDOT, LOS shall be determined in accordance with the current edition of the Highway Capacity Manual, a publication of the Transportation Research Board.

PRELIMINARY TRAFFIC ANALYSIS - An evaluation by DeIDOT, in terms of the proposed trip generation, to determine whether a Traffic Impact Study is necessary with regard to a proposed land use approval.

TRAFFIC IMPACTS:

DIMINUTIVE - The change in land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips per day.

NEGLIGIBLE - The change in land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips in any hour and fewer than 500 vehicle trips per day.

MINOR - The change in land use is expected to increase the trip generation of the subject land by at least 50 but fewer than 200 vehicle trips in any hour and at least 500 vehicle trips per day.

MAJOR - The change in land use is expected to increase the trip generation of the subject land by more than 200 vehicle trips in any hour or more than 2,000 vehicle trips per day.

TRAFFIC IMPACT STUDY (TIS) – A study conducted during the development approval process, in accordance with applicable DeIDOT regulations, to determine the impacts that traffic generated by the proposed development will have on the surrounding street network and the improvements needed to the transportation system in order to mitigate those impacts.

TRAFFIC OPERATIONAL ANALYSIS (TOA) – An evaluation, or series of evaluations, conducted during the review of subdivision, land development and entrance plans, in accordance with applicable DeIDOT regulations, primarily intended to determine site entrance location and movements to be allowed at the site entrance. These evaluations may include; Queuing Analysis, Highway Capacity Manual Analysis, and Crash Analysis.

LAND USE COORDINATION

1. Sussex County will make the final decisions on all matters of land use.
2. The Sussex County Planning and Zoning Department will request a Preliminary Traffic Analysis from DeIDOT for each land use application to determine if the resulting traffic impact will be negligible, minor, or major. This shall not be required where the County Planning and Zoning staff, in concurrence with DeIDOT staff, finds that the proposed change in land use will have a diminutive impact upon the road system. Unless more time is required given the size or complexity of the land use application, DeIDOT shall endeavor to provide a Preliminary Traffic Analysis within twenty days after receiving the Analysis request.
3. Given the seasonal nature of high-volume traffic volume in Sussex County, and since the “season” has expanded beyond just Memorial Day through Labor Day, with very high traffic volumes on seasonal weekends, it is important for DeIDOT to take into account these high volumes in any analysis that it performs. To be effective, low-volume off season volumes should not be utilized where they will artificially lower average traffic volumes.
4. Unless waived as set forth in Paragraph 2 above, Sussex County will not consider an application until DeIDOT supplies Sussex County with the above information.
5. When it is determined that the traffic impact would be negligible, no further traffic analysis will be necessary. DeIDOT has the authority to make such a determination where (based on the full development of the property as limited by either the zoning code or other factors) the expected average daily traffic (ADT) of the site will not exceed five hundred (500) trips. When DeIDOT determines negligible impact will occur, they will provide projected traffic volumes in support. Sussex County may approve land use applications with negligible impact at its discretion.
6. When DeIDOT determines the traffic impact to be minor, the traffic analysis shall include the feasibility of providing safe access and the condition, pavement, and the geometry of the nearby roadways and intersections relative to the traffic the subject property could generate. Where any of these are deemed inadequate, DeIDOT shall comment to this effect, and identify roadway improvements that shall be required by the Developer. An Area Wide Study Fee (AWSF) letter will be generated to document the developer’s obligations

to construct identified roadway improvements or fund road improvements as required by DelDOT. In addition, DelDOT may require further study if necessary.

7. When DelDOT determines that the traffic impact will be major, the developer will be required to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards. In addition, Sussex County, at its own initiative, may require a developer to conduct a TIS. The TIS will also consider the effects of active or proposed transportation improvements in the adopted Six (6) Year Capital Improvements Program, Current Transportation Plans, and Committed Off-Site Improvements, and the current Sussex County Comprehensive Plan and establish staging for development as needed. DelDOT will provide a technical evaluation of the TIS. Alternatively DelDOT may allow a Traffic Operational Analysis (TOA) instead of a TIS.
8. As an alternative to the TIS or TOA process set forth above, when DelDOT has determined that the area in question has already been the subject of sufficient study, a new TIS or TOA may not be required. Instead, DelDOT may require a "Fee in Lieu" to be paid by the developer to DelDOT to recoup all or a portion of the cost of the prior studies relied upon by DelDOT in lieu of a new TIS or TOA. The "Fee in Lieu" is unrelated to the developer's subsequent obligations to construct or fund road improvements as required by DelDOT and the "Fee in Lieu" is not a waiver of those requirements. A TIS or AWSF letter will be generated to document the developer's obligations.
9. Sussex County and DelDOT shall endeavor, where possible, to maintain a Level of Service of D on roads and intersections affected by a land use application. However, Sussex County and DelDOT recognize that: (a) a Level of Service of D is not always attainable; (b) that this threshold may create an undue burden on a property owner looking to develop a property given the prior development that has occurred in an area contributing to the existing Level of Service; or (c) other relevant factors (such as the size of the property, type or importance of the development) may mitigate against maintaining a Level of Service D. If the existing Level of Service is below D prior to the impact of the proposed land use, the existing Level of Service must at least be maintained.
10. No public hearing on the land use application shall occur until: (a) Sussex County receives the approved TIS from DelDOT; (b) Sussex County receives the approved TOA from DelDOT; (c) DelDOT advises that a "Fee in Lieu" (described in Paragraph 8 above) is

appropriate instead of a TIS; or (d) the application will have a diminutive impact as described above.

11. When DelDOT determines, on the basis of a TIS or TOA or studies previously performed as part of the “Fee in Lieu” process, that a land use decision could cause the threshold level of service to be exceeded, the County will not approve the land use application unless the developer takes appropriate measures to maintain operations at the threshold level or unless Sussex County finds that there are sufficient reasons why the developer should not be responsible for all or part of the measures necessary to maintain the threshold level of service. Sussex County, in the latter case, shall set forth in writing their reasons for approving the land use application.
12. Sussex County does not have the ability to determine what, if any, conditions of approval related to roadway improvements or traffic would be appropriate in a given land use application. Therefore, if, in DelDOT’s opinion, there are appropriate conditions of approval that should be imposed upon a land use decision, DelDOT shall offer those conditions as part of its TIS or as part of its Technical Advisory Committee review for consideration by Sussex County. Any such proposed conditions shall be clearly summarized by DelDOT in its Preliminary Traffic Analysis. After considering all relevant information regarding the land use application, Sussex County shall consider the proposed conditions but shall not be obligated to include them as part of any approval.
13. Phasing of land development with highway capacity and safety improvements to restore and maintain a level of service “D” may be required by DelDOT. To accomplish this, DelDOT should state what phasing is appropriate for the subject land use application and clearly state that phasing requirement to Sussex County so that Sussex County can clearly incorporate it into its various approvals as appropriate. Sussex County may then impose that phasing requirement as part of its approval of a land use application. Phasing of the project can include (but is not limited to) a consideration the following:
 - a. A delay of all or part of the development until specific highway improvements are made by DelDOT or others:
 - b. Whether the required highway improvements are being funded or constructed at the developer’s own expense;

- c. Whether the developer is participating in, and/or funding, transit or traffic mitigation strategies.

The phasing requirements shall be included as a Plan Sheet at the time of Final Site Plan approval. However, whenever possible, DelDOT shall endeavor to state whether a phasing recommendation is likely (with specific details to follow) as part of the TIS process prior to the Preliminary Site Plan or other public hearing process so that Sussex County, the developer and the public can have an expectation that phasing may be considered as part of the project development. Phasing tied to other types of site plan approval is addressed in a following Section of this MOU regarding Site Plan Coordination.

14. Where measures to maintain operations are agreed upon by a developer, both DelDOT and Sussex County shall assure that these measures are carried out.
15. When Sussex County believes that expert testimony regarding transportation issues is required to make a land use decision (such as a rezoning, major subdivision, conditional use or Residential Planned Community), DelDOT will provide a suitable representative to attend meetings of the Planning and Zoning Commission and/or County Council. The representative should be someone with specific technical knowledge of the project in particular and also ongoing projects in the area of Sussex County where the project is to occur.
16. In addition to the project-specific information referenced in the preceding paragraph, DelDOT shall provide regular updates to Sussex County about the status of ongoing and future roadway and transportation projects in the County, so that County Council and the Planning & Zoning Commission have an up-to-date understanding of their status. This shall include both developer-funded and DelDOT-initiated and -funded projects. During these updates, Sussex County will also have an opportunity to discuss other transportation improvements that may be needed in the future.
17. Whenever possible during the implementation of the foregoing items, Sussex County and DelDOT should encourage master planning for large scale developments on large parcels or groups of parcels in the Town Center, Coastal Area, Developing Area and commercial areas as set forth in the Comprehensive Land Use Plan to provide greater flexibility in design and/or the installation of additional roadways and interconnectivity.

18. The Sussex County Planning and Zoning Department is responsible for coordinating all required information with Sussex County Council and the Planning and Zoning Commission.
19. Sussex County shall be entitled to participate in any negotiations between a developer and DelDOT as to roadway improvements. Sussex County may provide input into those negotiations, but DelDOT shall be entitled to make the final determination as to all required roadway improvements and negotiated agreements with a developer. Any agreement reached between a developer and DelDOT as to roadway improvements, phasing of a development, funding of roadway improvements, etc. shall be immediately forwarded to Sussex County for its records with regard to the development. Any subsequent changes or amendments to a DelDOT/developer agreement shall likewise be immediately forwarded to Sussex County. Provided, however, that DelDOT recognizes that if a specific requirement (such as phasing) is incorporated into a land use decision (such as a major subdivision, conditional use or Residential Planned Community), this may not be enforceable by Sussex County without an amendment to the subdivision approval or the ordinance that approved a Residential Planned Community, Conditional Use or certain other rezonings where conditions can be imposed.

REZONINGS (WITHOUT SITE PLANS OR CONDITIONS OF APPROVAL)

1. Sussex County and DelDOT acknowledge that on a rezoning to a new zoning district where a specific site plan is not under consideration, and where the County cannot impose conditions as part of the rezoning approval, a TIS may not be possible (with the exception of rezonings to Residential Planned Communities and C-4, where specific site plans are considered and conditions can be imposed). This is because the various zoning districts have several permitted uses that are allowed once a rezoning occurs; as a result DelDOT cannot determine, at the time of rezoning, what the actual use will be nor what the traffic and possible roadway improvements will be as a result of it. This requires greater coordination on the part of both Sussex County and DelDOT.
2. Whenever possible, DelDOT shall endeavor to provide as much information about the general impacts of the rezoning upon area traffic and roadways as required in the preceding

Section prior to the public hearing before Sussex County Council and the Planning & Zoning Commission.

3. Whenever DelDOT is approached by a developer with a specific project in mind, DelDOT and that developer may enter into an agreement to obtain a TIS for the project as part of the rezoning process so that the information required as part of the TIS may be included in the record of the public hearings of the rezoning application. Because other possible uses of the property may be permitted under the proposed new zoning, Sussex County is not bound by this information in making its decision on the rezoning. However, if the use that the TIS is based upon changes after the rezoning occurs, another TIS shall be required and Sussex County shall not approve any Preliminary or Final Site Plan for the property until the new TIS is completed with all necessary traffic and roadway improvements determined by DelDOT. Alternatively, if no TIS is performed on a specific project, DelDOT or Sussex County shall have the ability to request a TIS based upon the most impactful permitted use available under the new zoning classification that is sought.

SITE PLAN COORDINATION

1. Section 115-220D of the Sussex County Zoning Code allows Sussex County to approve certain site plans “subject to conditions”. In any site plan reviewed pursuant to Section 115-220 of the Sussex Zoning Code, Sussex County, with the assistance of DelDOT, may impose conditions regarding phasing and the timing of building permits in conjunction with completion of necessary roadway improvements.
2. In all site plan reviews, DelDOT will review the site plans in accordance with its rules and regulations for access and roadway improvements. Sussex County will withhold any site plan approval until DelDOT has approved all necessary roadway improvements and entrance design requirements. Provided, however, that this requirement may be waived by Sussex County for minor amendments to existing site plans that changes the trip generation by less than 50 trips per day.
3. Sussex County shall withhold the issuance of any building permit until DelDOT has issued the entrance construction permit associated with the project.

4. DelDOT will withhold an entrance permit until the developer has agreed to construct the access point(s) to Department standards and to provide off-site improvements as may be required to maintain acceptable traffic operation on highways.
5. Sussex County will withhold issuance of the Certificate of Compliance until DelDOT has accepted the entrance construction and issued the notice to the owner that the entrance construction permit has been satisfied.

TRANSPORTATION IMPROVEMENT DISTRICTS

1. In the event that a land use application falls within a Transportation Improvement District (“TID”), the requirements of the TID, as set forth in the TID Agreement, shall supersede the requirements set forth in this MOU.

IT IS FURTHER RESOLVED that the Secretary of the Delaware Department of Transportation and The County Administrator will affirm this agreement by affixing their signature to the Resolution.

Adopted by the County Council of Sussex County on _____, 2019.

President of the County Council of Sussex County

The following signatures concurring herein:

For Sussex County:

Todd Lawson, Sussex County Administrator

Robert Wheatley, Chairman, Sussex County
Planning & Zoning Commission

Janelle Cornwell, Director of Planning & Zoning

**For the Department of
Transportation:**

Jennifer Cohan, Secretary

Projected Generated Trips	MOU	DCM
<50 vpd	Diminutive	n/a
<500 vpd and <50 vph	Negligible	No TIS required
>500 vpd or >50 vph	Minor	TIS or AWSF required
>2000 vpd or >200 vph	Major	TIS required

**REMARKS TO THE SUSSEX COUNTY PLANNING AND
ZONING COMMISSION REGARDING THE DRAFT
MEMORANDUM OF UNDERSTANDING BETWEEN
SUSSEX COUNTY AND THE DELAWARE
DEPARTMENT OF (De)DOT)**

December 12, 2019



SARG

Inform-Educate-Engage

Key Observations

- The new draft clearly acknowledges that the County is “solely responsible for all land use decisions in Sussex County, regardless of the position of other agencies. It must use this authority.**
- The revised MOU provides the opportunity to bring more balance and transparency to the County development review and approval process regarding transportation.**
- The MOU must be written so everyone can grasp not only the terms but also what type of development is included, the sequencing of the process and who is responsible at every stage.**
- The MOU must clearly state the specific regulation(s) that apply in each circumstance or provide the reference in an appendix or include them in the definitions section.**
- DeIDOT still has too much authority to determine what type of development the County will have and how infrastructure requirements will be determined, see the first bullet above.**

2019
SUSSEX COUNTY/DELAWARE DEPARTMENT OF TRANSPORTATION
MEMORANDUM OF UNDERSTANDING
FOR LAND DEVELOPMENT COORDINATION

WHEREAS, Title 9, Section 6962 of the *Delaware Code* “Highway Capacity” obligates Sussex County to “establish an agreement with the Department of Transportation to provide a procedure for analysis by the Department of Transportation (“DelDOT”) of the effects on traffic of each rezoning application; and

WHEREAS, This Memorandum of Understanding is intended to comply with the foregoing requirements of Title 9, Section 6962 of the Delaware Code; and

WHEREAS, Land development has the potential to impact adjacent highways and Sussex County and DelDOT recognize that an analysis of the effects upon traffic is important in all types of land use decisions (Residential Planned Communities, Major Subdivisions, Conditional Uses) and not just rezoning applications; and

WHEREAS, The 2018 Sussex County Comprehensive Plan promotes greater coordination between DelDOT and Sussex County in land use decisions; and

WHEREAS, Sussex County is solely responsible for land use decisions in Sussex County; and

WHEREAS, the DelDOT is responsible for the operation, maintenance, and construction of State-maintained roads as well as the regulation of all entrance and roadway improvements required as part of new development; and

WHEREAS, it is the desire of Sussex County and DelDOT to coordinate land development with transportation needs.

NOW, THEREFORE,

BE IT RESOLVED that Sussex County Council and DelDOT hereby adopt the following Memorandum of Understanding:

DEFINITIONS

COMMITTED OFF-SITE IMPROVEMENTS – Road improvements for the benefit of safety and/or capacity that are generally beyond the limits of the site entrance and frontage that are required to be built by an approved land development project. Such improvements do not include auxiliary lanes that serve the site entrance, but may include roadway widening along the frontage of the site.

AREA WIDE STUDY FEE~~FEE IN LIEU~~ – A fee collected to complete an Area Wide Study

~~that includes the proposed land use or transportation improvements that benefit the proposed land use. Payment of an Area Wide Study Fee in lieu of a TIS will not preclude the developer's responsibility for funding and/or construction of its share of off-site improvements. Those improvements may be determined to be needed by the Area Wide Study or other studies, e.g. TIS for other nearby developments. DelDOT regulations define an Area Wide Study Fee that, under certain conditions, DelDOT may accept when it would otherwise require a TIS. The fees accepted are used by DelDOT to subsidize the preparation of studies of larger areas than a TIS would normally address; they are not used to build improvements. Payment of the fee does not relieve a developer of responsibility to build or contribute toward transportation.~~

LEVEL OF SERVICE (LOS) - A quantitative stratification of a performance measure or measures representing how well a transportation facility or service operates from a traveler's perspective. For each type of facility or service there are six levels of service, ranging from A to F, with A representing the best operating condition and F the worst operating conditions. Except as may be specified by DelDOT, LOS shall be determined in accordance with the current edition of the Highway Capacity Manual, a publication of the Transportation Research Board.

PRELIMINARY TRAFFIC ANALYSIS — ~~A request made by Sussex County Planning and Zoning Department for an~~ evaluation by DelDOT, in terms of the proposed trip generation, to determine ~~the Traffic Impact whether a Traffic Impact Study is necessary~~ with regard to a proposed land use approval.

TRAFFIC IMPACTS:

DIMINUTIVE - The ~~change in proposed~~ land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips per day.

NEGLIGIBLE - The ~~change in proposed~~ land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips in any hour ~~or and~~ fewer than 500 vehicle trips per day.

MINOR - The ~~change in proposed~~ land use is expected to increase the trip generation of the subject land by at least 50 ~~vehicle trips in any hour~~ but fewer than 200 vehicle trips in any hour ~~or and~~ at least 500 vehicle trips per day.

MAJOR - The ~~change in proposed~~ land use is expected to increase the trip generation of the subject land by more than 200 vehicle trips in any hour or more than 2,000 vehicle trips per day.

TRAFFIC IMPACT STUDY (TIS) – A study conducted during the development approval process, in accordance with applicable DelDOT regulations, to determine the impacts that traffic generated by the proposed development will have on the surrounding street network and the improvements needed to the transportation system in order to mitigate those impacts.

TRAFFIC OPERATIONAL ANALYSIS (TOA) – An evaluation, or series of evaluations, conducted during the review of subdivision, land development and entrance plans, in accordance

with applicable DelDOT regulations, primarily intended to determine site entrance location and movements to be allowed at the site entrance. These evaluations may include; Queuing Analysis, Highway Capacity Manual Analysis, and Crash Analysis.

LAND USE COORDINATION

1. Sussex County will make the final decisions on all matters of land use.

2. Preliminary Traffic Analysis:

- a. The Sussex County Planning and Zoning Department will request a Preliminary Traffic Analysis from DelDOT for each land use application to determine if the resulting traffic impact will be diminutive, negligible, minor, or major. ~~This shall not be required where the County Planning and Zoning staff, in concurrence with DelDOT staff, finds that the proposed change in land use will have a diminutive impact upon the road system.~~
- ~~b. Unless more time is required given the size or complexity of the land use application,~~ DelDOT shall ~~endeavor to~~ provide a Preliminary Traffic Analysis within twenty days (20) after receiving the Analysis request. If more time is needed, a written request explaining the reason for the additional time will be required.
- ~~c. Unless waived as set forth in Paragraph 2 above,~~ Sussex County will not consider an application until DelDOT supplies Sussex County with the above information.

3. Diminutive Impact:

- ~~b.a. When it is determined that the impact would be diminutive, no further traffic analysis will be necessary.~~

4. Negligible Impact:

- ~~a. When it is determined that the impact would be negligible, no further traffic analysis will be necessary. DelDOT has the authority to make such a determination where (based on the full development of the property as limited by either the zoning code or other factors) the expected average daily traffic (ADT) of the site will not exceed five hundred (500) trips. When DelDOT determines the traffic impact to be negligible impact will occur,~~ they will provide projected traffic volumes in support and no further traffic analysis will be necessary.
- ~~b. Sussex County may approve land use applications with negligible impact at its~~

discretion.

5. Minor Impact:

- a. When DelDOT determines the traffic impact to be minor, the Preliminary Ttraffic Aanalysis shall include the feasibility of providing safe access and the condition, pavement, and the geometry of the nearby roadways and intersections relative to the traffic the subject property could generate. Where any of these are deemed potentially inadequate, DelDOT shall comment to this effect, and identify roadway improvements that mayshall be required by the Developer.
- b. When DelDOT determines that the traffic impact will be minor, the developer will be required to pay An Area Wide Study Fee (AWSF). ~~letter will be generated to document the developer's obligations to construct identified roadway improvements or fund road improvements as required by DelDOT.~~
- Alternative to an Area Wide Study Fee, the developer may elect to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards.
 - Payment of the fee does not exempt the developer from the responsibility to make off-site improvements or from preparing a Traffic Operational Analysis (TOA) if DelDOT identifies a need for a TOA in the plan review process. In addition, DelDOT may require further study if necessary.

6. Major Impact:

- a. ~~—~~When DelDOT determines that the traffic impact will be major, the developer will be required to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards. ~~In addition, Sussex County, at its own initiative, may require a developer to conduct at TIS.~~
- ~~e.b. Additionally, Alternatively,~~ DelDOT may ask forallow a Traffic Operational Analysis (TOA) in conjunction with ~~instead of a~~ TIS.
- c. ~~As an alternative to the TIS or TOA process set forth above, when DelDOT has determined that the area in question has already been the subject of sufficient study, a new TIS or TOA may not be required. Instead, DelDOT may require a "Fee in Lieu" to be paid by the developer to DelDOT to recoup all or a portion of the cost of the prior studies relied upon by DelDOT in lieu of a new TIS or TOA. The "Fee in Lieu" is~~

~~unrelated to the developer's subsequent obligations to construct or fund road improvements as required by DelDOT and the "Fee in Lieu" is not a waiver of those requirements. A TIS or AWSF letter will be generated to document the developer's obligations.~~

7. Elements of the Traffic Impact Study:

- a. The TIS will consider the effects of active or proposed transportation improvements in the adopted Six (6) Year Capital Improvements Program, Current Transportation Plans, and Committed Off-Site Improvements, and the current Sussex County Comprehensive Plan and establish staging for development as needed.
- b. Given the seasonal nature of high-volume traffic volume in Sussex County, and since the "season" has expanded beyond just Memorial Day through Labor Day, with very high traffic volumes on seasonal weekends, it is important for DelDOT to take into account these high volumes in any analysis that it performs. To be effective, seasonal traffic adjustment factors to normalize traffic volumes shall be applied when calculating trip generation. low volume off season volumes should not be utilized where they will artificially lower average traffic volumes.
- c. DelDOT will provide a technical evaluation of the TIS.

8. Level of Service Standards:

- a. Sussex County and DelDOT shall endeavor, where possible, to maintain a Level of Service of D on roads and intersections affected by a land use application. However, Sussex County and DelDOT recognize that:
 - ~~(a)~~ a Level of Service of D is not always attainable;
 - ~~that~~ that this threshold may create an undue burden on a property owner looking to develop a property given the prior development that has occurred in an area contributing to the existing Level of Service;
 - ~~or (e)~~ Other relevant factors (such as the size of the property, type or importance of the development) may mitigate against maintaining a Level of Service D.
- ~~b.~~ b. If the existing Level of Service is below D prior to the impact of the proposed land use, the existing Level of Service must at least be maintained.
- c. When DelDOT determines that the traffic impact of the proposed land use causes the

~~threshold level of service to be exceeded, on the basis of a TIS or TOA or studies previously performed as part of the “Fee in Lieu” process, that a land use decision could cause the threshold level of service to be exceeded,~~ the County will not approve the land use application unless:

- ~~T~~the developer agrees to takes appropriate measures to maintain operations at the threshold level of service; or,
- ~~or unless~~ Sussex County finds that there are sufficient reasons why the developer should not be responsible for all or part of the measures necessary to maintain the threshold level of service. Sussex County, in ~~this~~the latter case, shall set forth in writing their reasons for approving the land use application.

9. Coordination:

a. The Sussex County Planning and Zoning Department is responsible for coordinating all required information with Sussex County Council and the Planning and Zoning Commission.

b. No public hearing on the land use application shall occur until one of the following conditions are met:

- The application will have a diminutive impact as described above; or,
- The application will have a negligible impact as described above; or,
- Sussex County receives the approved AWSF letter from DelDOT; or,
- Sussex County receives the approved TOA from DelDOT; or,
- Sussex County receives the approved TIS from DelDOT.
- ~~(a) Sussex County receives the approved TIS from DelDOT; (b) Sussex County receives the approved TOA from DelDOT; (c) DelDOT advises that a “Fee in Lieu” (described in Paragraph 8 above) is appropriate instead of a TIS; or (d) the application will have a diminutive impact as described above.~~

e.c. Sussex County does not have the ability to determine what, if any, conditions of approval related to roadway improvements or traffic would be appropriate in a given land use application. Therefore, if, in DelDOT’s opinion, there are appropriate conditions of approval that should be imposed upon a land use decision, DelDOT shall offer those conditions as part of its TIS or as part of its Technical Advisory Committee

review for consideration by Sussex County. Any such proposed conditions shall be clearly summarized by DelDOT ~~in its Preliminary Traffic Analysis prior to the Preliminary Site Plan hearing.~~ After considering all relevant information regarding the land use application, Sussex County shall consider the proposed conditions but shall not be obligated to include them as part of any approval.

~~f.d. Phasing of land development with highway capacity and safety improvements to restore and maintain a level of service “D” may be required by DelDOT. To accomplish this,~~ DelDOT should clearly state what phasing of roadway improvements is appropriate for the proposed subject land use application ~~and clearly state that phasing requirement to Sussex County~~ so that Sussex County can consider the phasing clearly incorporate it into its various approvals as appropriate prior to the Preliminary Site Plan hearing. Sussex County may then impose that phasing requirement as part of its approval of a land use application. ~~DelDOT’s P~~phasing of the project ~~may~~ include (but ~~are~~is not limited to) ~~a~~ consideration of the following:

- A delay of all or part of the development until specific roadwayhighway improvements are made by DelDOT or others;
- Whether the required roadwayhighway improvements are being funded or constructed at the developer’s own expense;
- Whether the developer is participating in, and/or funding, transit or traffic mitigation strategies.

The phasing requirements shall be included as a Plan Sheet at the time of Final Site Plan approval. ~~However, whenever possible, DelDOT shall endeavor to state whether a phasing recommendation is likely (with specific details to follow) as part of the TIS process prior to the Preliminary Site Plan or other public hearing process so that Sussex County, the developer and the public can have an expectation that phasing may be considered as part of the project development.~~ Phasing tied to other types of site plan approval is addressed in a following Section of this MOU regarding Site Plan Coordination.

~~g. Where measures to maintain operations are agreed upon by a developer, both DelDOT and Sussex County shall assure that these measures are carried out.~~

~~h.c.~~ When Sussex County believes that expert testimony regarding transportation issues is

required to make a land use decision (such as a rezoning, major subdivision, conditional use or Residential Planned Community), DelDOT will provide a suitable representative to attend meetings of the Planning and Zoning Commission and/or County Council. The representative should be someone with specific technical knowledge of the project in particular ~~and also~~ and ongoing projects in the area of Sussex County where the project is to occur.

i.f. In addition to the project-specific information referenced in the preceding paragraph, DelDOT shall provide regular updates to Sussex County about the status of ongoing and future roadway and transportation projects in the County, so that County Council and the Planning & Zoning Commission have an up-to-date understanding of their status. This shall include both developer-funded and DelDOT-initiated and -funded projects. During these updates, Sussex County will also have an opportunity to discuss other transportation improvements that may be needed in the future.

j.g. Whenever possible during the implementation of the foregoing items, Sussex County and DelDOT should encourage master planning for large scale developments on large parcels or groups of parcels in the Town Center, Coastal Area, Developing Area and commercial areas as set forth in the Comprehensive Land Use Plan to provide greater flexibility in design and/or the installation of additional roadways, ~~and~~ interconnectivity.

k.h. ~~Sussex County shall be entitled to participate in any negotiations between a developer and DelDOT as to roadway improvements. Sussex County may provide input into those negotiations, but DelDOT shall be entitled to make the final determination as to all required roadway improvements and negotiated agreements with a developer. Any agreement reached between a developer and DelDOT as to roadway improvements, phasing of a development, and funding of roadway improvements, ~~, etc.~~ shall be ~~immediately~~ timely forwarded to Sussex County for its records with regard to the development. Any subsequent changes or amendments to a DelDOT and /developer agreement shall likewise be ~~timely~~ immediately forwarded to Sussex County. Provided, however, that DelDOT ~~acknowledges~~ recognizes that if a specific requirement (such as phasing) is incorporated into a land use decision (such as a major subdivision, conditional use or Residential Planned Community), this may not be enforceable by~~

Sussex County without an amendment to the subdivision approval or the ordinance that approved a Residential Planned Community, Conditional Use or certain other ~~rezonings~~rezoning's where conditions can be imposed.

REZONINGS (WITHOUT SITE PLANS OR CONDITIONS OF APPROVAL)

1. Sussex County and DelDOT acknowledge that on a rezoning to a new zoning district where a specific site plan is not under consideration, and where the County cannot impose conditions as part of the rezoning approval, a TIS may not be possible (with the exception of rezoning's to Residential Planned Communities and C-4, where specific site plans are considered and conditions can be imposed). This is because the various zoning districts have several permitted uses that are allowed once a rezoning occurs; as a result DelDOT cannot determine, at the time of rezoning, what the actual use will be nor what the traffic and possible roadway improvements will be as a result of it. This requires greater coordination on the part of both Sussex County and DelDOT.
2. Whenever possible, DelDOT shall endeavor to provide as much information about the general impacts of the rezoning upon area traffic and roadways as required in the preceding section prior to the public hearing before Sussex County Council and the Planning & Zoning Commission.
3. Whenever DelDOT is approached by a developer with a specific project in mind, DelDOT and that developer may enter into an agreement to obtain a TIS for the project as part of the rezoning process so that the information required as part of the TIS may be included in the record of the public hearings of the rezoning application. Because other possible uses of the property may be permitted under the proposed new zoning, Sussex County is not bound by this information in making its decision on the rezoning. However, if the use that the TIS is based upon changes after the rezoning occurs, another TIS shall be required and Sussex County shall not approve any Preliminary or Final Site Plan for the property until the new TIS is completed with all necessary traffic and roadway improvements determined by DelDOT. Alternatively, if no TIS is performed on a specific project, DelDOT ~~or Sussex County~~ shall have the ability to request a TIS based upon the most impactful permitted use available under the new zoning classification that is sought.

SITE PLAN COORDINATION

1. Section 115-220D of the Sussex County Zoning Code allows Sussex County to approve certain site plans “subject to conditions”. In any site plan reviewed pursuant to Section 115-220 of the Sussex Zoning Code, Sussex County, with the assistance of DelDOT, may impose conditions regarding phasing and the timing of building permits in conjunction with completion of necessary roadway improvements.
2. In all site plan reviews, DelDOT will review the site plans in accordance with its rules and regulations for access and roadway improvements. Sussex County will withhold any site plan approval until DelDOT has provided a Letter of No Contention (LONC) or a Letter of No Objection to Recordation (LONOR).~~approved all necessary roadway improvements and entrance design requirements.~~ Provided, however, that this requirement may be waived by Sussex County for minor amendments to existing site plans that changes the trip generation by less than 50 trips per day.
3. Sussex County shall withhold the issuance of any building permit until DelDOT has issued the entrance ~~construction~~ permit associated with the project.
4. DelDOT will withhold an entrance construction permit until the developer has agreed to construct the access point(s) to Department standards and to provide off-site improvements as may be required to maintain acceptable traffic operation on roadways~~highways~~.
5. Sussex County will withhold issuance of the Certificate of Compliance until DelDOT has accepted the entrance construction as substantially completed.~~and issued the notice to the owner that the entrance construction permit has been satisfied.~~

TRANSPORTATION IMPROVEMENT DISTRICTS

1. In the event that a land use application falls within a Transportation Improvement District (“TID”), the requirements of the TID, as set forth in the TID Agreement, shall supersede the requirements set forth in this MOU.

IT IS FURTHER RESOLVED that the Secretary of the Delaware Department of Transportation and The County Administrator will affirm this agreement by affixing their signature to the Resolution.

Adopted by the County Council of Sussex County on _____, 2019.

President of the County Council of Sussex County

The following signatures concurring herein:

For Sussex County:

Todd Lawson, Sussex County Administrator

Robert Wheatley, Chairman, Sussex County
Planning & Zoning Commission

Janelle Cornwell, Director of Planning & Zoning

**For the Department of
Transportation:**

Jennifer Cohan, Secretary

2019
SUSSEX COUNTY/DELAWARE DEPARTMENT OF TRANSPORTATION
MEMORANDUM OF UNDERSTANDING
FOR LAND DEVELOPMENT COORDINATION

WHEREAS, Title 9, Section 6962 of the *Delaware Code* “Highway Capacity” obligates Sussex County to “establish an agreement with the Department of Transportation to provide a procedure for analysis by the Department of Transportation (“DelDOT”) of the effects on traffic of each rezoning application; and

WHEREAS, This Memorandum of Understanding is intended to comply with the foregoing requirements of Title 9, Section 6962 of the Delaware Code; and

WHEREAS, Land development has the potential to impact adjacent highways and Sussex County and DelDOT recognize that an analysis of the effects upon traffic is important in all types of land use decisions (Residential Planned Communities, Major Subdivisions, Conditional Uses) and not just rezoning applications; and

WHEREAS, The 2018 Sussex County Comprehensive Plan promotes greater coordination between DelDOT and Sussex County in land use decisions; and

WHEREAS, Sussex County is solely responsible for land use decisions in Sussex County; and

WHEREAS, the DelDOT is responsible for the operation, maintenance, and construction of State-maintained roads as well as the regulation of all entrance and roadway improvements required as part of new development; and

WHEREAS, it is the desire of Sussex County and DelDOT to coordinate land development with transportation needs.

NOW, THEREFORE,

BE IT RESOLVED that Sussex County Council and DelDOT hereby adopt the following Memorandum of Understanding:

DEFINITIONS

COMMITTED OFF-SITE IMPROVEMENTS – Road improvements for the benefit of safety and/or capacity that are generally beyond the limits of the site entrance and frontage that are required to be built by an approved land development project. Such improvements do not include auxiliary lanes that serve the site entrance, but may include roadway widening along the frontage of the site.

AREA WIDE STUDY FEE – A fee collected to complete an Area Wide Study that includes the

proposed land use or transportation improvements that benefit the proposed land use. Payment of an Area Wide Study Fee in lieu of a TIS will not preclude the developer's responsibility for funding and/or construction of its share of off-site improvements. Those improvements may be determined to be needed by the Area Wide Study or other studies, e.g. TIS for other nearby developments.

LEVEL OF SERVICE (LOS) - A quantitative stratification of a performance measure or measures representing how well a transportation facility or service operates from a traveler's perspective. For each type of facility or service there are six levels of service, ranging from A to F, with A representing the best operating condition and F the worst operating conditions. Except as may be specified by DelDOT, LOS shall be determined in accordance with the current edition of the Highway Capacity Manual, a publication of the Transportation Research Board.

PRELIMINARY TRAFFIC ANALYSIS – A request made by Sussex County Planning and Zoning Department for an evaluation by DelDOT, in terms of the proposed trip generation, to determine the Traffic Impact with regard to a proposed land use approval.

TRAFFIC IMPACTS:

DIMINUTIVE - The proposed land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips per day.

NEGLIGIBLE - The proposed land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips in any hour or fewer than 500 vehicle trips per day.

MINOR - The proposed land use is expected to increase the trip generation of the subject land by at least 50 vehicle trips in any hour but fewer than 200 vehicle trips in any hour or at least 500 vehicle trips per day.

MAJOR - The proposed land use is expected to increase the trip generation of the subject land by more than 200 vehicle trips in any hour or more than 2,000 vehicle trips per day.

TRAFFIC IMPACT STUDY (TIS) – A study conducted during the development approval process, in accordance with applicable DelDOT regulations, to determine the impacts that traffic generated by the proposed development will have on the surrounding street network and the improvements needed to the transportation system in order to mitigate those impacts.

TRAFFIC OPERATIONAL ANALYSIS (TOA) – An evaluation, or series of evaluations, conducted during the review of subdivision, land development and entrance plans, in accordance with applicable DelDOT regulations, primarily intended to determine site entrance location and movements to be allowed at the site entrance. These evaluations may include; Queuing Analysis, Highway Capacity Manual Analysis, and Crash Analysis.

LAND USE COORDINATION

1. Sussex County will make the final decisions on all matters of land use.
2. Preliminary Traffic Analysis:
 - a. The Sussex County Planning and Zoning Department will request a Preliminary Traffic Analysis from DelDOT for each land use application to determine if the resulting traffic impact will be diminutive, negligible, minor, or major.
 - b. DelDOT shall provide a Preliminary Traffic Analysis within twenty days (20) after receiving the Analysis request. If more time is needed, a written request explaining the reason for the additional time will be required.
 - c. Unless waived, Sussex County will not consider an application until DelDOT supplies Sussex County with the above information.
3. Diminutive Impact:
 - a. When it is determined that the impact would be diminutive, no further traffic analysis will be necessary.
4. Negligible Impact:
 - a. When DelDOT determines the traffic impact to be negligible they will provide projected traffic volumes in support and no further traffic analysis will be necessary.
 - b. Sussex County may approve land use applications with negligible impact at its discretion.
5. Minor Impact:
 - a. When DelDOT determines the traffic impact to be minor, the Preliminary Traffic Analysis shall include the feasibility of providing safe access and the condition, pavement, and the geometry of the nearby roadways and intersections relative to the traffic the subject property could generate. Where any of these are deemed potentially inadequate, DelDOT shall comment to this effect, and identify roadway improvements that may be required by the Developer.
 - b. When DelDOT determines that the traffic impact will be minor, the developer will be required to pay An Area Wide Study Fee (AWSF).
 - Alternative to an Area Wide Study Fee, the developer may elect to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT

standards.

- Payment of the fee does not exempt the developer from the responsibility to make off-site improvements or from preparing a Traffic Operational Analysis (TOA) if DelDOT identifies a need for a TOA in the plan review process.

6. Major Impact:

- a. When DelDOT determines that the traffic impact will be major, the developer will be required to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards.
- b. Additionally, DelDOT may ask for a Traffic Operational Analysis (TOA) in conjunction with a TIS.
- c. A TIS letter will be generated to document the developer's obligations.

7. Elements of the Traffic Impact Study:

- a. The TIS will consider the effects of active or proposed transportation improvements in the adopted Six (6) Year Capital Improvements Program, Current Transportation Plans, and Committed Off-Site Improvements, and the current Sussex County Comprehensive Plan and establish staging for development as needed.
- b. Given the seasonal nature of high-volume traffic in Sussex County, seasonal traffic adjustment factors to normalize traffic volumes shall be applied when calculating trip generation.
- c. DelDOT will provide a technical evaluation of the TIS.

8. Level of Service Standards:

- a. Sussex County and DelDOT shall endeavor, where possible, to maintain a Level of Service of D on roads and intersections affected by a land use application. However, Sussex County and DelDOT recognize that:
 - Level of Service of D is not always attainable;
 - That this threshold may create an undue burden on a property owner looking to develop a property given the prior development that has occurred in an area contributing to the existing Level of Service;
 - Other relevant factors (such as the size of the property, type or importance of the development) may mitigate against maintaining a Level of Service D.
- b. If the existing Level of Service is below D prior to the impact of the proposed land use, the existing Level of Service must at least be maintained.

- c. When DelDOT determines that the traffic impact of the proposed land use causes the threshold level of service to be exceeded, the County will not approve the land use application unless:
- The developer agrees to take appropriate measures to maintain operations at the threshold level of service; or,
 - Sussex County finds that there are sufficient reasons why the developer should not be responsible for all or part of the measures necessary to maintain the threshold level of service. Sussex County, in this case, shall set forth in writing their reasons for approving the land use application.

9. Coordination:

- a. The Sussex County Planning and Zoning Department is responsible for coordinating all required information with Sussex County Council and the Planning and Zoning Commission.
- b. No public hearing on the land use application shall occur until one of the following conditions are met:
- The application will have a diminutive impact as described above; or,
 - The application will have a negligible impact as described above; or,
 - Sussex County receives the approved AWSF letter from DelDOT; or,
 - Sussex County receives the approved TOA from DelDOT; or,
 - Sussex County receives the approved TIS from DelDOT.
- c. Sussex County does not have the ability to determine what, if any, conditions of approval related to roadway improvements or traffic would be appropriate in a given land use application. Therefore, if, in DelDOT's opinion, there are appropriate conditions of approval that should be imposed upon a land use decision, DelDOT shall offer those conditions as part of its TIS or as part of its Technical Advisory Committee review for consideration by Sussex County. Any such proposed conditions shall be clearly summarized by DelDOT prior to the Preliminary Site Plan hearing. After considering all relevant information regarding the land use application, Sussex County shall consider the proposed conditions but shall not be obligated to include them as part of any approval.
- d. DelDOT should clearly state what phasing of roadway improvements is appropriate for

the proposed land use application so that Sussex County can consider the phasing in its various approvals as appropriate prior to the Preliminary Site Plan hearing. Sussex County may then impose that phasing requirement as part of its approval of a land use application. DelDOT's phasing of the project may include (but are not limited to) consideration of the following:

- A delay of all or part of the development until specific roadway improvements are made by DelDOT or others;
- Whether the required roadway improvements are being funded or constructed at the developer's own expense;
- Whether the developer is participating in, and/or funding, transit or traffic mitigation strategies.

The phasing requirements shall be included as a Plan Sheet at the time of Final Site Plan approval. Phasing tied to other types of site plan approval is addressed in a following Section of this MOU regarding Site Plan Coordination.

- e. When Sussex County believes that expert testimony regarding transportation issues is required to make a land use decision (such as a rezoning, major subdivision, conditional use or Residential Planned Community), DelDOT will provide a suitable representative to attend meetings of the Planning and Zoning Commission and/or County Council. The representative should be someone with specific technical knowledge of the project in particular and ongoing projects in the area of Sussex County where the project is to occur.
- f. In addition to the project-specific information referenced in the preceding paragraph, DelDOT shall provide regular updates to Sussex County about the status of ongoing and future roadway and transportation projects in the County, so that County Council and the Planning & Zoning Commission have an up-to-date understanding of their status. This shall include both developer-funded and DelDOT-initiated and -funded projects. During these updates, Sussex County will also have an opportunity to discuss other transportation improvements that may be needed in the future.
- g. Whenever possible during the implementation of the foregoing items, Sussex County and DelDOT should encourage master planning for large scale developments on large parcels or groups of parcels in the Town Center, Coastal Area, Developing Area and

commercial areas as set forth in the Comprehensive Land Use Plan to provide greater flexibility in design and/or the installation of additional roadways.

- h. Any agreement reached between a developer and DelDOT as to roadway improvements, phasing of a development and funding of roadway improvements shall be timely forwarded to Sussex County for its records with regard to the development. Any subsequent changes or amendments to a DelDOT and developer agreement shall likewise be timely forwarded to Sussex County. Provided, however, that DelDOT acknowledges that if a specific requirement (such as phasing) is incorporated into a land use decision (such as a major subdivision, conditional use or Residential Planned Community), this may not be enforceable by Sussex County without an amendment to the subdivision approval or the ordinance that approved a Residential Planned Community, Conditional Use or certain other rezoning's where conditions can be imposed.

REZONINGS (WITHOUT SITE PLANS OR CONDITIONS OF APPROVAL)

1. Sussex County and DelDOT acknowledge that on a rezoning to a new zoning district where a specific site plan is not under consideration, and where the County cannot impose conditions as part of the rezoning approval, a TIS may not be possible (with the exception of rezoning's to Residential Planned Communities and C-4, where specific site plans are considered and conditions can be imposed). This is because the various zoning districts have several permitted uses that are allowed once a rezoning occurs; as a result DelDOT cannot determine, at the time of rezoning, what the actual use will be nor what the traffic and possible roadway improvements will be as a result of it. This requires greater coordination on the part of both Sussex County and DelDOT.
2. Whenever possible, DelDOT shall endeavor to provide as much information about the general impacts of the rezoning upon area traffic and roadways as required in the preceding section prior to the public hearing before Sussex County Council and the Planning & Zoning Commission.
3. Whenever DelDOT is approached by a developer with a specific project in mind, DelDOT and that developer may enter into an agreement to obtain a TIS for the project as part of the rezoning process so that the information required as part of the TIS may be included in the

record of the public hearings of the rezoning application. Because other possible uses of the property may be permitted under the proposed new zoning, Sussex County is not bound by this information in making its decision on the rezoning. However, if the use that the TIS is based upon changes after the rezoning occurs, another TIS shall be required and Sussex County shall not approve any Preliminary or Final Site Plan for the property until the new TIS is completed with all necessary traffic and roadway improvements determined by DelDOT. Alternatively, if no TIS is performed on a specific project, DelDOT shall have the ability to request a TIS based upon the most impactful permitted use available under the new zoning classification that is sought.

SITE PLAN COORDINATION

1. Section 115-220D of the Sussex County Zoning Code allows Sussex County to approve certain site plans “subject to conditions”. In any site plan reviewed pursuant to Section 115-220 of the Sussex Zoning Code, Sussex County, with the assistance of DelDOT, may impose conditions regarding phasing and the timing of building permits in conjunction with completion of necessary roadway improvements.
2. In all site plan reviews, DelDOT will review the site plans in accordance with its rules and regulations for access and roadway improvements. Sussex County will withhold any site plan approval until DelDOT has provided a Letter of No Contention (LONC) or a Letter of No Objection to Recordation (LONOR). Provided, however, that this requirement may be waived by Sussex County for minor amendments to existing site plans that changes the trip generation by less than 50 trips per day.
3. Sussex County shall withhold the issuance of any building permit until DelDOT has issued the entrance permit associated with the project.
4. DelDOT will withhold an entrance construction permit until the developer has agreed to construct the access point(s) to Department standards and to provide off-site improvements as may be required to maintain acceptable traffic operation on roadways.
5. Sussex County will withhold issuance of the Certificate of Compliance until DelDOT has accepted the entrance construction as substantially completed.

TRANSPORTATION IMPROVEMENT DISTRICTS

- 1. In the event that a land use application falls within a Transportation Improvement District (“TID”), the requirements of the TID, as set forth in the TID Agreement, shall supersede the requirements set forth in this MOU.

IT IS FURTHER RESOLVED that the Secretary of the Delaware Department of Transportation and The County Administrator will affirm this agreement by affixing their signature to the Resolution.

Adopted by the County Council of Sussex County on _____, 2019.

President of the County Council of Sussex County

The following signatures concurring herein:

For Sussex County:

Todd Lawson, Sussex County Administrator

Robert Wheatley, Chairman, Sussex County
Planning & Zoning Commission

Janelle Cornwell, Director of Planning & Zoning

**For the Department of
Transportation:**

Jennifer Cohan, Secretary

January 7, 2020

Mr. Robert C. Wheatley, Chairman
Mrs. Kim Hoey Stevenson, Vice-Chairman
Mr. R. Keller Hopkins
Mr. J. Bruce Mears
Mrs. Holly Wingate

Sussex County Planning and Zoning Commission
P.O Box 417
Georgetown, DE 19947

**RE: Sussex County/DelDOT Memorandum of Understanding for Land
Development Coordination**

OVERVIEW

A Memorandum of Understanding (MOU) between Sussex County and DelDOT was established in 1988. Given the number of years which have transpired and the changes in land development since 1988, Sussex County's Planning and Zoning Department has developed a revised MOU which was presented to the Planning and Zoning Commission during a public hearing on December 12, 2019. Given the number of questions, comments, and concerns presented at the public hearing, the Commission voted to extend the public hearing until January 9, 2020.

During the recent weeks, a team consisting of developers and transportation engineers worked together to formulate a proposed revised MOU which, in our opinion, is better organized providing clarity to government staff, developers, consultants, and the general public.

We have submitted to you our proposed revised MOU for consideration.

CONFLICTING TERMS IN THE DOCUMENT

Roadway vs. Highway – There are a lot of areas in the document where the terms “highway” and “roadway” are used interchangeably. A highway commonly denotes facilities for land-based transportation which consists of limited access, grade separations and higher speeds, as referenced in DelDOT's Development Coordination Manual. Therefore, the broader term “roadway” is the preferred and should be used throughout the document.

Proposed land use vs. Change in land Use – The MOU addresses procedures when the future land use is being proposed, not necessarily changes. It is recommended that the term be consistent throughout the document and the term “proposed land use” is suggested.

DEFINITIONS

FEE IN LIEU – The fee in lieu process is really referring to what the DelDOT Development Coordination Manual calls an Area Wide Study Fee in lieu of a TIS. The shorthand term may be “Fee in Lieu” but the DelDOT Development Coordination Manual references the Area Wide Study Fee as the proper term, as well as the definition provided in the MOU. Since Fee in lieu is not a defined term in the DelDOT Development Coordination Manual and Area Wide Study Fee is a term therein, it would make sense to change the term used in this document to match. A better definition for Area Wide Study Fee that is found in the DelDOT Development Coordination Manual is:

AREA WIDE STUDY FEE – A fee collected to complete an Area Wide Study that includes the proposed land use or transportation improvements that benefit the proposed land use. Payment of an Area Wide Study Fee in lieu of a TIS will not preclude the developer’s responsibility for funding and/or construction of its share of off-site improvements. Those improvements may be determined to be needed by the Area Wide Study or other studies, e.g. TIS for other nearby developments.

LAND USE COORDINATION

The Land Use Coordination section of the MOU can be broken out into four (4) major categories. (1) Process, (2) Elements of a Traffic Impact Study (TIS), (3) Level of Service (LOS) Standards, and (4) Coordination. A simple restructuring of the document will help with the flow and clarity. As it is currently drafted, these categories identified above, are intermingled with each other and are generating some of the misunderstanding.

(1) Process: (Paragraph 1,2,4,5,6,7,8)

The current process today can be very easily mapped out; however, the current organization of this document creates confusion and contradiction with how the DelDOT Development Coordination Manual and the process work today. The same intent and information can be captured if the MOU were revised to match the process and organized in a manner that the general public can understand.

The process as it stands today that the MOU is trying to map out is as follows:

- Step 1: A land use change is proposed on a parcel within Sussex County.

- Step 2: The Sussex County Planning and Zoning Department will request a Preliminary Traffic Analysis (also known today as a Service Level Evaluation) from DelDOT. (We understand that the Service Level Evaluation process is potentially changing which is why the new term Preliminary Traffic Analysis is being used, however, that change has not occurred yet which is driving a lot of confusion on what the Preliminary Traffic Analysis will actually provide beyond what a Service Level Evaluation already does.)
- Step 3: DelDOT responds to the Preliminary Traffic Analysis determining if the resulting traffic impact of the land use is diminutive, negligible, minor or major (noting that a diminutive impact is a new term with this MOU). In DelDOT's response, it will typically include the annual Delaware Vehicle Volume Summary for the segments of road adjacent to the proposed land use and the trip generation for the proposed land use based on the Institute of Transportation Engineer's Trip Generation Manual, current edition.
- Step 4: DelDOT's response determines which traffic impact category and step in the process an applicant will move forward with.
 - (a) Diminutive Impact – No further study or information would be required.
 - (b) Negligible Impact – DelDOT will provide traffic volumes to support the impact and no further analysis will be necessary.
 - (c) Minor Impact
 - a. Developer will be required to pay an Area Wide Study Fee (AWSF). Payment of the fee does not exempt the developer from the responsibility to make off-site improvements or from preparing a TOA if DelDOT identifies a need for a TOA in the plan review process.
 - b. Alternative to an AWSF, the developer may elect to conduct an in-depth Traffic Impact Study (at the developer's expense) to DelDOT standards.
 - DelDOT may require a Traffic Operational Analysis (TOA) along with a TIS.
 - (d) Major Impact
 - a. The Developer will be required to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards.
 - b. DelDOT may require a Traffic Operational Analysis (TOA) along with a TIS.

- Step 5: For Minor and Major Impacts, an agreement is made between the developer and DelDOT based on the traffic impact and represented in either a TIS, TOA or AWSF letter, discussing or identifying the entrance, frontage and developer's share of offsite improvements.

Paragraph 2 and 4: How will Sussex County and DelDOT determine an impact will be diminutive without performing a Preliminary Traffic Analysis? Currently there is no process other than the County sending in the Service Level Evaluation request form to DelDOT and DelDOT responding to the request with their determination of the impact. Suggested edit and combination of para. 2 and 4:

Preliminary Traffic Analysis:

- a. *The Sussex County Planning and Zoning Department will request a Preliminary Traffic Analysis from DelDOT for each land use application to determine if the resulting traffic impact will be diminutive, negligible, minor, or major.*
- b. *DelDOT shall provide a Preliminary Traffic Analysis within twenty days (20) after receiving the Analysis request. If more time is needed, a written request explaining the reason for the additional time will be required.*
- c. *Unless waived, Sussex County will not consider an application until DelDOT supplies Sussex County with the above information.*

New Paragraph: Diminutive impacts will only be able to be determined after a Preliminary Traffic Analysis is completed, due to the way the process works and until a new process is crafted, a new paragraph will need to be added to the MOU to handle the added impact:

Diminutive Impact:

- a. *When it is determined that the impact would be diminutive, no further traffic analysis will be necessary.*

Paragraph 5: This paragraph relates to negligible impacts. The second sentence redefines the term negligible, which is inconsistent with the rest of the document and the paragraphs that relate to traffic impacts, as they don't redefine the impacts in those paragraphs, and unnecessary since it is a defined term in the definitions. A suggested edit is:

Negligible Impact:

- a. *When DelDOT determines the traffic impact to be negligible they will provide projected traffic volumes in support and no further analysis will be necessary.*
- b. *Sussex County may approve land use applications with negligible impact at its discretion.*

Paragraph 6: This paragraph relates to minor impacts. When there is a minor impact to a proposed land use, the DelDOT Development Coordination Manual states that there are two ways a developer can address traffic related responsibilities for the proposed land use. The first is for the developer to pay into an Area Wide Study and the second is the developer may elect to conduct a Traffic Impact Study. A suggested revision to para. 6 is:

Minor Impact:

- a. *When DelDOT determines the traffic impact to be minor, the Preliminary Traffic Analysis shall include the feasibility of providing safe access and the condition, pavement, and the geometry of the nearby roadways and intersections relative to the traffic the subject property could generate. Where any of these are deemed potentially inadequate, DelDOT shall comment to this effect, and identify roadway improvements that may be required by the developer.*
- b. *When DelDOT determines that the traffic impact will be minor, the developer will be required to pay an Area Wide Study Fee (AWSF).*
 - *Alternative to an Area Wide Study Fee, the developer may elect to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards.*
 - *Payment of the fee does not exempt the developer from the responsibility to make off-site improvements or from preparing a Traffic Operational Analysis (TOA) if DelDOT identifies a need for a TOA in the plan review process.*

Paragraph 7 and 8: These paragraphs relate to major impacts. When a major impact occurs, the developer is required to complete a TIS for the proposed land use. The developer does not have the ability to participate in an Area Wide Study Fee in lieu of a TIS if the traffic impact is major. If DelDOT is not requiring the developer to conduct a TIS, then Sussex County should not be able to require a TIS. The County does not have the ability to review or provide a technical analysis of the TIS and if DelDOT is not requiring it, that means there is sufficient data to support the proposed land use change by other means or previous Traffic Impact Studies. Para. 7 also has elements of what is required in a TIS, that may better fit into its own paragraph, in a new section, since a TIS is available for use in both Major and Minor traffic impacts. A suggested edit and combination of para 7 and 8 are:

Major Impact:

- a. *When DelDOT determines that the traffic impact will be major, the developer will be required to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards.*
- b. *Additionally, DelDOT may require a Traffic Operational Analysis (TOA) in conjunction with a TIS.*
- c. *A TIS letter will be generated to document the developer's obligations.*

(2) Elements of a Traffic Impact Study (TIS): (Paragraph 7,3)

There are sections within the document that are specific to the information that is provided in a Traffic Impact Study. Per the DelDOT Development Coordination Manual a TIS can be utilized in both a minor and major impact. It makes sense to create a section that specifically identifies the elements of a TIS with regards to the MOU.

New Paragraph:

The TIS will consider the effects of active or proposed transportation improvements in the adopted Six (6) Year Capital Improvements Program, Current Transportation Plans, and Committed Off-Site Improvements, and the current Sussex County Comprehensive Plan and establish staging for development as needed.

Paragraph 3: DelDOT already requires these seasonal adjustment factors when applied to traffic counts for studies. Suggest rewording to:

Given the seasonal nature of high-volume traffic in Sussex County, seasonal traffic adjustment factors to normalize traffic volumes shall be applied when calculating trip generation.

(3) Level of Service (LOS) Standards: (Paragraph 9, 11)

Level of service standards are found throughout the document. It would make more sense to have them under one section to show the intent of DelDOT and Sussex County when handling the level of service issues presented.

Paragraph 11: The same intent can be achieved without all the extra wording with the suggestion below:

When DelDOT determines that the traffic impact of the proposed land use causes the threshold level of service to be exceeded, the county will not approve the land use application unless:

- *The developer agrees to take appropriate measures to maintain operations at the threshold level of service; or,*
- *Sussex County finds that there are sufficient reasons why the developer should not be responsible for all or part of the measures necessary to maintain the threshold level of service. Sussex County, in this case, shall set forth in writing their reasons for approving the land use application.*

(4) Coordination: (Paragraph 18, 10, 12, 13, 14, 15, 16, 17, 19)

The MOU is all about coordination between DelDOT and Sussex County. It is imperative that the paragraphs relating to coordination be identified and organized together.

Paragraph 10: As this paragraph is written, if the impact is negligible then it does not fall within any of the categories and the County is unable to hold a public hearing. A suggested edit is:

No public hearing on the land use application shall occur until one of the following conditions are met:

- *The application will have a diminutive impact as described above; or,*
- *The application will have a negligible impact as described above; or,*
- *Sussex County receives the approved AWSF letter from DelDOT; or,*
- *Sussex County receives the approved TOA letter from DelDOT; or,*
- *Sussex County receives the approved TIS letter from DelDOT.*

Paragraph 12: Due to the short turnaround time on the Preliminary Traffic Analysis, it is more feasible to have any conditions proposed by DelDOT prior to Preliminary Site Plan hearing, so they are available for the public. This would allow time for proposed land uses with minor or major impacts to complete any studies that are warranted for the site as well as provide the data, from those studies, that DelDOT would need to create such conditions. The conditions would then end up in a separate letter or, if possible, the TIS, TOA or AWSF letter. The suggested edit to the sentence effected in para. 12 is:

Any such proposed conditions shall be clearly summarized by DelDOT prior to the Preliminary Site Plan hearing.

Paragraph 13: It is already stated in the document that the level of service is to be maintained or restored at a “D”. The first sentence in the paragraph is repetitive and if the document gets organized with Level of Service standards, unneeded. A suggested edit is:

DelDOT should clearly state what phasing of roadway improvements is appropriate for the proposed land use application so that Sussex County can consider the phasing in its various approvals as appropriate prior to the Preliminary Site Plan hearing. Sussex County may then impose that phasing requirement as part of its approval of a land use application. DelDOT’s phasing of the project may include (but are not limited to) consideration of the following:

- *A delay of all or part of the development until specific roadway improvements are made by DelDOT or others;*
- *Whether the required roadway improvements are being funded or constructed at the developer’s own expense;*
- *Whether the developer is participating in, and/or funding, transit or traffic mitigation strategies.*

The phasing requirements shall be included as a Plan Sheet at the time of Final Site Plan approval. Phasing tied to other types of site plan approval is addressed in a following Section of this MOU regarding Site Plan Coordination.

Paragraph 19: Sussex County should not participate in negotiating road improvements. Road improvements are determined by DelDOT and the developer is responsible for its share of construction and funding of the determined off-site improvement. The County doesn’t have jurisdiction over the construction of road improvements or the timing of the road improvements.

It is an agreement between DelDOT and the developer. Once the agreement is made, it will be shared with the County and the County can then condition the Site Plan to reflect any conditions or phasing of the agreement. A suggested edit to para. 19 is:

Any agreement reached between a developer and DelDOT as to roadway improvements, phasing of a development, and funding of roadway improvements, shall be timely forwarded to Sussex County for its records with regard to the development. Any subsequent changes or amendments to a DelDOT and developer agreement shall likewise be timely forwarded to Sussex County. Provided, however, that DelDOT acknowledges that if a specific requirement (such as phasing) is incorporated into a land use decision (such as a major subdivision, conditional use or Residential Planned Community), this may not be enforceable by Sussex County without an amendment to the subdivision approval or the ordinance that approved a Residential Planned Community. Conditional Use or certain other rezoning's where conditions can be imposed.

SITE PLAN COORDINATION

Paragraph 2: There may be a time, especially with larger proposed land use changes, when roadway improvements are phased, at a later date, after the development starts. In para. 2 the way it is written, it would require that all roadway improvements are designed and approved before the County approves the site plan. DelDOT has a process called Letter of No Contention and Letter of No Objection to Recordation that would allow the County to move forward with approvals without the developer having to spend unnecessary capital on designing plans that will not all be constructed at that time and will most likely need to be redesigned due to ever-changing DelDOT regulations. A suggested edit to para. 2 is:

In all site plan reviews, DelDOT will review the site plans in accordance with its rules and regulations for access for roadway improvements. Sussex County will withhold any site plan approval until DelDOT has provided a Letter of No Contention (LONC) or a Letter of No Objection to Recordation (LONOR). Provided, however, that this requirement may be waived by Sussex County for minor amendments to existing site plans that changes the trip generation by less than 50 trips per day.

Paragraph 5: The terms used in the paragraph are contradicting. The County and DelDOT view a permit being satisfied as two different milestones. To clean this up a suggested edit to para 5 is:

Sussex County will withhold issuance of the Certification of Compliance until DelDOT has accepted the entrance construction as substantially completed.

SUMMARY

In summary, we applaud Sussex County's Planning and Zoning Department for taking the initiative to update an outdated MOU between it and DelDOT. We appreciate the opportunity to review and make comments and suggestions to the proposed draft MOU. We have developed a revised draft which, in our opinion, provides more clarity and organization while maintaining the original intent of the first draft. Thank you in advance for your consideration of our submission.

Respectfully submitted by:

Thomas Natelli Jr. – Natelli Communities

Robert Tunnell, III. – Tunnell Companies, L.P.

Betty H. Tustin – The Traffic Group, Senior Project Manager, P.E., PTOE

Paul G. Archibald – T. Y. LIN International, Project Director – Transportation, P.E., PTOE

Richard T. Rezer – T. Y. LIN International, Project Manager – Traffic

Jason Palkewicz – Solutions IPEM, P.E., LEED AP

Jim Eriksen – Solutions IPEM, P.E.

CC:

Janelle Cornwell, Director, Sussex County Planning and Zoning

Vincent Robertson, Counsel, Sussex County Planning and Zoning

J. Marc Cote, Assistant Director, Development Coordination

T. William Brockenbrough Jr., County Coordinator, Development Coordination

ENCLOSURES:

1: MOU DRAFT REVISION – REDLINE – 010720

2: MOU DRAFT REVISION – BLACKLINE – 010720

**Dennis Crawford
32659 Hastings Drive
Lewes, DE 19958**

December 12, 2019

TO: Sussex County Delaware Planning and Zoning Commission

To be read at December 12 meeting and/or made part of public record.

Please remember this date: November 8, 2019. On this date, which is not during the summer, not during the arrival of the Cape May/Lewes Ferry and not during the mad rush to Cape Henlopen High School. It was just a normal fall day except for one thing; at home my heart stopped beating and I blacked out. My wife frantically contacted 911. Luckily my heart started beating again before the ambulance and paramedics arrived. Upon arrival it was determined I should be transported to the hospital, which is only 3 or 4 miles away. During the ride, and before I passed out again in the ambulance, I was amazed at the amount of traffic the driver had to negotiate. In addition, I was even more amazed at the number of vehicles that would not or did not move out of the way. This was a short ride down Gills Neck Road and a right onto Kings Highway. Please keep in mind that the projects already approved by the County have not even started yet or are not 50% complete.

Upon arrival at the hospital, my pulse was 20. An AED device was used and I was shocked many times to get the heart rate stable. I spent five (5) days in ICU.

I present this real life story so the County officials will realize that their decisions have put the safety of the citizens in jeopardy. Please keep our safety foremost in your decision making process on more building without proper infrastructure.

Sincerely,

Dennis Crawford

Natelli Communities

Mr. Robert Wheatley, Chairman
Mrs. Kim Hoey Stevenson, Vice-Chairman
Mr. R. Keller Hopkins
Mr. J. Bruce Mears
Mrs. Holly Wingate

December 12, 2019

Sussex County Planning and Zoning Commission
2 The Circle, P.O. Box 417
Georgetown, DE 19947

Re: Sussex County/Delaware Department of Transportation Memorandum of Understanding for Land Development Coordination

First, I would like to state that I am not opposed to Sussex County and The Delaware Department of Transportation (DelDOT) having a Memorandum of Understanding (MOU) for Land Development Coordination. However, this MOU needs work, and I would recommend that, if possible, more time is taken to look at the provisions of this MOU and how they relate to the DelDOT Development Coordination Manual, as well as, the implications of governing land use by the County's reliance on DelDOT.

The MOU has many conflicting statements and there needs to be clarification on the process. As a developer that navigates these various processes on a regular basis, it is hard to understand how to apply these requirements from the perspective of this MOU. DelDOT has its own regulations and requirements that a developer is required to follow, and this does not seem to completely align with that.

One example of where clarification is needed is between Section 4 "Consider an application" and Section 10 "No public hearing on the land use application shall occur". Are they meant to be the same statement, or do they have different meanings? In the context provided, Sussex County may not consider an application until a preliminary traffic analysis has occurred. However, a hearing may not occur until the County receives a TIS, TOA, DelDOT advises of a "Fee in Lieu", or there is a diminutive impact. There are two general concerns here, considering an application and holding a public hearing can mean the same thing. The second, which I also point out below, is that Section 10 only allows for Major and Diminutive Traffic Impacts to have public hearings because Section 10 stays silent on Minor and Negligible Traffic Impacts and the relevant information required to be provided by DelDOT before Sussex County is allowed to hold public hearings on land uses with those two traffic impacts.

Comments on Land Use Coordination

Section 2:

“The Sussex County Planning and Zoning Department will request a Preliminary Traffic Analysis from DeIDOT...”

- What is the trigger for this request?
- Who is requesting the Preliminary Traffic Analysis, and will they be responsible to follow up when the request is unfulfilled in a timely manner?
- What all is included in the Preliminary Traffic Analysis
- This is something that a developer could have their certified professional traffic engineer provide in a timely manner and DeIDOT can verify. A developer has their hands on a project a lot longer than the County does, and this is information that during the due diligence period would be part of the initial study anyway prior to the need of the county requesting it.

“Unless more time is required given the size or complexity of the land use application, DeIDOT shall endeavor to provide a Preliminary Traffic Analysis within twenty days after receiving the Analysis request.”

- This is an open-ended statement of a timeline that gives no comfort of a definitive delivery date of the requested information.

Depending on how long DeIDOT may take to deliver the requested Preliminary Traffic Analysis, this section of the MOU presents itself as a potential roadblock in any land use application process unless a provision can be made that empowers the County to be willing to consider the application even more so than what Section 4 provides. An alternative would be to allow the developer to engage with DeIDOT or a third-party qualified traffic engineer/consultant to provide the required information.

Section 3:

This section contradicts how traffic counts are applied in the required TIS and TOA studies used to determine offsite improvements, so why use different methods for the Preliminary Traffic Analysis. The way this section is written it would artificially inflate traffic counts and reduce the existing capacity of the roadways, thus decreasing the current LOS to worse operating conditions than what is existing.

Current methods already in use provide seasonal traffic adjustment factors to normalize traffic volumes and the TIS includes summer peak Saturday counts. It would make sense to apply this method to the Preliminary Traffic Analysis.

Section 4:

“Unless waived as set forth in Paragraph 2 above, Sussex County will not consider an application until DeIDOT Supplies Sussex County with the above information.”

- This is a potential roadblock for any land use application. There is nothing compelling DeIDOT to respond to the County within the specified timeframe defined in Section 2 of the MOU. There is also no requirement within any DeIDOT regulations that can be that supported to back up the statement that requires them to respond to the request that I have been able to find to date. An alternative would be to allow the developer to engage with DeIDOT or a third-party qualified traffic engineer/consultant to provide the required information

Section 6: Traffic Impact Minor

“When DeIDOT determines the traffic impact to be minor, the traffic analysis shall include the feasibility of providing of providing safe access and the condition, pavement, and the geometry of the nearby roadways and intersections relative to the traffic the subject property could generate. Where any of these are deemed inadequate, DeIDOT shall comment to this effect,...”

- Why was the term preliminary dropped when talking about the traffic analysis?
- DeIDOT cannot determine the inadequacy of nearby roadways and intersections unless a TIS or other prior recent studies have been completed.

“An Area Wide Study Fee (AWSF) letter will be generated to document the developer’s obligations to construct identified roadway improvements or fund road improvements as required by DeIDOT.”

- A Developer would pay an AWSF to DeIDOT so DeIDOT can complete the study or offset the costs of prior studies to determine the inadequacy of the roadways or intersections and the developer’s obligations for roadway improvements would be handled under a separate agreement. The AWSF is the mechanism that would determine if roadways or intersections are inadequate so how could DeIDOT comment on the adequacy prior to the study being completed?

Section 7: Traffic Impact Major

“...Sussex County, at its own initiative, may require a developer to conduct a TIS.”

- If a TIS is not warranted by DeIDOT, there is good merit behind that, such as recent TIS performed in the adjacent area that cover the scope needed for this land use. The county has no jurisdiction to require a developer to conduct a TIS.

“Alternatively DeIDOT may allow a Traffic Operational Analysis (TOA) instead of a TIS.”

- Per the DeIDOT Development Coordination Manual 2.3.2 TOA – Rules for a Requirement for a TOA - *“DeIDOT may require a TOA for any development project that is expected to generate 200 or more vehicle trips per day and for which a TIS was not completed.”*
- They are typically limited in their scope compared to a TIS and target a specific intersection or access point for a specific dataset, such as crash data or trip generation.
- They are used after a TIS has been completed and there is a scope change in the TIS, the TOA would address that scope change.

- TOA by the definitions set forth in the MOU can be applied to Negligible, Minor and Major Traffic Impacts.

Section 10:

- (a) Sussex County receives the approved TIS from DeIDOT – under MOU covers land use applications with Major Traffic Impacts only
- (b) Sussex County receives the approved TOA from DeIDOT – under MOU covers land use applications with Major Traffic Impacts only
- (c) DeIDOT advises that a “Fee in Lieu” described in Paragraph 8 above) is appropriate instead of a TIS – under MOU covers land use applications with Major Traffic Impacts only
- (d) The application will have a diminutive impact as described above – under MOU covers land use applications with Diminutive Traffic Impacts Only

There are no provisions in Section 10 that determine when the County can hold a hearing for land use applications with traffic impacts that are Negligible and Minor.

Section 11:

When the TIS is performed there are other factors applied to the traffic counts that drive the LOS threshold levels to be exceeded. This cannot be a one size fits all statement.

Section 13:

“Phasing of land development with highway capacity and safety improvements to restore and maintain a level of service “D” may be required by DeIDOT.”

- This statement contradicts Section 9.
- Sometimes LOS D is unattainable and this needs to be considered when applying phasing or other restrictions to development activities.

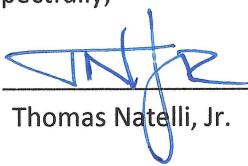
DeIDOT already requires phasing improvements for site access and offsite improvements. Typically, it is tied to the number of building permits. These are incorporated into the TIS, but for large scale developments where this will be applied, how will the county track work that is permitted and inspected by the state?

Section 19:

DeIDOT maintains the roadways within Sussex County that are covered under this MOU, negotiations should be between the applicant and DeIDOT.

Respectfully,

By: _____

A handwritten signature in blue ink, appearing to read "TNJR", is written over a horizontal line. The signature is stylized and cursive.

Thomas Natelli, Jr.

RECEIVED

JAN 09 2019

SUSSEX COUNTY
PLANNING & ZONING

January 9, 2020

Mr. Robert C. Wheatley
Chairman
Sussex County Planning and Zoning Commission
P.O. Box 417
Georgetown, DE 19947

Chairman Wheatley, Members of the Commission:

I am Rich Borrasso and live in Milton. I am speaking here as a private citizen, not representing any group.

At the last public hearing, a number of speakers provided suggestions regarding the DRAFT MOU for Land Development Coordination. In general, what I heard was, the public wants Sussex County to execute its responsibilities, exercise its authority and fully develop its capabilities to best leverage the MOU as an instrument to help protect, preserve and enhance public welfare and safety.

Beyond traffic I believe one of the best examples of County responsibility was best demonstrated in your work and ultimate implementation of the 2019 Comprehensive Plan. As stated in the Plan, "growth is putting increasing pressure on the County's transportation system. Responding to this pressure will require a combination of capacity improvements and the implementation of better approaches to land use and transportation coordination". With over 50 strategies detailed in the Transportation Element in the Plan, County government was clear in acknowledging change was needed.

Additionally, over the next 5 years over \$1Billion in infrastructure investment will be spent in Sussex County. The County's responsibility for direct oversight and engagement will be critical to ensure the maximum return on investment for all who live here.

For years, residents were told that the County had no authority over roads, that was DelDOT's responsibility. In the words of the draft MOU, "Sussex County is solely responsible for all land use decisions in the County", but land use decisions drive and determine traffic levels. Traffic is the direct result of land use.....so, the County is responsible for traffic.

FILE COPY

MOU 1/9/2020
Robbie Comment

But responsibility cannot be met without the authority to act. That is why laws and regulations have been adopted over the years granting County Government authority act on behalf of its residents in many areas. But of course, our discussion here is specifically about this newly drafted MOU.

Until last year, the current MOU was pretty much unknown to the public and to many officials at both the County and State levels. When it came to light, it became much clearer that the County actually did have a great deal of unused authority to influence traffic impact decisions, at least under certain circumstances. This has led to the draft MOU you have before you which significantly broadens the County's input on road development and improvement.

Evidence of this "broadened authority" can be found and is outlined in the DeIDOT Development Coordination Manual which according to DeIDOT is the State "bible" for highway planning and design. Although some argued at the public hearing that the County has no authority regarding a Traffic Impact Study or TIS, Chapter 2 Traffic and Analysis and Improvements is clear:

Allow me to paraphrase select sections in the Manual.

- Section: Intersections and Roadway Segments to be Studied
Paragraph B. The local government specifies what, if any, requirement they have with regard to the Level of Service.
- Section: Basis for Requirement
Paragraph C. If the local land use agency has more stringent TIS warrant requirements than those provided in this section, it requires a TIS using those more stringent requirements.
- Section: Future Traffic
Paragraph B. DeIDOT and the local zoning/land development agency collaborate on how the types and levels of development will be used to generate and distribute vehicle trips

So, it is very clear, the County has the authority to impose requirements as it relates to Traffic Impact Studies. To this point I suggest Paragraph 7 in the MOU DRAFT needs to be strengthened beyond just stating, "In addition, Sussex County, at its own initiative, may require a developer to conduct a TIS". This section must be expanded to identify greater inclusion and input by County agencies who are the most knowledgeable of local issues. At the very least a reference back to Chapter 2 in the Manual is warranted.

The facts are that Sussex County has the responsibility for traffic in the County; it has the authority to assure that traffic studies and proposed improvements are done with the best interest of its residents.

So, beyond this MOU DRAFT let me shift to the 3rd duty mentioned in my opening- which is "capability".

At the last public hearing the County admitted it lacks the knowledge and expertise to best understand, review and scrutinize the traffic analysis or the improvements recommended by DelDOT. This is an astonishing statement considering that Sussex County is the fastest growing county in the State, has severe and growing traffic safety and congestion issues, has the largest backlog of road improvements, and as mentioned earlier a planned Billion dollar spend on infrastructure.

It is time for the County to resolve this lack of capability. Stating that the County does not have the capability is viewed by many as an excuse. The issue is not that the County doesn't have the capability; it doesn't have the will or the desire to acquire and develop this capability. With a budget surplus of millions of dollars, what issue facing our citizens and continuously raised in most public hearings could be more benefitted by an investment in an on- staff Traffic Planner or contracting a traffic consultant? What is even a greater concern is what we learned this week at the County Council Meeting regarding the Delaware State Police Activity Report for Sussex County where November YTD 2019 fatal crashes are up an alarming 36% combined with a 13% increase in Personal Injury Crashes. This is an effort and an expenditure that the County cannot afford to put off any longer.

In closing, this draft MOU must be revised to reflect these realities. The Commission must fulfill its obligations to its responsibilities, exercise its authority and fully develop County capabilities to protect, preserve and enhance the both community and individual property rights and quality of life. The public is looking forward to the details in the Commission's recommendations to Council resulting from these public hearings.

Thank you for allowing me the opportunity to express my thoughts.

Rich Borrasso
Milton, DE 19968

January 7, 2020

Mr. Robert C. Wheatley, Chairman
Mrs. Kim Hoey Stevenson, Vice-Chairman
Mr. R. Keller Hopkins
Mr. J. Bruce Mears
Mrs. Holly Wingate

Sussex County Planning and Zoning Commission
P.O Box 417
Georgetown, DE 19947

**RE: Sussex County/DelDOT Memorandum of Understanding for Land
Development Coordination**

OVERVIEW

A Memorandum of Understanding (MOU) between Sussex County and DelDOT was established in 1988. Given the number of years which have transpired and the changes in land development since 1988, Sussex County's Planning and Zoning Department has developed a revised MOU which was presented to the Planning and Zoning Commission during a public hearing on December 12, 2019. Given the number of questions, comments, and concerns presented at the public hearing, the Commission voted to extend the public hearing until January 9, 2020.

During the recent weeks, a team consisting of developers and transportation engineers worked together to formulate a proposed revised MOU which, in our opinion, is better organized providing clarity to government staff, developers, consultants, and the general public.

We have submitted to you our proposed revised MOU for consideration.

CONFLICTING TERMS IN THE DOCUMENT

Roadway vs. Highway – There are a lot of areas in the document where the terms “highway” and “roadway” are used interchangeably. A highway commonly denotes facilities for land-based transportation which consists of limited access, grade separations and higher speeds, as referenced in DelDOT's Development Coordination Manual. Therefore, the broader term “roadway” is the preferred and should be used throughout the document.

FILE COPY

Public Comment
MOU 1/9/2020

Proposed land use vs. Change in land Use – The MOU addresses procedures when the future land use is being proposed, not necessarily changes. It is recommended that the term be consistent throughout the document and the term “proposed land use” is suggested.

DEFINITIONS

FEE IN LIEU – The fee in lieu process is really referring to what the DelDOT Development Coordination Manual calls an Area Wide Study Fee in lieu of a TIS. The shorthand term may be “Fee in Lieu” but the DelDOT Development Coordination Manual references the Area Wide Study Fee as the proper term, as well as the definition provided in the MOU. Since Fee in lieu is not a defined term in the DelDOT Development Coordination Manual and Area Wide Study Fee is a term therein, it would make sense to change the term used in this document to match. A better definition for Area Wide Study Fee that is found in the DelDOT Development Coordination Manual is:

AREA WIDE STUDY FEE – A fee collected to complete an Area Wide Study that includes the proposed land use or transportation improvements that benefit the proposed land use. Payment of an Area Wide Study Fee in lieu of a TIS will not preclude the developer’s responsibility for funding and/or construction of its share of off-site improvements. Those improvements may be determined to be needed by the Area Wide Study or other studies, e.g. TIS for other nearby developments.

LAND USE COORDINATION

The Land Use Coordination section of the MOU can be broken out into four (4) major categories. (1) Process, (2) Elements of a Traffic Impact Study (TIS), (3) Level of Service (LOS) Standards, and (4) Coordination. A simple restructuring of the document will help with the flow and clarity. As it is currently drafted, these categories identified above, are intermingled with each other and are generating some of the misunderstanding.

(1) Process: (Paragraph 1,2,4,5,6,7,8)

The current process today can be very easily mapped out; however, the current organization of this document creates confusion and contradiction with how the DelDOT Development Coordination Manual and the process work today. The same intent and information can be captured if the MOU were revised to match the process and organized in a manner that the general public can understand.

The process as it stands today that the MOU is trying to map out is as follows:

- Step 1: A land use change is proposed on a parcel within Sussex County.

- Step 2: The Sussex County Planning and Zoning Department will request a Preliminary Traffic Analysis (also known today as a Service Level Evaluation) from DelDOT. (We understand that the Service Level Evaluation process is potentially changing which is why the new term Preliminary Traffic Analysis is being used, however, that change has not occurred yet which is driving a lot of confusion on what the Preliminary Traffic Analysis will actually provide beyond what a Service Level Evaluation already does.)
- Step 3: DelDOT responds to the Preliminary Traffic Analysis determining if the resulting traffic impact of the land use is diminutive, negligible, minor or major (noting that a diminutive impact is a new term with this MOU). In DelDOT's response, it will typically include the annual Delaware Vehicle Volume Summary for the segments of road adjacent to the proposed land use and the trip generation for the proposed land use based on the Institute of Transportation Engineer's Trip Generation Manual, current edition.
- Step 4: DelDOT's response determines which traffic impact category and step in the process an applicant will move forward with.
 - (a) Diminutive Impact – No further study or information would be required.
 - (b) Negligible Impact – DelDOT will provide traffic volumes to support the impact and no further analysis will be necessary.
 - (c) Minor Impact
 - a. Developer will be required to pay an Area Wide Study Fee (AWSF). Payment of the fee does not exempt the developer from the responsibility to make off-site improvements or from preparing a TOA if DelDOT identifies a need for a TOA in the plan review process.
 - b. Alternative to an AWSF, the developer may elect to conduct an in-depth Traffic Impact Study (at the developer's expense) to DelDOT standards.
 - DelDOT may require a Traffic Operational Analysis (TOA) along with a TIS.
 - (d) Major Impact
 - a. The Developer will be required to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards.
 - b. DelDOT may require a Traffic Operational Analysis (TOA) along with a TIS.

- Step 5: For Minor and Major Impacts, an agreement is made between the developer and DelDOT based on the traffic impact and represented in either a TIS, TOA or AWSF letter, discussing or identifying the entrance, frontage and developer's share of offsite improvements.

Paragraph 2 and 4: How will Sussex County and DelDOT determine an impact will be diminutive without performing a Preliminary Traffic Analysis? Currently there is no process other than the County sending in the Service Level Evaluation request form to DelDOT and DelDOT responding to the request with their determination of the impact. Suggested edit and combination of para. 2 and 4:

Preliminary Traffic Analysis:

- a. *The Sussex County Planning and Zoning Department will request a Preliminary Traffic Analysis from DelDOT for each land use application to determine if the resulting traffic impact will be diminutive, negligible, minor, or major.*
- b. *DelDOT shall provide a Preliminary Traffic Analysis within twenty days (20) after receiving the Analysis request. If more time is needed, a written request explaining the reason for the additional time will be required.*
- c. *Unless waived, Sussex County will not consider an application until DelDOT supplies Sussex County with the above information.*

New Paragraph: Diminutive impacts will only be able to be determined after a Preliminary Traffic Analysis is completed, due to the way the process works and until a new process is crafted, a new paragraph will need to be added to the MOU to handle the added impact:

Diminutive Impact:

- a. *When it is determined that the impact would be diminutive, no further traffic analysis will be necessary.*

Paragraph 5: This paragraph relates to negligible impacts. The second sentence redefines the term negligible, which is inconsistent with the rest of the document and the paragraphs that relate to traffic impacts, as they don't redefine the impacts in those paragraphs, and unnecessary since it is a defined term in the definitions. A suggested edit is:

Negligible Impact:

- a. *When DelDOT determines the traffic impact to be negligible they will provide projected traffic volumes in support and no further analysis will be necessary.*
- b. *Sussex County may approve land use applications with negligible impact at its discretion.*

Paragraph 6: This paragraph relates to minor impacts. When there is a minor impact to a proposed land use, the DelDOT Development Coordination Manual states that there are two ways a developer can address traffic related responsibilities for the proposed land use. The first is for the developer to pay into an Area Wide Study and the second is the developer may elect to conduct a Traffic Impact Study. A suggested revision to para. 6 is:

Minor Impact:

- a. *When DelDOT determines the traffic impact to be minor, the Preliminary Traffic Analysis shall include the feasibility of providing safe access and the condition, pavement, and the geometry of the nearby roadways and intersections relative to the traffic the subject property could generate. Where any of these are deemed potentially inadequate, DelDOT shall comment to this effect, and identify roadway improvements that may be required by the developer.*
- b. *When DelDOT determines that the traffic impact will be minor, the developer will be required to pay an Area Wide Study Fee (AWSF).*
 - *Alternative to an Area Wide Study Fee, the developer may elect to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards.*
 - *Payment of the fee does not exempt the developer from the responsibility to make off-site improvements or from preparing a Traffic Operational Analysis (TOA) if DelDOT identifies a need for a TOA in the plan review process.*

Paragraph 7 and 8: These paragraphs relate to major impacts. When a major impact occurs, the developer is required to complete a TIS for the proposed land use. The developer does not have the ability to participate in an Area Wide Study Fee in lieu of a TIS if the traffic impact is major. If DelDOT is not requiring the developer to conduct a TIS, then Sussex County should not be able to require a TIS. The County does not have the ability to review or provide a technical analysis of the TIS and if DelDOT is not requiring it, that means there is sufficient data to support the proposed land use change by other means or previous Traffic Impact Studies. Para. 7 also has elements of what is required in a TIS, that may better fit into its own paragraph, in a new section, since a TIS is available for use in both Major and Minor traffic impacts. A suggested edit and combination of para 7 and 8 are:

Major Impact:

- a. *When DelDOT determines that the traffic impact will be major, the developer will be required to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards.*
- b. *Additionally, DelDOT may require a Traffic Operational Analysis (TOA) in conjunction with a TIS.*
- c. *A TIS letter will be generated to document the developer's obligations.*

(2) Elements of a Traffic Impact Study (TIS): (Paragraph 7,3)

There are sections within the document that are specific to the information that is provided in a Traffic Impact Study. Per the DelDOT Development Coordination Manual a TIS can be utilized in both a minor and major impact. It makes sense to create a section that specifically identifies the elements of a TIS with regards to the MOU.

New Paragraph:

The TIS will consider the effects of active or proposed transportation improvements in the adopted Six (6) Year Capital Improvements Program, Current Transportation Plans, and Committed Off-Site Improvements, and the current Sussex County Comprehensive Plan and establish staging for development as needed.

Paragraph 3: DelDOT already requires these seasonal adjustment factors when applied to traffic counts for studies. Suggest rewording to:

Given the seasonal nature of high-volume traffic in Sussex County, seasonal traffic adjustment factors to normalize traffic volumes shall be applied when calculating trip generation.

(3) Level of Service (LOS) Standards: (Paragraph 9, 11)

Level of service standards are found throughout the document. It would make more sense to have them under one section to show the intent of DelDOT and Sussex County when handling the level of service issues presented.

Paragraph 11: The same intent can be achieved without all the extra wording with the suggestion below:

When DelDOT determines that the traffic impact of the proposed land use causes the threshold level of service to be exceeded, the county will not approve the land use application unless:

- *The developer agrees to take appropriate measures to maintain operations at the threshold level of service; or,*
- *Sussex County finds that there are sufficient reasons why the developer should not be responsible for all or part of the measures necessary to maintain the threshold level of service. Sussex County, in this case, shall set forth in writing their reasons for approving the land use application.*

(4) Coordination: (Paragraph 18, 10, 12, 13, 14, 15, 16, 17, 19)

The MOU is all about coordination between DelDOT and Sussex County. It is imperative that the paragraphs relating to coordination be identified and organized together.

Paragraph 10: As this paragraph is written, if the impact is negligible then it does not fall within any of the categories and the County is unable to hold a public hearing. A suggested edit is:

No public hearing on the land use application shall occur until one of the following conditions are met:

- *The application will have a diminutive impact as described above; or,*
- *The application will have a negligible impact as described above; or,*
- *Sussex County receives the approved AWSF letter from DelDOT; or,*
- *Sussex County receives the approved TOA letter from DelDOT; or,*
- *Sussex County receives the approved TIS letter from DelDOT.*

Paragraph 12: Due to the short turnaround time on the Preliminary Traffic Analysis, it is more feasible to have any conditions proposed by DelDOT prior to Preliminary Site Plan hearing, so they are available for the public. This would allow time for proposed land uses with minor or major impacts to complete any studies that are warranted for the site as well as provide the data, from those studies, that DelDOT would need to create such conditions. The conditions would then end up in a separate letter or, if possible, the TIS, TOA or AWSF letter. The suggested edit to the sentence effected in para. 12 is:

Any such proposed conditions shall be clearly summarized by DelDOT prior to the Preliminary Site Plan hearing.

Paragraph 13: It is already stated in the document that the level of service is to be maintained or restored at a "D". The first sentence in the paragraph is repetitive and if the document gets organized with Level of Service standards, unneeded. A suggested edit is:

DelDOT should clearly state what phasing of roadway improvements is appropriate for the proposed land use application so that Sussex County can consider the phasing in its various approvals as appropriate prior to the Preliminary Site Plan hearing. Sussex County may then impose that phasing requirement as part of its approval of a land use application. DelDOT's phasing of the project may include (but are not limited to) consideration of the following:

- *A delay of all or part of the development until specific roadway improvements are made by DelDOT or others;*
- *Whether the required roadway improvements are being funded or constructed at the developer's own expense;*
- *Whether the developer is participating in, and/or funding, transit or traffic mitigation strategies.*

The phasing requirements shall be included as a Plan Sheet at the time of Final Site Plan approval. Phasing tied to other types of site plan approval is addressed in a following Section of this MOU regarding Site Plan Coordination.

Paragraph 19: Sussex County should not participate in negotiating road improvements. Road improvements are determined by DelDOT and the developer is responsible for its share of construction and funding of the determined off-site improvement. The County doesn't have jurisdiction over the construction of road improvements or the timing of the road improvements.

It is an agreement between DelDOT and the developer. Once the agreement is made, it will be shared with the County and the County can then condition the Site Plan to reflect any conditions or phasing of the agreement. A suggested edit to para. 19 is:

Any agreement reached between a developer and DelDOT as to roadway improvements, phasing of a development, and funding of roadway improvements, shall be timely forwarded to Sussex County for its records with regard to the development. Any subsequent changes or amendments to a DelDOT and developer agreement shall likewise be timely forwarded to Sussex County. Provided, however, that DelDOT acknowledges that if a specific requirement (such as phasing) is incorporated into a land use decision (such as a major subdivision, conditional use or Residential Planned Community), this may not be enforceable by Sussex County without an amendment to the subdivision approval or the ordinance that approved a Residential Planned Community. Conditional Use or certain other rezoning's where conditions can be imposed.

SITE PLAN COORDINATION

Paragraph 2: There may be a time, especially with larger proposed land use changes, when roadway improvements are phased, at a later date, after the development starts. In para. 2 the way it is written, it would require that all roadway improvements are designed and approved before the County approves the site plan. DelDOT has a process called Letter of No Contention and Letter of No Objection to Recordation that would allow the County to move forward with approvals without the developer having to spend unnecessary capital on designing plans that will not all be constructed at that time and will most likely need to be redesigned due to ever-changing DelDOT regulations. A suggested edit to para. 2 is:

In all site plan reviews, DelDOT will review the site plans in accordance with its rules and regulations for access for roadway improvements. Sussex County will withhold any site plan approval until DelDOT has provided a Letter of No Contention (LONC) or a Letter of No Objection to Recordation (LONOR). Provided, however, that this requirement may be waived by Sussex County for minor amendments to existing site plans that changes the trip generation by less than 50 trips per day.

Paragraph 5: The terms used in the paragraph are contradicting. The County and DelDOT view a permit being satisfied as two different milestones. To clean this up a suggested edit to para 5 is:

Sussex County will withhold issuance of the Certification of Compliance until DelDOT has accepted the entrance construction as substantially completed.

SUMMARY

In summary, we applaud Sussex County's Planning and Zoning Department for taking the initiative to update an outdated MOU between it and DeIDOT. We appreciate the opportunity to review and make comments and suggestions to the proposed draft MOU. We have developed a revised draft which, in our opinion, provides more clarity and organization while maintaining the original intent of the first draft. Thank you in advance for your consideration of our submission.

Respectfully submitted by:

Thomas Natelli Jr. – Natelli Communities

Robert Tunnell, III. – Tunnell Companies, L.P.

Betty H. Tustin – The Traffic Group, Senior Project Manager, P.E., PTOE

Paul G. Archibald – T. Y. LIN International, Project Director – Transportation, P.E., PTOE

Richard T. Rezer – T. Y. LIN International, Project Manager – Traffic

Jason Palkewicz – Solutions IPEM, P.E., LEED AP

Jim Eriksen – Solutions IPEM, P.E.

CC:

Janelle Cornwell, Director, Sussex County Planning and Zoning

Vincent Robertson, Counsel, Sussex County Planning and Zoning

J. Marc Cote, Assistant Director, Development Coordination

T. William Brockenbrough Jr., County Coordinator, Development Coordination

ENCLOSURES:

1: MOU DRAFT REVISION – REDLINE – 010720

2: MOU DRAFT REVISION – BLACKLINE – 010720

December 12, 2019

Commissioner Bob Wheatley
President, Sussex Planning & Zoning Commission
2 The Circle/P O Box 589
Georgetown, DE 19947

Via Email

Dear Planning & Zoning Commissioners;

I am writing provide comments and concerns about the proposed Memorandum Of Understanding (MOU) between Sussex County and DelDOT.

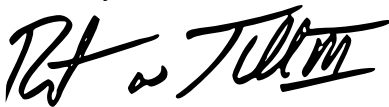
The Draft MOU takes more zoning authority away from Sussex County, by not allowing any zoning application to move forward without a response from DelDOT. As currently written the MOU does not 100% follow the DelDOT manual and the 20-day period for DelDOT response includes additional items beyond the initial trip generation analysis. I believe there is no way DelDOT is able to prepare information on and respond to the County as outlined in the MOU within the 20-day timeframe. The steps need to be broken out more clearly and reasonable time deadlines applied to each step of the process.

- **Timing Issues**—Throughout the MOU there are no timelines to guide responses from DelDOT or coordination between DelDOT and Sussex County. A period of time should be established for each step of the process. The only time frame outlined in the draft MOU is 20 days for DelDOT to endeavor to respond with a Preliminary Traffic Analysis once receiving an Analysis Request from the County.
- **Land Use Coordination Section Comments**—
 - **Item 2.** At what step in the process would a ‘Trip Generation Analysis’ be required? This would be the base information needed to determine if the resulting traffic impact would be negligible, minor, or major. Does DelDOT perform the trip generation analysis or would the developer? Can this actually be accomplished in 20 days?
 - **Item 3.** Does this paragraph seems to differ in what traffic counts are used for current TIS studies. Is it the intention of DelDOT to not allow any off-season traffic counts and only rely on peak season numbers? This would inflate the traffic counts and reduce the existing capacity of the roadways. Currently DelDOT provides seasonal traffic adjustment factors to normalize traffic volumes and TIS’s include peak summer Saturday counts. The current method already adjusts traffic counts for seasonality.
 - **Item 4.** This is a significant change from the 1988 MOU. Sussex County was free to consider applications after the 20day time period expired fi they didn’t receive information. There is nothing in the MOU compelling DelDOT to ever respond to a request, and therefore the County could never consider that application without a DelDOT response

- The paragraph needs to contain a set period of time for DelDOT's response and then allow the County to move forward with consideration of an application.
 - Item #4 is also confusing: What exact information is to be supplied to the County? As it states right now, The Preliminary Traffic Analysis as well as all traffic volume information must be supplied to the County. This item should be moved up one paragraph to be clear the information needed to be supplied is the Preliminary Traffic Analysis.
- **Item 6.** To determine any inadequacy and/or off-site improvements a TIS must be completed. How can that be completed in 20 days? Does DelDOT currently allow an area wide study fee payment for 'major' changes in land use?
 - **Item 7.** Does this paragraph and Item 6 conflict? It seems that a TIS would be required in order to generate the information needed to determine the adequacy of the adjacent roads and the off-site improvements in Item #6, So is Item #7 redundant?
 - Currently a Traffic Operational Analysis isn't allowed for a 'Major' change in land use. Is this a new policy change for DelDOT?
 - **Item 11.** How does this paragraph and Item 9 relate in maintaining the existing level of service?
 - **Item 12.** It is not feasible to include proposed conditions in the initial Preliminary Traffic Analysis provided by DelDOT. How can all the traffic generation be calculated, evaluated, distributed, and improvements determined within the 20-day period? Currently this process takes a much longer time period and comes **AFTER** a TIS has been completed and all detailed analysis for each intersection is complete.

Thank you for consideration of my comments, I ask the Planning and Zoning Commission to not make a decision and allow DelDOT to amend the MOU to address the items listed above. Please feel free to reach out to me at (302) 945-9300 or rtunnell@potnets.com with any further questions.

Sincerely,



Robert W. Tunnell III

ACEC

AMERICAN COUNCIL OF ENGINEERING COMPANIES
of Delaware

January 9, 2020

Mr. Robert C. Wheatley, Chairman
Mrs. Kim Hoey Stevenson, Vice-Chairman
Mr. R. Keller Hopkins
Mr. J. Bruce Mears
Mrs. Holly Wingate

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JAN 09 2019

SUSSEX COUNTY
PLANNING & ZONING

Sussex County Planning and Zoning Commission
P.O Box 417
Georgetown, DE 19947

**RE: Sussex County/DelDOT Memorandum of Understanding for Land
Development Coordination**

Dear Chairman Wheatley and Members of the Commission:

As Chairman of the American Council of Engineering Companies of Delaware Sussex County Partnership Committee, we offer our support of the MOU Comments and proposed revisions as prepared by Select Members of the Property Business Alliance. We have reviewed the proposed revisions and found them to be easier follow, better organized and similar to the process under the current MOU.

We thank you for your time.

Sincerely,



Ring W. Lardner, P.E.
Chair, Sussex County Partnership Committee of ACECDE

Cc: ACECDE Executive Committee
Janelle Cornwell, Director, Planning and Zoning

2019
SUSSEX COUNTY/DELAWARE DEPARTMENT OF TRANSPORTATION
MEMORANDUM OF UNDERSTANDING
FOR LAND DEVELOPMENT COORDINATION

WHEREAS, Title 9, Section 6962 of the *Delaware Code* "Highway Capacity" obligates Sussex County to "establish an agreement with the Department of Transportation to provide a procedure for analysis by the Department of Transportation ("DelDOT") of the effects on traffic of each rezoning application; and

WHEREAS, This Memorandum of Understanding is intended to comply with the foregoing requirements of Title 9, Section 6962 of the Delaware Code; and

WHEREAS, Land development has the potential to impact adjacent highways and Sussex County and DelDOT recognize that an analysis of the effects upon traffic is important in all types of land use decisions (Residential Planned Communities, Major Subdivisions, Conditional Uses) and not just rezoning applications; and

WHEREAS, The 2018 Sussex County Comprehensive Plan promotes greater coordination between DelDOT and Sussex County in land use decisions; and

WHEREAS, Sussex County is solely responsible for land use decisions in Sussex County; and

WHEREAS, ~~the~~ DelDOT is responsible for the operation, maintenance, and construction of State-maintained roads as well as the regulation of all entrance and roadway improvements required as part of new development; and

WHEREAS, it is the desire of Sussex County and DelDOT to coordinate land development with transportation needs.

NOW, THEREFORE,

BE IT RESOLVED that Sussex County Council and DelDOT hereby adopt the following Memorandum of Understanding:

DEFINITIONS

COMMITTED OFF-SITE IMPROVEMENTS – Road improvements for the benefit of safety and/or capacity that are generally beyond the limits of the site entrance and frontage that are required to be built by an approved land development project. Such improvements do not include auxiliary lanes that serve the site entrance, but may include roadway widening along the frontage of the site.

FILE COPY

David Huff mou

FEE IN LIEU - DeIDOT regulations define an Area Wide Study Fee that, under certain conditions, DeIDOT may accept when it would otherwise require a TIS. The fees accepted are used by DeIDOT to subsidize the preparation of studies of larger areas than a TIS would normally address; they are not used to build improvements. Payment of the fee does not relieve a developer of responsibility to build or contribute toward transportation.

LEVEL OF SERVICE (LOS) - A quantitative stratification of a performance measure or measures representing how well a transportation facility or service operates from a traveler's perspective. For each type of facility or service there are six levels of service, ranging from A to F, with A representing the best operating condition and F the worst operating conditions. Except as may be specified by DeIDOT, LOS shall be determined in accordance with the current edition of the Highway Capacity Manual, a publication of the Transportation Research Board.

PRELIMINARY TRAFFIC ANALYSIS - An evaluation by DeIDOT, in terms of the proposed trip generation, to determine whether a Traffic Impact Study is necessary with regard to a proposed land use approval.

TRAFFIC IMPACTS:

DIMINUTIVE - The change in land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips per day.

NEGLIGIBLE - The change in land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips in any hour and fewer than 500 vehicle trips per day.

MINOR - The change in land use is expected to increase the trip generation of the subject land by at least 50 but fewer than 200 vehicle trips in any hour and at least 500 vehicle trips per day.

MAJOR - The change in land use is expected to increase the trip generation of the subject land by more than 200 vehicle trips in any hour or more than 2,000 vehicle trips per day.

TRAFFIC IMPACT STUDY (TIS) – A study conducted during the development approval process, in accordance with applicable DeIDOT regulations, to determine the impacts that traffic generated by the proposed development will have on the surrounding street network and the improvements needed to the transportation system in order to mitigate those impacts.

TRAFFIC OPERATIONAL ANALYSIS (TOA) – An evaluation, or series of evaluations, conducted during the review of subdivision, land development and entrance plans, in accordance with applicable DeIDOT regulations, primarily intended to determine site entrance location and movements to be allowed at the site entrance. These evaluations may include; Queuing Analysis, Highway Capacity Manual Analysis, and Crash Analysis.

LAND USE COORDINATION

1. Sussex County will make the final decisions on all matters of land use.
2. The Sussex County Planning and Zoning Department will request a Preliminary Traffic Analysis from DelDOT for each land use application to determine if the resulting traffic impact will be diminutive, negligible, minor, or major. ~~This shall not be required where the County Planning and Zoning staff, in concurrence with DelDOT staff, finds that the proposed change in land use will have a diminutive impact upon the road system.~~ Unless more time is required given the size or complexity of the land use application, DelDOT shall endeavor to provide a Preliminary Traffic Analysis within twenty days after receiving the Analysis request.
- ~~3.1. Given the seasonal nature of high volume traffic volume in Sussex County, and since the "season" has expanded beyond just Memorial Day through Labor Day, with very high traffic volumes on seasonal weekends, it is important for DelDOT to take into account these high volumes in any analysis that it performs. To be effective, low volume off season volumes should not be utilized where they will artificially lower average traffic volumes.~~
- 4.3. Unless waived as set forth in Paragraph 2 above, Sussex County will not consider an application until DelDOT supplies Sussex County with the above information.
- 5.4. When it is determined that the traffic impact would be diminutive or negligible, no further traffic analysis will be necessary. DelDOT has the authority to make such a determination where (based on the full development of the property as limited by either the zoning code or other factors) the expected average daily traffic (ADT) of the site will not exceed five hundred (500) trips. When DelDOT determines negligible impact will occur, they will provide projected traffic volumes in support. ~~Sussex County may approve land use applications with negligible impact at its discretion.~~
- 6.5. When DelDOT determines the traffic impact to be minor, the traffic analysis shall include the feasibility of providing safe access and the condition, pavement, and the geometry of the nearby roadways and intersections relative to the traffic the subject property could generate. Where any of these are deemed inadequate, DelDOT shall comment to this effect, and identify roadway improvements that shall be required by the Developer. An Area Wide Study Fee (AWSF) letter will be generated to document the developer's obligations

to construct identified roadway improvements or fund road improvements as required by DeIDOT. In addition, DeIDOT may require further study if necessary.

7.6. When DeIDOT determines that the traffic impact will be major, the developer will be required to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DeIDOT standards. In addition, Sussex County, at its own initiative, may require a developer to conduct a TIS. DeIDOT will provide a technical evaluation of the TIS in the form of written comments in a Traffic Impact Study Review Letter (TISRL). The DeIDOT's scoping requirements for the TIS and its TISRL will also should consider the effects of active or proposed transportation improvements in the adopted Six (6) Year Capital Improvements Program, Current Transportation Plans, and Committed Off-Site Improvements, and the current Sussex County Comprehensive Plan and establish recommend -staging phasing for development as needed may be appropriate given the location of the project. ~~DeIDOT will provide a technical evaluation of the TIS.~~ Alternatively DeIDOT may allow a Traffic Operational Analysis (TOA) (at the developer's expense) instead of a TIS.

7. As an alternative to the TIS or TOA process set forth above, when DeIDOT has determined that the area in question has already been the subject of sufficient study, a new TIS or TOA may not be required. Instead, DeIDOT may require a "Fee in Lieu" to be paid by the developer to DeIDOT to recoup all or a portion of the cost of the prior studies relied upon by DeIDOT in lieu of a new TIS or TOA. The "Fee in Lieu" is unrelated to the developer's subsequent obligations to construct or fund road improvements as required by DeIDOT and the "Fee in Lieu" is not a waiver of those requirements. A TIS or AWSF letter will be generated to document the developer's obligations.

8. Given the seasonal nature of high-volume traffic volume in certain areas of Sussex County, specified herein, and since the "season" has expanded beyond just Memorial Day through Labor Day, with very high traffic volumes on seasonal weekends, it is important for DeIDOT's scoping requirements for the TIS, the TIS and the TISRL to take into account these high volumes in any analysis that it performs. This may include ~~be effective, adjusting the weight given to low-volume off season volumes should not be utilized whereif they will~~ would artificially lower average traffic volumes. The areas of specific

Commented [HDC1]: The TIS is performed at the developer's expense, what cost (portion thereof) is DeIDOT "recouping"?

concern where seasonal volumes should be carefully considered are the following:

8.9. Sussex County and DelDOT shall endeavor, where possible, to maintain a Level of Service of D on roads and intersections affected by a land use application. However, Sussex County and DelDOT recognize that: (a) a Level of Service of D is not always attainable; (b) that this threshold may create an undue burden on a property owner looking to develop a property given the prior development that has occurred in an area contributing to the existing Level of Service; or (c) other relevant factors (such as the size of the property, type or importance of the development) may mitigate against maintaining a Level of Service D. If the existing Level of Service is below D prior to the impact of the proposed land use, the existing Level of Service must at least be maintained.

9.10. No public hearing on the land use application shall occur until: (a) Sussex County receives the approved TIS from DelDOT; (b) Sussex County receives the approved TOA from DelDOT; (c) DelDOT advises that a “Fee in Lieu” (described in Paragraph 8 above) is appropriate instead of a TIS; or (d) the application will have a diminutive, negligible or minor impact (with no requirement for a TIS) as described above.

10.11. ~~When~~ If DelDOT determines, on the basis of its analysis of a TIS or TOA or studies previously performed as part of the “Fee in Lieu” process, that a land use decision could cause the threshold level of service to be exceeded, the County ~~will~~ may not approve the land use application unless the developer takes appropriate measures to maintain operations at the threshold level or unless Sussex County finds that there are sufficient reasons why the developer should not be responsible for all or part of the measures necessary to maintain the threshold level of service. ~~Sussex County, in the latter case, shall set forth in writing their reasons for approving the land use application.~~

11.12. Sussex County does not have the ~~capability to~~ of ~~determine~~ ing what, if any, conditions of approval related to roadway improvements or traffic would be appropriate in a given land use application. Therefore, if, in DelDOT’s opinion, there are appropriate conditions of approval that ~~should~~ it recommends be imposed upon a land use decision, DelDOT shall offer those conditions as part of its TISRL or as part of its Technical Advisory Committee review for consideration by Sussex County. Any such proposed

conditions shall be clearly summarized by DelDOT in its analysis of the TIS or TOA or other written comment provided by DelDOT Preliminary Traffic Analysis. ~~After considering all relevant information regarding the land use application, Sussex County shall consider the proposed conditions but~~ shall not be obligated to include them as part of any approval.

~~12.13.~~ 13. Phasing of land development with highway capacity and safety improvements to restore and maintain a level of service "D" may be ~~required~~ recommended by DelDOT. ~~To accomplish this, Any phasing recommended by DelDOT should state what phasing is appropriate for the subject land use application and be a clear and concisely written statement that phasing requirement to Sussex County so that Sussex County can clearly incorporate it into its various approvals as appropriate. Sussex County, in its discretion, may then impose that phasing requirement recommendation as part of its approval of a land use application. Phasing of the project can may include (but is not limited to) a consideration the following:~~

- a. A delay of all or part of the development until specific highway improvements are made by DelDOT or others;
- b. Whether the required highway improvements are being funded or constructed at the developer's own expense;
- c. Whether the developer is participating in, and/or funding, transit or traffic mitigation strategies.

~~Any The~~ phasing requirements established by Sussex County shall be included ~~as a Plan Sheet on at the time of the~~ Final Site Plan approval. However, whenever possible, DelDOT shall endeavor to state whether a phasing recommendation is likely (with specific details to follow) as part of the TIS ~~RL process prior to the Preliminary Site Plan or other public hearing process~~ so that Sussex County, the developer and the public can discuss that recommendation during the public hearing process ~~have an expectation that phasing may be considered as part of the project development~~. Phasing tied to other types of site plan approval is addressed in a following Section of this MOU regarding Site Plan Coordination.

~~13.14.~~ 14. Where measures to maintain operations are agreed upon by a developer, both DelDOT and Sussex County shall assure that these measures are carried out.

~~14.15.~~ When Sussex County believes that expert testimony regarding transportation issues is required to make a land use decision (such as a rezoning, major subdivision, conditional use or Residential Planned Community), DelDOT will provide a suitable representative to attend meetings of the Planning and Zoning Commission and/or County Council. The representative should be someone with specific technical knowledge of the project in particular and also ongoing projects in the area of Sussex County where the project is to occur.

~~15.16.~~ In addition to the project-specific information referenced in the preceding paragraph, DelDOT shall provide regular updates to Sussex County about the status of ongoing and future roadway and transportation projects in the County, so that County Council and the Planning & Zoning Commission have an up-to-date understanding of their status. This shall include both developer-funded and DelDOT-initiated and -funded projects. During these updates, Sussex County will also have an opportunity to discuss other transportation improvements that may be needed in the future.

~~16.17.~~ Whenever possible during the implementation of the foregoing items, Sussex County and DelDOT should encourage master planning for large scale developments on large parcels or groups of parcels in the Town Center, Coastal Area, Developing Area and commercial areas as set forth in the Comprehensive Land Use Plan to provide greater flexibility in design and/or the installation of additional roadways and interconnectivity.

~~17.18.~~ The Sussex County Planning and Zoning Department is responsible for coordinating all required information with Sussex County Council and the Planning and Zoning Commission.

~~18.19.~~ Sussex County shall be entitled to participate in any negotiations between a developer and DelDOT as to roadway improvements. Sussex County may provide input into those negotiations, but DelDOT shall be entitled to make the final determination as to all required roadway improvements and negotiated agreements with a developer. Any agreement reached between a developer and DelDOT as to roadway improvements, phasing of a development, funding of roadway improvements, etc. shall be immediately forwarded to Sussex County for its records with regard to the development. Any subsequent changes or amendments to a DelDOT/developer agreement shall likewise be immediately forwarded to Sussex County. Provided, however, that DelDOT recognizes

that if a specific requirement (such as phasing) is incorporated into a land use decision (such as a major subdivision, conditional use or Residential Planned Community), this may not be enforceable by Sussex County without an amendment to the subdivision approval or the ordinance that approved a Residential Planned Community, Conditional Use or certain other rezonings where conditions can be imposed.

REZONINGS (WITHOUT SITE PLANS OR CONDITIONS OF APPROVAL)

1. Sussex County and DeIDOT acknowledge that on a rezoning to a new zoning district where a specific site plan is not under consideration, and where the County cannot impose conditions as part of the rezoning approval, a TIS may not be possible (with the exception of rezonings to Residential Planned Communities and C-4, where specific site plans are considered and conditions can be imposed). This is because the various zoning districts have several permitted uses that are allowed once a rezoning occurs; as a result DeIDOT cannot determine, at the time of rezoning, what the actual use will be nor what the traffic and possible roadway improvements will be as a result of it. This requires greater coordination on the part of both Sussex County and DeIDOT.
2. Whenever possible, DeIDOT shall endeavor to provide as much information about the general impacts of the rezoning upon area traffic and roadways as required in the preceding Section prior to the public hearing before Sussex County Council and the Planning & Zoning Commission.
3. Whenever DeIDOT is approached by a developer with a specific project in mind, DeIDOT and that developer may enter into an agreement to obtain a TIS for the project as part of the rezoning process so that the information required as part of the TIS may be included in the record of the public hearings of the rezoning application. Because other possible uses of the property may be permitted under the proposed new zoning, Sussex County is not bound by this information in making its decision on the rezoning. However, if the use that the TIS is based upon changes after the rezoning occurs, another TIS shall be required and Sussex County shall not approve any Preliminary or Final Site Plan for the property until the new TIS is completed with all necessary traffic and roadway improvements determined by DeIDOT. Alternatively, if no TIS is performed on a specific project, DeIDOT or Sussex

County shall have the ability to request a TIS based upon the most impactful permitted use available under the new zoning classification that is sought.

SITE PLAN COORDINATION

1. Section 115-220D of the Sussex County Zoning Code allows Sussex County to approve certain site plans “subject to conditions”. In any site plan reviewed pursuant to Section 115-220 of the Sussex Zoning Code, Sussex County, with the assistance of DeIDOT, may impose conditions regarding phasing and the timing of building permits in conjunction with completion of necessary roadway improvements.
2. ~~When Sussex County requires DeIDOT review of site plans, that review shall be for any necessary roadway improvements and entrance design requirements. In all For~~ site plan reviews ~~by DeIDOT required by Sussex County,~~ DeIDOT ~~wi~~shall review the site plans in accordance with its rules and regulations for access and roadway improvements. ~~For site plan reviews where Sussex County requires DeIDOT review,~~ Sussex County ~~wi~~shall withhold ~~any-final~~ site plan approval until DeIDOT has ~~either stamped/signed the plans, provided a Letter of No Objection, provided a Letter of No Objection to Recordation or provided a written statement approving the access and roadway improvements. approved all-necessary roadway improvements and entrance design requirements.~~—Provided, however, that this requirement may be waived by Sussex County for minor amendments to existing site plans that changes the trip generation by less than 50 trips per day.
3. Sussex County shall withhold the issuance of any building permit until DeIDOT has issued the entrance construction permit associated with the project.
4. DeIDOT will withhold an entrance permit until the developer has agreed to construct the access point(s) to Department standards and to provide off-site improvements as may be required to maintain acceptable traffic operation on highways.
5. Sussex County will withhold issuance of the Certificate of Compliance until DeIDOT has accepted the entrance construction and issued the notice to the owner that the entrance construction permit has been ~~satisfied~~~~satisfactorily completed according to its terms.~~
- 5-6. ~~The coordination described in this section shall take into consideration any phasing of the land use project.~~

TRANSPORTATION IMPROVEMENT DISTRICTS

- 1. In the event that a land use application falls within a Transportation Improvement District (“TID”), the requirements of the TID, as set forth in the TID Agreement, shall supersede the requirements set forth in this MOU.

IT IS FURTHER RESOLVED that the Secretary of the Delaware Department of Transportation and The County Administrator will affirm this agreement by affixing their signature to the Resolution.

Adopted by the County Council of Sussex County on _____, 2019.

President of the County Council of Sussex County

The following signatures concurring herein:

For Sussex County:

Todd Lawson, Sussex County Administrator

Robert Wheatley, Chairman, Sussex County
Planning & Zoning Commission

Janelle Cornwell, Director of Planning & Zoning

**For the Department of
Transportation:**

Jennifer Cohan, Secretary



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FIELD OFFICE LOCATIONS

- Arkansas
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- Texas
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- Virginia
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December 12, 2019

Robert C. Wheatley, Chairman
Mrs. Kim Hoey Stevenson, Vice-Chairman
Mr. R. Keller Hopkins
Mr. J. Bruce Mears
Mrs. Holly Wingate

Sussex County Planning and Zoning Commission
2 The Circle
P.O. Box 417
Georgetown, DE 19947

RE: Sussex County/DelDOT Memorandum of Understanding for Land
Development Coordination

Overall Comments:

Having guidance for obtaining approval for land development applications is a worthy endeavor. Consideration must be given to the expense and time commitment required by a land development process. Specific timelines and trigger points should be set and enforced. For example, what will trigger the request for a Preliminary Traffic Analysis to be completed by DelDOT? What timeline will be set forth for completing a TIS or conducting a hearing?

Several paragraphs are unclear as discussed below. I suggest a rewrite and subsequent second hearing before the Planning and Zoning Commission before preceding to a hearing with the County Council.

I would also suggest a reorganization of the section on Land Use Coordination. Some paragraphs seem repetitive and out of order. If you would like more specifics, I will be glad to provide.

SECTION: DEFINITIONS: TRAFFIC IMPACTS:

The MOU categorizes "Traffic Impacts" into four categories: diminutive, negligible, minor, major, based on the number of vehicles per hour and vehicles per day anticipated to be generated by the proposed development. The table below provides a comparison between the MOU definitions and DelDOT's Development Coordination Manual (DCM) definitions.

Projected Generated Trips	MOU	DCM
<50 vpd	Diminutive	n/a
<500 vpd and <50 vph	Negligible	No TIS required
>500 vpd or >50 vph	Minor	TIS or AWSF required
>2000 vpd or >200 vph	Major	TIS required

Note: The DCM provides an allowance for internal capture and/or pass-by trips. This is not mentioned in the MOU.

SECTION: LAND USE COORDINATION:

1. No comment
2. The Preliminary Traffic Analysis appears to be similar to the existing Service Level Evaluation Request. In its response, DelDOT provides information necessary to make the determination of the Traffic Impact to be diminutive, negligible, minor, or major. A more thorough discussion should be provided as to the content of the Preliminary Traffic Analysis. The process might be formalized through the provision of a “fill-in-the-blank” form similar the SLE. As previously discussed, what will trigger the request for a Preliminary Traffic Analysis. Can an applicant’s Traffic Engineer provide the Preliminary Traffic Analysis to be reviewed by DelDOT? This would be similar to the applicant’s request for a TIS Scoping Meeting with DelDOT.
3. The DCM requires the application of seasonal adjustment factors to traffic counts to normalize the data. For Sussex County, Section 2.2.8.5.C.15 of the DCM specifically states that summer counts may be required in eastern Sussex County. The recent practice is that summer Saturday counts are collected and are not adjusted. However, reason must be applied when evaluating the results so that infrastructure is not overbuilt to accommodate high traffic volumes which occur infrequently throughout the year. Generally, our nation has not been able to maintain the existing infrastructure.
4. Prohibiting the “consideration” of an application until a Preliminary Traffic Analysis is received from DelDOT could stall an application for an undetermined amount of time. The applicants traffic engineer can provide a Preliminary Traffic Analysis as specified in item 2 above which could be confirmed when same is provided by DelDOT.
5. This section could be better worded. *When it is determined from the Preliminary Traffic Analysis (provided by DelDOT or the applicant’s traffic engineer) that the traffic impact for an application would be negligible, no further traffic analysis will be necessary. Sussex County may approve land use applications with negligible impact at its discretion.*
6. This section is unclear. If a Preliminary Traffic Analysis indicates that the traffic impact of an application is “minor”, (>500 vpd but <2,000 vpd OR >50 vph but < 200 vph), the DCM provides for an applicant to complete a TIS OR pay an Area Wide Study Fee (AWSF). In some cases, it may be more beneficial for the applicant to complete a TIS. The AWSF is based on the number of trips projected to be generated by the development and is paid into a fund which is utilized at DelDOT’s discretion. In some situations, DelDOT may also require the applicant to contribute to off-site improvements as noted in Section 2.2.2.2 of the DCM.
7. It is my understanding that for an application determined to have a Major impact will be required to have a TIS completed. A Traffic Operational Analysis would not then be necessary.
8. It is my understanding that DelDOT will allow an AWSF (or “fee in lieu) only for applications generating less than 2,000 vpd or 200 vph.
9. Consideration to maintain existing Level of Service is understood.

10. This paragraph should be reworded such that the requirements necessary to be fulfilled for a public hearing are itemized by the traffic impact – diminutive, negligible, minor, or major.
11. It is unclear what the “threshold level of service” is. Is it the existing Level of Service?
12. DelDOT can offer conditions of approval after a TIS is received and reviewed which can take up to one year to complete. DelDOT would not be able to provide this information in a Preliminary Traffic Analysis completed in 20 days.
13. It is my understanding that the construction of off-site road improvements is frequently tied to the phasing of the construction of a development.
14. This section is unclear to me.
15. Concur with having a DelDOT representative at meetings and/or hearings.
16. Concur with DelDOT providing regular updates on the status of transportation projects. This information should be provided publicly on Sussex County’s website.
17. Concur with master planning
18. Concur with internal coordination.
19. As DelDOT maintains most of the roadways within Sussex County, negotiations should be between the applicant and DelDOT.

Sincerely,



Betty H. Tustin, P.E., PTOE
Senior Project Manager

CC: Janelle Cornwell, Director, Sussex County Planning and Zoning Office

BHT:amr

To: Sussex County Council

From: Gail Van Gilder

Date: December 11, 2019

RE: Sussex County/DelDOT Memorandum of Understanding(MOU)

The purpose of the Memorandum to better coordinate land development and transportation is clearly needed and the parties ought to be commended in pursuing this initiative. The comments below are meant to tighten up the MOU and use it to address challenges I see in the County.

1. Paragraph 2: Under this paragraph, DelDOT will prepare a trip generation analysis of the development proposal. This is a great place to begin. However, this is also a time for both DelDOT and the County to look at the design of the site plan if available or if not, what a potential site plan might look like and determine the internal design that would provide the least impact to the roadway network. This would include number of access points, location of access, location of the major access. Such information would be useful to DelDOT, the County and the developer. If the site is reviewed for potential impacts prior to significant engineering by the developer, the opportunity to make changes that benefit the public is maximized.
2. Paragraph 3: I believe that this could be defined better. Finding the proper analysis periods is typically controversial in Sussex County. Perhaps a calendar for the various parts of the county would provide some definition for the public to better understand when the traffic data is permitted to be collected and how it is adjusted to find the proper time of year for analysis.
3. Paragraph 4: This is important as it permits the County to receive information pertinent to the first steps of its land development review. I believe that any site plan or site guidance as noted in Paragraph 2 would add additional value to the County's work.
4. Paragraph 5: While the text of the paragraph is fine with me, I am concerned that areas that receive a lot of infill development from developments with negligible or diminutive trip generation will experience a significant amount of congestion that the taxpayer will be responsible to address. Just as DelDOT collects review fees from developers to review developments, they could calculate some average cost to mitigate development traffic impacts in Sussex

County and reduce it to a per trip fee. That trip fee could be assessed for all trips from developments for which no assessment of traffic impact is required under this MOU. This also could be considered under the 'fee in lieu of' provision contained in Paragraphs 6 and 8 in this MOU.

5. Paragraphs 6, 7 and 8: Acceptable as written.
6. Paragraphs 9 and 11: Paragraph 9 sets a level of service D standard with some flexibility and in areas currently operating below level of service D, it is required that the existing level of service be maintained. Paragraph 11 provides the obligates for the County to not approve a development unless the level of service threshold is maintained. The County may waive this requirement, but the MOU doesn't specify the circumstances that must be present to justify such a waiver. I believe that the County based upon testimony from the developer and the public with some input from professionals ought to be able to define and quantify a public benefit and document that the public benefit outweighs the adverse traffic impacts of the development. Examples might be a supermarket proposed for a food desert, a medical building proposed for a community with a predominate population of seniors, or a food processing plant located adjacent to its supplying farms.
7. Paragraph 12: Should DelDOT believe that transportation conditions are essential for a given land development application, it can submit them to the County, but the County is under no obligation to include them in the land development approval. I understand that the County has undisputed authority in land use decisions, however, should the County reject or significantly modify the proposed DelDOT conditions, there ought to be a written record as to why such an action is in the public interest. Similarly, the MOU should reflect the case of the County desiring to place a condition on DelDOT's access approval. In this case, too, there should be a finding that the rejection or significant alteration is in the public interest. See Comment 7, above, for a more detailed description.
8. Paragraph 13: Acceptable as written.
9. Paragraph 14: This paragraph needs to be more specific. It should assign responsibilities. Most land developments with monitoring agreements specify what the developer is responsible for and what government is responsible for. The responsible government agency could be the land development approving office or the DOT. Many times, there is joint responsibility based upon the number of Certificates of Occupancy issued or some other easy to monitor measure. Unfortunately, in some cases I've known, the agency responsible for triggering the next step in the monitoring program misses the trigger in the agreement due

to the crush of business. Therefore, I believe that this issue ought to be addressed now so that the processes can be put in place and the personnel familiarized.

10. Paragraphs 15 and 16: These two paragraphs require DeIDOT to keep the County up to date on all transportation issues in the County as well as issues specific to developments. This is good as far as it goes. It requires the County to rely on DeIDOT. Should the County decide it wants a second opinion, the paragraph ought to obligate DeIDOT to work with the County's expert should one be retained.
11. Paragraph 17: I believe that the County Zoning Ordinance ought to be amended to REQUIRE master planning of large tracts even if only a small portion of the larger tract is submitted to the land development review process. Similarly, DeIDOT's regulations ought to be similarly amended. New Road, Kings Highway and Gills Neck Road in the Lewes area provide ample justification to support such a comment. In the Gills Neck/Kings Highway example, there is no interconnected roadway system, placing increased pressure and congestion on Kings Highway and on Gills Neck Road. The lack of a master plan means that individual developments, even those with single ownership or those with related owners were planned in isolation with regards to transportation. The benefits of internal connections between developments was never analyzed since it was not ever required at either the County or at DeIDOT. Regarding New Road, the County took the position that the master plan would not consider land use design; to them, it was a traffic calming plan. The large number of units that could be developed in the Nassau area scream for a master plan that considers internal roadway design and consideration of external access to roads in addition to New Road. This situation is the rule throughout Coastal Sussex rather than the exception and the taxpayer will need to fund bigger and more expensive roadways because of it. Route 24, US Route 9 and Plantation Road come to mind and without a master planning requirement, the only remedy is a TID that widens these roads to four lanes, yet the underlying problem of poor interconnectivity among the developments is not addressed.
12. Paragraph 18: Acceptable as written.
13. Paragraph 19: While this paragraph is largely acceptable as written, if DeIDOT and the County agree to a condition after the subdivision plan is approved, why would the County not as a matter of course, amend their prior approval? This appears to me to be akin to a minor approval since the developer would have already agreed to it when it accepted the DeIDOT permit.
14. Rezoning Paragraph 1, 2 and 3: The County should revise its zoning ordinance to require the developer in a rezoning case to either submit calculations of the

maximum density and trip generation permitted under the zoning district applied for or commit to a density and a maximum trip generation that, if approved, carries with the land as a deed restriction that the County warrants it will enforce. The issue here is hypothetical: What is the applying developer assures a low trip generation, the rezoning is approved, and the site is flipped to another developer that submits a site plan for the highest density possible. The rezoning decision ought to be made on the worst-case scenario and if the worst-case scenario turns out to be in the public interest, then a lesser density will be even more in the public interest. This provides some certainty to the process and provides additional clarity to Zoning Paragraphs 2 and 3.

15. Site Plan Coordination Paragraphs 1 through 5: If the above suggestions are incorporated, these paragraphs are acceptable as written as they are process oriented.
16. TID Paragraph 1: Acceptable as written.
17. General Comment: Sussex County is home to three of the State's Byways: Historic Lewes Byway, Delaware Bayshore Byway and the Nanticoke Heritage Byway. There needs to be a recognition that these special roadways have intrinsic values that both DelDOT and Sussex County have pledged to protect and preserve. They have endorsed the Corridor Management Plan (CMP) for the Historic Lewes Byway and sponsor the Nanticoke Heritage Byway. The current County Comprehensive Plan recognizes the value of the three byways in the County. DelDOT has committed to implement the CMP as related to their efforts to improve each byway roadway whether with publicly funded projects or private developer projects. They also have committed to follow their publication Context Sensitive Solutions for Delaware's Byways. This should be referenced in the MOU. Further, the County should amend its ordinances to include the specific recommendations included in the CMPs for landscaping and roadside design.

Comments on DRAFT MOU Between Sussex County and DeIDOT

Keith Steck

Dec. 12, 2019

Thank you for the opportunity to comment. My name is Keith Steck. I'm a resident of Milton and the vice president of the Delaware Coalition for Open Government--DeICOG, for short.

The draft MOU is a start but needs considerable revisions to make it a truly effective document. I have two types of comments regarding this document: general comments about the document and specific comments about the various numbered points.

General Comments

First, this document needs to specify which Sussex County government entity is the lead and representing Sussex County. There are a lot of county entities--County Council, the Planning and Zoning Office, the P&Z Commission, the Engineering, the Board of Adjustment, etc. Who is actually the lead or coordinating entity? This document needs to explicitly state this and if more than one entity is involved, state that especially regarding the Transportation Improvement Districts. Also, if towns are involved, that needs to be clearly discussed.

Second, this document as written is not a transportation document but a roadway traffic document. There's no mention of transportation in the broad sense; for example there's no mention of DART, other mass transit, or future potential transportation systems or other modes, like senior-oriented modes or nontraditional transit options like Uber or Lyft. If there is no plan to include them, then call this what it is--a roadway traffic MOU.

Third, I see nothing in this plan that specifies in what situation this traffic MOU applies. It does not state what kinds of land-use settings, zoning, and development is covered, such as residential, agricultural, commercial, or industrial. For example, this document does not state the size of commercial, residential, or industrial development would be covered; does it apply to residential projects of 50 homes, 100 homes, 200 homes? Does this MOU cover "light" or "heavy" industrial parks and define those terms? Would this apply to commercial shopping or office park projects such as strip shopping centers, malls, or other similar "light" commercial projects and define the size of them? Further, this MOU does not discuss whether decisions

involve new projects only or projects involving specific zoning categories such as AR-1, or Heavy Commercial? And it does not identify what projects or other situations, industries, or other characteristics that are EXCLUDED. The MOU implies development is residential, but it does not clearly state what is actually covered. Let's not leave things so vague that no one really knows what is covered and what isn't. Please, do everyone a favor and identify the specific types of development, sizes of project, zoning categories and other characteristics that ARE AND ARE NOT COVERED.

Fourth, this document only discusses vehicle traffic on proposed and existing roads and highways without defining what "traffic" means. Are we talking--cars, large trucks, busses, tractor trailers hauling hazardous waste? Simply saying "vehicles" without acknowledging the difference between a small car and a tractor trailer is like saying all boats are the same when in fact there's a huge difference between a canoe and a Carnival Cruise ship.

Fifth, this document talks about traffic studies and roadway traffic access and mentions roads in and out of existing communities those yet to be built. But where's the long-term orientation--is this looking at milestones such as a 5-year, 10-year, or other points in time. ^{Time Frame} Sussex County is projected to grow substantially over the next 20 years or more, so it seems like the plan needs to be reviewed every 5 years and revised accordingly.

Sixth. Similarly, where's the discussion about roads and the overall development going on now and planned over the next 5, 10, 15, and 20 years and the interplay between roads and projected growth over the next 10 or 20 years, including projects already approved but not yet under development? There's almost no mention of the relationship of this MOU and the County's new comprehensive plan, especially regarding planned growth, expanding population centers along the beaches growth corridors and town centers like Georgetown, Seaford, Milton, Millsboro, and Milford. And what about the long-term goal of protecting the rural character of the county? Yes, the terms "land use" and "phased development" are sprinkled in the document, but what's truly important is reflecting the interconnectedness of roads, plans on the table, and the future. But if there are no specific mechanisms for looking at how roads, traffic, safety, development, and environmental concerns all impact each other, we're doomed to repeat

the same failed pattern of looking at each project as if nothing else exists or nothing new will be built.

Seventh, there is no discussion or recognition about safety in this MOU--in fact, the word "safety" is only mentioned twice in the entire document. No where in the document is there any mention about the safety of pedestrians or bicycle traffic, despite the number of pedestrians and cyclists killed each year. Where is any discussion or consideration about emergency/first responder access such as ambulance, fire, or police access or emergency response times? In fact, the words POLICE, FIRE TRUCK, AMBULANCE, EMERGENCY VEHICLES do not even appear anywhere in this document. Why? Shouldn't THE WORD "SAFETY" APPEAR IN BIG BOLD LETTERS THROUGHOUT THIS DOCUMENT and be a key consideration in the design of roads and community access? The volume of traffic should not take priority over the ability of first responders to get to emergencies; road design and traffic volume and flow should reflect response time criteria for first responders to be able to reach a traffic accident, someone having a heart attack, a shooting, or a house fire. I see no such consideration. And what about evacuation routes and plans--where are these in this MOU? Safety issues and emergency access should be critical factors in roadway construction and traffic design and volume decisions. Keep this in mind when you are considering whether to prohibit wide roads and only allow a single entrance/exit into a community of 200, 300, or 400 homes or and industrial center. I say MAKE SAFETY AND EMERGENCY ACCESS CENTRAL POINTS OF ANY TRANSPORTATION MOU. The MOU needs language reflecting the importance of safety and emergency access and evacuation plans.

Specific Comments

With regard to specific provisions in this MOU, I have the following comments:

Under Definitions

What is "FEE IN LIEU"? This is poorly defined. There is a vague reference to DeIDOT regulations without identifying the specific regulations. What is the basis and value of the fee--is it based on a certain dollar amount per acre, per house, per job created, or something else?

This definition also mentions "under certain conditions"--they should be identified.

"LEVEL OF SERVICE." What are the middle ranges--B, C, D, and E? Why is level "D" mentioned in points 9 and 13 of the Land Use section? Why does the MOU say Sussex County and DeIDOT "endeavor, where possible" for a level D (see point 9 under Land Use)? What is level D... creeping along/barely moving?... and why is this a target? Does this factor in safety and emergency access? What level does New Castle County strive for and what does it experience? Why not shoot for level C? What level do traffic engineers and safety specialists recommend? Can levels of service vary by type of road, such as rural roads, suburban or urban roads, or by width of roads?

Under Land US Coordination

Point 3 discusses seasonal high volume, but as noted above there is no discussion or acknowledgment about safety of pedestrians or cyclists, especially during warm weather when more pedestrians and cyclists are out.

Point 7 discusses traffic impact and the need for traffic impact studies. It mentions that Sussex County may require a developer to do a TIS. The rationale for this should be spelled out. This point also discussed the Six (6) Year Capital Improvements Program but does not explain what this is or why it is being considered. Moreover, this point states that DeIDOT may alternatively allow a Traffic Operation Analysis instead of a TIS; Why?

Point 8. What is the reason for this? The explanation is not clear, given that the definition of a Fee in Lieu is for a wider area study.

Point 9. The discussion states that maintaining a Level of Service D rating may not be realistic and goes not to state this "may create an undue burden" on a property owner for various reasons and there may be other reasons this is not possible. This discussion as written illustrates exactly why P&Z and County Council should seriously consider the implications of projects on the long-term viability of roads and the impacts on adjoining or nearby areas not just for the immediate point in time but also the long term, such as 10 years out, especially when projects exists for future development, even if they have not been physically started.

Point 11. This indicates that a developer could get out of paying costs to maintain a desired or "threshold" level of service but does not explain what those reasons are. These reasons should be listed and/or explained. There is no reason a developer should not bear some costs and allow all costs to fall to taxpayers when the developer is going to profit from developing land. If he or she is going to gain from the development, he or she should bear part of the cost of common improvements outside of the community.

Point 12. Under no circumstances should Sussex County be allowed to reject all conditions proposed by DeIDOT. The County and DeIDOT should negotiate the conditions and the costs to the developer. If the developer is willing to develop the land, then he or she should be willing to pay for some if not all of the improvement(s).

Point 14. The word "assure" should read ensure. As for ensuring measures are carried out, this point needs to describe how this will occur--through bonding, etc.

Point 15. What is meant by a "suitable" DeIDOT representative? If this is referring to the technical expertise and familiarity with Sussex County ordinances and comprehensive plan, they the MOU should identify the qualifications.

Point 17. What is meant by "whenever possible"? One a year, once every 5 years? Seems like this should be specific, such as annually. Likewise, "large scale" and "large parcels" should be defined--such as xxx square feet, xxx acres, etc.

Rezoning

Point 1 needs to explain the circumstances why "rezoning to a new zoning district" preclude a TIS. This is too vague.

Final comment: Results of TIS and other studies should be publicly accessible electronically, such as electronic files.

January 27, 2020

The Honorable Michael H. Vincent, Council President
The Honorable Irwin G. Burton III, Council Vice-President
The Honorable Douglas B. Hudson
The Honorable John L. Riley
The Honorable Samuel R. Wilson, Jr.

Sussex County Council
2 The Circle
P.O Box 589
Georgetown, DE 19947

**RE: Sussex County/DelDOT Memorandum of Understanding for Land
Development Coordination**

OVERVIEW

A Memorandum of Understanding (MOU) between Sussex County and DelDOT was established in 1988. Given the number of years which have transpired and the changes in the land development process since 1988, Sussex County's Planning and Zoning Department has developed a revised MOU which was presented to the Planning and Zoning Commission during a public hearing on December 12, 2019.

On January 23rd, 2019 the Planning and Zoning Commission recommended approval with changes to the Memorandum of Understanding between Sussex County and DelDOT. As part of the motion, it was recommended that County Council take into consideration the reorganization of the document for clarity.

As stated at the January 23rd, 2019 Planning and Zoning meeting, the current document's format is based on the 1988 document layout and organization, which is outdated and confusing. Since then there have been decades of processes and regulations put into place that the revised MOU is trying to capture. During the Planning and Zoning hearing process, a team consisting of developers, transportation engineers and civil engineers worked together to formulate a proposed revised MOU which, in our opinion, is better organized providing clarity to government staff, developers, consultants, and the general public.

We have submitted to you our proposed revised MOU for consideration. These suggested changes are provided with the commentary and subject matter support by our team and their various related professional backgrounds.

Due to the short amount of time between the Planning and Zoning Commission approval and the County Council public hearing we politely ask that the public record and hearing remain open. Our team has not had the ability to review the recommended document changes by the Planning and Zoning Commission in the redline version document referenced at the January 23rd, 2019 meeting.

CONFLICTING TERMS IN THE DOCUMENT

Roadway vs. Highway – The document uses the terms “highway” and “roadway” interchangeably. A highway commonly denotes facilities for land-based transportation which consists of limited access, grade separations and higher speeds, as referenced in DelDOT’s Development Coordination Manual. Therefore, the broader term “roadway” is the preferred and should be used throughout the document.

Proposed Land Use vs. Change in Land Use – The MOU addresses procedures when the future land use is being proposed, not necessarily changes in land use. It is recommended that the term be consistent throughout the document and the term “proposed land use” is suggested.

DEFINITIONS

FEE IN LIEU – The fee in lieu term is really referring to what the DelDOT Development Coordination Manual calls an “Area Wide Study Fee in lieu of a TIS”. The shorthand term may be “Fee in Lieu” but the DelDOT Development Coordination Manual references the Area Wide Study Fee as the proper term, as well as the definition provided in the MOU. Since Fee in lieu is not a defined term in the DelDOT Development Coordination Manual and Area Wide Study Fee is a term therein, it would make sense to change the term used in this document to match. A better definition for Area Wide Study Fee as currently found in the DelDOT Development Coordination Manual is:

AREA WIDE STUDY FEE – A fee collected to complete an Area Wide Study that includes the proposed land use or transportation improvements that benefit the proposed land use. Payment of an Area Wide Study Fee in lieu of a TIS will not preclude the developer’s responsibility for funding and/or construction of its share of off-site improvements. Those improvements may be determined to be needed by the Area Wide Study or other studies, e.g. TIS for other nearby developments.

LAND USE COORDINATION

The Land Use Coordination section of the MOU can be broken out into four (4) major categories. (1) Process, (2) Elements of a Traffic Impact Study (TIS), (3) Level of Service (LOS) Standards, and (4) Coordination. A simple restructuring of the document will help with its flow and clarity. As it is currently drafted, these categories identified above, are intermingled with each other and are generating some of the misunderstanding.

(1) Process: (Paragraph 1,2,4,5,6,7,8)

The current process today can be very easily outlined; however, the current organization of this document creates confusion and contradiction with how the DelDOT Development Coordination Manual and the process work today. The same intent and information can be captured if the MOU were revised to match the process and organized in a manner that the general public can understand.

The process as it stands today that the MOU is trying to map out is as follows:

- Step 1: A land use change is proposed on a parcel within Sussex County.
- Step 2: The Sussex County Planning and Zoning Department requests a Preliminary Traffic Analysis (also known today as a Service Level Evaluation) from DelDOT. (We understand that the Service Level Evaluation process is potentially changing which is why the new term Preliminary Traffic Analysis is being used. However, that change has not yet occurred which is driving a lot of confusion on what the Preliminary Traffic Analysis will provide beyond what a Service Level Evaluation already does.)
- Step 3: DelDOT responds to the Preliminary Traffic Analysis determining if the resulting traffic impact of the land use is diminutive, negligible, minor or major (noting that a diminutive impact is a new term with this MOU). In DelDOT's response, it will typically include the annual Delaware Vehicle Volume Summary for the segments of road adjacent to the proposed land use and the trip generation for the proposed land use based on the Institute of Transportation Engineer's Trip Generation Manual, current edition.
- Step 4: DelDOT's response determines the traffic impact category which dictates the next steps in the process with which the applicant will move forward.
 - (a) Diminutive Impact – No further study or information would be required.
 - (b) Negligible Impact – DelDOT will provide traffic volumes to support the impact and no further analysis will be necessary.
 - (c) Minor Impact

- a. Developer will be required to pay an Area Wide Study Fee (AWSF). Payment of the fee does not exempt the developer from the responsibility to make off-site improvements or from preparing a TOA if DelDOT identifies a need for a TOA in the plan review process.
- b. Alternative to an AWSF, the developer may elect to conduct an in-depth Traffic Impact Study (at the developer's expense) to DelDOT standards.
 - DelDOT may require a Traffic Operational Analysis (TOA) along with a TIS.

(d) Major Impact

- a. The Developer will be required to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards.
 - b. DelDOT may require a Traffic Operational Analysis (TOA) along with a TIS.
- Step 5: For Minor and Major Impacts, an agreement is made between the developer and DelDOT based on the traffic impact and represented in either a TIS, TOA or AWSF letter, discussing or identifying the entrance, frontage and developer's share of offsite improvements.

Paragraph 2 and 4: How will Sussex County and DelDOT determine an impact will be diminutive without performing a Preliminary Traffic Analysis? Currently there is no process other than the County sending in the Service Level Evaluation request form to DelDOT and DelDOT responding to the request with their determination of the impact. Suggested edit and combination of para. 2 and 4:

Preliminary Traffic Analysis:

- a. *The Sussex County Planning and Zoning Department will request a Preliminary Traffic Analysis from DelDOT for each land use application to determine if the resulting traffic impact will be diminutive, negligible, minor, or major.*
- b. *DelDOT shall provide a Preliminary Traffic Analysis within twenty days (20) after receiving the Analysis request. If more time is needed, a written request explaining the reason for the additional time will be required.*
- c. *Unless waived, Sussex County will not consider an application until DelDOT supplies Sussex County with the above information.*

New Paragraph: Diminutive impacts will only be able to be determined after a Preliminary Traffic Analysis is completed, due to the way the process works and until a new process is crafted, a new paragraph will need to be added to the MOU to handle the added impact:

Diminutive Impact:

- a. *When it is determined that the impact would be diminutive, no further traffic analysis will be necessary.*

Paragraph 5: This paragraph relates to negligible impacts. The second sentence redefines the term negligible, which is inconsistent with the rest of the document and the paragraphs that relate to traffic impacts. They do not redefine the impacts in those paragraphs, and it is unnecessary since it is a defined term in the definitions. A suggested edit is:

Negligible Impact:

- a. *When DelDOT determines the traffic impact to be negligible they will provide projected traffic volumes in support and no further analysis will be necessary.*
- b. *Sussex County may approve land use applications with negligible impact at its discretion.*

Paragraph 6: This paragraph relates to minor traffic impacts. When there is a minor impact to a proposed land use, the DelDOT Development Coordination Manual states that there are two ways a developer can address traffic related responsibilities for the proposed land use. The first is for the developer to pay into an Area Wide Study and the second is the developer may elect to conduct a Traffic Impact Study. A suggested revision to para. 6 is:

Minor Impact:

- a. *When DelDOT determines the traffic impact to be minor, the Preliminary Traffic Analysis shall include the feasibility of providing safe access and the condition, pavement, and the geometry of the nearby roadways and intersections relative to the traffic the subject property could generate. Where any of these are deemed potentially inadequate, DelDOT shall comment to this effect, and identify roadway improvements that may be required by the developer.*
- b. *When DelDOT determines that the traffic impact will be minor, the developer will be required to pay an Area Wide Study Fee (AWSF).*
 - *Alternative to an Area Wide Study Fee, the developer may elect to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards.*
 - *Payment of the fee does not exempt the developer from the responsibility to make off-site improvements or from preparing a Traffic Operational Analysis (TOA) if DelDOT identifies a need for a TOA in the plan review process.*

Paragraph 7 and 8: These paragraphs relate to major traffic impacts. When a major impact occurs, the developer is required to complete a TIS for the proposed land use. The developer does not have the ability to participate in an Area Wide Study Fee in lieu of a TIS if the traffic impact is major. If DelDOT is not requiring the developer to conduct a TIS, then Sussex County should not be able to require a TIS. The County does not have the ability to review or provide a technical analysis of the TIS and if DelDOT is not requiring it, that means there is sufficient data to support the proposed land use change by other means or previous Traffic Impact Studies. Para. 7 also has elements of what is required in a TIS, that may better fit into its own paragraph, in a new section, since a TIS is available for use in both Major and Minor traffic impacts. A suggested edit and combination of para 7 and 8 are:

Major Impact:

- a. *When DelDOT determines that the traffic impact will be major, the developer will be required to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards.*
- b. *Additionally, DelDOT may require a Traffic Operational Analysis (TOA) in conjunction with a TIS.*
- c. *A TIS letter will be generated to document the developer's obligations.*

(2) Elements of a Traffic Impact Study (TIS): (Paragraph 7,3)

There are sections within the document that are specific to the information that is provided in a Traffic Impact Study. Per the DelDOT Development Coordination Manual a TIS can be utilized in both a minor and major impact. It makes sense to create a section that specifically identifies the elements of a TIS with regards to the MOU.

New Paragraph:

The TIS will consider the effects of active or proposed transportation improvements in the adopted Six (6) Year Capital Improvements Program, Current Transportation Plans, and Committed Off-Site Improvements, and the current Sussex County Comprehensive Plan and establish staging for development as needed.

Paragraph 3: DelDOT already requires these seasonal adjustment factors when applied to traffic counts for studies. Suggest rewording to:

Given the seasonal nature of high-volume traffic in Sussex County, seasonal traffic adjustment factors to normalize traffic volumes shall be applied when calculating trip generation.

(3) Level of Service (LOS) Standards: (Paragraph 9, 11)

Level of service standards are found throughout the document. It would make more sense to have them under one section to show the intent of DelDOT and Sussex County when handling the level of service issues presented.

Paragraph 11: The same intent can be achieved without all the extra wording with the suggestion below:

When DelDOT determines that the traffic impact of the proposed land use causes the threshold level of service to be exceeded, the county will not approve the land use application unless:

- *The developer agrees to take appropriate measures to maintain operations at the threshold level of service; or,*
- *Sussex County finds that there are sufficient reasons why the developer should not be responsible for all or part of the measures necessary to maintain the threshold level of service. Sussex County, in this case, shall set forth in writing their reasons for approving the land use application.*

(4) Coordination: (Paragraph 18, 10, 12, 13, 14, 15, 16, 17, 19)

The focus of the MOU is all about coordination between DelDOT and Sussex County. It is imperative that the paragraphs relating to coordination be identified and organized together.

Paragraph 10: As this paragraph is written, if the impact is negligible then it does not fall within any of the categories and the County is unable to hold a public hearing. A suggested edit is:

No public hearing on the land use application shall occur until one of the following conditions are met:

- *The application will have a diminutive impact as described above; or,*
- *The application will have a negligible impact as described above; or,*
- *Sussex County receives the approved AWSF letter from DelDOT; or,*
- *Sussex County receives the approved TOA letter from DelDOT; or,*
- *Sussex County receives the approved TIS letter from DelDOT.*

Paragraph 12: Due to the short turnaround time on the Preliminary Traffic Analysis, it is more feasible to have any conditions proposed by DelDOT prior to Preliminary Site Plan hearing, so they are available for the public. This would allow time for proposed land uses with minor or major impacts to complete any studies that are warranted for the site as well as provide the data, from those studies, that DelDOT would need to create such conditions. The conditions would then end up in a separate letter or, if possible, the TIS, TOA or AWSF letter. The suggested edit to the sentence effected in para. 12 is:

Any such proposed conditions shall be clearly summarized by DelDOT prior to the Preliminary Site Plan hearing.

Paragraph 13: It is already stated in the document that the level of service is to be maintained or restored at a “D”. The first sentence in the paragraph is repetitive and if the document gets organized with Level of Service standards, unneeded. A suggested edit is:

DelDOT should clearly state what phasing of roadway improvements is appropriate for the proposed land use application so that Sussex County can consider the phasing in its various approvals as appropriate prior to the Preliminary Site Plan hearing. Sussex County may then impose that phasing requirement as part of its approval of a land use application. DelDOT's phasing of the project may include (but are not limited to) consideration of the following:

- *A delay of all or part of the development until specific roadway improvements are made by DelDOT or others;*
- *Whether the required roadway improvements are being funded or constructed at the developer's own expense;*
- *Whether the developer is participating in, and/or funding, transit or traffic mitigation strategies.*

The phasing requirements shall be included as a Plan Sheet at the time of Final Site Plan approval. Phasing tied to other types of site plan approval is addressed in a following Section of this MOU regarding Site Plan Coordination.

Paragraph 19: Sussex County should not directly participate in negotiating road improvements. The process the Developer navigates with DelDOT is a detailed, multi-step, and lengthy process. Adding additional agencies into the fold will only make it more challenging. Sussex County has the opportunity at many points in the processes in place to make comments and recommendations, such as the PLUS process and public hearing process. Road improvements are determined by DelDOT and the developer is responsible for its share of construction and funding of the determined off-site improvement. It is an agreement between DelDOT and the developer. Once the agreement is made, it will be shared with the County and the County can then condition the Site Plan to reflect any conditions or phasing of the agreement. A suggested edit to para. 19 is:

Any agreement reached between a developer and DelDOT as to roadway improvements, phasing of a development, and funding of roadway improvements, shall be timely forwarded to Sussex County for its records with regard to the development. Any subsequent changes or amendments to a DelDOT and developer agreement shall likewise be timely forwarded to Sussex County. Provided, however, that DelDOT acknowledges that if a specific requirement (such as phasing) is incorporated into a land use decision (such as a major subdivision, conditional use or Residential Planned Community), this may not be enforceable by Sussex County without an amendment to the subdivision approval or the ordinance that approved a Residential Planned Community. Conditional Use or certain other rezoning's where conditions can be imposed.

SITE PLAN COORDINATION

Paragraph 2: There may be a time, especially with larger proposed land use changes, when roadway improvements may be phased, at a later date, after the development starts. This may occur with large proposed land use changes. In para. 2 the way it is written, it would require that all roadway improvements are designed and approved before the County approves the site plan. DelDOT has a process called Letter of No Contention and Letter of No Objection to Recordation that would allow the County to move forward with approvals without the developer having to spend unnecessary capital on designing plans that will not all be constructed at that time and will most likely need to be redesigned due to ever-changing DelDOT regulations. A suggested edit to para. 2 is:

In all site plan reviews, DelDOT will review the site plans in accordance with its rules and regulations for access for roadway improvements. Sussex County will withhold any site plan approval until DelDOT has provided a Letter of No Contention (LONC) or a Letter of No Objection to Recordation (LONOR). Provided, however, that this requirement may be waived by Sussex County for minor amendments to existing site plans that changes the trip generation by less than 50 trips per day.

Paragraph 5: The terms used in the paragraph are contradicting. The County and DelDOT view a permit being satisfied as two different milestones. To clean this up a suggested edit to para 5 is:

Sussex County will withhold issuance of the Certification of Compliance until DelDOT has accepted the entrance construction as substantially completed.

SUMMARY

In summary, we applaud Sussex County Council for taking the initiative to update an outdated MOU between it and DelDOT. We appreciate the opportunity to review and make comments and suggestions to the proposed draft MOU. We have developed a revised draft which, in our opinion, provides more clarity and organization while maintaining the original intent of the first draft. Thank you in advance for your consideration of our submission.

Respectfully submitted by:

Thomas Natelli Jr. – Natelli Communities

Robert Tunnell, III. – Tunnell Companies, L.P.

Betty H. Tustin – The Traffic Group, Senior Project Manager, P.E., PTOE

Paul G. Archibald – T. Y. LIN International, Project Director – Transportation, P.E., PTOE

Richard T. Rezer – T. Y. LIN International, Project Manager – Traffic

Jason Palkewicz – Solutions IPEM, P.E., LEED AP

Jim Eriksen – Solutions IPEM, P.E.

CC:

Robin Griffith, Clerk of the Council

J. Everett Moore Jr., County Attorney

J. Marc Cote, Assistant Director, Development Coordination

T. William Brockenbrough Jr., County Coordinator, Development Coordination

ENCLOSURES:

1: MOU DRAFT REVISION – REDLINE – 010720

2: MOU DRAFT REVISION – BLACKLINE – 010720

2019
SUSSEX COUNTY/DELAWARE DEPARTMENT OF TRANSPORTATION
MEMORANDUM OF UNDERSTANDING
FOR LAND DEVELOPMENT COORDINATION

WHEREAS, Title 9, Section 6962 of the *Delaware Code* “Highway Capacity” obligates Sussex County to “establish an agreement with the Department of Transportation to provide a procedure for analysis by the Department of Transportation (“DelDOT”) of the effects on traffic of each rezoning application; and

WHEREAS, This Memorandum of Understanding is intended to comply with the foregoing requirements of Title 9, Section 6962 of the Delaware Code; and

WHEREAS, Land development has the potential to impact adjacent highways and Sussex County and DelDOT recognize that an analysis of the effects upon traffic is important in all types of land use decisions (Residential Planned Communities, Major Subdivisions, Conditional Uses) and not just rezoning applications; and

WHEREAS, The 2018 Sussex County Comprehensive Plan promotes greater coordination between DelDOT and Sussex County in land use decisions; and

WHEREAS, Sussex County is solely responsible for land use decisions in Sussex County; and

WHEREAS, the DelDOT is responsible for the operation, maintenance, and construction of State-maintained roads as well as the regulation of all entrance and roadway improvements required as part of new development; and

WHEREAS, it is the desire of Sussex County and DelDOT to coordinate land development with transportation needs.

NOW, THEREFORE,

BE IT RESOLVED that Sussex County Council and DelDOT hereby adopt the following Memorandum of Understanding:

DEFINITIONS

COMMITTED OFF-SITE IMPROVEMENTS – Road improvements for the benefit of safety and/or capacity that are generally beyond the limits of the site entrance and frontage that are required to be built by an approved land development project. Such improvements do not include auxiliary lanes that serve the site entrance, but may include roadway widening along the frontage of the site.

AREA WIDE STUDY FEE – A fee collected to complete an Area Wide Study that includes the

proposed land use or transportation improvements that benefit the proposed land use. Payment of an Area Wide Study Fee in lieu of a TIS will not preclude the developer's responsibility for funding and/or construction of its share of off-site improvements. Those improvements may be determined to be needed by the Area Wide Study or other studies, e.g. TIS for other nearby developments.

LEVEL OF SERVICE (LOS) - A quantitative stratification of a performance measure or measures representing how well a transportation facility or service operates from a traveler's perspective. For each type of facility or service there are six levels of service, ranging from A to F, with A representing the best operating condition and F the worst operating conditions. Except as may be specified by DelDOT, LOS shall be determined in accordance with the current edition of the Highway Capacity Manual, a publication of the Transportation Research Board.

PRELIMINARY TRAFFIC ANALYSIS – A request made by Sussex County Planning and Zoning Department for an evaluation by DelDOT, in terms of the proposed trip generation, to determine the Traffic Impact with regard to a proposed land use approval.

TRAFFIC IMPACTS:

DIMINUTIVE - The proposed land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips per day.

NEGLIGIBLE - The proposed land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips in any hour or fewer than 500 vehicle trips per day.

MINOR - The proposed land use is expected to increase the trip generation of the subject land by at least 50 vehicle trips in any hour but fewer than 200 vehicle trips in any hour or at least 500 vehicle trips per day.

MAJOR - The proposed land use is expected to increase the trip generation of the subject land by more than 200 vehicle trips in any hour or more than 2,000 vehicle trips per day.

TRAFFIC IMPACT STUDY (TIS) – A study conducted during the development approval process, in accordance with applicable DelDOT regulations, to determine the impacts that traffic generated by the proposed development will have on the surrounding street network and the improvements needed to the transportation system in order to mitigate those impacts.

TRAFFIC OPERATIONAL ANALYSIS (TOA) – An evaluation, or series of evaluations, conducted during the review of subdivision, land development and entrance plans, in accordance with applicable DelDOT regulations, primarily intended to determine site entrance location and movements to be allowed at the site entrance. These evaluations may include; Queuing Analysis, Highway Capacity Manual Analysis, and Crash Analysis.

LAND USE COORDINATION

1. Sussex County will make the final decisions on all matters of land use.
2. Preliminary Traffic Analysis:
 - a. The Sussex County Planning and Zoning Department will request a Preliminary Traffic Analysis from DelDOT for each land use application to determine if the resulting traffic impact will be diminutive, negligible, minor, or major.
 - b. DelDOT shall provide a Preliminary Traffic Analysis within twenty days (20) after receiving the Analysis request. If more time is needed, a written request explaining the reason for the additional time will be required.
 - c. Unless waived, Sussex County will not consider an application until DelDOT supplies Sussex County with the above information.
3. Diminutive Impact:
 - a. When it is determined that the impact would be diminutive, no further traffic analysis will be necessary.
4. Negligible Impact:
 - a. When DelDOT determines the traffic impact to be negligible they will provide projected traffic volumes in support and no further traffic analysis will be necessary.
 - b. Sussex County may approve land use applications with negligible impact at its discretion.
5. Minor Impact:
 - a. When DelDOT determines the traffic impact to be minor, the Preliminary Traffic Analysis shall include the feasibility of providing safe access and the condition, pavement, and the geometry of the nearby roadways and intersections relative to the traffic the subject property could generate. Where any of these are deemed potentially inadequate, DelDOT shall comment to this effect, and identify roadway improvements that may be required by the Developer.
 - b. When DelDOT determines that the traffic impact will be minor, the developer will be required to pay An Area Wide Study Fee (AWSF).
 - Alternative to an Area Wide Study Fee, the developer may elect to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT

standards.

- Payment of the fee does not exempt the developer from the responsibility to make off-site improvements or from preparing a Traffic Operational Analysis (TOA) if DelDOT identifies a need for a TOA in the plan review process.

6. Major Impact:

- a. When DelDOT determines that the traffic impact will be major, the developer will be required to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards.
- b. Additionally, DelDOT may ask for a Traffic Operational Analysis (TOA) in conjunction with a TIS.
- c. A TIS letter will be generated to document the developer's obligations.

7. Elements of the Traffic Impact Study:

- a. The TIS will consider the effects of active or proposed transportation improvements in the adopted Six (6) Year Capital Improvements Program, Current Transportation Plans, and Committed Off-Site Improvements, and the current Sussex County Comprehensive Plan and establish staging for development as needed.
- b. Given the seasonal nature of high-volume traffic in Sussex County, seasonal traffic adjustment factors to normalize traffic volumes shall be applied when calculating trip generation.
- c. DelDOT will provide a technical evaluation of the TIS.

8. Level of Service Standards:

- a. Sussex County and DelDOT shall endeavor, where possible, to maintain a Level of Service of D on roads and intersections affected by a land use application. However, Sussex County and DelDOT recognize that:
 - Level of Service of D is not always attainable;
 - That this threshold may create an undue burden on a property owner looking to develop a property given the prior development that has occurred in an area contributing to the existing Level of Service;
 - Other relevant factors (such as the size of the property, type or importance of the development) may mitigate against maintaining a Level of Service D.
- b. If the existing Level of Service is below D prior to the impact of the proposed land use, the existing Level of Service must at least be maintained.

- c. When DelDOT determines that the traffic impact of the proposed land use causes the threshold level of service to be exceeded, the County will not approve the land use application unless:
- The developer agrees to take appropriate measures to maintain operations at the threshold level of service; or,
 - Sussex County finds that there are sufficient reasons why the developer should not be responsible for all or part of the measures necessary to maintain the threshold level of service. Sussex County, in this case, shall set forth in writing their reasons for approving the land use application.

9. Coordination:

- a. The Sussex County Planning and Zoning Department is responsible for coordinating all required information with Sussex County Council and the Planning and Zoning Commission.
- b. No public hearing on the land use application shall occur until one of the following conditions are met:
- The application will have a diminutive impact as described above; or,
 - The application will have a negligible impact as described above; or,
 - Sussex County receives the approved AWSF letter from DelDOT; or,
 - Sussex County receives the approved TOA from DelDOT; or,
 - Sussex County receives the approved TIS from DelDOT.
- c. Sussex County does not have the ability to determine what, if any, conditions of approval related to roadway improvements or traffic would be appropriate in a given land use application. Therefore, if, in DelDOT's opinion, there are appropriate conditions of approval that should be imposed upon a land use decision, DelDOT shall offer those conditions as part of its TIS or as part of its Technical Advisory Committee review for consideration by Sussex County. Any such proposed conditions shall be clearly summarized by DelDOT prior to the Preliminary Site Plan hearing. After considering all relevant information regarding the land use application, Sussex County shall consider the proposed conditions but shall not be obligated to include them as part of any approval.
- d. DelDOT should clearly state what phasing of roadway improvements is appropriate for

the proposed land use application so that Sussex County can consider the phasing in its various approvals as appropriate prior to the Preliminary Site Plan hearing. Sussex County may then impose that phasing requirement as part of its approval of a land use application. DelDOT's phasing of the project may include (but are not limited to) consideration of the following:

- A delay of all or part of the development until specific roadway improvements are made by DelDOT or others;
- Whether the required roadway improvements are being funded or constructed at the developer's own expense;
- Whether the developer is participating in, and/or funding, transit or traffic mitigation strategies.

The phasing requirements shall be included as a Plan Sheet at the time of Final Site Plan approval. Phasing tied to other types of site plan approval is addressed in a following Section of this MOU regarding Site Plan Coordination.

- e. When Sussex County believes that expert testimony regarding transportation issues is required to make a land use decision (such as a rezoning, major subdivision, conditional use or Residential Planned Community), DelDOT will provide a suitable representative to attend meetings of the Planning and Zoning Commission and/or County Council. The representative should be someone with specific technical knowledge of the project in particular and ongoing projects in the area of Sussex County where the project is to occur.
- f. In addition to the project-specific information referenced in the preceding paragraph, DelDOT shall provide regular updates to Sussex County about the status of ongoing and future roadway and transportation projects in the County, so that County Council and the Planning & Zoning Commission have an up-to-date understanding of their status. This shall include both developer-funded and DelDOT-initiated and -funded projects. During these updates, Sussex County will also have an opportunity to discuss other transportation improvements that may be needed in the future.
- g. Whenever possible during the implementation of the foregoing items, Sussex County and DelDOT should encourage master planning for large scale developments on large parcels or groups of parcels in the Town Center, Coastal Area, Developing Area and

commercial areas as set forth in the Comprehensive Land Use Plan to provide greater flexibility in design and/or the installation of additional roadways.

- h. Any agreement reached between a developer and DelDOT as to roadway improvements, phasing of a development and funding of roadway improvements shall be timely forwarded to Sussex County for its records with regard to the development. Any subsequent changes or amendments to a DelDOT and developer agreement shall likewise be timely forwarded to Sussex County. Provided, however, that DelDOT acknowledges that if a specific requirement (such as phasing) is incorporated into a land use decision (such as a major subdivision, conditional use or Residential Planned Community), this may not be enforceable by Sussex County without an amendment to the subdivision approval or the ordinance that approved a Residential Planned Community, Conditional Use or certain other rezoning's where conditions can be imposed.

REZONINGS (WITHOUT SITE PLANS OR CONDITIONS OF APPROVAL)

1. Sussex County and DelDOT acknowledge that on a rezoning to a new zoning district where a specific site plan is not under consideration, and where the County cannot impose conditions as part of the rezoning approval, a TIS may not be possible (with the exception of rezoning's to Residential Planned Communities and C-4, where specific site plans are considered and conditions can be imposed). This is because the various zoning districts have several permitted uses that are allowed once a rezoning occurs; as a result DelDOT cannot determine, at the time of rezoning, what the actual use will be nor what the traffic and possible roadway improvements will be as a result of it. This requires greater coordination on the part of both Sussex County and DelDOT.
2. Whenever possible, DelDOT shall endeavor to provide as much information about the general impacts of the rezoning upon area traffic and roadways as required in the preceding section prior to the public hearing before Sussex County Council and the Planning & Zoning Commission.
3. Whenever DelDOT is approached by a developer with a specific project in mind, DelDOT and that developer may enter into an agreement to obtain a TIS for the project as part of the rezoning process so that the information required as part of the TIS may be included in the

record of the public hearings of the rezoning application. Because other possible uses of the property may be permitted under the proposed new zoning, Sussex County is not bound by this information in making its decision on the rezoning. However, if the use that the TIS is based upon changes after the rezoning occurs, another TIS shall be required and Sussex County shall not approve any Preliminary or Final Site Plan for the property until the new TIS is completed with all necessary traffic and roadway improvements determined by DelDOT. Alternatively, if no TIS is performed on a specific project, DelDOT shall have the ability to request a TIS based upon the most impactful permitted use available under the new zoning classification that is sought.

SITE PLAN COORDINATION

1. Section 115-220D of the Sussex County Zoning Code allows Sussex County to approve certain site plans “subject to conditions”. In any site plan reviewed pursuant to Section 115-220 of the Sussex Zoning Code, Sussex County, with the assistance of DelDOT, may impose conditions regarding phasing and the timing of building permits in conjunction with completion of necessary roadway improvements.
2. In all site plan reviews, DelDOT will review the site plans in accordance with its rules and regulations for access and roadway improvements. Sussex County will withhold any site plan approval until DelDOT has provided a Letter of No Contention (LONC) or a Letter of No Objection to Recordation (LONOR). Provided, however, that this requirement may be waived by Sussex County for minor amendments to existing site plans that changes the trip generation by less than 50 trips per day.
3. Sussex County shall withhold the issuance of any building permit until DelDOT has issued the entrance permit associated with the project.
4. DelDOT will withhold an entrance construction permit until the developer has agreed to construct the access point(s) to Department standards and to provide off-site improvements as may be required to maintain acceptable traffic operation on roadways.
5. Sussex County will withhold issuance of the Certificate of Compliance until DelDOT has accepted the entrance construction as substantially completed.

TRANSPORTATION IMPROVEMENT DISTRICTS

- 1. In the event that a land use application falls within a Transportation Improvement District (“TID”), the requirements of the TID, as set forth in the TID Agreement, shall supersede the requirements set forth in this MOU.

IT IS FURTHER RESOLVED that the Secretary of the Delaware Department of Transportation and The County Administrator will affirm this agreement by affixing their signature to the Resolution.

Adopted by the County Council of Sussex County on _____, 2019.

President of the County Council of Sussex County

The following signatures concurring herein:

For Sussex County:

Todd Lawson, Sussex County Administrator

Robert Wheatley, Chairman, Sussex County
Planning & Zoning Commission

Janelle Cornwell, Director of Planning & Zoning

**For the Department of
Transportation:**

Jennifer Cohan, Secretary

2019
SUSSEX COUNTY/DELAWARE DEPARTMENT OF TRANSPORTATION
MEMORANDUM OF UNDERSTANDING
FOR LAND DEVELOPMENT COORDINATION

WHEREAS, Title 9, Section 6962 of the *Delaware Code* “Highway Capacity” obligates Sussex County to “establish an agreement with the Department of Transportation to provide a procedure for analysis by the Department of Transportation (“DelDOT”) of the effects on traffic of each rezoning application; and

WHEREAS, This Memorandum of Understanding is intended to comply with the foregoing requirements of Title 9, Section 6962 of the Delaware Code; and

WHEREAS, Land development has the potential to impact adjacent highways and Sussex County and DelDOT recognize that an analysis of the effects upon traffic is important in all types of land use decisions (Residential Planned Communities, Major Subdivisions, Conditional Uses) and not just rezoning applications; and

WHEREAS, The 2018 Sussex County Comprehensive Plan promotes greater coordination between DelDOT and Sussex County in land use decisions; and

WHEREAS, Sussex County is solely responsible for land use decisions in Sussex County; and

WHEREAS, the DelDOT is responsible for the operation, maintenance, and construction of State-maintained roads as well as the regulation of all entrance and roadway improvements required as part of new development; and

WHEREAS, it is the desire of Sussex County and DelDOT to coordinate land development with transportation needs.

NOW, THEREFORE,

BE IT RESOLVED that Sussex County Council and DelDOT hereby adopt the following Memorandum of Understanding:

DEFINITIONS

COMMITTED OFF-SITE IMPROVEMENTS – Road improvements for the benefit of safety and/or capacity that are generally beyond the limits of the site entrance and frontage that are required to be built by an approved land development project. Such improvements do not include auxiliary lanes that serve the site entrance, but may include roadway widening along the frontage of the site.

AREA WIDE STUDY FEE~~FEE-IN-LIEU~~ – A fee collected to complete an Area Wide Study

~~that includes the proposed land use or transportation improvements that benefit the proposed land use. Payment of an Area Wide Study Fee in lieu of a TIS will not preclude the developer's responsibility for funding and/or construction of its share of off-site improvements. Those improvements may be determined to be needed by the Area Wide Study or other studies, e.g. TIS for other nearby developments. DeIDOT regulations define an Area Wide Study Fee that, under certain conditions, DeIDOT may accept when it would otherwise require a TIS. The fees accepted are used by DeIDOT to subsidize the preparation of studies of larger areas than a TIS would normally address; they are not used to build improvements. Payment of the fee does not relieve a developer of responsibility to build or contribute toward transportation.~~

LEVEL OF SERVICE (LOS) - A quantitative stratification of a performance measure or measures representing how well a transportation facility or service operates from a traveler's perspective. For each type of facility or service there are six levels of service, ranging from A to F, with A representing the best operating condition and F the worst operating conditions. Except as may be specified by DeIDOT, LOS shall be determined in accordance with the current edition of the Highway Capacity Manual, a publication of the Transportation Research Board.

PRELIMINARY TRAFFIC ANALYSIS ~~— A request made by Sussex County Planning and Zoning Department for an~~ evaluation by DeIDOT, in terms of the proposed trip generation, to determine ~~the Traffic Impact whether a Traffic Impact Study is necessary~~ with regard to a proposed land use approval.

TRAFFIC IMPACTS:

DIMINUTIVE - The ~~change in proposed~~ land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips per day.

NEGLIGIBLE - The ~~change in proposed~~ land use is expected to increase the trip generation of the subject land by fewer than 50 vehicle trips in any hour ~~or and~~ fewer than 500 vehicle trips per day.

MINOR - The ~~change in proposed~~ land use is expected to increase the trip generation of the subject land by at least 50 ~~vehicle trips in any hour~~ but fewer than 200 vehicle trips in any hour ~~or and~~ at least 500 vehicle trips per day.

MAJOR - The ~~change in proposed~~ land use is expected to increase the trip generation of the subject land by more than 200 vehicle trips in any hour or more than 2,000 vehicle trips per day.

TRAFFIC IMPACT STUDY (TIS) – A study conducted during the development approval process, in accordance with applicable DeIDOT regulations, to determine the impacts that traffic generated by the proposed development will have on the surrounding street network and the improvements needed to the transportation system in order to mitigate those impacts.

TRAFFIC OPERATIONAL ANALYSIS (TOA) – An evaluation, or series of evaluations, conducted during the review of subdivision, land development and entrance plans, in accordance

with applicable DelDOT regulations, primarily intended to determine site entrance location and movements to be allowed at the site entrance. These evaluations may include; Queuing Analysis, Highway Capacity Manual Analysis, and Crash Analysis.

LAND USE COORDINATION

1. Sussex County will make the final decisions on all matters of land use.

2. Preliminary Traffic Analysis:

- a. The Sussex County Planning and Zoning Department will request a Preliminary Traffic Analysis from DelDOT for each land use application to determine if the resulting traffic impact will be diminutive, negligible, minor, or major. ~~This shall not be required where the County Planning and Zoning staff, in concurrence with DelDOT staff, finds that the proposed change in land use will have a diminutive impact upon the road system.~~
- ~~b. Unless more time is required given the size or complexity of the land use application,~~ DelDOT shall ~~endeavor to~~ provide a Preliminary Traffic Analysis within twenty days (20) after receiving the Analysis request. If more time is needed, a written request explaining the reason for the additional time will be required.
- ~~c. Unless waived as set forth in Paragraph 2 above,~~ Sussex County will not consider an application until DelDOT supplies Sussex County with the above information.

3. Diminutive Impact:

- ~~b.a. When it is determined that the impact would be diminutive, no further traffic analysis will be necessary.~~

4. Negligible Impact:

- ~~a. When it is determined that the impact would be negligible, no further traffic analysis will be necessary. DelDOT has the authority to make such a determination where (based on the full development of the property as limited by either the zoning code or other factors) the expected average daily traffic (ADT) of the site will not exceed five hundred (500) trips. When DelDOT determines the traffic impact to be negligible impact will occur, they will provide projected traffic volumes in support and no further traffic analysis will be necessary.~~
- b. Sussex County may approve land use applications with negligible impact at its

discretion.

5. Minor Impact:

- a. When DelDOT determines the traffic impact to be minor, the Preliminary Ttraffic Aanalysis shall include the feasibility of providing safe access and the condition, pavement, and the geometry of the nearby roadways and intersections relative to the traffic the subject property could generate. Where any of these are deemed potentially inadequate, DelDOT shall comment to this effect, and identify roadway improvements that ~~may~~shall be required by the Developer.
- b. When DelDOT determines that the traffic impact will be minor, the developer will be required to pay An Area Wide Study Fee (AWSF). ~~letter will be generated to document the developer's obligations to construct identified roadway improvements or fund road improvements as required by DelDOT.~~
- Alternative to an Area Wide Study Fee, the developer may elect to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards.
 - Payment of the fee does not exempt the developer from the responsibility to make off-site improvements or from preparing a Traffic Operational Analysis (TOA) if DelDOT identifies a need for a TOA in the plan review process. ~~In~~ addition, DelDOT may require further study if necessary.

6. Major Impact:

- a. ~~—~~When DelDOT determines that the traffic impact will be major, the developer will be required to conduct an in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT standards. ~~In addition, Sussex County, at its own initiative, may require a developer to conduct at TIS.~~
- ~~e.b. Additionally, Alternatively,~~ DelDOT may ask for~~allow~~ a Traffic Operational Analysis (TOA) in conjunction with ~~instead of~~ a TIS.
- c. ~~As an alternative to the TIS or TOA process set forth above, when DelDOT has determined that the area in question has already been the subject of sufficient study, a new TIS or TOA may not be required. Instead, DelDOT may require a "Fee in Lieu" to be paid by the developer to DelDOT to recoup all or a portion of the cost of the prior studies relied upon by DelDOT in lieu of a new TIS or TOA. The "Fee in Lieu" is~~

~~unrelated to the developer's subsequent obligations to construct or fund road improvements as required by DelDOT and the "Fee in Lieu" is not a waiver of those requirements. A TIS or AWSF letter will be generated to document the developer's obligations.~~

7. Elements of the Traffic Impact Study:

- a. The TIS will consider the effects of active or proposed transportation improvements in the adopted Six (6) Year Capital Improvements Program, Current Transportation Plans, and Committed Off-Site Improvements, and the current Sussex County Comprehensive Plan and establish staging for development as needed.
- b. Given the seasonal nature of high-volume traffic volume in Sussex County, and since the "season" has expanded beyond just Memorial Day through Labor Day, with very high traffic volumes on seasonal weekends, it is important for DelDOT to take into account these high volumes in any analysis that it performs. To be effective, seasonal traffic adjustment factors to normalize traffic volumes shall be applied when calculating trip generation. low volume off season volumes should not be utilized where they will artificially lower average traffic volumes.
- c. DelDOT will provide a technical evaluation of the TIS.

8. Level of Service Standards:

- a. Sussex County and DelDOT shall endeavor, where possible, to maintain a Level of Service of D on roads and intersections affected by a land use application. However, Sussex County and DelDOT recognize that:
 - ~~(a)~~ a Level of Service of D is not always attainable;
 - ~~that~~ that this threshold may create an undue burden on a property owner looking to develop a property given the prior development that has occurred in an area contributing to the existing Level of Service;
 - ~~or (e)~~ other relevant factors (such as the size of the property, type or importance of the development) may mitigate against maintaining a Level of Service D.
- ~~b.~~ b. If the existing Level of Service is below D prior to the impact of the proposed land use, the existing Level of Service must at least be maintained.
- c. When DelDOT determines that the traffic impact of the proposed land use causes the

~~threshold level of service to be exceeded, on the basis of a TIS or TOA or studies previously performed as part of the “Fee in Lieu” process, that a land use decision could cause the threshold level of service to be exceeded,~~ the County will not approve the land use application unless:

- ~~The~~ developer agrees to take appropriate measures to maintain operations at the threshold level of service; or,
- ~~or unless~~ Sussex County finds that there are sufficient reasons why the developer should not be responsible for all or part of the measures necessary to maintain the threshold level of service. Sussex County, in ~~this~~ the latter case, shall set forth in writing their reasons for approving the land use application.

9. Coordination:

a. The Sussex County Planning and Zoning Department is responsible for coordinating all required information with Sussex County Council and the Planning and Zoning Commission.

b. No public hearing on the land use application shall occur until one of the following conditions are met:

- The application will have a diminutive impact as described above; or,
- The application will have a negligible impact as described above; or,
- Sussex County receives the approved AWSF letter from DelDOT; or,
- Sussex County receives the approved TOA from DelDOT; or,
- Sussex County receives the approved TIS from DelDOT.
- ~~(a) Sussex County receives the approved TIS from DelDOT; (b) Sussex County receives the approved TOA from DelDOT; (c) DelDOT advises that a “Fee in Lieu” (described in Paragraph 8 above) is appropriate instead of a TIS; or (d) the application will have a diminutive impact as described above.~~

e.c. Sussex County does not have the ability to determine what, if any, conditions of approval related to roadway improvements or traffic would be appropriate in a given land use application. Therefore, if, in DelDOT’s opinion, there are appropriate conditions of approval that should be imposed upon a land use decision, DelDOT shall offer those conditions as part of its TIS or as part of its Technical Advisory Committee

review for consideration by Sussex County. Any such proposed conditions shall be clearly summarized by DelDOT ~~in its Preliminary Traffic Analysis~~ prior to the Preliminary Site Plan hearing. After considering all relevant information regarding the land use application, Sussex County shall consider the proposed conditions but shall not be obligated to include them as part of any approval.

~~f.d. Phasing of land development with highway capacity and safety improvements to restore and maintain a level of service “D” may be required by DelDOT. To accomplish this,~~ DelDOT should clearly state what phasing of roadway improvements is appropriate for the proposed subject land use application ~~and clearly state that phasing requirement to Sussex County~~ so that Sussex County can consider the phasing clearly incorporate it into its various approvals as appropriate prior to the Preliminary Site Plan hearing. Sussex County may then impose that phasing requirement as part of its approval of a land use application. ~~DelDOT’s P~~phasing of the project ~~may~~ can include (but ~~are~~ is not limited to) ~~a~~ consideration of the following:

- A delay of all or part of the development until specific ~~roadway~~ highway improvements are made by DelDOT or others;
- Whether the required ~~roadway~~ highway improvements are being funded or constructed at the developer’s own expense;
- Whether the developer is participating in, and/or funding, transit or traffic mitigation strategies.

The phasing requirements shall be included as a Plan Sheet at the time of Final Site Plan approval. ~~However, whenever possible, DelDOT shall endeavor to state whether a phasing recommendation is likely (with specific details to follow) as part of the TIS process prior to the Preliminary Site Plan or other public hearing process so that Sussex County, the developer and the public can have an expectation that phasing may be considered as part of the project development.~~ Phasing tied to other types of site plan approval is addressed in a following Section of this MOU regarding Site Plan Coordination.

~~g. Where measures to maintain operations are agreed upon by a developer, both DelDOT and Sussex County shall assure that these measures are carried out.~~

~~h.c.~~ When Sussex County believes that expert testimony regarding transportation issues is

required to make a land use decision (such as a rezoning, major subdivision, conditional use or Residential Planned Community), DelDOT will provide a suitable representative to attend meetings of the Planning and Zoning Commission and/or County Council. The representative should be someone with specific technical knowledge of the project in particular ~~and also~~and ongoing projects in the area of Sussex County where the project is to occur.

i.f. In addition to the project-specific information referenced in the preceding paragraph, DelDOT shall provide regular updates to Sussex County about the status of ongoing and future roadway and transportation projects in the County, so that County Council and the Planning & Zoning Commission have an up-to-date understanding of their status. This shall include both developer-funded and DelDOT-initiated and -funded projects. During these updates, Sussex County will also have an opportunity to discuss other transportation improvements that may be needed in the future.

j.g. Whenever possible during the implementation of the foregoing items, Sussex County and DelDOT should encourage master planning for large scale developments on large parcels or groups of parcels in the Town Center, Coastal Area, Developing Area and commercial areas as set forth in the Comprehensive Land Use Plan to provide greater flexibility in design and/or the installation of additional roadways, ~~and~~ interconnectivity.

~~k.h. Sussex County shall be entitled to participate in any negotiations between a developer and DelDOT as to roadway improvements. Sussex County may provide input into those negotiations, but DelDOT shall be entitled to make the final determination as to all required roadway improvements and negotiated agreements with a developer. Any agreement reached between a developer and DelDOT as to roadway improvements, phasing of a development, and funding of roadway improvements, ~~etc.~~ shall be ~~immediately~~timely forwarded to Sussex County for its records with regard to the development. Any subsequent changes or amendments to a DelDOT and /developer agreement shall likewise be ~~timely~~immediately forwarded to Sussex County. Provided, however, that DelDOT ~~acknowledges~~recognizes that if a specific requirement (such as phasing) is incorporated into a land use decision (such as a major subdivision, conditional use or Residential Planned Community), this may not be enforceable by~~

Sussex County without an amendment to the subdivision approval or the ordinance that approved a Residential Planned Community, Conditional Use or certain other ~~rezonings~~rezoning's where conditions can be imposed.

REZONINGS (WITHOUT SITE PLANS OR CONDITIONS OF APPROVAL)

1. Sussex County and DelDOT acknowledge that on a rezoning to a new zoning district where a specific site plan is not under consideration, and where the County cannot impose conditions as part of the rezoning approval, a TIS may not be possible (with the exception of rezoning's to Residential Planned Communities and C-4, where specific site plans are considered and conditions can be imposed). This is because the various zoning districts have several permitted uses that are allowed once a rezoning occurs; as a result DelDOT cannot determine, at the time of rezoning, what the actual use will be nor what the traffic and possible roadway improvements will be as a result of it. This requires greater coordination on the part of both Sussex County and DelDOT.
2. Whenever possible, DelDOT shall endeavor to provide as much information about the general impacts of the rezoning upon area traffic and roadways as required in the preceding section prior to the public hearing before Sussex County Council and the Planning & Zoning Commission.
3. Whenever DelDOT is approached by a developer with a specific project in mind, DelDOT and that developer may enter into an agreement to obtain a TIS for the project as part of the rezoning process so that the information required as part of the TIS may be included in the record of the public hearings of the rezoning application. Because other possible uses of the property may be permitted under the proposed new zoning, Sussex County is not bound by this information in making its decision on the rezoning. However, if the use that the TIS is based upon changes after the rezoning occurs, another TIS shall be required and Sussex County shall not approve any Preliminary or Final Site Plan for the property until the new TIS is completed with all necessary traffic and roadway improvements determined by DelDOT. Alternatively, if no TIS is performed on a specific project, DelDOT ~~or Sussex County~~ shall have the ability to request a TIS based upon the most impactful permitted use available under the new zoning classification that is sought.

SITE PLAN COORDINATION

1. Section 115-220D of the Sussex County Zoning Code allows Sussex County to approve certain site plans “subject to conditions”. In any site plan reviewed pursuant to Section 115-220 of the Sussex Zoning Code, Sussex County, with the assistance of DelDOT, may impose conditions regarding phasing and the timing of building permits in conjunction with completion of necessary roadway improvements.
2. In all site plan reviews, DelDOT will review the site plans in accordance with its rules and regulations for access and roadway improvements. Sussex County will withhold any site plan approval until DelDOT has provided a Letter of No Contention (LONC) or a Letter of No Objection to Recordation (LONOR).~~approved all necessary roadway improvements and entrance design requirements.~~ Provided, however, that this requirement may be waived by Sussex County for minor amendments to existing site plans that changes the trip generation by less than 50 trips per day.
3. Sussex County shall withhold the issuance of any building permit until DelDOT has issued the entrance ~~construction~~ permit associated with the project.
4. DelDOT will withhold an entrance construction permit until the developer has agreed to construct the access point(s) to Department standards and to provide off-site improvements as may be required to maintain acceptable traffic operation on roadways~~highways~~.
5. Sussex County will withhold issuance of the Certificate of Compliance until DelDOT has accepted the entrance construction as substantially completed.~~and issued the notice to the owner that the entrance construction permit has been satisfied.~~

TRANSPORTATION IMPROVEMENT DISTRICTS

1. In the event that a land use application falls within a Transportation Improvement District (“TID”), the requirements of the TID, as set forth in the TID Agreement, shall supersede the requirements set forth in this MOU.

IT IS FURTHER RESOLVED that the Secretary of the Delaware Department of Transportation and The County Administrator will affirm this agreement by affixing their signature to the Resolution.

Adopted by the County Council of Sussex County on _____, 2019.

President of the County Council of Sussex County

The following signatures concurring herein:

For Sussex County:

Todd Lawson, Sussex County Administrator

Robert Wheatley, Chairman, Sussex County
Planning & Zoning Commission

Janelle Cornwell, Director of Planning & Zoning

**For the Department of
Transportation:**

Jennifer Cohan, Secretary

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
KIM HOEY STEVENSON, VICE-CHAIRMAN
R. KELLER HOPKINS
J. BRUCE MEARS
HOLLY J. WINGATE



Sussex County

DELAWARE
sussexcountyde.gov
302-855-7878 T
302-854-5079 F
JANELLE CORNWELL, AICP
DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date December 12, 2019

Application: CU 2199 OA-Rehoboth, LLC

Applicant: OA-Rehoboth, LLC
18949 Coastal Hwy., Unit 301
Rehoboth Beach, DE 19971

Owner: Herola Family, LLC
4660 19th St.
San Francisco, CA 94114

Site Location: South of John J. Williams Hwy., approximately 0.29 mile east of
Warrington Rd.

Current Zoning: CR-1 (General Commercial District)

Proposed Use: Multi-Family (224 Units)

Comprehensive Land
Use Plan Reference: Coastal Area

Councilmatic
District: Mr. Hudson

School District: Cape Henlopen School District

Fire District: Rehoboth Beach Fire District

Sewer: Sussex County

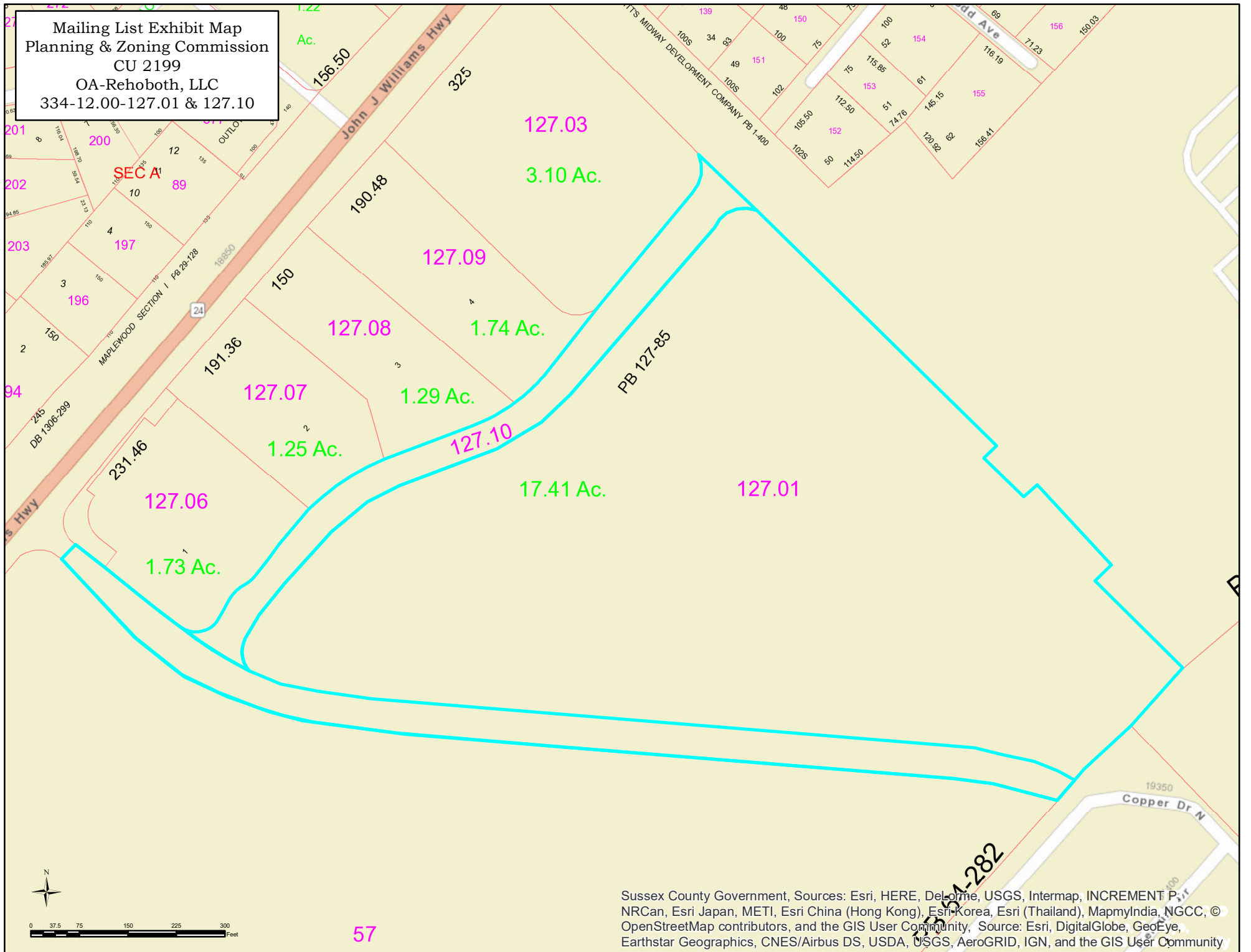
Water: Tidewater

Site Area: 18.793 ac. +/-

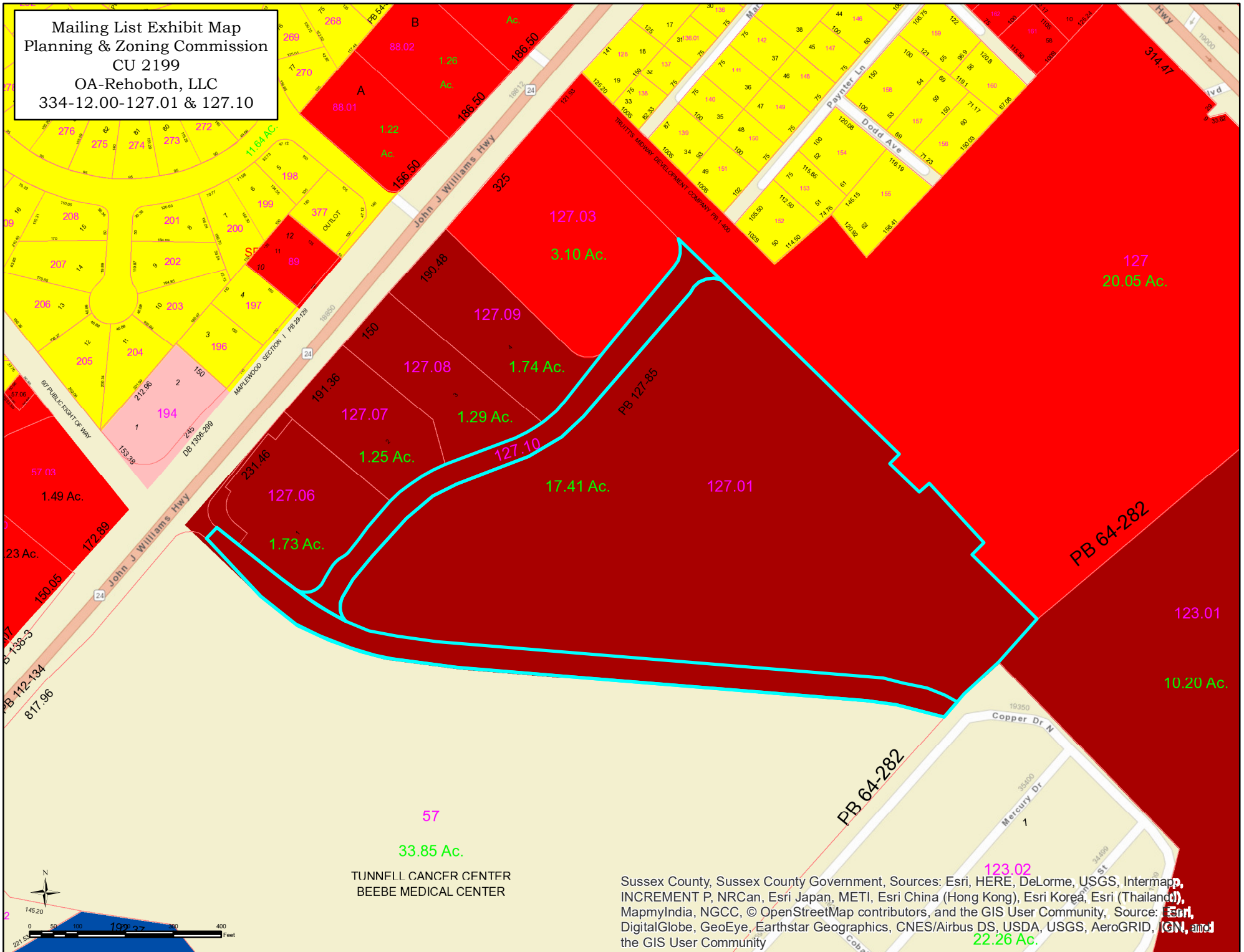
Tax Map ID.: 334-12.00-127.01 & 127.10



Mailing List Exhibit Map
Planning & Zoning Commission
CU 2199
OA-Rehoboth, LLC
334-12.00-127.01 & 127.10



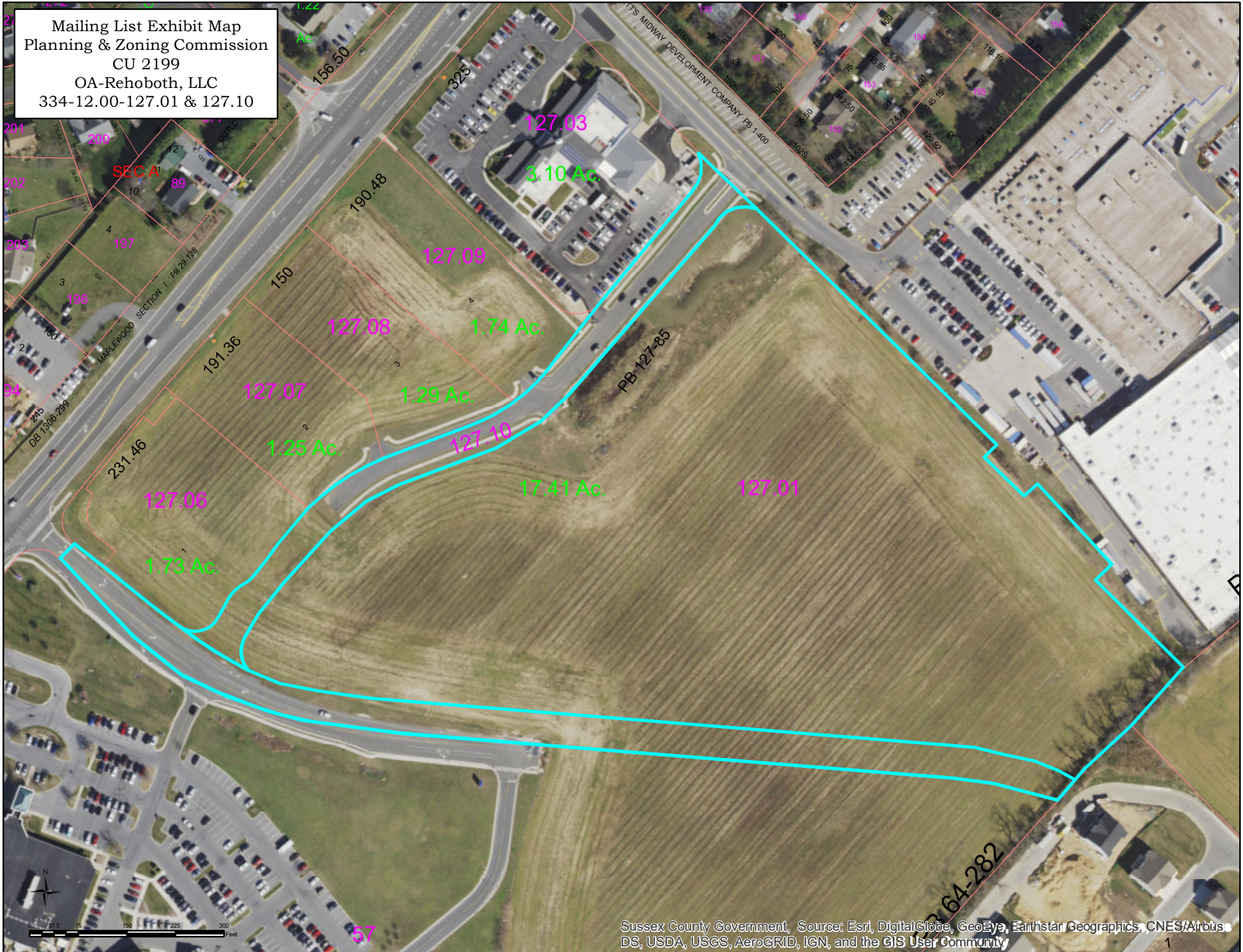
Mailing List Exhibit Map
Planning & Zoning Commission
CU 2199
OA-Rehoboth, LLC
334-12.00-127.01 & 127.10



TUNNELL CANCER CENTER
BEEBE MEDICAL CENTER

Sussex County, Sussex County Government, Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, NGCC, © OpenStreetMap contributors, and the GIS User Community, Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Mailing List Exhibit Map
Planning & Zoning Commission
CU 2199
OA-Rehoboth, LLC
334-12.00-127.01 & 127.10



PLANNING & ZONING

JANELLE M. CORNWELL, AICP
DIRECTOR

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(302) 854-5079 F



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Jamie Whitehouse, Planning & Zoning Manager
CC: Vince Robertson, Assistant County Attorney and Applicant
Date: December 5, 2019
RE: Staff Analysis for CU 2199 OA Rehoboth, LLC

This memo is to provide background and analysis for the Planning Commission to consider as part of application CU 2199 OA Rehoboth, LLC to be reviewed during the December 12, 2019 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for parcels 334-12.00-127.01 & 127.10 to allow for Multi-Family (224 Units). The size of the property to be used as the Conditional Use is 18.7 Acres +/-.

The application site forms part of a lands associated with application CZ 1732, which was approved for a Change of Zone from AR-1 (Agricultural Residential Zoning District) to CR-1 (Commercial Residential Zoning District) on September 24, 2013.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map indicates that the property has the land use designation of "Coastal Area". The Coastal Areas land use designation recognizes that *"a range of housing types should be permitted in Coastal Areas, including single family homes, townhouses, and multi-family units."*

The adjoining lands to the north, north-east and south-west are all designated on the Future Land use Map as Commercial Areas. Many of these parcels contain commercial uses.

The application property, and the four parcels to the north west along John J. Williams Highway are all zoned CR-1 (Commercial Residential Zoning District). The properties to the north and north-east are zoned C-1 (General Commercial Zoning District). The parcels to the south, which include the Beebe Medical Center, are zoned AR-1 (Agricultural Residential District).

There are other Conditional Use approvals within a 1-mile radius of the application site. Since 2011, there has been one Conditional Use approval (CU 2072) for multi-family dwelling structures (20 units) on a 5.1 acre parcel of land (Tax Parcel 334-13.00-27.00) that was approved on May 23, 2017, subject to conditions of approval.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional Use to allow for multi-family dwellings, subject to consideration of the scale and impact of the use, could be considered as being consistent with the land use, area zoning and adjoining uses.



**Planning & Zoning Commission Application
Sussex County, Delaware**

Sussex County Planning & Zoning Department
2 The Circle (P.O. Box 417) Georgetown, DE 19947
302-855-7878 ph. 302-854-5079 fax

Type of Application: (please check applicable)

- Conditional Use
- Zoning Map Amendment

Site Address of Conditional Use/Zoning Map Amendment

Type of Conditional Use Requested:

Tax Map #: _____ **Size of Parcel(s):** _____
Current Zoning: _____ **Proposed Zoning:** _____ **Size of Building:** _____

Land Use Classification:

Water Provider: _____ **Sewer Provider:** _____

Applicant Information

Applicant Name: _____
Applicant Address: _____
City: _____ State: _____ Zip Code: _____
Phone #: _____ E-mail: _____

Owner Information

Owner Name: _____
Owner Address: _____
City: _____ State: _____ Zip Code: _____
Phone #: _____ E-mail: _____

Agent/Attorney/Engineer Information

Agent/Attorney/Engineer Name: _____
Agent/Attorney/Engineer Address: _____
City: _____ State: _____ Zip Code: _____
Phone #: _____ E-mail: _____



Check List for Sussex County Planning & Zoning Applications

The following shall be submitted with the application

Completed Application

Provide eight (8) copies of the Site Plan or Survey of the property

- Survey shall show the location of existing or proposed building(s), building setbacks, parking area, proposed entrance location, etc.
- Provide a PDF of Plans (may be e-mailed to a staff member)
- Deed or Legal description

Provide Fee \$500.00

Optional - Additional information for the Commission/Council to consider (ex. architectural elevations, photos, exhibit books, etc.) If provided submit 8 copies and they shall be submitted a minimum of ten (10) days prior to the Planning Commission meeting.

Please be aware that Public Notice will be sent to property owners within 200 feet of the subject site and County staff will come out to the subject site, take photos and place a sign on the site stating the date and time of the Public Hearings for the application.

DeIDOT Service Level Evaluation Request Response

PLUS Response Letter (if required)

The undersigned hereby certifies that the forms, exhibits, and statements contained in any papers or plans submitted as a part of this application are true and correct.

I also certify that I or an agent on my behalf shall attend all public hearing before the Planning and Zoning Commission and the Sussex County Council and any other hearing necessary for this application and that I will answer any questions to the best of my ability to respond to the present and future needs, the health, safety, morals, convenience, order, prosperity, and general welfare of the inhabitants of Sussex County, Delaware.

Signature of Applicant/Agent/Attorney

Date:

Signature of Owner

Date:

For office use only:

Date Submitted: _____

Fee: \$500.00 Check #: _____

Staff accepting application: _____

Application & Case #: _____

Location of property: _____

Subdivision: _____

Date of PC Hearing: _____

Recommendation of PC Commission: _____

Date of CC Hearing: _____

Decision of CC: _____



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

JENNIFER COHAN
SECRETARY

RECEIVED

November 20, 2019

Ms. Janelle Cornwell, Director
Sussex County Planning & Zoning
P.O. Box 417
Georgetown, DE 19947

NOV 20 2019

SUSSEX COUNTY
PLANNING & ZONING

Dear Ms. Cornwell:

This letter is to revise and replace my previous letter of September 10, 2019, regarding a Service Level Evaluation Request for the **OA-Rehoboth, LLC** conditional use application. On October 28, 2019, the applicant submitted a revised application modifying the proposed land use from 216 units of three-story multi-family housing and a 175-unit continuing care retirement community, to 224 units of four-story multi-family housing and a 175-unit continuing care retirement community. We are writing to address that request. A copy of our September 10, 2019 letter is enclosed.

The Department has completed its review of a Service Level Evaluation Request for the above-mentioned application, which we received on October 28, 2019. This application is for a 17.37-acre parcel (Tax Parcel: 334-12.00-127.01). The subject land is located on the southeast side of Delaware Route 24, approximately 1,600 feet northeast of the intersection of Delaware Route 24 and Warrington Road / Plantation Road (Sussex Road 275). The subject land is currently zoned as CR-1 (Commercial Residential) and the applicant is seeking a conditional use approval to develop 224 units of four-story multi-family housing and a 175-unit continuing care retirement community.

Per the 2018 Delaware Vehicle Volume Summary, the annual average and summer average daily traffic volumes along the segment of Delaware Route 24 where the subject land is located, which is from Warrington Road to Delaware Route 1, are 19,505 and 25,103 vehicles per day, respectively.

Based on our review, we estimate that the proposed land use will generate more than 50 vehicle trips per a weekly peak hour or 500 vehicle trips per day, and would be considered to have a Minor impact to the local area roadways. In this instance, the Department considers a Minor impact to be when a proposed land use would generate more than either 50 vehicle trips per a weekly peak hour and / or 500 vehicle trips per day but fewer than 200 vehicle trips per a weekly peak hour and 2,000 vehicle trips per day. Because of this impact, we recommend that the applicant be required to perform a Traffic Impact Study (TIS) for the subject application. However, our Development Coordination



Ms. Janelle M. Cornwell
Page 2 of 2
November 20, 2019

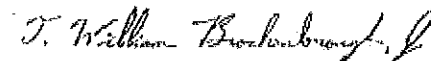
Manual provides that where a TIS is required only because the volume warrants are met, and the projected trip generation will be fewer than 200 vehicle trips per a weekly peak hour and fewer than 2,000 vehicle trips per day, DeIDOT may permit the developer to pay an Area-Wide Study Fee of \$10 per daily trip in lieu of doing a TIS. For this application, if the County were agreeable, we would permit the developer to pay an Area-wide Study Fee.

According to the Institute of Transportation Engineers (ITE) Trip Generation Manual, a development of 224 units of four-story multi-family housing and a 175-unit continuing care retirement community would generate 1,657 vehicle trips per day, 101 vehicle trips during the morning peak hour, and 131 vehicle trips during the evening peak hour. As stated above, because this development would generate fewer than 2,000 vehicle trips per day and fewer than 200 vehicle trips during a weekly peak hour, the applicant has the option to pay the Area-Wide Study Fee in lieu of doing a TIS. The Area-Wide Study Fee for the proposed development would be \$16,570.00. Payment of the Area-Wide Study Fee does not preclude a developer from having to make or participate in off-site improvements, including a Traffic Operational Analysis (TOA), if one is found to be necessary during the site plan review process.

If the County approves this application, the applicant should be reminded that DeIDOT requires compliance with State regulations regarding plan approvals and entrance permits, whether or not a TIS is required.

Please contact Mr. Claudy Joinville, at (302) 760-2124, if you have questions concerning this correspondence.

Sincerely,



T. William Brockenbrough, Jr.
County Coordinator
Development Coordination

TWB:cjm
Enclosure

cc: Constance C. Holland, Coordinator, Cabinet Committee on State Planning Issues
OA-Rehoboth, LLC, Applicant
J. Marc Coté, Assistant Director, Development Coordination
Gemez Norwood, South District Public Works Manager, Maintenance & Operations
Susanne Laws, Sussex County Subdivision Coordinator, Development Coordination
Derek Sapp, Subdivision Manager, Development Coordination
Kevin Hickman, Subdivision Manager, Development Coordination
Brian Yates, Subdivision Manager, Development Coordination
John Andrescavage, Subdivision Manager, Development Coordination
Troy Brestel, Project Engineer, Development Coordination
Claudy Joinville, Project Engineer, Development Coordination

SUSSEX COUNTY ENGINEERING DEPARTMENT
UTILITY PLANNING DIVISION
C/U & C/Z COMMENTS

TO: **Janelle Cornwell**

REVIEWER: **Chris Calio**

DATE: **11/20/2019**

APPLICATION: **CU 2199 OA-Rehoboth, LLC**

APPLICANT: **OA-Rehoboth, LLC**

FILE NO: **OM-9.04**

TAX MAP &
PARCEL(S): **334-12.00-127.01 & 127.10**

LOCATION: **South of John J. Williams Highway, approximately 0.29 mile east of Warrington Road.**

NO. OF UNITS: **224**

GROSS
ACREAGE: **18.793**

SYSTEM DESIGN ASSUMPTION, MAXIMUM NO. OF UNITS/ACRE: **6.67**

SEWER:

- (1). Is the project in a County operated and maintained sanitary sewer and/or water district?
Yes No
- a. If yes, see question (2).
b. If no, see question (7).
- (2). Which County Tier Area is project in? **Tier 2**
- (3). Is wastewater capacity available for the project? **Yes, As Proposed** If not, what capacity is available? **N/A.**
- (4). Is a Construction Agreement required? **Yes** If yes, contact Utility Engineering at (302) 855-7717.
- (5). Are there any System Connection Charge (SCC) credits for the project? **No** If yes, how many? **N/A.** Is it likely that additional SCCs will be required? **Yes** If yes, the current System Connection Charge Rate is **Unified \$6,360.00** per EDU. Please contact **Christine Fletcher** at **302-855-7719** for additional information on charges.

- (6). Is the project capable of being annexed into a Sussex County sanitary sewer district? **Yes**
- Attached is a copy of the Policy for Extending District Boundaries in a Sussex County Water and/or Sanitary Sewer District.
- (7). Is project adjacent to the Unified Sewer District? **Yes**
- (8). Comments: **Parcel 127.10 is currently within the boundary of the Sussex County Unified Sanitary Sewer District. Parcel 127.01 will have to be annexed into the district.**
- (9). Is a Sewer System Concept Evaluation required? **Yes, Contact Utility Planning at 302-855-1299 to apply**
- (10). Is a Use of Existing Infrastructure Agreement Required? **Yes**

UTILITY PLANNING APPROVAL:



John J. Ashman
Director of Utility Planning

Xc: Hans M. Medlarz, P.E.
Jayne Dickerson
Christine Fletcher

Policy for Extending District Boundaries

1. Property owner (developer) and/or his representative shall make a request to the Utility Planning Division for a Sewer System Concept Evaluation.
2. Property owner (developer) and/or his representative shall meet with the applicable planning and zoning agency to determine if zoning is appropriate for the development being planned.
3. With appropriate zoning, property owner (developer) and/or his representative shall send a letter (with appropriate application fee as listed below) requesting the Sussex County Council to consider extending the water and/or sanitary sewer district boundaries. (Sussex County Code)

Application Fees	
Less than 2 acres	\$500.00
2.1 - 9.99 acres	\$750.00
10 - 150.00 acres	\$1,500.00
Greater than 150.00 acres	\$2,500.00

4. The Sussex County Engineering Department shall present, for Sussex County Council's consideration, posting of notices for the proposed extension of the district boundaries.
5. The Sussex County Council approves posting notices for the proposed extension of the boundaries. (If approval to post the notices is not given, the appropriate fee is refunded.)
6. Within ninety days of the posting of the notices, the Sussex County Council approves/disapproves extending the boundaries.
7. The Sussex County Council approves/disapproves of the extension of the water and/or sanitary sewer pipelines under the appropriate Sussex County Ordinance.



MEMORANDUM

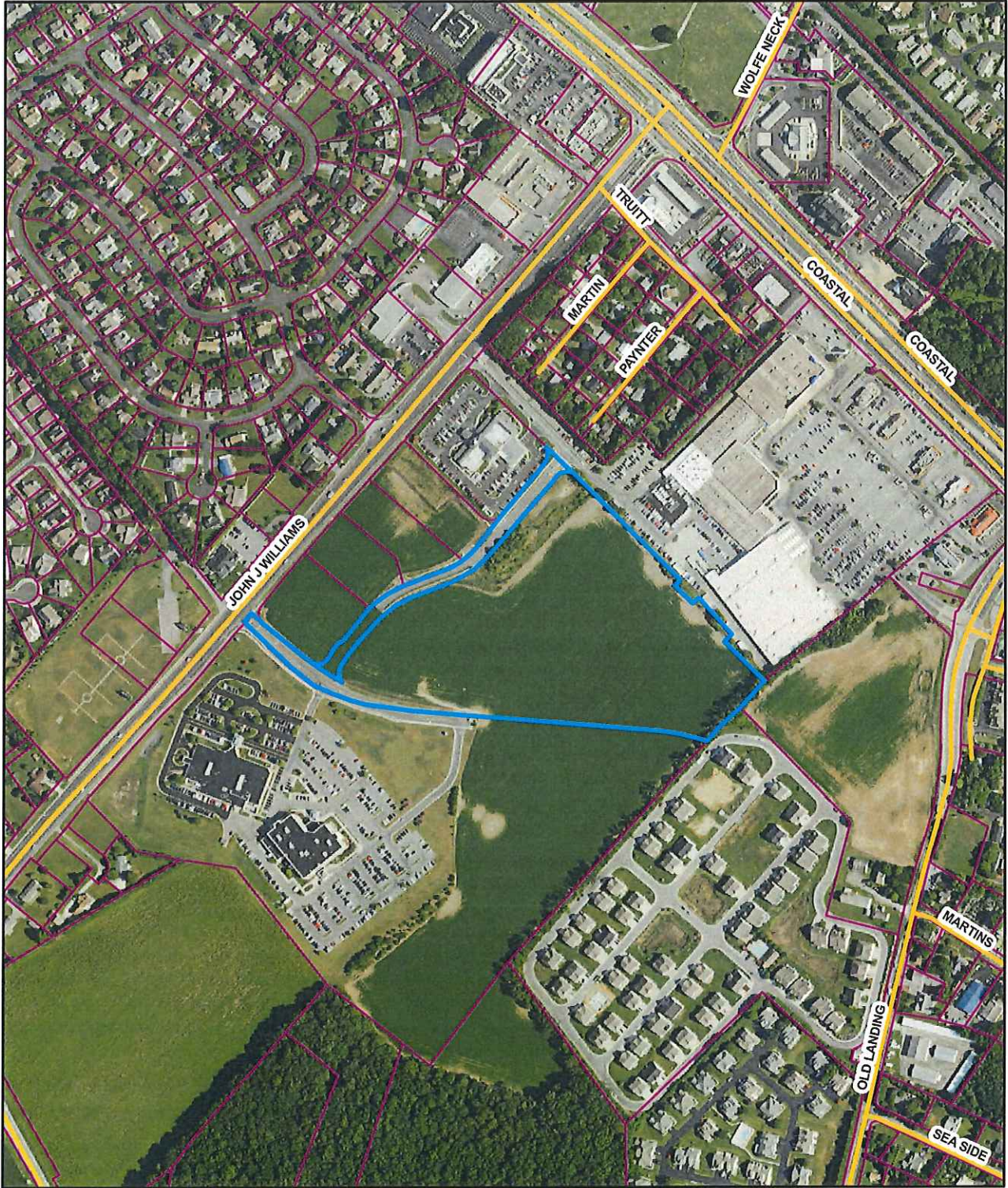
TO: Janelle M. Cornwell
FROM: Debbie Absher, Director of Ag Programs
SUBJECT: LUPA
DATE: December 10, 2019

Attached you will find the comments for the following proposed zoning changes:

- 2019-25 – Workman's Crossing
- CU 2199 – OA-Rehoboth, LLC
- CZ 1900 – Michael P. Justice
- CU 2200 & CZ 1901 – Mary and Victor Rico

If you have any questions, I can be reached at 856-3990, ext. 3.

BJH
Enclosures



CU 2199
TM #334-12.00-127.01 & 127.10
OA-Rehoboth, LLC

Soil Map—Sussex County, Delaware
(OA-Rehoboth, LLC)



Soil Map may not be valid at this scale.

Map Scale: 1:7,920 if printed on A landscape (11" x 8.5") sheet.
 0 100 200 400 600 Meters
 0 350 700 1400 2100 Feet
 Map projection: Web Mercator Corner coordinates: WGS84 Edge tics: UTM Zone 18N WGS84

Natural Resources
Conservation Service

Web Soil Survey
National Cooperative Soil Survey

MAP LEGEND

- Area of Interest (AOI)
- Area of Interest (AOI)
- Soils**
- Soil Map Unit Polygons
- Soil Map Unit Lines
- Soil Map Unit Points
- Special Point Features**
- Blowout
- Borrow Pit
- Clay Spot
- Closed Depression
- Gravel Pit
- Gravelly Spot
- Landfill
- Lava Flow
- Marsh or swamp
- Mine or Quarry
- Miscellaneous Water
- Perennial Water
- Rock Outcrop
- Saline Spot
- Sandy Spot
- Severely Eroded Spot
- Sinkhole
- Slide or Slip
- Sodic Spot

- Spoil Area
- Stony Spot
- Very Stony Spot
- Wet Spot
- Other
- Special Line Features
- Water Features**
- Streams and Canals
- Transportation**
- Rails
- Interstate Highways
- US Routes
- Major Roads
- Local Roads
- Background**
- Aerial Photography

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:24,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Sussex County, Delaware
Survey Area Data: Version 20, Sep 13, 2019

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Nov 21, 2018—Mar 12, 2019

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
GrA	Greenwich loam, 0 to 2 percent slopes	20.1	99.7%
GuB	Greenwich-Urban land complex, 0 to 5 percent slopes	0.1	0.3%
Totals for Area of Interest		20.2	100.0%

Selected Soil Interpretations

This report allows the customer to produce a report showing the results of the soil interpretation(s) of his or her choice. It is useful when a standard report that displays the results of the selected interpretation(s) is not available.

When customers select this report, they are presented with a list of interpretations with results for the selected map units. The customer may select up to three interpretations to be presented in table format.

For a description of the particular interpretations and their criteria, use the "Selected Survey Area Interpretation Descriptions" report.

Report—Selected Soil Interpretations

Selected Soil Interpretations—Sussex County, Delaware							
Map symbol and soil name	Pct. of map unit	ENG - Dwellings W/O Basements		ENG - Dwellings With Basements		ENG - Septic Tank Absorption Fields (DE)	
		Rating class and limiting features	Value	Rating class and limiting features	Value	Rating class and limiting features	Value
GrA—Greenwich loam, 0 to 2 percent slopes							
Greenwich	85	Not limited		Not limited		Very limited	
						Restricted permeability	1.00
GuB—Greenwich-Urban land complex, 0 to 5 percent slopes							
Greenwich	60	Not limited		Not limited		Very limited	
						Restricted permeability	1.00
Urban land	20	Not rated		Not rated		Not rated	

Data Source Information

Soil Survey Area: Sussex County, Delaware
 Survey Area Data: Version 20, Sep 13, 2019

Prime and other Important Farmlands

This table lists the map units in the survey area that are considered important farmlands. Important farmlands consist of prime farmland, unique farmland, and farmland of statewide or local importance. This list does not constitute a recommendation for a particular land use.

In an effort to identify the extent and location of important farmlands, the Natural Resources Conservation Service, in cooperation with other interested Federal, State, and local government organizations, has inventoried land that can be used for the production of the Nation's food supply.

Prime farmland is of major importance in meeting the Nation's short- and long-range needs for food and fiber. Because the supply of high-quality farmland is limited, the U.S. Department of Agriculture recognizes that responsible levels of government, as well as individuals, should encourage and facilitate the wise use of our Nation's prime farmland.

Prime farmland, as defined by the U.S. Department of Agriculture, is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses. It could be cultivated land, pastureland, forestland, or other land, but it is not urban or built-up land or water areas. The soil quality, growing season, and moisture supply are those needed for the soil to economically produce sustained high yields of crops when proper management, including water management, and acceptable farming methods are applied. In general, prime farmland has an adequate and dependable supply of moisture from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, an acceptable salt and sodium content, and few or no rocks. The water supply is dependable and of adequate quality. Prime farmland is permeable to water and air. It is not excessively erodible or saturated with water for long periods, and it either is not frequently flooded during the growing season or is protected from flooding. Slope ranges mainly from 0 to 6 percent. More detailed information about the criteria for prime farmland is available at the local office of the Natural Resources Conservation Service.

For some of the soils identified in the table as prime farmland, measures that overcome a hazard or limitation, such as flooding, wetness, and droughtiness, are needed. Onsite evaluation is needed to determine whether or not the hazard or limitation has been overcome by corrective measures.

A recent trend in land use in some areas has been the loss of some prime farmland to industrial and urban uses. The loss of prime farmland to other uses puts pressure on marginal lands, which generally are more erodible, droughty, and less productive and cannot be easily cultivated.

Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops, such as citrus, tree nuts, olives, cranberries, and other fruits and vegetables. It has the special combination of soil quality, growing season, moisture supply, temperature, humidity, air drainage, elevation, and aspect needed for the soil to economically produce sustainable high yields of these crops when properly managed. The water supply is dependable and of adequate quality. Nearness to markets is an additional consideration. Unique farmland is not based on national criteria. It commonly is in areas where there is a special microclimate, such as the wine country in California.

In some areas, land that does not meet the criteria for prime or unique farmland is considered to be *farmland of statewide importance* for the production of food, feed, fiber, forage, and oilseed crops. The criteria for defining and delineating farmland of statewide importance are determined by the appropriate State agencies. Generally, this land includes areas of soils that nearly meet the requirements for prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some areas may produce as high a yield as prime farmland if conditions are favorable. Farmland of statewide importance may include tracts of land that have been designated for agriculture by State law.

In some areas that are not identified as having national or statewide importance, land is considered to be *farmland of local importance* for the production of food, feed, fiber, forage, and oilseed crops. This farmland is identified by the appropriate local agencies. Farmland of local importance may include tracts of land that have been designated for agriculture by local ordinance.

Report—Prime and other Important Farmlands

Prime and other Important Farmlands—Sussex County, Delaware		
Map Symbol	Map Unit Name	Farmland Classification
GrA	Greenwich loam, 0 to 2 percent slopes	All areas are prime farmland
GuB	Greenwich-Urban land complex, 0 to 5 percent slopes	Not prime farmland

Data Source Information

Soil Survey Area: Sussex County, Delaware
 Survey Area Data: Version 20, Sep 13, 2019

SOILS

ADD ANY ADDITIONAL INFORMATION THAT MAY BE CONSIDERED PERTINENT:

SOILS:

GrA Greenwich loam, 0 to 2 percent slopes
GuB Greenwich-Urban land complex, 0 to 5 percent slopes

- A. SUITABILITY OF SOILS INTENDED USE:
 See attached table for suitability.

- B. EVALUATE THE SOILS INCLUDED IN THIS PROJECT WITH RESPECT
 TO EROSION AND SEDIMENTATION CONTROL:
 - 1. DURING CONSTRUCTION:
 Follow recommended erosion and sediment control practices.

 - 2. AFTER CONSTRUCTION:
 Maintain vegetation.

- C. FARMLAND RATING (PRIME, UNIQUE, STATEWIDE IMPORTANCE,
 ETC.):
 See attached table(s) for ratings.

- D. ADDITIONAL COMMENTS (IF APPLICABLE):

DRAINAGE AND FLOODING

Add any additional information that may be considered pertinent:

DRAINAGE:

A. Any Storm flood hazard area affected? Yes No

B. Would the proposed project necessitate any off-site drainage improvements?

Possibly

C. Would the proposed project necessitate any on-site drainage improvements?

yes

D. Any Tax Ditch affected? Yes No

Additional Comments (if applicable)

All landowners, developers, and site designers are strongly encouraged to thoroughly investigate the presence of easements or right-of-ways along tax ditches. These documents are located in the Prothonotary's Office and/or with the Recorder of Deeds. If a stormwater management facility is proposed along a stream or ditch, the Sussex Conservation District will require verification of any easements. Before you start any project design, please look into this matter by calling the Division of Soil and Water Conservation-Drainage Program at (302) 855-1930 or the Sussex Conservation District Sediment and Stormwater Program at (302) 856-7219 for more information.


Statement to Sussex County Planning and Zoning,
12 December 2019

From Sterling Crossing Condominium Association

Regarding: C/U 2199 OA – Rehoboth, LLC KS An Ordinance to grant a Conditional Use of land in a CR-1 Commercial Residential District for multi-family (224 units) to be located on a certain parcel of land lying and being in Lewes and Rehoboth Hundred, Sussex County, containing 18.793 acres, more or less. The property is lying on the south side of John J. Williams Hwy. (Rt. 24), approximately 0.29 mile east of Warrington Rd. 911 Address: N/A. Tax Parcels: 334-12.00-127.01 and 127.10.

We endorse the Ocean Atlantic-Rehoboth multi-family plans. We thank Preston Schell for his vision. We thank Paul Townsend and family for the gift of land for the new connector road. We appreciate DeIDOT's Design Concept of December 9, 2019 for the Henlopen TID Airport Road segment 34, and their guidance to our community through the years.

Thank you.


--Kathleen Baker, Chair
Advocacy Team
35496 Copper Drive South
Rehoboth Beach, DE 19971
703/403-6882

SUPPORT EXHIBIT

FILE COPY

CU 2199

CONDITIONAL USE NO. 2199

OA-REHOBOTH, LLC

PROPOSED CONDITIONS

- A. The maximum number of residential apartment units shall not exceed 224 units located in no more than 7 buildings.
- B. All entrances, intersections, interconnections, roadways and multi-modal improvements required by DelDot shall be completed in accordance with DelDot's requirements.
- C. The Development shall be served as part of a Sussex County Sanitary District. The Developer shall comply with all requirements and specifications of the County Engineering Department.
- D. The Development shall be served by central water.
- E. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner which is consistent with Best Management Practices.
- F. Recreational amenities, including a community clubhouse, outdoor swimming pool, playground, and enclosed dog park shall be completed prior to issuance of a building permit for fourth multi-family building.
- G. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Department.
- H. The location for a school bus shelter shall be coordinated with the local school district's transportation manager. The location of the bus stop shelter shall be shown on the Final Site Plan.
- I. No outdoor construction activities or deliveries of dirt, fill or similar shall occur at the site except between the hours of 7:30 a.m. through 7:00 p.m., Monday through Friday, and 8:00 a.m. through 5:00 p.m. on Saturdays. There shall be no construction at the site on Sundays.

Applicant
Exhibit

FILE COPY

CU2199

- J. The design of interior drives shall meet or exceed Sussex County requirements for multi-family development.
- K. One lighted entrance sign, not to exceed 32 square feet per side, shall be permitted.
- L. Space in the community clubhouse or in 1 unit shall be permitted as an on-site management office.
- M. The Applicant or its assigns shall be responsible for the maintenance of interior drives and parking areas, buildings, buffers, stormwater management, recreational amenities and all open space.
- N. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Sussex County Office of Planning and Zoning.
- O. The Final Site Plan shall contain the approval of Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- P. The Final Site Plan shall include a landscape plan for all of the buffer areas, showing all of the landscaping and vegetation to be included in the buffer areas.
- Q. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

CONDITIONAL USE NO. 2199

OA-REHOBOTH, LLC

PROPOSED FINDINGS

1. The Applicant is proposing a conditional use to develop a residential rental apartment complex containing 224 units on a parcel of land located between Route 24 and Old Landing Road behind the Rehoboth Mall on the west side of Route 1.
2. Under the Strategies for State Policies and spending, the site is located in Investment Level 2 which is an area where growth is anticipated by local, County and State plans in the near term future. The Office of State Planning Coordination indicated no objection to the proposed development.
3. Under the 2018 Sussex County Comprehensive Plan, the site surrounded by Coastal and Commercial areas as designated on the future land use map which are “growth” areas designated in the plan.
4. The plan states that a range of housing types should be permitted in coastal areas and that higher density residential development of up to 12 units per acre can be appropriate in locations where: 1) Central water and sewer are utilized, 2) The site is near sufficient commercial uses and employment centers, 3) It is in keeping with the character of the area 4) It is along a main road or near a major intersection 5) There is adequate level of service or 6) Where there are other relevant considerations.
5. Central water will be provided by Tidewater Utilities and central sewer will be provided as part of the West Rehoboth Expansion of the Dewey Beach Sanitary Sewer District. The County Engineering Department indicated that adequate wastewater capacity is available to serve the proposed development.
6. The site is centrally located in the Route 1 commercial corridor near numerous retail and service commercial uses and employment centers. The site is adjacent to the Rehoboth Mall, Delaware Eye Institute and Beebe Hospital Campus.

7. The site is an undeveloped "infill" parcel predominately surrounded by commercial uses and commercial zoned land with residential uses to the south. The site is currently zoned CR-1 which permits by right any of the permitted uses listed in the CR-1 District.
8. The site is located near the intersection of Route 1 and Route 24, two principal roadways in Eastern Sussex County and will have access to Route 24.
9. DelDot determined that the developer could contribute an area side study fee in lieu of a Traffic Impact Study. The estimated vehicle trips per day generated by the proposed use is less than traffic that would be generated by uses currently permitted by the existing CR-1 zoning. The Applicant will dedicate land and contribute to the cost of DelDot planned connector road from Route 24 to Old Landing Road.
10. The proposed 224 Residential Apartment Development will (provide a local housing option for) moderate income county residents who constitute a significant percentage of the workforce in Lewes-Rehoboth Beach resort area but because of the high price of homes and lack of rental units, are unable to live near their place of employment. This results in long commuting time, increased transportation costs and increased traffic.
11. The proposed 224 Residential Apartment Development at this location is in accordance with the goals of the housing element of the Comprehensive Plan and consistent with the recommendations of Sussex County Housing Opportunities and Market Evaluation Report prepared by LSA Planning.
12. The proposed 224 Residential Apartment Development is strongly supported by the Delaware State Housing Authority since it will provide a more affordable housing product in the coastal resort area where the need for workforce housing exists. Based on the site's location in a DSHA defined "Area of Opportunity", where employment opportunities, major roadways and supportive infrastructure exist, DSHA deems the site an excellent location for a more affordable housing product and rental units are vital to any well-balanced community.
13. The Applicant has addressed the items to be considered by Section 99-9(c) of the subdivision code and the Environmental Assessment and Public Facility Evaluation Report.

14. With the conditions imposed the proposed Conditional Use meets the purposes of the Zoning Ordinance, Comprehensive Plan and Title 9, Chapter 69 of the Delaware Code in that the proposed Conditional Use is essential and desirable for the general convenience and welfare and promotes the health, safety, morale, convenience, order, prosperity and welfare of the present and future residents of Sussex County.

2019 Sussex County Comprehensive Plan

“Coastal Area”

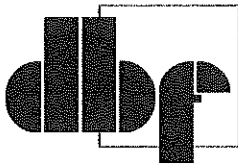
Densities (Page 4-16)

- Medium and higher density (4-12 units per acre) can be appropriate in certain locations
- Medium and higher density could be supported in areas:
 - a. Where there is central water and sewer;
 - b. Near sufficient commercial uses and employment centers;
 - c. Where it is in keeping with the character of the area;
 - d. Where the location is along a main road or at/or near a major Intersection;
 - e. Where there is adequate level of service;
 - f. Or, where other considerations exist that are relevant to the requested project and density

Applicant
Exhibit

FILE COPY

02/21/99



*Michael R. Wigley, AIA, LEED AP
W. Zachary Crouch, P.E.
Michael E. Wheedleton, AIA
Jason P. Loar, P.E.
Ring W. Lardner, P.E.*

August 9, 2019

Sussex County Administrative Building
Planning and Zoning Department
2 The Circle
P.O. Box 589
Georgetown, DE 19947

RECEIVED
AUG 09 2019
SUSSEX COUNTY
PLANNING & ZONING

Attn: Janelle M. Cornwell, AICP

RE: Herola Property
Chapter 99-9C Response
Tax Parcel No.: 3-34-12.00-127.01 & 3-34-12.00-127.10
DBF#: 818C032

Dear Ms. Cornwell:

On behalf of our client, OA Rehoboth, LLC., we are pleased to provide you with our written response to the items listed in Chapter 99-9C.

The proposed Herola Property Apartment Complex provides careful consideration of the following items in Sussex County Chapter 99-9C:

1. **Integration of the proposed subdivision into the existing terrain and surrounding landscape.**
 - a. The project is located centrally in a Level 2 state strategies spending area, surrounded on all sides by existing residential and commercial properties. Public water, wastewater and other utilities already exist at the site. A centrally located clubhouse with pool, dog park and stormwater pond will provide green open space for the residents.
2. **Minimal use of wetlands and floodplains.**
 - a. Wetlands do not exist on site.
 - b. Site is not impacted by the 100-yr floodplain as determined by FEMA Map 10005C0332K, Dated March 16, 2015.

3. Preservation of natural and historical features.

- a. According to the National Register of Historical Places, there are no known archaeological sites or National Register-listed property on this parcel.

4. Preservation of open space and scenic views.

- a. 5.06 acres green space is being proposed. A centrally located landscaped pond, dog park club house with pool will provide residents with pleasant views. Landscaping will be used to reduce view of the surrounding commercial properties.

5. Minimization of tree, vegetation and soil removal and grade changes.

- a. Grade changes will be minimized to the extent necessary to provide road construction to meet design requirements and to ensure proper lot drainage.
- b. There are no existing wooded areas on the site.

6. Screening of objectionable features from neighboring properties and roadways.

- a. Many of the surrounding properties are commercial parcels. Landscaping will be provided to minimize the views.

7. Provision for water supply.

- a. Tidewater Utilities, Inc. will supply all homes with central water.

8. Provision for sewage disposal.

- a. Sussex County sewer infrastructure is located on site. Sanitary sewer will be tied into the manhole located in the ROW by the entrance of the site. We will request annexation of the property into the West Rehoboth Expansion of the Dewey Beach SSD.

9. Prevention of pollution of surface and groundwater.

- a. The storm drainage system will capture 100% of all drainage from the site.
- b. Best Available Technologies (BATs) will be used during the design and construction of the property.

- c. Best Management Practices (BMPs) will be used during the design and construction of the property.
- d. The site will utilize Green Technology where feasible for the project.

10. Minimization of erosion and sedimentation, minimization of changes in groundwater levels, minimization of increased rates of runoff, minimization of potential for flooding and design of drainage so that groundwater is maximized.

- a. The stormwater management areas will be designed to meet all local, state and federal guidelines for sediment and nutrient removal.
- b. An Erosion and Sediment Control Plan will be developed and implemented as required by the Sussex Conservation District and DNREC. The plan will specify in detail how the project is to be constructed to limit the amount of sediment and other pollutants from leaving the site during construction.
- c. All storms will be controlled and discharge at the pre-development rate. The 100-year storm will be safely routed through this site.

11. Provision for safe vehicular and pedestrian movement within the site and to adjacent roadways.

- a. The interior of the project contains sidewalks throughout the site, providing pedestrian connection to amenities as well as to Rehoboth mall and Route 24. DelDOT's interconnection to old landing road will also provide vehicular and pedestrian movement to Route 1.
- b. The road design will conform to Sussex County standards and specifications and will be turned over to the homeowners association for maintenance upon acceptance by the County.
- c. Street lighting will be provided for this project.

12. Effect on area property values.

- a. Based on historical land trends in Sussex County, the property values around the proposed subdivision will increase with the development of Old Mill Landing Subdivision.

13. Preservation and conservation of farmland.

- a. Developing in a Level 2 area is preferred by State Planning and preserves other lands for farmland.

14. Effect on schools, public buildings and community facilities.

- a. The increase in tax revenue to the school district will assist in the maintenance and operations of the public school system.
- b. The trend towards seniors moving to Sussex County will provide tax revenue without adding large numbers of potential new students.

15. Effect on area roadways and public transportation.

- a. The subdivision streets will be designed to Sussex County standards and specifications. The development will pay into the Area Wide Study fee which will contribute to necessary improvements in the area. The improved connection to Old Landing Road should improve traffic flow in the area.

16. Compatibility with other area land uses.

- a. The subdivision conforms to the designated zoning for the property and is consistent with the surrounding land use as mentioned above.

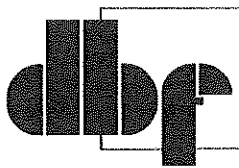
17. Effect on area waterways.

- a. The subdivision will be designed and constructed to comply with all sediment and stormwater regulations.
- b. The site will comply with all TMDLs and PCS's as adopted by the State.

On behalf of our client we thank you for your review and consideration of this response. If you should have any questions or concerns please contact me at 424-1441

Sincerely,
Davis, Bowen & Fiedel, Inc.


W. Zachary Crouch, P.E.
Principal



Michael R. Wigley, AIA, LEED AP
W. Zachary Crouch, P.E.
Michael E. Wheedleton, AIA
Jason P. Loar, P.E.
Ring W. Lardner, P.E.

August 9, 2019

RECEIVED

Sussex County Administrative Building
Planning and Zoning Department
2 The Circle
P.O. Box 589
Georgetown, Delaware 19947

AUG 09 2019

SUSSEX COUNTY
PLANNING & ZONING

Attn: Janelle Cornwell
Director of Planning

RE: Herola Property
Environmental Assessment and Public Facility Evaluation Report
Tax Parcel No.: 3-34-12.00-127.01 & 127.10
DBF #818C032

Dear Ms. Cornwell:

On behalf of our client, OA Rehoboth, LLC., we are submitting an Environmental Assessment and Public Facility Evaluation Report in accordance with §115-194.3. ES-1 Environmentally Sensitive Development District Overlay Zone (ESDDOZ), Subparagraph B (2). We offer the following information that comprises our report:

- (a) *Proposed drainage design and the effect on stormwater quality and quantity leaving the site, including methods for reducing the amount of phosphorous and nitrogen in the stormwater runoff and the control of any other pollutants such as petroleum hydrocarbons or metals.*

The proposed improvements will meet or exceed the state regulations for stormwater management. We intend to use infiltration basins as well as other Best Management Practices to meet these requirements.

- (b) *Proposed method of providing potable and, where appropriate, irrigation water and the effect on public or private water systems and groundwater, including an estimate of average and peak demands.*

The proposed project is located in Tidewater Utility Inc.'s, franchise area and they hold the Certificate of Public Necessity (CPCN). A letter from Tidewater said they

are willing and able to provide public water for this project. Impacts to the groundwater and other systems have been evaluated as part of Tidewaters's CPCN.

- (c) *Proposed means of wastewater treatment and disposal with an analysis of the effect on the quality of groundwater and surface waters, including alternative locations for on-site septic systems.*

The proposed project is adjacent to the West Rehoboth Expansion of the Dewey Beach SSD. Existing sanitary manholes are located on site and will connect the project to Sussex Counties existing sanitary sewer system.

- (d) *Analysis of the increase in traffic and the effect on the surrounding roadway system.*

The proposed project will participate in an Area Wide Study and pay the area wide study fee.

- (e) *The presence of any endangered or threatened species listed on federal or state registers and proposed habitat protection areas.*

There is no known state or federally listed endangered or threatened species on this site.

- (f) *The preservation and protection from loss of any tidal or non-tidal wetlands on the site.*

There were no wetlands found on site.

- (g) *Provisions for open space as defined in §115-4.*

The proposed project provides 5.06 acres of green space.. Open space will consist of a centrally located landscape stormwater management pond with walking trail, a dog park and club house with pool.

- (h) *A description of provisions for public and private infrastructure.*

The Developer will construct gravity sewer lines to serve this parcel and will be connected to the existing Sussex County sanitary sewer infrastructure. The Developer will also construct the internal water mains in the project that will be owned and maintained by Tidewater Utilities, Inc. The internal roadways will be constructed by the Developer and privately maintained. Electric will be provided by Delaware Electric Coop.

Ms. Janelle Cornwell
Sussex County Planning and Zoning Commission
August 9, 2019
Page 3

- (i) *Economic, recreational or other benefits.*

The proposed project will create a considerable amount of jobs during construction. Future residents of Sussex County will pay county taxes. The project will provide more affordable priced homes in the area.

- (j) *The presence of any historic or cultural resources that are listed on the National Register of Historic Places.*

There are no known archaeological sites or National Register-listed property on this parcel.

- (k) *An affirmation that the proposed application and proposed mitigation measures are in conformance with the current Sussex County Comprehensive Plan.*

The proposed application and mitigation measures comply with the current Sussex County Comprehensive Plan.

- (l) *Actions to be taken by the applicant to mitigate the detrimental impacts identified relevant to Subsection B(2)(a) through (k) above and the manner by which they are consistent with the Comprehensive Plan.*

All mitigation measures, where required, have been discussed in their respective section. All mitigation measures as well as the application are consistent with the Comprehensive Plan.

If you have any questions or need additional information, please call me at (302) 424-1441.

Sincerely,
Davis, Bowen & Friedel, Inc.



W. Zachary Crouch, P.E.
Principal

Michael R. Wigley, AIA, LEED AP
W. Zachary Crouch, P.E.
Michael E. Wheedleton, AIA
Jason P. Loar, P.E.
Ring W. Lardner, P.E.
Jamie L. Sechler, P.E.

August 9, 2019

Sussex County Administrative Building
Planning and Zoning Department
2 The Circle
P.O. Box 589
Georgetown, DE 19947

RECEIVED

AUG 09 2019

SUSSEX COUNTY
PLANNING & ZONING

Attn: Janelle M. Cornwell, AICP

RE: **Herola Property**
PLUS Comments – 2019-06-03
Tax Parcel No.: 3-34-12.00-127.01
DBF#: 818C032

Dear Ms. Cornwell:

We have read and reviewed the comments provided during the PLUS Review of the Project on June 26, 2019, and received from the Office of State Planning dated July 23, 2019. We offer the following item-by-item response narrative for your review:

Strategies for State Policies and Spending

This project is located in Investment Level 2 according to the Strategies for State Policies and Spending. Investment Level 2 reflects areas where growth is anticipated by local, county, and State plans in the near term future. State investments will support growth in these areas. Our office has no objections to the proposed rezoning and development of this project in accordance with the County codes and ordinances

Thank you for the clarification of a Level 2 state strategies classification.

Code Requirements/Agency Permitting Requirements

Department of Transportation – Contact Bill Brockenbrough 760-2109

- *The proposed apartment complex would access Delaware Route 24 by way of private rights-of-way. The site access is proposed on a 50-foot right-of-way running more or less parallel to Route 24. The east end of that right-of-way is already built and connects to a private service road serving the Rehoboth Mall. The west end has not been built but would connect to a 30-foot right-of-way extending south from Route 24 toward Old*

Landing Road (Sussex Road 274). The 30-foot right-of-way partially contains Lexus Drive, an access road that serves the Beebe Medical Center property on Route 24.

As discussed further below, DelDOT contemplates an extension of Airport Road (Sussex Road 275A) from Old Landing Road to Delaware Route 24 that would include the access road just mentioned. To the extent that the developer wishes to have the 50-foot right-of-way accepted into State maintenance someday, the road within it and the site access on it 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>.

The developer is working with DelDOT regarding options to connect to Old Landing Road. The roads will be designed to Sussex County and DelDOT standards.

- *Presently, in accordance with Section 2.4 of the Development Coordination Manual, DelDOT is working with Sussex County on the creation of the Henlopen Transportation Improvement District (TID), which would extend southwest from Delaware Route 1 along Delaware Routes 23 and 24 to Chapel Branch. If and when the TID is established, developers in the TID would pay a fee, based on their trip generation or a surrogate measure such as dwelling units, to fund transportation improvements in the TID by DelDOT rather than doing Traffic Impact Studies specific to their development and making or funding improvements identified through that effort.*

One of the improvements that could be included in the TID is the extension of Airport Road mentioned above. DelDOT has developed three conceptual alignments for that extension. Copies are attached. While the alignment has not been finally determined and the extension has yet to be designed, presently Alternative B is DelDOT's preferred alternative and the plan should be modified to accommodate it. At the PLUS meeting, the developer's engineer offered that they had developed an alternative proposal for the alignment of the extension. DelDOT is evaluating that proposal.

If the TID is implemented as anticipated, DelDOT would require the developer to provide rights-of-way and, perhaps build some or all of the extension in exchange for credit against their TID fee. Regardless, the rights-of-way should be reserved so as to minimize the effect on the apartment complex when the road is built.

Other anticipated off-site improvements that DelDOT expects to require include improvements to Lexus Drive and two signal agreements, one for Route 24 and Lexus Drive, and one for Old Landing Road and Airport Road.

The developer will continue to work with DelDOT regarding alignment to Old Landing Road and other off-site improvements that may be required.

- Pursuant to Section P.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.

A pre-submittal meeting request form has been submitted and meeting with DelDOT has been scheduled

- Section P.5 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.

The developer will work with DelDOT in regard to fees assessed to the project.

- Per Section 2.2.2.1 of the *Manual*, Traffic Impact Studies (TIS) are warranted for developments generating more than 500 vehicle trip ends per day or 50 vehicle trip ends per hour in any hour of the day.

From PLUS application, the 216 proposed apartments would generate 1,595 vehicle trip ends per day. DelDOT calculates a slightly different number, 1,595 vehicle trip ends per day of which 99 and 117 vehicle trip ends would occur during the weekday morning and evening peak hours of Route 24, respectively. Therefore the plan meets the warrants for a TIS.

Section 2.2.2.2 of the Manual provides that for developments generating less than 2,000 vehicle trip ends per day and less than 200 vehicle trip ends per hour in any hour of the day, DelDOT may accept an Area Wide Study (AWS) Fee in lieu of the TIS if the local government does not require a TIS. If the County requires a TIS, DelDOT will support their requirement and will not accept the AWS Fee.

The purpose of a TIS is to identify offsite improvements that the developer should build or contribute toward. Regardless of whether a TIS is done for this development, DelDOT anticipates requiring the developer to participate in DelDOT's improvements on Route 24 between Mulberry Knoll Road and Route 1, and to dedicate rights-of-way, and possibly build improvements along the access road that serves Beebe Medical Center and would indirectly serve their site. The amount of the contribution(s) specific improvements and have yet to be determined but the AWS Fee, if paid, would not be counted in that regard. AWS Fees are used to fund traffic studies, not to build improvements. The DelDOT Route 24 project just mentioned is programmed for construction beginning in the spring of 2020 and ending in the spring of 2022.

The developer is working with DelDOT to determine the need for a TIS and/or and Area Wide Study Fee and to determine the extent of offsite improvements.

- *Section 3.5.4.2 of the Development Coordination Manual addresses requirements for Shared Use Paths and sidewalks. For projects in Level 1 and 2 Investment Areas, installation of paths or sidewalks along the frontage on State-maintained roads is required. DelDOT anticipates that the Airport Road extension would include sidewalk on one or both sides and would recommend that the County require continuation of the existing sidewalks along the 50-foot right-of-way discussed above.*

Sidewalks were proposed with the alternatives to the Airport Road Extension. Sidewalks throughout the site will be designed to connect to the Airport Road Extension, Walmart shopping center and Route 24.

- *Referring to Section 3.5.5 of the Manual, existing and proposed transit stops and associated facilities as required by the Delaware Transit Corporation (DTC) or DelDOT shall be shown on the Record Plan.*

Should a transit stop be necessary, it will be shown on the record plan.

State Historic Preservation Office – Contact Carlton Hall 736-7404

- *There are no known archaeological sites or known National Register-listed or eligible properties currently on the parcel. However, the project area is on well-drained soils and prior to development near surface water drainages. There is medium to high potential for prehistoric archaeological resources. Therefore, the SHPO is recommending an archaeological survey of the project area.*
- *If any project or development proceeds, the developer should be aware of the Unmarked Human Burials and Human Skeletal Remains Law (Del. C. Title 7, Ch. 54).*
- *If there is federal involvement, in the form of licenses, permits, or funds, the federal agency, often through its client, is responsible for complying with Section 106 of the National Historic Preservation Act (36 CFR 800) and must consider their project's effects on any known or potential cultural or historic resources. For further information or additional details pertaining to the Section 106 process and the Advisory Council's role; please review the Advisory Council's website at the following: www.achp.gov*

Thank you for researching known archaeological sites and the National Register. The developer is aware of the Unmarked Burials and Human Skeletal Remains Law. We do not anticipate federal involvement, should federal involvement occur the developer comply with the National Historic Preservation Act.

Delaware State Fire Marshall's Office – Contact Duane Fox 259-7037

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):

Fire Protection Water Requirements:

- *Water distribution system capable of delivering at least 1000 gpm for 1-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers.*
- *Where a water distribution system is proposed for multi-family (apartment) sites, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.*

Water distribution will be provided by Tidewater Utilities, Inc. and will meet pressure and duration requirements. The required infrastructure will be added to the plans and submitted for Fire Marshal approval. Hydrant Location, water main locations, and water main sized will be shown on the utility plan and submitted for Fire Marshall review and approval.

Fire Protection Features:

- *All structures over 10,000 Sq. Ft. aggregate will require automatic sprinkler protection installed.*
- *Buildings occupied as apartments (multi-family living units comprising of 3 or more units) will require automatic sprinkler protection installed.*
- *Buildings greater than 10,000 sq. ft, 3-stories or more, over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements*
- *Show Fire Department Connection location (Must be within 300 feet of fire hydrant), and detail as shown in the DSFPR.*
- *Show Fire Lanes and Sign Detail as shown in DSFPR*

Automatic sprinkler protection will be installed and fire connection locations shown as required. Fire lanes and signs will be marked according to Fire Marshall code.

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.*
- *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.*

Accessibility to within 100 ft. will be provided. Breaks in parking allow access to the sides and rear of buildings. A 40' building separation has been provided. We do not anticipate the use of gates to limit access to the development. We do not propose any cul-de-sacs or turnarounds in the site.

Gas Piping and System Information

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

We are currently working with Gas providers and will provide that information on the plans to receive Fire Marshall approval.

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)
- 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

Notes and site data will be added to the site plans and submitted to the Fire Marshal's office for review and approval.

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 the suggestions can benefit the project.*

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The applicant should expect a requirement that all PLUS and Technical Advisory Committee (TAC) comments be addressed prior to submitting plans for review.
Plus and TAC comments will be addressed.
- Please be advised that the Standard General Notes have been updated and posted to the DelDOT website. Please begin using the new version and look for the revision date of March 21, 2019. The notes can be found at <https://www.deldot.gov/Business/subdivisions/>
The latest notes will be used.

Department of Natural Resources and Environmental Control – Michael Tholstrup 735-3352

Water Quality Recommendations

- *Consider using pervious pavement/pavers in parking areas to help minimize impervious cover.*
- *Use green stormwater management technologies where feasible.*

Fish & Wildlife

- *A review of the DNREC database indicates that there are currently no records of state-rare or federally listed plants, animals, or natural communities at this project site.*

Green technologies will be used in the design of stormwater where feasible.

Delaware State Fire Marshall's Office – Contact Duane Fox 259-7037

- *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.*

We look forward to working with your office.

State Housing Authority – Contact: Karen Horton 739-4263

- *DSHA strongly supports the site plan for 216 apartment units on 12.55 acres along Rt. 24 and Old Landing Road in Sussex County. This would provide Sussex County an excellent opportunity to facilitate a more affordable housing product in the Coastal Resort Area. The need for housing affordable to the many county residents who work in this resort economy is acute and well documented. Considering the site's close proximity to the Rt. 24 and Coastal Highway intersection and location within a DSHA-defined "Areas of Opportunity" providing economic opportunity, high performing schools, and supportive infrastructure that help households succeed, this is an excellent location for a more affordable housing product. As a result, the DSHA recommends that Sussex County embrace the opportunity to approve this proposal permitting residents to live close to their jobs, as well as, the resources and benefits this area provides.*
- *DSHA noted their concern with the current scale and site layout. Rental units are vital to any well-balanced community, the intensity of the proposal warrants quality design measures to create a desirable, human-scaled, and pedestrian-oriented community. Incorporating attractive streetscapes, visually appealing façade treatments, significant landscaping and pedestrian-oriented measures will help the proposal integrate into the larger coastal area.*

If you have any questions or would like more information, please feel free to call me at (302) 739-4263 ext. 251 or via e-mail at karenh@destatehousing.com.

Thank you for your support of the project. We look forward to working with the Delaware Housing Authority to bring affordable housing to the area.

Delaware Area Rapid Transit (DART) – Contact: Jared Kauffman 576-6062

- *A pedestrian pathway is needed from entrance of property to SR 24 for people to connect with the bus stop.*
- *Internal pedestrian pathways are needed from internal pedestrian paths to roadways (both to north-south uncompleted roadway, and to east-west uncompleted roadway that allows entrance to Beacon Pediatrics).*

Sidewalks are proposed throughout the site. The developer will work with the adjacent landowner to provide connection to Route 24 via the sidewalk on the southwest side of the vision center optical.

Sussex County – Contact Rob Davis 302-855-7820

- *Approximately 1/3 acre of the parcel is in a Tier 1 area and the remaining portion of the parcel is in a Tier 2 area. The portion of the parcel in the Tier 2 area (approximately 17.41 acres) is not within a sewer district and must be annexed into the sewer district. Sewer service is not available to the Tier 2 area until annexation into the sewer district is approved by the Sussex County Council. The developer will need to complete all administrative procedures for the annexation.*
- *A “Use of Existing Infrastructure Agreement” is required and must be approved prior to approval of construction plans. Sussex County Code, Chapter 110 requires that the Engineer and/or Developer request a Sewer System Concept Evaluation (SSCE) from the Utility Planning Department for their project by providing the parcel(s) estimated equivalent dwelling units (EDU) for the project, along with payment of \$1,000.00 payable to Sussex County Council. The Utility Planning Department will review the parcel(s) and EDU, determine capacity, provide the connection point and define any additional parcels that must be served as part of the project. Should it be determined that a pump station is required for the project, additional information may be requested. This information will be conveyed to the engineer and/or developer as well as the Sussex County Public Works department. The Public Works will use this information when reviewing construction drawings to verify that the correct connection point is used, and all required parcels are served.*
- *Attached is a listing of steps to be completed for extending district boundaries.*
Thank you for clarification of the sewer district boundary. We will begin the process of annexation into the sewer district. Existing Sanitary sewer manholes are located within the private ROW adjacent to this property and will be used for connection. The developer will request a sewer system concept evaluation from the county.

Ms. Janelle M. Cornwell
Sussex County P&Z
August 9, 2019
Page 10 of 10

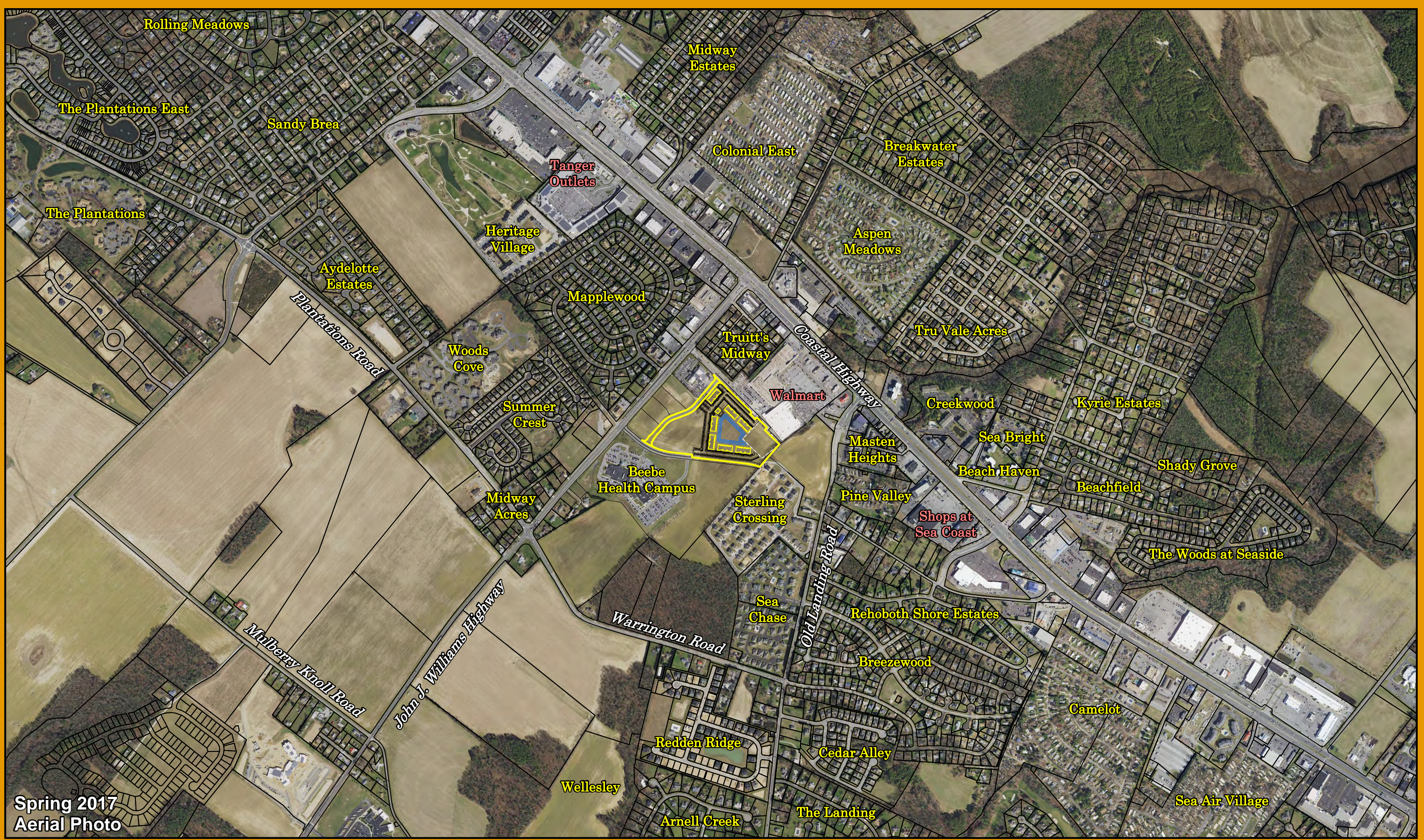
In addition to the comments above our office has received a letter from Brandy Nauman, Sussex County Housing Coordinator & Fair Housing Compliance Officer. A copy of that letter is enclosed wit this letter.

On behalf of the Developer we thank the State for providing us with these comments. Please contact me at (302) 424-1441 if you have any questions or need additional information.

Sincerely,
DAVIS, BOWEN & FRIEDEL, INC.

A handwritten signature in black ink, appearing to read 'W. Zachary Crouch', with a stylized flourish at the end.

W. Zachary Crouch, P.E.
Principle



Spring 2017
Aerial Photo

Sources:
Tax Parcels per Sussex County








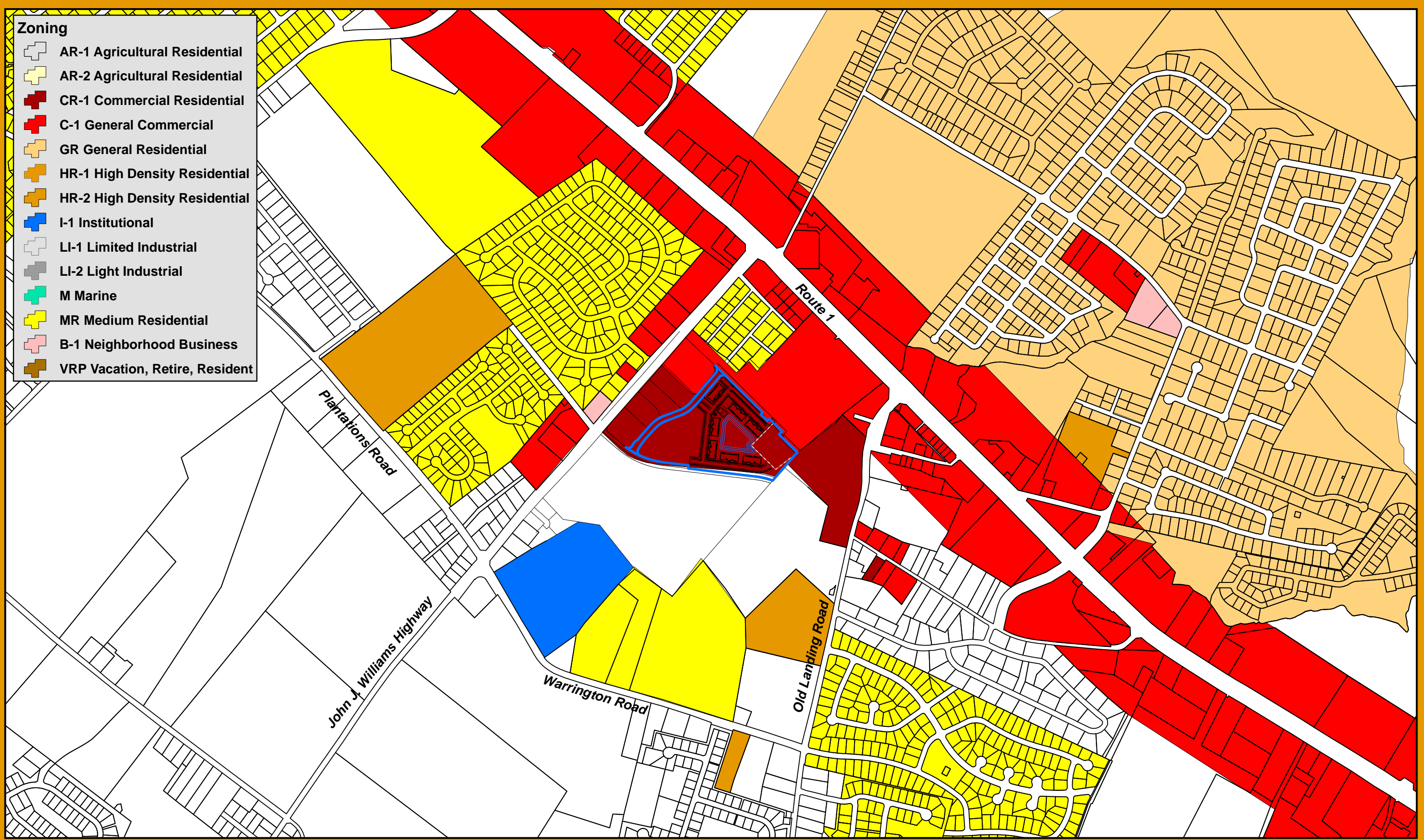
November 2019

Surrounding Communities Map

Herola Property
Sussex County, Delaware



- Zoning**
-  AR-1 Agricultural Residential
 -  AR-2 Agricultural Residential
 -  CR-1 Commercial Residential
 -  C-1 General Commercial
 -  GR General Residential
 -  HR-1 High Density Residential
 -  HR-2 High Density Residential
 -  I-1 Institutional
 -  LI-1 Limited Industrial
 -  LI-2 Light Industrial
 -  M Marine
 -  MR Medium Residential
 -  B-1 Neighborhood Business
 -  VRP Vacation, Retire, Resident

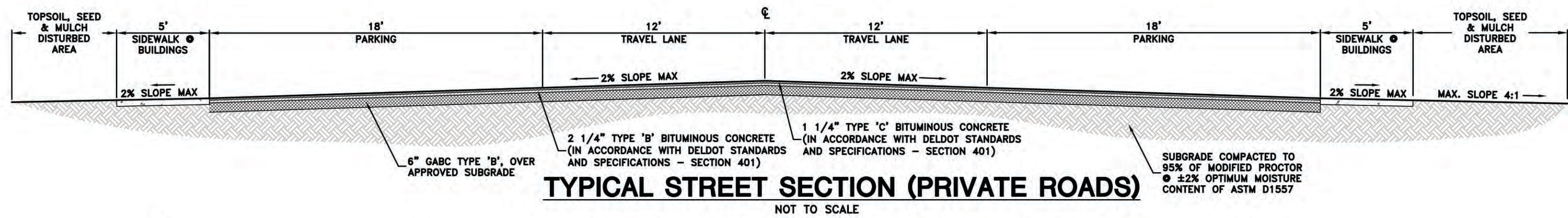


Sources:
Tax Parcels per Sussex County



Sussex County Zoning Map
Herola Property
 Sussex County, Delaware





LINE DATA

LINE	BEARING	DISTANCE
L1	S 44°31'26" W	25.00'
L2	S 45°28'34" E	85.00'
L3	N 44°31'26" E	25.00'
L4	S 44°31'26" W	39.00'
L5	S 52°53'08" W	17.29'
L6	N 06°44'48" E	30.00'
L7	N 30°06'19" E	13.67'
L8	N 30°06'47" E	12.19'

CURVE DATA

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	50.00'	75.18'	68.29'	S 02°23'45" E	86°08'52"
C2	40.00'	65.99'	58.75'	S 87°19'04" W	94°31'08"
C3	275.00'	136.92'	135.51'	S 54°56'11" W	28°31'37"
C4	325.00'	161.74'	160.08'	S 54°56'23" W	28°30'50"
C5	325.00'	153.49'	152.07'	S 55°40'13" W	27°03'36"
C6	275.00'	129.81'	128.61'	S 55°40'26" W	27°02'47"
C7	575.00'	120.65'	120.43'	S 36°07'17" W	12°01'19"
C8	40.00'	66.84'	59.33'	S 17°31'58" E	95°44'11"
C9	720.00'	378.03'	373.71'	S 68°12'43" E	30°04'58"
C10	625.00'	60.73'	60.71'	S 39°21'24" W	5°34'04"
C11	39.00'	19.34'	19.14'	S 50°46'30" W	28°24'33"
C12	61.00'	35.27'	34.78'	S 48°24'53" W	33°07'39"
C13	639.00'	19.39'	19.39'	S 30°58'57" W	1°44'19"
C14	40.00'	67.48'	59.76'	S 78°27'05" W	96°39'13"
C15	780.00'	183.48'	183.05'	S 76°30'53" E	13°28'39"
C16	750.00'	165.01'	164.68'	S 76°57'01" E	12°36'22"

DAVIS, BOWEN & FRIEDEL, INC.
 ARCHITECTS, ENGINEERS & SURVEYORS
 SALISBURY, MARYLAND (410) 543-9091
 MILFORD, DELAWARE (302) 424-1441

**HEROLA PROPERTY
 LEWES & REHOBOTH HUNDRED
 SUSSEX COUNTY, DELAWARE**

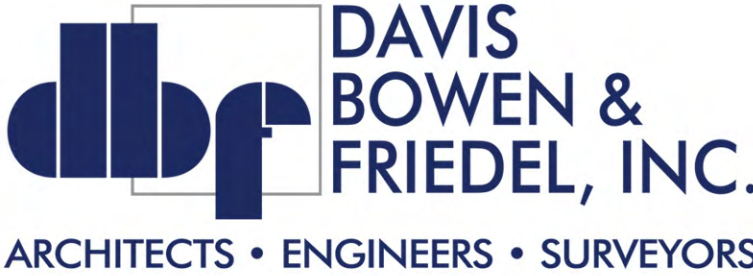
Date: OCTOBER 2019
 Scale: 1" = 60'
 Dwn.By: JMJ
 Proj.No.: 0818S001.D01
 Dwg.No.:

HEROLA PROPERTY

SUSSEX COUNTY, DELAWARE

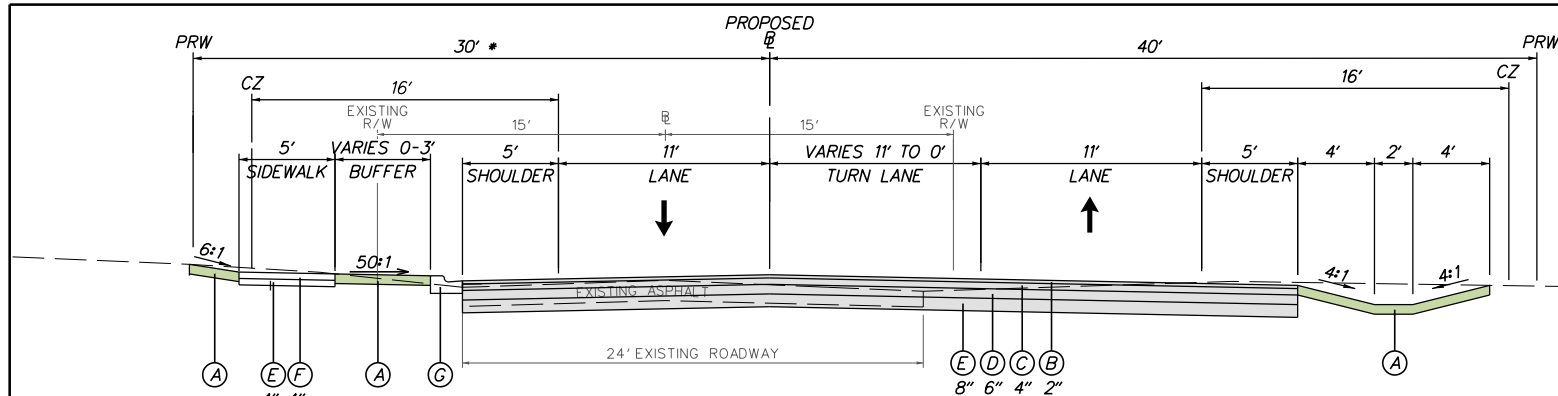
November 14, 2019

Scale: 1" = 200'

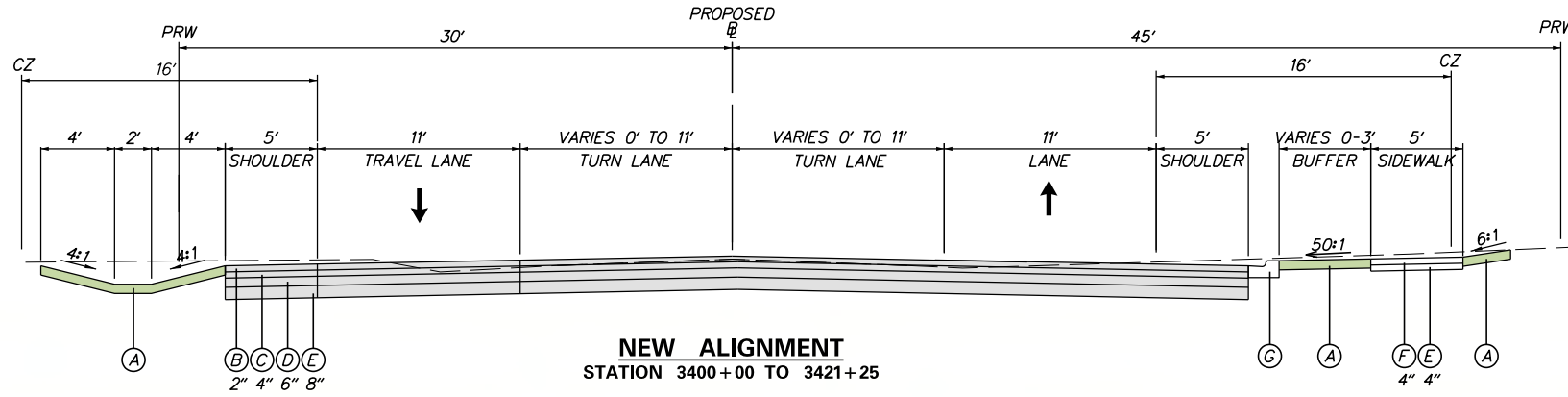








PROPOSED WIDENING (RIGHT OF BASELINE)
 STATION 3421+25 TO 3437+25
 STATION 3437+25 TO 3450+63 (NO CURB ON LEFT)

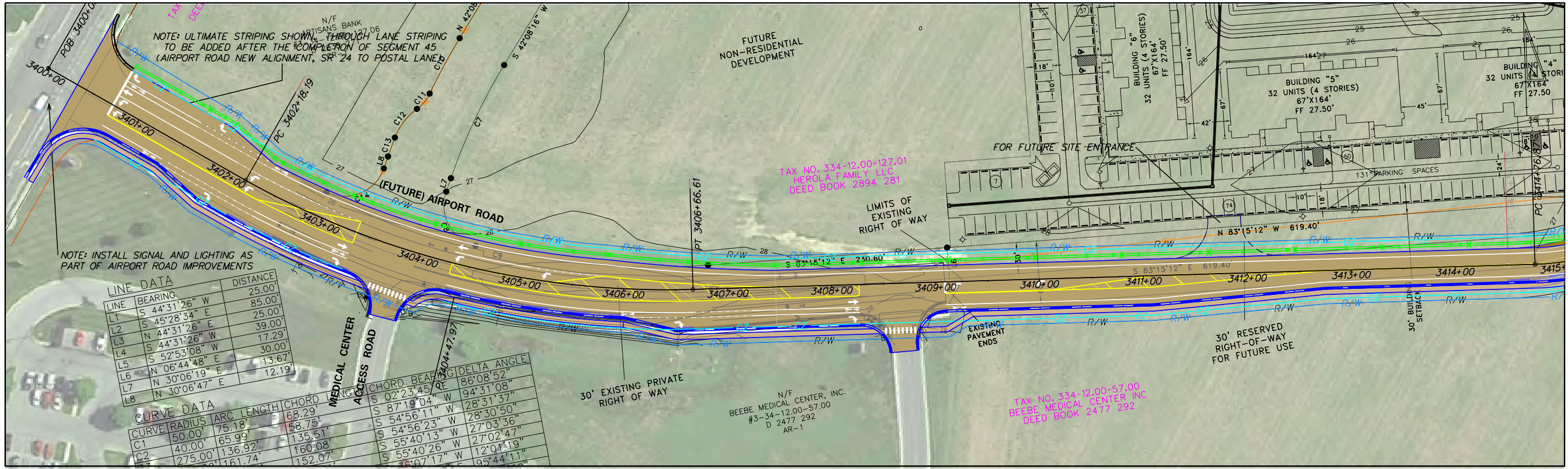


NEW ALIGNMENT
 STATION 3400+00 TO 3421+25

- (A) TOPSOIL, 6" DEPTH PERMANENT GRASS SEEDING, DRY GROUND
- (B) BITUMINOUS CONCRETE, SUPERPAVE TYPE C
- (C) BITUMINOUS CONCRETE, SUPERPAVE TYPE B
- (D) BITUMINOUS CONCRETE, SUPERPAVE BITUMINOUS CONCRETE BASE COURSE
- (E) GRADED AGGREGATE BASE COURSE, TYPE B
- (F) PCC SIDEWALK
- (G) PCC CURB AND GUTTER

LEGEND

- PROPOSED PERMANENT EASEMENT
- PROPOSED RIGHT-OF-WAY
- EXISTING PROPERTY LINE
- EXISTING RIGHT-OF-WAY
- REQUIRED CLEAR ZONE
- PROPOSED UTILITY POLE
- EXISTING UTILITY POLE
- PROPOSED FENCE
- PROPOSED LINEAR BMP
- PROPOSED PIPE
- PROPOSED ROAD
- PROPOSED SHARED-USE PATH
- PROPOSED SIDEWALK
- PROPOSED RIGHT-OF-WAY/CLEAR ZONE
- PAVEMENT REMOVAL - TOPSOIL, SEED AND MULCH
- TEMPORARY CONSTRUCTION EASEMENT



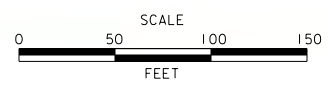
LINE	BEARING	DISTANCE
L1	S 44°31'26" W	25.00'
L2	S 45°28'34" E	25.00'
L3	N 44°31'26" E	39.00'
L4	S 44°31'26" W	17.29'
L5	S 52°53'08" W	30.00'
L6	N 06°44'48" E	13.67'
L7	N 30°06'19" E	12.19'
L8	N 30°06'47" E	12.19'

CURVE	RADIUS	ARC LENGTH	CHORD	CHORD BEARING	DELTA ANGLE
C1	50.00'	75.18'	68.29'	S 02°23'45" W	86°08'52"
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C8	275.00'	136.92'	135.51'	S 55°40'17" W	95°44'11"

PLOTTED BY: BPEETERSON DATE: 12/10/2019
 FILE LOCATION: Q:\2016\160643_002_HENLOPEN_TID_CADD_34-AIRPORT ROAD\CP.DGN [SHEET: CP01]



ADDENDUMS / REVISIONS

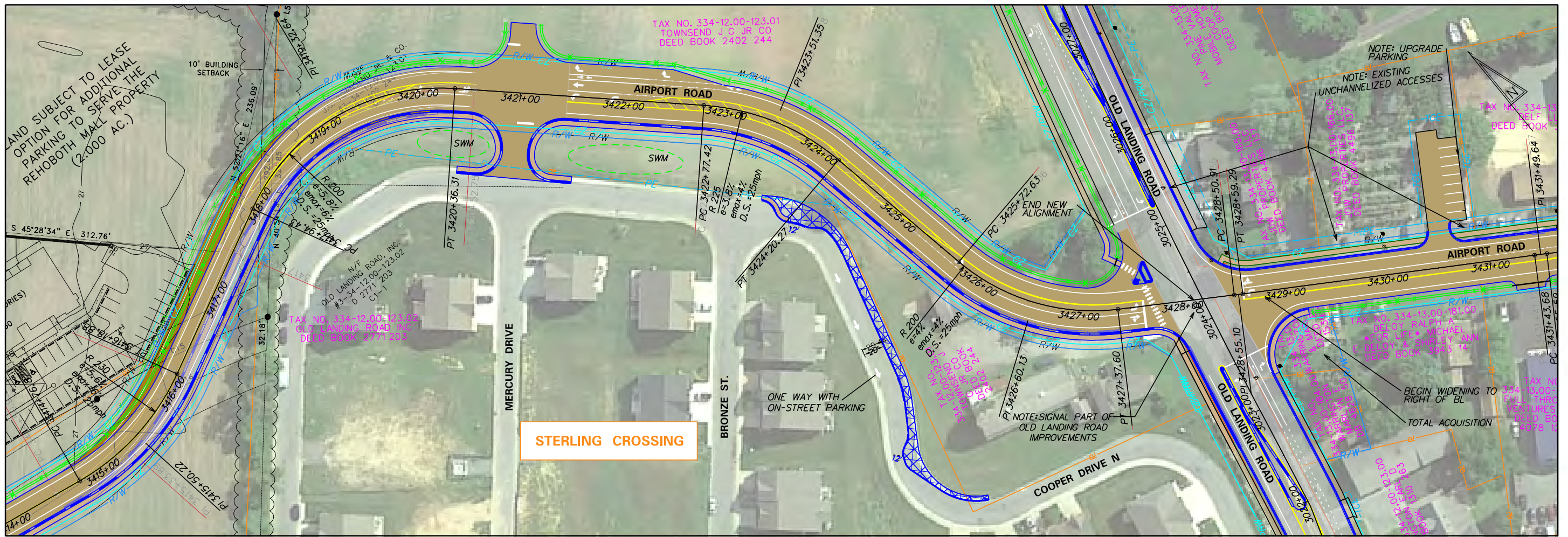
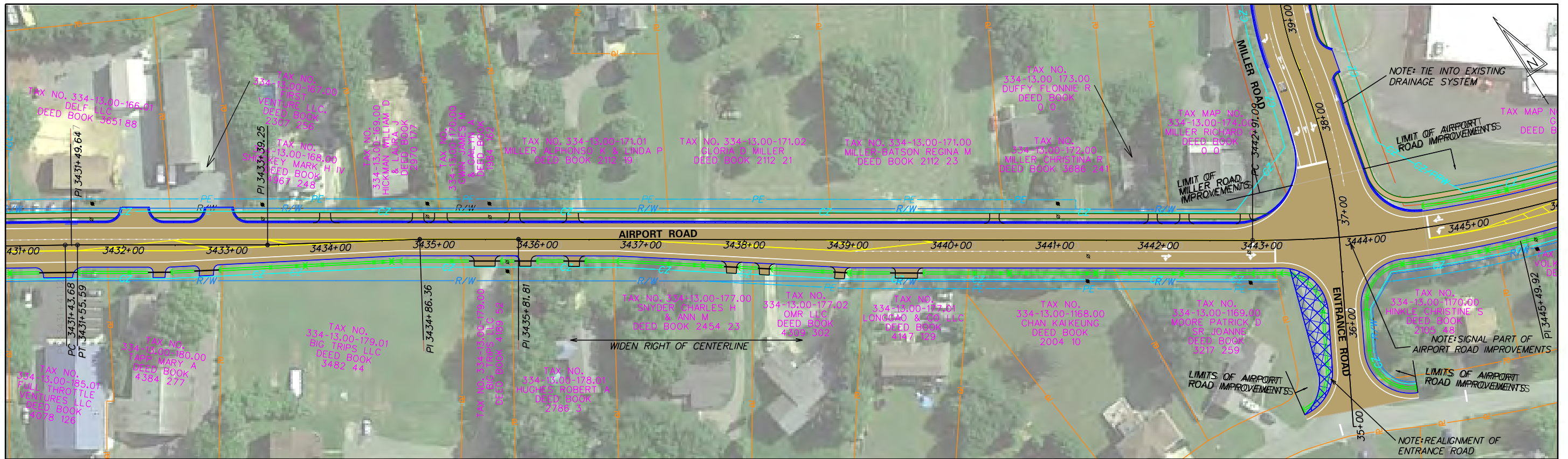


**HENLOPEN TID
 AIRPORT ROAD
 (SEGMENT 34)**

CONTRACT	BRIDGE NO.	N/A
T201769002	DESIGNED BY:	WJD
COUNTY	CHECKED BY:	BPH
NEW CASTLE		

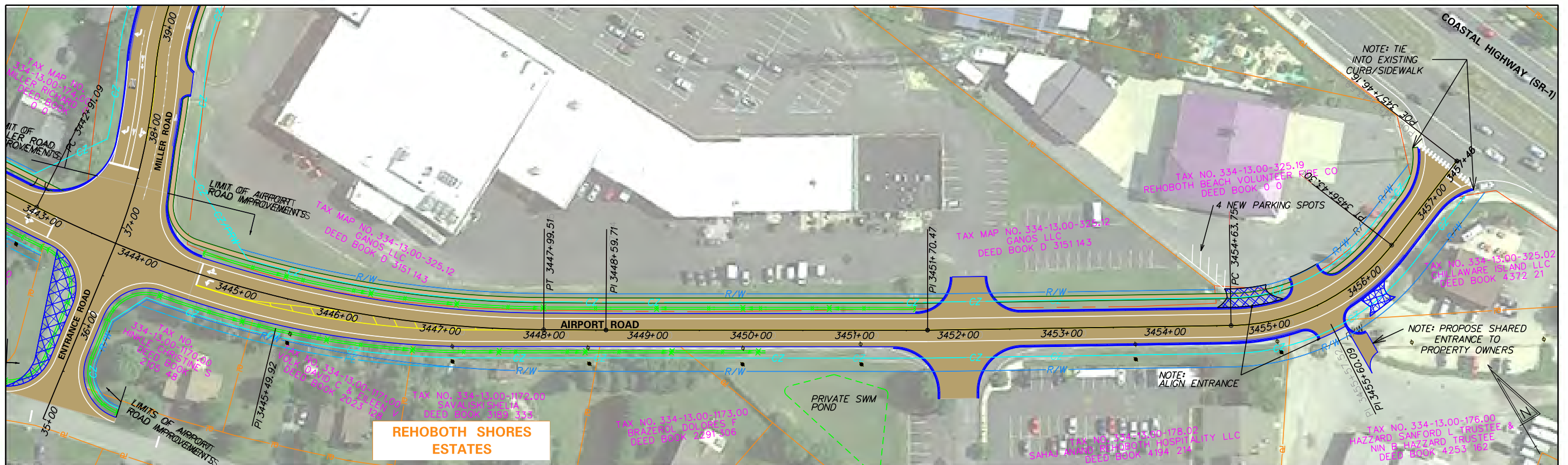
CONCEPT PLAN

SHEET NO.	1
TOTAL SHTS.	5



PLOTTED BY: BPETERSON DATE: 12/10/2019
 FILE LOCATION: Q:\2016\160643_002_HENLOPEN_TID_V_CADD_34-AIRPORT ROAD\CP.DGN [SHEET: CP01]

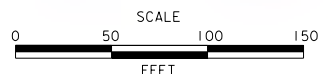
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 FILE LOCATION: Q:\2016\160643_002_HENLOPEN_TID\CADD\34-AIRPORT ROAD\CP.DGN [SHEET: CP01]



REHOBOTH SHORES ESTATES



ADDENDUMS / REVISIONS



HENLOPEN TID AIRPORT ROAD (SEGMENT 34)

CONTRACT	BRIDGE NO.	NA
T201769002	DESIGNED BY:	WJD
COUNTY	CHECKED BY:	BPH
NEW CASTLE		

CONCEPT PLAN

SHEET NO.	3
TOTAL SHTS.	5

HEROLA PROPERTY MULTI-FAMILY COMMUNITY

CONDITIONAL USE APPLICATION

Sussex County, Delaware

0818S001.E01

DECEMBER 2019



Table of Contents

- A. Executive Summary
- B. Data Column
- C. Subdivision Application – Preliminary Site Plans
- D. Chapter 99-9C Response/ESDDOZ Report
- E. Existing Deed/Legal Description
- F. Color Rendering/Color Rendering on Aerial Photograph/Building Elevations

Exhibits

- 1. Maps
 - a. Surrounding Communities
 - b. Flood Insurance Rate Map (FIRM) from FEMA
 - c. 2015 State Strategies Map
 - d. Future Land Use Map
 - e. Sussex County Zoning Map
 - f. 1992 Aerial Map
 - g. 2017 Aerial Map
 - h. Environmental
 - i. Source Water Protection Areas
 - j. NRCS Soil Survey
 - k. Beers Atlas – Lewes and Rehoboth
- 2. DelDOT Revised Service Level Evaluation Request Letter
- 3. PLUS Response

A

EXECUTIVE SUMMARY

A. Land Use & Zoning

1. The Herola Property, Multi-Family Community.
2. The property is located adjacent to Rehoboth Mall between Route 24 and Old Landing Road.
3. The Owner of the property is Herola Family, LLC.
4. The property is currently zoned CR-1. (Commercial Residential)
5. The proposed application is a request for a Conditional Use in the existing CR-1 (Commercial Residential) district.
6. The property is located in the Level 2 Area of the 2015 State Strategies Map.
7. The property is located within the Coastal Area within the 2018 Comp Plan (Environmentally Sensitive Developing District Overlay Zone, Old Comp Plan).

B. Land Utilization

1. The total acreage of the property is 18.79 acres of land.
2. The proposed community is designed to for 224 apartments complex, with 4.75 acres of open space.
3. The applicant requests a conditional use on 18.79 acres of the property.
4. The maximum number of units proposed is 224 Apartment Units with site density of 11.92 units/acre. (18.79-acre site).
5. The proposed community is located adjacent to Rehoboth Mall and will have access off the service road with 2 access point on Route 24 until connection road is constructed between Route 24 and Old Landing Road.
6. The proposed community does not have any wetland on site.
7. The proposed community consists of active and passive open space.

- a. The active open space area consists of a clubhouse, pool, dog park and tot lot.
 - b. The passive open space area consists of stormwater management and landscaping areas.
8. The project was presented to P.L.U.S. on June 26, 2019 and comments were received from the Office of State Planning on July 23, 2019.

C. Environmental

1. The property does not contain wetlands.
2. The property is not located within a Wellhead Protection Area.

D. Traffic

1. In lieu of a Traffic Impact Study (TIS), the development will pay an Area-Wide Study Fee.
2. The developer has had several meetings with DelDOT on the design and coordination of the connection road from Route 24 to Old Landing Road. The developer will be participating and cooperating with DelDOT on the cost and location of the connection road.

E. Civil Engineering

1. The internal roads will be privately maintained and will meet Sussex County Design Standards.
2. Drinking and fire protection water will be provided by Tidewater Utilities, Inc.
3. A 3rd of the project is located within the West Rehoboth South Planning area Sanitary Sewer District. The other 2/3 will need to be annexed into the District. Based on the Utility Planning Department, capacity is available and a 'Use of Existing Infrastructure Agreement' will be required.
4. The stormwater management system will meet all State, County and Conservation District requirements through combination of Best Management Practices (BMP) and Best Available Technologies (BAT). The project may consist of some infiltration practices as well as traditional wet detention ponds.

5. The project is within the Cape Henlopen School District
6. Fire protection will be provided by Rehoboth Volunteer Fire Company.
7. Electricity will be provided by Delaware Electric Co-operative.

F. County Code Compliance

1. Preliminary Land Use Service Response Letter
2. Sussex County Code, Chapter 99-9C Response Letter
3. Environmental Assessment and Public Facility Evaluation Report

B

Herola Property Conditional Use
Data Sheet

Owner: Herola Family, LLC.
Developer: OA Rehoboth, LLC.
Engineer: Davis, Bowen & Friedel, Inc.

Project Description

Physical Location: Located between Route 24 & Old Landing Road, directly behind the Rehoboth Walmart
Tax Parcel #: 3-34-12.00-127.01 & 3-34-12.00-127.10
Acreage: 18.793 +/- Acres
Current Zoning: CR-1 (Commercial Residential District)
Proposed Zoning: CR-1 (Commercial Residential District)
Current Land Use: Agriculture
Proposed Land Use: Multi-Family Community with Clubhouse

<u>Proposed Units:</u>	<u>224 Multi-Family Units</u>
Density	11.92 Units Per Acre
Impervious Coverage	67% (11.51 Acres)

CR-1 Zoning Requirements

Front Yard Setback:	30 FT
Side Yard Setback:	10 FT
Rear Yard Setback:	10 FT
Minimum Lot Area:	10,000 SQFT.
Minimum Lot Width:	75 FT
Minimum Lot Depth:	100 FT
Maximum Building Height:	42 FT

Utility Provider

Water	Tidewater Utilities, Inc.
Sewer	Sussex County (W. Rehoboth Planning Area)

C

Planning & Zoning Commission Application Sussex County, Delaware

Sussex County Planning & Zoning Department
2 The Circle (P.O. Box 417) Georgetown, DE 19947
302-855-7878 ph. 302-854-5079 fax

Type of Application: (please check applicable)Conditional Use Zoning Map Amendment **Site Address of Conditional Use/Zoning Map Amendment**

Adjacent to Rehoboth Mall between Route 24 and Old Landing Road

Type of Conditional Use Requested:

224-Multi-Family Apartment Complex

Tax Map #: 3-34-12.00-127.01 & 127.10Size of Parcel(s): 18.793 AcresCurrent Zoning: CR-1Proposed Zoning: CR-1Size of Building: 7 Buildings 67'x170'. 4 StoLand Use Classification: Residential Site PlanWater Provider: Tidewater Utilities, Inc.Sewer Provider: Sussex County West Rehoboth SSD**Applicant Information**Applicant Name: OA-Rehoboth, LLC.Applicant Address: 18949 Coastal Hwy, Unit 301City: Rehoboth BeachState: DEZip Code: 19971Phone #: (302) 227-3573E-mail: preston@oacompanies.com**Owner Information**Owner Name: Herola Family, LLC.Owner Address: 4660 19th StreetCity: San FranciscoState: CAZip Code: 94114Phone #: (514) 753-4579E-mail: hdody@comcast.com**Agent/Attorney/Engineer Information**Agent/Attorney/Engineer Name: Davis, Bowen & Friedel, Inc.Agent/Attorney/Engineer Address: 1 Park AvenueCity: MilfordState: DEZip Code: 19963Phone #: (302) 424-1441E-mail: wzc@dbfinc.com

Check List for Sussex County Planning & Zoning Applications

The following shall be submitted with the application

- ✓ **Completed Application**
- ✓ **Provide eight (8) copies of the Site Plan or Survey of the property**
 - Survey shall show the location of existing or proposed building(s), building setbacks, parking area, proposed entrance location, etc.
 - Provide a PDF of Plans (may be e-mailed to a staff member)
 - Deed or Legal description
- ✓ **Provide Fee \$500.00**
- ✓ **Optional - Additional information for the Commission/Council to consider** (ex. architectural elevations, photos, exhibit books, etc.) If provided submit 8 copies and they shall be submitted a minimum of ten (10) days prior to the Planning Commission meeting.
- ✓ **Please be aware that Public Notice will be sent to property owners within 200 feet of the subject site and County staff will come out to the subject site, take photos and place a sign on the site stating the date and time of the Public Hearings for the application.**
- ✓ **DeIDOT Service Level Evaluation Request Response**
- ✓ **PLUS Response Letter** (if required)

The undersigned hereby certifies that the forms, exhibits, and statements contained in any papers or plans submitted as a part of this application are true and correct.

I also certify that I or an agent on my behalf shall attend all public hearing before the Planning and Zoning Commission and the Sussex County Council and any other hearing necessary for this application and that I will answer any questions to the best of my ability to respond to the present and future needs, the health, safety, morals, convenience, order, prosperity, and general welfare of the inhabitants of Sussex County, Delaware.

Signature of Applicant/Agent/Attorney

Date: _____

Signature of Owner

Heather H. Dodey

Herola Family LLC

Date: *10/17/2019*

For office use only:

Date Submitted: _____

Fee: \$500.00 Check #: _____

Staff accepting application: _____

Application & Case #: _____

Location of property: _____

Subdivision: _____

Date of PC Hearing: _____

Recommendation of PC Commission: _____

Date of CC Hearing: _____

Decision of CC: _____

GENERAL NOTES

- BOUNDARY AND EXISTING CONDITIONS SURVEY HAS BEEN PREPARED BY DAVIS, BOWEN, & FRIEDEL, INC.
- EXISTING UTILITIES AREA SHOWN ACCORDING TO THE BEST AVAILABLE INFORMATION. THE CONTRACTOR SHALL VERIFY THROUGH TEST PITTING, THE LOCATIONS, SIZE, AND INVERT ELEVATIONS OF ALL UNDERGROUND UTILITIES AS REQUIRED TO GIVE TIMELY ADVANCE NOTICE TO ENGINEERS OF ANY CONFLICT BETWEEN EXISTING AND NEW WORK.
- THE CONTRACTOR SHALL NOTIFY MISS UTILITY (1-800-282-8555) AND SUSSEX COUNTY 72 HOURS PRIOR TO EXCAVATION TO HAVE UNDERGROUND UTILITIES MARKED. THE CONTRACTOR SHALL NOTIFY ALL UTILITY OWNERS PRIOR TO ANY EXCAVATION.
- THE CONTRACTOR SHALL REPAIR OR REPLACE IN KIND ANY EXISTING FEATURES DAMAGED OR DESTROYED DURING CONSTRUCTION.
- ALL BACKFILLED AND DISTURBED AREAS TO BE SEEDED AND MULCHED WITH 4" OF TOPSOIL TO BE PLACED IN FILL AREAS.
- THE CONTRACTOR SHALL PROVIDE ALL NECESSARY STAKE OUT OF LINE AND GRADE.
- ALL CONSTRUCTION MUST BE DONE IN COMPLIANCE WITH THE OCCUPATIONAL SAFETY AND HEALTH ACT, LATEST EDITION, AND ALL RULES AND REGULATIONS THEREIN.
- THE CONTRACTOR SHALL KEEP EXISTING UTILITIES IN OPERATION DURING CONSTRUCTION.
- THE CONTRACTOR SHALL COMPLY WITH THE REQUIREMENTS OF ALL PERMITS SECURED, WHICH TAKE PRECEDENCE OVER SPECIFICATIONS.
- THE CONTRACTOR SHALL EXERCISE EXTREME CARE AND CAUTION AND TAKE MEASURES NECESSARY TO PROTECT TREES DURING CONSTRUCTION ACTIVITY.
- THE CONTRACTOR IS RESPONSIBLE FOR SECURING AND PROTECTING UTILITY POLES BEFORE AND DURING CONSTRUCTION ACTIVITIES.
- ANY DISTURBED AREAS OUTSIDE THE RIGHT-OF-WAY SHALL BE RESTORED TO THEIR ORIGINAL CONDITION IMMEDIATELY.
- MAINTENANCE OF THE STREETS WITHIN THIS SUBDIVISION WILL BE THE RESPONSIBILITY OF THE DEVELOPER, THE PROPERTY OWNERS WITHIN THE SUBDIVISION, OR BOTH. THE STATE ASSUMES NO RESPONSIBILITY FOR THE FUTURE MAINTENANCE OF THESE STREETS.

SITE NOTES

- THE INTERIOR STREET DESIGN SHALL INCLUDE STREET LIGHTING AND SIDEWALKS.
- ALL SIGNALS, ENTRANCES, INTERSECTIONS, ROADWAY AND IMPROVEMENTS, AND MULTI-MODAL FACILITIES SHALL BE CONSTRUCTED AS REQUIRED BY DELDOT.
- NO SITE PREPARATION, SITE DISTURBANCE, SITE EXCAVATION OR OTHER SITE CONSTRUCTION SHALL BE COMMENCED UNTIL ALL PERMITS REQUIRED BY ALL OTHER LAWS, ORDINANCES, RULES AND REGULATIONS SHALL HAVE BEEN ISSUED AND THE APPROVED FINAL SITE PLAN IS RECORDED, EXCEPT SUCH SITE WORK FOR WHICH A PERMIT HAS BEEN ISSUED BY THE SUSSEX CONSERVATION DISTRICT.
- INTERIOR STREET LIGHTING SHALL BE POINTED DOWNWARD, AS TO NOT DISTURB THE NEIGHBORING PROPERTIES.

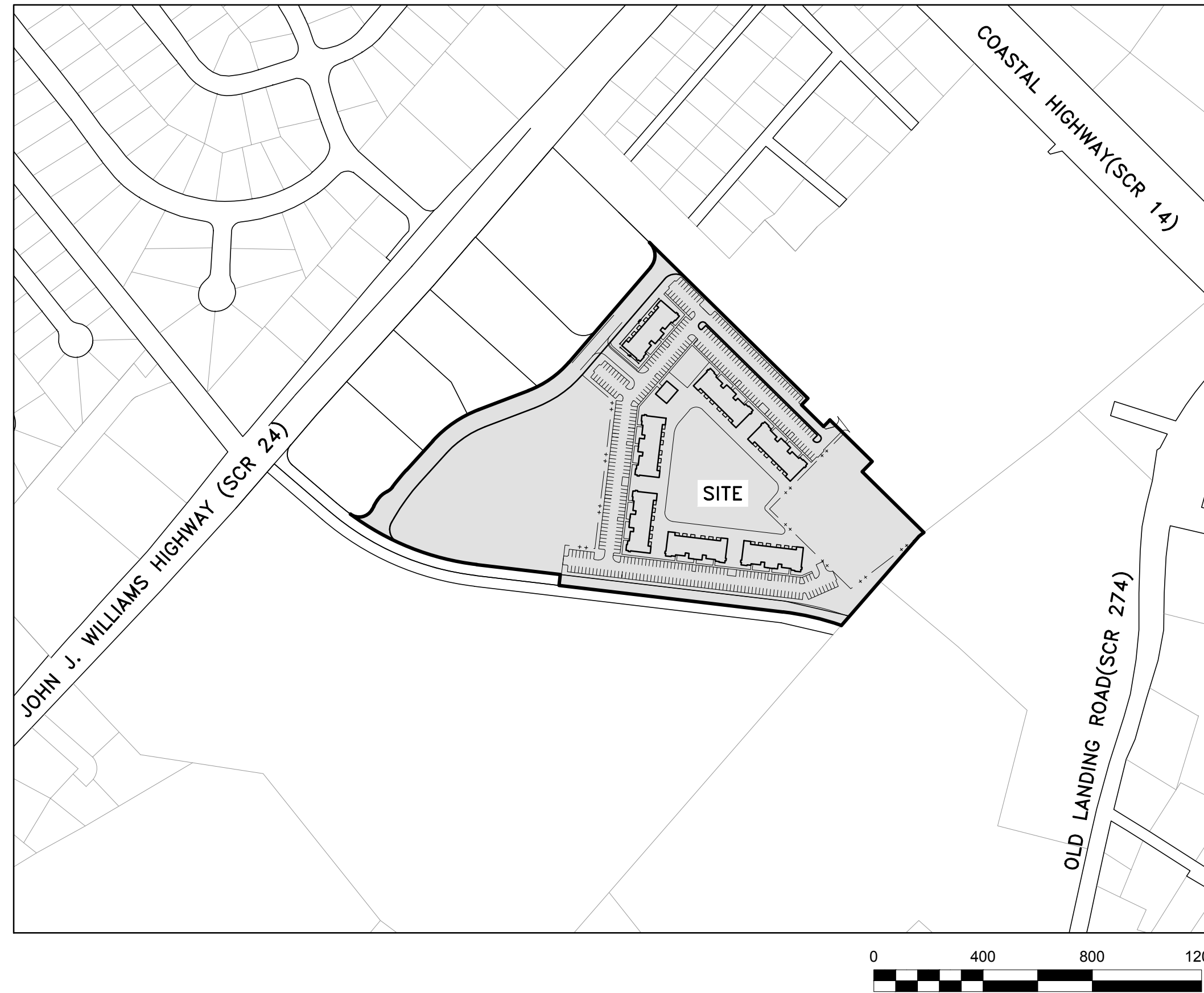
HEROLA PROPERTY MULTI-FAMILY COMMUNITY

PRELIMINARY PLANS SUSSEX COUNTY, DELAWARE

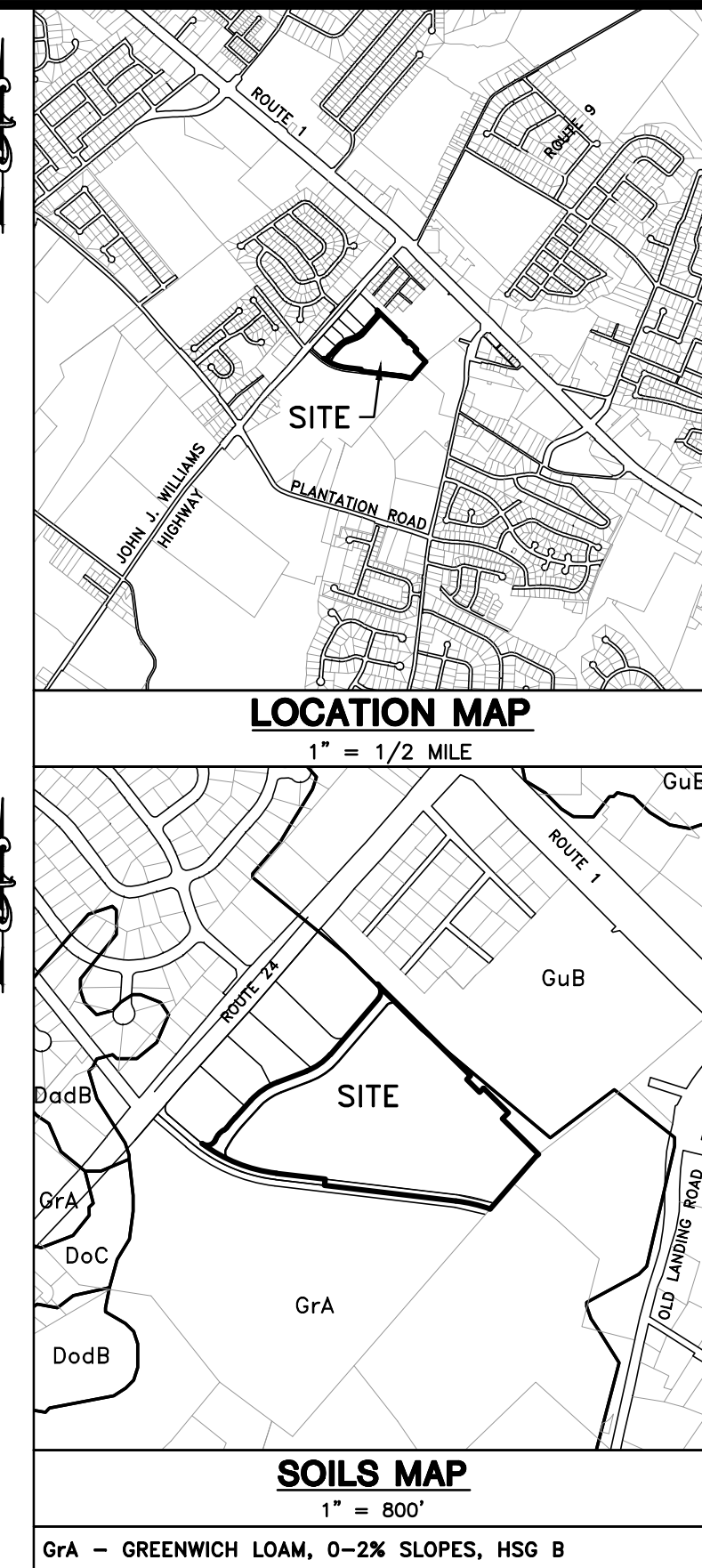
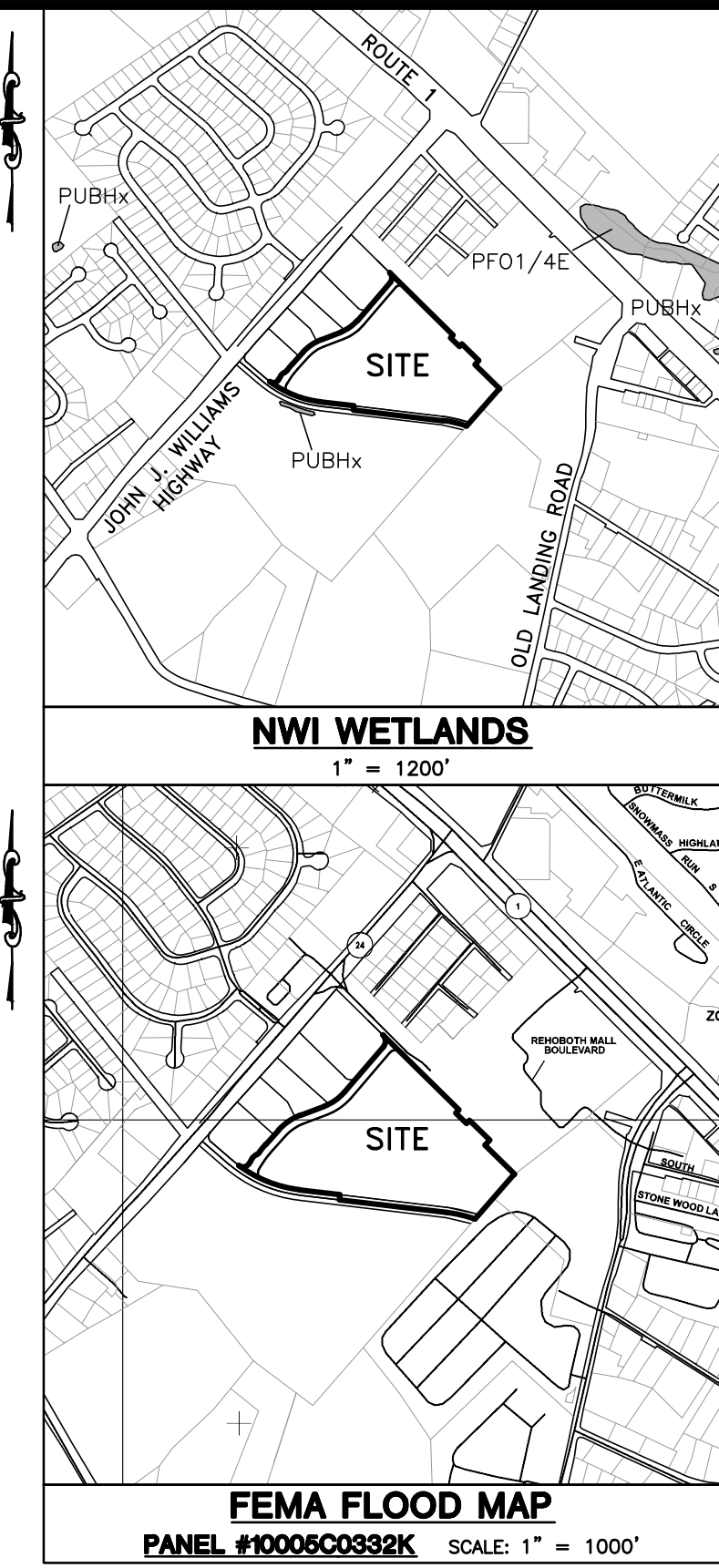
DBF PROJECT NO. 818S001D01 AUGUST 2019

DATA COLUMN

PARCEL ID: 334-12.00-127.01 & 127.10
 EX. ZONING: CR-1 (COMMERCIAL RESIDENTIAL DISTRICT)
 PROP. ZONING: CR-1 (COMMERCIAL RESIDENTIAL DISTRICT)
 EX. USE: VACANT/AGRICULTURE
 PROP. USE: 224 MULTI-FAMILY UNITS WITH CLUBHOUSE
 TOTAL SITE AREA: 18.793 ACRES
 FLOOD HAZARD MAP: THIS PROPERTY IS NOT IMPACTED BY THE 100 YEAR FLOODPLAIN AS DETERMINED BY FEMA MAP 10005C0332K, DATED MARCH 16, 2015
 WETLANDS: DO NOT EXIST ON SITE
 MAXIMUM DENSITY: 12 UNITS PER ACRE
 PROPOSED DENSITY: 224 UNITS/18.793 AC. = 11.92 UNITS PER ACRE
 IMPERVIOUS COVERAGE: 11.51 ACRES/17.061 ACRES(WITHOUT ROW) = 67%
 PARKING:
 REQUIRED: 224 UNITS x 2/UNIT = 448 SPACES (BEFORE REDUCTION)
 PARKING REDUCTION: 1-50 UNITS 100 100 SPACES
 51-200 UNITS 300 REDUCED 15% TO 255 SPACES
 201-224 UNITS 48 REDUCED 20% TO 394 SPACES REQUIRED
 PROVIDED: 403 SPACES INCLUDING 18 HANDICAPPED ACCESSIBLE
 UTILITIES:
 SEWER: PUBLIC (SUSSEX COUNTY, WEST REHOBOTH SOUTH PLANNING AREA)
 WATER: PUBLIC (TIDEWATER UTILITIES, INC.)
 SETBACK REQUIREMENTS:
 FRONT SETBACK: 30'
 SIDE SETBACK: 10'
 REAR SETBACK: 10'
 MAXIMUM PERMITTED BUILDING HEIGHT: 42'
 MINIMUM BUILDING SEPARATION: 40'
 PROPOSED BUILDING CONSTRUCTION: WOOD CONSTRUCTION
 OWNER: HEROLA FAMILY, LLC.
 4015 164th STREET
 SUITE 106
 LYNNWOOD, WA 98087
 DEVELOPER: OA REHOBOTH, LLC.
 18949 COASTAL HIGHWAY
 REHOBOTH BEACH, DE 19971
 (302) 227-3573
 PREPARED BY: DAVIS, BOWEN & FRIEDEL, INC.
 1 PARK AVENUE
 MILFORD, DE 19963
 (302) 424-1441

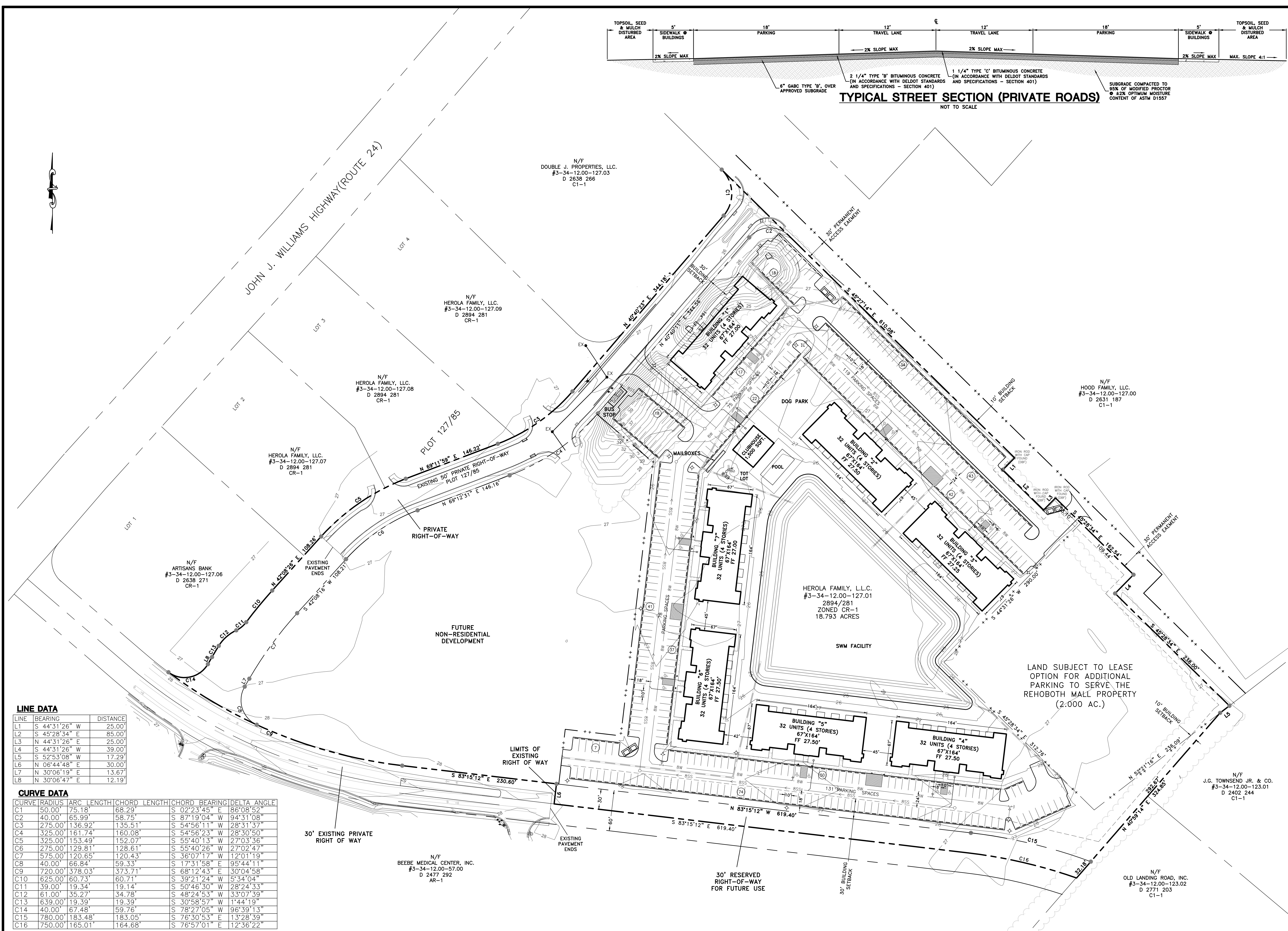
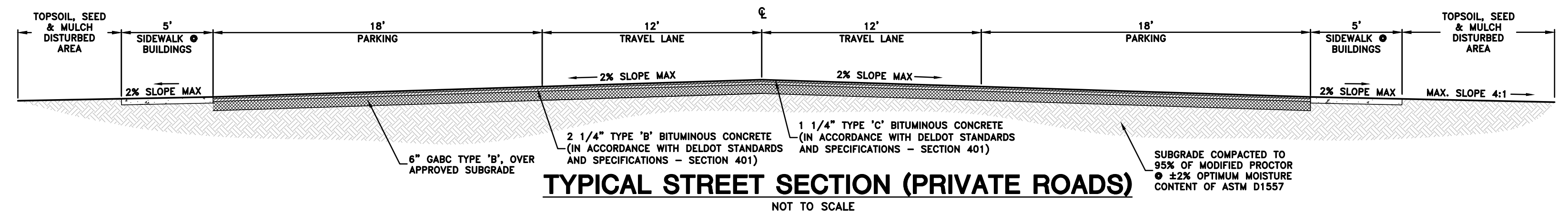


INDEX OF SHEETS	
PL-1	PRELIMINARY TITLE
PL-2	PRELIMINARY SITE PLAN



OWNER'S STATEMENT
 I, THE UNDERSIGNED, HEREBY STATE THAT I AM THE OWNER OF THE PROPERTY DESCRIBED AND SHOWN ON THIS PLAN. THE PLAN WAS MADE AT MY DIRECTION, I ACKNOWLEDGE THE SAME TO BE MY ACT AND DESIRE THE PLAN BE RECORDED ACCORDING TO LAW.
 HEROLA FAMILY, LLC. DATE
 4015 164TH STREET, SUITE 106
 LYNNWOOD, WA 98087

ENGINEER'S STATEMENT
 I, W. ZACHARY CROUCH, P.E., HEREBY STATE THAT I AM A REGISTERED ENGINEER IN THE STATE OF DELAWARE, THAT THE INFORMATION SHOWN HEREON HAS BEEN PREPARED UNDER MY SUPERVISION AND TO MY BEST KNOWLEDGE AND BELIEF REPRESENTS GOOD ENGINEERING PRACTICES AS REQUIRED BY THE APPLICABLE LAWS OF THE STATE OF DELAWARE.
 by W. ZACHARY CROUCH, P.E. DATE
 DAVIS, BOWEN & FRIEDEL, INC.
 1 PARK AVENUE
 MILFORD, DELAWARE, 19963



LINE DATA

LINE	BEARING	DISTANCE
L1	S 44°31'26" W	25.00'
L2	S 45°28'34" E	85.00'
L3	N 44°31'26" E	25.00'
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CURVE DATA

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C5	325.00'	153.49'	152.07'	S 55°40'13" W	27°03'36"
C6	275.00'	129.81'	128.61'	S 55°40'26" W	27°02'47"
C7	575.00'	120.65'	120.43'	S 36°07'17" W	12°01'19"
C8	40.00'	66.84'	59.33'	S 17°31'58" E	95°44'11"
C9	720.00'	378.03'	373.71'	S 68°12'43" E	30°04'58"
C10	625.00'	60.73'	60.71'	S 39°21'24" W	5°34'04"
C11	39.00'	19.34'	19.14'	S 50°46'30" W	28°24'33"
C12	61.00'	35.27'	34.78'	S 48°24'53" W	33°07'39"
C13	639.00'	19.39'	19.39'	S 30°58'57" W	1°44'19"
C14	40.00'	67.48'	59.76'	S 78°27'05" W	96°39'13"
C15	780.00'	183.48'	183.05'	S 76°30'53" E	13°28'39"
C16	750.00'	165.01'	164.68'	S 76°57'01" E	12°36'22"

P:\Ocean Atlantic\08180032 Herola Property\PRELIMINARY\SITE BASE SUBMIT.dwg Nov 26, 2019 - 2:00pm

D

*Michael R. Wigley, AIA, LEED AP
W. Zachary Crouch, P.E.
Michael E. Wheelleton, AIA
Jason P. Loar, P.E.
Ring W. Lordner, P.E.*

August 9, 2019
REVISED: 11/19/19

Sussex County Administrative Building
Planning and Zoning Department
2 The Circle
P.O. Box 589
Georgetown, DE 19947

Attn: Janelle M. Cornwell, AICP

RE: **Herola Property**
Chapter 99-9C Response
Tax Parcel No.: 3-34-12.00-127.01 & 3-34-12.00-127.10
DBF#: 818C032

Dear Ms. Cornwell:

On behalf of our client, OA Rehoboth, LLC., we are pleased to provide you with our written response to the items listed in Chapter 99-9C.

The proposed Herola Property Apartment Complex provides careful consideration of the following items in Sussex County Chapter 99-9C:

1. **Integration of the proposed subdivision into the existing terrain and surrounding landscape.**
 - a. The project is located centrally in a Level 2 state strategies spending area, surrounded on all sides by existing residential and commercial properties. Public water, wastewater and other utilities already exist at the site. A centrally located clubhouse with pool, dog park and stormwater pond will provide green open space for the residents.
2. **Minimal use of wetlands and floodplains.**
 - a. Wetlands do not exist on site.
 - b. Site is not impacted by the 100-yr floodplain as determined by FEMA Map 10005C0332K, Dated March 16, 2015.

3. Preservation of natural and historical features.

- a. According to the National Register of Historical Places, there are no known archaeological sites or National Register-listed property on this parcel.

4. Preservation of open space and scenic views.

- a. 4.765 acres green space is being proposed. A centrally located landscaped pond, dog park club house with pool will provide residents with pleasant views. Landscaping will be used to reduce view of the surrounding commercial properties.

5. Minimization of tree, vegetation and soil removal and grade changes.

- a. Grade changes will be minimized to the extent necessary to provide road construction to meet design requirements and to ensure proper lot drainage.
- b. There are no existing wooded areas on the site.

6. Screening of objectionable features from neighboring properties and roadways.

- a. Many of the surrounding properties are commercial parcels. Landscaping will be provided to minimize the views.

7. Provision for water supply.

- a. Tidewater Utilities, Inc. will supply all homes with central water.

8. Provision for sewage disposal.

- a. Sussex County sewer infrastructure is located on site. Sanitary sewer will be tied into the manhole located in the ROW by the entrance of the site. We will request annexation of the property into the West Rehoboth Expansion of the Dewey Beach SSD.

9. Prevention of pollution of surface and groundwater.

- a. The storm drainage system will capture 100% of all drainage from the site.
- b. Best Available Technologies (BATs) will be used during the design and construction of the property.

- c. Best Management Practices (BMPs) will be used during the design and construction of the property.
- d. The site will utilize Green Technology where feasible for the project.

10. Minimization of erosion and sedimentation, minimization of changes in groundwater levels, minimization of increased rates of runoff, minimization of potential for flooding and design of drainage so that groundwater is maximized.

- a. The stormwater management areas will be designed to meet all local, state and federal guidelines for sediment and nutrient removal.
- b. An Erosion and Sediment Control Plan will be developed and implemented as required by the Sussex Conservation District and DNREC. The plan will specify in detail how the project is to be constructed to limit the amount of sediment and other pollutants from leaving the site during construction.
- c. All storms will be controlled and discharge at the pre-development rate. The 100-year storm will be safely routed through this site.

11. Provision for safe vehicular and pedestrian movement within the site and to adjacent roadways.

- a. The interior of the project contains sidewalks throughout the site, providing pedestrian connection to amenities as well as to Rehoboth mall and Route 24. DeIDOT's interconnection to old landing road will also provide vehicular and pedestrian movement to Route 1.
- b. The road design will conform to Sussex County standards and specifications and will be turned over to the homeowners association for maintenance upon acceptance by the County.
- c. Street lighting will be provided for this project.

12. Effect on area property values.

- a. Based on historical land trends in Sussex County, the property values around the proposed project will increase with the development of the apartment complex.

Ms. Janelle Cornwell
Sussex County Planning and Zoning Commission
August 9, 2019
REVISED: 11/19/19
Page 4

13. Preservation and conservation of farmland.

- a. Developing in a Level 2 area is preferred by State Planning and preserves other lands for farmland.

14. Effect on schools, public buildings and community facilities.

- a. The increase in tax revenue to the school district will assist in the maintenance and operations of the public school system.
- b. The trend towards seniors moving to Sussex County will provide tax revenue without adding large numbers of potential new students.

15. Effect on area roadways and public transportation.

- a. The subdivision streets will be designed to Sussex County standards and specifications. The development will pay into the Area Wide Study fee which will contribute to necessary improvements in the area. The improved connection to Old Landing Road should improve traffic flow in the area.

16. Compatibility with other area land uses.

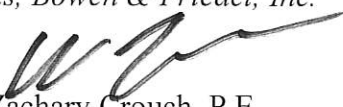
- a. The subdivision conforms to the designated zoning for the property and is consistent with the surrounding land use as mentioned above.

17. Effect on area waterways.

- a. The subdivision will be designed and constructed to comply with all sediment and stormwater regulations.
- b. The site will comply with all TMDLs and PCS's as adopted by the State.

On behalf of our client we thank you for your review and consideration of this response. If you should have any questions or concerns please contact me at 424-1441

Sincerely,
Davis, Bowen & Friedel, Inc.


W. Zachary Crouch, P.E.
Principal

*Michael R. Wigley, AIA, LEED AP
W. Zachary Crouch, P.E.
Michael E. Wheedleton, AIA
Jason P. Loan, P.E.
Ring W. Lordner, P.E.*

August 9, 2019
REVISED: 11/19/19

Sussex County Administrative Building
Planning and Zoning Department
2 The Circle
P.O. Box 589
Georgetown, Delaware 19947

Attn: Janelle Cornwell
Director of Planning

RE: Herola Property
Environmental Assessment and Public Facility Evaluation Report
Tax Parcel No.: 3-34-12.00-127.01 & 127.10
DBF #818C032

Dear Ms. Cornwell:

On behalf of our client, OA Rehoboth, LLC., we are submitting an Environmental Assessment and Public Facility Evaluation Report in accordance with §115-194.3. ES-1 Environmentally Sensitive Development District Overlay Zone (ESDDOZ), Subparagraph B (2). We offer the following information that comprises our report:

- (a) *Proposed drainage design and the effect on stormwater quality and quantity leaving the site, including methods for reducing the amount of phosphorous and nitrogen in the stormwater runoff and the control of any other pollutants such as petroleum hydrocarbons or metals.*

The proposed improvements will meet or exceed the state regulations for stormwater management. We intend to use infiltration basins as well as other Best Management Practices to meet these requirements.

- (b) *Proposed method of providing potable and, where appropriate, irrigation water and the effect on public or private water systems and groundwater, including an estimate of average and peak demands.*

The proposed project is located in Tidewater Utility Inc.'s, franchise area and they

hold the Certificate of Public Necessity (CPCN). A letter from Tidewater said they are willing and able to provide public water for this project. Impacts to the groundwater and other systems have been evaluated as part of Tidewater's CPCN.

- (c) *Proposed means of wastewater treatment and disposal with an analysis of the effect on the quality of groundwater and surface waters, including alternative locations for on-site septic systems.*

The proposed project is adjacent to the West Rehoboth Expansion of the Dewey Beach SSD. Existing sanitary manholes are located on site and will connect the project to Sussex Counties existing sanitary sewer system.

- (d) *Analysis of the increase in traffic and the effect on the surrounding roadway system.*

The proposed project will participate in an Area Wide Study and pay the area wide study fee.

- (e) *The presence of any endangered or threatened species listed on federal or state registers and proposed habitat protection areas.*

There is no known state or federally listed endangered or threatened species on this site.

- (f) *The preservation and protection from loss of any tidal or non-tidal wetlands on the site.*

There were no wetlands found on site.

- (g) *Provisions for open space as defined in §115-4.*

The proposed project provides 4.746 acres of green space.. Open space will consist of a centrally located landscape stormwater management pond with walking trail, a dog park and club house with pool.

- (h) *A description of provisions for public and private infrastructure.*

The Developer will construct gravity sewer lines to serve this parcel and will be connected to the existing Sussex County sanitary sewer infrastructure. The Developer will also construct the internal water mains in the project that will be owned and maintained by Tidewater Utilities, Inc. The internal roadways will be constructed by the Developer and privately maintained. Electric will be provided by Delaware Electric Coop.

- (i) *Economic, recreational or other benefits.*

The proposed project will create a considerable amount of jobs during construction. Future residents of Sussex County will pay county taxes. The project will provide more affordable priced homes in the area.

- (j) *The presence of any historic or cultural resources that are listed on the National Register of Historic Places.*

There are no known archaeological sites or National Register-listed property on this parcel.

- (k) *An affirmation that the proposed application and proposed mitigation measures are in conformance with the current Sussex County Comprehensive Plan.*

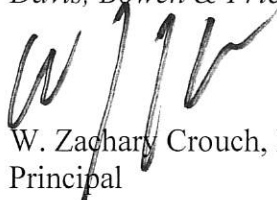
The proposed application and mitigation measures comply with the current Sussex County Comprehensive Plan.

- (l) *Actions to be taken by the applicant to mitigate the detrimental impacts identified relevant to Subsection B(2)(a) through (k) above and the manner by which they are consistent with the Comprehensive Plan.*

All mitigation measures, where required, have been discussed in their respective section. All mitigation measures as well as the application are consistent with the Comprehensive Plan.

If you have any questions or need additional information, please call me at (302) 424-1441.

Sincerely,
Davis, Bowen & Friedel, Inc.



W. Zachary Crouch, P.E.
Principal

E

C & T
 Tax Parcel No. 3-34 12.00 127.01
 Prepared by: Cooch and Taylor
 Ret-to: PO Box 1680
 Wilmington, DE 19899 1680

D E E D

THIS DEED, made this 25th day of April in the year of our LORD two thousand three

BETWEEN **THE HEROLA COMPANY**, a General Partnership, with its principal office at 3111 132nd Avenue S.E., Snohomish, Washington 98290, party of the first part (Grantor),

A N D

HEROLA FAMILY, LLC, a Limited Liability Company of the State of Delaware, party of the second part (Grantee)

WITNESSETH, that the said party of the first part, for and in consideration of the sum of One and 00/100 Dollar (\$1.00), lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grants and conveys unto the said party of the second part:

Parcel 1

ALL that certain tract, piece and parcel of land, situate in Lewes and Rehoboth Hundred, Sussex County and State of Delaware, near Midway, on the public road leading from Lewes to Rehoboth, adjoining lands of the Presbyterian Church, heirs of Robert Dodd, Marion Hood Wilson and others, being a part of a larger tract of land subdivided by survey and plotted among the four children of John Hood by Henry Marshall, surveyor in August 1900, and more particularly described as follows:

BEGINNING at the original corner of a larger tract at the edge of a branch and near the school house and the Presbyterian Church and running from thence South 23 degrees West 243-1/2 feet; thence South 57-1/2 degrees West 1270-1/2 feet; thence South 47 degrees West 519 feet to a corner post in the division line; thence with the same North 38 degrees West 790 feet to another corner post; thence with a line of the whole tract South 48-1/2 degrees West 665 feet to a corner of John D. Hood and A. C. Blizzard; thence North 32-1/2 degrees West 622-1/2 feet to a corner of Hannah W. Hood land; thence with the same North 46-1/4 degrees East 1722-1/2 feet to a corner of Richard Paynter's (now Mrs. Robert Dodd's) land; thence with same South 39-1/2 degrees East 660 feet; thence North 48-1/2 degrees East 145 feet; thence South 38 degrees East 121-1/2 feet; thence North 47-3/4 degrees East 977 feet across the road to Lewes to line of Robert Dodd's land; thence with the same South 46-1/4 degrees East 909 feet, home to the place of Beginning, containing 54 acres of land, be the same more or less, improved by a dwelling house and other outbuildings thereon. EXCEPTING THEREFROM the following described property, to-wit:

ALL that certain tract, piece and parcel of land, situate in the Lewes and Rehoboth Hundred, Sussex County, in the State of Delaware, and lying on the Northwest side of and binding upon Delaware Route 1 (140 feet wide as now laid out) and being a part of a larger tract of land which is now owned by Robert B. Hood as described among the Land Records of Sussex County, Delaware, in Liber 551, Folio 646, and being more particularly described as follows:

BEGINNING for same at an iron pipe placed lying on the Northwest right-of-way line of said Delaware Route 1, said point lying 62.35 feet on a bearing of North 45 degrees 1 minute 36 seconds West from the intersection point of the Westerly most right-of-way line of Sussex County Route 274 and the said Northwesterly most right-of-way line of Delaware Route 1 and running from thence by and with the Northwesterly right-of-way line of Delaware Route 1 North 45 degrees 1 minute 36 seconds West 263.86 feet to an iron pipe found, said iron pipe marking the Northeasterly most corner of the other lands of Robert B. Hood; thence continuing by and with the Northwesterly right-of-way line of Delaware Route 1 North 45 degrees 1 minute 36 seconds West a distance of 266.5 feet, plus or minus, to a point; thence South 44 degrees 58 minutes 24 seconds West, a distance of 10 feet to a point; thence continuing by and with the Delaware Route 1 right-of-way line North 45 degrees 1 minute 36 seconds West, a distance of 58.5 feet, plus or minus, to the Northwesterly most corner of the above referenced Robert B. Hood lands; thence continuing by and with the Northwesterly most right-

GRANTEE'S ADDRESS
 3111 132nd Avenue, S.E.
 Snohomish, WA 98290

TAX PARCEL NUMBER
 3-34-12.00 127.01

Consideration: \$0.00 Exempt Code: A

County	State	Total
0.00	0.00	0.00

counter Date: 10/10/2003

of-way line of Delaware Route 1 North 45 degrees 1 minute 36 seconds West, a distance of 381.61 feet, to an iron pipe placed, said iron pipe lying along the Northeasterly most limits of the Truitt's Midway Development Company Subdivision as shown on a plat recorded among the Land Records of Sussex County, Delaware, in Plat Book 1, Folio 400; thence by and with the Easterly most line of Truitt's Midway Development Company Subdivision South 41 degrees 26 minutes 22 seconds West, a distance of 710.39 feet to an iron pipe placed; thence continuing by and with the lands of the Truitt's Midway Development Company Subdivision the following three courses and distances, North 44 degrees 17 minutes 31 seconds West, a distance of 119.95 feet to an iron pipe placed; thence South 42 degrees 42 minutes 5 seconds West, a distance of 144.11 feet to an iron pipe placed; thence North 45 degrees 23 minutes 36 seconds West, a distance of 634.57 feet to an iron pipe found lying on the Northeasterly most right-of-way line of Delaware Route 24 (50 feet wide as now laid out); thence continuing by and with the Northeasterly right-of-way line of Delaware Route 24 South 40 degrees 20 minutes 24 seconds West, a distance of 500.14 feet to an iron pipe placed, said point lying on the Northerly most property line of the remaining lands of Robert B. Hood; thence by and with the line of the remaining Robert B. Hood lands, the following ten courses and distances, South 49 degrees 39 minutes 36 seconds East, a distance of 15 feet to an iron pipe placed; thence North 40 degrees 20 minutes 24 seconds East, a distance of 366.07 feet to an iron pipe placed; thence South 87 degrees 28 minutes 24 seconds East, a distance of 16.33 feet to a point; thence South 45 degrees 23 minutes 36 seconds East, a distance of 1,021.46 feet to an iron pipe placed; thence South 44 degrees 36 minutes 24 seconds West, a distance of 25 feet to an iron pipe placed; thence South 45 degrees 23 minutes 36 seconds East, a distance of 85 feet to an iron pipe placed; thence North 44 degrees 36 minutes 24 seconds East, a distance of 25 feet to an iron pipe placed; thence South 45 degrees 23 minutes 36 seconds East, a distance of 162.54 feet to an iron pipe placed; thence South 44 degrees 36 minutes 24 seconds West, a distance of 39 feet to an iron pipe placed; thence South 45 degrees 23 minutes 36 seconds East, a distance of 238 feet to an iron pipe placed, said iron pipe lying on the Northerly most line of the lands now or formerly of Francis C. Warrington as described among the Land Records of Sussex County, Delaware, in Folio 360, Liber 582; thence by and with the lands of Francis C. Warrington North 52 degrees 21 minutes 0 seconds East, a distance of 534.71 feet to an iron pipe placed, said iron pipe lying at the Northeasterly most corner of the Janes Acre Trailer Park as described among the Land Records of Sussex County, Delaware, in Folio 410, Liber 375, and shown more particularly on a plat recorded among the Land Records of Sussex County, Delaware, in Plat Book 1, Folio 55; thence continuing by and with the Northerly most line of Janes Acres Trailer Park North 52 degrees 21 minutes 0 seconds East, a distance of 489.06 feet to the point of beginning; the lands herein described containing 22.10 acres, plus or minus, and being shown more particularly on a plat entitled "Subdivision of the Lands of Robert B. Hood" as prepared by John H. Plummer and Associates, Inc., dated January 30, 1984, and recorded among the Land Records of Sussex County, Delaware, in Plat Book _____, Folio _____.

EXCEPTING, ALSO, a parcel of land containing 24.745 acres, more or less, more fully described in a Deed from The Herola Company, a General Partnership, to The Beebe Medical Center, Inc., dated April 18, 2000, and recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, in Deed Book 02477, Page 292.

EXCEPTING, ALSO, a parcel of land containing 3.10 acres, more or less, more fully described in a Deed from The Herola Company, a General Partnership, to The Cherry Cove Land Development Company, recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, in Deed Book 02469 Page 112, and being designated on the County Tax Records of Sussex County as Tax Parcel No. 3-34-1200-127.03.

PARCEL 2

ALL that certain tract, piece and parcel of land situate, lying and being in Lewes and Rehoboth Hundred, Sussex County, Delaware, and more fully described as follows, to-wit:

BEGINNING at an original corner post near but Southwest from an old Sassafras tree, and running thence South 33-3/4 degrees East 693-1/4 feet; thence South 15 degrees West 980 feet to the North edge of a road leading to Rehoboth; thence with said road North 66-1/2 degrees West 1521 feet to a corner of Richard P. Morris' land; thence with the same North 15-1/2 degrees East 295 feet; thence North 48-1/4 degrees East 781 feet; thence North 32-1/2 degrees West 520 feet to a corner of A. C. Blizzard's land; thence with the same North 48-1/2 degrees East 1223 feet to a corner division post; thence with a division line South 38 degrees East 790 feet to another corner post in the division line and line of the original tract; thence with said line South 47 degree West 718-1/2 feet home to the place of beginning, containing 54 acres of land, more or less.

EXCEPTING THEREFROM all that certain tract, piece or parcel of land situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, conveyed unto Robert B. Hood by Deed of Robert B. Hood, individually and in his capacities as Settlor and Trustee of the Irrevocable Living Trust Agreement for the benefit of Heather B. Hood, Robert W. Hood and Lara A. Hood, SANDRA S. HOOD, individually and in her capacity as Settlor of the Irrevocable Living Trust Agreement for the benefit of Heather B. Hood, Robert W. Hood and Lara A. Hood, HEATHER B. HOOD, individually and in her capacity as Beneficiary under the Irrevocable Living Trust Agreement for the benefit of Heather B. Hood, Robert W. Hood and Lara A. Hood, ROBERT W. HOOD, individually and in his capacity as Beneficiary under the Irrevocable Living Trust Agreement for the benefit of Heather B. Hood, Robert W. Hood and Lara A. Hood, and LARA A. HOOD, individually and in her capacity as Beneficiary under the Irrevocable Living Trust Agreement for the benefit of Heather B. Hood, Robert W. Hood and Lara A. Hood, dated the 7th day of August, 1987, and recorded in the Office of the Recorder of Deeds, in and for Sussex County, in Deed Book 1511, Page 167.

The above two parcels, as described herein, are subject to any and all restrictions, reservations, conditions, easements and agreements of record in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, which pertain to the above described parcels.

The two parcels described herein are part of the same lands and premises conveyed by Robert B. Hood, et al., to The Herola Company by Deed dated August 15, 1988, and recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, in Deed Book 1604, Page 95.

No title search and no lien search have been requested or performed in connection with the transfer of title set forth in this Deed.

IN WITNESS WHEREOF, the said party of the first part, The Herola Company, a General Partnership, has caused its name to be set the day and year first above written, and this Deed to be duly delivered by Robert B. Hood, its duly authorized person designated with the consent of all partners of The Herola Company.

SIGNED SEALED AND DELIVERED
IN THE PRESENCE OF;

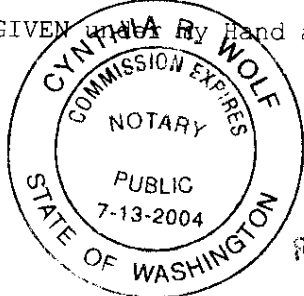
THE HEROLA COMPANY

By: [Signature] (SEAL)
Robert B. Hood

STATE OF WASHINGTON)
 : SS
COUNTY OF SNOHOMISH)

BE IT REMEMBERED, That on this 25th day of April, 2003, personally came before me, the Subscriber, a Notary Public, in and for the State and County aforesaid, Robert B. Hood, the duly authorized person designated with the consent of all Partners of The Herola Company, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed and the act and deed of the said Partnership, The Herola Company.

GIVEN under My Hand and Seal of office, the day and year aforesaid.



[Signature]
Notary Public

RECORDER OF DEEDS
JOHN F. BRADY

03 OCT 10 AM 8:09
SUSSEX COUNTY
DOC. SURCHARGE PAID

Received

OCT 14 2003

ASSESSMENT DIVISION
OF SUSSEX CTY

**LEGAL DESCRIPTION
TAX PARCEL 3-34-12.00-127.01 & 127.10
HEROLA FAMILY, L.L.C.**

*Michael R. Wigley, AIA, LEED AP
W. Zachary Crouch, P.E.
Michael E. Wheedleton, AIA
Jason P. Loar, P.E.
Ring W. Lardner, P.E.
Jamie L. Sechler, P.E.*

November 19, 2019

ALL that piece or parcel of land, hereinafter described, situate, lying and being on the southeasterly side of Route 24 and being located in Lewes and Rehoboth Hundred, Sussex County, Delaware; said piece or parcel of land being more particularly described as follows:

BEGINNING at a point formed by the intersection of the easterly right of way line of a 30' Wide Strip of Right-of-Way and the northerly right of way line of the 50' Right of Way to be maintained by the owners of Lots 1,2,3,4 and Residue Lands, said point also being the northwesterly most corner of the herein described parcel as shown on a plat entitled "Minor Subdivision Record Plat Lands of Herola Family LLC" dated July 8, 2008, thence,

- 1) running by and with said northerly right of way line of the said 50' Right-of-Way, the following twelve courses and distances, by and with the arc of a curve, deflecting to the left, having an arc length of 67.48 feet, a radius of 40.00 feet and a chord bearing and distance of North 78 degrees 27 minutes 05 seconds East 59.76 feet to a point, thence,
- 2) North 30 degrees 06 minutes 47 seconds East 12.19 feet to a point, thence,
- 3) by and with the arc of a curve, deflecting to the left, having an arc length of 19.39 feet, a radius of 639.00 feet and a chord bearing and distance of North 30 degrees 58 minutes 57 seconds East 19.39 feet to a point, thence,
- 4) by and with the arc of a curve, deflecting to the right, having an arc length of 35.27 feet, a radius of 61.00 feet and a chord bearing and distance of North 48 degrees 24 minutes 53 seconds East 34.78 feet to a point, thence,
- 5) by and with the arc of a curve, deflecting to the left, having an arc length of 19.34 feet, a radius of 39.00 feet and a chord bearing and distance of North 50 degrees 46 minutes 30 seconds East 19.14 feet to a point, thence,
- 6) by and with the arc of a curve, deflecting to the right, having an arc length of 60.73 feet, a radius of 625.00 feet and a chord bearing and distance of North 39 degrees 21 minutes 24 seconds East 60.71 feet to a point, thence,
- 7) North 42 degrees 08 minutes 26 seconds East 108.26 feet to a point, thence,

- 8) by and with the arc of a curve, deflecting to the right, having an arc length of 153.49 feet, a radius of 325.00 feet and a chord bearing and distance of North 55 degrees 40 minutes 13 seconds East 152.07 feet to a point, thence,
- 9) North 69 degrees 11 minutes 59 seconds East 146.22 feet to a point, thence,
- 10) by and with the arc of a curve, deflecting to the left, having an arc length of 136.92 feet, a radius of 275.00 feet and a chord bearing and distance of North 54 degrees 56 minutes 11 seconds East 135.51 feet to a point, thence,
- 11) North 40 degrees 40 minutes 23 seconds East 344.18 feet to a point, thence,
- 12) by and with the arc of a curve, deflecting to the left, having an arc length of 75.18 feet, a radius of 50.00 feet and a chord bearing and distance of North 02 degrees 23 minutes 45 seconds East 68.29 feet to a point on the westerly property line of the lands of, now or formerly, Hood Family, L.L.C., as recorded in the aforesaid Office of the Recorder of Deeds in Deed Book 2631, Page 187, thence,
- 13) leaving said right of way and running by and with the said westerly line of the lands of, now or formerly, Hood Family, L.L.C., the following seven courses and distances, South 45 degrees 27 minutes 14 seconds East 610.08 feet to a point, thence,
- 14) South 44 degrees 31 minutes 26 seconds West 25.00 feet to a point, thence,
- 15) South 45 degrees 28 minutes 34 seconds East 85.00 feet to a point, thence,
- 16) North 44 degrees 31 minutes 26 seconds East 25.00 feet to a point, thence,
- 17) South 45 degrees 28 minutes 34 seconds East 162.54 feet to a point, thence,
- 18) South 44 degrees 31 minutes 26 seconds West 39.00 feet to a point, thence,
- 19) South 45 degrees 28 minutes 34 seconds East 238.00 feet to a point on the westerly line of the lands of, now or formerly, J.G. Townsend, Jr. & Co., as recorded in the aforesaid Office of the Recorder of Deeds in Deed Book 2401, Page 244, thence,
- 20) leaving said Hood Family, L.L.C. lands and running by and with said J.G. Townsend, Jr. & Co. lands, South 52 degrees 53 minutes 08 seconds West 17.29 feet to a point, thence,
- 21) continuing by and with said J.G. Townsend, Jr. & Co. lands and also running by and with the lands of, now or formerly, Old Landing Road, Inc., as recorded in the aforesaid Office of the Recorder of Deeds in Deed Book 2771, Page 203, South 40 degrees 59 minutes 14 seconds West 324.85 feet to a point on the northeasterly line of the lands of, now or formerly, Beebe Medical Center, Inc., as recorded in the aforesaid Office of the Recorder of Deeds in Deed Book 2477, Page 292 and said point also being the centerline of a Future Connector Road (60' wide), thence,

22) leaving said Old Landing Road, Inc. lands and running by and with said Beebe Medical Center, Inc. and said centerline of Future Connector Road, the following two courses, thence,

23) by and with the arc of a curve, deflecting to the left, having an arc length of 165.01 feet, a radius of 750.00 feet and a chord bearing and distance of North 76 degrees 57 minutes 01 seconds West 164.68 feet to a point, thence,

24) North 83 degrees 15 minutes 12 seconds West 619.40 feet to a point, thence,

25) leaving said centerline and lands of, now or formerly, Beebe Medical Center, Inc, North 06 degrees 44 minutes 48 seconds West 30.00 feet to a point on the aforementioned easterly right of way line of a 30' Wide Strip of Right-of-Way the following three courses and distances, thence

26) North 83 degrees 15 minutes 12 seconds West 230.60 feet to a point, thence,

27) by and with the arc of a curve, deflecting to the right, having an arc length of 378.03 feet, a radius of 720.00 feet and a chord bearing and distance of North 68 degrees 12 minutes 43 seconds West 373.71 feet to a point and the place of beginning.

CONTAINING 18.793 acres of land, more or less.

F

\\m001\civil\Ocean Atlantic\08180032 Herola Property\PRELIMINARY\SITE BASE SUBMIT.dwg Nov 26, 2019 - 2:55pm

LINE DATA

LINE	BEARING	DISTANCE
L1	S 44°31'26" W	25.00'
L2	S 45°28'34" E	85.00'
L3	N 44°31'26" E	25.00'
L4	S 44°31'26" W	39.00'
L5	S 52°53'08" W	17.29'
L6	N 06°44'48" E	30.00'
L7	N 30°06'19" E	13.67'
L8	N 30°06'47" E	12.19'

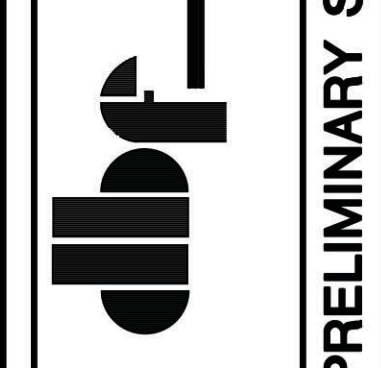
CURVE DATA

CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	50.00'	75.18'	68.29'	S 02°23'45" E	86°08'52"
C2	40.00'	65.99'	58.75'	S 87°19'04" W	94°31'08"
C3	275.00'	136.92'	135.51'	S 54°56'11" W	28°31'37"
C4	325.00'	161.74'	160.08'	S 54°56'23" W	28°30'50"
C5	325.00'	153.49'	152.07'	S 55°40'13" W	27°03'36"
C6	275.00'	129.81'	128.61'	S 55°40'26" W	27°02'47"
C7	575.00'	120.65'	120.43'	S 36°07'17" W	12°01'19"
C8	40.00'	66.84'	59.33'	S 17°31'58" E	95°44'11"
C9	720.00'	378.03'	373.71'	S 68°12'43" E	30°04'58"
C10	625.00'	60.73'	60.71'	S 39°21'24" W	5°34'04"
C11	39.00'	19.34'	19.14'	S 50°46'30" W	28°24'33"
C12	61.00'	35.27'	34.78'	S 48°24'53" W	33°07'39"
C13	639.00'	19.39'	19.39'	S 30°58'57" W	1°44'19"
C14	40.00'	67.48'	59.76'	S 78°27'05" W	96°39'13"
C15	780.00'	183.48'	183.05'	S 76°30'53" E	13°28'39"
C16	750.00'	165.01'	164.68'	S 76°57'01" E	12°36'22"



TYPICAL STREET SECTION (PRIVATE ROADS)
NOT TO SCALE

DAVIS, BOWEN & FRIEDEL, INC.
ARCHITECTS, ENGINEERS & SURVEYORS
SALISBURY, MARYLAND (410) 543-9091
MILFORD, DELAWARE (302) 424-1441



PRELIMINARY SITE PLAN

**HEROLA PROPERTY
LEWES & REHOBOTH HUNDRED
SUSSEX COUNTY, DELAWARE**

Date: **OCTOBER 2019**
Scale: **1" = 60'**
Dwn.By: **JMJ**
Proj.No.: **0818S001.D01**
Dwg.No.:

HEROLA PROPERTY

SUSSEX COUNTY, DELAWARE

November 14, 2019

Scale: 1" = 200'

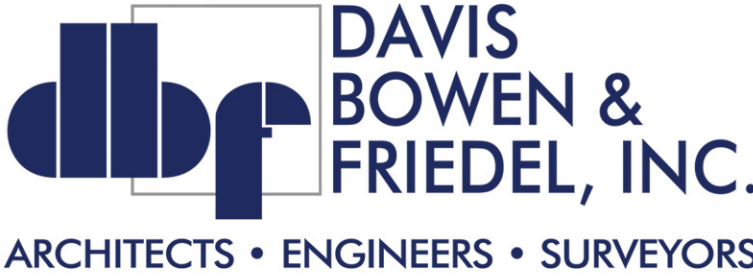
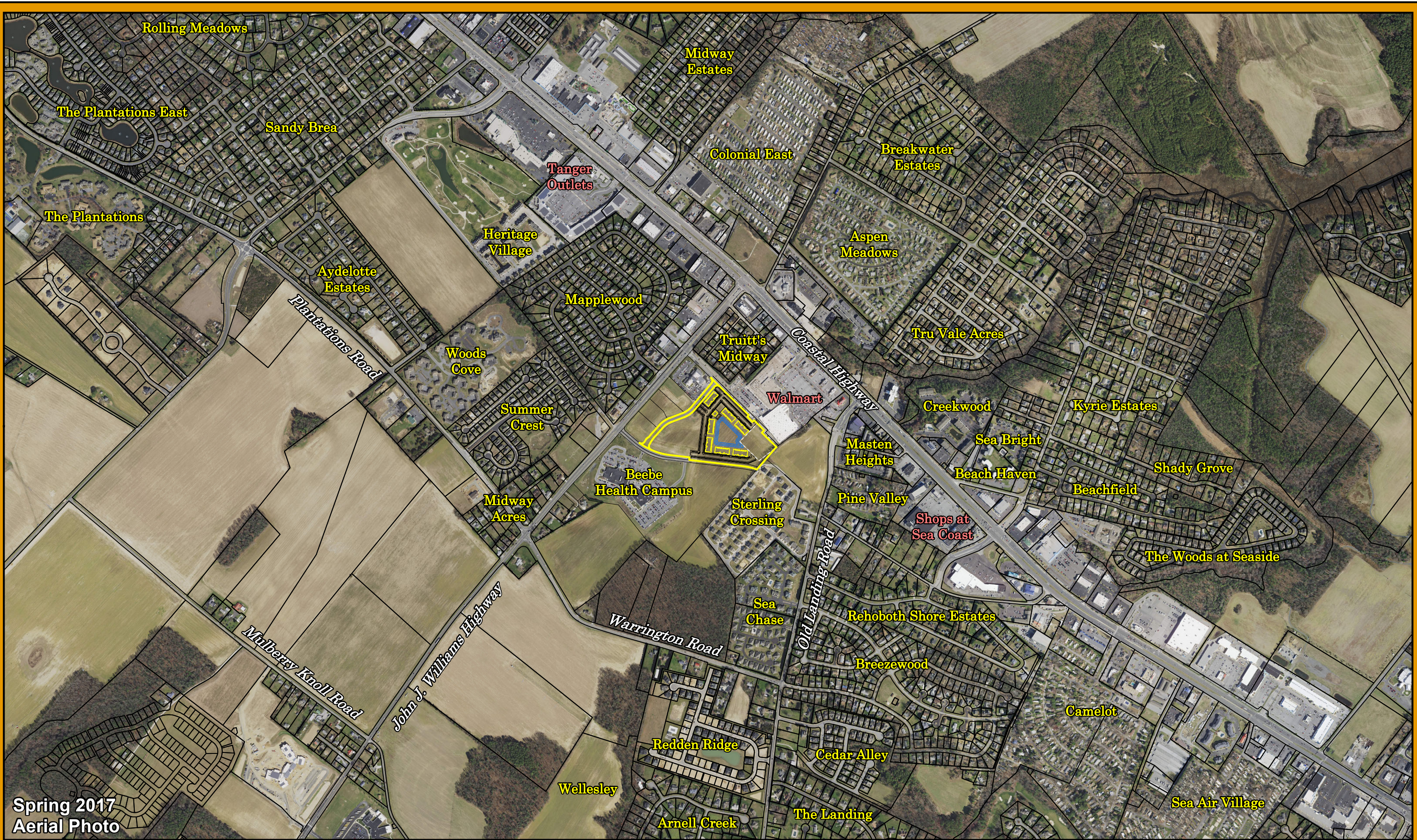






Exhibit 1



Spring 2017
Aerial Photo

Sources:
Tax Parcels per Sussex County

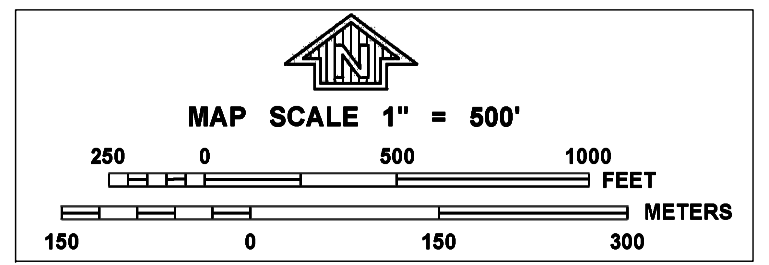
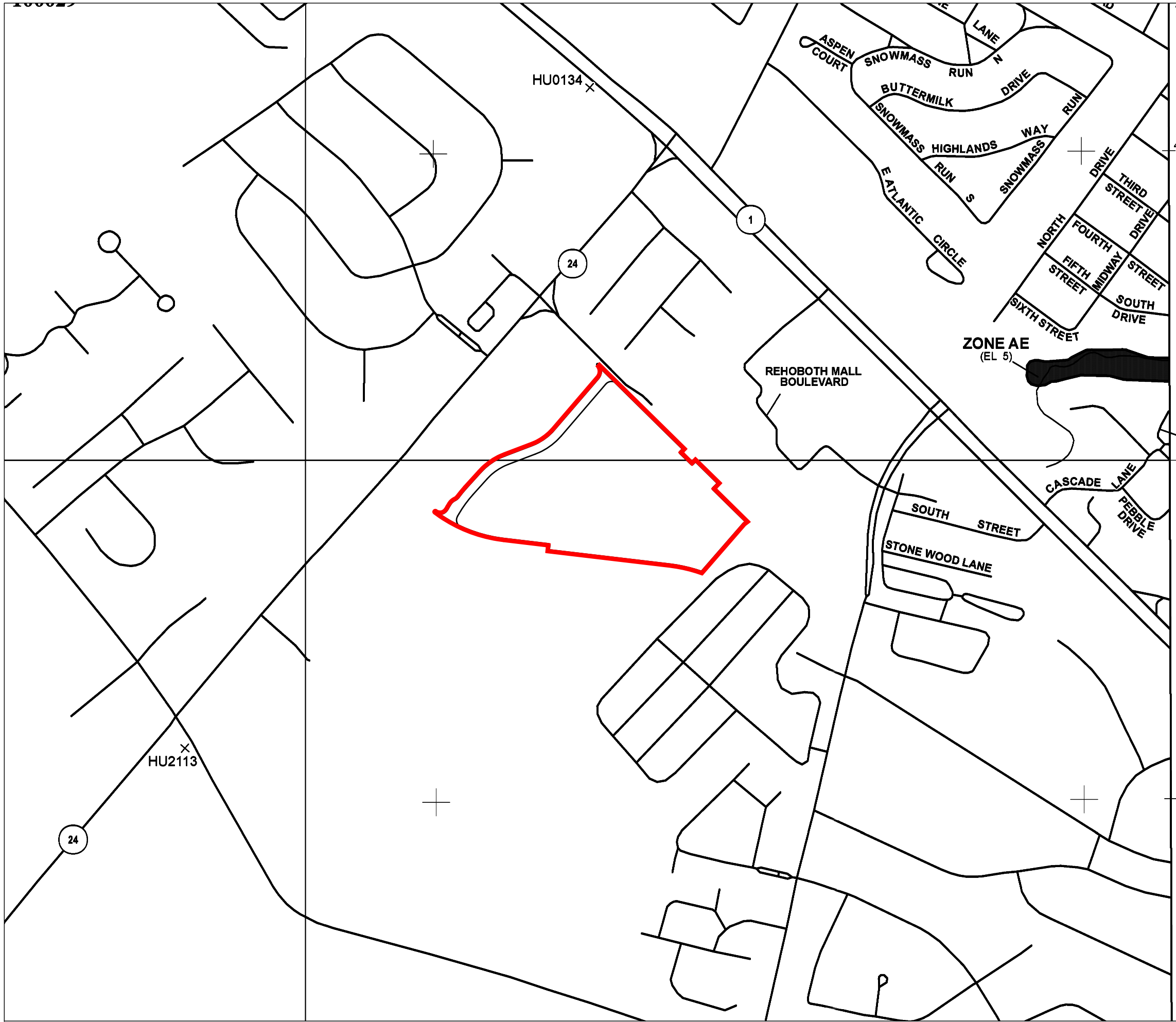
N November 2019
W E S

Surrounding Communities Map

Herola Property
Sussex County, Delaware

0 1,000 2,000
Feet





NATIONAL FLOOD INSURANCE PROGRAM

PANEL 0332K

FIRM
FLOOD INSURANCE RATE MAP

**SUSSEX COUNTY,
 DELAWARE
 AND INCORPORATED AREAS**

PANEL 332 OF 660

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:

<u>COMMUNITY</u>	<u>NUMBER</u>	<u>PANEL</u>	<u>SUFFIX</u>
SUSSEX COUNTY	100029	0332	K

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.



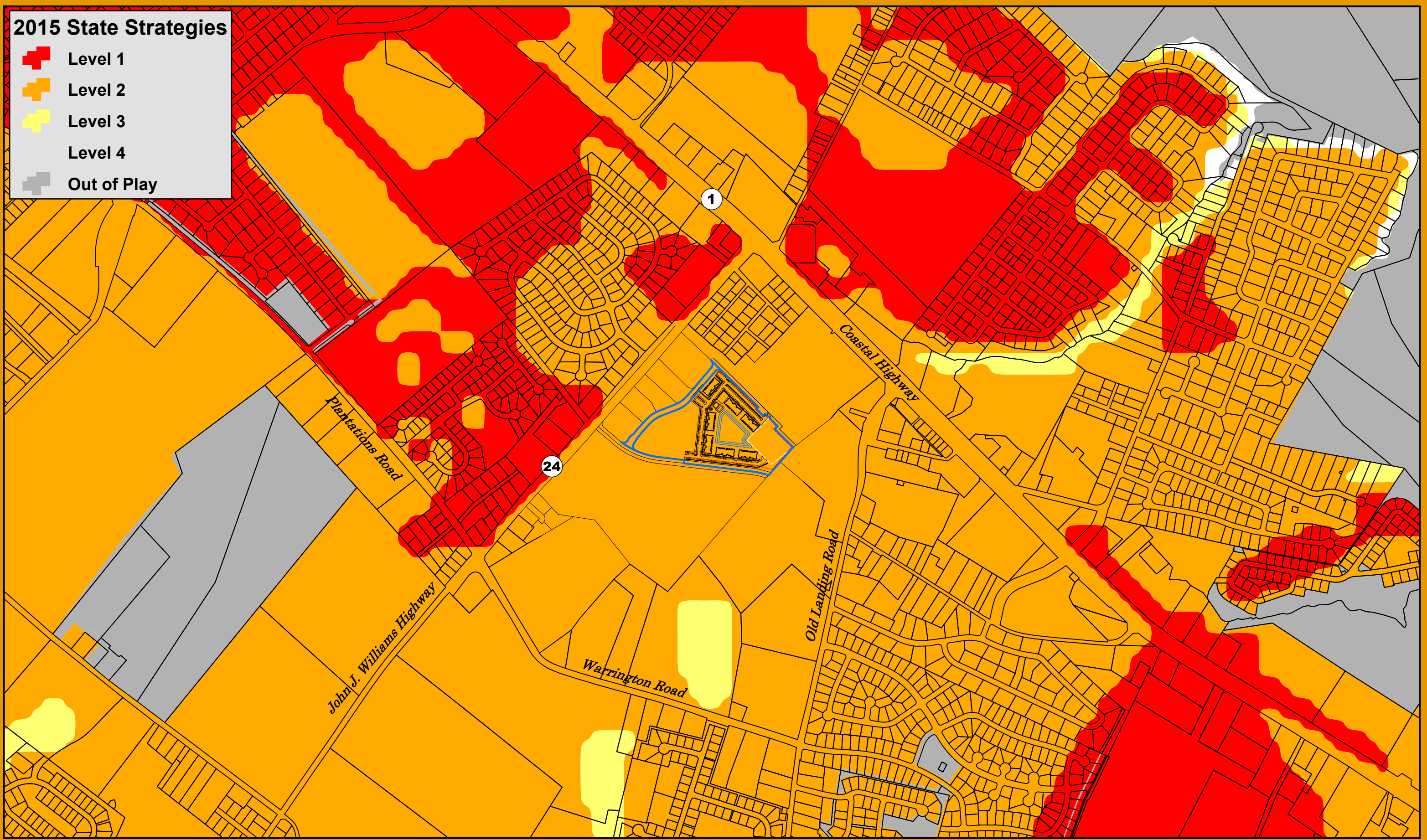
**MAP NUMBER
 10005C0332K**

**MAP REVISED
 MARCH 16, 2015**

Federal Emergency Management Agency

2015 State Strategies

-  Level 1
-  Level 2
-  Level 3
-  Level 4
-  Out of Play



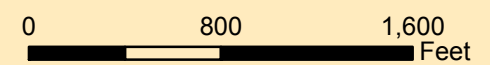
Sources:
Tax Parcels per Sussex County











2015 State Strategies

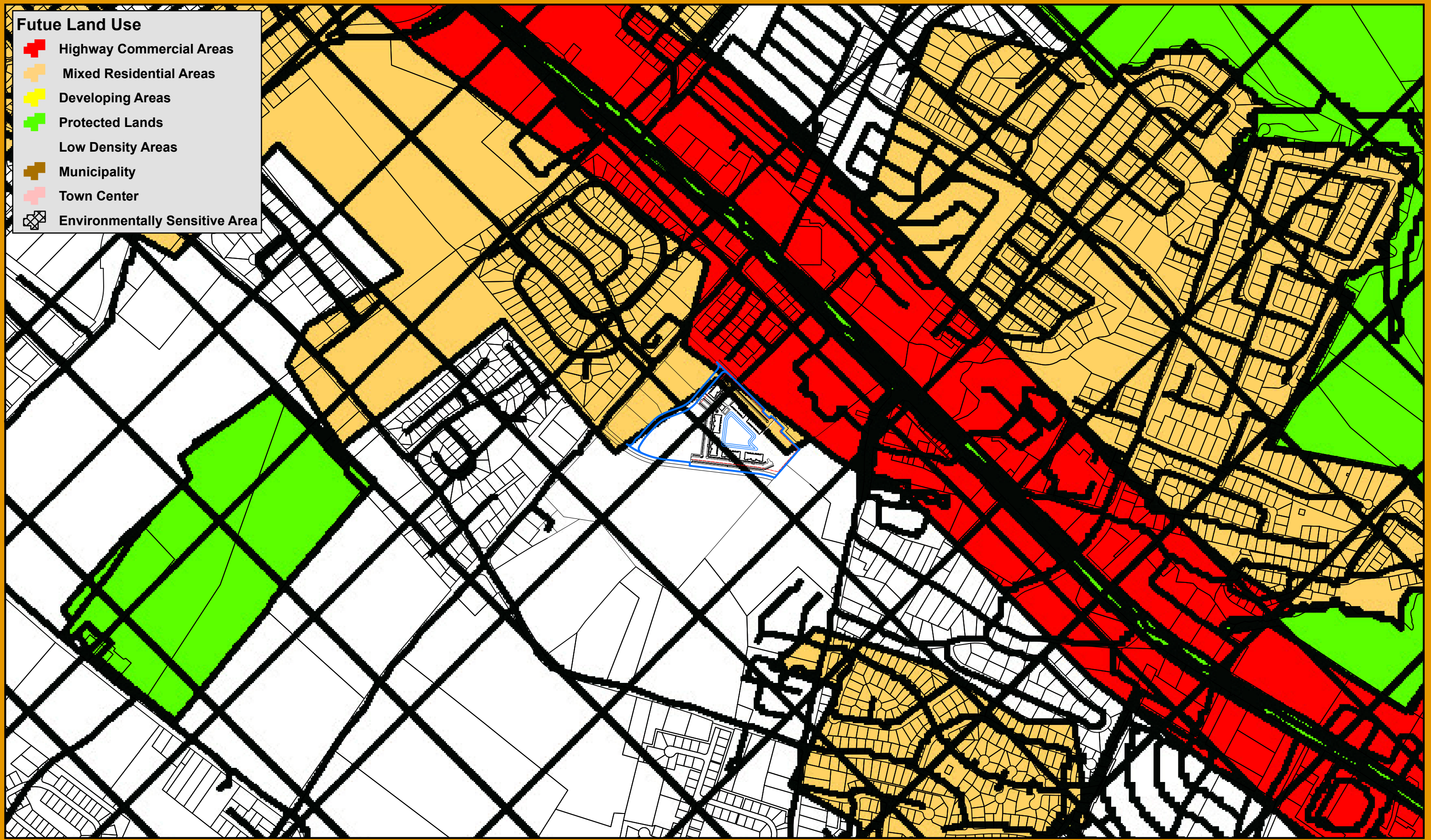
Herola Property

Sussex County, Delaware



Futue Land Use

-  Highway Commercial Areas
-  Mixed Residential Areas
-  Developing Areas
-  Protected Lands
-  Low Density Areas
-  Municipality
-  Town Center
-  Environmentally Sensitive Area

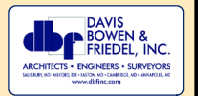
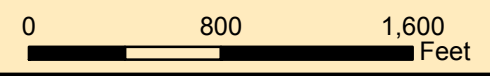


**Entire Site is within the
Environmental Sensitive Developing Area**

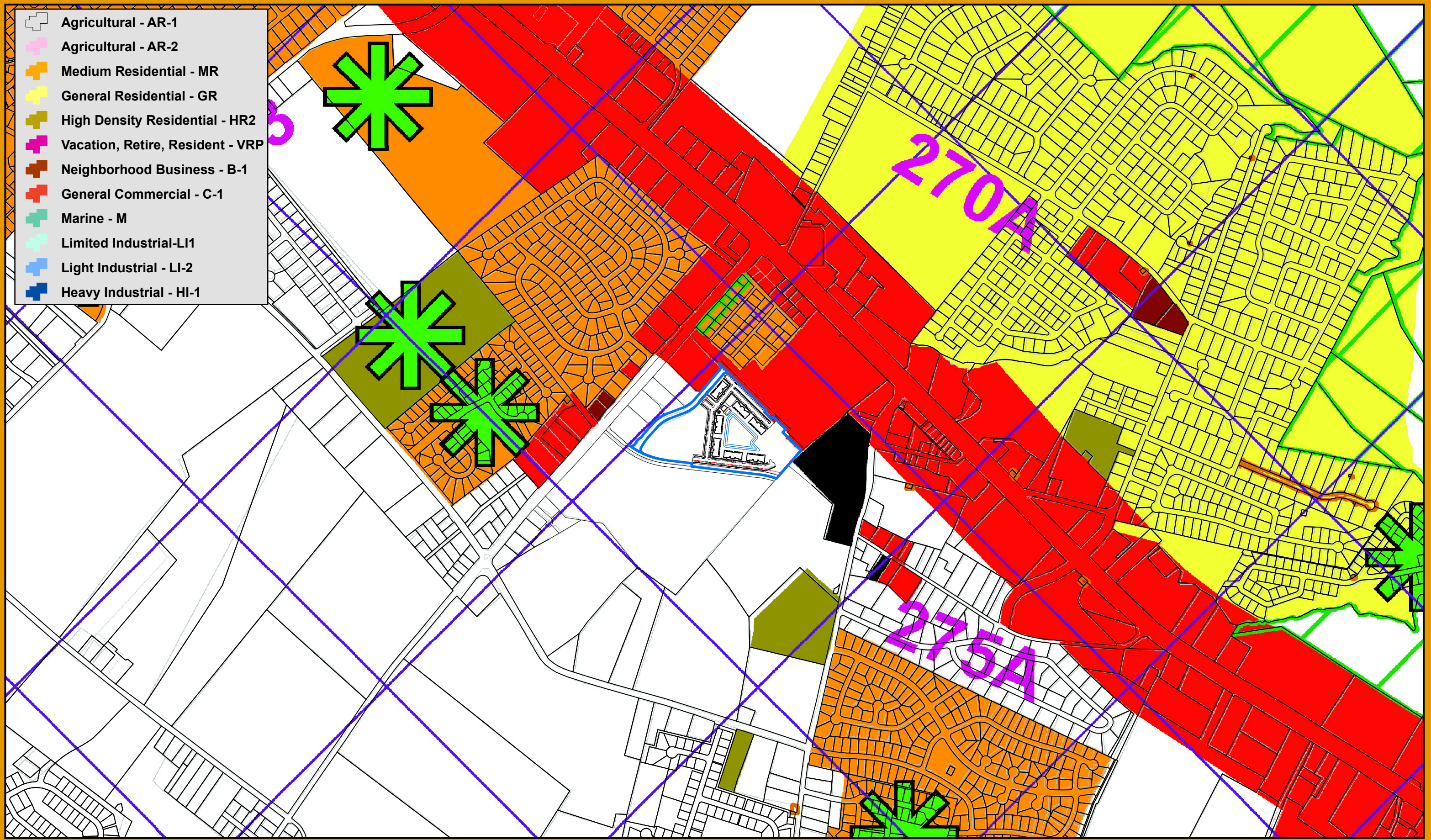
November 2019



Sussex County Future Land Use
Herola Property
Sussex County, Delaware



-  Agricultural - AR-1
-  Agricultural - AR-2
-  Medium Residential - MR
-  General Residential - GR
-  High Density Residential - HR2
-  Vacation, Retire, Resident - VRP
-  Neighborhood Business - B-1
-  General Commercial - C-1
-  Marine - M
-  Limited Industrial-LI1
-  Light Industrial - LI-2
-  Heavy Industrial - HI-1

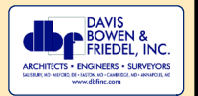


Sources:
Tax Parcels per Sussex County



Sussex County Zoning Map

Herola Property
Sussex County, Delaware



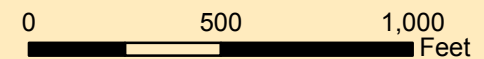


Spring 1992
Aerial Photo

Sources:
Tax Parcels per Sussex County



1992 Aerial Photo
Herola Property
Sussex County, Delaware





Spring 2017
Aerial Photo

Sources:
Tax Parcels per Sussex County

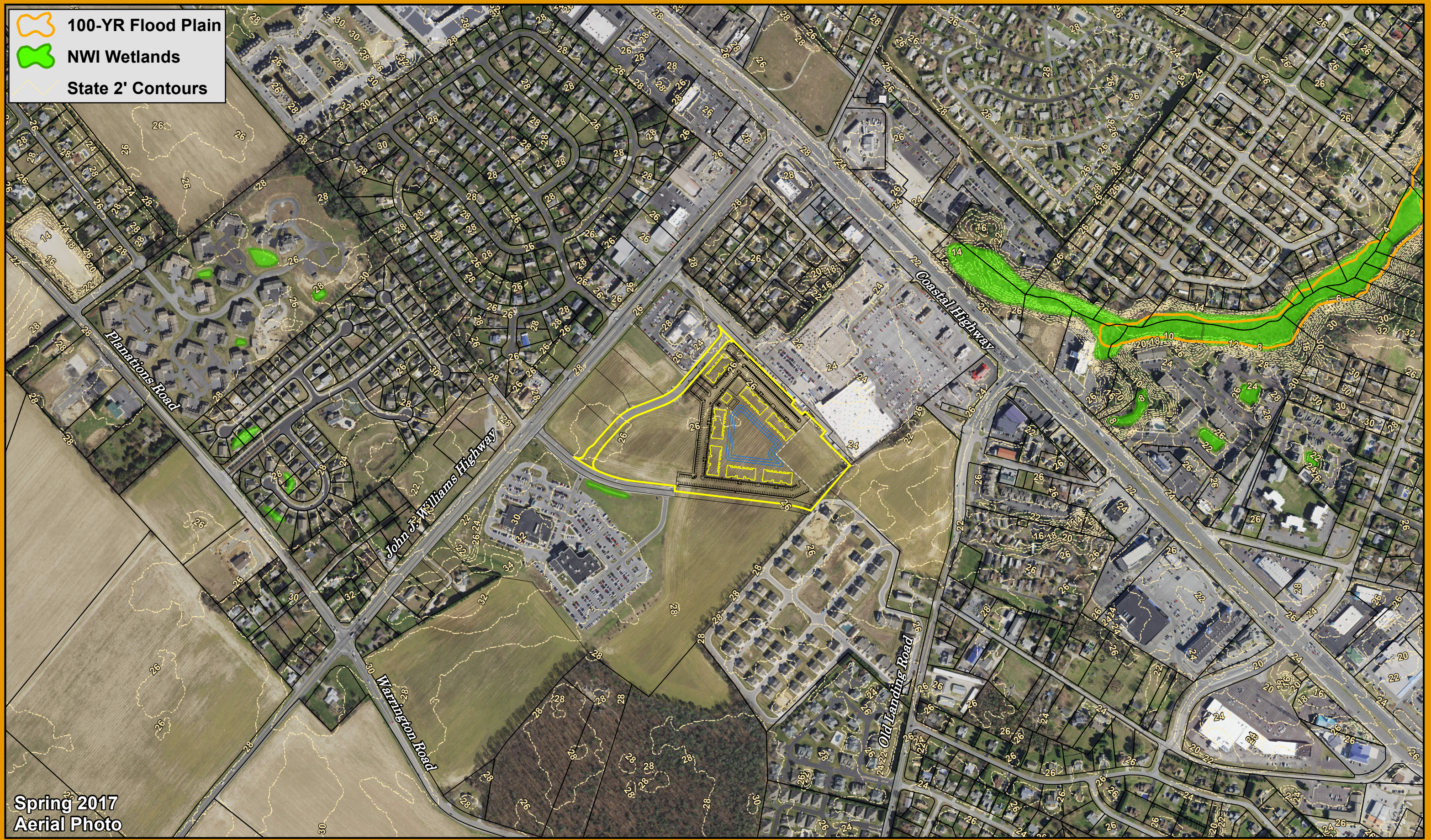


2017 Aerial Photo
Herola Property
Sussex County, Delaware

0 500 1,000
Feet



 100-YR Flood Plain
 NWI Wetlands
 State 2' Contours

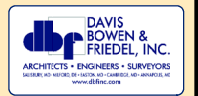




Spring 2017
Aerial Photo

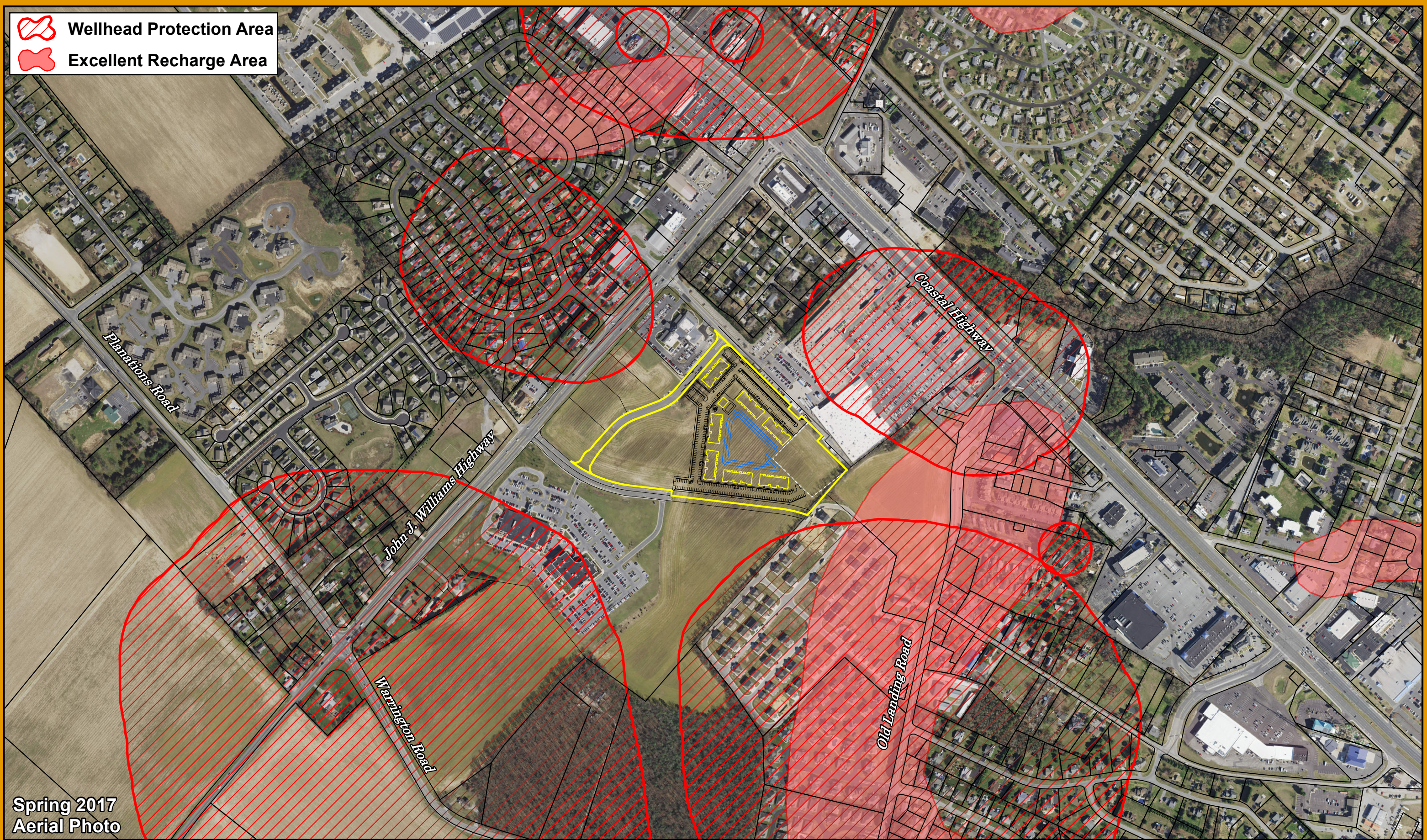
Sources:
Tax Parcels per Sussex County


 November 2019

Environmental Map
Herola Property
 Sussex County, Delaware



-  Wellhead Protection Area
-  Excellent Recharge Area



Spring 2017
Aerial Photo

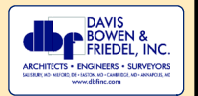
Sources:
Tax Parcels per Sussex County

N November 2019

 W E S

Source Water Protection Areas

Herola Property
Sussex County, Delaware





Spring 2017
Aerial Photo

Lewes Business Directory.

Hotel.

D. D. Murray...Proprietor of Atlantic Hotel.

Merchants.

Wm. P. Orr...Dealer in General Merchandise.
Thos. E. Ricards...
Dodd, Lingo & Burton...
Hitchens & Marshall...Dealers in Grain, Lumber, Lime, Fertilizers and Coal.

Physicians.

David Hall...Physician and Surgeon.
Jos. Lyons...

Residents.

L. L. Lyons...
Jno. P. Marshall...
H. Wolfe...

Farmers.

Harbison Hickman...
N. W. Hickman...
Jno. F. Woods...

Miscellaneous.

Wm. E. Spencer...Real Estate Agent.
Jos. Lafetra...Custom House Officer.
J. S. Burton...Surveyor and Conveyancer.
Wm. M. Hickman...U. S. Assistant Assessor.
Jno. Marshall, Jr...Captain of Schooner "Garnet."
E. D. West...House Carpenter.
Jos. T. Burres...Keeper of Cape Henlopen Lighthouse.

LEWES AND REHOBOTH

Sussex Co.
Scale 1 inch to the Mile.

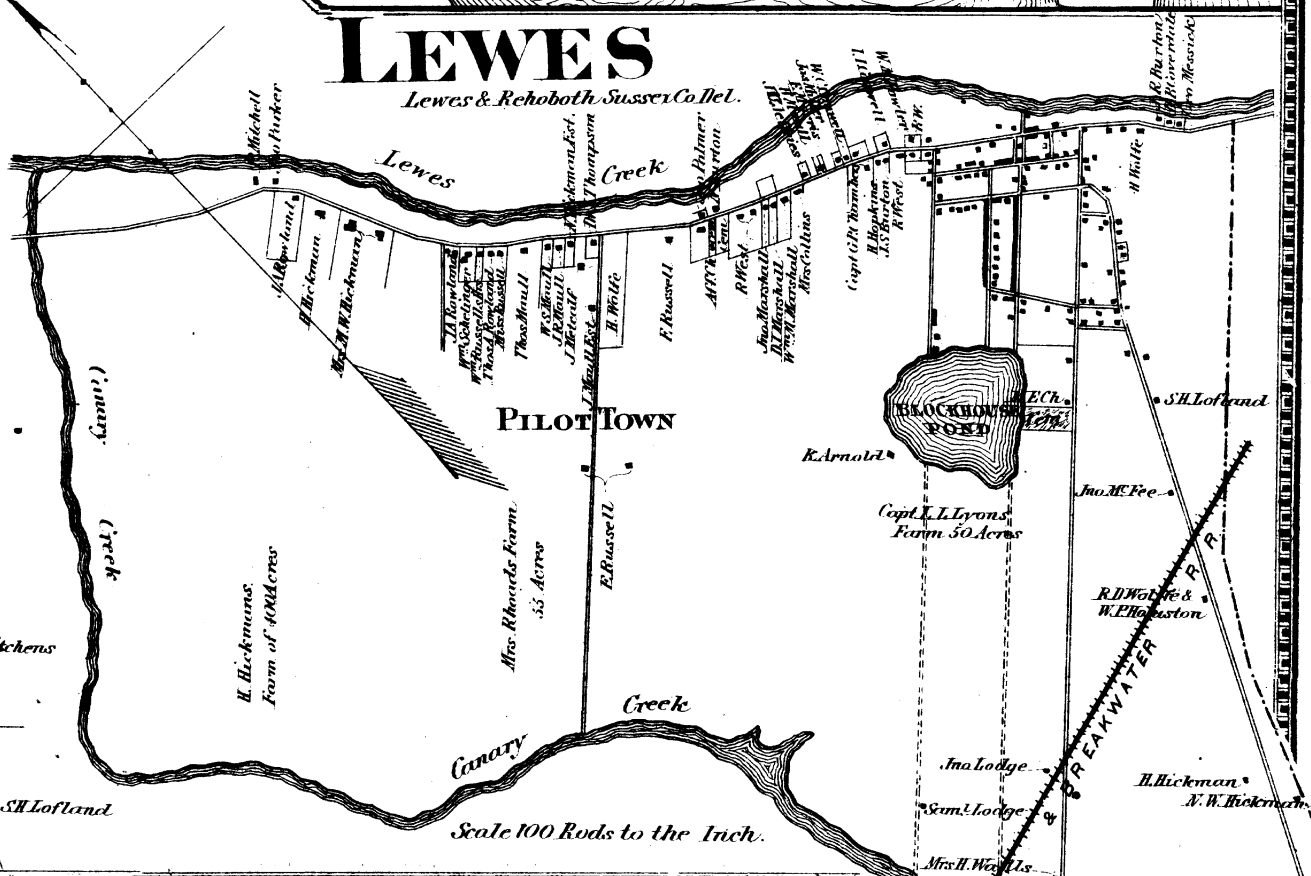
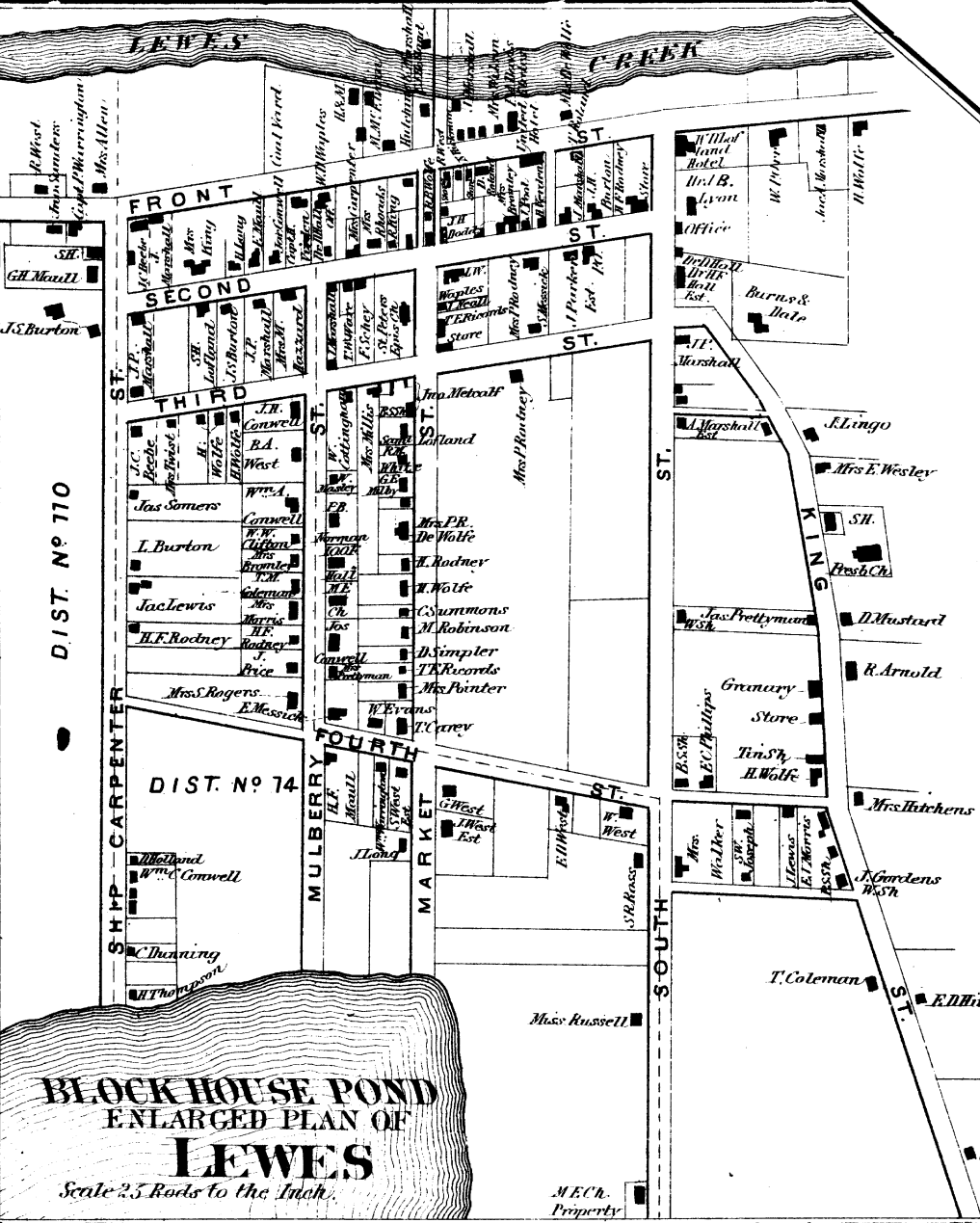
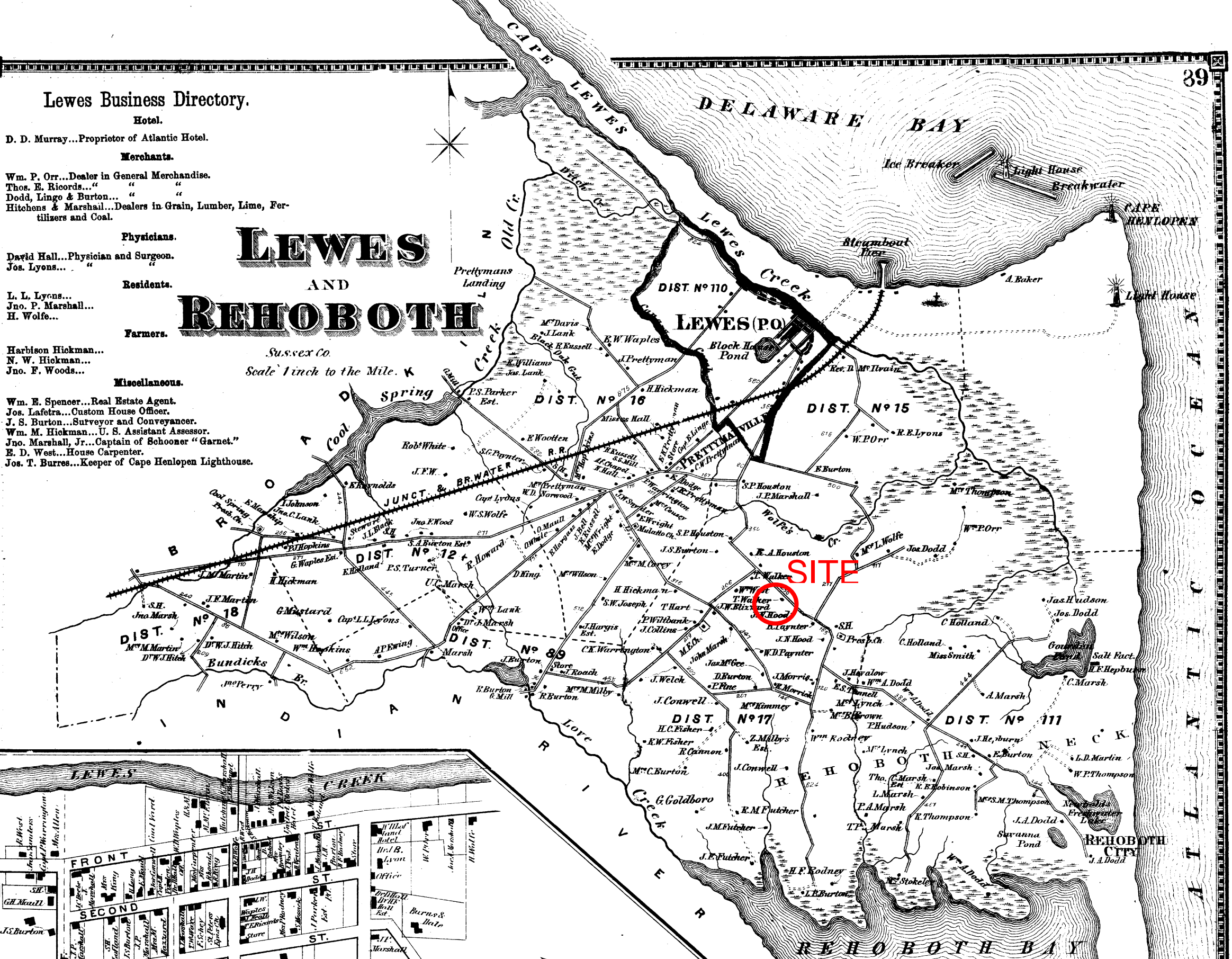


Exhibit 2



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. Box 778
DOVER, DELAWARE 19903

JENNIFER COHAN
SECRETARY

November 20, 2019

Ms. Janelle Cornwell, Director
Sussex County Planning & Zoning
P.O. Box 417
Georgetown, DE 19947

Dear Ms. Cornwell:

This letter is to revise and replace my previous letter of September 10, 2019, regarding a Service Level Evaluation Request for the **OA-Rehoboth, LLC** conditional use application. On October 28, 2019, the applicant submitted a revised application modifying the proposed land use from 216 units of three-story multi-family housing and a 175-unit continuing care retirement community, to 224 units of four-story multi-family housing and a 175-unit continuing care retirement community. We are writing to address that request. A copy of our September 10, 2019 letter is enclosed.

The Department has completed its review of a Service Level Evaluation Request for the above-mentioned application, which we received on October 28, 2019. This application is for a 17.37-acre parcel (Tax Parcel: 334-12.00-127.01). The subject land is located on the southeast side of Delaware Route 24, approximately 1,600 feet northeast of the intersection of Delaware Route 24 and Warrington Road / Plantation Road (Sussex Road 275). The subject land is currently zoned as CR-1 (Commercial Residential) and the applicant is seeking a conditional use approval to develop 224 units of four-story multi-family housing and a 175-unit continuing care retirement community.

Per the 2018 Delaware Vehicle Volume Summary, the annual average and summer average daily traffic volumes along the segment of Delaware Route 24 where the subject land is located, which is from Warrington Road to Delaware Route 1, are 19,505 and 25,103 vehicles per day, respectively.

Based on our review, we estimate that the proposed land use will generate more than 50 vehicle trips per a weekly peak hour or 500 vehicle trips per day, and would be considered to have a Minor impact to the local area roadways. In this instance, the Department considers a Minor impact to be when a proposed land use would generate more than either 50 vehicle trips per a weekly peak hour and / or 500 vehicle trips per day but fewer than 200 vehicle trips per a weekly peak hour and 2,000 vehicle trips per day. Because of this impact, we recommend that the applicant be required to perform a Traffic Impact Study (TIS) for the subject application. However, our Development Coordination



Ms. Janelle M. Cornwell

Page 2 of 2

November 20, 2019

Manual provides that where a TIS is required only because the volume warrants are met, and the projected trip generation will be fewer than 200 vehicle trips per a weekly peak hour and fewer than 2,000 vehicle trips per day, DelDOT may permit the developer to pay an Area-Wide Study Fee of \$10 per daily trip in lieu of doing a TIS. For this application, if the County were agreeable, we would permit the developer to pay an Area-wide Study Fee.

According to the Institute of Transportation Engineers (ITE) Trip Generation Manual, a development of 224 units of four-story multi-family housing and a 175-unit continuing care retirement community would generate 1,657 vehicle trips per day, 101 vehicle trips during the morning peak hour, and 131 vehicle trips during the evening peak hour. As stated above, because this development would generate fewer than 2,000 vehicle trips per day and fewer than 200 vehicle trips during a weekly peak hour, the applicant has the option to pay the Area-Wide Study Fee in lieu of doing a TIS. The Area-Wide Study Fee for the proposed development would be \$16,570.00. Payment of the Area-Wide Study Fee does not preclude a developer from having to make or participate in off-site improvements, including a Traffic Operational Analysis (TOA), if one is found to be necessary during the site plan review process.

If the County approves this application, the applicant should be reminded that DelDOT requires compliance with State regulations regarding plan approvals and entrance permits, whether or not a TIS is required.

Please contact Mr. Claudy Joinville, at (302) 760-2124, if you have questions concerning this correspondence.

Sincerely,



T. William Brockenbrough, Jr.
County Coordinator
Development Coordination

TWB:cjm

Enclosure

cc: Constance C. Holland, Coordinator, Cabinet Committee on State Planning Issues
OA-Rehoboth, LLC, Applicant
J. Marc Coté, Assistant Director, Development Coordination
Gemez Norwood, South District Public Works Manager, Maintenance & Operations
Susanne Laws, Sussex County Subdivision Coordinator, Development Coordination
Derek Sapp, Subdivision Manager, Development Coordination
Kevin Hickman, Subdivision Manager, Development Coordination
Brian Yates, Subdivision Manager, Development Coordination
John Andrescavage, Subdivision Manager, Development Coordination
Troy Brestel, Project Engineer, Development Coordination
Claudy Joinville, Project Engineer, Development Coordination



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. Box 778
DOVER, DELAWARE 19903

JENNIFER COHAN
SECRETARY

September 10, 2019

Ms. Janelle Cornwell, Director
Sussex County Planning & Zoning
P.O. Box 417
Georgetown, DE 19947

Dear Ms. Cornwell:

The Department has completed its review of a Service Level Evaluation Request for the **OA-Rehoboth, LLC** conditional use application, which we received on August 12, 2019. This application is for a 17.37-acre parcel (Tax Parcel: 334-12.00-127.01). The subject land is located on the southeast side of Delaware Route 24, approximately 1,600 feet northeast of the intersection of Delaware Route 24 and Warrington Road / Plantation Road (Sussex Road 275). The subject land is currently zoned as CR-1 (Commercial Residential) and the applicant is seeking a conditional use approval to develop 216 units of three-story multi-family housing and a 175-unit continuing care retirement community.

Per the 2018 Delaware Vehicle Volume Summary, the annual average and summer average daily traffic volumes along the segment of Delaware Route 24 where the subject land is located, which is from Warrington Road to Delaware Route 1, are 19,505 and 25,103 vehicles per day, respectively.

Based on our review, we estimate that the proposed land use will generate more than 50 vehicle trips per a weekly peak hour or 500 vehicle trips per day, and would be considered to have a Minor impact to the local area roadways. In this instance, the Department considers a Minor impact to be when a proposed land use would generate more than either 50 vehicle trips per a weekly peak hour and / or 500 vehicle trips per day but fewer than 200 vehicle trips per a weekly peak hour and 2,000 vehicle trips per day. Because of this impact, we recommend that the applicant be required to perform a Traffic Impact Study (TIS) for the subject application. However, our Development Coordination Manual provides that where a TIS is required only because the volume warrants are met, and the projected trip generation will be fewer than 200 vehicle trips per a weekly peak hour and fewer than 2,000 vehicle trips per day, DeDOT may permit the developer to pay an Area-Wide Study Fee of \$10 per daily trip in lieu of doing a TIS. For this application, if the County were agreeable, we would permit the developer to pay an Area-wide Study Fee.



Ms. Janelle M. Cornwell

Page 2 of 2

September 10, 2019

According to the Institute of Transportation Engineers (ITE) Trip Generation Manual, a development of 216 units of three-story multi-family housing and a 175-unit continuing care retirement community would generate 1,613 vehicle trips per day, 99 vehicle trips during the morning peak hour, and 128 vehicle trips during the evening peak hour. As stated above, because this development would generate fewer than 2,000 vehicle trips per day and fewer than 200 vehicle trips during a weekly peak hour, the applicant has the option to pay the Area-Wide Study Fee in lieu of doing a TIS. The Area-Wide Study Fee for the proposed development would be \$16,130.00. Payment of the Area-Wide Study Fee does not preclude a developer from having to make or participate in off-site improvements, including a Traffic Operational Analysis (TOA), if one is found to be necessary during the site plan review process.

If the County approves this application, the applicant should be reminded that DeIDOT requires compliance with State regulations regarding plan approvals and entrance permits, whether or not a TIS is required.

Please contact Mr. Claudy Joinville, at (302) 760-2124, if you have questions concerning this correspondence.

Sincerely,



T. William Brockenbrough, Jr.
County Coordinator
Development Coordination

TWB:cjm

cc: Constance C. Holland, Coordinator, Cabinet Committee on State Planning Issues
OA-Rehoboth, LLC, Applicant
J. Marc Coté, Assistant Director, Development Coordination
Gemez Norwood, South District Public Works Manager, Maintenance and Operations
Susanne Laws, Sussex County Subdivision Coordinator, Development Coordination
Derek Sapp, Subdivision Manager, Development Coordination
Kevin Hickman, Subdivision Manager, Development Coordination
Brian Yates, Subdivision Manager, Development Coordination
John Andrescavage, Subdivision Manager, Development Coordination
Troy Brestel, Project Engineer, Development Coordination
Claudy Joinville, Project Engineer, Development Coordination

Exhibit 3

Michael R. Wigley, AIA, LEED AP
W. Zachary Crouch, P.E.
Michael E. Wheedleton, AIA
Jason P. Loar, P.E.
Ring W. Lardner, P.E.
Jamie L. Sechler, P.E.

August 9, 2019

Sussex County Administrative Building
Planning and Zoning Department
2 The Circle
P.O. Box 589
Georgetown, DE 19947

Attn: Janelle M. Cornwell, AICP

RE: **Herola Property**
PLUS Comments – 2019-06-03
Tax Parcel No.: 3-34-12.00-127.01
DBF#: 818C032

Dear Ms. Cornwell:

We have read and reviewed the comments provided during the PLUS Review of the Project on June 26, 2019, and received from the Office of State Planning dated July 23, 2019. We offer the following item-by-item response narrative for your review:

Strategies for State Policies and Spending

This project is located in Investment Level 2 according to the Strategies for State Policies and Spending. Investment Level 2 reflects areas where growth is anticipated by local, county, and State plans in the near term future. State investments will support growth in these areas. Our office has no objections to the proposed rezoning and development of this project in accordance with the County codes and ordinances

Thank you for the clarification of a Level 2 state strategies classification.

Code Requirements/Agency Permitting Requirements

Department of Transportation – Contact Bill Brockenbrough 760-2109

- *The proposed apartment complex would access Delaware Route 24 by way of private rights-of-way. The site access is proposed on a 50-foot right-of-way running more or less parallel to Route 24. The east end of that right-of-way is already built and connects to a private service road serving the Rehoboth Mall. The west end has not been built but would connect to a 30-foot right-of-way extending south from Route 24 toward Old*

Landing Road (Sussex Road 274). The 30-foot right-of-way partially contains Lexus Drive, an access road that serves the Beebe Medical Center property on Route 24.

As discussed further below, DelDOT contemplates an extension of Airport Road (Sussex Road 275A) from Old Landing Road to Delaware Route 24 that would include the access road just mentioned. To the extent that the developer wishes to have the 50-foot right-of-way accepted into State maintenance someday, the road within it and the site access on it 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>.

The developer is working with DelDOT regarding options to connect to Old Landing Road. The roads will be designed to Sussex County and DelDOT standards.

- *Presently, in accordance with Section 2.4 of the Development Coordination Manual, DelDOT is working with Sussex County on the creation of the Henlopen Transportation Improvement District (TID), which would extend southwest from Delaware Route 1 along Delaware Routes 23 and 24 to Chapel Branch. If and when the TID is established, developers in the TID would pay a fee, based on their trip generation or a surrogate measure such as dwelling units, to fund transportation improvements in the TID by DelDOT rather than doing Traffic Impact Studies specific to their development and making or funding improvements identified through that effort.*

One of the improvements that could be included in the TID is the extension of Airport Road mentioned above. DelDOT has developed three conceptual alignments for that extension. Copies are attached. While the alignment has not been finally determined and the extension has yet to be designed, presently Alternative B is DelDOT's preferred alternative and the plan should be modified to accommodate it. At the PLUS meeting, the developer's engineer offered that they had developed an alternative proposal for the alignment of the extension. DelDOT is evaluating that proposal.

If the TID is implemented as anticipated, DelDOT would require the developer to provide rights-of-way and, perhaps build some or all of the extension in exchange for credit against their TID fee. Regardless, the rights-of-way should be reserved so as to minimize the effect on the apartment complex when the road is built.

Other anticipated off-site improvements that DelDOT expects to require include improvements to Lexus Drive and two signal agreements, one for Route 24 and Lexus Drive, and one for Old Landing Road and Airport Road.

The developer will continue to work with DelDOT regarding alignment to Old Landing Road and other off-site improvements that may be required.

- Pursuant to Section P.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.

A pre-submittal meeting request form has been submitted and meeting with DelDOT has been scheduled

- Section P.5 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.

The developer will work with DelDOT in regard to fees assessed to the project.

- Per Section 2.2.2.1 of the Manual, Traffic Impact Studies (TIS) are warranted for developments generating more than 500 vehicle trip ends per day or 50 vehicle trip ends per hour in any hour of the day.

From PLUS application, the 216 proposed apartments would generate 1,595 vehicle trip ends per day. DelDOT calculates a slightly different number, 1,595 vehicle trip ends per day of which 99 and 117 vehicle trip ends would occur during the weekday morning and evening peak hours of Route 24, respectively. Therefore the plan meets the warrants for a TIS.

Section 2.2.2.2 of the Manual provides that for developments generating less than 2,000 vehicle trip ends per day and less than 200 vehicle trip ends per hour in any hour of the day, DelDOT may accept an Area Wide Study (AWS) Fee in lieu of the TIS if the local government does not require a TIS. If the County requires a TIS, DelDOT will support their requirement and will not accept the AWS Fee.

The purpose of a TIS is to identify offsite improvements that the developer should build or contribute toward. Regardless of whether a TIS is done for this development, DelDOT anticipates requiring the developer to participate in DelDOT's improvements on Route 24 between Mulberry Knoll Road and Route 1, and to dedicate rights-of-way, and possibly build improvements along the access road that serves Beebe Medical Center and would indirectly serve their site. The amount of the contribution(s) specific improvements and have yet to be determined but the AWS Fee, if paid, would not be counted in that regard. AWS Fees are used to fund traffic studies, not to build improvements. The DelDOT Route 24 project just mentioned is programmed for construction beginning in the spring of 2020 and ending in the spring of 2022.

The developer is working with DelDOT to determine the need for a TIS and/or and Area Wide Study Fee and to determine the extent of offsite improvements.

- *Section 3.5.4.2 of the Development Coordination Manual addresses requirements for Shared Use Paths and sidewalks. For projects in Level 1 and 2 Investment Areas, installation of paths or sidewalks along the frontage on State-maintained roads is required. DelDOT anticipates that the Airport Road extension would include sidewalk on one or both sides and would recommend that the County require continuation of the existing sidewalks along the 50-foot right-of-way discussed above.*

Sidewalks were proposed with the alternatives to the Airport Road Extension. Sidewalks throughout the site will be designed to connect to the Airport Road Extension, Walmart shopping center and Route 24.

- *Referring to Section 3.5.5 of the Manual, existing and proposed transit stops and associated facilities as required by the Delaware Transit Corporation (DTC) or DelDOT shall be shown on the Record Plan.*

Should a transit stop be necessary, it will be shown on the record plan.

State Historic Preservation Office – Contact Carlton Hall 736-7404

- *There are no known archaeological sites or known National Register-listed or eligible properties currently on the parcel. However, the project area is on well-drained soils and prior to development near surface water drainages. There is medium to high potential for prehistoric archaeological resources. Therefore, the SHPO is recommending an archaeological survey of the project area.*
- *If any project or development proceeds, the developer should be aware of the Unmarked Human Burials and Human Skeletal Remains Law (Del. C. Title 7, Ch. 54).*
- *If there is federal involvement, in the form of licenses, permits, or funds, the federal agency, often through its client, is responsible for complying with Section 106 of the National Historic Preservation Act (36 CFR 800) and must consider their project's effects on any known or potential cultural or historic resources. For further information or additional details pertaining to the Section 106 process and the Advisory Council's role; please review the Advisory Council's website at the following: www.achp.gov*

Thank you for researching known archaeological sites and the National Register. The developer is aware of the Unmarked Burials and Human Skeletal Remains Law. We do not anticipate federal involvement, should federal involvement occur the developer comply with the National Historic Preservation Act.

Delaware State Fire Marshall's Office – Contact Duane Fox 259-7037

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):

Fire Protection Water Requirements:

- *Water distribution system capable of delivering at least 1000 gpm for 1-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers.*
- *Where a water distribution system is proposed for multi-family (apartment) sites, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.*

Water distribution will be provided by Tidewater Utilities, Inc. and will meet pressure and duration requirements. The required infrastructure will be added to the plans and submitted for Fire Marshal approval. Hydrant Location, water main locations, and water main sized will be shown on the utility plan and submitted for Fire Marshall review and approval.

Fire Protection Features:

- *All structures over 10,000 Sq. Ft. aggregate will require automatic sprinkler protection installed.*
- *Buildings occupied as apartments (multi-family living units comprising of 3 or more units) will require automatic sprinkler protection installed.*
- *Buildings greater than 10,000 sq. ft, 3-stories or more, over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements*
- *Show Fire Department Connection location (Must be within 300 feet of fire hydrant), and detail as shown in the DSFPR.*
- *Show Fire Lanes and Sign Detail as shown in DSFPR*

Automatic sprinkler protection will be installed and fire connection locations shown as required. Fire lanes and signs will be marked according to Fire Marshall code.

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.*
- *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.*

Accessibility to within 100 ft. will be provided. Breaks in parking allow access to the sides and rear of buildings. A 40' building separation has been provided. We do not anticipate the use of gates to limit access to the development. We do not propose any cul-de-sacs or turnarounds in the site.

Gas Piping and System Information

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

We are currently working with Gas providers and will provide that information on the plans to receive Fire Marshall approval.

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)
- 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

Notes and site data will be added to the site plans and submitted to the Fire Marshal's office for review and approval.

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 the suggestions can benefit the project.*

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The applicant should expect a requirement that all PLUS and Technical Advisory Committee (TAC) comments be addressed prior to submitting plans for review.
Plus and TAC comments will be addressed.
- Please be advised that the Standard General Notes have been updated and posted to the DelDOT website. Please begin using the new version and look for the revision date of March 21, 2019. The notes can be found at <https://www.deldot.gov/Business/subdivisions/>
The latest notes will be used.

Department of Natural Resources and Environmental Control – Michael Tholstrup 735-3352

Water Quality Recommendations

- *Consider using pervious pavement/pavers in parking areas to help minimize impervious cover.*
- *Use green stormwater management technologies where feasible.*

Fish & Wildlife

- *A review of the DNREC database indicates that there are currently no records of state-rare or federally listed plants, animals, or natural communities at this project site.*

Green technologies will be used in the design of stormwater where feasible.

Delaware State Fire Marshall's Office – Contact Duane Fox 259-7037

- *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.*

We look forward to working with your office.

State Housing Authority – Contact: Karen Horton 739-4263

- *DSHA strongly supports the site plan for 216 apartment units on 12.55 acres along Rt. 24 and Old Landing Road in Sussex County. This would provide Sussex County an excellent opportunity to facilitate a more affordable housing product in the Coastal Resort Area. The need for housing affordable to the many county residents who work in this resort economy is acute and well documented. Considering the site's close proximity to the Rt. 24 and Coastal Highway intersection and location within a DSHA-defined "Areas of Opportunity" providing economic opportunity, high performing schools, and supportive infrastructure that help households succeed, this is an excellent location for a more affordable housing product. As a result, the DSHA recommends that Sussex County embrace the opportunity to approve this proposal permitting residents to live close to their jobs, as well as, the resources and benefits this area provides.*
- *DSHA noted their concern with the current scale and site layout. Rental units are vital to any well-balanced community, the intensity of the proposal warrants quality design measures to create a desirable, human-scaled, and pedestrian-oriented community. Incorporating attractive streetscapes, visually appealing façade treatments, significant landscaping and pedestrian-oriented measures will help the proposal integrate into the larger coastal area.*

If you have any questions or would like more information, please feel free to call me at (302) 739-4263 ext. 251 or via e-mail at karenh@destatehousing.com.

Thank you for your support of the project. We look forward to working with the Delaware Housing Authority to bring affordable housing to the area.

Delaware Area Rapid Transit (DART) – Contact: Jared Kauffman 576-6062

- *A pedestrian pathway is needed from entrance of property to SR 24 for people to connect with the bus stop.*
- *Internal pedestrian pathways are needed from internal pedestrian paths to roadways (both to north-south uncompleted roadway, and to east-west uncompleted roadway that allows entrance to Beacon Pediatrics).*

Sidewalks are proposed throughout the site. The developer will work with the adjacent landowner to provide connection to Route 24 via the sidewalk on the southwest side of the vision center optical.

Sussex County – Contact Rob Davis 302-855-7820

- *Approximately 1/3 acre of the parcel is in a Tier 1 area and the remaining portion of the parcel is in a Tier 2 area. The portion of the parcel in the Tier 2 area (approximately 17.41 acres) is not within a sewer district and must be annexed into the sewer district. Sewer service is not available to the Tier 2 area until annexation into the sewer district is approved by the Sussex County Council. The developer will need to complete all administrative procedures for the annexation.*
- *A “Use of Existing Infrastructure Agreement” is required and must be approved prior to approval of construction plans. Sussex County Code, Chapter 110 requires that the Engineer and/or Developer request a Sewer System Concept Evaluation (SSCE) from the Utility Planning Department for their project by providing the parcel(s) estimated equivalent dwelling units (EDU) for the project, along with payment of \$1,000.00 payable to Sussex County Council. The Utility Planning Department will review the parcel(s) and EDU, determine capacity, provide the connection point and define any additional parcels that must be served as part of the project. Should it be determined that a pump station is required for the project, additional information may be requested. This information will be conveyed to the engineer and/or developer as well as the Sussex County Public Works department. The Public Works will use this information when reviewing construction drawings to verify that the correct connection point is used, and all required parcels are served.*
- *Attached is a listing of steps to be completed for extending district boundaries.*
Thank you for clarification of the sewer district boundary. We will begin the process of annexation into the sewer district. Existing Sanitary sewer manholes are located within the private ROW adjacent to this property and will be used for connection. The developer will request a sewer system concept evaluation from the county.

Ms. Janelle M. Cornwell
Sussex County P&Z
August 9, 2019
Page 10 of 10

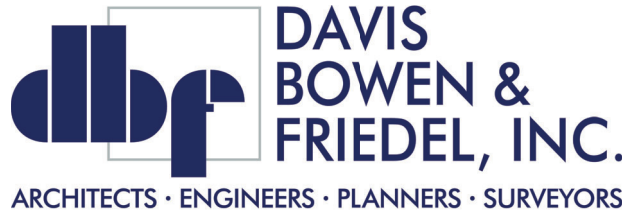
In addition to the comments above our office has received a letter from Brandy Nauman, Sussex County Housing Coordinator & Fair Housing Compliance Officer. A copy of that letter is enclosed with this letter.

On behalf of the Developer we thank the State for providing us with these comments. Please contact me at (302) 424-1441 if you have any questions or need additional information.

Sincerely,
DAVIS, BOWEN & FRIEDEL, INC.



W. Zachary Crouch, P.E.
Principle



*IMPROVING OUR COMMUNITIES.
SHAPING THE WORLD AROUND US.
CREATING VALUE BY DESIGN.*

1 Park Avenue
Milford, DE 19963
(302) 424-1441

601 East Main Street, Suite 100
Salisbury, MD 21804
(410) 543-9091

106 Washington Street, Suite 103
Easton, MD 21601
(410) 770-4744

www.dbfinc.com

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
KIM HOEY STEVENSON, VICE-CHAIRMAN
R. KELLER HOPKINS
J. BRUCE MEARS
HOLLY J. WINGATE



Sussex County

DELAWARE
sussexcountyde.gov
302-855-7878 T
302-854-5079 F
JANELLE CORNWELL, AICP
DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date December 12, 2019

Application: CZ 1900 Michael P. Justice

Applicant/Owner: Michael P. Justice, Trustee
29687 Sawmill Dr.
Dagsboro, DE 19939

Site Location: West side of Parker House Rd., approximately 0.35 mile south of
Beaver Dam Rd.

Current Zoning: GR (General Residential District)

Proposed Zoning: GR-RPC (General Residential District – Residential Planned
Community)

Comprehensive Land
Use Plan Reference: Coastal Area

Councilmatic
District: Mr. Rieley

School District: Indian River School District

Fire District: Millville Fire District

Sewer: Sussex County

Water: Tidewater

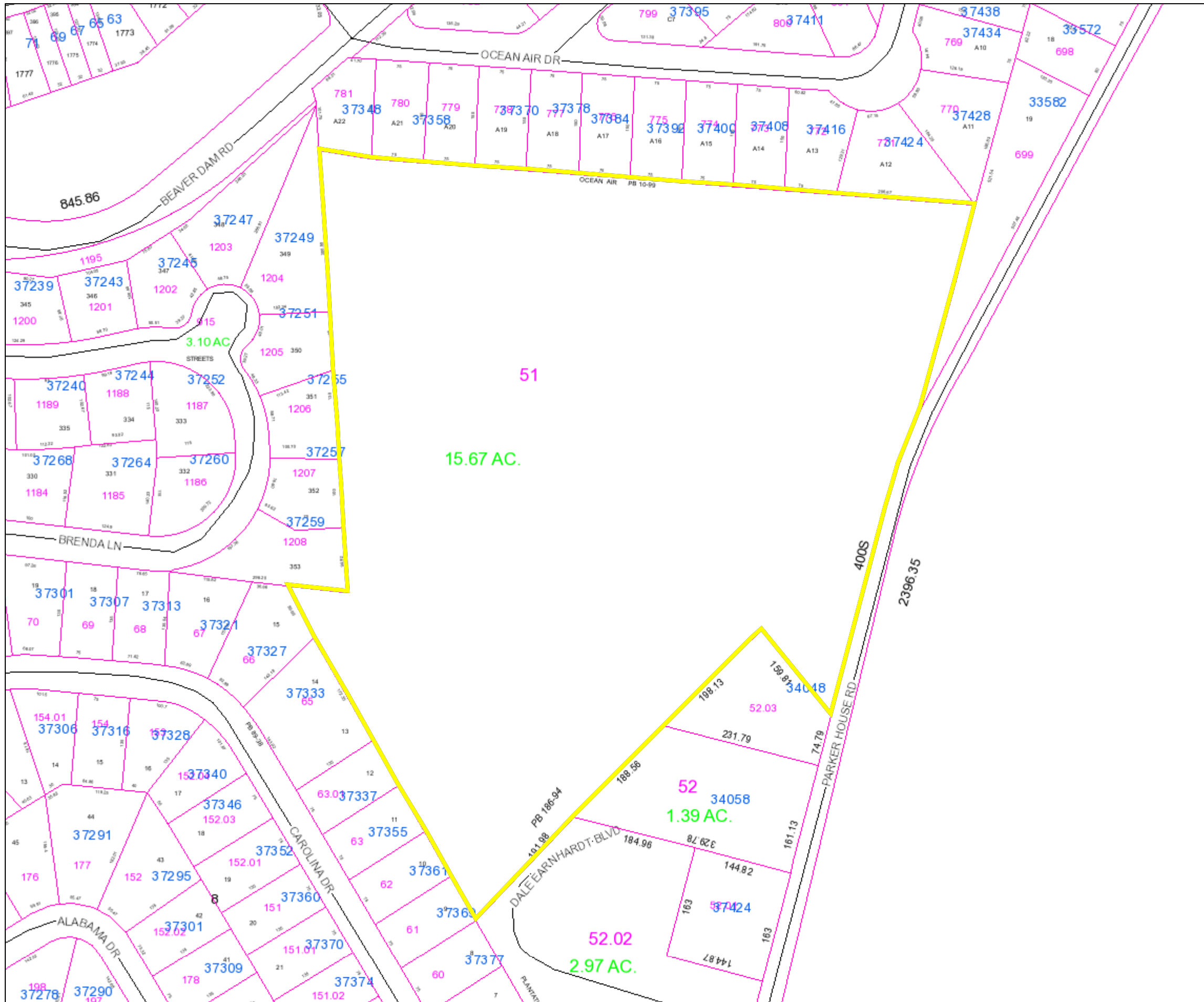
Site Area: 16.1 ac. +/-

Tax Map ID.: 134-16.00-51.00





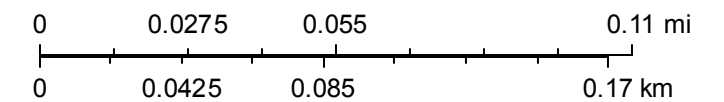
Sussex County



PIN:	134-16.00-51.00
Owner Name	JUSTICE MICHAEL P TTEE REV TR
Book	4741
Mailing Address	29687 SAW MILL DR
City	DAGSBORO
State	DE
Description	OCEAN VIEW TO
Description 2	DOUBLE BRIDGES
Description 3	N/A
Land Code	

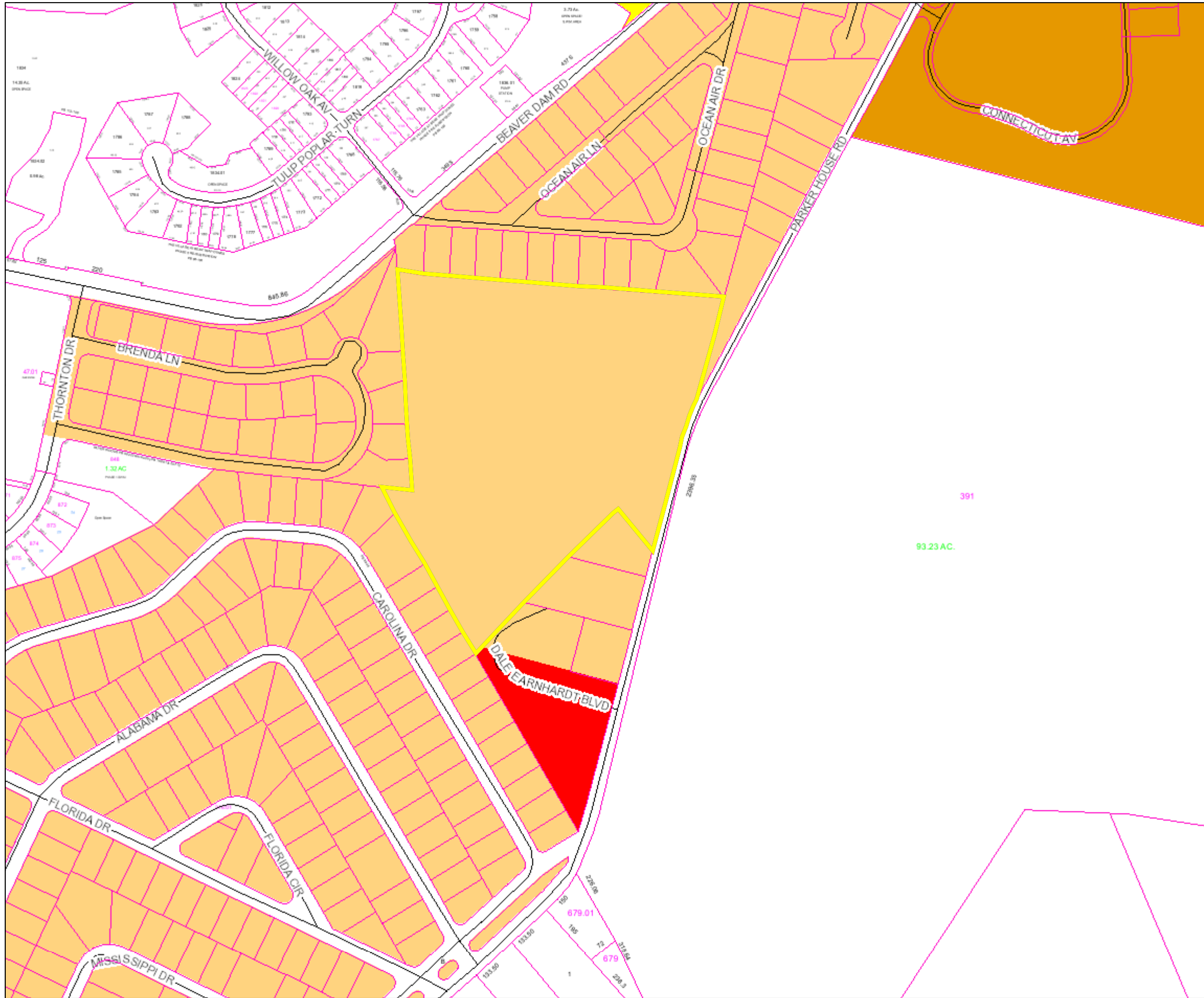
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- Tax Parcels
- 911 Address
- Streets
- County Boundaries

1:2,257





Sussex County



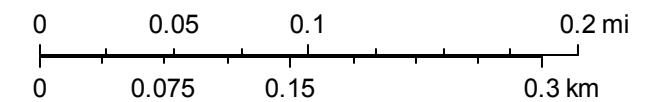
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Owner Name	JUSTICE MICHAEL P TTEE REV TR
Book	4741
Mailing Address	29687 SAW MILL DR
City	DAGSBORO
State	DE
Description	OCEAN VIEW TO
Description 2	DOUBLE BRIDGES
Description 3	N/A
Land Code	

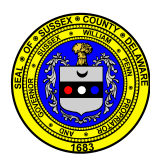
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- polygonLayer**

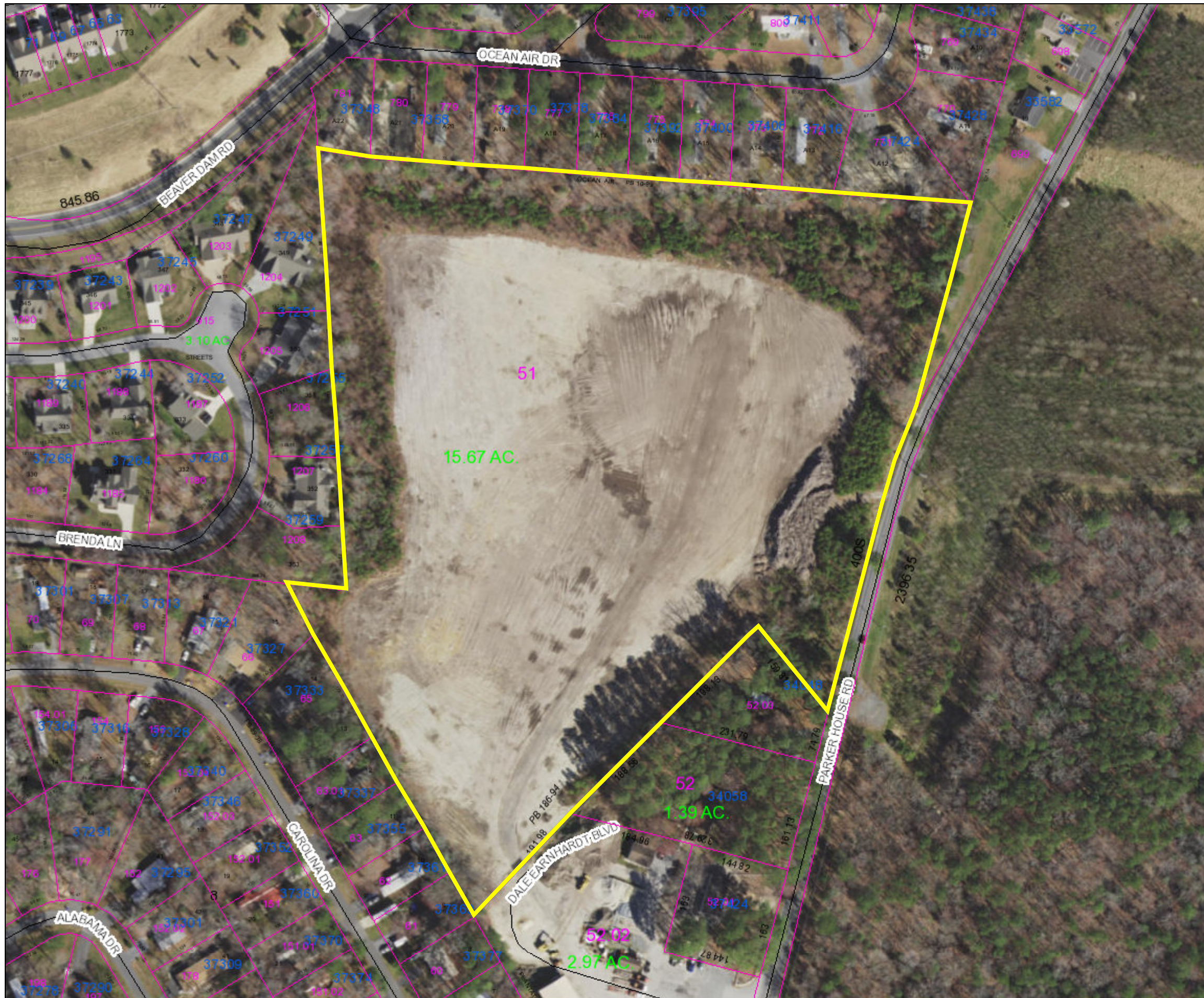
 - Override 1
- Tax Parcels
- Streets

1:4,514





Sussex County



PIN:	134-16.00-51.00
Owner Name	JUSTICE MICHAEL P TTEE REV TR
Book	4741
Mailing Address	29687 SAW MILL DR
City	DAGSBORO
State	DE
Description	OCEAN VIEW TO
Description 2	DOUBLE BRIDGES
Description 3	N/A
Land Code	

polygonLayer

Override 1

polygonLayer

Override 1

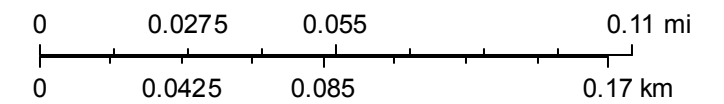
Tax Parcels

911 Address

Streets

County Boundaries

1:2,257



PLANNING & ZONING

JANELLE M. CORNWELL, AICP
DIRECTOR

(302) 855-7878 T
(302) 854-5079 F



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Jamie Whitehouse, Planning & Zoning Manager
CC: Vince Robertson, Assistant County Attorney and Applicant
Date: December 5, 2019
RE: Staff Analysis for CZ 1900 Michael P. Justice

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1900 Michael P. Justice to be reviewed during the December 12, 2019 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for parcel 134-16.00-51.00 to facilitate a change from the General Residential (GR) Zoning District to a General Residential (GR) Zoning District with a Residential Planned Community (RPC) Overlay and is located on the west side of Parker House Rd, approximately 0.35 mile south of Beaver Dam Rd. The size of the property is 16.1 acres +/-.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the property has the land use designation of "Coastal Areas."

The surrounding land use to the north, west and east are also designated as "Coastal Areas." Coastal Areas support a range of housing types including single-family homes, townhouses, and multi-family units provided that any relevant special environmental concerns are addressed.

The property is zoned GR (General Residential District.) The properties directly to the north, west and south of the application site are all also zoned General Residential District (GR). To the immediate south of the application site there is a triangular shaped parcel of land that is zoned C-1 (General Commercial Zoning District).

Since 2011, there has been 1 change of zone application within a 1-mile radius of the application site. CZ 1758 for a change of zone from AR-1 to MR on a 7.2035 acre parcel (134-19.00-19.00) was approved by County Council at its meeting of December 2nd 2014.

Based on the analysis of the land use, surrounding zoning and uses, a change of zone to allow for a GR-RPC in this location, subject to considerations of scale and impact, could be considered as being consistent with the surrounding land use, area zoning, and uses.



File #: CZ1900
201908 966

Planning & Zoning Commission Application Sussex County, Delaware

Sussex County Planning & Zoning Department
2 The Circle (P.O. Box 417) Georgetown, DE 19947
302-855-7878 ph. 302-854-5079 fax

Type of Application: (please check applicable)

Conditional Use
Zoning Map Amendment

Site Address of Conditional Use/Zoning Map Amendment

West side of Parker House Road, 1/2 mile south of intersection with Beaver Dam Road

Type of Conditional Use Requested:

Tax Map #: 134-16.00-51.00 Size of Parcel(s): 16.1 ac.

Current Zoning: GR Proposed Zoning: GR/RPC Size of Building: _____

Land Use Classification: Coastal Area

Water Provider: Tidewater Sewer Provider: Sussex County

Applicant Information

Applicant Name: Michael P. Justice, Trustee
Applicant Address: 29687 Sawmill Drive
City: Dagsboro State: DE Zip Code: 19939
Phone #: (302) 745-8155 E-mail: mike@paulspaving.com

Owner Information

Owner Name: same as applicant
Owner Address: _____
City: _____ State: _____ Zip Code: _____
Phone #: _____ E-mail: _____

Agent/Attorney/Engineer Information

Agent/Attorney/Engineer Name: Axiom Engineering, LLC - C/O Kenneth R. Christenbury, P.E.
Agent/Attorney/Engineer Address: 18 Chestnut Street
City: Georgetown State: DE Zip Code: 19947
Phone #: (302) 855-0810 E-mail: ken@axeng.com



Check List for Sussex County Planning & Zoning Applications

The following shall be submitted with the application

- ✓ **Completed Application**
- ✓ **Provide eight (8) copies of the Site Plan or Survey of the property**
 - Survey shall show the location of existing or proposed building(s), building setbacks, parking area, proposed entrance location, etc.
 - Provide a PDF of Plans (may be e-mailed to a staff member)
 - Deed or Legal description
- ✓ **Provide Fee \$500.00**
- ✓ **Optional - Additional information for the Commission/Council to consider** (ex. architectural elevations, photos, exhibit books, etc.) If provided submit 8 copies and they shall be submitted a minimum of ten (10) days prior to the Planning Commission meeting.
- ✓ **Please be aware that Public Notice will be sent to property owners within 200 feet of the subject site and County staff will come out to the subject site, take photos and place a sign on the site stating the date and time of the Public Hearings for the application.**
- ✓ **DeIDOT Service Level Evaluation Request Response**
- ✓ **PLUS Response Letter** (if required)

The undersigned hereby certifies that the forms, exhibits, and statements contained in any papers or plans submitted as a part of this application are true and correct.


I also certify that I or an agent on my behalf shall attend all public hearing before the Planning and Zoning Commission and the Sussex County Council and any other hearing necessary for this application and that I will answer any questions to the best of my ability to respond to the present and future needs, the health, safety, morals, convenience, order, prosperity, and general welfare of the inhabitants of Sussex County, Delaware.

Signature of Applicant/Agent/Attorney



Date: 8/2/2019

Signature of Owner



Date: 8/2/2019

For office use only:

Date Submitted: 8/5/19

Fee: \$500.00 Check #: 858

Staff accepting application: ceh

Application & Case #: 2019089106

Location of property: _____

Subdivision: _____

Date of PC Hearing: _____

Recommendation of PC Commission: _____

Date of CC Hearing: _____

Decision of CC: _____



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

JENNIFER COHAN
SECRETARY

July 29, 2019

Ms. Janelle Cornwell, Director
Sussex County Planning & Zoning
P.O. Box 417
Georgetown, DE 19947

Dear Ms. Cornwell:

The Department has completed its review of a Service Level Evaluation Request for the **Michael P. Justice, Trustee**, conditional application, which we received on July 2, 2019. This application is for an approximately 15.67-acre parcel (Tax Parcel: 134-16.00-51.00). The subject land is located on the west side of Parker House Road (Sussex Road 362), approximately 1,880 feet southwest of the intersection of Parker House Road and Beaver Dam Road (Sussex Road 368). The subject land is currently zoned GR (General Residential), and the applicant is seeking a conditional use with a residential planned community (RPC) overlay approval to develop 45 single-family detached houses.

Per the 2018 Delaware Vehicle Volume Summary, the annual average and summer average daily traffic volumes along the segment of Parker House Road where the subject land is located, which is from Double Bridges Road (Sussex Road 363) to Muddy Neck Road (Sussex Road 361), are 1,646 and 2,116 vehicles per day, respectively.

Based on our review, we estimate that the above land use will generate fewer than 50 vehicle trips in any hour and fewer than 500 vehicle trips per day. These numbers of trips are DelDOT's minimum warrants for determining that a Traffic Impact Study (TIS) should be required for a particular development. Because the proposed land use would not meet these warrants, we consider the development's traffic impact to be negligible in the context of our agreement with the County regarding land development coordination and we do not recommend that the applicant be required to perform a TIS for the subject application. DelDOT's description of this application as negligible with regard to warranting a TIS does not mean that it is negligible in other respects. We recommend that the applicant not be required to perform a TIS for the subject application.

Because the site would generate more than 200 vehicle trips per day, a Traffic Operational Analysis (TOA) may be required as part of the site plan review process, in accordance with Chapter 2 of the Development Coordination Manual.

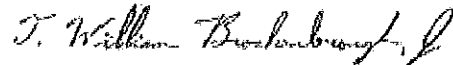


Ms. Janelle M. Cornwell
Page 2 of 2
July 29, 2019

If the County approves this application, the applicant should be reminded that DeIDOT requires compliance with State regulations regarding plan approvals and entrance permits, whether or not a TIS is required.

Please contact Mr. Claudy Joinville, at (302) 760-2124, if you have questions concerning this correspondence.

Sincerely,



T. William Brockenbrough, Jr.
County Coordinator
Development Coordination

TWB:cjm

cc: Constance C. Holland, Coordinator, Cabinet Committee on State Planning Issues
Michael P. Justice, Trustee, Applicant
J. Marc Coté, Assistant Director, Development Coordination
Gemez Norwood, South District Public Works Manager, Maintenance & Operations
Susanne Laws, Sussex County Subdivision Coordinator, Development Coordination
Derek Sapp, Subdivision Manager, Development Coordination
Kevin Hickman, Subdivision Manager, Development Coordination
Brian Yates, Subdivision Manager, Development Coordination
John Andrescavage, Subdivision Manager, Development Coordination
Troy Brestel, Project Engineer, Development Coordination
Claudy Joinville, Project Engineer, Development Coordination

Preliminary Land Use Service (PLUS)

Delaware State Planning Coordination

122 William Penn Street • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-5661

Purpose of PLUS - -The PLUS process is intended to provide consolidated State comments regarding the proposed project. The Applicant is encouraged to submit the application during the concept stages of planning as this process often offers recommendations for changes to the plan. The application should be submitted after the pre-application meeting with the local jurisdiction but before formal application is made.

Please complete this PLUS application in its entirety. All questions must be answered. If a question is unknown at this time or not applicable, please explain. Unanswered questions on this form could lead to delays in scheduling your review. This form will enable the state staff to review the project before the scheduled meeting and to have beneficial information available for the applicant and/or developer at the time of review. If you need assistance or clarification, please call the State Planning Office at (302) 739-3090.

PLUS Number (to be completed by OSPC): _____
Investment Level Per Strategies for State Policies and Spending (to be determined by OSPC): 2

1. Project Title/Name: Evergreen RPC		
2. Location (please be specific): West side-Parker House Road, 1/2 mile south of Beaver Dam		
3. Parcel Identification #: 134-16.00-51.00	4. County or Local Jurisdiction Name: where project is located: Sussex	
5. If contiguous to a municipality, are you seeking annexation: No		
6. Owner's Name: Michael P. Justice, Trustee		
Address: 29687 Sawmill Drive		
City: Dagsboro	State: DE	Zip: 19939
Phone: 302-745-8155	Fax:	Email: mike@paulspaving.co
7. Equitable Owner/Developer (This Person is required to attend the PLUS meeting): same as owner		
Address:		
City:	State:	Zip:
Phone:	Fax:	Email:
8. Project Designer/Engineer: Kenneth R. Christenbury, P.E.		
Address: Axiom Engineering, LLC - 18 Chestnut Street		
City: Georgetown	State: DE	Zip: 19947
Phone: 302-855-0810	Fax: 302-855-0812	Email: ken@axeng.com
9. Please Designate a Contact Person, including phone number, for this Project: Kenneth R. Christenbury, P.E.		

Information Regarding Site:

10. Type of Review: Rezoning, if not in compliance with certified comprehensive plan Site Plan Review Subdivision

11. Brief Explanation of Project being reviewed: Proposed re-zoning to GR-RPC
If this property has been the subject of a previous LUPA or PLUS review, please provide the name(s) and date(s) of those applications.

12. Area of Project (Acres +/-): 16.1 Number of Residential Units: 45 Commercial square footage:

13. Present Zoning: GR 14. Proposed Zoning: GR-RPC

15. Present Use: Vacant 16. Proposed Use: Single Family Detached Dwellings

17. Water: Central (Community system) Individual On-Site Public (Utility)
Service Provider Name: Tidewater

Will a new public well be located on the site? Yes No

18. Wastewater: Central (Community system) Individual On-Site Public (Utility)
Service Provider Name: SUSSEX COUNTY

Will a new community wastewater system be located on this site? Yes No

19. If residential, describe style and market segment you plan to target (Example- Age restricted): Single Family Detached (mix of retirees and families)

20. Environmental impacts:

How many forested acres are presently on-site? _____ ac. How many forested acres will be removed? _____ ac.

To your knowledge, are there any wetlands, as defined by the U.S. Army Corps of Engineers or the Department of Natural Resources and Environmental Control, on the site? Yes No

Are the wetlands: Tidal Acres: _____
 Non-tidal Acres: _____

If "Yes", have the wetlands been delineated? Yes No

Has the Army Corps of Engineers signed off on the delineation? Yes No

Will the wetlands be directly impacted and/or do you anticipate the need for wetland permits? Yes No If "Yes", describe the impacts:

How close do you anticipate ground disturbance to wetlands, streams, wells, or waterbodies? improvements to ditch

21. Does this activity encroach on or impact any tax ditch, public ditch, or private ditch (ditch that directs water off-site)? Yes No

22. List the proposed method(s) of stormwater management for the site: Wet Extended detention basin

23. Is open space proposed? Yes No If "Yes," how much? _____ Acres:

What is the intended use of the open space (for example, active recreation, passive recreation, stormwater management, wildlife habitat, historical or archeological protection)? Forest buffer, shared use path, passive open space

24. Are you considering dedicating any land for community use (e.g., police, fire, school)? Yes No

25. Please estimate How many vehicle trips will this project generate on an average weekday? A trip is a vehicle entering or exiting. If traffic is seasonal, assume peak season: 429

What percentage of those trips will be trucks, excluding vans and pick-up trucks? 1%

26. Will the project connect to state maintained roads? Yes No

27. Please list any locations where this project physically could be connected to existing or future development on adjacent lands and indicate your willingness to discuss making these connections. N/A, infill.

28. Are there existing sidewalks? Yes No; bike paths Yes No
Are there proposed sidewalks? Yes No; bike paths Yes

Is there an opportunity to connect to a larger bike, pedestrian, or transit network? Yes No

29. To your knowledge, is this site in the vicinity of any known historic/cultural resources or sites? Yes No

Has this site been evaluated for historic and/or cultural resources? Yes No

Would you be open to a site evaluation by the State Historic Preservation Office? Yes No

30. To promote an accurate review of your parcel's features, would you permit a State agency site visit? Yes No

Person to contact to arrange visit: K.Christenbur phone number: 302-855-0810

31. Are any federal permits, licensing, or funding anticipated? Yes No

I hereby certify that the information on this application is complete, true and correct, to the best of my knowledge.

[Signature]
Signature of property owner

7/30/2019
Date

[Signature]
Signature of Person completing form
(If different than property owner)

7/30/19
Date

Signed application must be received before application is scheduled for PLUS review.

This form should be returned to the Office of State Planning electronically at PLUS@state.de.us along with an electronic copy of any site plans and development plans for this site. Site Plans, drawings, and location maps should be submitted as image files (JPEG, GIF, TIF, etc.) or as PDF files. GIS data sets and CAD drawings may also be submitted. If electronic copy of the plan is not available, contact the Office of State Planning at (302) 739-3090 for further instructions. A signed copy should be forwarded to the Office of State Planning, 122 William Penn Street, Dover, DE 19901. Thank you for this input. Your request will be researched thoroughly. Please be sure to note the contact person so we may schedule your request in a timely manner.

Ken Christenbury

From: Ken Christenbury <ken@axeng.com>
Sent: Friday, August 02, 2019 8:04 PM
To: Steven Bayer; Dorothy Morris
Cc: Mike Justice; John Sergovic; Christin Headley
Subject: 0188-1502 Evergreen RPC PLUS APPLICATION
Attachments: 0188-1502_SIGNED PLUS Application.pdf; _11X17-0188-1902-CZ-1-3 RPC SKETCH PLAN SET.pdf

Dorothy/Steve,

The attached subdivision has only 45 lots, but it is being filed as a Residential Planned Community and is subject to PLUS review. Please let me know if you need anything further to schedule this for PLUS review.

Thank you,

Ken

Kenneth R. Christenbury, P.E.
President, Axiom Engineering, LLC
18 Chestnut Street
Georgetown, DE 19947
(302) 855-0810
Fax 855-0812

ken@axeng.com
www.axeng.com



18 Chestnut Street
Georgetown, DE 19947
Phone: 302.855.0810
Fax: 302.855.0812
E-mail: ken@axeng.com
www.axeng.com

**Kenneth R.
Christenbury, P.E.**
President

SUSSEX COUNTY ENGINEERING DEPARTMENT
UTILITY PLANNING DIVISION
C/U & C/Z COMMENTS

TO: **Janelle Cornwell**

REVIEWER: **Chris Calio**

DATE: **11/21/2019**

APPLICATION: **CZ 1900 Michael P. Justice**

APPLICANT: **Michael P. Justice, Trustee**

FILE NO: **MC-1.02**

TAX MAP &
PARCEL(S): **134-16.00-51.00**

LOCATION: **West side of Parker House Road, approximately 0.35 mile south of Beaver Dam Road.**

NO. OF UNITS: **35**

GROSS
ACREAGE: **16.1**

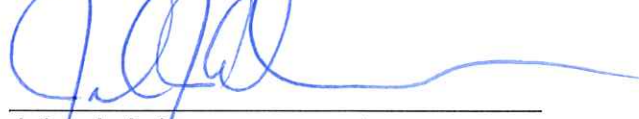
SYSTEM DESIGN ASSUMPTION, MAXIMUM NO. OF UNITS/ACRE: **4**

SEWER:

- (1). Is the project in a County operated and maintained sanitary sewer and/or water district?
Yes No
- a. If yes, see question (2).
b. If no, see question (7).
- (2). Which County Tier Area is project in? **Tier 1**
- (3). Is wastewater capacity available for the project? **Yes, As Proposed** If not, what capacity is available? **N/A.**
- (4). Is a Construction Agreement required? **Yes** If yes, contact Utility Engineering at (302) 855-7717.
- (5). Are there any System Connection Charge (SCC) credits for the project? **No** If yes, how many? **N/A.** Is it likely that additional SCCs will be required? **Yes** If yes, the current System Connection Charge Rate is **Unified \$6,360.00** per EDU. Please contact **Blair Lutz** at **302-855-7719** for additional information on charges.

- (6). Is the project capable of being annexed into a Sussex County sanitary sewer district? **N/A**
- Attached is a copy of the Policy for Extending District Boundaries in a Sussex County Water and/or Sanitary Sewer District.
- (7). Is project adjacent to the Unified Sewer District? **N/A**
- (8). Comments: **Click or tap here to enter text.**
- (9). Is a Sewer System Concept Evaluation required? **Yes, Contact Utility Planning at 302-855-1299 to apply**
- (10). Is a Use of Existing Infrastructure Agreement Required? **Yes**

UTILITY PLANNING APPROVAL:



John J. Ashman
Director of Utility Planning

Xc: Hans M. Medlarz, P.E.
Jayne Dickerson
Blair Lutz



MEMORANDUM

TO: Janelle M. Cornwell

FROM: Debbie Absher, Director of Ag Programs

SUBJECT: LUPA

DATE: December 10, 2019

Attached you will find the comments for the following proposed zoning changes:

- 2019-25 – Workman's Crossing
- CU 2199 – OA-Rehoboth, LLC
- CZ 1900 – Michael P. Justice
- CU 2200 & CZ 1901 – Mary and Victor Rico

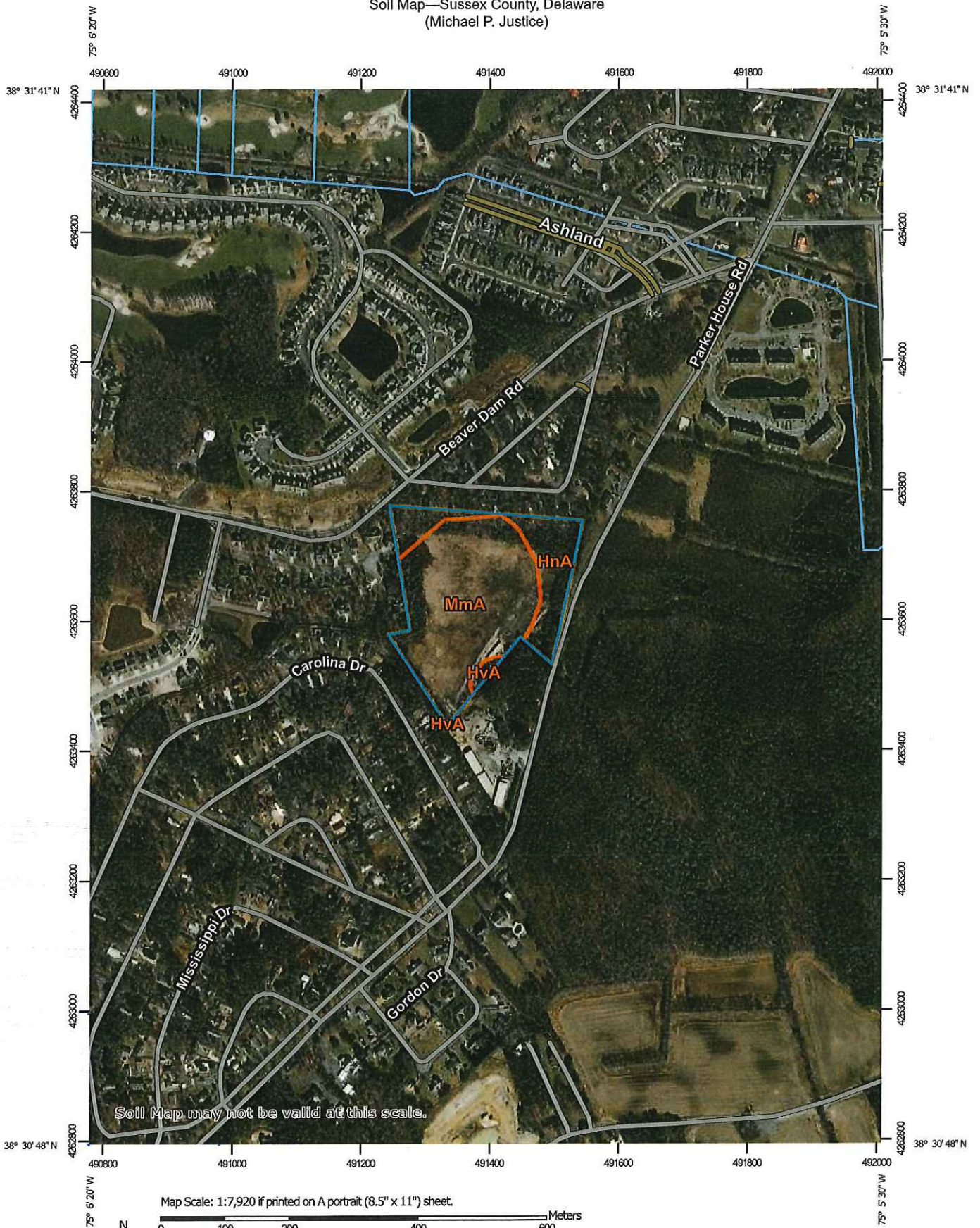
If you have any questions, I can be reached at 856-3990, ext. 3.

BJH
Enclosures

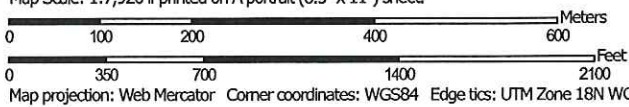


CZ 1900
TM #134-16.00-51.00
Michael P. Justice

Soil Map—Sussex County, Delaware
(Michael P. Justice)



Map Scale: 1:7,920 if printed on A portrait (8.5" x 11") sheet.



MAP LEGEND

- Area of Interest (AOI)
 - Area of Interest (AOI)
 - Soils
 - Soil Map Unit Polygons
 - Soil Map Unit Lines
 - Soil Map Unit Points
- Special Point Features
 - Blowout
 - Borrow Pit
 - Clay Spot
 - Closed Depression
 - Gravel Pit
 - Gravelly Spot
 - Landfill
 - Lava Flow
 - Marsh or swamp
 - Mine or Quarry
 - Miscellaneous Water
 - Perennial Water
 - Rock Outcrop
 - Saline Spot
 - Sandy Spot
 - Severely Eroded Spot
 - Sinkhole
 - Slide or Slip
 - Sodic Spot
- Water Features
 - Streams and Canals
- Transportation
 - Rails
 - Interstate Highways
 - US Routes
 - Major Roads
 - Local Roads
- Background
 - Aerial Photography
- Other
 - Spill Area
 - Stony Spot
 - Very Stony Spot
 - Wet Spot
 - Other
 - Special Line Features

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:24,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Sussex County, Delaware
Survey Area Data: Version 20, Sep 13, 2019

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Nov 21, 2018—Mar 12, 2019

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
HnA	Hammonton sandy loam, 0 to 2 percent slopes	4.3	26.4%
HvA	Hurlock sandy loam, 0 to 2 percent slopes	0.3	1.7%
MmA	Mullica mucky sandy loam, 0 to 2 percent slopes	11.8	71.9%
Totals for Area of Interest		16.3	100.0%

Selected Soil Interpretations

This report allows the customer to produce a report showing the results of the soil interpretation(s) of his or her choice. It is useful when a standard report that displays the results of the selected interpretation(s) is not available.

When customers select this report, they are presented with a list of interpretations with results for the selected map units. The customer may select up to three interpretations to be presented in table format.

For a description of the particular interpretations and their criteria, use the "Selected Survey Area Interpretation Descriptions" report.

Report—Selected Soil Interpretations

Selected Soil Interpretations—Sussex County, Delaware							
Map symbol and soil name	Pct. of map unit	ENG - Dwellings W/O Basements		ENG - Dwellings With Basements		ENG - Septic Tank Absorption Fields (DE)	
		Rating class and limiting features	Value	Rating class and limiting features	Value	Rating class and limiting features	Value
HnA—Hammonton sandy loam, 0 to 2 percent slopes							
Hammonton	80	Somewhat limited		Very limited		Very limited	
		Depth to saturated zone	0.39	Depth to saturated zone	1.00	Depth to saturated zone	1.00
HvA—Hurlock sandy loam, 0 to 2 percent slopes							
Hurlock, drained	42	Very limited		Very limited		Very limited	
		Ponding	1.00	Ponding	1.00	Depth to saturated zone	1.00
		Depth to saturated zone	1.00	Depth to saturated zone	1.00	Ponding	1.00
						Restricted permeability	1.00
Hurlock, undrained	38	Very limited		Very limited		Very limited	
		Ponding	1.00	Ponding	1.00	Depth to saturated zone	1.00
		Depth to saturated zone	1.00	Depth to saturated zone	1.00	Ponding	1.00
						Restricted permeability	1.00

Selected Soil Interpretations--Sussex County, Delaware							
Map symbol and soil name	Pct. of map unit	ENG - Dwellings W/O Basements		ENG - Dwellings With Basements		ENG - Septic Tank Absorption Fields (DE)	
		Rating class and limiting features	Value	Rating class and limiting features	Value	Rating class and limiting features	Value
MmA--Mullica mucky sandy loam, 0 to 2 percent slopes							
Mullica, drained	50	Very limited		Very limited		Very limited	
		Depth to saturated zone	1.00	Depth to saturated zone	1.00	Depth to saturated zone	1.00
Mullica, undrained	30	Very limited		Very limited		Very limited	
		Ponding	1.00	Ponding	1.00	Depth to saturated zone	1.00
		Depth to saturated zone	1.00	Depth to saturated zone	1.00	Ponding	1.00

Data Source Information

Soil Survey Area: Sussex County, Delaware
 Survey Area Data: Version 20, Sep 13, 2019

Prime and other Important Farmlands

This table lists the map units in the survey area that are considered important farmlands. Important farmlands consist of prime farmland, unique farmland, and farmland of statewide or local importance. This list does not constitute a recommendation for a particular land use.

In an effort to identify the extent and location of important farmlands, the Natural Resources Conservation Service, in cooperation with other interested Federal, State, and local government organizations, has inventoried land that can be used for the production of the Nation's food supply.

Prime farmland is of major importance in meeting the Nation's short- and long-range needs for food and fiber. Because the supply of high-quality farmland is limited, the U.S. Department of Agriculture recognizes that responsible levels of government, as well as individuals, should encourage and facilitate the wise use of our Nation's prime farmland.

Prime farmland, as defined by the U.S. Department of Agriculture, is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses. It could be cultivated land, pastureland, forestland, or other land, but it is not urban or built-up land or water areas. The soil quality, growing season, and moisture supply are those needed for the soil to economically produce sustained high yields of crops when proper management, including water management, and acceptable farming methods are applied. In general, prime farmland has an adequate and dependable supply of moisture from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, an acceptable salt and sodium content, and few or no rocks. The water supply is dependable and of adequate quality. Prime farmland is permeable to water and air. It is not excessively erodible or saturated with water for long periods, and it either is not frequently flooded during the growing season or is protected from flooding. Slope ranges mainly from 0 to 6 percent. More detailed information about the criteria for prime farmland is available at the local office of the Natural Resources Conservation Service.

For some of the soils identified in the table as prime farmland, measures that overcome a hazard or limitation, such as flooding, wetness, and droughtiness, are needed. Onsite evaluation is needed to determine whether or not the hazard or limitation has been overcome by corrective measures.

A recent trend in land use in some areas has been the loss of some prime farmland to industrial and urban uses. The loss of prime farmland to other uses puts pressure on marginal lands, which generally are more erodible, droughty, and less productive and cannot be easily cultivated.

Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops, such as citrus, tree nuts, olives, cranberries, and other fruits and vegetables. It has the special combination of soil quality, growing season, moisture supply, temperature, humidity, air drainage, elevation, and aspect needed for the soil to economically produce sustainable high yields of these crops when properly managed. The water supply is dependable and of adequate quality. Nearness to markets is an additional consideration. Unique farmland is not based on national criteria. It commonly is in areas where there is a special microclimate, such as the wine country in California.

In some areas, land that does not meet the criteria for prime or unique farmland is considered to be *farmland of statewide importance* for the production of food, feed, fiber, forage, and oilseed crops. The criteria for defining and delineating farmland of statewide importance are determined by the appropriate State agencies. Generally, this land includes areas of soils that nearly meet the requirements for prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some areas may produce as high a yield as prime farmland if conditions are favorable. Farmland of statewide importance may include tracts of land that have been designated for agriculture by State law.

In some areas that are not identified as having national or statewide importance, land is considered to be *farmland of local importance* for the production of food, feed, fiber, forage, and oilseed crops. This farmland is identified by the appropriate local agencies. Farmland of local importance may include tracts of land that have been designated for agriculture by local ordinance.

Report—Prime and other Important Farmlands

Prime and other Important Farmlands--Sussex County, Delaware		
Map Symbol	Map Unit Name	Farmland Classification
HnA	Hammonton sandy loam, 0 to 2 percent slopes	All areas are prime farmland
HvA	Hurlock sandy loam, 0 to 2 percent slopes	Farmland of statewide importance
MmA	Mullica mucky sandy loam, 0 to 2 percent slopes	Prime farmland if drained

Data Source Information

Soil Survey Area: Sussex County, Delaware
 Survey Area Data: Version 20, Sep 13, 2019

SOILS

ADD ANY ADDITIONAL INFORMATION THAT MAY BE CONSIDERED PERTINENT:

SOILS:

HnA Hammonton sandy loam, 0 to 2 percent slopes
HvA Hurlock sandy loam, 0 to 2 percent slopes
MmA Mullica mucky sandy loam, 0 to 2 percent slopes

- A. SUITABILITY OF SOILS INTENDED USE:
See attached table for suitability.

- B. EVALUATE THE SOILS INCLUDED IN THIS PROJECT WITH RESPECT TO EROSION AND SEDIMENTATION CONTROL:
 - 1. DURING CONSTRUCTION:

Follow recommended erosion and sediment control practices.

 - 2. AFTER CONSTRUCTION:

Maintain vegetation.

- C. FARMLAND RATING (PRIME, UNIQUE, STATEWIDE IMPORTANCE, ETC.):
See attached table(s) for ratings.

- D. ADDITIONAL COMMENTS (IF APPLICABLE):

DRAINAGE AND FLOODING

Add any additional information that may be considered pertinent:

DRAINAGE:

- A. Any Storm flood hazard area affected? Yes No
- B. Would the proposed project necessitate any off-site drainage improvements?
N/A - For Zoning change
- C. Would the proposed project necessitate any on-site drainage improvements?
N/A - zoning change
- D. Any Tax Ditch affected? Yes No

Additional Comments (if applicable)

All landowners, developers, and site designers are strongly encouraged to thoroughly investigate the presence of easements or right-of-ways along tax ditches. These documents are located in the Prothonotary's Office and/or with the Recorder of Deeds. If a stormwater management facility is proposed along a stream or ditch, the Sussex Conservation District will require verification of any easements. Before you start any project design, please look into this matter by calling the Division of Soil and Water Conservation-Drainage Program at (302) 855-1930 or the Sussex Conservation District Sediment and Stormwater Program at (302) 856-7219 for more information.

Russell Warrington

From: nfwelsch@verizon.net
Sent: Wednesday, December 11, 2019 12:23 PM
To: Russell Warrington
Subject: C/Z 1900 MICHAEL P. JUSTICE Parcel Re-zoning Public Hearing

Ref: Norman Welsch - Comments to the Planning & Zoning Commission

To Whom It May Concern:

My purpose for submitting these comments to be aired at the meeting is to alert the Commission regarding previous water management issues related to the Justice parcel, and request that Sussex County Planning and Zoning, Michael Justice, Plantation Park, and other state departments/agencies, will jointly ensure that appropriate water management systems required by Delaware and Sussex County regulations will be designed, reviewed and constructed and maintained to prevent flooding on the adjacent and abutted residential properties. It should be noted that based on previous conversations with Mr. Justice and his proposed actions to date, it seems he is being a responsible developer and intends to take the correct action and do the right thing.

Background

My wife and I own a vacation home (not a primary residence) in the Silver Woods Phase I development, which abuts the Justice parcel now subject to re-zoning.

When we settled on the house in January 2008, the Justice parcel was mostly a wooded area of mature trees. In subsequent years, most of the trees were clear cut, leaving approximately a 20-yard buffer of trees behind our house and a few of our neighbors and the Justice parcel. During 2016/2017, the Justice parcel was cleared further, and tons of dirt were trucked in and dumped across the entire parcel. This effectively resulted in the ground being elevated above that in the buffer zones behind our houses, forming a slope onto our properties.

The significant rains in 2018 and spring 2019 caused severe flooding in an area on the Justice parcel behind our abutted properties, which drained onto my and neighboring properties due to storm water run-off from the elevated Justice parcel. It forced us, at considerable personal cost, to have our lots re-graded and drainage tiles installed. Despite this, our crawl space was submerged in a foot of water several times, which we also had to pay to have remediated. Essentially, our properties had become a Sump area for the run-off from the Justice parcel.

In March 2019, some workers began pumping the water that was on the Justice parcel to an area away from the buffer of trees behind our properties, and our flooding problem seemed to

disappear in hours. I called and spoke with Mr. Justice, who indicated he was developing the property for residential use, and the drainage problem was exacerbated by Plantation Park trailer park landowners who had dammed up a drainage ditch leading to and through their property. He indicated he had surveyors coming in a week or so, and the water was being pumped away from the flooded area to permit the surveyors to do their work. He indicated he was willing to put in a drainage ditch and impoundment to catch run-off, but that Plantation Park should be forced to tie into the ditch.

A week or so later (April 2019), my neighbor Steve Maternick, who is a permanent resident of Silver Woods, talked with engineers from Axiom engineering who were marking off my and his property lines to determine the extent of the problem and how the storm water runoff from the Justice parcel could possibly be resolved.

Approximately a month ago (November 2019), Mr. Maternick told me that Mr. Justice visited our properties and they had a chance to discuss the water problem. In that discussion, Mr. Justice indicated to Mr. Maternick that he was going to construct the ditch and a run-off collection pond toward the southern side of the Justice parcel.

Comments for Planning and Zoning Commission meeting December 12, 2019

Regarding CZ 1900 Michael P. Justice, Trustee

Submitted by:

Steven Maternick

37249 Brenda Lane

Frankford, DE 19945

Good evening. My name is Steve Maternick and I live in the Silver Woods Community at 37249 Brenda Lane, which is located immediately adjacent to the subject property owned by Michael Justice at the Northwest boundary corner.

My wife and I purchased our lot in Silver Woods in 2007 and our home was completed in February 2010. I became a full-time resident in September 2016.

As it pertains to the proposed development of the Evergreen RPC community I would like to state right off the top that I am not opposed to the development in concept. However, I do have a few concerns with regards to drainage and flooding potential, as well as the lack of a buffer along our property line.

I have reviewed the entire application and paperless package for this project. In doing so, I noticed that a road for the proposed community will end very close to our property line at a drainage easement and it appears that the existing forested buffer will be removed right up to our property line. I am concerned that this impervious road surface ending so close to our property and removal of the existing forest buffer will exacerbate recent flooding issues experienced over the past two years.

A bit of background regarding the recent flooding issues: When we bought our lot in 2007, the subject property for this application was covered by a mature forest. The property was cleared again sometime around 2014. During the period of time between 2007 until 2018, we did not experience any major flooding issues on our property, despite the clearing of the adjoining property twice and some significant rain events, including hurricane Sandy. However, over the past two years, properties in the Silver Woods development, situated along the western boundary of the Michael Justice property, have experienced severe flooding in the Spring of 2018 and the Winter of 2018 and 2019. (See attached photos of the flooding.) We are hopeful that the necessary and required stormwater management plans for this new community will mitigate these flooding issues.

As for some of my specific questions regarding this project that I hope can be addressed by the Planning and Zoning Commission:

Pages 85 and 86 of the paperless packet, Drawing CZ-1 and CZ-2 (Cover sheet sketch plan) show no forest buffer along our property line and that of our neighbor, Norman Welsch. However, on page 156, on the Wetlands Impact Permit sketch it shows a forest buffer. Which is it? I would like a forest buffer to be added along our property line as it is for all other adjoining properties. I will note that on page 96 in the Compliance with Subdivision Ordinance 99-C(1) it states that, "All adjacent properties are buffered

Opposition
Exhibit

FILE COPY

CZ 1900

by 20' wide areas in common open space where existing woods are to remain, or forested buffers are to be planted where none exist."

Regarding the proposed road ending so close to our property. How is the end of the road going to be configured so that water does not just rush down the road onto our property? Will the width of the road at its end point be curbed and drains in place that will carry the water away? Right now, from what I can see, that road ends without any indication of storm drains or barriers to stop the water. It looks like it will drain into the easement.

Lastly, in the Proposed Findings of Fact and Conditions for Change of Zone #1900; it states, in item 11 pertaining to Section 99-9C of the Subdivision Ordinance, item f: "Objectionable features, such as dry storm water management ponds and homes adjacent to neighboring properties will be minimized by the inclusion of forest buffers around the perimeter of the proposed dwelling lots." I consider the road way ending close to our property as an objectionable feature and would like consideration of a buffer to be added to curtail our view of the roadway.

Re: C2 1900 M. Justice
View of Flooding at 37249 & 37251 Brenda Lane, Silver Woods, on 2/24/19, Adjacent to
Mike Justice's property.

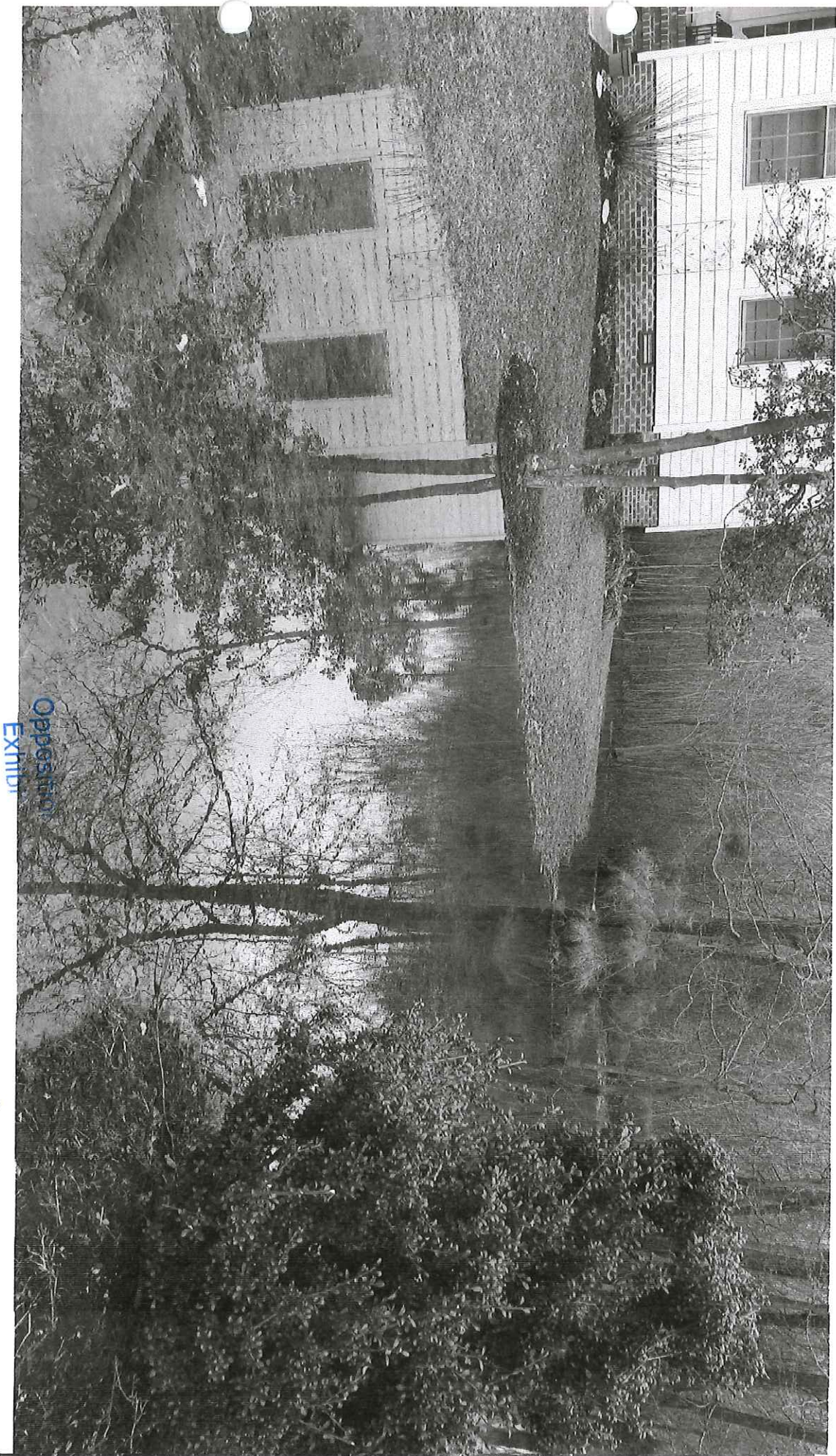


Opposition
Exhibit

FILE COPY

Submitted by: Steve Maternick
37249 Brenda Lane
Frankford DE

Re: CZ 1900 M. Justice
View of Flooding at 37249 Brenda Lane, Silver Woods, on 3/4/19. Adjacent to Mike Justice's property.



Opposition
Exhibit

Submitted by:
Steve Materick
37249 Brenda Lane
Frankford, DE

FILE COPY

Re: CZ 1900 M. Justice
View of Flooding at 37249 + 37251 Brenda Lane, Silver Woods, on 3/4/19. Adjacent to
Mike Justice's property.



Opposition
Exhibit

FILE COPY

Submitted by:
Steve Mafernick
37249 Brenda Lane
Frankford, DE

Re: CZ 1900 Mike Justice
View of flooding on Mike Justice property where it joins Silver Woods Properties
located at 37249 & 37251 Brenda Lane. Photo taken 3/4/19



Exposition
Exhibit

FILE COPY

Submitted by:
Steve Maternick
37249 Brenda Lane, Frankford
DE

Re: CZ 1900 M. Justice
Views of Flooding at 37249 ~ 37251 Brendalane, S. Sea Woods, on 3/10/19. Adjacent to Mike
Justice's property.



Exposition

Exhibit

FILE COPY

Submitted by: Steve Mafernick
37249 Brendalane
Frankford, DE

Re:
CZ 1900
M. Justice

View of
flooding on
3/20/19
prior to
Mr. Justice
pumping
water off
his property.



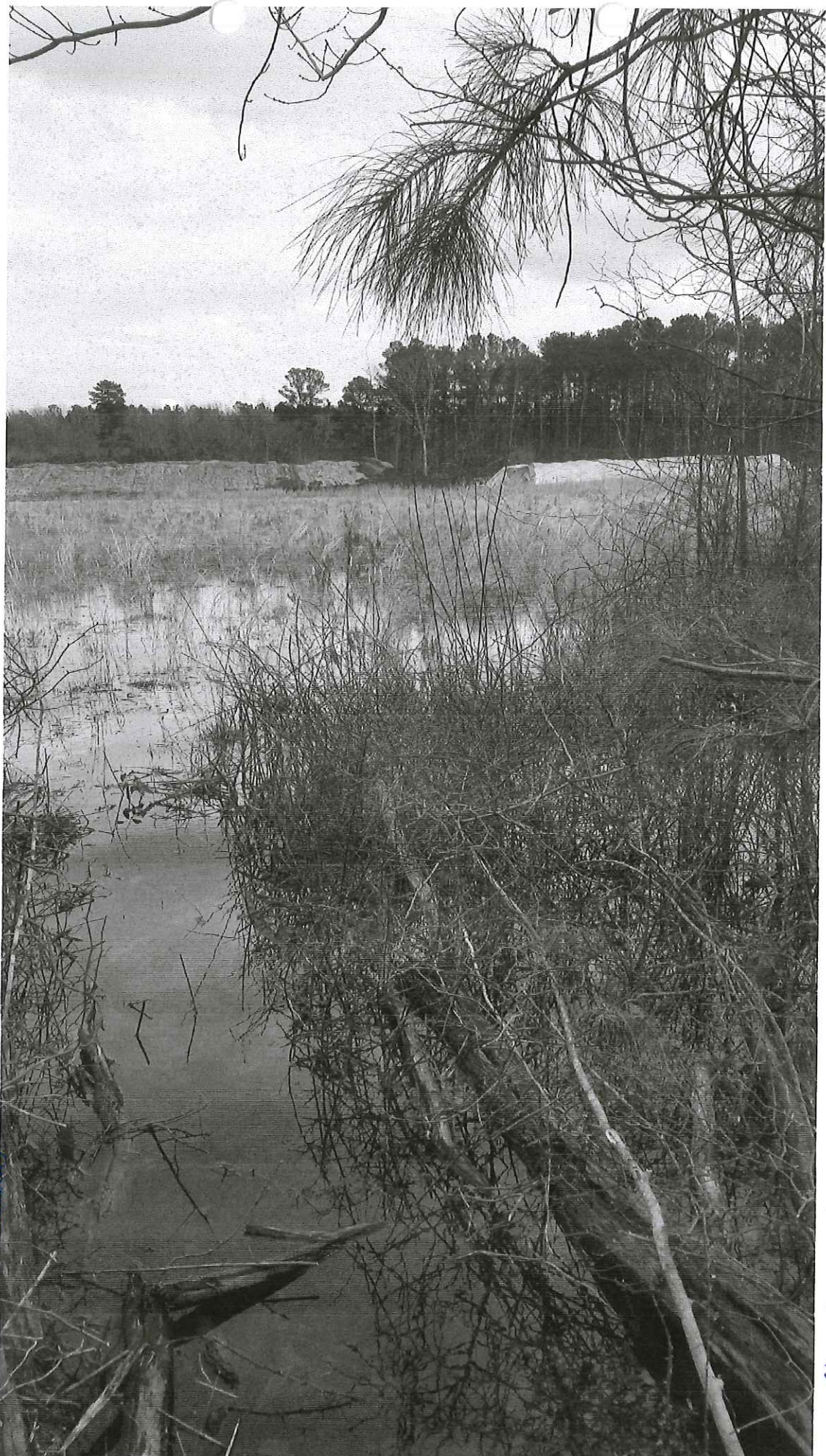
FILE COPY

Opposition
Exhibit

Submitted
by:
Steve Maternick
37249 Brenda
Lane, Frankford
DE

QZ 1900
M. Justice
3/20/19

View of
flooding
on Mr.
Justice's
Property
adjacent
to Silver
Woods.



Opposite
Exhibit

FILE COPY

Submitted
by:
Steve
Maternick
37249 Brenda
Lane
Frankford
DE

Re: C2 1900 Michael Justice

View of Silver woods Properties (37249 + 37251 Brenda lane)
after Mr. Justice pumped water off his property.

3/27/19



Opposite
Exhibit

Submitted by:

FILE COPY

Steve Mafernick
37249 Brenda Lane, Frankford
DE

Public Hearing

12/12/19 6:00pm

C/2 1900 Michael

P Justice Trustee

Tax Parcel 134-16.00

51.00

We are totally against
this. This property backs up
to ours & we continue to have
problems with flooding
& ditches that the owners
send the water our way. I
don't trust that they
will do the right thing
with the lands.
DUREC has been out

many times and their
land is not zoned for residential
district.

Our property is

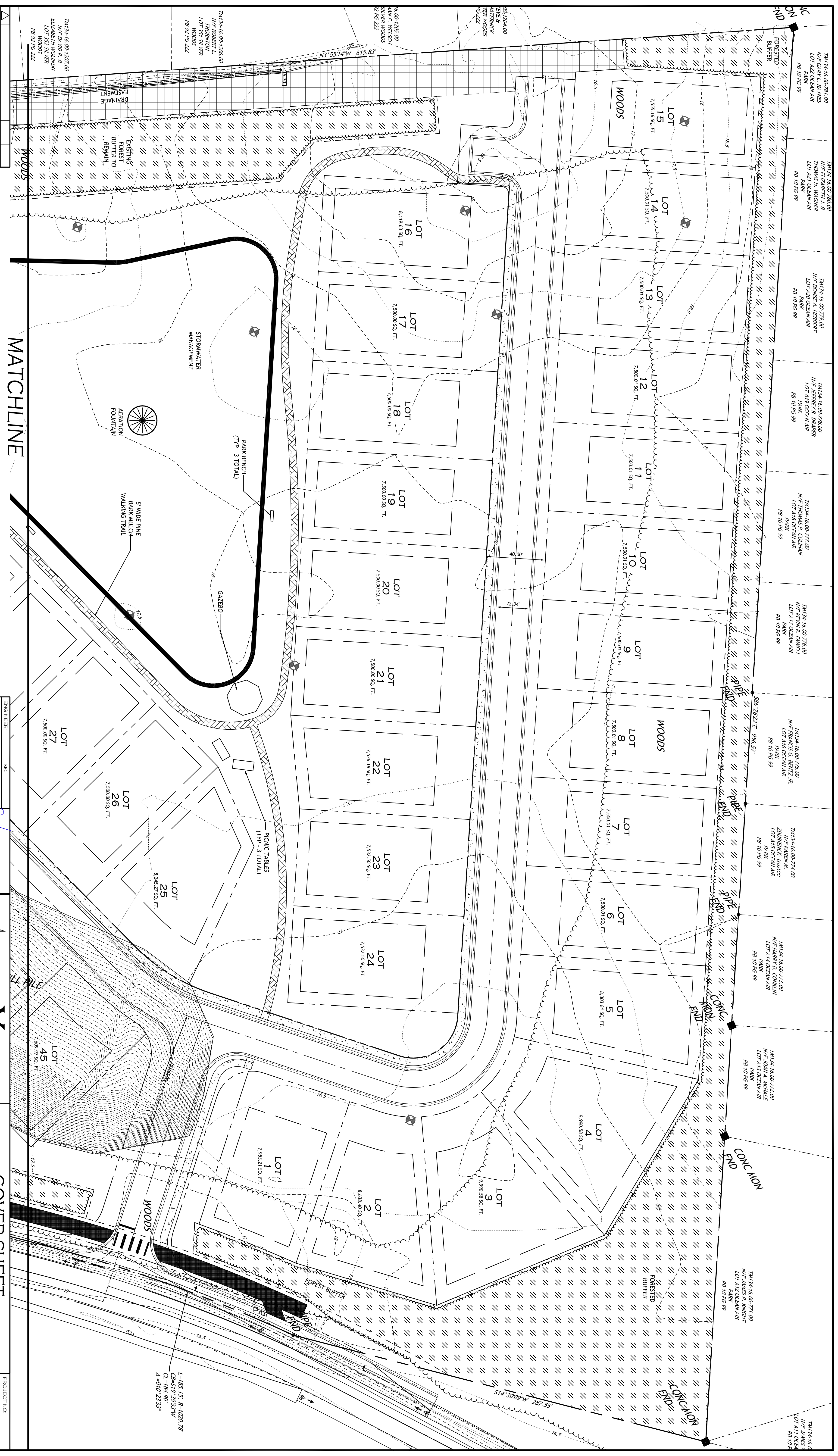
37337 Carolina Dr.
Frankford, DE 19945

**Mr. & Mrs. John Oberly Sr.
123 Chapel Hill Dr.
Newark, DE 19711**

RECEIVED

DEC 11 2019

SUSSEX COUNTY
PLANNING & ZONING



MATCHLINE

REV	DESCRIPTION OF REVISION	DATE	BY
1	RESPONSE TO PLANS COMMENTS	11/21/2019	NJC
2			
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30			

7/13/14-16.00-27.00
N/F DAVID S. &
ELIZABETH WOLINSKI
LOT 352 SILVER
PG 92 PG 222

7/13/14-16.00-1200.00
N/F ROBERT L.
LOT 351 SILVER
WOODS
PG 92 PG 222

6.00-1205.00
N/F WESLEY
LOT 353 SILVER
WOODS
PG 92 PG 222

6.00-1204.00
N/F WESLEY
LOT 354 SILVER
WOODS
PG 92 PG 222

7/13/14-16.00-281.00
N/F GARY L. RAYNES
LOT 422 OCEAN AIR
PARK
PG 10 PG 99

7/13/14-16.00-380.00
N/F ELIZABETH J. &
LOT 421 OCEAN AIR
PARK
PG 10 PG 99

7/13/14-16.00-776.00
N/F DENNIS R. HANSEN
LOT 418 OCEAN AIR
PARK
PG 10 PG 99

7/13/14-16.00-778.00
N/F JEFFREY R. DRAPER
LOT 417 OCEAN AIR
PARK
PG 10 PG 99

7/13/14-16.00-277.00
N/F THOMAS P. COLLIER
LOT 416 OCEAN AIR
PARK
PG 10 PG 99

7/13/14-16.00-776.00
N/F KEVIN R. DANIEL
LOT 415 OCEAN AIR
PARK
PG 10 PG 99

7/13/14-16.00-775.00
N/F LOT 414 OCEAN AIR
PARK
PG 10 PG 99

7/13/14-16.00-774.00
N/F MAREN M.
ZDUNENKO, HUSBAND
LOT 413 OCEAN AIR
PARK
PG 10 PG 99

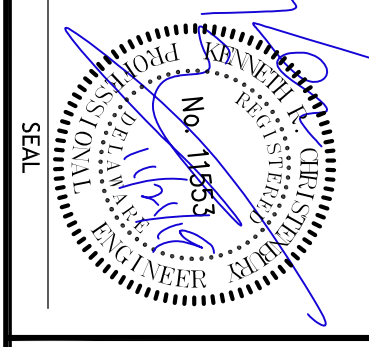
7/13/14-16.00-273.00
N/F LOT 412 OCEAN AIR
PARK
PG 10 PG 99

7/13/14-16.00-272.00
N/F LOT 411 OCEAN AIR
PARK
PG 10 PG 99

7/13/14-16.00-271.00
N/F JAMES P. KNIGHT
LOT 410 OCEAN AIR
PARK
PG 10 PG 99

7/13/14-16.00-270.00
N/F JAMES P.
LOT 409 OCEAN AIR
PARK
PG 10 PG 99

ENGINEER:	NJC
DESIGNER:	NJC
DRAWN BY:	EW
CHECKED BY:	NJC
DATE:	8/22/2019
TAX MAP:	134-16.00-51.00



AXIOM ENGINEERING L.L.C.
18 CHESTNUT STREET
GEORGETOWN, DE 19947
TEL: 410-855-0810
FAX: 410-855-0811
EMAIL: AAXIOM@AXIOM.COM
WEB: WWW.AXIOM.COM

EVERGREEN
RESIDENTIAL PLANNED COMMUNITY
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

PROJECT NO. 0188-1502
DRAWING: CZ-2
SHEET: 2 OF 3

COVER SHEET

SKETCH PLAN FOR CZ #1900

RESIDENTIAL PLANNED COMMUNITY

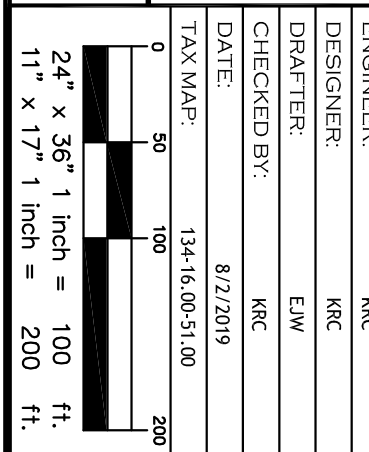
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

PROJECT NO. 0188-1502

DRAWING: CZ-2

SHEET: 2 OF 3

L=183.15', R=1020.78'
C=549.38'±35'±W
I=0+0'±233'



EVERGREEN RPC

CHANGE OF ZONE #1900

OWNER/APPLICANT:
MICHAEL P. JUSTICE, TRUSTEE

BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE



PLANNING & ZONING COMMISSION
DECEMBER 19, 2019



AXIOM
ENGINEERING L.L.C.

TABLE OF CONTENTS

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1

EXECUTIVE SUMMARY & ZONING MAP

EXECUTIVE SUMMARY - CHANGE OF ZONE #1900 EVERGREEN RESIDENTIAL PLANNED COMMUNITY

Evergreen RPC-CZ#1900 (see Tab 2 for application) proposes 45 detached single-family dwellings on 16.10 acres on the west side of Sussex County Route 362 (Parker House Road). It is consistent with the character and trend of development in the area. Evergreen RPC will have 39% open space, including preservation of 1.45 acres of existing forest and planting of 0.62 acres of forest buffer, installation of sidewalk, a walking trail, a shared use path (if required by DeIDOT), picnic tables, park benches and a gazebo (See Sketch Plan - Tab 3).

The 2018 update to Sussex County's Comprehensive Plan was approved by the governor in March of 2019. The update removed the Environmentally Sensitive Developing Overlay Zone designation and reclassified the subject property as "Coastal Area" (Tab 4). The following characteristics are described in the plan for Coastal Areas:

- Permitted Uses -A range of housing types should be permitted in Coastal Areas, including single-family homes, townhouses, and multi-family units.
- Densities -Sussex County's base density of 2 units per acre is appropriate throughout this classification; however, medium and higher density (4-12 units per acre) can be appropriate in certain locations. Medium and higher density could be supported in areas:
 - where there is central water and sewer;
 - near sufficient commercial uses and employment centers;
 - where it is in keeping with the character of the area;
 - where it is along a main road or at/or near a major intersection;
 - where there is adequate Level of Service;

CZ 1900 is in harmony with these requirements and the requirements of the GR zoning district of the property.

The project is fully compliant with County Subdivision Ordinance 99-9(c) (Tab 5). The Delaware Department of Transportation has not required a Traffic Impact Study (Tab 6). The applicant has addressed comments issued by the Preliminary Land Use Service (PLUS - Tab 7). The project will be served by the Sussex County Sanitary Sewer and Tidewater Utilities central water (Tab 8). The property is free of regulated floodplains (Tab 10), and the environmental conditions of the property have been field verified to ensure compliance with federal, state and local requirements (Tabs 11-13). Draft Covenants and Restrictions (Tab 14) and proposed Conditions of Approval (Tab 15) have been included to ensure that adjoining property values are not adversely affected by the development of this project.



VILLAGE AT BEAR TRAP DUNES
TOWN OF OCEAN VIEW

KENSINGTON PARK
DENSITY = 3.02 DU/AC.

OCEAN AIR
DENSITY = 2.74 DU/AC.

SILVER WOODS PHASE 1
DENSITY = 2.64 DU/AC

CZ #1900
EVERGREEN RPC
PROPOSED
DENSITY = 2.82 DU/AC.

PLANTATION PARK
DENSITY = 2.97 DU/AC.

STATE OF DELAWARE
DIVISION OF FISH AND
WILDLIFE

PREVIOUSLY ZONED GR
ANNEXED INTO TOWN OF OCEAN VIEW
SILVER WOODS MXPC- 114.83 ACRES
(MIXED USE PLANNED COMMUNITY)
9.82 ACRES MULTI-FAMILY
16.73 ACRES MIXED USE
5.10 ACRES ASSISTED LIVING
11.10 ACRES FUTURE COMMERCIAL
72.08 ACRES SINGLE FAMILY

REV	DESCRIPTION OF REVISION	REVISION DATE	CHECKED BY/DATE

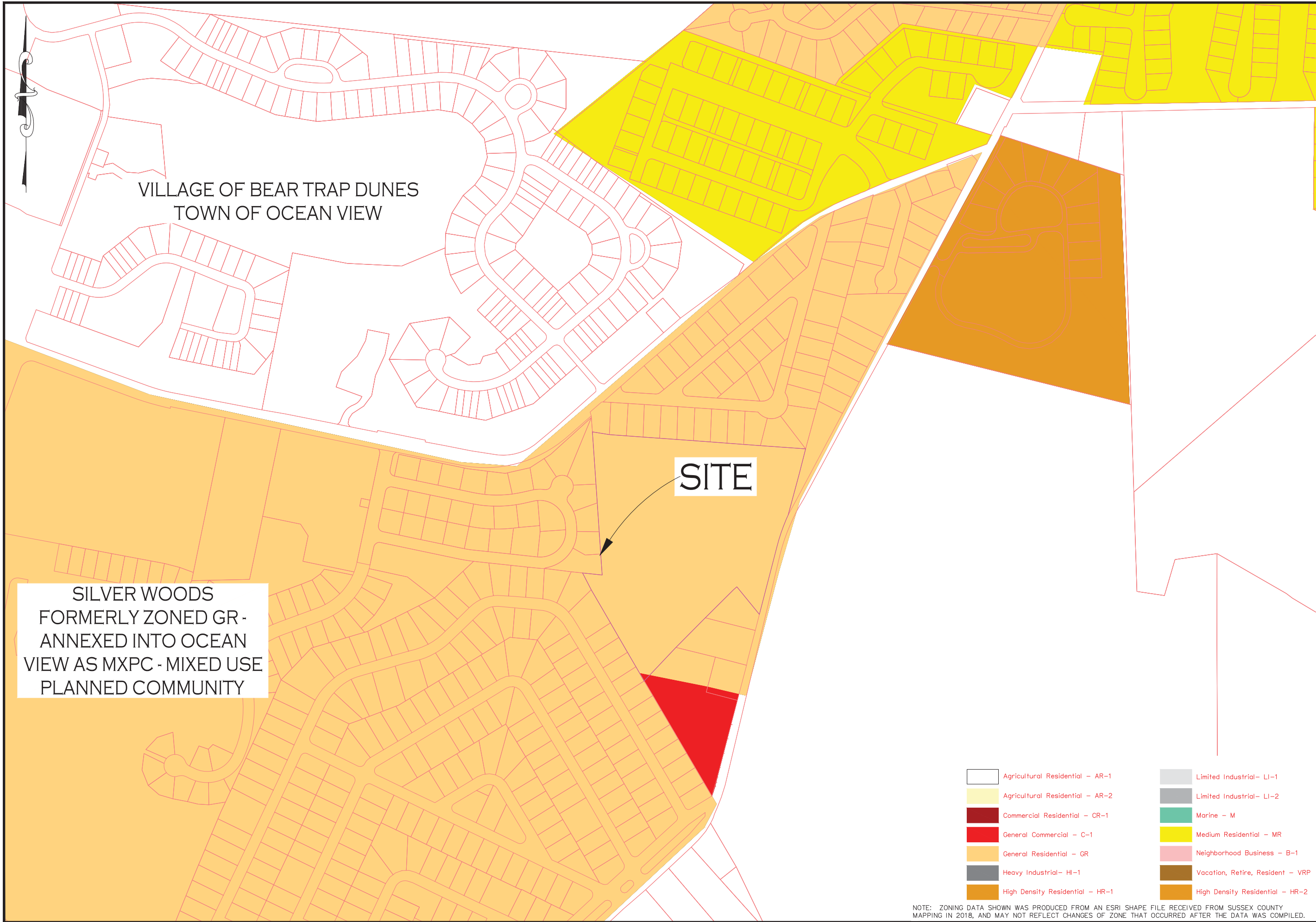
TAXMAP & AERIAL PHOTO
PUBLIC DATA REFERENCED TO
CZ# 1900 - EVERGREEN RPC
BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE

Axiom Engineering L.L.C.
18 CHESTNUT STREET
GEORGETOWN, DE 19947
TEL: 302.855.0810
FAX: 855.0812
WWW.AXIOMENGINEERING.COM

ENGINEER:	KRC
DESIGNER:	KRC
DRAFTER:	KRC
CHECKED BY:	KRC
DATE:	11/19/2019
TAX MAP:	134-16.00-51.00

PROJECT NO: 0188-1502
DRAWING: CR-1
SHEET: 1 OF 9
SCALE

NOTE: SCALE INDICATED IS APPROXIMATE. NO FIELD SURVEY WAS PERFORMED OR IS IMPLIED BY THIS DRAWING. TAX PARCEL GEOMETRY DATA SHOWN WAS PRODUCED FROM AN ESRI SHAPE FILE RECEIVED FROM SUSSEX COUNTY MAPPING IN 2018, AND MAY NOT REFLECT SUBDIVISIONS THAT OCCURRED AFTER THE DATA WAS COMPILED. IMAGE OBTAINED FROM GOOGLE EARTH PRO



VILLAGE OF BEAR TRAP DUNES
TOWN OF OCEAN VIEW

SITE

SILVER WOODS
FORMERLY ZONED GR -
ANNEXED INTO OCEAN
VIEW AS MXPC - MIXED USE
PLANNED COMMUNITY

- | | | | |
|--|---------------------------------|--|----------------------------------|
| | Agricultural Residential - AR-1 | | Limited Industrial- LI-1 |
| | Agricultural Residential - AR-2 | | Limited Industrial- LI-2 |
| | Commercial Residential - CR-1 | | Marine - M |
| | General Commercial - C-1 | | Medium Residential - MR |
| | General Residential - GR | | Neighborhood Business - B-1 |
| | Heavy Industrial- HI-1 | | Vacation, Retire, Resident - VRP |
| | High Density Residential - HR-1 | | High Density Residential - HR-2 |

NOTE: ZONING DATA SHOWN WAS PRODUCED FROM AN ESRI SHAPE FILE RECEIVED FROM SUSSEX COUNTY MAPPING IN 2018, AND MAY NOT REFLECT CHANGES OF ZONE THAT OCCURRED AFTER THE DATA WAS COMPILED.

REV	DESCRIPTION OF REVISION	REVISION BY/DATE

ZONING MAP
PUBLIC DATA REFERENCED TO
CZ# 1900 - EVERGREEN RPC
BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE

AXIOM
ENGINEERING L.L.C.
18 CHESTNUT STREET
GEORGETOWN, DE 19947
TEL: 302.855.0810
FAX: 302.855.0812
WEB: WWW.AXIOS.COM

ENGINEER:	KRC
DESIGNER:	KRC
DRAWER:	KRC
CHECKED BY:	KRC
DATE:	11/19/2019
TAX MAP:	134-16.00-51.00

PROJECT NO: 0188-1502
DRAWING: CR-3
SHEET: 3 OF 9

SCALE

2

ZONING APPLICATION AND DEED

**Planning & Zoning Commission Application
Sussex County, Delaware**

Sussex County Planning & Zoning Department
2 The Circle (P.O. Box 417) Georgetown, DE 19947
302-855-7878 ph. 302-854-5079 fax

Type of Application: (please check applicable)

Conditional Use
Zoning Map Amendment

Site Address of Conditional Use/Zoning Map Amendment

West side of Parker House Road, 1/2 mile south of intersection with Beaver Dam Road

Type of Conditional Use Requested:

Tax Map #: 134-16.00-51.00 **Size of Parcel(s):** 16.1 ac.

Current Zoning: GR **Proposed Zoning:** GR/RPC **Size of Building:** _____

Land Use Classification: Coastal Area

Water Provider: Tidewater **Sewer Provider:** Sussex County

Applicant Information

Applicant Name: Michael P. Justice, Trustee
Applicant Address: 29687 Sawmill Drive
City: Dagsboro State: DE Zip Code: 19939
Phone #: (302) 745-8155 E-mail: mike@paulspaving.com

Owner Information

Owner Name: same as applicant
Owner Address: _____
City: _____ State: _____ Zip Code: _____
Phone #: _____ E-mail: _____

Agent/Attorney/Engineer Information

Agent/Attorney/Engineer Name: Axiom Engineering, LLC - C/O Kenneth R. Christenbury, P.E.
Agent/Attorney/Engineer Address: 18 Chestnut Street
City: Georgetown State: DE Zip Code: 19947
Phone #: (302) 855-0810 E-mail: ken@axeng.com



Check List for Sussex County Planning & Zoning Applications

The following shall be submitted with the application

- ✓ **Completed Application**
- ✓ **Provide eight (8) copies of the Site Plan or Survey of the property**
 - Survey shall show the location of existing or proposed building(s), building setbacks, parking area, proposed entrance location, etc.
 - Provide a PDF of Plans (may be e-mailed to a staff member)
 - Deed or Legal description
- ✓ **Provide Fee \$500.00**
- ✓ **Optional - Additional information for the Commission/Council to consider** (ex. architectural elevations, photos, exhibit books, etc.) If provided submit 8 copies and they shall be submitted a minimum of ten (10) days prior to the Planning Commission meeting.
- ✓ **Please be aware that Public Notice will be sent to property owners within 200 feet of the subject site and County staff will come out to the subject site, take photos and place a sign on the site stating the date and time of the Public Hearings for the application.**
- ✓ **DeIDOT Service Level Evaluation Request Response**
- ✓ **PLUS Response Letter** (if required)

The undersigned hereby certifies that the forms, exhibits, and statements contained in any papers or plans submitted as a part of this application are true and correct.

I also certify that I or an agent on my behalf shall attend all public hearing before the Planning and Zoning Commission and the Sussex County Council and any other hearing necessary for this application and that I will answer any questions to the best of my ability to respond to the present and future needs, the health, safety, morals, convenience, order, prosperity, and general welfare of the inhabitants of Sussex County, Delaware.

Signature of Applicant/Agent/Attorney



Date: 8/2/2019

Signature of Owner



Date: 8/2/2019

For office use only:

Date Submitted: _____

Fee: \$500.00 Check #: _____

Staff accepting application: _____

Application & Case #: _____

Location of property: _____

Subdivision: _____

Date of PC Hearing: _____

Recommendation of PC Commission: _____

Date of CC Hearing: _____

Decision of CC: _____

27454

BK: 4741 PG: 240

TAX MAP AND PARCEL #:
1-34 16.00 51.00
PREPARED BY & RETURN TO:
Shannon R. Owens, Esquire
Sergovic Carmean Weidman
McCartney & Owens, P.A.
406 South Bedford Street
P.O. Box 751
Georgetown, Delaware 19947

NO TITLE EXAMINATION REQUESTED OR PERFORMED

THIS DEED, made this 20th day of July, 2017,

- BETWEEN -

MICHAEL P. JUSTICE, as to a 45% undivided interest, of 29687 Saw Mill Drive, Dagsboro, Delaware 19939, party of the first part,

- AND -

MICHAEL P. JUSTICE, TRUSTEE OF THE MICHAEL P. JUSTICE REVOCABLE TRUST DATED JULY 20, 2017, of 29687 Saw Mill Drive, Dagsboro, Delaware 19939, party of the second part.

WITNESSETH: That the said party of the first part, for and in consideration of the sum of ONE AND 00/100 DOLLARS (\$1.00), lawful money of the United States of America, the receipt whereof is hereby acknowledged, hereby grant and convey unto the party of the second part, and his heirs and assigns, in fee simple, the following described lands, situate, lying and being in Sussex County, State of Delaware:

ALL that certain piece, parcel or tract of land lying and being situated in Muddy Neck, Baltimore Hundred, County of Sussex and State of Delaware, beginning at the center of the County Road known as the Beaver Dam Road leading from Ocean View to the double bridges and running in line with pine tree at the side of said road 957 feet to the lands of Samuel F. Holt; thence cornering and running with the lands of Samuel F. Holt South 5 ½ degrees West 875 feet to the lands now or formerly of Harry Quillen; thence with the lands now or formerly of Harry Quillen South 20 degrees East 388 feet in line with a ditch; thence cornering at a point with the lands of the aforesaid Harry Quillen and running North 55 degrees 5 minutes East 592 feet; thence cornering and running South 44 degrees 4/5 East 184 feet to center of county Road or Beaver Dam Road leading from double bridges to Ocean View thence down center of said road North 22 ¼ degrees East 778 feet back to the place of beginning, and said to contain fifteen (15) acres and 107 square perches, be the same more or less.

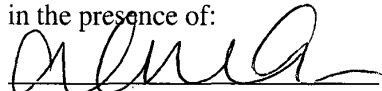
BEING the same property conveyed to Michael P. Justice and Equity Trust Company Custodian FBO Michael P. Justice IRA from Warrington Family Limited Partnership, by Deed dated August 19, 2015 of record in the Office of the Recorder of Deeds in and for Sussex County in Deed Book 4436, Page 129, et seq.

UNDER AND SUBJECT to any and all restrictions, reservations, conditions, easements and agreements of record in the Office of the Recorder of Deeds in and for Sussex County, Delaware.

EXCEPTING AND RESERVING any and all possible out conveyances from August 19, 2015, forward.

IN WITNESS WHEREOF, the party of the first part has hereunto set his hand and seal the day and year first above written.

Signed, Sealed and Delivered
in the presence of:

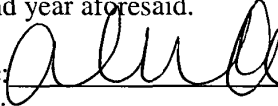

Witness

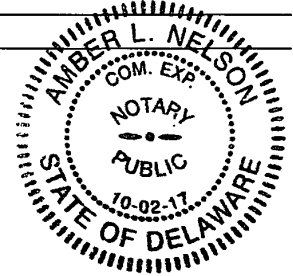
 (SEAL)
MICHAEL P. JUSTICE
Consideration: .00

STATE OF DELAWARE	:	County	.00
	:	state	.00
	:	Town	.00
COUNTY OF SUSSEX	:	Total	.00
	:	Received: Teresa C Jul 24, 2017	

BE IT REMEMBERED, that on the 20th of July, 2017, personally came before me, the subscriber, **MICHAEL P. JUSTICE**, party of the first part to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his act and deed.

Given under my Hand and Seal of office the day and year aforesaid.

Notary Public: 
Printed Name: _____
My Commission Expires: _____



RECEIVED
Jul 24, 2017
ASSESSMENT DIVISION
OF SUSSEX COUNTY

Recorder of Deeds
Scott Dailey
Jul 24, 2017 08:49A
Sussex County
Doc. Surcharge Paid

3

SITE DATA TABLE & RPC SKETCH PLAN

SITE DATA:

OWNER/APPLICANT:

MICHAEL P. JUSTICE, TRUSTEE
29687 SAWMILL DRIVE
DAGSBORO, DE 19939
302-745-8155
mike@paulspaving.com

TAX MAP	134-16.00-51.00
DEED REFERENCE	DB 4741 - PG 240
STATE INVESTMENT LEVEL	3
TRANSPORTATION IMPROVEMENT DISTRICT	N/A
HIGHWAY FUNCTIONAL CLASSIFICATION/POSTED SPEED LIMIT	MINOR COLLECTOR / 50 MPH
CURRENT ZONING	GR
PROPOSED ZONING	GR-RPC (CZ #1900)
EXISTING USE	VACANT
PROPOSED USE	45 SINGLE FAMILY DWELLING LOTS
DENSITY	2.82 DWELLING UNITS/ACRE

REQUIRED LOT SIZE

MIN. WIDTH	60*
MIN. DEPTH	100'
MIN. AREA	7,500 SQ. FT.*

BUILDING SETBACKS

FRONT	25*
CORNER	15'
SIDE	8*
REAR	8*

* REDUCED LOT WIDTH, LOT AREA AND SETBACKS APPLIED FOR WITH RPC CHANGE OF ZONE

PROPOSED BUILDING HEIGHT	42' MAX.
--------------------------	----------

SITE AREA CALCULATIONS:

DEDICATION TO STATE OF DELAWARE	0.35± AC.
PRIVATE ROAD R.O.W.	1.71± AC.
LOTS	7.97± AC.
<u>OPEN SPACE</u>	<u>6.29± AC. (39%)</u>
TOTAL SITE AREA	16.10± AC.

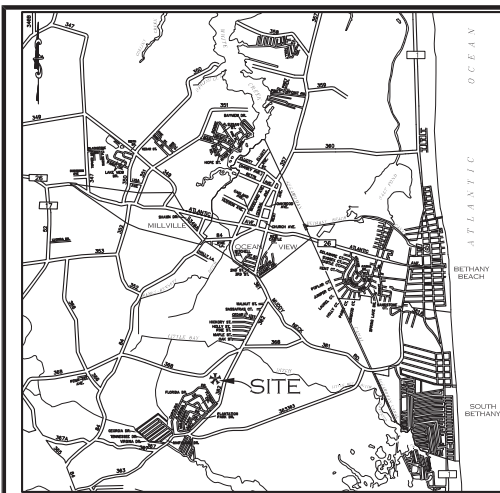
OPEN SPACE CALCULATIONS:

WETLANDS & WATERS OF THE U.S.	0.13± AC.
STORMWATER MANAGEMENT AREA	1.81± AC.
EXISTING FOREST TO REMAIN	1.45± AC.
PLANTED FOREST BUFFERS	0.62± AC.
DELDOT PERMANENT EASEMENT	0.17± AC.
OTHER OPEN SPACE	2.11± AC.

FOREST CONDITIOINS

EXISTING FOREST ON PROPERTY	4.93± AC.
FOREST CLEARED	3.48± AC.
FOREST TO REMAIN	1.45± AC. (30%)
<u>FOREST BUFFERS PLANTED</u>	<u>0.62± AC.</u>
TOTAL FOREST	2.07± AC.

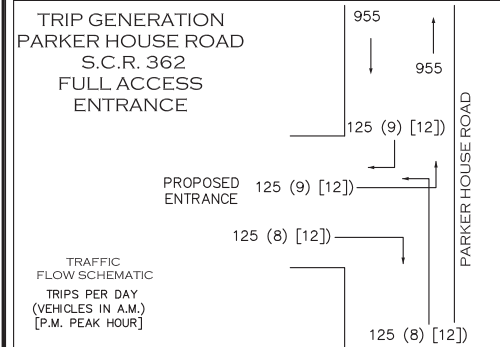
WATER SUPPLY	TIDEWATER UTILITIES
SEWAGE DISPOSAL	SUSSEX COUNTY



VICINITY MAP
SCALE: 1" = 1 MILE

NOTES:

- FORESTED BUFFERS, STREETS, STORMWATER MANAGEMENT FACILITIES AND OTHER COMMON AREAS SHALL BE MAINTAINED BY THE DEVELOPER UNTIL SUCH TIME AS A HOMEOWNERS ASSOCIATION CAN PROVIDE FOR REQUIRED MAINTENANCE. SUSSEX COUNTY AND THE STATE OF DELAWARE ASSUME NO RESPONSIBILITY FOR THE FUTURE MAINTENANCE OF THESE FACILITIES WITHIN THE SITE.
- ACCESS TO LOTS SHALL BE PROVIDED FROM THE SUBDIVISION STREETS PROPOSED WITH THIS PLAN. NO DIRECT ACCESS TO PUBLIC STREETS IS PROPOSED EXCEPT THE ENTRANCE SPECIFICALLY SHOWN ON THIS PLAN.
- BASED UPON FLOOD INSURANCE RATE MAP (FIRM) NUMBER 10005C013K, DATED MARCH 16, 2015; THE ENTIRE PROPERTY IS LOCATED IN AN AREA DESIGNATED AS ZONE "X" (UNSHADED), WHICH IS AN AREA DETERMINED TO BE OUTSIDE THE 500-YEAR FLOODPLAIN.
- THE BOUNDARY AND TOPOGRAPHIC INFORMATION SHOWN ON THIS PLAN WAS TAKEN FROM A FIELD SURVEY PREPARED BY AXIOM ENGINEERING, LLC IN JULY 2019. HORIZONTAL CONTROL IS REFERENCED TO NAD 83 STATE PLANE GRID, VERTICAL CONTROL IS REFERENCED TO NAVD 88.
- ALL SUBDIVISION LOTS SHALL HAVE FIVE-FOOT-WIDE EASEMENTS ALONG ALL LOT LINES FOR A TOTAL EASEMENT WIDTH OF AT LEAST TEN (10) FEET ALONG A LOT LINE COMMON TO TWO LOTS. EASEMENTS ALONG PERIMETER BOUNDARIES OF THE SUBDIVISION SHALL BE TEN (10) FEET IN WIDTH ON THE INTERIOR SIDE OF THE BOUNDARY. NO BUILDING, STRUCTURE OR OTHER PERMANENT OBSTRUCTION SHALL BE PLACED IN ANY EASEMENT.
- THIS PLAN DOES NOT VERIFY TO THE LOCATION AND/OR EXISTENCE OF EASEMENTS OR RIGHT-OF-WAYS CROSSING SUBJECT PROPERTY AS NO TITLE SEARCH WAS PROVIDED.
- ALL FIRE LANES, FIRE HYDRANTS, AND FIRE DEPARTMENT CONNECTIONS SHALL BE MARKED IN ACCORDANCE WITH THE STATE FIRE PREVENTION REGULATIONS.
- THE LANDSCAPE PLAN FOREST AND/OR LANDSCAPE BUFFER PLANS SHALL BE INSTALLED WITHIN 18 MONTHS FROM THE DATE SITE WORK IS AUTHORIZED TO COMMENCE. IF THE SUBDIVISION IS TO BE CONSTRUCTED IN PHASES, THE BUFFER FOR EACH PHASE MUST BE COMPLETED BEFORE COUNTY APPROVALS OR PERMITS WILL BE GRANTED TO CONSTRUCT THE NEXT PHASE.
- BUS STOPS SHALL BE LOCATED AT THE DISCRETION OF THE INDIAN RIVER SCHOOL DISTRICT.
- DRAINAGE EASEMENTS SHOWN SHALL BE ESTABLISHED UPON COMPLETION OF CONSTRUCTION PLANS AND SHALL INCORPORATE ANY EASEMENTS OBTAINED FROM ADJOINING PROPERTY OWNERS FOR THE PURPOSE OF IMPROVING THE EXISTING DRAINAGE DITCHES NEAR THE SHARED PROPERTY LINES.

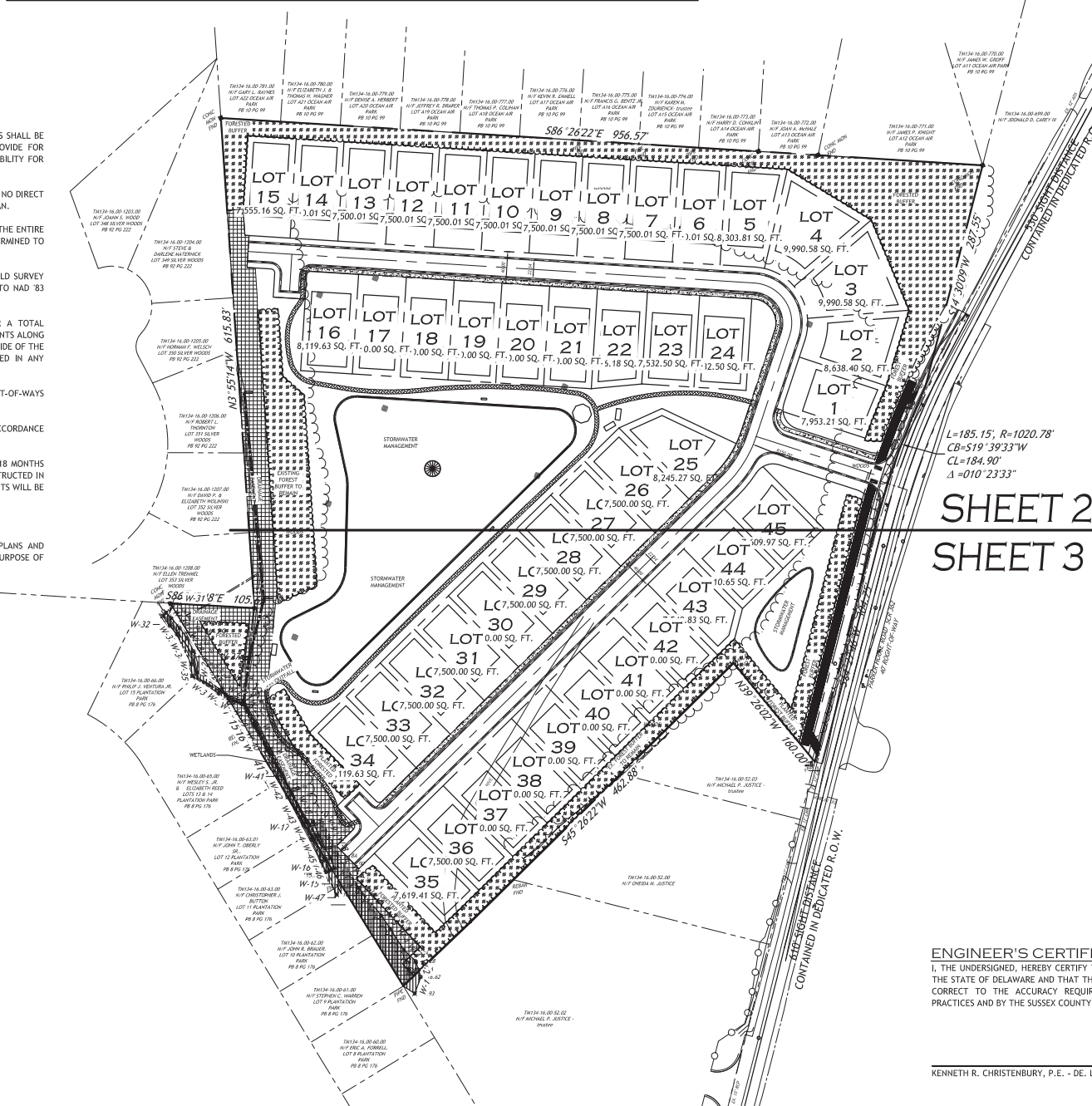
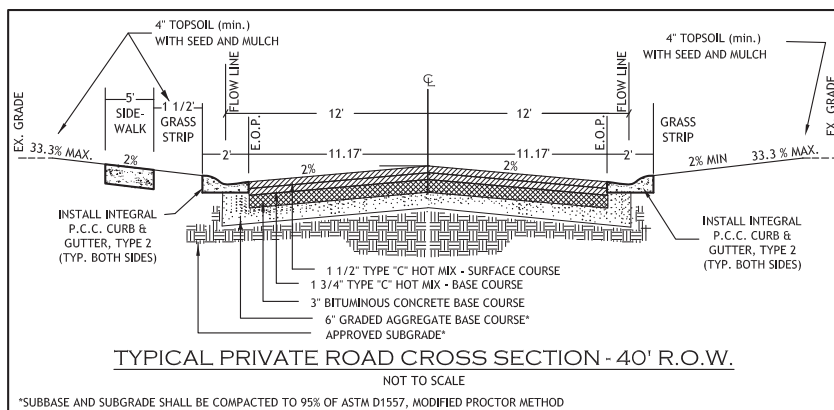


TRIP GENERATION
PARKER HOUSE ROAD
S.C.R. 362
FULL ACCESS
ENTRANCE

TRAFFIC FLOW SCHEMATIC
TRIPS PER DAY (VEHICLES IN A.M.)
[P.M. PEAK HOUR]

ROUTE 9 TRAFFIC DATA:
HIGHWAY FUNCTIONAL CLASSIFICATION = MINOR COLLECTOR
POSTED SPEED LIMIT = 50 MPH (DESIGN SPEED = 55 MPH)
AADT = 1,646 (FROM 2018 DELDOT TRAFFIC SUMMARY)
10-YEAR PROJECTED AADT = 1,116 X AADT TRIPS = 1,909
10-YEAR PROJECTED AADT + SITE ADT = 2,338

SITE TRIPS GENERATED:
SOURCE: ITE TRIP GENERATION MANUAL 10TH EDITION
ITE CODE 210 - SINGLE FAMILY DETACHED HOUSING-45 UNITS
ADT = 499 (DELDOT PLUS COMMENTS) PEAK HOUR ADT = 47
<1% TRUCKS AND BUSES x 499 TRIPS = 5 TRIPS
215 ENTERING TRIPS, DIRECTIONAL DISTRIBUTION:
50% RIGHT IN
50% LEFT IN



SHEET 2
SHEET 3

CZ #1900 CONDITIONS OF APPROVAL:

- THE MAXIMUM NUMBER OF DWELLING UNITS SHALL NOT EXCEED 45 SINGLE FAMILY DWELLING UNITS.
- A HOMEOWNERS ASSOCIATION SHALL BE FORMED TO PROVIDE FOR THE PERPETUAL MAINTENANCE, REPAIR AND REPLACEMENT OF BUFFERS, STORMWATER MANAGEMENT FACILITIES, STREETS, AMENITIES AND OTHER COMMON AREAS, IN COMPLIANCE WITH DUCIOA.
- ALL ENTRANCES, INTERSECTIONS, INTERCONNECTIONS, ROADWAYS AND MULTI-MODAL IMPROVEMENTS REQUIRED BY DELDOT SHALL BE COMPLETED IN ACCORDANCE WITH DELDOT'S REQUIREMENTS.
- THE RPC SHALL BE SERVED AS PART OF A SUSSEX COUNTY SANITARY SEWER DISTRICT. THE DEVELOPER SHALL COMPLY WITH ALL REQUIREMENTS AND SPECIFICATIONS OF THE COUNTY ENGINEERING DEPARTMENT.
- THE RPC SHALL BE SERVED BY CENTRAL WATER.
- STORMWATER MANAGEMENT AND EROSION AND SEDIMENTATION CONTROL FACILITIES SHALL BE CONSTRUCTED IN ACCORDANCE WITH ALL APPLICABLE STATE AND COUNTY REQUIREMENTS. THESE FACILITIES SHALL BE OPERATED IN A MANNER THAT IS CONSISTENT WITH BEST MANAGEMENT PRACTICES.
- THE FINAL SITE PLAN SHALL CONTAIN THE APPROVAL OF THE SUSSEX CONSERVATION DISTRICT FOR THE DESIGN AND LOCATION OF ALL STORMWATER MANAGEMENT AREAS AND EROSION AND SEDIMENTATION CONTROL FACILITIES.
- NO WETLANDS SHALL BE INCLUDED IN INDIVIDUAL LOTS.
- MAINTENANCE IMPACTS TO THE WETLAND DITCHES SHALL BE COMPLETED IN COMPLIANCE WITH FEDERAL (U.S. ARMY CORPS OF ENGINEERS), STATE (DNREC) AND LOCAL (SUSSEX CONSERVATION DISTRICT) REQUIREMENTS
- INTERIOR STREET DESIGN SHALL MEET OR EXCEED SUSSEX COUNTY'S STREET DESIGN REQUIREMENTS, WITH A MINIMUM RIGHT-OF-WAY WIDTH OF 40'. THERE SHALL BE CURB AND GUTTER DRAINAGE, STREET LIGHTING AND SIDEWALKS ON ONE SIDE OF THE STREETS WITHIN THE RPC.
- ALL AMENITIES SHALL BE COMPLETED PRIOR TO THE ISSUANCE OF THE 25TH BUILDING PERMIT.
- IF REQUESTED BY THE INDIAN RIVER SCHOOL DISTRICT, A SCHOOL BUS STOP SHALL BE PROVIDED. THE LOCATION OF THE BUS STOP AREA SHALL BE SHOWN ON THE FINAL SITE PLAN.
- ROAD NAMING AND ADDRESSING SHALL BE SUBJECT TO THE REVIEW AND APPROVAL OF SUSSEX COUNTY MAPPING AND ADDRESSING DEPARTMENTS.
- A FORESTED LANDSCAPE BUFFER SHALL BE ESTABLISHED AS INDICATED ON THE RPC SKETCH PLAN. THIS MAY INCLUDE THE EXISTING TREES. THE FINAL SITE PLAN SHALL INCLUDE A LANDSCAPE PLAN FOR ALL OF THE BUFFER AREAS, SHOWING ALL OF THE LANDSCAPING AND VEGETATION TO BE INCLUDED IN THE BUFFER AREAS.
- AS OFFERED BY THE APPLICANT, THE COMMUNITY WILL NOT CONTAIN ANY MANUFACTURED HOMES.
- THE FINAL SITE PLAN SHALL BE SUBJECT TO THE REVIEW AND APPROVAL OF THE SUSSEX COUNTY PLANNING AND ZONING COMMISSION.

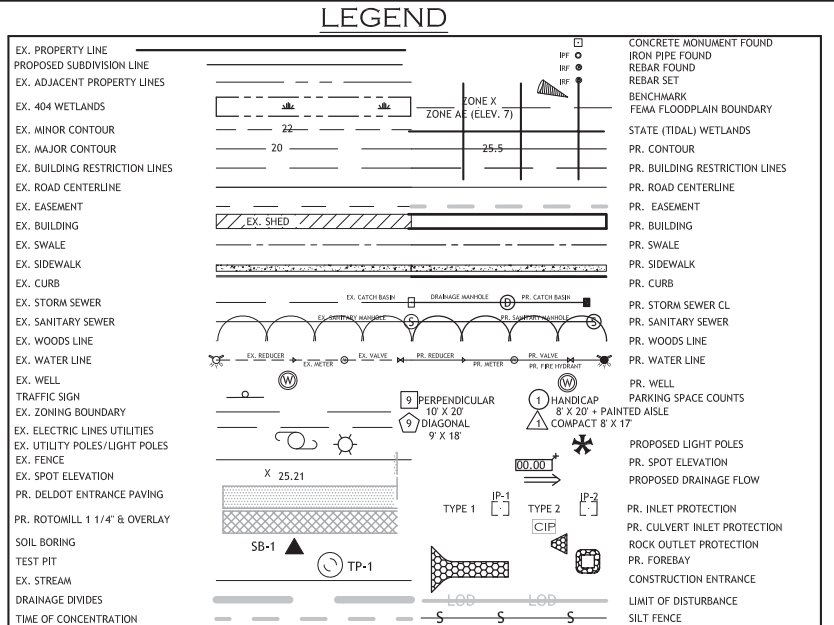
WETLANDS CERTIFICATION:
I, KENNETH W. REDINGER, STATE THAT THE BOUNDARIES OF WATERS OF THE UNITED STATES INCLUDING WETLANDS SUBJECT TO THE CORPS OF ENGINEERS REGULATORY PROGRAM DELINEATED UPON THIS PLAN HAVE BEEN DETERMINED USING MY PROFESSIONAL JUDGMENT IN ACCORDANCE WITH THE 1987 CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL, REGULATIONS AND SUPPLEMENTAL GUIDANCE (33 CFR 328.3(a)(8)), WATERS OF THE U.S. DEFINITION/CECW-OR, 10-7-1991, QUESTIONS AND ANSWERS ON THE 1987 COE MANUAL/CECW-OR, 9-26-1990, RGL 90-7/CECW-OR, 3-6-1992, CLARIFICATION AND INTERPRETATION OF THE 1987 MANUAL), THIS DELINEATION HAS NOT BEEN CONDUCTED FOR USDA PROGRAM OR AGRICULTURAL PURPOSES.

IN ACCORDANCE WITH DNREC TIDAL WETLAND MAPS, THERE ARE NO STATE REGULATED WETLANDS ON THE SITE.

ENGINEER'S CERTIFICATION:
I, THE UNDERSIGNED, HEREBY CERTIFY THAT I AM A REGISTERED PROFESSIONAL ENGINEER IN THE STATE OF DELAWARE AND THAT THE PLAN SHOWN AND DESCRIBED HEREON IS TRUE AND CORRECT TO THE ACCURACY REQUIRED BY ACCEPTED PROFESSIONAL STANDARDS AND PRACTICES AND BY THE SUSSEX COUNTY SUBDIVISION AND LAND DEVELOPMENT REGULATIONS.

KENNETH R. CHRISTENBURY, P.E. - DE. LICENSE NO. 11553-EXPIRES 6/30/2020 DATE

KENNETH W. REDINGER DATE
P.O. BOX 479
HORNTOWN, VA 23395
PHONE: (757) 990-9308 E-MAIL: kwredinger@gmail.com



SITE DATA:
OWNER/APPLICANT:

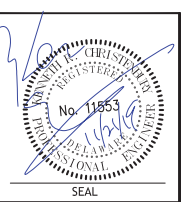
TAX MAP	134-16-00-51.00
DEED REFERENCE	DB 4741 - PG 240
STATE INVESTMENT LEVEL	3
TRANSPORTATION IMPROVEMENT DISTRICT	N/A
HIGHWAY FUNCTIONAL CLASSIFICATION/POSTED SPEED LIMIT	MINOR COLLECTOR / 50 MPH
CURRENT ZONING	GR
PROPOSED ZONING	GR-APC (CZ #1900)
EXISTING USE	VACANT
PROPOSED USE	45 SINGLE FAMILY DWELLING LOTS
DENSITY	2.82 DWELLING UNITS/ACRE
REQUIRED LOT SIZE	60'
MIN. WIDTH	100'
MIN. DEPTH	107'
MIN. AREA	7,500 SQ. FT.
BUILDING SETBACKS	
FRONT	25'
CORNER	15'
SIDE	8'
REAR	8'
PROPOSED BUILDING HEIGHT	42' MAX.
SITE AREA CALCULATIONS:	
DEDICATION TO STATE OF DELAWARE	0.35± AC.
PRIVATE ROAD R.O.W.	1.71± AC.
LOTS	7.97± AC.
OPEN SPACE	6.29± AC. (39%)
TOTAL SITE AREA	16.10± AC.
OPEN SPACE CALCULATIONS:	
WETLANDS & WATERS OF THE U.S.	0.12± AC.
STORMWATER MANAGEMENT AREA	1.81± AC.
EXISTING FOREST TO REMAIN	1.45± AC.
PLANTED FOREST BUFFERS	0.62± AC.
DELDOT PERMANENT EASEMENT	0.17± AC.
OTHER OPEN SPACE	2.11± AC.
FOREST CONDITIONS	
EXISTING FOREST ON PROPERTY	4.93± AC.
FOREST CLEARED	3.46± AC.
FOREST TO REMAIN	1.45± AC. (30%)
FOREST BUFFERS PLANTED	0.62± AC.
TOTAL FOREST	2.07± AC.
WATER SUPPLY	TOWN WATER UTILITIES
SEWAGE DISPOSAL	SUSSEX COUNTY

OWNER'S CERTIFICATION:
I HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY SHOWN AND DESCRIBED ON THIS PLAN, AND THAT THE RESIDENTIAL PLANNED COMMUNITY SHOWN REPRESENTS MY ACT, AND THAT I DESIRE THE PROPERTY TO BE RECORDED AS SHOWN IN ACCORDANCE WITH ALL APPLICABLE LAWS, ORDINANCES AND REGULATIONS.

MICHAEL P. JUSTICE, TRUSTEE DATE
29687 SAWMILL DRIVE
DAGSBORO, DE 19939
302-745-8155
mike@paulspaving.com

RESPONSE TO PLUS COMMENTS	KRC	KRC
BY DATE	11/21/2019	11/21/2019
REV	DESCRIPTION OF REVISION	BY DATE

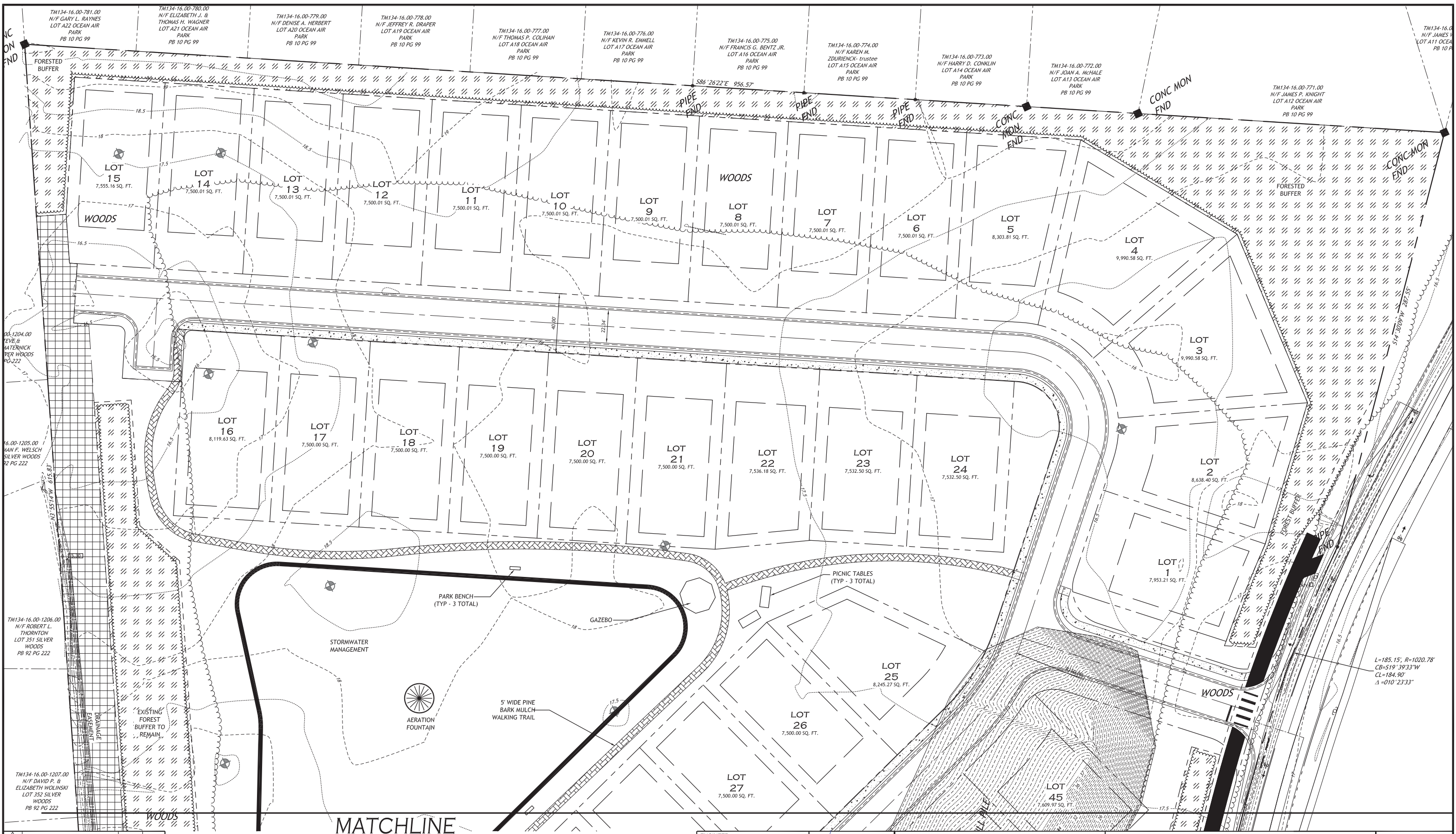
ENGINEER:	KRC
DESIGNER:	KRC
DRAFTER:	EJW
CHECKED BY:	KRC
DATE:	8/12/2019
TAX MAP:	134-16-00-51.00



AXIOM ENGINEERING L.L.C.
18 CHESTNUT STREET
GEORGETOWN, DE 19947
(302) 855-0810
FAX: 855-0812
E-MAIL: AXIOM@AXIOM.COM
WEB: WWW.AXIOM.COM

COVER SHEET
SKETCH PLAN FOR CZ #1900
EVERGREEN
RESIDENTIAL PLANNED COMMUNITY
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

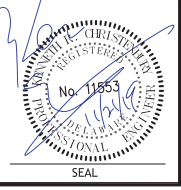
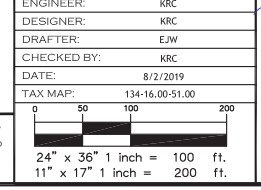
PROJECT NO: 0188-1502
DRAWING: CZ-1
SHEET: 1 OF 3



REV	DESCRIPTION OF REVISION	BY	DATE
1	RESPONSE TO PLUS COMMENTS	KRC	11/21/2019
2		KRC	11/21/2019

ENGINEER: KRC
 DESIGNER: KRC
 DRAFTER: EJW
 CHECKED BY: KRC
 DATE: 8/2/2019
 TAX MAP: 134-16-00-51.00

THIS DRAWING DOES NOT INCLUDE NECESSARY COMPONENTS FOR CONSTRUCTION SAFETY. ALL CONSTRUCTION MUST BE DONE IN COMPLIANCE WITH THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 AND ALL RULES AND REGULATIONS THEREOF AND APPURTAINANT.



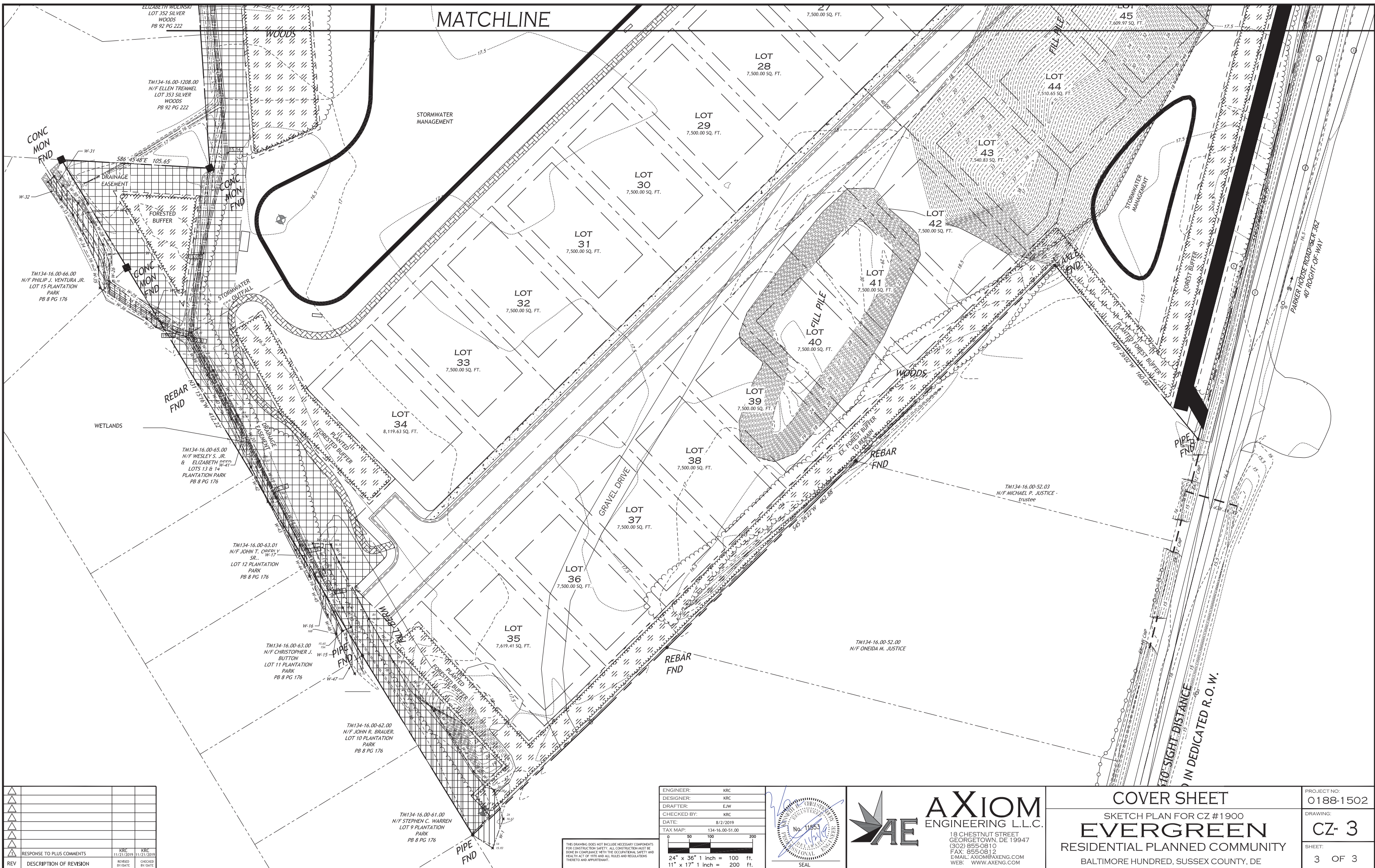
AE AXIOM ENGINEERING L.L.C.
 18 CHESTNUT STREET
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 E-MAIL: AXIOM@AXENG.COM
 WEB: WWW.AXENG.COM

COVER SHEET
 SKETCH PLAN FOR CZ #1900
EVERGREEN
 RESIDENTIAL PLANNED COMMUNITY
 BALTIMORE HUNDRED, SUSSEX COUNTY, DE

PROJECT NO:
0188-1502

DRAWING:
CZ- 2

SHEET:
2 OF 3



REV	DESCRIPTION OF REVISION	BY/DATE	CHECKED BY/DATE
1	RESPONSE TO PLUS COMMENTS	KRC 11/21/2019	KRC 11/21/2019

THIS DRAWING DOES NOT INCLUDE NECESSARY COMPONENTS FOR CONSTRUCTION SAFETY. ALL CONSTRUCTION MUST BE DONE IN COMPLIANCE WITH THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 AND ALL RULES AND REGULATIONS THEREOF AND APPURTENANT.

ENGINEER:	KRC
DESIGNER:	KRC
DRAFTER:	EJW
CHECKED BY:	KRC
DATE:	8/2/2019
TAX MAP:	134-16.00-51.00



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COVER SHEET
 SKETCH PLAN FOR CZ #1900
EVERGREEN
 RESIDENTIAL PLANNED COMMUNITY
 BALTIMORE HUNDRED, SUSSEX COUNTY, DE

PROJECT NO:	0188-1502
DRAWING:	CZ-3
SHEET:	3 OF 3

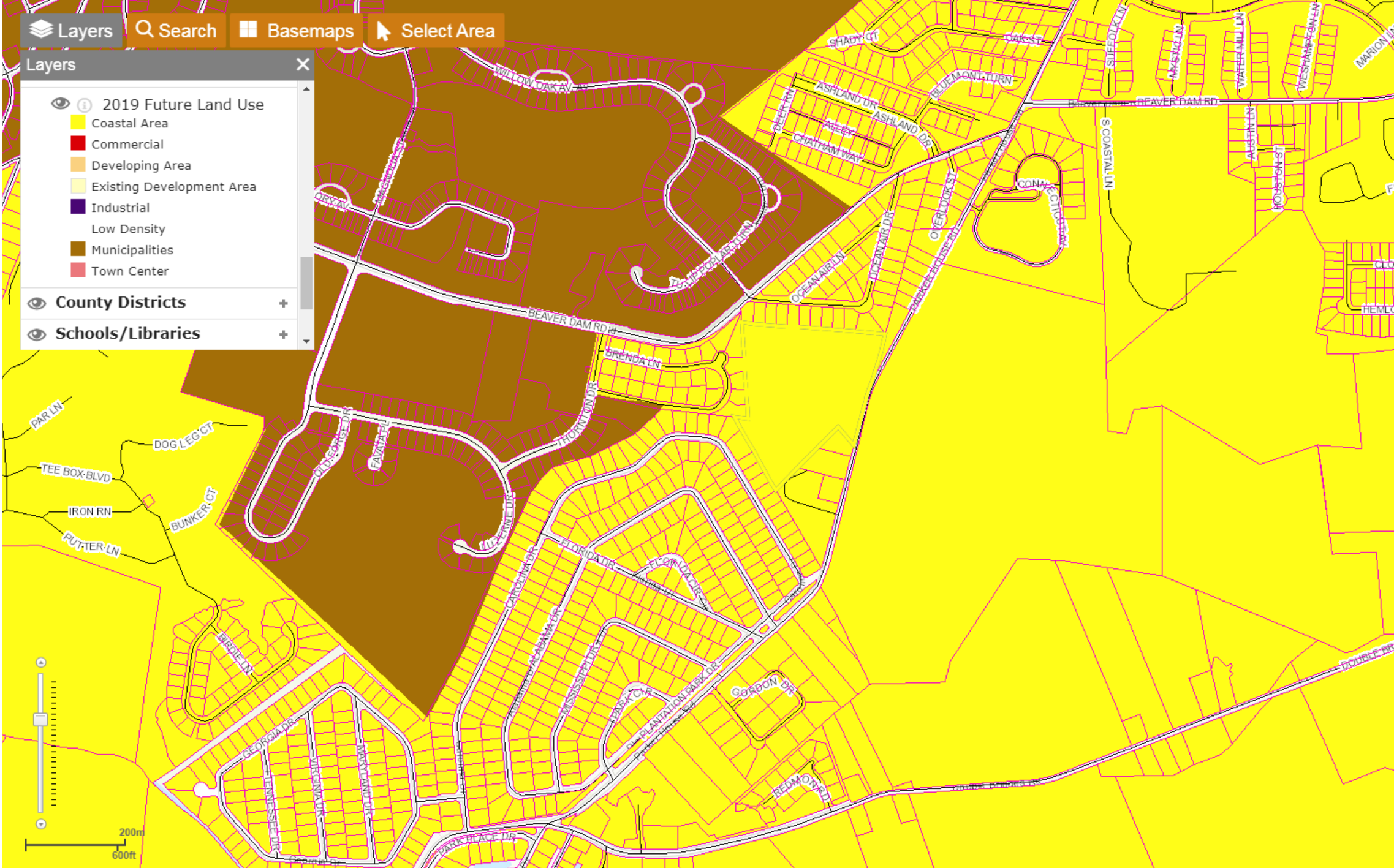
4

**COMPREHENSIVE PLAN FUTURE LAND USE
MAP & COMPLIANCE STATEMENT**

Layers Search Basemaps Select Area

Layers

- 2019 Future Land Use
 - Coastal Area
 - Commercial
 - Developing Area
 - Existing Development Area
 - Industrial
 - Low Density
 - Municipalities
 - Town Center
- County Districts +
- Schools/Libraries +



Hide search results >>

Search results Clear Selected

Selected Features: Parcels (1)

1) 134-16.00-51.00 Zoom

Book	4741
Page	240
Owner Name	JUSTICE MICHAEL P TTEE REV TR
Mailing Address	29687 SAW MILL DR
City	DAGSBORO
State	DE
Sewer Account	17-01-051
Description	OCEAN VIEW TO
Description 2	DOUBLE BRIDGES
Land Code	RV
Town Code	00
CAP	0
BLDG Improvement	0
LND Improvement	160200
PIN with Unit	134-16.00-51.00
PIN	134-16.00-51.00
Zipcode	19939
Frontage	0
Depth	0
Fire District	84
Council District	5

Selected Features (1)

- Infrastructure – Central water and sewer facilities are strongly encouraged. If central utilities are not possible, permitted densities should be limited to two units per acre provided a septic permit can be approved.

4. Coastal Area

Sussex County has designated the areas around Rehoboth Bay, Indian River Bay, and Little Assawoman Bay (the inland bays) as Coastal Areas. Coastal Areas generally encompass areas on the south-eastern side of Sussex County within what was previously referred to as the Environmentally Sensitive Developing Areas of prior Comprehensive Plans. The updated name more accurately reflects the function of this land use classification. While the Coastal Area is a Growth Area, additional considerations should be taken into account in this Area that may not apply in other Growth Areas.

The Coastal Area designation is intended to recognize two characteristics. First, this region is among the most desirable locations in Sussex County for new housing, as is reflected in new construction data and real estate prices. Second, this region contains ecologically important and sensitive characteristics as well as other coastal lands which help to absorb floodwaters and provide extensive habitat for native flora and fauna. This area also has significant impact upon water quality within the adjacent bays and inlets as well as upon natural the region's various habitats. And, these factors are themselves part of the reason that this Area is so desirable-making the protection of them important to both the environment and the economy.

The County has significant initiatives to extend public sewer service to replace inadequate on-site systems. This is described more in within Chapter 8, Utilities. Careful control of stormwater runoff is also an important concern in keeping sediment and other pollutants out of the Inland Bays.

The challenge in this region is to safeguard genuine natural areas and mitigate roadway congestion without stifling the tourism and real estate markets which: a) provide many jobs; b) create business for local entrepreneurs; and c) help keep local tax rates low.

The following guidelines should apply to future growth in Coastal Areas:

- Permitted Uses – Coastal Areas are areas that can accommodate development provided special environmental concerns are addressed. A range of housing types should be permitted in Coastal Areas, including single-family homes, townhouses, and multi-family units. Retail and office uses are appropriate but larger shopping centers and office parks should be confined to selected locations with access along arterial roads. Appropriate mixed-use development should also be allowed. In doing so, careful mixtures of homes with light commercial, office and institutional uses can be appropriate to provide for convenient services and to allow people to work close to home. Major new industrial uses are not proposed in these areas.

- **Densities** –Sussex County’s base density of 2 units per acre is appropriate throughout this classification; however, medium and higher density (4-12 units per acre) can be appropriate in certain locations. Medium and higher density could be supported in areas: where there is central water and sewer; near sufficient commercial uses and employment centers; where it is in keeping with the character of the area; where it is along a main road or at/or near a major intersection; where there is adequate Level of Service; or where other considerations exist that are relevant to the requested project and density. A clustering option permitting smaller lots and additional flexibility in dimensional standards is encouraged on tracts of a certain minimum size, provided significant permanent common open space is preserved and the development is connected to central water and sewer service. The preservation of natural resources or open space is strongly encouraged in this land use classification. The County should revisit environmental protection in the Coastal Areas.

Specific regulations governing cluster developments are designated by zoning district. There currently is an option where density can be increased with optional density bonuses for certain zoning districts. Those optional bonuses may involve payment of fees that fund permanent land preservation elsewhere in the County, or other options. RPC’s are encouraged to allow for a mix of housing types and to preserve open space and natural areas/resources. Cluster development that allows for smaller lots and flexibility in dimensional standards is encouraged if the developer uses a cluster option that results in permanent preservation of a substantial percentage of the tract and/or natural areas/resources. Master planning should be encouraged especially for large-scale developments on large parcels or groups of parcels, higher density and mixed-use developments to provide flexibility in site design.

All applicants for developments of a minimum size (as specified in zoning) should continue to be required to provide information that analyzes the development’s potential environmental impacts, including effects on stormwater runoff, nitrogen and phosphorous loading, wetlands, woodlands, wastewater treatment, water systems, and other matters that affect the ecological sensitivity of the inland bays.

- **Infrastructure** – Central water and sewer facilities are strongly encouraged. If central utilities are not possible, permitted densities should be limited to two units per acre provided a septic permit can be approved.

5. Existing Development Area

Existing Development Areas consists of primarily of existing residential development under the current General Residential and Medium Density Residential zoning districts, as well as some commercial uses. These areas are scattered throughout the County. These areas are surrounded by Low Density Areas, and this particular classification is simply being used to identify these

Compliance with 2019 Comprehensive Plan - Coastal Areas

Sussex County's 2019 Comprehensive Plan Update Future Land Use Map designates the project as a growth zone, specifically Coastal Area. Quotes from the Comp Plan regarding Coastal Areas include the following considerations:

- First, this region is among the most desirable locations in Sussex County for new housing, as is reflected in new construction data and real estate prices. CZ #1900 provides housing options in an area recognized by the County to be desirable for housing.
- Second, this region contains ecologically important and sensitive characteristics as well as other coastal lands which help to absorb floodwaters and provide extensive habitat for native flora and fauna. This area also has significant impact upon water quality within the adjacent bays and inlets as well as upon natural the region's various habitats. 39% (6.29 ac.) of the site will remain in open space, 30% (1.45 ac.) of the existing forest will be preserved and 0.62 acres of forest buffer will be planted. The site's environmental conditions have been field verified to ensure compliance with federal, state and local requirements (see Tabs 11-13).
- Careful control of stormwater runoff is also an important concern in keeping sediment and other pollutants out of the Inland Bays. The site design will incorporate Best Management Practices in accordance with Sussex Conservation District criteria.
- Permitted Uses -A range of housing types should be permitted in Coastal Areas, including single-family homes, townhouses, and multi-family units. CZ #1900 provides single family detached housing which is permitted in Coastal Areas.
- Densities -Sussex County's base density of 2 units per acre is appropriate throughout this classification; however, medium and higher density (4-12 units per acre) can be appropriate in certain locations. Medium and higher density could be supported in areas:
 - where there is central water and sewer; Sussex County central sewer is available, Tidewater Utilities is ready and willing to provide central water to the property
 - near sufficient commercial uses and employment centers; C-1 General Commercial lands are adjacent on the southern border of the property.

- where it is in keeping with the character of the area; Kensington Park has a density of 3.02 du/ac., Plantation Park Subdivision has a density of 2.97 du/ac., Ocean Air has a density of 2.74 du/ac., Silverwoods Phase 1 has a density of 2.64 du/ac. CZ #1900 proposes a density of 2.82 du/ac., which is in keeping with the character of the surrounding residential neighborhoods.
- where it is along a main road or at/or near a major intersection; SCR 362 (Parker House Road) is classified by the Delaware Department of Transportation (DelDOT) as a Minor Collector.
- where there is adequate Level of Service; DelDOT did not require a Traffic Impact Study in response to this application.
- The preservation of natural resources or open space is strongly encouraged in this land use classification. 39% (6.29 ac.) of the site will remain in open space, 30% (1.45 ac.) of the existing forest will be preserved.
- Infrastructure - Central water and sewer facilities are strongly encouraged. If central utilities are not possible, permitted densities should be limited to two units per acre provided a septic permit can be approved. The property is served by Sussex County central sewer, and Tidewater Utilities has issued a Ready and Willing letter to provide central water to the property sufficient for potable water and fire protection flow requirements.

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CHAPTER 99-9C COMPLIANCE STATEMENT

Compliance with Subdivision Ordinance § 99-9C

In the design and layout of Evergreen RPC, the following items have been considered from Subdivision Ordinance § 99-9C:

§ 99-C(1) Integration of the proposed subdivision into existing terrain and surrounding landscape: Evergreen RPC is located adjacent to existing single family home developments. All of the adjacent properties are buffered by 20' wide areas in common open space where existing woods are to remain, or forested buffers are to be planted where no existing forest stands.

§ 99-C(2) Minimal use of wetlands and floodplains: Wetlands are limited to the existing ditch located on the southwest side of the property, where no lots are proposed. The site contains no regulatory floodplains.

§ 99-C(3) Preservation of natural and historical features: There are no known historic features on the property. Approximately 1.45 acres of existing forest will be preserved and 0.62 acres will be planted as forest buffers, 39% of the site will be preserved in HOA open space.

§ 99-C(4) Preservation of open space and scenic views: 39% of the property, or 5.94 acres, will be preserved as common open space.

§ 99-C(5) Minimization of tree, vegetation and soil removal and grade changes: The proposed design allows for the conservation or planting of 2 acres of forest. Soil removal and grade changes will be minimized during the final design to be limited only to that which is needed to provide positive drainage and proper cover over proposed utilities.

§ 99-C(6) Screening of objectionable features from neighboring properties and roadways: The stormwater management pond will be equipped with an aeration fountain, and will not appear objectionable. As detailed above, the site will be buffered on all sides.

§ 99-C(7) Provision for water supply: Tidewater Utilities shall provide central water to the project.

§ 99-C(8) Provision for sewage disposal: The project is located in a Sussex County Sanitary Sewer District where service is available.

§ 99-C(9) Prevention of pollution of surface and groundwater: The site shall include Best Management Practices (BMPs) that will enhance surface water quality. At this time it is anticipated that the site will include a wet extended detention basin and other Sussex Conservation District (SCD) accepted facilities. In addition, the development of the site with central sanitary sewer to be provided by Sussex County minimizes negative environmental impacts.

§ 99-C(10) Minimization of erosion and sedimentation, minimization of changes in groundwater levels, minimization of increased rates of runoff, minimization of potential for flooding and design of drainage so that groundwater recharge is maximized: The retention of existing forest cover will result in a site development that minimizes erosion. During construction, SCD approved erosion and sediment control measures shall be implemented to limit sediment laden runoff from leaving the project site.

§ 99-C(11) Provision for safe vehicular and pedestrian movement within the site and to adjacent ways: If required by DELDOT, a shared use path will be included on the project frontage. Sidewalks have been proposed for one side of the project street, which connects to open space in the middle and at both ends of the project.

§ 99-C(12) Effect on area property values: The development of Evergreen RPC with quality single family homes, community gathering places in open space and infrastructure will increase the value of the subject property, thereby likely increasing the value of surrounding property. Also, the introduction of landscaped open space areas will likely improve their values as well.

§ 99-C(13) Preservation and conservation of farmland: The property is not in agricultural use, nor are any adjoining properties. The conversion of this area from agricultural to residential likely dates back to the early 1970's, when Sussex County zoned this area General Residential (GR).

§ 99-C(14) Effect on schools, public buildings and community facilities: Evergreen RPC is located within the Indian River School District. A school bus stop shelter will be provided if requested by the school district. Since the 45 lots proposed in Evergreen are anticipated to be marketed to retirees, it is unlikely that it will increase any burdens on the school districts. Increases in real estate taxes will serve to benefit the Indian River School District.

§ 99-C(15) Effect on area roadways and public transportation: DelDOT did not require a traffic impact study in response to this application. Road improvements related to the entrance design will be installed as required by DelDOT. Right-of-way dedications and permanent easements along both frontages have been indicated as required by DelDOT.

§ 99-C(16) Compatibility with other area land uses: Evergreen RPC Subdivision, as proposed, is consistent with other existing land uses in the vicinity. Kensington Park has a density of 3.02 du/ac., Plantation Park Subdivision has a density of 2.97 du/ac., Ocean Air has a density of 2.74 du/ac., Silverwoods Phase 1 has a density of 2.64 du/ac. CZ #1900 proposes a density of 2.82 du/ac., which is in keeping with the character of the surrounding residential neighborhoods

§ 99-C(17) Effect on area waterways: The use of Best Management Practices as required by the Sussex Conservation District, the planting of forest buffers, and the preservation of some of the existing forest cover will enhance the quality of both surface and groundwater discharges from the site.

6

DELDOT SERVICE LEVEL EVALUATION



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. Box 778
DOVER, DELAWARE 19903

JENNIFER COHAN
SECRETARY

July 29, 2019

Ms. Janelle Cornwell, Director
Sussex County Planning & Zoning
P.O. Box 417
Georgetown, DE 19947

Dear Ms. Cornwell:

The Department has completed its review of a Service Level Evaluation Request for the **Michael P. Justice, Trustee**, conditional application, which we received on July 2, 2019. This application is for an approximately 15.67-acre parcel (Tax Parcel: 134-16.00-51.00). The subject land is located on the west side of Parker House Road (Sussex Road 362), approximately 1,880 feet southwest of the intersection of Parker House Road and Beaver Dam Road (Sussex Road 368). The subject land is currently zoned GR (General Residential), and the applicant is seeking a conditional use with a residential planned community (RPC) overlay approval to develop 45 single-family detached houses.

Per the 2018 Delaware Vehicle Volume Summary, the annual average and summer average daily traffic volumes along the segment of Parker House Road where the subject land is located, which is from Double Bridges Road (Sussex Road 363) to Muddy Neck Road (Sussex Road 361), are 1,646 and 2,116 vehicles per day, respectively.

Based on our review, we estimate that the above land use will generate fewer than 50 vehicle trips in any hour and fewer than 500 vehicle trips per day. These numbers of trips are DeIDOT's minimum warrants for determining that a Traffic Impact Study (TIS) should be required for a particular development. Because the proposed land use would not meet these warrants, we consider the development's traffic impact to be negligible in the context of our agreement with the County regarding land development coordination and we do not recommend that the applicant be required to perform a TIS for the subject application. DeIDOT's description of this application as negligible with regard to warranting a TIS does not mean that it is negligible in other respects. We recommend that the applicant not be required to perform a TIS for the subject application.

Because the site would generate more than 200 vehicle trips per day, a Traffic Operational Analysis (TOA) may be required as part of the site plan review process, in accordance with Chapter 2 of the Development Coordination Manual.



Ms. Janelle M. Cornwell
Page 2 of 2
July 29, 2019

If the County approves this application, the applicant should be reminded that DelDOT requires compliance with State regulations regarding plan approvals and entrance permits, whether or not a TIS is required.

Please contact Mr. Claudy Joinville, at (302) 760-2124, if you have questions concerning this correspondence.

Sincerely,



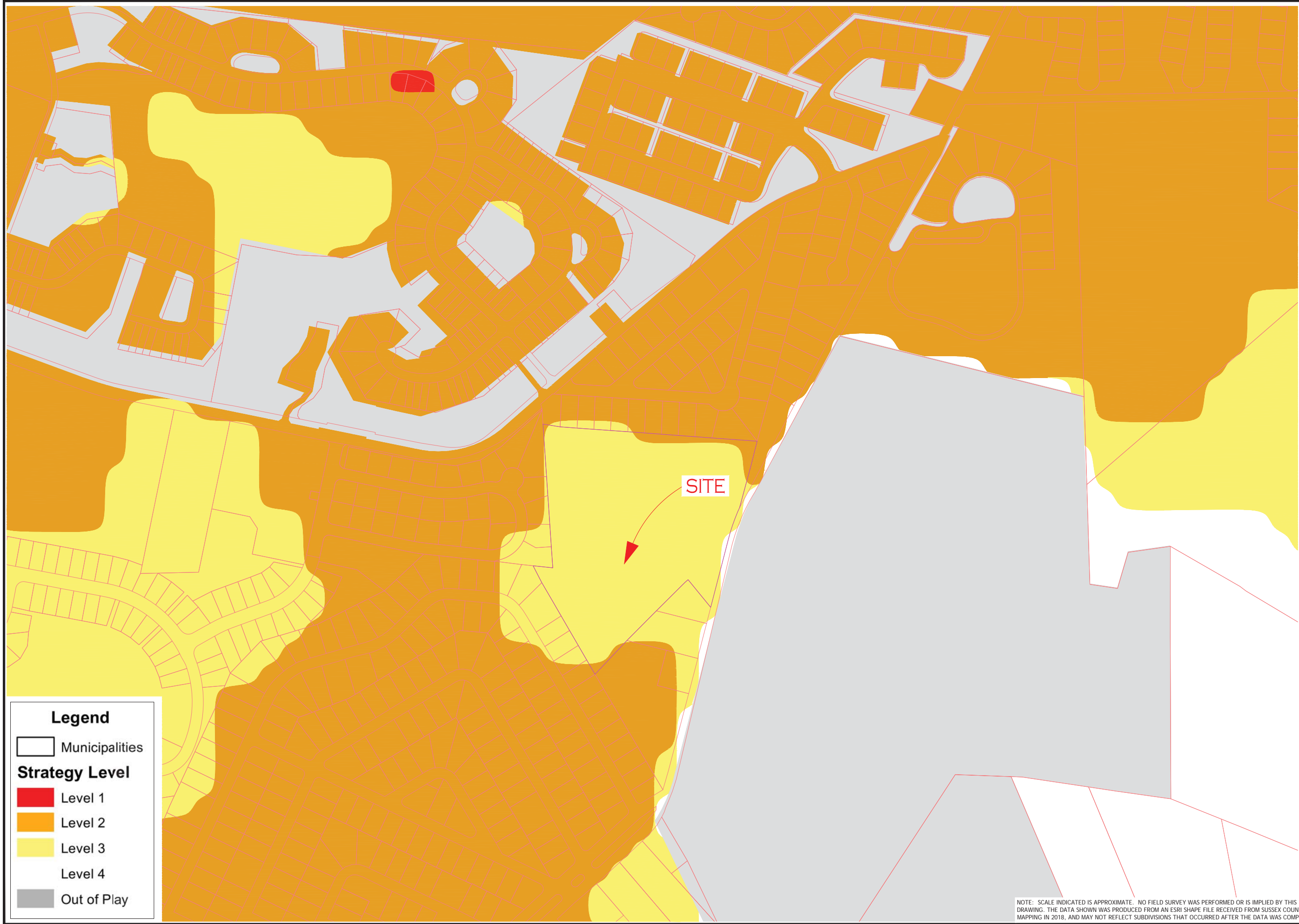
T. William Brockenbrough, Jr.
County Coordinator
Development Coordination

TWB:cjm







cc: Constance C. Holland, Coordinator, Cabinet Committee on State Planning Issues
Michael P. Justice, Trustee, Applicant
J. Marc Coté, Assistant Director, Development Coordination
Gemez Norwood, South District Public Works Manager, Maintenance & Operations
Susanne Laws, Sussex County Subdivision Coordinator, Development Coordination
Derek Sapp, Subdivision Manager, Development Coordination
Kevin Hickman, Subdivision Manager, Development Coordination
Brian Yates, Subdivision Manager, Development Coordination
John Andrescavage, Subdivision Manager, Development Coordination
Troy Brestel, Project Engineer, Development Coordination
Claudy Joinville, Project Engineer, Development Coordination

7

**PRELIMINARY LAND USE SERVICE
(PLUS) RESPONSE**



Legend

-  Municipalities
- Strategy Level**
-  Level 1
-  Level 2
-  Level 3
-  Level 4
-  Out of Play

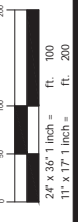
REV	DESCRIPTION OF REVISION	REVISOR	DATE

STATE STRATEGIES MAP
 PUBLIC DATA REFERENCED TO
CZ# 1900 - EVERGREEN RPC
 BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE

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ENGINEER:	KRC
DESIGNER:	KRC
DRAWN BY:	KRC
CHECKED BY:	KRC
DATE:	11/19/2019
TAX MAP:	134-16.00-51.00



PROJECT NO: **0188-1502**
 DRAWING: **CR-4**
 SHEET: **4 OF 9**
 SEAL _____

NOTE: SCALE INDICATED IS APPROXIMATE. NO FIELD SURVEY WAS PERFORMED OR IS IMPLIED BY THIS DRAWING. THE DATA SHOWN WAS PRODUCED FROM AN ESRI SHAPE FILE RECEIVED FROM SUSSEX COUNTY MAPPING IN 2018, AND MAY NOT REFLECT SUBDIVISIONS THAT OCCURRED AFTER THE DATA WAS COMPILED.



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Georgetown, DE 19947
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Fax: 302 855-0812
E-mail: axiom@axeng.com

November 22, 2019

Office of State Planning Coordination
122 William Penn Street - Suite 302
Dover, DE 19901

Attn: Constance C. Holland, AICP

RE: PLUS review 2019-09-02; Evergreen RPC

Dear Ms. Holland:

Axiom Engineering is in receipt of comments resulting from the September 25, 2019 meeting with State agency planners. Comments received are shown in black, Axiom Engineering's responses are shown underlined and printed in red.

Strategies for State Policies and Spending

The proposed development is located within an Investment Level 3 area, which is more than likely present because of wetlands on the site. Investment Level 3 reflects areas where growth is anticipated by local, county, and state plans in the longer term future, or areas that may have environmental or other constraints to development. State investments may support future growth in these areas, but please be advised that the State has other priorities for the near future.

We not only encourage you to design the site with respect for the environmental features which are present, but we also ask that you work closely with DNREC regarding their concerns noted in this letter to ensure that the environmentally sensitive areas on and around this site are protected.

The developer has retained Kenneth W. Redinger to perform detailed site analyses including soil borings and test pits, water table monitoring, flora and fauna review to determine that environmentally sensitive features on the project site are accurately indicated on the site plan. Additional data from Mr. Redinger will be provided to the U.S. Army Corps of Engineers, DNREC, Sussex County and other agencies reviewing the project.

Code Requirements/Agency Permitting Requirements

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The site access on Parker House Road (Sussex Road 362) must be designed in accordance with DeIDOT's Development Coordination Manual, which is available at <http://www.deldot.gov/Business/subdivisions/index.shtml?dc=changes>.

Acknowledged.

- Pursuant to Section P.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.

Acknowledged.

- Section P.5 of the Manual addresses fees that are assessed for the review of development proposals. DeIDOT 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.

Acknowledged.

- Per Section 2.2.2.1 of the Manual, Traffic Impact Studies (TIS) are warranted for developments generating more than 500 vehicle trip ends per day or 50 vehicle trip ends per hour in any hour of the day. From the PLUS application, the total daily trips are estimated at 429 vehicle trip ends per day. DeIDOT calculates that this number should be 499 and finds further that the trip generation during the weekday evening peak hour would be 47 vehicle trip ends. Therefore, the plan does not meet the warrants for a TIS.

The trip generation diagram has been updated accordingly.

The purpose of a TIS is to identify offsite improvements that the developer should build or contribute toward. While a TIS is not required, DeIDOT anticipates requiring the developer to improve Parker House Road to meet Collector Road standards, including two 11-foot travel lanes and two 8-foot shoulders, within the limits of their projected frontage, i.e. from a point about 340 feet north of the limit of their actual frontage to a point about 850 feet south of their actual frontage, for a total distance of about 1,630 feet including their site entrance. This requirement may include a bituminous concrete overlay to the existing travel lanes, at DeIDOT's discretion. If DeIDOT requires an overlay, they will analyze the existing travel lanes' pavement section specify the overlay thickness.

The site does not warrant a TIS, why is the Department requiring off-site improvements beyond the frontage of the site?

- As necessary, in accordance with Section 3.2.5 and Figure 3.2.5-a of the Manual, DeIDOT will require dedication of right-of-way along the site's frontage on Parker House. By this regulation, this dedication is to provide a minimum of 40 feet of right-of-way from the physical centerline on Parker

House Road. The following right-of-way dedication note is required, “**An X-foot wide right-of-way is hereby dedicated to the State of Delaware, as per this plat.**”

Acknowledged.

- 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 on Parker House Road. 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 established for the State of Delaware, as per this plat.**”

Acknowledged.

- Referring to Section 3.4.2.1 of the Manual, the following items, among other things, are required on the Record Plan:
 - A Traffic Generation Diagram. See Figure 3.4.2-a for the required format and content.
 - Depiction of all existing entrances within 450 feet of the entrance on Parker House Road.
 - Notes identifying the type of off-site improvements, agreements (signal, letter) contributions and when the off-site improvements are warranted.

The site does not warrant a TIS, why is the Department requiring off-site improvements beyond the frontage of the site?

- Section 3.5.4.2 of the Manual addresses requirements for shared-use paths and sidewalks. For projects in Level 3 and 4 Investment Areas, installation of paths or sidewalks along the frontage on State-maintained roads is at DelDOT’s discretion. DelDOT anticipates requiring the developer to build a Shared Use Path along their frontage.

Acknowledged.

- Referring to Section 3.5.5 of the Manual, existing and proposed transit stops and associated facilities as required by the Delaware Transit Corporation (DTC) or DelDOT shall be shown on the Record Plan.

Please provided DTC comments.

- 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 Parker House Road.

Acknowledged.

- 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.

Acknowledged.

Department of Natural Resources and Environmental Control – Contact Michael Tholstrup 735-3352

Sediment and Stormwater Management

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

Acknowledged.

- The applicant should employ green-technology stormwater management and rain gardens (in lieu of open-water management structures) to mitigate or reduce nutrient and bacterial pollutant runoff.

Acknowledged.

State Historic Preservation Office – Contact Carlton Hall 736-7400

- There are no known archaeological sites or known National Register listed or eligible properties on the parcel.
- If any project or development proceeds, the developer should be aware of the Unmarked Human Burials and Human Skeletal Remains Law (Del. C. Title 7, Ch. 54).
- If there is federal involvement, in the form of licenses, permits, or funds, the federal agency, often through its client, is responsible for complying with Section 106 of the National Historic Preservation Act (36 CFR 800) and must consider their project's effects on any known or potential cultural or historic resources. For further information on the Section 106 process please review the Advisory Council on Historic Preservation's website at: www.achp.gov

Acknowledged.

Delaware State Fire Marshall's Office – Contact Duane Fox 259-7037

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:

Fire Protection Water Requirements:

- Where a water distribution system is proposed for single-family dwellings it shall be capable of delivering at least 500 gpm for 1-hour duration, at 20-psi residual pressure. Fire hydrants with 1000 feet spacing on centers are required.
- The infrastructure for fire protection water shall be provided, including the size of water mains.

Acknowledged.

Accessibility:

- Where traffic circles (round-abouts) are located in the subdivision, they too are to be arranged in such a manner that they will not adversely affect quick and unimpeded travel of fire apparatus throughout the subdivision. Additionally, where trees are to be situated adjacent to travel roads in the subdivision, some forethought should be exercised regarding how future growth of the trees may affect fire department travel throughout the subdivision.
- 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.

Acknowledged.

Gas Piping and System Information:

- Provide type of fuel proposed and show locations of bulk containers on plan.

Acknowledged.

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

Acknowledged.

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 the suggestions can benefit the project.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The applicant should expect a requirement that any substation and/or wastewater facilities will be required to have access from an internal driveway with no direct access to Parker House Road.
- 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 DeIDOT website. Please begin using the new versions and look for the revision dates of March 21, 2019 and March 25, 2019. The notes can be found at <https://www.deldot.gov/Business/subdivisions/>

Acknowledged.

Department of Natural Resources and Environmental Control – Contact Michael Tholstrup 735-3352

Groundwater Discharges

- A soil feasibility study should be completed and submitted to the Groundwater Discharges Section (GWDS) Small System Section, in Georgetown, for approval. *Section 5.2.2 of the Regulations Governing the Design, Installation, and Operation of On-Site Wastewater Treatment and Disposal Systems.*

The project will not have an On-Site Wastewater Treatment and Disposal System.

- With wastewater disposal being provided by Sussex County, GWDS Large System might need to be notified, if the disposal capacity is changing from the existing permit.

Sussex County's PLUS comments below state the following:

- The development is within Tier 1 - Sussex County Unified Sanitary Sewer District and sewer service is available.

The County Engineering Department is responsible to comply with DNREC's permitting requirements.

State Natural Area

- The project area is across the road from the Little Assawoman Natural Area. Impacts to the natural area should be avoided. A "natural area" as defined by the law is an area of land or water, or of both land and water, whether in public or

private ownership, which either retains or has reestablished its natural character (although it need not be undisturbed), or has unusual flora or fauna, or has biotic, geological, scenic or archaeological features of scientific or educational value.

The developer has retained Kenneth W. Redinger to perform detailed site analyses including soil borings and test pits, water table monitoring, flora and fauna review to determine that environmentally sensitive features on the project site are accurately indicated on the site plan. Additional data from Mr. Redinger will be provided to the U.S. Army Corps of Engineers, DNREC, Sussex County and other agencies reviewing the project.

- Please contact Jennifer Holmes with the DNREC Division of Parks and Recreation, Office of Nature Preserves: (302)739-9239 or Jennifer.Holmes@delaware.gov.

Mr. Redinger will contact Jennifer Holmes and provide the results of his studies.

Natural Habitat Protection

- DNREC statewide mapping indicates that this proposal may impact 8.55 acres of wetlands.

Statewide mapping lacks the necessary accuracy for determining actual wetland boundaries. The results of Mr. Redinger's site specific study will be provided to the agencies.

Recommendations

- 1) Avoid diverting surface water from roadways and stormwater facilities into the wetlands on site. Water quality could be detrimentally affected by run-off which can contain oil and other pollutants (basically any substance a home owner may use on their lawn or driveway).
- 2) Maintain inputs to natural wetlands at pre-construction levels. Avoid causing increases or decreases in water levels.
- 3) Small animals, such as salamanders have difficulty climbing vertical curbs. Excluding curbs is best for these species but if road curbing is part of the design, curbing that allows small animals to climb out of the roadbed (such as Cape Cod curbing) is preferred over steep, vertical curbing.
- 4) Avoid installing sewers with grates, which can create a hazard for amphibians and reptiles.
- 5) Any culverts installed should be open bottom box culverts to allow for natural substrate to remain and in-water passage of aquatic life. Additionally, culverts should be left as wide as possible to ensure that salamanders can travel through them.
- 6) Perc test holes act as pitfall traps, collecting large numbers of amphibians, turtles, and other animals that will be unable to escape and will ultimately die. As such, perc test holes should be refilled to grade.
- 7) Low spillage lights (those that reflect light directly downward onto the area to be illuminated) should be used on roads and homes within 750 ft. of the forested wetlands on site. Fluorescent and mercury vapor lighting should not be used.

Acknowledged.

Wetland and Hydric Soils

- The project area contains mapped wetlands and hydric soil mapping units (e.g., Hurlock and Mullica) that encompass the entirety of the proposed project area; therefore, the proposed project area is mostly unsuitable for development.

Acknowledged.

- Hydric soils are functionally important source of water storage (functions as a “natural sponge”); the loss of water storage through excavation, filling, or grading of intact native hydric soils increases the probability for more frequent and destructive flooding events (exacerbated by projected increases in precipitation and sea-level rise due to climate change). The probability for flooding is further compounded by increases in surface imperviousness as building density in the area increases over time. Moreover, destruction of hydric soils increases the amount pollutant runoff (i.e., hydric soils sequester and detoxify pollutants) which contributes to lower observed water quality in regional waterbodies and wetlands.

Acknowledged.

Recommendations:

- The applicant should contact a licensed (Delaware Class D) soil scientist to make a site-specific assessment (i.e., soil survey mapping) of the soils on this site. A list of licensed Class D soil scientists can be obtained at the following web link:
<http://www.dnrec.delaware.gov/wr/Information/GWDInfo/Pages/GroundWaterDiscargesLicensesandLicensees.aspx>

Mr. Redinger is collaborating with Laf Erickson of Atlantic Resource Management, Inc.. Mr. Erickson is a highly regarded Class D licensed soil scientist with decades of local experience.

- According to PLUS application materials, a wetlands delineation was conducted. The project parcel (#134-16.00-51.00) was previously submitted through PLUS (application 2006-11-02). The 2006 application noted a wetland delineation was conducted and 2.01 acres of non-tidal wetlands on site. Aerial photographs now show the site has been cleared. The new 2019 PLUS application notes 0.13 acres of non-tidal wetland on site. This wetland delineation will need to be approved by the US Army Corp of Engineers before construction activities begin.

Mr. Redinger has submitted his preliminary findings to the US Army Corps of Engineers, and will submit a formal Jurisdictional Determination concurrent with preparation of engineering plans.

- Contact the Subaqueous Lands section before “modifying” or “making improvements” to any ditches. The Subaqueous Lands section can be reached by phone at (302) 739-9943.

Mr. Redinger will contact Subaqueous Lands.

- Wherever practicable, the applicant should mitigate impacts from impervious cover via pervious pavers, as an alternative for conventional paving. Specifically, in those areas designated for parking.

Acknowledged.

- This proposed project will lead to increased probability for future flooding events due to removal of forest cover, filling of wetlands, and the creation of unnecessary and avoidable increases in surface imperviousness through use of conventional or “outdated” building or development practices (use of impervious paving materials rather than pervious). Additionally, potential flooding impacts will be exacerbated by more frequent and intense future precipitation events based on climate science research. Finally, this project will lead to degraded water quality in the greater Inland Bays watershed for the same reasons that increase the probability for future flooding events.

Acknowledged.

Sustainable Development Recommendations

- The applicant should consider the use of recycled, energy efficient materials, and renewable energy infrastructure.

Acknowledged.

- The Division of Climate, Coastal, & Energy offers incentives for clean transportation (Workplace EV Charging) and energy efficiency. These programs address climate change goals of reducing greenhouse gas emissions and improving overall air quality (www.de.gov/greenenergy, www.de.gov/cleantransportation, www.de.gov/eeif).

Acknowledged.

Nuisance Waterfowl Avoidance Recommendations

- Wet ponds created for stormwater management purposes may attract resident Canada geese and mute swans that will create a nuisance for community residents. High concentrations of waterfowl in ponds create water-quality problems, leave droppings on lawn and paved areas, and can become aggressive during the nesting season. Short manicured lawns surrounding ponds provide attractive habitat for these species.

Recommendations:

- 1) To deter waterfowl from taking up residence in these ponds, DNREC recommends planting the surrounding open space with a mix of native wildflower plantings (to be planted in accordance with the Sediment and Stormwater Plan approval agency requirements).

- 2) It is best to mow the open space area surrounding the pond only once a year, either in February or March. If mowing must occur more often, it would be helpful to leave a minimum buffer of 15-30 ft. in width to be mowed annually. This area would be necessary to adequately deter the waterfowl from inhabiting the area (when the view of the surrounding area from the pond is blocked, geese can't scan for predators and are less likely to reside and nest in the area of the pond). In addition to deterring nuisance waterfowl, the native wildflower mix will also serve to attract bees, butterflies, and other pollinators, and reduce run-off, which can contain oil and other pollutants that homeowners may use on their lawns and driveways.

Acknowledged.

- For assistance in drafting a list of plants suitable for a stormwater management pond buffer, please contact DNREC's botanist, Bill McAvoy at (302) 735-8668 or William.McAvoy@delaware.gov.

Acknowledged.

Mosquito-Nuisance Avoidance

- Mosquito control issues are increasing as developments infringe on wetland areas which often lead to increased demands by the public for mosquito control services. These services are often underfunded as local property taxes do not support the State's mosquito control services. As a result, Homeowner's Association (HOA) often inherit the burden of dealing with mosquito issues. DNREC provides the following helpful recommendations (1) achieving good control in an environmentally compatible manner requires technical knowledge, (2) the HOA will need concurrence from all their homeowners/residents for if, how, when and where any treatments will be done, (3) controlling mosquitoes can be quite costly and an on-going problem, and (4) the HOA should be aware that there can be liability issues that their treatment activities might cause, particularly in regard to any claims of chemical trespass, misapplications, or adverse impacts to human health or the environment from insecticide exposures. If the applicant has any questions regarding mosquito control issues, they can contact Dr. Bill Meredith, Mosquito Control Administrator at (302) 739-9917.

Acknowledged.

Fish & Wildlife Management

- The proposed project is adjacent to Assawoman Wildlife Area, which is publicly owned State land managed by the Division of Fish and Wildlife, DNREC. The developer will need to contact the Regional Wildlife Biologist, Rob Gano, to discuss this project. Rob can be reached at (302) 539-3160. The State is concerned that the quantity and quality of wildlife habitat in the wildlife area, particularly near the border, might be negatively affected by this development. In addition, DNREC is concerned that there will be pressure by future residents to alter activities at the wildlife area. The wildlife area was established in the mid-1990s and many of the

activities have been on-going since that time. It is important that residents, of this proposed community, are aware of wildlife management activities.

The developer should discuss the following issues with Rob Gano and make sure potential residents are fully aware of wildlife area activities:

- 1) The access road for the wildlife area borders this project on the eastern boundary. This road provides access to staff, hunters, and other users of the wildlife area which can include early morning hour use.
- 2) In addition to introducing human disturbance to the wildlife area, there is concern that there will be pressure to alter established management methods. Habitat management is extremely important to the health and use of the wildlife area. Residents should be aware that herbicide control of invasive plant species and controlled burning of grass stands are tools used to maintain wildlife habitat.
- 3) Hunting is a legal activity that takes place on the wildlife area and is often used by hunters in the early morning hours. Residents will be subject to the noise of fire arms and barking dogs that are pursuing game. In addition, hunting within 100 yards of a dwelling is prohibited and the developer will need to work with Rob to establish safety zones. Adequate buffers between dwellings and wildlife area boundaries will need to be established. Hunting is a recreational opportunity offered to all residents of Delaware, occurs on publicly owned land, is a method of wildlife management, and is well established at this wildlife area.
- 4) The use of ATV's (all-terrain vehicles) by non-wildlife area staff is illegal on the wildlife area. This has become a problem at other wildlife areas where residential developments have been built adjacent to state land. Not only do ATV's destroy habitat, but their use becomes an on-going enforcement issue.
- 5) During construction, measures should be taken so that on-site construction trash does not blow onto the wildlife area. In addition, planting a wind break would be useful in preventing residential trash from blowing onto the wildlife area in the future. Residents should be aware that dumping trash on wildlife areas is illegal.

Acknowledged.

Delaware State Fire Marshall's Office – Contact Duane Fox 259-7037

- Although not a requirement of the State Fire Prevention Regulations, the Office of the State Fire Marshal encourages home builders to consider the benefits of home sprinkler protection in dwellings. The Office of the State Fire Marshal also reminds home builders that they are obligated to comply with requirements of Subchapter III of Chapter 36 of Title 6 of the Delaware Code which can be found at the following website: <http://delcode.delaware.gov/title6/c036/sc03/index.shtml>

Acknowledged.

- 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.

Acknowledged.



Sussex County – Contact Rob Davis 302-855-7820

- The development is within Tier 1 - Sussex County Unified Sanitary Sewer District and sewer service is available. A sewer system concept evaluation must be requested to define a connection point for new areas that were not previously approved.
- A “Use of Existing Infrastructure Agreement” is required for new areas and must be approved prior to approval of construction plans. Sussex County Code, Chapter 110, requires that the Engineer and/or Developer request a Sewer System Concept Evaluation (SSCE) from the Utility Planning Department for new areas of the project not previously approved by providing the parcel(s) estimated equivalent dwelling units (EDU) for the project, along with payment of a \$1,000.00 fee for the evaluation. The fee is to be payable to Sussex County Council. The Utility Planning Department will review the parcel(s) and EDU, confirm capacity, provide the connection point and define any additional parcels that must be served as part of the project. Should it be determined that a pump station is required for the project, additional information may be requested. This information will be conveyed to the engineer and/or developer as well as the Sussex County Public Works department. The Public Works Division will use this information when reviewing construction drawings to verify that the correct connection point is used, and all required parcels are served.
- The proposed development will require a developer installed collection system in accordance with Sussex County standards and procedures.
- Onetime system connection charges will apply. Please contact the Utility Permits Division at 302 854-7719 for additional information on charges.

Acknowledged.

If there are any questions regarding the attached, do not hesitate to contact me at the above number or by e-mail: ken@axeng.com

Sincerely,

Kenneth R. Christenbury, P.E.
President, Axiom Engineering, LLC



8

WATER AND SEWER UTILITY AVAILABILITY

**UTILITY AVAILABILITY
CHANGE OF ZONE #1900**

On November 18, 2019 Tidewater Utilities indicated that they are ready and willing to serve the needs of this project, including fire protection flow requirements of the State Fire Marshal's Office.

On October 23, 2019, the Sussex County Engineering Department's PLUS Comments states: "The development is within Tier 1 - Sussex County Unified Sanitary Sewer District and sewer service is available."



A Middlesex Water Company Affiliate

November 18, 2019

Sent via E-mail

Kenneth Christenbury, P.E.
Axiom Engineering, LLC
18 Chestnut Street
Georgetown, DE 19947

RE: Tidewater Utilities, Inc. Willing and Able Letter – Parcel 134-16.00-51.00

Dear Mr. Christenbury:

Tidewater Utilities, Inc. (Tidewater) is willing and able to serve public water, including fire protection, to Parcel 134-16.00-51.00 based on the terms and conditions of a water service agreement to be negotiated and agreed upon by Tidewater and the owners of this parcel(s). This parcel is located within Tidewater's existing Certificate of Public Convenience and Necessity (CPCN) franchised area.

This development will be part of Tidewater's Ocean View/Bethany Bay District. A series of well, treatment plants and storage tanks will provide domestic and fire flows to this parcel.

Please feel free to contact me at 302-747-1325 if you have any questions or concerns regarding this matter. Tidewater looks forward to meeting the water needs of this project.

Sincerely,

Kirsten E. Higgins

Kirsten Higgins
Director Contract Administration

- 2) In addition to introducing human disturbance to the wildlife area, there is concern that there will be pressure to alter established management methods. Habitat management is extremely important to the health and use of the wildlife area. Residents should be aware that herbicide control of invasive plant species and controlled burning of grass stands are tools used to maintain wildlife habitat.
- 3) Hunting is a legal activity that takes place on the wildlife area and is often used by hunters in the early morning hours. Residents will be subject to the noise of fire arms and barking dogs that are pursuing game. In addition, hunting within 100 yards of a dwelling is prohibited and the developer will need to work with Rob to establish safety zones. Adequate buffers between dwellings and wildlife area boundaries will need to be established. Hunting is a recreational opportunity offered to all residents of Delaware, occurs on publicly owned land, is a method of wildlife management, and is well established at this wildlife area.
- 4) The use of ATV's (all-terrain vehicles) by non-wildlife area staff is illegal on the wildlife area. This has become a problem at other wildlife areas where residential developments have been built adjacent to state land. Not only do ATV's destroy habitat, but their use becomes an on-going enforcement issue.
- 5) During construction, measures should be taken so that on-site construction trash does not blow onto the wildlife area. In addition, planting a wind break would be useful in preventing residential trash from blowing onto the wildlife area in the future. Residents should be aware that dumping trash on wildlife areas is illegal.

Delaware State Fire Marshall's Office – Contact Duane Fox 259-7037

- Although not a requirement of the State Fire Prevention Regulations, the Office of the State Fire Marshal encourages home builders to consider the benefits of home sprinkler protection in dwellings. The Office of the State Fire Marshal also reminds home builders that they are obligated to comply with requirements of Subchapter III of Chapter 36 of Title 6 of the Delaware Code which can be found at the following website:
<http://delcode.delaware.gov/title6/c036/sc03/index.shtml>
- 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.

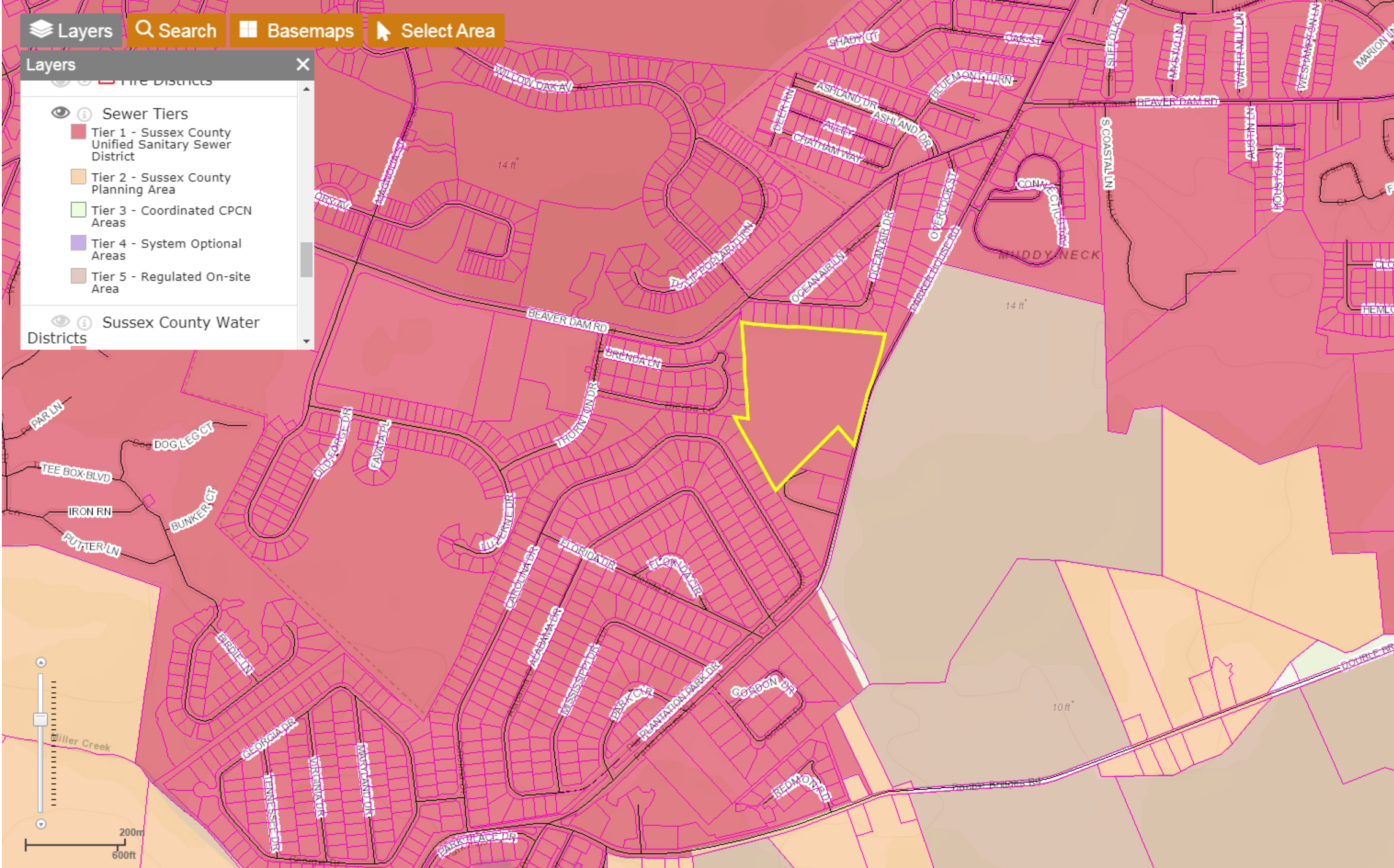
Sussex County – Contact Rob Davis 302-855-7820

- The development is within Tier 1 - Sussex County Unified Sanitary Sewer District and sewer service is available. A sewer system concept evaluation must be requested to define a connection point for new areas that were not previously approved.
- A “Use of Existing Infrastructure Agreement” is required for new areas and must be approved prior to approval of construction plans. Sussex County Code, Chapter 110, requires that the Engineer and/or Developer request a Sewer System Concept Evaluation

Layers Search Basemaps Select Area

Layers

- Fire Districts
- Sewer Tiers
 - Tier 1 - Sussex County Unified Sanitary Sewer District
 - Tier 2 - Sussex County Planning Area
 - Tier 3 - Coordinated CPCN Areas
 - Tier 4 - System Optional Areas
 - Tier 5 - Regulated On-site Area
- Sussex County Water Districts



Hide search results >>

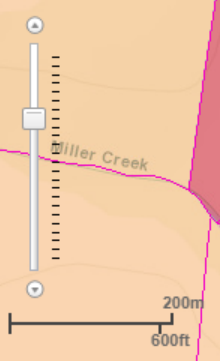
Search results Clear Selected

Selected Features: Parcels (1)

▼ 1) 134-16.00-51.00 Zoom

Book	4741
Page	240
Owner Name	JUSTICE MICHAEL P TTEE REV TR
Mailing Address	29687 SAW MILL DR
City	DAGSBORO
State	DE
Sewer Account	17-01-051
Description	OCEAN VIEW TO
Description 2	DOUBLE BRIDGES
Land Code	RV
Town Code	00
CAP	0
BLDG Improvement	0
LND Improvement	160200
PIN with Unit	134-16.00-51.00
PIN	134-16.00-51.00
Zipcode	19939
Frontage	0
Depth	0
Fire District	84
Council District	5

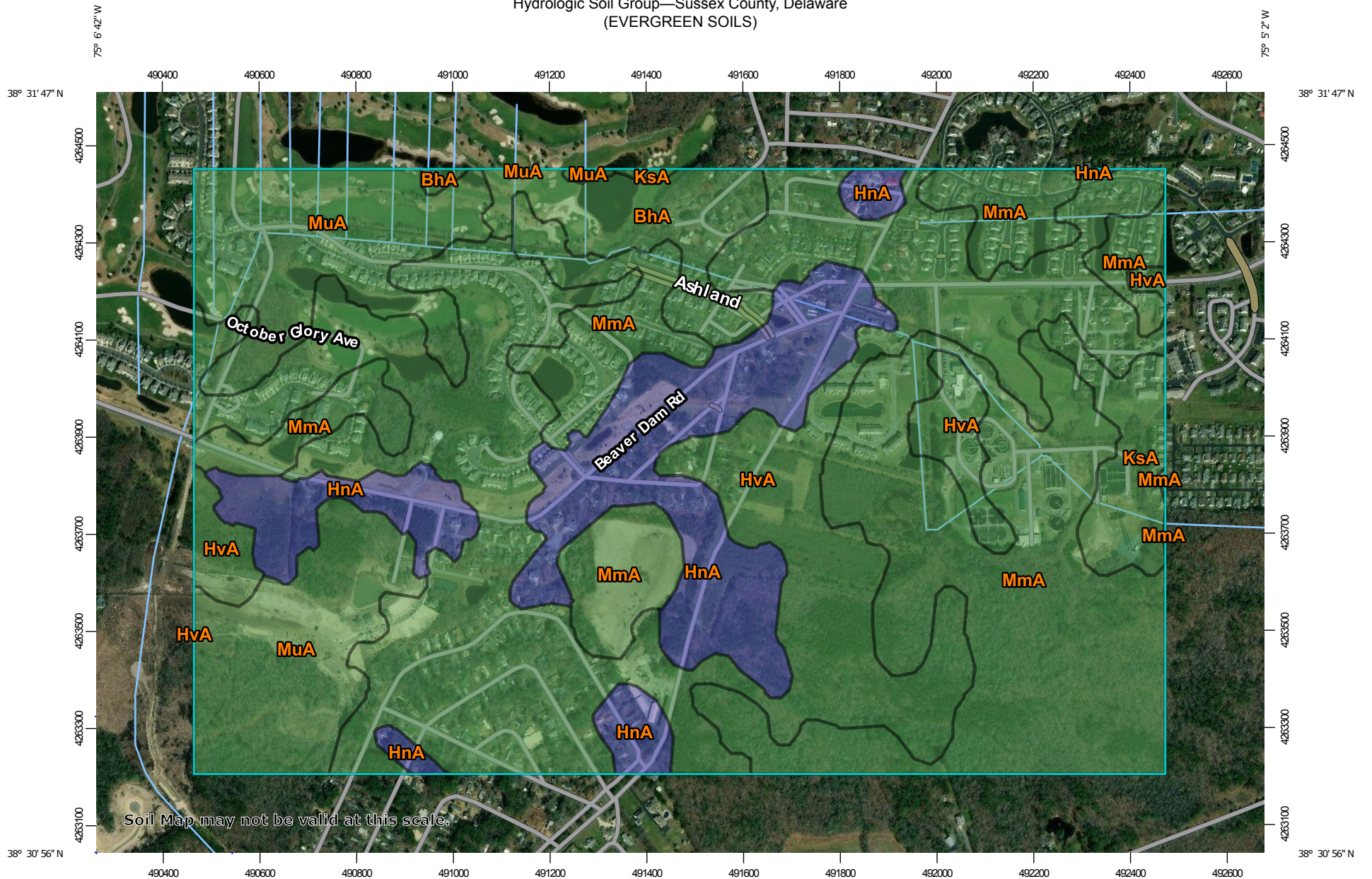
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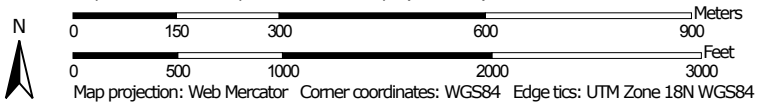
9

NRCS SOIL MAP & REPORT

Hydrologic Soil Group—Sussex County, Delaware
(EVERGREEN SOILS)




Map Scale: 1:11,000 if printed on A landscape (11" x 8.5") sheet.



MAP LEGEND

Area of Interest (AOI)









 Area of Interest (AOI)

Soils

Soil Rating Polygons





 A
 A/D
 B
 B/D
 C
 C/D
 D
 Not rated or not available

Soil Rating Lines


 A
 A/D
 B
 B/D
 C
 C/D
 D
 Not rated or not available

Soil Rating Points






 A
 A/D
 B
 B/D

 C
 C/D
 D
 Not rated or not available

Water Features

 Streams and Canals

Transportation

 Rails
 Interstate Highways
 US Routes
 Major Roads
 Local Roads

Background

 Aerial Photography

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:24,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
 Web Soil Survey URL:
 Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Sussex County, Delaware
 Survey Area Data: Version 19, Sep 14, 2018

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Dec 31, 2009—Jun 27, 2017

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Hydrologic Soil Group

Map unit symbol	Map unit name	Rating	Acres in AOI	Percent of AOI
BhA	Berryland mucky loamy sand, 0 to 2 percent slopes	A/D	26.7	4.3%
HnA	Hammonton sandy loam, 0 to 2 percent slopes	B	86.4	13.9%
HvA	Hurlock sandy loam, 0 to 2 percent slopes	A/D	230.9	37.2%
KsA	Klej loamy sand, 0 to 2 percent slopes	A/D	17.7	2.9%
MmA	Mullica mucky sandy loam, 0 to 2 percent slopes	A/D	172.0	27.7%
MuA	Mullica-Berryland complex, 0 to 2 percent slopes	A/D	87.2	14.0%
Totals for Area of Interest			621.0	100.0%



NOTE: SCALE INDICATED IS APPROXIMATE. NO FIELD SURVEY WAS PERFORMED OR IS IMPLIED BY THIS DRAWING. SOIL DATA SHOWN WAS PRODUCED FROM AN ESRI SHAPE FILE RECEIVED FROM THE NATURAL RESOURCE CONSERVATION SERVICE, A DIVISION OF THE U.S. DEPARTMENT OF AGRICULTURE. IMAGE OBTAINED FROM GOOGLE EARTH PRO

REV	DESCRIPTION OF REVISION	REVISION BY/DATE	CHECKED BY/DATE

NRCSS SOIL BOUNDARIES
 PUBLIC DATA REFERENCED TO
CZ# 1900 - EVERGREEN RPC
 BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE

AXIOM
 ENGINEERING L.L.C.
 18 SHELSTON STREET
 GEORGETOWN, DE 19847
 (302) 855-0810
 FAX: 855-0812
 EMAIL: INFO@AXIOMENR.COM
 WEB: WWW.AXIOMENR.COM

ENGINEER:	KRC
DESIGNER:	KRC
DRAFTER:	KRC
CHECKED BY:	KRC
DATE:	11/19/2019
TAX MAP:	134-16.00-51.00

PROJECT NO: 0188-1502
 DRAWING: CR-5
 SHEET: 5 OF 9

SEAL

Description

Hydrologic soil groups are based on estimates of runoff potential. Soils are assigned to one of four groups according to the rate of water infiltration when the soils are not protected by vegetation, are thoroughly wet, and receive precipitation from long-duration storms.

The soils in the United States are assigned to four groups (A, B, C, and D) and three dual classes (A/D, B/D, and C/D). The groups are defined as follows:

Group A. Soils having a high infiltration rate (low runoff potential) when thoroughly wet. These consist mainly of deep, well drained to excessively drained sands or gravelly sands. These soils have a high rate of water transmission.

Group B. Soils having a moderate infiltration rate when thoroughly wet. These consist chiefly of moderately deep or deep, moderately well drained or well drained soils that have moderately fine texture to moderately coarse texture. These soils have a moderate rate of water transmission.

Group C. Soils having a slow infiltration rate when thoroughly wet. These consist chiefly of soils having a layer that impedes the downward movement of water or soils of moderately fine texture or fine texture. These soils have a slow rate of water transmission.

Group D. Soils having a very slow infiltration rate (high runoff potential) when thoroughly wet. These consist chiefly of clays that have a high shrink-swell potential, soils that have a high water table, soils that have a claypan or clay layer at or near the surface, and soils that are shallow over nearly impervious material. These soils have a very slow rate of water transmission.

If a soil is assigned to a dual hydrologic group (A/D, B/D, or C/D), the first letter is for drained areas and the second is for undrained areas. Only the soils that in their natural condition are in group D are assigned to dual classes.

Rating Options

Aggregation Method: Dominant Condition

Component Percent Cutoff: None Specified

Tie-break Rule: Higher

10

STORMWATER MANAGEMENT AND FLOODPLAIN OVERVIEW

STORMWATER MANAGEMENT AND FLOODPLAIN OVERVIEW CHANGE OF ZONE #1900

According to the Federal Emergency Management Agency's Flood Insurance Rate map, the property is not subject to FEMA regulated flood zones. This does not indicate that the project has no possibility of flooding or contributing to flooding on adjacent properties. Accordingly, the site will be designed with Best Management Practices in compliance with Sussex Conservation District requirements. The Sussex Conservation District will require management of the 10-year and 100-year discharges to pre-development rates. The purpose of this requirement is to prevent adverse effects of these storms to other properties located adjacent to the receiving waters.



October 18, 2019

Existing Ditch located on the southwest property line of Evergreen RPC
Evergreen RPC is located on the left side of the photo, existing, adjoining residential homes in
Plantation Park are shown on the right side of the photo.

Evergreen RPC drains to the rear of the project site to an existing wetland ditch. Kenneth Redinger has been retained to map out the extents of regulated wetlands on the project site adjacent to the ditch. The developer intends to apply for a Nationwide Permit with the U.S. Army Corps of Engineers to perform maintenance excavations on the portions of the ditch that are on the subject property. If drainage easements can be obtained from the adjoining property owners, additional off-site maintenance will be included in the permit application.



NOTE: 1' INTERVAL TOPOGRAPHIC CONTOURS SHOWN WERE PRODUCED FROM AN ESRI SHAPE FILE RECEIVED FROM THE STATE OF DELAWARE BASED ON 2014 LIDAR MAPPING, AND MAY NOT REFLECT GRADING, EXCAVATION OR OTHER TOPOGRAPHIC CHANGES THAT OCCURRED AFTER THE DATA WAS GATHERED. THE DATA SHOWN IS SUFFICIENT FOR PLANNING AND REGIONAL STUDY PURPOSES ONLY. NO FIELD SURVEY WAS PERFORMED OR IS IMPLIED BY THIS DRAWING. IMAGE OBTAINED FROM GOOGLE EARTH PRO.

TOPOGRAPHIC CONTOUR LEGEND

0	CONTOUR
1	CONTOUR
2	CONTOUR
3	CONTOUR
4	CONTOUR
5	CONTOUR
6	CONTOUR
7	CONTOUR
8	CONTOUR
9	CONTOUR

REV	DESCRIPTION OF REVISION	REVIEWED BY/DATE	CHECKED BY/DATE

STATE LIDAR TOPOGRAPHY
 PUBLIC DATA REFERENCED TO
 CZ# 1900 - EVERGREEN RPC
 BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE

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 ENGINEERING L.L.C.
 18 SHELSTON STREET
 GEORGETOWN, DE 19847
 (302) 855-0810
 FAX: 855-0812
 WWW.AXIOM-ENG.COM

ENGINEER:	KRC
DESIGNER:	KRC
DRAFTER:	KRC
CHECKED BY:	KRC
DATE:	11/19/2019
TAX MAP:	134-16.00-51.00

PROJECT NO: 0188-1502
 DRAWING: CR-6
 SHEET: 6 OF 9

SCALE: _____

24' x 36" 1 inch = ft. 200
 11' x 17" 1 inch = ft. 400

NOTES TO USERS

This map is for use in administering the National Flood Insurance Program. It does not necessarily identify all areas subject to flooding, particularly from local drainage sources of small size. The community map repository should be consulted for possible updated or additional flood hazard information.

To obtain more detailed information in areas where **Base Flood Elevations (BFEs)** and/or **flowways** have been determined, users are encouraged to consult the Flood Profiles and Floodway Data and/or Summary of Stillwater Elevations tables contained within the Flood Insurance Study (FIS) report that accompanies this FIRM. Users should be aware that BFEs shown on the FIRM represent rounded whole-foot elevations. These BFEs are intended for flood insurance rating purposes only and should not be used as the sole source of flood elevation information. Accordingly, flood elevation data presented in the FIS report should be utilized in conjunction with the FIRM for purposes of construction and/or floodplain management.

Coastal Base Flood Elevations shown on this map apply only landward of 0' North American Vertical Datum of 1988 (NAVD 88). Users of this FIRM should be aware that coastal flood elevations are also provided in the Summary of Stillwater Elevations tables in the Flood Insurance Study report for this jurisdiction. Elevations shown in the Summary of Stillwater Elevations tables should be used for construction and/or floodplain management purposes when they are higher than the elevations shown on this FIRM.

Boundaries of the **flowways** were computed at cross sections and interpolated between cross sections. The flowways were based on hydraulic considerations with regard to requirements of the National Flood Insurance Program. Floodway widths and other pertinent floodway data are provided in the Flood Insurance Study report for this jurisdiction.

Certain areas not in Special Flood Hazard Areas may be protected by **flood control structures**. Refer to Section 2.4 "Flood Protection Measures" of the Flood Insurance Study report for information on flood control structures for this jurisdiction.

The **projection** used in the preparation of this map was State Plane Delaware zone (FIPSZONE 0700). The **horizontal datum** was NAD 83, GRS80 spheroid. Differences in datum, spheroid, projection or State Plane zones used in the production of FIRMs for adjacent jurisdictions may result in slight positional differences in map features across jurisdiction boundaries. These differences do not affect the accuracy of information shown on this FIRM.

Flood elevations on this map are referenced to the North American Vertical Datum of 1988. These flood elevations must be compared to structure and ground elevations referenced to the same vertical datum. For information regarding conversion between the National Geodetic Vertical Datum of 1929 and the North American Vertical Datum of 1988, visit the National Geodetic Survey website at <http://www.ngs.noaa.gov> or contact the National Geodetic Survey at the following address:

NGS Information Services
NOAA, NINGS12
National Geodetic Survey
SSM3-3, #9202
1315 East-West Highway
Silver Spring, Maryland 20910-3282
(301) 713-3242

To obtain current elevation, description, and/or location information for **bench marks** shown on this map, please contact the Information Services Branch of the National Geodetic Survey at (301) 713-3242, or visit its website at <http://www.ngs.noaa.gov>.

Base map information shown on this FIRM was provided in digital format by Delaware Geospatial Data Exchange. The base map features were compiled at a scale of 1:24,000 from aerial photography dated 2011.

This map reflects more detailed and up-to-date **stream channel configurations** than those shown on the previous FIRM for this jurisdiction. The floodplains and flowways that were transferred from the previous FIRM may have been adjusted to conform to these new stream channel configurations. As a result, the Flood Profiles and Floodway Data tables in the Flood Insurance Study Report (which contains authoritative hydraulic data) may reflect stream channel distances that differ from what is shown on this map.

Corporate limits shown on this map are based on the best data available at the time of publication. Because changes due to annexations or de-annexations may have occurred after this map was published, map users should contact appropriate community officials to verify current corporate limit locations.

Please refer to the separately printed **Map Index** for an overview map of the county showing the layout of map panels, community map repository addresses, and a Listing of Communities table containing National Flood Insurance Program dates for each community as well as a listing of the panels on which each community is located.

The AE Zone category has been divided by a **Limit of Moderate Wave Action (LMWA)**. The LMWA represents the approximate landward limit of the 1.5-foot breaking wave. The effects of wave hazards between the VE Zone and the LMWA (or between the shoreline and the LMWA for areas where VE Zones are not identified) will be similar to, but less severe than those in the VE Zone.

Contact the **FEMA Map Information eXchange** at 1-877-336-2627 for information on available products associated with this FIRM. Available products may include previously issued Letters of Map Change, a Flood Insurance Study report, and/or digital versions of this map. The FEMA Map Information eXchange may also be reached by Fax at 1-800-358-9620 and their website at <http://www.msc.fema.gov/>.

If you have **questions about this map** or questions concerning the National Flood Insurance Program in general, please call 1-877-FEMA-MAP (1-877-336-2627) or visit the FEMA website at <http://www.fema.gov/business/nfp>.

COASTAL BARRIER RESOURCES SYSTEM (CBRS) LEGEND

10-01-1983 CBRS Area
FLOOD INSURANCE NOT AVAILABLE FOR STRUCTURES NEWLY BUILT OR SUBSTANTIALLY IMPROVED ON OR AFTER OCTOBER 1, 1983, IN DESIGNATED CBRS AREAS.

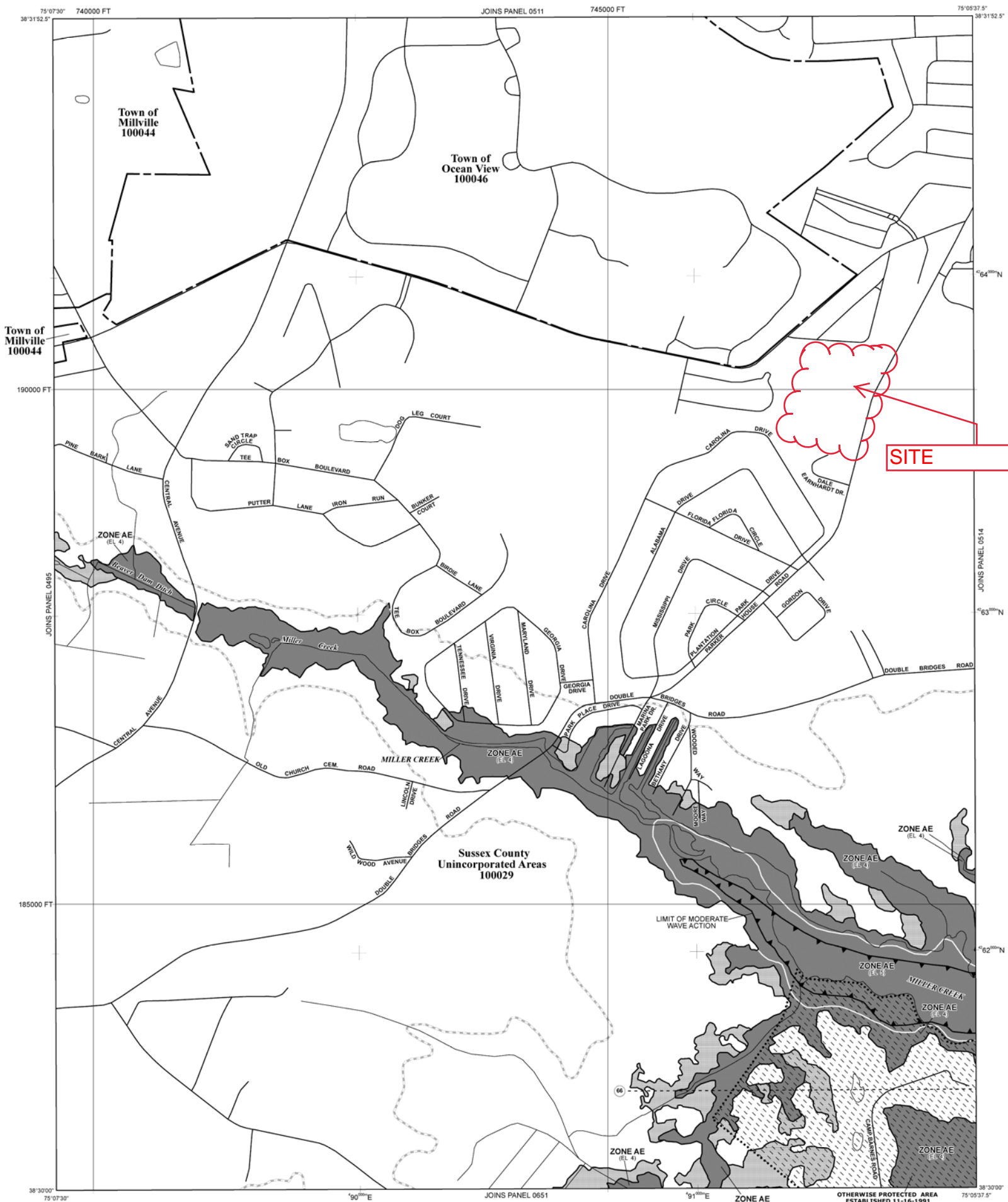
11-16-1990 CBRS Area
FLOOD INSURANCE NOT AVAILABLE FOR STRUCTURES NEWLY BUILT OR SUBSTANTIALLY IMPROVED ON OR AFTER NOVEMBER 16, 1990, IN DESIGNATED CBRS AREAS.

10-01-1983 Otherwise Protected Area (OPA)
FLOOD INSURANCE NOT AVAILABLE FOR STRUCTURES NEWLY BUILT OR SUBSTANTIALLY IMPROVED ON OR AFTER OCTOBER 1, 1983, IN DESIGNATED OPAs WITHIN THE CBRS.

11-16-1991 Otherwise Protected Area (OPA)
FLOOD INSURANCE NOT AVAILABLE FOR STRUCTURES NEWLY BUILT OR SUBSTANTIALLY IMPROVED ON OR AFTER NOVEMBER 16, 1991, IN DESIGNATED OPAs WITHIN THE CBRS.

12-06-1999 Otherwise Protected Area (OPA)
FLOOD INSURANCE NOT AVAILABLE FOR STRUCTURES NEWLY BUILT OR SUBSTANTIALLY IMPROVED ON OR AFTER DECEMBER 06, 1999, IN DESIGNATED OPAs WITHIN THE CBRS.

Boundaries of the **John H. Chafee Coastal Barrier Resources System (CBRS)** shown on this FIRM were transferred from the official CBRS source map(s) for this area and are depicted on this FIRM for informational purposes only. The official CBRS maps are enacted by Congress via the Coastal Barrier Resources Act, as amended, and maintained by the U.S. Fish and Wildlife Service (FWS). The official CBRS maps used to determine whether or not an area is located within the CBRS are available for download at <http://www.fws.gov>. For an official determination of whether or not an area is located within the CBRS, or for any questions regarding the CBRS, please contact the FWS field office for this area at (410) 573-4500.



LEGEND

SPECIAL FLOOD HAZARD AREAS (SFHAs) SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD

The 1% annual chance flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V, and VE. The Base Flood Elevation is the water-surface elevation of the 1% annual chance flood.

ZONE A No Base Flood Elevations determined.

ZONE AE Base Flood Elevations determined.

ZONE AH Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined.

ZONE AO Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.

ZONE AR Special Flood Hazard Area formerly protected from the 1% annual chance flood by a flood control system that was subsequently decertified. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.

ZONE A99 Area to be protected from 1% annual chance flood by a Federal flood protection system under construction; no Base Flood Elevations determined.

ZONE V Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.

ZONE VE Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.

FLOODWAY AREAS IN ZONE AE

The floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increases in flood heights.

OTHER FLOOD AREAS

ZONE X Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile, and areas protected by levees from 1% annual chance flood.

OTHER AREAS

ZONE X Areas determined to be outside the 0.2% annual chance floodplain.

ZONE D Areas in which flood hazards are undetermined, but possible.

COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS

OTHERWISE PROTECTED AREAS (OPAs)

CBRS areas and OPAs are normally located within or adjacent to Special Flood Hazard Areas.

Floodplain boundary
Flowway boundary
Zone D boundary
CBRS and OPA boundary
Boundary dividing Special Flood Hazard Area Zones and boundary dividing Special Flood Hazard Areas of different Base Flood Elevations, flood depths or flood velocities.
Limit of Moderate Wave Action
Advisory line estimating flooding extents if dunes are breached during a 0.2% annual chance flood event
Base Flood Elevation line and value; elevation in feet* (EL 987)
Base Flood Elevation value where uniform within zone; elevation in feet*

* Referenced to the North American Vertical Datum of 1988

① Cross section line
② Transsect line
87°07'45", 32°22'30" Geographic coordinates referenced to the North American Datum of 1983 (NAD 83), Western Hemisphere.
76°N 100-meter Universal Transverse Mercator grid values, zone 18N
600000 FT 5000-foot grid values; Delaware State Plane coordinate system (FIPSZONE 0700), Transverse Mercator projection
DX5510 x Bench mark (see explanation in Notes to Users section of this FIRM panel)
● M1.5 River Mile

MAP REPOSITORY
Refer to listing of Map Repositories on Map Index

EFFECTIVE DATE OF COUNTYWIDE FLOOD INSURANCE RATE MAP
June 16, 1995

EFFECTIVE DATE(S) OF REVISION(S) TO THIS PANEL
See Notes to Users Page in FIS Report

For community map revision history prior to countywide mapping, refer to the Community Map History table located in the Flood Insurance Study report for this jurisdiction.

To determine if flood insurance is available in this community, contact your Insurance agent or call the National Flood Insurance Program at 1-800-638-6623.

MAP SCALE 1" = 500'
250 0 500 1000 FEET
150 0 150 300 METERS

NATIONAL FLOOD INSURANCE PROGRAM

PANEL 0513K

FIRM

FLOOD INSURANCE RATE MAP

SUSSEX COUNTY, DELAWARE AND INCORPORATED AREAS

PANEL 513 OF 660

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS

COMMUNITY	NUMBER	PANEL	SUFFIX
MILLVILLE TOWN OF	100044	0513	K
OCEAN VIEW TOWN OF	100046	0513	K
SUSSEX COUNTY	100029	0513	K

NOTE: THIS MAP INCLUDES BOUNDARIES OF THE COASTAL BARRIER RESOURCES SYSTEM ESTABLISHED UNDER THE COASTAL BARRIER RESOURCES ACT OF 1982 AND/OR SUBSEQUENT ENACTED LEGISLATION.

Notice to User: The Map Number shown below should be used when placing map orders; the Community Number shown above should be used on insurance applications for the subject community.

MAP NUMBER
10005C0513K

MAP REVISED
MARCH 16, 2015

Federal Emergency Management Agency

1 1

PUBLIC MAPPING OF ENVIRONMENTAL CONDITIONS

**PUBLIC MAPPING OF ENVIRONMENTAL CONDITOINS
CHANGE OF ZONE #1900**

Publicly available data for the environmental conditions of the site have been downloaded including the following:

- 2018 Google Earth Satellite Imagery
- State Wetland Maps
- Wellhead Protection Area Maps
- Excellent Recharge areas

Field conditions on the property are being evaluated by Kenneth Redinger, Environmental Scientist.



REV	DESCRIPTION OF REVISION	REVISION DATE	CHECKED BY DATE

TAXMAP & AERIAL PHOTO
 PUBLIC DATA REFERENCED TO
CZ# 1900 - EVERGREEN RPC
 BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE

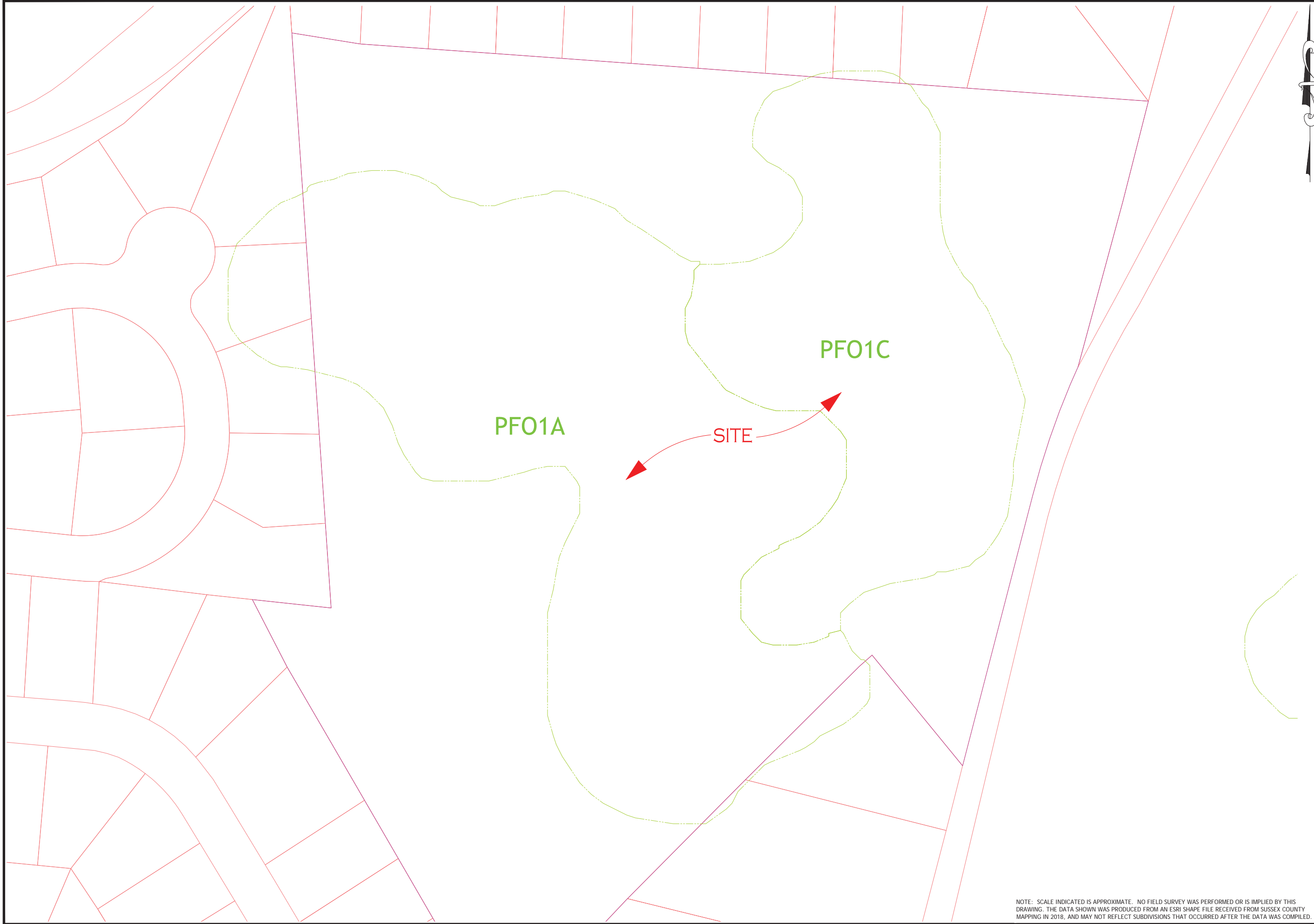
AXIOM
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 18 CHESTNUT STREET
 GEORGETOWN, DE 19947
 (302) 855-0810
 FAX: 855-0812
 WWW.AXIOENGINEERING.COM



ENGINEER:	KRC
DESIGNER:	KRC
DRAFTER:	KRC
CHECKED BY:	KRC
DATE:	11/19/2019
TAX MAP:	134-16-00-51.00

PROJECT NO:	0188-1502
DRAWING:	CR-2
SHEET:	2 OF 9

NOTE: SCALE INDICATED IS APPROXIMATE. NO FIELD SURVEY WAS PERFORMED OR IS IMPLIED BY THIS DRAWING. TAX PARCEL GEOMETRY DATA SHOWN WAS PRODUCED FROM AN ESRI SHAPE FILE RECEIVED FROM SUSSEX COUNTY MAPPING IN 2018, AND MAY NOT REFLECT SUBDIVISIONS THAT OCCURRED AFTER THE DATA WAS COMPILED. IMAGE OBTAINED FROM GOOGLE EARTH PRO



WETLANDS MAP
 PUBLIC DATA REFERENCED TO
CZ# 1900 - EVERGREEN RPC
 BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE

AXIOM
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 GEORGETOWN, DE 19947
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 FAX: 302.855.0812
 WEB: WWW.AXENG.COM

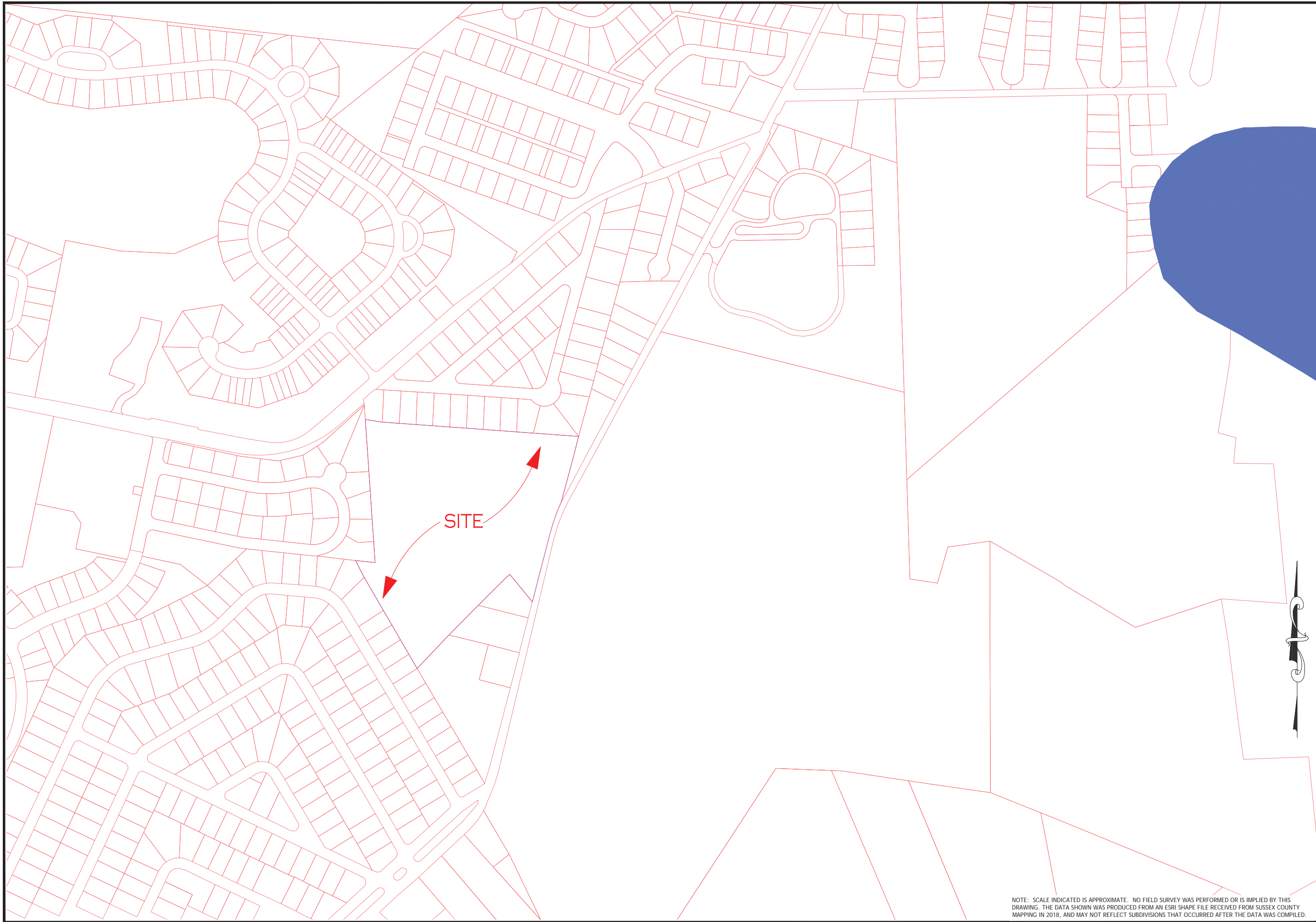
ENGINEER:	KRC
DESIGNER:	KRC
DRAWER:	KRC
CHECKED BY:	KRC
DATE:	11/19/2019
TAX MAP:	134-16.00-51.00

PROJECT NO:	0188-1502
DRAWING:	CR-7
SHEET:	7 OF 9

SEAL	
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REVISION	DESCRIPTION OF REVISION	REVISION DATE

NOTE: SCALE INDICATED IS APPROXIMATE. NO FIELD SURVEY WAS PERFORMED OR IS IMPLIED BY THIS DRAWING. THE DATA SHOWN WAS PRODUCED FROM AN ESRI SHAPE FILE RECEIVED FROM SUSSEX COUNTY MAPPING IN 2018, AND MAY NOT REFLECT SUBDIVISIONS THAT OCCURRED AFTER THE DATA WAS COMPILED.



SITE

NOTE: SCALE INDICATED IS APPROXIMATE. NO FIELD SURVEY WAS PERFORMED OR IS IMPLIED BY THIS DRAWING. THE DATA SHOWN WAS PRODUCED FROM AN ESRI SHAPE FILE RECEIVED FROM SUSSEX COUNTY MAPPING IN 2018, AND MAY NOT REFLECT SUBDIVISIONS THAT OCCURRED AFTER THE DATA WAS COMPILED.

REV	DESCRIPTION OF REVISION	REVISION BY/DATE	CHECKED BY/DATE

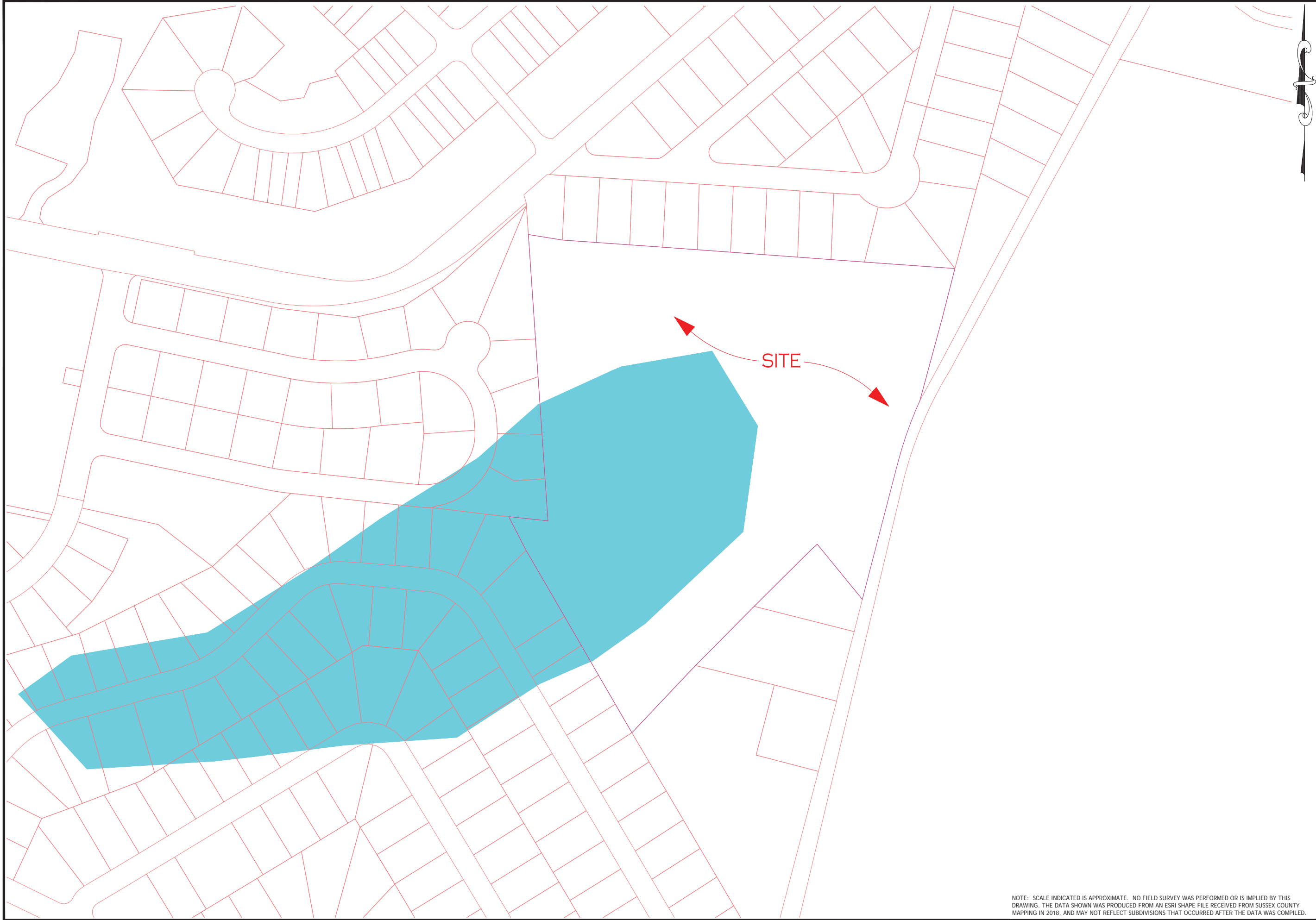
WHPA MAP
 PUBLIC DATA REFERENCED TO
CZ# 1900 - EVERGREEN RPC
 BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE

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ENGINEER:	KRC
DESIGNER:	KRC
DRAWER:	KRC
CHECKED BY:	KRC
DATE:	11/19/2019
TAX MAP:	134-16.00-51.00

24" x 36" 1 inch = 100 ft.
 11" x 17" 1 inch = 200 ft.

PROJECT NO: **0188-1502**
 DRAWING: **CR-8**
 SHEET: **8 OF 9**
 SEAL: _____



EXCELLENT RECHARGE MAP
 PUBLIC DATA REFERENCED TO
CZ# 1900 - EVERGREEN RPC
 BALTIMORE HUNDRED, SUSSEX COUNTY, DELAWARE

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ENGINEER:	KRC
DESIGNER:	KRC
DRAFTER:	KRC
CHECKED BY:	KRC
DATE:	11/19/2019
TAX MAP:	134-16.00-51.00



SEAL _____

PROJECT NO: 0188-1502
 DRAWING: CR-9
 SHEET: 9 OF 9

REV	DESCRIPTION OF REVISION	REVISOR	DATE

NOTE: SCALE INDICATED IS APPROXIMATE. NO FIELD SURVEY WAS PERFORMED OR IS IMPLIED BY THIS DRAWING. THE DATA SHOWN WAS PRODUCED FROM AN ESRI SHAPE FILE RECEIVED FROM SUSSEX COUNTY MAPPING IN 2018, AND MAY NOT REFLECT SUBDIVISIONS THAT OCCURRED AFTER THE DATA WAS COMPILED.

12

DRAFT WETLAND IMPACT PERMIT

DRAFT WETLAND IMPACT PERMITS CHANGE OF ZONE #1900

The applicant has retained Kenneth W. Redinger to evaluate the environmental conditions of the subject property. Based on Mr. Redinger's review, ditch maintenance can be completed under a U.S. Army Corps of Engineer's (USACE) Nationwide Permit. Preliminary meetings with the USACE, and the draft permit drawings shown have been submitted for regulatory review. One of the conditions of approval for CZ#1900 is that all federal, state and local permits be obtained before construction commences. Portions of the existing ditch on the subject property are to be the subject of ditch maintenance.



October 18, 2019

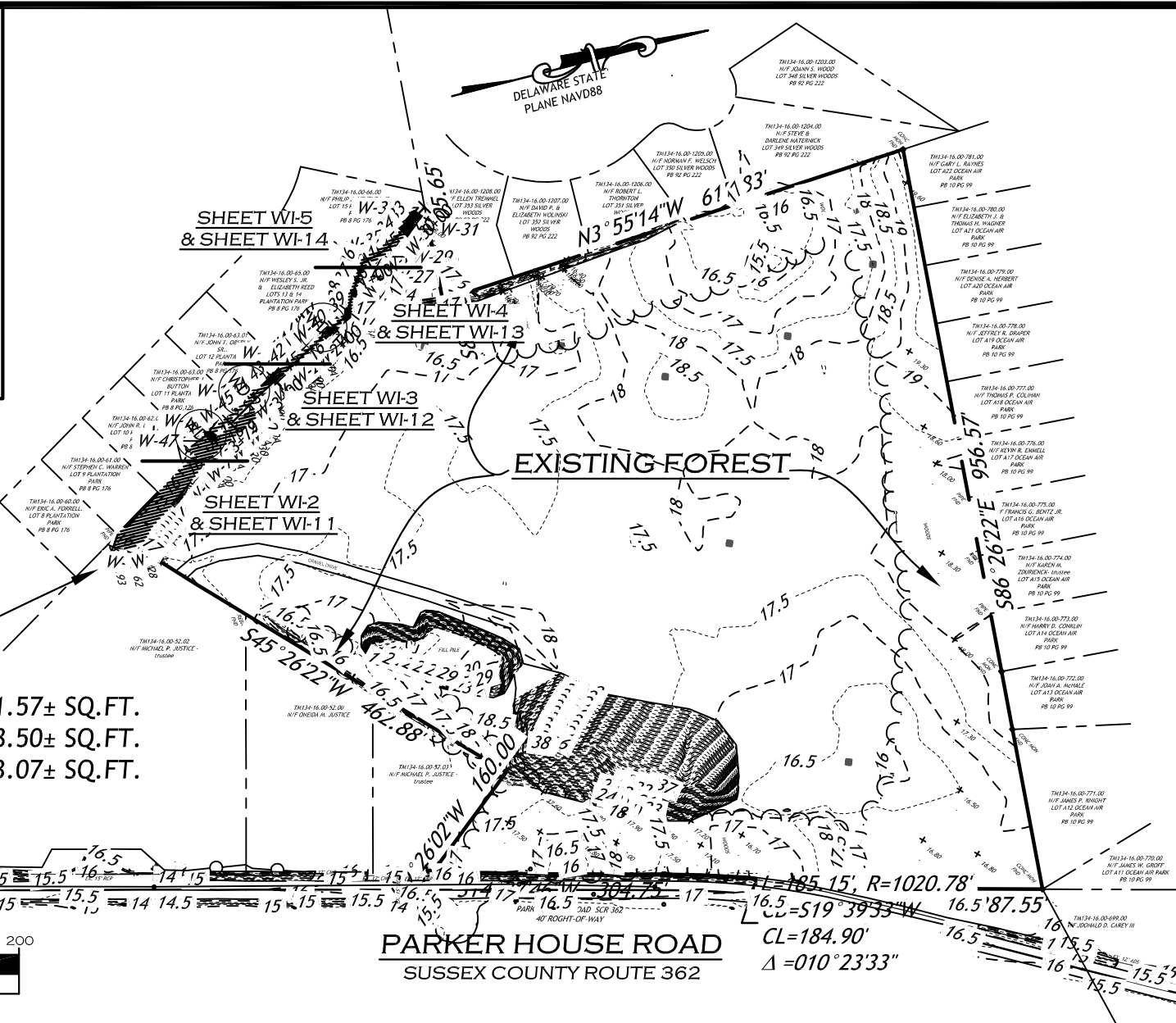
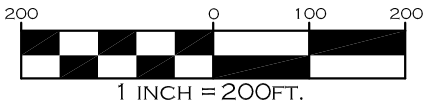
Existing Ditch located on the southwest property line of Evergreen RPC
Evergreen RPC is located on the left side of the photo, existing, adjoining residential homes in
Plantation Park are shown on the right side of the photo.

In addition to off-site ditch maintenance, the applicant will meet with adjoining property owners to discuss the possibility of performing maintenance cleanouts on properties willing to grant temporary construction easements for the maintenance. If such easements are granted, the draft permits shown will be amended to reflect the amended scope of work.



VICINITY MAP
SCALE: 1" = 2 MILES

NOTE:
 TOTAL WETLANDS AREA = 7,401.57± SQ.FT.
 WETLANDS ON-SITE = 5,518.50± SQ.FT.
 WETLANDS OFF-SITE = 1,883.07± SQ.FT.



PARKER HOUSE ROAD
 SUSSEX COUNTY ROUTE 362

$R=1020.78'$
 $CL=184.90'$
 $\Delta=010^{\circ}23'33''$



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WETLAND IMPACT PERMITS FOR
EVERGREEN
 RESIDENTIAL PLANNED COMMUNITY
 BALTIMORE HUNDRED, SUSSEX COUNTY, DE

SCALE	1" = 200'
DESIGNED	KRC
DRAWN	KRC
CHECKED	KRC
DATE	11/18/2019
T.M.	134-16.00-51.00

0188-1502
 EXHIBIT:
WI- 1



DELAWARE STATE
PLANE NAVD88

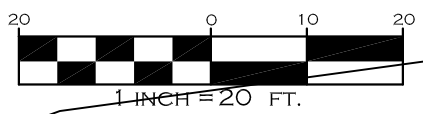
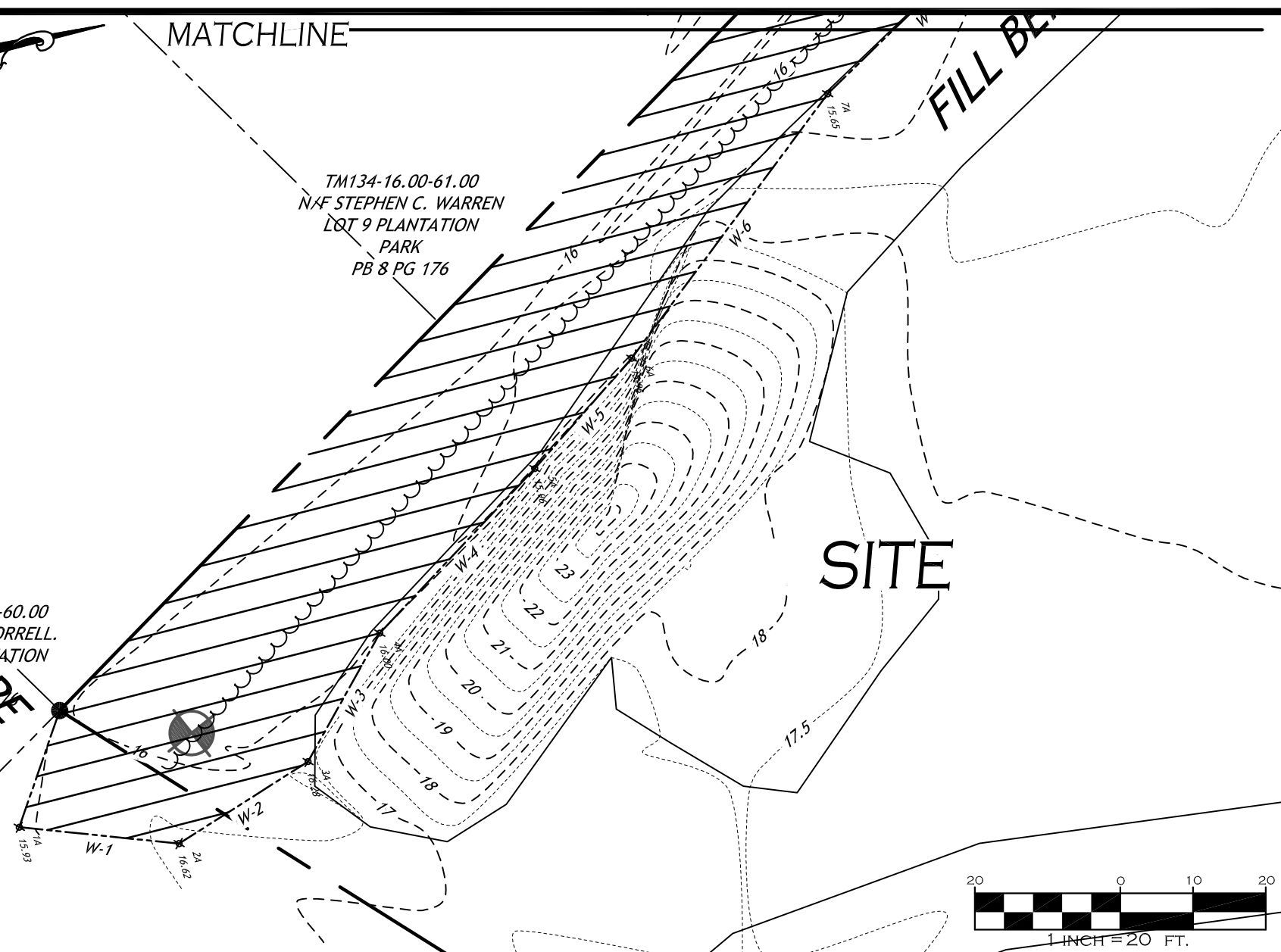
MATCHLINE

FILL BL.

TM134-16.00-61.00
N/F STEPHEN C. WARREN
LOT 9 PLANTATION
PARK
PB 8 PG 176

TM134-16.00-60.00
N/F ERIC A. FORRELL
LOT 8 PLANTATION
PARK
PB 8 PG 176

SITE



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WETLAND IMPACT PERMITS FOR
EVERGREEN
RESIDENTIAL PLANNED COMMUNITY
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

SCALE	1" = 20'
DESIGNED	KRC
DRAWN	KRC
CHECKED	KRC
DATE	11/18/2019
T.M.	134-16.00-51.00

0188-1502
EXHIBIT:
WI- 2

DELAWARE STATE
PLANE NAVD88

MATCHLINE

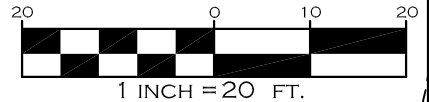
LOT 12 PLANTATION
PARK
PB 8 PG 178

TM134-16.00-63.00
N/F CHRISTOPHER J.
BLITTON
LOT 11 PLANTATION
PARK
PB 8 PG 176

WETLAND IMPACT CROSS
SECTION WD-2

SITE

WETLAND IMPACT CROSS
SECTION WD-3



MATCHLINE

PIPE
END

BERM

TM134-16.00-62.00
N/F JOHN R. BRAUER
LOT 10 PLANTATION
PARK
PB 8 PG 176



AXIOM
ENGINEERING L.L.C.

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FAX: 855-0812
EMAIL: AXIOM@AXENG.COM
WEB: WWW.AXENG.COM

WETLAND IMPACT PERMITS FOR
EVERGREEN
RESIDENTIAL PLANNED COMMUNITY
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

SCALE	1" = 20'
DESIGNED	KRC
DRAWN	KRC
CHECKED	KRC
DATE	11/18/2019
T.M.	134-16.00-51.00

0188-1502

EXHIBIT:

WI- 3



DELAWARE STATE
PLANE NAVD88

MATCHLINE

CONC
MON
FND

REBAR
FND

WETLAND IMPACT CROSS
SECTION WD-1

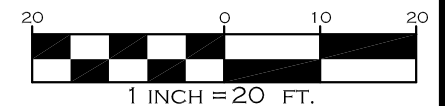
SITE

TM134-16.00-65.00
N/F WESLEY S. JR.
& ELIZABETH REED
LOTS 13 & 14
PLANTATION PARK
PB 8 PG 176

W-41
TM134-16.00-63.01
N/F JOHN T. OBERLY
SR..
LOT 12 PLANTATION
PARK
PB 8 PG 175

$N31^{\circ}15'16''W$ 412.22'

MATCHLINE



AXIOM
ENGINEERING L.L.C.
18 CHESTNUT STREET
GEORGETOWN, DE 19947
(302) 855-0810
FAX: 855-0812
EMAIL: AXIOM@AXENG.COM
WEB: WWW.AXENG.COM

WETLAND IMPACT PERMITS FOR
EVERGREEN
RESIDENTIAL PLANNED COMMUNITY
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

SCALE	1" = 20'
DESIGNED	KRC
DRAWN	KRC
CHECKED	KRC
DATE	11/18/2019
T.M.	134-16.00-51.00

0188-1502
EXHIBIT:
WI- 4

DELAWARE STATE
PLANE NAVD88

TM134-16.00-66.00
N/F PHILIP J. VENTURA JR.
LOT 15 PLANTATION
PARK
PB 8 PG 176

TM134-16.00-1208.00
N/F ELLEN TREMMEL
LOT 353 SII VFR
SITE

**CONC
MON
PND**

W-32

W-31

W-33

W-30

W-34

W-28

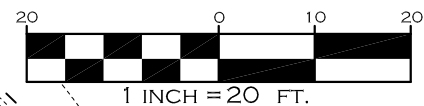
W-29

W-35

W-26

MATCHLINE

45°48"E 105.65'



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WETLAND IMPACT PERMITS FOR
EVERGREEN
RESIDENTIAL PLANNED COMMUNITY
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

SCALE	1" = 20'
DESIGNED	KRC
DRAWN	KRC
CHECKED	KRC
DATE	11/18/2019
T.M.	134-16.00-51.00

0188-1502
EXHIBIT:
WI- 5

WETLANDS LINE TABLE

LINE #	LENGTH	DIRECTION
W-1	22.09	N20°06'E
W-2	21.01	N18°13'W
W-3	20.23	N46°34'W
W-4	31.09	N32°30'W
W-5	20.20	N34°28'W
W-6	45.25	N39°13'W
W-7	35.00	N29°58'W
W-8	45.72	N27°52'W
W-9	13.62	N24°08'W
W-10	13.00	N86°31'W
W-11	20.15	S22°36'E
W-12	30.33	S26°43'E
W-13	15.01	S22°54'E
W-15	15.00	N24°50'W
W-16	30.12	N26°43'W
W-17	23.29	N26°54'W
W-18	37.48	N26°16'W
W-19	28.81	N25°18'W
W-20	34.87	N25°52'W

WETLANDS LINE TABLE

LINE #	LENGTH	DIRECTION
W-21	37.28	N28°10'W
W-22	30.81	N29°47'W
W-23	24.31	N69°47'W
W-24	9.34	N48°49'W
W-25	36.34	N52°35'W
W-26	12.29	N01°55'E
W-27	14.69	N19°09'W
W-28	17.90	N26°50'W
W-29	16.30	N35°29'W
W-30	16.31	N40°13'W
W-31	9.53	N43°59'W
W-32	15.15	S35°39'E
W-33	14.09	S38°57'E
W-34	41.16	S25°36'E
W-35	15.03	S05°14'E
W-36	39.67	S56°42'E
W-37	8.92	S48°14'E
W-38	22.59	S72°13'E
W-39	31.27	S29°01'E

WETLANDS LINE TABLE

LINE #	LENGTH	DIRECTION
W-40	35.65	S28°23'E
W-41	36.60	S22°19'E
W-42	27.50	S25°47'E
W-43	39.66	S29°49'E
W-44	21.22	S28°27'E
W-45	30.00	S24°49'E
W-46	14.99	S24°48'E
W-47	31.00	S24°49'E

NOTE:
 TOTAL WETLANDS AREA = 7,401.57± SQ.FT.
 WETLANDS ON-SITE = 5,518.50± SQ.FT.
 WETLANDS OFF-SITE = 1,883.07± SQ.FT.



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 WEB: WWW.AXENG.COM

WETLAND IMPACT PERMITS FOR
EVERGREEN
 RESIDENTIAL PLANNED COMMUNITY
 BALTIMORE HUNDRED, SUSSEX COUNTY, DE

SCALE	-
DESIGNED	KRC
DRAWN	KRC
CHECKED	KRC
DATE	11/18/2019
T.M.	134-16.00-51.00

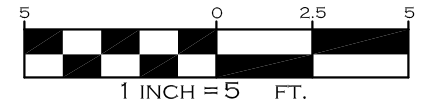
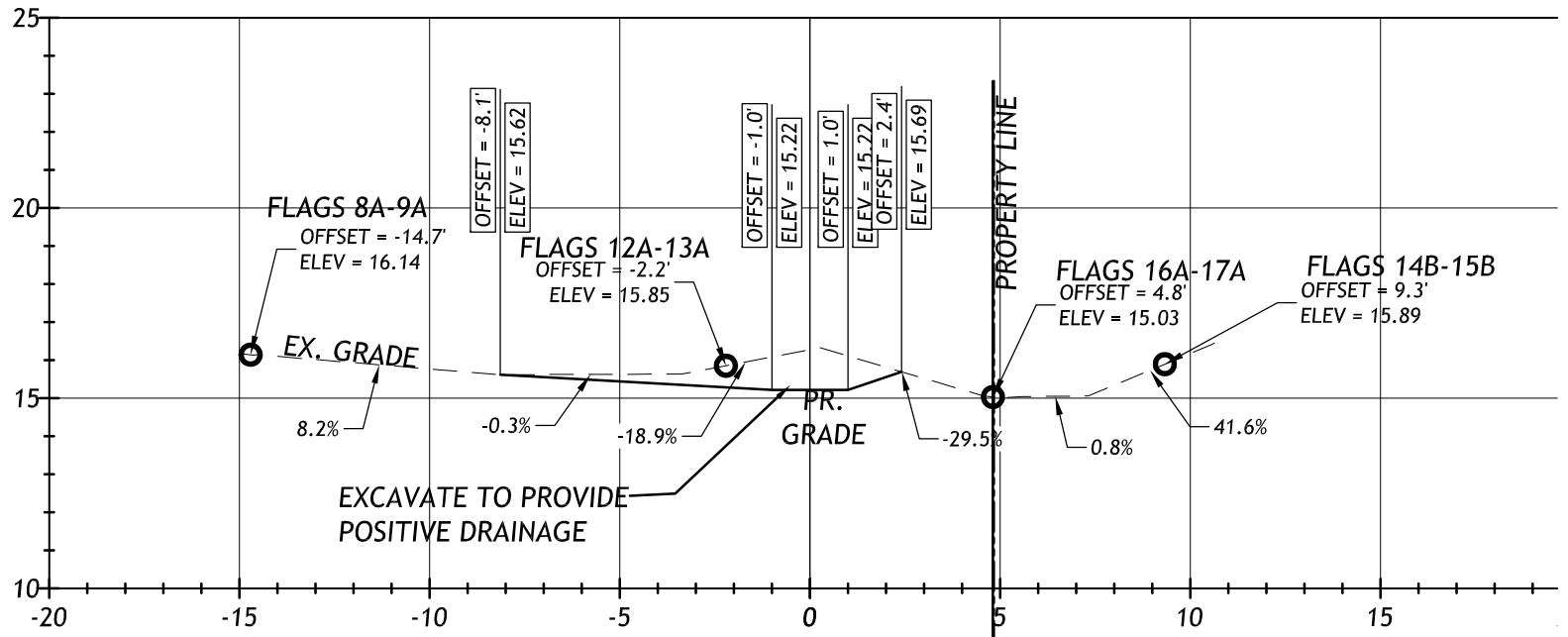
0188-1502

EXHIBIT:

WI- 6

WETLAND
IMPACT AREA
CROSS
SECTION

(WD-3) STA: 3+79



AE **AXIOM**
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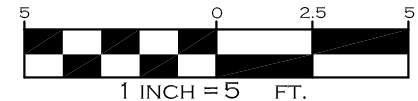
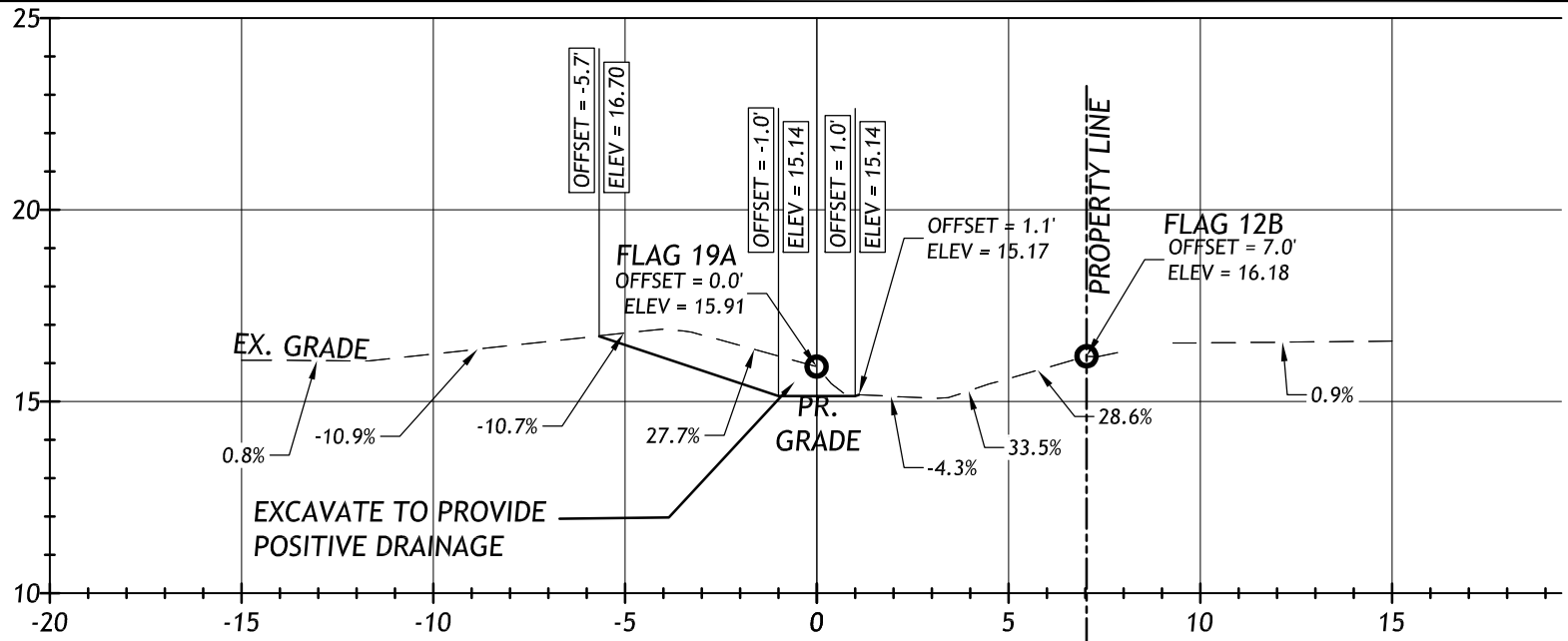
WETLAND IMPACT PERMITS FOR
EVERGREEN
RESIDENTIAL PLANNED COMMUNITY
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

SCALE	1" = 5'
DESIGNED	KRC
DRAWN	KRC
CHECKED	KRC
DATE	11/18/2019
T.M.	134-16.00-51.00

0188-1502
EXHIBIT:
WI- 7

WETLAND
IMPACT AREA
CROSS
SECTION

(WD-2) STA: 3+01



AE **AXIOM**
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WETLAND IMPACT PERMITS FOR
EVERGREEN
RESIDENTIAL PLANNED COMMUNITY
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

SCALE	1" = 5'
DESIGNED	KRC
DRAWN	KRC
CHECKED	KRC
DATE	11/18/2019
T.M.	134-16.00-51.00

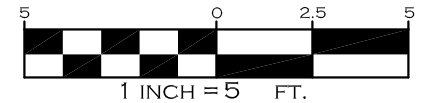
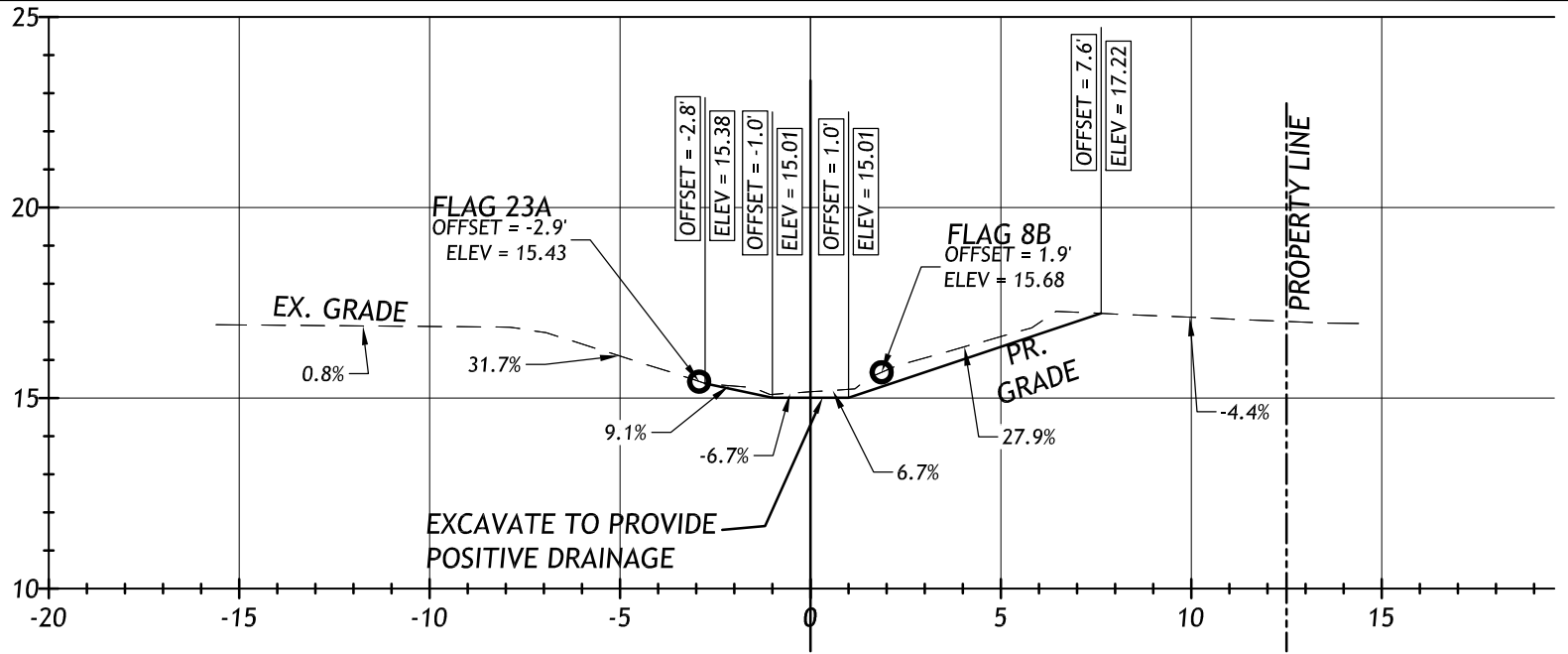
0188-1502

EXHIBIT:

WI- 8

WETLAND
IMPACT AREA
CROSS
SECTION

(WD-1) STA: 1+72

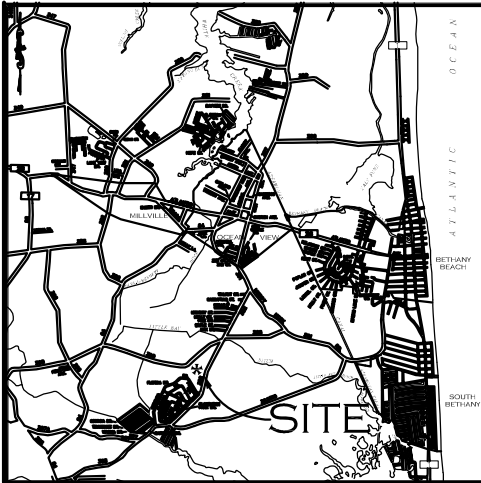


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WETLAND IMPACT PERMITS FOR
EVERGREEN
RESIDENTIAL PLANNED COMMUNITY
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

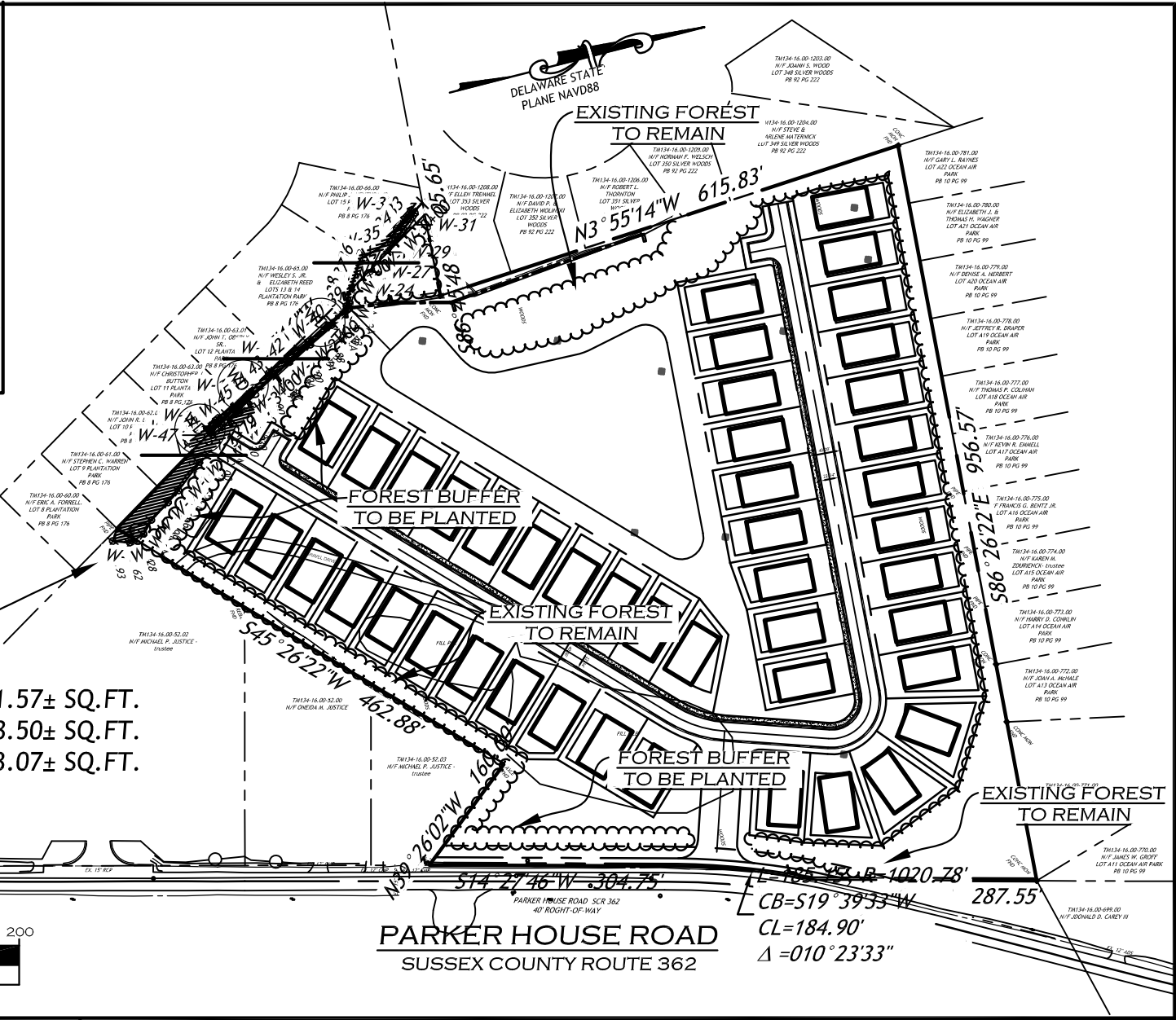
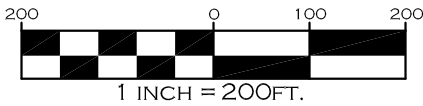
SCALE	1" = 5'
DESIGNED	KRC
DRAWN	KRC
CHECKED	KRC
DATE	11/18/2019
T.M.	134-16.00-51.00

0188-1502
EXHIBIT:
WI- 9



VICINITY MAP
SCALE: 1" = 2 MILES

NOTE:
 TOTAL WETLANDS AREA = 7,401.57± SQ.FT.
 WETLANDS ON-SITE = 5,518.50± SQ.FT.
 WETLANDS OFF-SITE = 1,883.07± SQ.FT.



PARKER HOUSE ROAD
SUSSEX COUNTY ROUTE 362

CB-519°39'33"W
CL-184.90'
Δ-010°23'33"

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WETLAND IMPACT PERMITS FOR
EVERGREEN
 RESIDENTIAL PLANNED COMMUNITY
 BALTIMORE HUNDRED, SUSSEX COUNTY, DE

SCALE	1" = 200'
DESIGNED	KRC
DRAWN	KRC
CHECKED	KRC
DATE	11/18/2019
T.M.	134-16.00-51.00

0188-1502
 EXHIBIT:
WI-10

DELAWARE STATE
PLANE NAVD88

MATCHLINE

TM134-16.00-61.00
N/F STEPHEN C. WARREN
LOT 9 PLANTATION
PARK
PB 8 PG 176

TM134-16.00-60.00
N/F ERIC A. FORRELL
LOT 8 PLANTATION
PARK
PB 8 PG 176

RAVE
POND

FOREST BUFFER
TO REMAIN

FOREST BUFFER
TO BE PLANTED

FILL BL

LOT
35
7,919.14 SQ. FT.



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WETLAND IMPACT PERMITS FOR
EVERGREEN
RESIDENTIAL PLANNED COMMUNITY
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

SCALE	1" = 20'
DESIGNED	KRC
DRAWN	KRC
CHECKED	KRC
DATE	11/18/2019
T.M.	134-16.00-51.00

0188-1502
EXHIBIT:
WI-1 1

DELAWARE STATE
PLANE NAVD88

MATCHLINE

EXISTING
VEGETATION TO
BE REMOVED
FOR DITCH
MAINTENANCE

TM134-16.00-63.00
N/F CHRISTOPHER J.
BUTTON
LOT 11 PLANTATION
PARK
PB 8 PG 176

LOT 12 PLANTATION
PARK
PB 8 PG 178

FOREST BUFFER
TO BE PLANTED

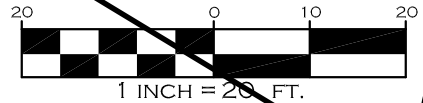
WETLAND IMPACT CROSS
SECTION WD-2

SITE

WETLAND IMPACT CROSS
SECTION WD-3

BERM

MATCHLINE



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WETLAND IMPACT PERMITS FOR EVERGREEN

RESIDENTIAL PLANNED COMMUNITY
BALTIMORE HUNDRED, SUSSEX COUNTY, DE

SCALE	1" = 20'
DESIGNED	KRC
DRAWN	KRC
CHECKED	KRC
DATE	11/18/2019
T.M.	134-16.00-51.00

0188-1502

EXHIBIT:

WI-12

DELAWARE STATE
PLANE NAVD88

MATCHLINE

CONC
W/ON
FND

EXISTING
VEGETATION TO
REMAIN

EXISTING
VEGETATION TO
BE REMOVED
FOR DITCH
MAINTENANCE

REBAR
FND

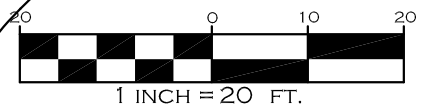
WETLAND IMPACT CROSS
SECTION WD-1

TM134-16.00-65.00
N/F WESLEY S. JR.
& ELIZABETH REED
LOTS 13 & 14
PLANTATION PARK
PB 8 PG 176


SITE

FOREST BUFFER
TO BE PLANTED
16.5

W-41
TM134-16.00-63.01
N/F JOHN T. OBERLY
SR..
LOT 12 PLANTATION
PARK
PB 8 PG 175



MATCHLINE

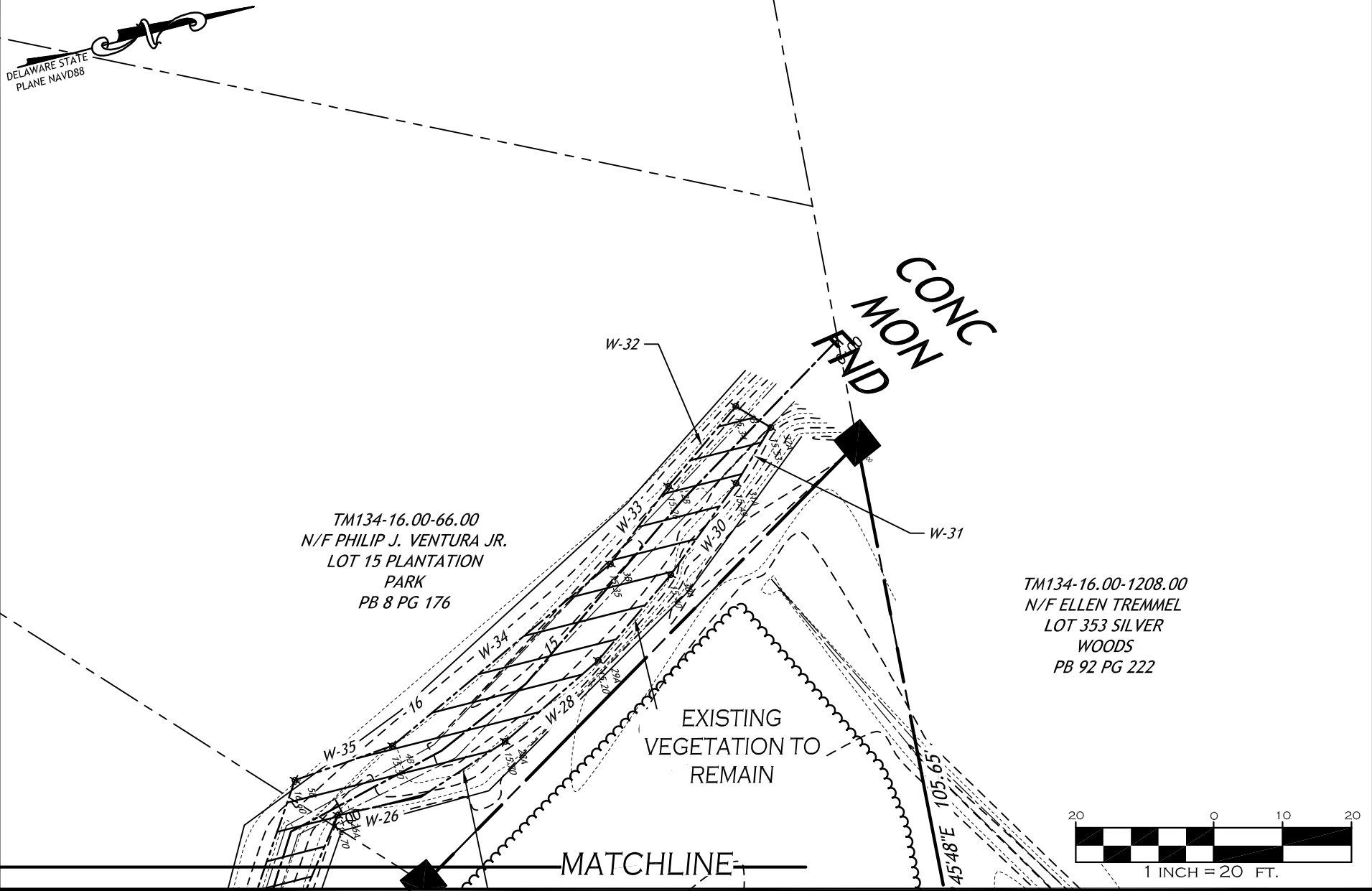


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0188-1502
EXHIBIT:
WI-13



AXIOM
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T.M.	134-16.00-51.00

0188-1502
EXHIBIT:
WI-1 4

13

WETLAND STUDY LETTER

Kenneth W. Redinger Environmental Services

P.O. Box 479 / Horntown, Virginia 23395

Phone: (757) 894-7032 / E-mail: kwredinger@gmail.com

November 26, 2019 - Via Email

Axiom Engineering, LLC
18 Chestnut Street
Georgetown, Delaware 19947

Attn: Kenneth R. Christenbury, P.E.

Re: Wetland Delineation Update, Parcel 1-34-16.00-51.00 (16.10Acres)
Evergreen Residential Planned Community (RPZ-CZ#1900)
Parker House Road (SCR 362), Frankford, Baltimore Hundred, Sussex County, DE
Property Owner/Applicant: Michael P. Justice

Mr. Christenbury,

On behalf of the property owner/applicant, Michael P. Justice, the subject parcel has been evaluated to determine the extent of waters of the United States, including wetlands subject to the U.S. Army Corps of Engineers (USACE) Regulatory Program under Section 404 of the Clean Water Act (CWA) and the Delaware Department of Natural Resources and Environmental Control (DNREC) Wetlands and Subaqueous Lands Section under Title 7 Chapters 66 and 72 of the Delaware Code. The intent of this letter is to provide an update on the location of wetlands and/or other Waters of the United States within the subject property for general planning purposes.

On-site investigations were conducted within the subject parcel by Kenneth W. Redinger Environmental Services between March 4 and November 8, 2019 to delineate wetland boundaries in accordance with the 1987 Corps of Engineers Wetland Delineation Manual and the Regional Supplement to the Corps of Engineers Wetlands Delineation Manual: Atlantic and Gulf Coastal Plain Region, Version 2.0 (November 2010) and associated regulatory guidance.

Based on the evaluation of hydrology, vegetation and soils made during the on-site investigations, a total of 5,518 square feet of palustrine forested wetlands that may be subject to regulation under Section 404 of the CWA have been identified within the southeastern portion of the subject parcel, as depicted on a Wetlands Plan by Axiom Engineering, LLC dated July 24, 2019. A man-made drainage channel located along the southern property boundary may also be regulated as Waters of the United States for the purposes of Section 404 of the CWA. No state regulated wetlands were identified within the subject parcel.

A request to confirm the limits of wetlands and Waters of the United States within the subject parcel will be submitted to the Philadelphia District USACE upon completion of the Wetland Delineation Report in mid-December 2019.

Prior authorization from the USACE will be obtained for any unavoidable impacts to jurisdictional wetlands and/or Waters of the United States that may be required for site development.

Justice Wetland Delineation Update
November 26, 2019
Page 2 of 2

I will provide a final Wetland Delineation Report for the Sussex County Council Public Hearing scheduled for January 28, 2020.

Please contact me with any questions you may have concerning this project in the meantime.

Sincerely,

A handwritten signature in blue ink, appearing to read "KWR", with a long, sweeping horizontal stroke extending to the right.

Kenneth W. Redinger
Professional Wetland Scientist #2126

14

DRAFT HOA COVENANTS AND RESTRICTIONS

Sussex County Tax Map No. 1-34-16.00-51.00

Prepared By and Return To:
Sergovic Carmean Weidman McCartney & Owens, P.A.
P.O. Box 751, Georgetown, DE 19947

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
FOR EVERGREEN RESIDENTIAL PLANNED COMMUNITY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is entered into and declared by Michael P. Justice, Trustee of the Michael P. Justice Revocable Trust dated July 20, 2017 (hereinafter referred to as "Declarant"), which is the owner of the property identified in Exhibit "A" hereto and declares that the lands described in Exhibit "A" shall be subject to and bound by the following Declaration of Covenants, Conditions and Restrictions for the Evergreen Residential Planned Community.

The Declarant has deemed it desirable for the efficient preservation of values and amenities in said Community,¹ to create an agency to which will be delegated and assigned the powers of maintaining and administering the community facilities, Common Areas,² and administering and enforcing the covenants, conditions and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created; and

The Declarant will cause a nonprofit corporation, The Evergreen Residential Planned Community Owners Association, Inc. (hereinafter the "Association"), to be incorporated under the laws of the State of Delaware, for the purpose of exercising the functions aforesaid.

The Declarant, intending to be legally bound, and to bind the property which is the subject matter of this Declaration, and intending that such restrictive covenants, conditions and

¹ As hereinafter defined.

² As hereinafter defined.

restrictions shall run with title to the land, and to bind the heirs, administrators, executors and assigns of every lot owner acquiring the lands described in Exhibit "A" hereto, hereby declares as follows:

1. Definitions. The following words, when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

A. "**Architectural Review Committee**" or "**ARC**" shall mean and refer to the committee appointed by the Declarant or the Association to review plans for construction on each Lot.

B. "**Association**" shall mean and refer to The Evergreen Residential Planned Community Owners Association, Inc., or such other membership corporation as the Declarant shall form, its successors and assigns.

C. "**Community**" shall mean and refer to Evergreen Residential Planned Community.

D. "**Declarant**" shall mean and refer to Michael P. Justice, Trustee of the Michael P. Justice Revocable Trust dated July 20, 2017, and any successor.

E. "**Declaration**" shall mean and refer to this instrument.

F. "**Lot**" shall mean and refer to any unimproved or improved plot of land intended and subdivided for a detached single family residence, shown upon the Record Plat as a numbered parcel, but shall not include the "Common Areas" as hereinabove defined.

G. "**Member**" shall mean and refer to all those Owners who are members of the Association as provided in Paragraph 11 A of this Declaration.

H. "**Mortgage**" shall mean and refer to any mortgage, deed of trust, or similar instrument granted as security for the performance of any obligation.

I. "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, holding a fee simple title to any Lot, but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

J. "**Record Plat**" shall mean the plat of record in the Office of the Recorder of Deeds, in and for Sussex County, recorded in Plot Book _____ at Page _____, depicting the Property and all of the Lots, the Common Areas and the sidewalk easement.

K. "**Sidewalk Easement**" shall mean the sidewalk as shown on the Record Plat. The sidewalk is located on one side of the internal street and are located as depicted on the Record Plat. The Sidewalk Easement is reserved to the Association for its upkeep and maintenance and for use of its members and guests, whose use is limited to pedestrian use, non-motorized bicycles, baby carriages, sleds (in winter); however, skating and skate boarding are a prohibited use.

2. Property subject to this Declaration. The lands set forth in Exhibit "A" hereto are made subject to this Declaration (the "Property").

3. Common Area. The road or roads, the stormwater management erosion and sediment control facilities, designated private community open space, forested buffer, the Sidewalk Easement and the street lighting (hereinafter "common areas") shown and depicted and so designated in Plot Book ___ at Page ___, a plot titled, *The Evergreen Residential Planned Community*, serve the property which is the subject of this Declaration; the road(s), Sidewalk

Easement and street lighting shown on the recorded plot are private right-of-ways and common areas benefiting all Lots shown on the Record Plat; and it is hereby provided that the road or roads, Sidewalk Easement, street lighting and common areas shown on the Record Plat, is declared to be private road(s), a private Sidewalk Easement, private street lighting, private common areas and private storm water management erosion and sediment control facilities and that each property owner who obtains a deed for a Lot as shown on the Record Plat as served by such road(s), Sidewalk Easement, street lighting, common areas, and private storm water management erosion and sediment control facilities by the acceptance of such conveyance, hereby agrees to be responsible for maintaining, repairing, replacing the Common Areas including the roads, street, Sidewalk Easement, street lights, and providing electric service for street lighting and for the up keep of all improvements on such road(s) and Common Areas through the Association (“Common Areas”).

4. Maintenance by Association. The responsibility for maintenance, repair and replacement of the Common Areas shall be the responsibility of the Association and the assessment of such cost shall be prorata among all Lot Owners served with each Lot having an equal assessment to all other Lots served by such road(s), Sidewalk Easement, street lighting and Common Areas.

5. Remedial or Restrictive Council. The Declarant further declares that all Lots created on the lands that are the subject matter of this Declaration shall be subject to the following remedial or restrictive covenants:

A. The numbered Lots shall not be used to harbor or raise any swine, hogs, chickens or any non-domesticated animals, including horses, sheep, cows, goats, etc.

B. All Lots shall only be improved by stick-built, custom-built, or modular residential structures, which have not previously been occupied or received a certificate of occupancy at another location. Each main dwelling structure must have a an under roof and heated living area of a minimum of 1,800 square feet for one-story dwellings, and 2,200 square feet for two-story dwellings, exclusive of decks and porches. Each main dwelling unit roof(s) shall have:

(1) A minimum roof pitch of 5'/12' for a single story main dwelling;

(2) For a two-story main dwelling, the roof pitch may be modified to accommodate hip roofs, gambrel roofs and/or mansard roofs; provided however, that a gambrel, hip or mansard roof must have a minimum 3'/12' pitch;

(3) Shed roofs and flat roofs shall not be allowed on a main dwelling or garage, unless approved by the ARC as being in harmony with the architecture of the main dwelling, and all porch roofs shall have a minimum of 3'/12' pitch.

C. Each main dwelling shall have an attached garage.

D. Manufactured homes shall be strictly prohibited. A manufactured home shall be a housing unit defined by the Sussex County Comprehensive Zoning Ordinance as a mobile home or trailer, and if not defined by such Ordinance, shall be a housing unit which moves to the site affixed to a chassis. Modular homes are permissible. A modular home is any structure that is trucked to the site with its interior components constructed off-site. No structure of any temporary character, shack, barn or other outbuildings, except as provided herein, shall be placed on any Lot at any time, except during periods of construction for storage of materials, and such temporary structures shall not in any event be used for living quarters.

E. All buildings or structures placed on the Lots are subject to the building setback requirements for front, side and rear property lines as ordained by the RPC approval of Evergreen Residential Planned Community by the Sussex County Government. No shed structure shall be allowed.

F. Travel trailers, motor homes, campers, wave runners, boats and/or boat trailers may be placed at the rear of the property, behind the home, provided the placement does not encroach on any side yard or rear yard setback requirement, and is not visible from the street or streets.

G. All grass is to be no greater than six (6) inches in height. If grass is greater than six (6) inches in height, the Declarant, the Association, or their successors have the right to cut said grass and the property owner shall be required within five (5) days of invoicing to pay the cost incurred by the invoicing entity doing such work.

H. The only detached accessory structure permitted shall be one (1) garage type structure per Lot as an accessory to an existing or fully completed main dwelling. The siding and roof materials and color of any detached garage must match the main structure, and the roof of the garage must have a roof pitch of no less than 4¹/₁₂'. The size of the any detached garage shall be no greater than 24' x 24' and not less than 12' x 12'.

I. All driveways must be covered with cement, tar and chip, blacktop, concrete paver, brick, or by a pervious surface approved by the ARC as in harmony with the architecture of the main dwelling and beneficial to storm water management, and fully completed within six (6) months of the Certificate of Occupancy for the main dwelling on any Lot.

J. No drying lines for the drying or airing of fabrics or other material will be permitted on the site within view of the streets.

K. No stripped down, partially wrecked or junked motor vehicles are to be located on the property and exposed to view. No repairing or overhauling of automobiles will be permitted unless contained within a fully enclosed garage. In the event an automobile is not used for an extended period of time, it must be removed or stored within a garage.

L. No noxious, offensive or illegal activity shall be carried on any Lot. Lot Owners shall not perform any acts, or carry on any practices which may be a nuisance or menace to other Lot Owners, including permitting their dogs to bark continually that would be annoying to adjoining Lots as to cause a nuisance or unreasonably disturb any resident of the Community.

M. No business activities shall be authorized on any Lot, except however, customary home occupations may be maintained on any Lot; however, excluded from home occupations shall be barber shops and beauty salons.

N. No trash, ashes, garbage or other refuse shall be dumped, stored or accumulated on any Lot.

O. No outside burning of wood, trash, garbage or household refuse shall be permitted.

P. Once construction of any building, whether a main residential structure or permitted accessory structure limited to one detached garage per lot as further specified in 5.G., above, shall have commenced, such construction shall proceed without delay until the same is completed, unless the delay is attributed to causes beyond the control of the owner. Cessation of work, once started for a continuous period of ninety (90) days, shall be prima facie evidence of

an attempt to abandon the same, and any abandonment of commenced construction shall be deemed a nuisance. All Lots must be graded and seeded within six (6) months of obtaining a Certificate of Occupancy for any main dwelling.

Q. The Property may be located in the vicinity of land used primarily for agricultural purposes on which normal agricultural uses and activities have been afforded the highest priority status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of the Property is expressly conditioned upon acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities. This restriction incorporates the notice of agricultural use protection ordained by the Sussex County Code at § 99-6 G(1).

R. The numbered Lots as developed by the individual Lot Owners of the Lots in the Community are subject to a stormwater management plan, which includes, and is not limited to specifications for culvert pipes to be placed under driveways. Each Owner of a numbered Lot, upon development of a driveway to serve that Lot, shall be responsible for the installation of a culvert pipe conforming to the location and specifications of the construction of culvert pipes beneath driveways as contained in the record drainage plan for the Community of record in the Office of the Sussex County Planning and Zoning Commission. The installation of the culvert pipe under driveways and the maintenance of same shall be the sole responsibility of the Lot Owner installing the driveway and the culvert pipe. The Lot Owners recognize that the failure to properly install the culvert pipes under the driveways in conformance with the drainage plan may cause Sussex County to withhold a building or occupancy permit until the driveway

culvert pipe is brought to the standards required by the approved drainage plan. Each Lot Owner agrees to install the underground driveway culvert pipe in accordance with the specifications hereinabove established, and the cost to correct any installed culvert pipe to meet those specifications shall be at the sole cost of the Lot Owner.

S. Some of the Lots may contain wetlands regulated by the U.S. Army Corps of Engineers and/or State of Delaware. Any Lot conveyed, if known by the Declarant to contain wetlands, shall include in its deed a notice and warning that such Lot contains regulated wetlands which shall state the following: "This site contains regulated wetlands--activities within these wetlands may require a permit from the U.S. Army Corps of Engineers and/or the State of Delaware." This restriction is provided to comply with Sussex County Code § 99-6 H.

T. Any Lot which contains any portion of the Sidewalk Easement as depicted on the Record Plat is subject to a Sidewalk Easement. The Owners of such Lots shall cooperate with the Association in maintaining the portion of the Sidewalk Easement located on such Lot free of obstruction and to allow the uses permitted in the Sidewalk Easement. Additionally, if a Lot Owner cause's damage to a portion of the improvements created within the Sidewalk Easement, the Lot Owner causing such damage shall be subject to a special assessment imposed by the Association to effect repairs caused to the sidewalk improvements of the Lot Owner by the Lot Owner's agents or contractors causing damage.

6. Lots subject to Assessment by the Association. By taking title to a deed for a Lot subject to these restrictive covenants, the Lot Owner recognizes that the Association will determine whether any street and road improvements, and/or Common Area improvements shown on the approved Record Plat, requires maintenance and/or repair. All assessments for

maintenance expense of roads and/or drainage facilities shall be determined in a like manner. Each Lot Owner recognizes that the provisions of this restrictive covenant are intended to comply with, and to bring the Community into conformity with the requirements of the Sussex County Code § 99-27.

7. Creation of Corporation for Owners Association. The Declarant will cause a nonprofit corporation, The Evergreen Residential Planned Community Owners Association, Inc., to be incorporated under the laws of the State of Delaware, for the purpose of exercising the functions of the Association under this Declaration.

8. Reservation of Easements by Declarant. The Declarant has the right to grant and reserve easements and rights-of-way through, under, over and across the common areas, and easements for the installation, maintenance and inspection of the lines and appurtenances for public or private water, sewage, drainage, gas, electricity, telephone, cable television and any other utility.

9. Architectural Approval of Structures. In order to insure the development and maintenance of the Community as a residential development of high standards, no building, structure, fence, wall or other erection shall be commenced, erected, maintained or used, nor shall any addition to or change or alterations therein, or in the use thereof, be made upon any Lot which is subject to the Declaration, no matter for what purpose or use, until complete and comprehensive plans and specifications showing the nature, kind, shape, height, materials, floor plans, exterior architectural scheme, location and placements on the Lot, structure or other erection, the grading and landscaping of the Lot to be built upon or improved, and such other information as may be necessary to determine the type, nature or scope of the proposed

improvement as is reasonably necessary, shall be submitted to and approved in writing by the ARC, or its successors. The plans shall be submitted to the ARC for approval along with a payment in the amount as set forth from time to time by the Association to discharge its expenses, if any. If the ARC does not reject a submitted plan within thirty (30) days of verified receipt, the plan shall be deemed approved by the ARC, except that any approval obtained by the passage of time without action or otherwise, shall not authorize any construction which is in violation of any explicit prohibition herein provided. Verified receipt shall be by accepted certified mail, registered mail, or written receipt of hand delivery. Plans shall be delivered to the Declarant, until the Association is organized by its first election of Directors by the members, and, thereafter, to the registered agent of the Association. A copy all such plans and specifications, finally approved as aforesaid, shall be lodged permanently with the ARC; **PROVIDED, HOWEVER,** that nothing herein shall require the aforesaid approval as to interior decorations, alterations or changes.

The ARC, or its successors, shall have the right to refuse to approve any such plans or specifications, grading or landscaping plans or changes, which are not in compliance with Paragraph 5 of the Declaration, or not suitable or desirable to the ARC, or its successors, based upon an application of the mandatory architectural considerations herein provided. In passing on such plans, the ARC shall take into consideration the suitability of the proposed building or other improvements or erections and/or the materials of which the building or other improvements or erections are to be built, and the site upon which it is proposed to be built, the harmony thereof with the surroundings, and the harmony of such improvements, additions, alterations or changes, as planned, on the adjacent or neighboring property, and any and all

factors which in its opinion, would affect the harmony of such proposed improvements, erections, alterations or changes with previously approved structures on Lots subject to this Declaration.

10. Binding Effect. These restrictions and remedial provisions are binding on the Declarant, and on each Lot Owner who takes title to a Lot in the Community and shall bind and run with title to the Lots.

11. Membership and Voting Rights.

A. Every Owner of a Lot, which is subject to assessment shall be a Member of the Association provided, however, that any such person or entity who holds such interest merely as security for performance of an obligation shall not be a Member, unless and until such person or entity has succeeded to such Owner's interest by enforcement of such security interest. Membership shall be appurtenant to and may not be separated from the ownership of any Lot, which is subject to assessment. Provided, however, that the Declarant shall be considered an Owner of each Lot held by it, whether such Lot or Lots are or are not subject to assessment.

B. The Association shall have one class of voting membership; **Class A:** which shall be all Owners, including the Declarant. Class A members shall be entitled to one (1) vote for each Lot. When more than one person holds an interest in any Lot all such persons shall be members. The vote of such Lot shall be exercised as the Owners themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

C. The Declarant shall establish the Association by the filing of a Certificate of Incorporation of the Association when the Declarant, at its sole discretion, deems the creation

of such Association appropriate, except that the Certificate of Incorporation shall be filed by the Declarant no later than January 1, 2025.

12. Property Subject to Declaration. The real property subject to this Declaration is all that property located in Baltimore Hundred, Sussex County, Delaware as shown on the Record Plat, and as described in Exhibit "A." The lands subject to this Declaration shall also be subject to restrictions, easements or rights of way previously granted by the Declarant, or its predecessors in title as recorded in the Office of the Recorder of Deeds, in and for Sussex County.

13. Property Rights in the Common Areas.

A. Owners' Easement of Enjoyment. Every Owner shall have a right of easement of enjoyment in and to the Common Areas, and such easement shall be appurtenant to and shall pass with the title to every Lot.

B. Title to Common Areas. The Declarant shall convey legal title in the Common Areas to the Association. The conveyance of title in the Common Areas may be retained by the Declarant until such time as the Declarant has completed improvements thereon, and until such a time as, in the opinion of the Declarant, the Association shall be able to maintain the same, but, notwithstanding any other provision herein, the Declarant hereby covenants for itself, its successors and assigns, that it shall convey all its right, title and interest in the Common Areas to the Association, free and clear of all liens, but subject to all previous restrictions of record and this Declaration no later than the **1st day of January, 2025.**

C. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Certificate of Incorporation and By-Laws to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage the properties, and the rights of such mortgagee in the property shall be subordinate to the rights of the Owners hereunder, provided, however, that no such borrowing or mortgaging shall be made unless approved by the vote of two-thirds (2/3) of the eligible votes at a meeting duly called for such purpose.

(b) The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosure.

(c) The right of the Association as provided in its Certificate of Incorporation or By-Laws, to suspend the enjoyment rights of any Member in any easement or in any Common Areas, for a period during which any assessment against such Member remains unpaid for infractions of the Declaration or of the Association's published rules and regulations, except the voting rights of any Member may not be suspended.

(d) The right of the Association to dedicate or transfer all or any part of its interest in the Common Areas (subject to easements created hereunder, or previously created of record) to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer or determination as to purposes or as to the conditions thereof, shall be effective unless an instrument of consent signed by the Members entitled to cast two-thirds (2/3) of the votes has been recorded.

(e) The right of the Declarant prior to the conveyance of the Common Areas to the Association, and of the Association, to grant and reserve easements and rights-of-

way through, under, over and across the Common Areas, for the installation, maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage, gas, electricity, telephone and other utilities.

(f) The right of the Association to adopt rules and regulations governing the use by the Owners of the Common Areas.

(g) The right of the Association, pursuant to adopted rules and regulations, to assess liquidated damages in an amount reasonably determined by the Association's Board of Directors to be imposed as a special assessment against any Lot Owner who violates or proposes to violate the Declaration or the rules adopted by the Association, in an amount necessary to compensate the Association and the remaining Lot owners for the damages that would occur for a violation of the Declaration or the rules adopted by the Association. The reasonableness of the liquidated damages imposed by the Board of Directors of the Association for anticipatory or actual breaches of the Declaration or the rules adopted by the Association shall be presumed reasonable and shall be enforced by a court of competent jurisdiction as a reasonable assessment of liquidated damages unless the affected Lot Owner can establish that there is an arbitrary relationship between the amount of the liquidated damages and the harm sought to be prevented by the established liquidated damage. All such liquidated damages shall be assessed as a special assessment of liquidated damages in accordance with Paragraph 14, provided however, that before imposing the special assessment for liquidated damages, the lot owner to be assessed shall have the opportunity to contest the assessment by providing notice to the Board of Directors of the Association requesting a hearing within seventy-two (72) hours of notice of intent to impose a liquidated damages special assessment.

D. Delegation of Use. Any Owner may delegate the rights of enjoyment to the Common Areas and facilities to the members of the Owner's family, tenants, guests, or contract purchasers (and members of the family of any tenant or contract purchaser) who resides on the Lot, or to such other persons as may be permitted by the Association.

E. Obligations of the Association. The Association shall:

(a) Take title to, own, manage and maintain any portion of the Common Areas transferred to it, as described in Paragraph 3.

(b) Operate and maintain, for the use and benefit of all Members of the Association, all Common Areas and facilities and improvements developed thereon.

(c) Operate and maintain all facilities on, mow the grass on, plant and replace landscaping on, all Common Areas.

(d) Maintain and restrict the use or uses to be made on or to the Common Areas.

14. Covenant for Maintenance by the Declarant. Until the Common Areas are improved and transferred to the Association, title to the Common Areas shall be retained by the Declarant. The Declarant shall be entitled to utilize initial assessments and annual assessments paid by Lot Owners to defer maintenance expenses in the Common Areas until sixty percent (60%) of all Lots in the Community are sold to third-party purchasers for value. In the event that the actual maintenance of the Common Areas exceeds the expenses discharged by an annual assessment per year, per sold Lot, then in that event, the Declarant shall pay the excess maintenance requirements until sixty percent (60%) of the Lots are sold. After sixty percent (60%) of the Lots are sold, the Declarant shall be under no obligation to contribute to Common

Areas maintenance expenses. Any capital improvements to Common Areas shall be made by the Declarant at its expense until sixty percent (60%) of the Lots are sold by the Declarant to a third-party purchaser for value.

15. Covenant for Maintenance and to Accept and Discharge Assessments.

A. Creation of Lien and Personal Obligation of Assessments. The Declarant, for itself and its successors and assigns, and each Lot Owner within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed or other transfer document therefor, whether or not it shall be expressly established in such Deed or other transfer document, hereby covenants and agrees to pay the Association: (1) annual assessments or charges; (2) liquidated damage assessments, if imposed, pursuant to the provisions of Paragraph 13C(g); and (3) an initial assessment in the amount of Two Hundred Dollars (\$200.00) due upon the conveyance of any Lot from the Declarant to a third-party purchaser for value (except to the Declarant), such assessments to be fixed, established and collected as hereinafter provided. The annual assessment, liquidated damage assessment and initial assessment, together with interest and costs and reasonable attorney's fees, shall be a charge on the Lot, and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees for the collection thereof, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment was due. A personal obligation for delinquent assessment shall not pass to the Owner's successor in title (other than as a lien on the land), unless expressly assumed by them.

B. Purpose of Assessments. Assessments levied by the Association shall be for the purpose of promoting the recreation, health, safety and welfare of the residents of the

Property, or for the improvement and maintenance of the Common Areas of the property, and for services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas, including, but not limited to, the payment of taxes and insurance thereon, repair, replacement and additions thereto, for the cost of labor, equipment, materials, management and supervision thereof, or for operating reserve funds and reserve funds for repair and replacement of the Common Areas and the facilities thereon, or for a purpose of discharging a duty or obligation of the Association, and/or for liquidated damages for the breach or anticipated breach of the Declaration or rules adopted by the Association by a Lot Owner.

C. Basis and Maximum Annual Assessment. Each respective Lot to be sold by the Declarant, as conveyed by the Declarant after the final date of transfer to any Owner, shall thereafter be subject to assessments to be paid to the Association. The amount of such annual assessment shall be fixed annually at Five Hundred Dollars (\$500.00) per year until sixty percent (60%) of all Lots in the Community are sold to third-parties other than the Declarant, or a successor Declarant, and thereafter periodically as needs for annual assessments arise, as determined by the Association through the Board of Directors, and shall be charged or assessed in equal proportions against each Lot within the property, except for assessments for liquidated damages. The first assessment year shall be **January 1, 202_**, and the assessment rate for the first assessment year is set at Five Hundred Dollars (\$500.00), and thereafter each annual assessment shall be made for each subsequent calendar year commencing as of January 1 of each year. Each annual assessment shall be due and payable on or before thirty (30) days after it has been fixed and levied. It shall be the duty of the Association to notify all Owners, whose addresses are listed with the said Association, within thirty (30) days after said annual

assessment has been fixed or levied, giving the amount of the charge of the assessment for said year, when due, and the amount due on each Lot or parcel of land owned by each such Owner. Failure of the Association to levy the assessment for any one year shall not affect the right of the Association to do so for any subsequent year.

D. Establishment of Annual Assessment Rate. The Board of Directors of the Association may, after sixty percent (60%) of all Lots are transferred and sold to third-parties other than the Declarant, after consideration of current maintenance costs and future needs of the Association, fix the annual assessment in an amount deemed appropriate and may provide for the payment in monthly or quarterly installments; provided however, that if any periodic payment obligation is not paid on its due date, the full annual amount of the assessment shall be due. In establishing each annual assessment after the first annual assessment, the Board of Directors may increase the annual assessment by twenty percent (20%) over the previous year's assessment. Any increase in the annual assessment in excess of twenty percent (20%) over the previous year's assessment shall require approval by fifty-one percent (51%) of the eligible votes of the Association.

E. Initial Assessment. In addition to the annual assessment or other assessments, the Declarant, for use of the Association, hereby establishes an initial assessment to be paid by the purchaser upon the conveyance of each Lot from the Declarant (except the Declarant) to a third-party purchaser for value; and the amount of such initial assessment is set at Two Hundred Fifty Dollars (\$250.00). The Declarant may use that fund to pay the cost of any obligation to maintain the Common Areas pending transfer of the fund and the Common Areas to the Association.

F. Special Assessment for Liquidated Damages. The Association, through its Board of Directors, has the power and duty to impose liquidated damage assessments for violations of this Declaration and/or By-Laws or Rules of the Association. Such assessment shall be imposed in the manner set forth in Paragraph 13C(g).

G. Date of Commencement Assessment; Due Date. The annual assessments as to any Lot shall commence on the conveyance of such Lot, prorated for the remaining portion of said year, providing such conveyance is after **January 1, 202_**. In the event a Lot is conveyed prior to **January 1, 202_**, the annual assessment will commence **January 1, 202_**. The due date of any liquidated damage assessment shall be established by the Board of Directors in establishing the liquidated damage assessment.

H. Effect of Nonpayment of Assessment. The Personal Obligation of the Owner; the Lien; Remedies of the Association. If any assessment is not paid on the date when stated to be due in the notice of assessment, then the assessment shall be deemed delinquent, and if the delinquent payment is a periodic payment (i.e. monthly, quarterly, etc.), the entire assessment shall be delinquent, and shall, together with such interest thereon and cost of collection thereof, including reasonable attorney's fees, as hereinafter provided, continue as a lien on the Lot and any structure built thereon which shall bind such Lot in the hands of the Owner, his heirs, devisees, personal representatives, successors and assigns. In addition to such lien rights, the obligation of the assessment shall be a personal obligation of the then Owner to pay such assessment, however, the personal obligation shall not pass to his successors in title (other than as a lien on the land) unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the delinquency, the assessment shall bear interest from the date of

delinquency at the rate of the legal interest rate authorized by 6 Del. C. § 2301 as amended, and the Association may bring legal action against the Owner personally obligated to pay the same or may enforce or foreclose the lien against the Lot; and in the event a judgment is obtained, such judgment shall include interest on the assessment from its due date and reasonable attorney's fees to be fixed by the Court, together with the costs of collection. No Owner of a Lot may waive or otherwise escape liability for an assessment provided for herein by non-use of the Common Areas or abandonment of his or its Lot. The Association reserves the right to suspend the enjoyment rights of any Member in any easement or Common Area for the period during which any assessment against such Member remains unpaid.

I. Subordination of the Lien to the First Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage on the Lot. Sale or transfer of any Lot shall not affect the assessment lien. However, sale or transfer of any Lot by foreclosure of any first mortgage or any proceedings in lieu thereof, shall extinguish the lien of such assessments as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

J. Exempt Property. The following property subject to this Declaration shall be exempted from the assessments, charges and liens created herein:

- (a) All properties dedicated to and accepted by a government body, agency or authority and devoted to public use;
- (b) All Common Areas;

(c) All Lots owned by the Declarant until sold to third persons, unless such Lots are improved by a permitted structure.

16. Amendment. This Declaration may be amended at any time after it is recorded by sixty percent (60%) of the Lot Owners voting at a meeting of the Association providing prior notice of the proposed amendment or by written consent to approve amendment as noticed in the ballot to the Lot Owners written consent.

[signature pages]

DRAFT

IN WITNESS WHEREOF, the Declarant executes this Declaration of Restrictions and Covenants this ____ day of _____, 2005.

MICHAEL P. JUSTICE
Trustee of the Michael P. Justice Revocable
Trust dated July 20, 2017

Witness By _____ (SEAL)
_____, Trustee

STATE OF DELAWARE :
: ss.
COUNTY OF SUSSEX :

BE IT REMEMBERED, that on this ____ day of _____, A.D. 2019, personally came before me, the Subscriber, a Notary Public for the State and County aforesaid, MICHAEL P. JUSTICE, Trustee of the Michael P. Justice Revocable Trust dated July 20, 2017, party to this Indenture, known to me personally to be such, and acknowledged this Indenture to be his deed.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

Notary Public

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**PROPOSED FINDINGS OF FACTS
AND
CONDITIONS OF APPROVAL**

PROPOSED FINDINGS OF FACT AND CONDITIONS CHANGE OF ZONE #1900

1. This is an application for a Residential Planned Community including 45 single-family homes on 16.1 acres in Baltimore Hundred on the west side of Route 362 (Parker House Road) approximately ½ mile south of the intersection of Parker House Road with Beaver Dam Road, and is known as Tax Parcel 1-34-16.00-51.00.
2. The applicant and owner/developer of the project is Michael P. Justice, Trustee.
3. The lands to the north of the subject property are zoned General Residential (GR), lands to the west are located within the Town of Ocean View with a density similar to that allowed in a GR district. Lands to the south are zoned GR and C-1, general commercial. CZ #1900 does not change the underlying zone of the property, but adds a Residential Planned Community Overlay to establish a GR-RPC property with a density of 2.82 dwelling units/acre.
4. This application is consistent with and meets the goals of the Coastal Area established in the 2018 Update to the Comprehensive Land Use Plan of Sussex County and its Future Land Use Map.
5. With the conditions imposed the development will be designed in accordance with the County zoning ordinance and subdivision ordinance.
6. The project has a proposed density of 2.83 units per acre, similar to the density of the surrounding residential communities
 - a. 3.02 du/ac. Kensington Park
 - b. 2.97 du/ac. Plantation Park
 - c. 2.74 du/ac. Ocean Air
 - d. 2.64 du/ac Silverwoods Phase 1
7. The property is in investment level III according to the State Strategies for Spending map. According to the 2019 Sussex County Comprehensive Plan, the property is in a Coastal Area, which supports a mix of housing types.
8. Potable water will be provided by Tidewater Utilities.
9. Sewer will be provided by Sussex County.
10. The project will have a homeowners association for the maintenance of common areas, e.g., open areas, amenities, streets, etc., in compliance with DUCIOA.

11. The items listed in Section 99-9C of the Subdivision Ordinance have been satisfactorily addressed, in that:
- a. The subdivision will be integrated into the existing terrain and surrounding landscape with the maintenance of open space, trees and buffers;
 - b. Impacts to the existing wetland ditch shall be minimized to allow for drainage improvements only. All impacts to wetlands shall be subject to the review and approval of the U.S. Army Corps of Engineers and the Delaware Department of Natural Resources and Environmental Control.
 - c. The property has 5 acres of existing forest, 2 acres of existing forest are to be preserved in common open space.
 - d. The development design will preserve 39% of the parcel as common open space;
 - e. The developer will provide assurances that tree, vegetation and soil removal will be minimal and enhanced through landscaping features;
 - f. Objectionable features, such as dry storm water management ponds and homes adjacent to neighboring properties will be minimized by the inclusion of forest buffers around the perimeter of the proposed dwelling lots;
 - g. Through the establishment of a stormwater management plan approved by the Soil Conservation Service, erosion and sedimentation and pollution of surface and groundwater will be minimized on site;
 - h. The project will provide for safe vehicular and pedestrian movement within the site and onto connecting roadways;
 - i. Area property values will not be negatively affected by development of the project;
 - j. The project will not adversely affect the preservation and conservation of farmland;
 - k. The project will have a positive benefit on schools by generating economic benefits in the form of increased revenues through property taxes. The developer will consult with Indian River School District to determine whether a school bus shelter will be provided. At the same time, the expected demographic of purchasers and impact on the school system is not expected to create a burden on the school district;
 - l. The Delaware Department of Transportation did not require a Traffic Impact Study for this proposed project.
 - m. The project will be compatible with other area land uses, including residential development in the vicinity. In addition, the project has been designed to minimize any adverse impacts on properties that are adjacent to it;
 - n. The project will not adversely affect area waterways in that the surface and stormwater management plan will provide containment and

treatment on site.

- o. The applicant has responded to the Preliminary Land Use Service. The project will be served with County sewer and central potable water.
- p. The change of zone is consistent with the character and trend of development in the immediate area and have no adverse impact of any sort on neighboring or nearby properties.
- q. As a result, the approval of this change of zone promotes and protects the health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex County.

CZ #1900 CONDITIONS OF APPROVAL:

- A. THE MAXIMUM NUMBER OF DWELLING UNITS SHALL NOT EXCEED 45 SINGLE FAMILY DWELLING UNITS.
- B. A HOMEOWNERS ASSOCIATION SHALL BE FORMED TO PROVIDE FOR THE PERPETUAL MAINTENANCE, REPAIR AND REPLACEMENT OF BUFFERS, STORMWATER MANAGEMENT FACILITIES, STREETS, AMENITIES AND OTHER COMMON AREAS, IN COMPLIANCE WITH DUCIOA.
- C. ALL ENTRANCES, INTERSECTIONS, INTERCONNECTIONS, ROADWAYS AND MULTI-MODAL IMPROVEMENTS REQUIRED BY DELDOT SHALL BE COMPLETED IN ACCORDANCE WITH DELDOT'S REQUIREMENTS.
- D. THE RPC SHALL BE SERVED AS PART OF A SUSSEX COUNTY SANITARY SEWER DISTRICT. THE DEVELOPER SHALL COMPLY WITH ALL REQUIREMENTS AND SPECIFICATIONS OF THE COUNTY ENGINEERING DEPARTMENT.
- E. THE RPC SHALL BE SERVED BY CENTRAL WATER.
- F. STORMWATER MANAGEMENT AND EROSION AND SEDIMENTATION CONTROL FACILITIES SHALL BE CONSTRUCTED IN ACCORDANCE WITH ALL APPLICABLE STATE AND COUNTY REQUIREMENTS. THESE FACILITIES SHALL BE OPERATED IN A MANNER THAT IS CONSISTENT WITH BEST MANAGEMENT PRACTICES.
- M. THE FINAL SITE PLAN SHALL CONTAIN THE APPROVAL OF THE SUSSEX CONSERVATION DISTRICT FOR THE DESIGN AND LOCATION OF ALL STORMWATER MANAGEMENT AREAS AND EROSION AND SEDIMENTATION CONTROL FACILITIES.
- N. NO WETLANDS SHALL BE INCLUDED IN INDIVIDUAL LOTS.
- O. MAINTENANCE IMPACTS TO THE WETLAND DITCHES SHALL BE COMPLETED IN COMPLIANCE WITH FEDERAL (U.S. ARMY CORPS OF ENGINEERS), STATE (DNREC) AND LOCAL (SUSSEX CONSERVATION DISTRICT) REQUIREMENTS
- P. INTERIOR STREET DESIGN SHALL MEET OR EXCEED SUSSEX COUNTY'S STREET DESIGN REQUIREMENTS, WITH A MINIMUM RIGHT-OF-WAY WIDTH OF 40'. THERE SHALL BE CURB AND GUTTER DRAINAGE, STREET LIGHTING AND SIDEWALKS ON ONE SIDE OF THE STREETS WITHIN THE RPC.
- Q. ALL AMENITIES SHALL BE COMPLETED PRIOR TO THE ISSUANCE OF THE 25TH BUILDING PERMIT.
- R. IF REQUESTED BY THE INDIAN RIVER SCHOOL DISTRICT, A SCHOOL BUS STOP SHALL BE PROVIDED. THE LOCATION OF THE BUS STOP AREA SHALL BE SHOWN ON THE FINAL SITE PLAN.
- S. ROAD NAMING AND ADDRESSING SHALL BE SUBJECT TO THE REVIEW AND APPROVAL OF SUSSEX COUNTY MAPPING AND ADDRESSING DEPARTMENTS.
- T. A FORESTED LANDSCAPE BUFFER SHALL BE ESTABLISHED AS INDICATED ON THE RPC SKETCH PLAN. THIS MAY INCLUDE THE EXISTING TREES. THE FINAL SITE PLAN SHALL INCLUDE A LANDSCAPE PLAN FOR ALL OF THE BUFFER AREAS, SHOWING ALL OF THE LANDSCAPING AND VEGETATION TO BE INCLUDED IN THE BUFFER AREAS.
- U. AS PROFFERED BY THE APPLICANT, THE COMMUNITY WILL NOT CONTAIN ANY MANUFACTURED HOMES.
- V. THE FINAL SITE PLAN SHALL BE SUBJECT TO THE REVIEW AND APPROVAL OF THE SUSSEX COUNTY PLANNING AND ZONING COMMISSION.



PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
KIM HOEY STEVENSON, VICE-CHAIRMAN
R. KELLER HOPKINS
J. BRUCE MEARS
HOLLY J. WINGATE



Sussex County

DELAWARE
sussexcountyde.gov
302-855-7878 T
302-854-5079 F
JANELLE CORNWELL, AICP
DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date December 12, 2019

Application: CU 2200 & CZ 1901 Mary and Victor Rico

Applicant/Owner: Mary and Victor Rico
31422 Indian Mission Road
Millsboro, DE 19966

Site Location: 20797 Sunset Ln. North side of John J. Williams Hwy., approximately
0.28 mile northeast of Camp Arrowhead Rd.

Current Zoning: AR-1 (Agricultural Residential District)

Proposed Zoning: MR (Medium Residential District)

Proposed Use: Multi-Family (7 Units)

Comprehensive Land
Use Plan Reference: Commercial and Coastal Areas

Councilmatic
District: Mr. Burton

School District: Cape Henlopen School District

Fire District: Lewes Fire District

Sewer: Sussex County

Water: Private, On-Site

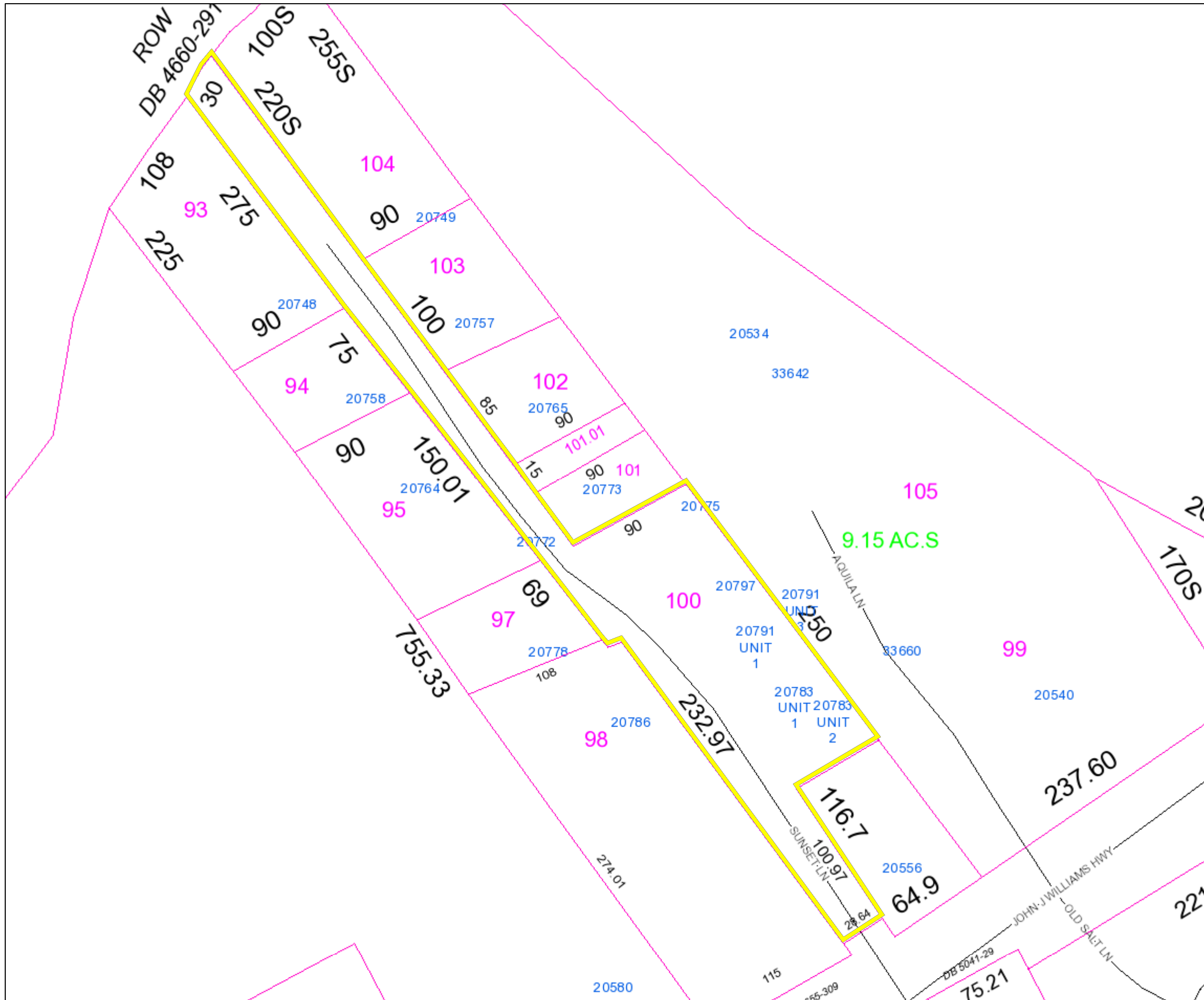
Site Area: 0.927 ac. +/-

Tax Map ID.: 234-7.00-100.00





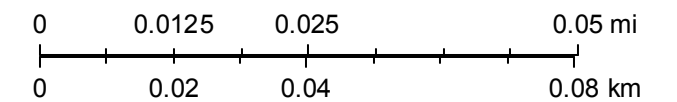
Sussex County



PIN:	234-7.00-100.00-1
Owner Name	RICO VICTOR A
Book	4725
Mailing Address	32183 POWELL FARM RD
City	FRANKFORD
State	DE
Description	LOVE CREEK COTTAGES
Description 2	CONDO UNIT 1
Description 3	N/A
Land Code	

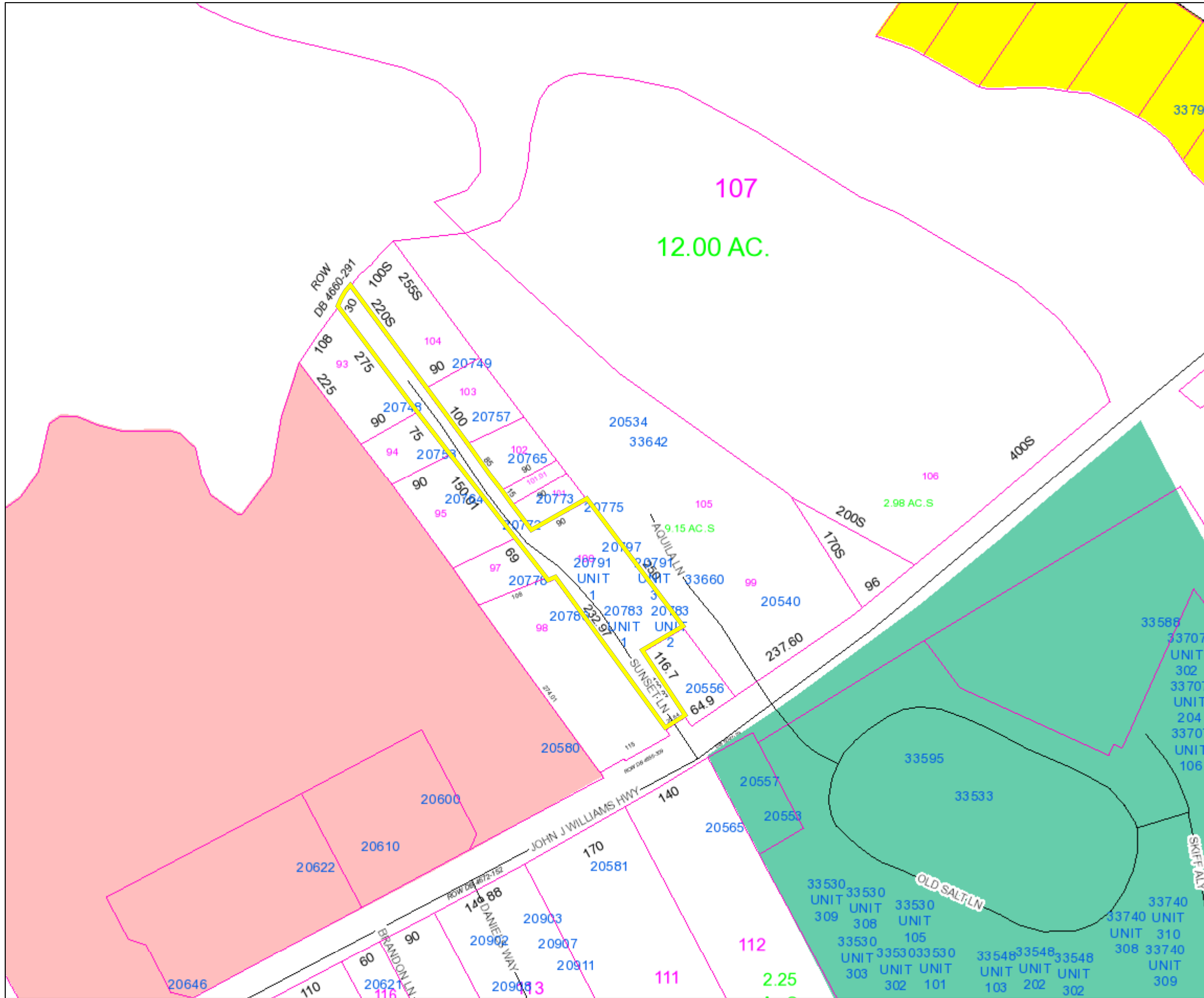
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| polygonLayer | Override 1 |
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|--|-------------|
| | Tax Parcels |
|--|-------------|
- | | |
|--|-------------|
| | 911 Address |
|--|-------------|
- | | |
|--|---------|
| | Streets |
|--|---------|
- | | |
|--|-------------------|
| | County Boundaries |
|--|-------------------|

1:1,128





Sussex County



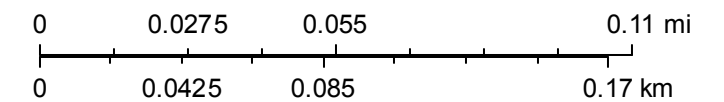
PIN:	234-7.00-100.00-1
Owner Name	RICO VICTOR A
Book	4725
Mailing Address	32183 POWELL FARM RD
City	FRANKFORD
State	DE
Description	LOVE CREEK COTTAGES
Description 2	CONDO UNIT 1
Description 3	N/A
Land Code	

- polygonLayer**

 - Override 1
- polygonLayer**

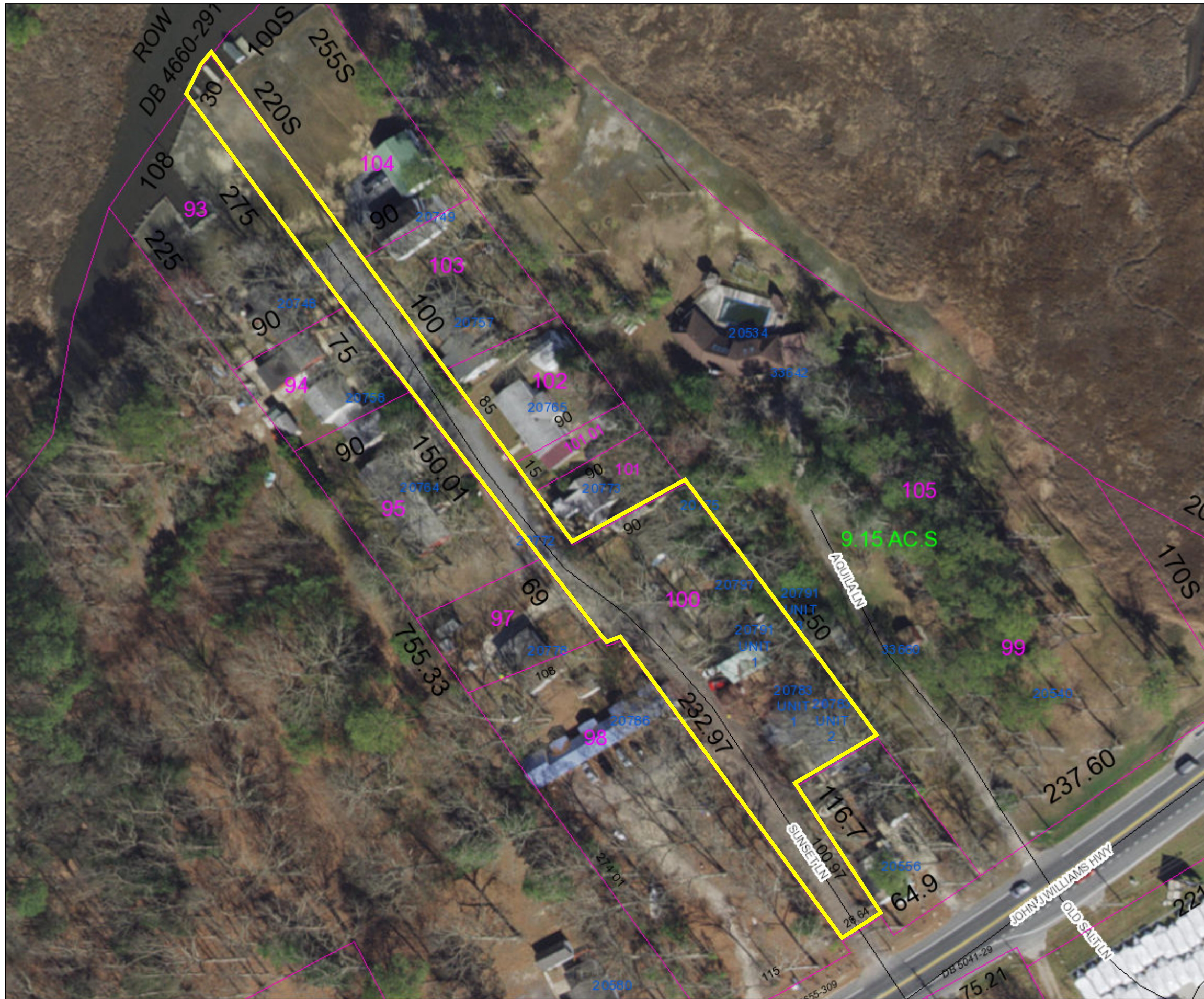
 - Override 1
 - Tax Parcels
 - 911 Address
 - Streets

1:2,257



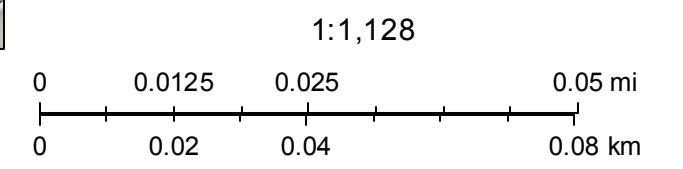


Sussex County



PIN:	234-7.00-100.00-1
Owner Name	RICO VICTOR A
Book	4725
Mailing Address	32183 POWELL FARM RD
City	FRANKFORD
State	DE
Description	LOVE CREEK COTTAGES
Description 2	CONDO UNIT 1
Description 3	N/A
Land Code	

- polygonLayer**
Override 1
- polygonLayer**
Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries



PLANNING & ZONING

JANELLE M. CORNWELL, AICP
DIRECTOR

(302) 855-7878 T
(302) 854-5079 F



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members

From: Lauren DeVore, Planner III

CC: Vince Robertson, Assistant County Attorney and applicant

Date: December 3, 2019

RE: Staff Analysis for CZ 1901 Mary and Victor Rico

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CZ 1901 Mary and Victor Rico to be reviewed during the December 12, 2019 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for parcel 234-7.00-100.00 to facilitate a change from the Agricultural Residential (AR-1) Zoning District to a Medium-Density Residential (MR) Zoning District and is located at 20797 Sunset Lane in Lewes, DE 19958. The size of the property is 0.927 acres +/-.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the property has the land use designation of "Commercial Areas."

The surrounding land use to the north and east are designated "Coastal Areas." Coastal Areas support a range of housing types including single-family homes, townhouses, and multi-family units provided that special environmental concerns are addressed. The adjacent parcels to the west and south of the subject parcel are designated "Commercial Areas." "Commercial Areas include concentrations of retail and service uses, commercial corridors, shopping centers, hotels, motels, car washes and auto dealers. This includes other medium and larger scale commercial uses as well as mixed-use buildings.

Table 4.5-2 "Zoning Districts Applicable to Future Land Use Categories" of the 2018 Sussex County Comprehensive Plan states that the Medium Density Residential Zoning District may be appropriate within the Coastal Areas designation. However, the Medium Density Residential Zoning District is not specifically listed as an applicable Zoning District in the Commercial Area.

The property is zoned AR-1 (Agricultural Residential District.) The property directly to the north of the application site is zoned Agricultural Residential District (AR-1). Properties to the east and south are zoned Agricultural Residential (AR-1) and existing properties on the opposite side of John J. Williams Highway (Route 24) are zoned Marine (M). The parcels to the west reflect a variety



of zoning districts and include a mixture of Agricultural Residential (AR-1), Neighborhood Business (B-1) and Medium Density Residential (MR).

Since 2011, there have not been any other Change of Zone applications considered within a 1-mile radius of the application site.

Based on the analysis of the land use, surrounding zoning and uses, a change of zone to allow for a property zoned Medium Density Residential (MR) in this location may be considered consistent with the surrounding land use, area zoning, and uses.

PLANNING & ZONING

JANELLE M. CORNWELL, AICP
DIRECTOR

(302) 855-7878 T
(302) 854-5079 F



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members

From: Jennifer Norwood, Planner I

CC: Vince Robertson, Assistant County Attorney and applicant

Date: December 5, 2019

RE: Staff Analysis for CU 2200 Mary and Victor Rico

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2200 Mary and Victor Rico to be reviewed during the December 12, 2019 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for parcel 234-7.00-100.00 to allow for multi-family (7 units) to be located at 20797 Sunset Lane, Lewes. The size of the property is 0.927 ac. +/-.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. Also included as part of the Comprehensive Plan is the Future Land Use Map to help determine how land should be zoned and to ensure responsible future development. The Future Land Use Map indicates that the property has the land use designation of "Commercial Areas."

The surrounding land use to the north and east are designated as "Coastal Areas." Coastal Areas support a range of housing types including single-family homes, townhouses, and multi-family units provided that special environmental concerns are addressed. The adjacent parcels to the west and south of the subject parcel are designated "Commercial Areas." "Commercial Areas include concentrations of retail and service uses, commercial corridors, shopping centers, hotels, motels, car washes and auto dealers. This includes other medium and larger scale commercial uses as well as mixed-use buildings.

The property is zoned AR-1 (Agricultural Residential District.) The property directly to the north of the application site is zoned Agricultural Residential District (AR-1). Properties to the east and south are zoned Agricultural Residential (AR-1) and existing properties on the opposite side of John J. Williams Highway (Route 24) are zoned Marine (M). The parcels to the west reflect a variety of zoning districts and include a mixture of Agricultural Residential (AR-1), Neighborhood Business (B-1) and Medium Density Residential (MR).

Since 2011, there have not been any other Conditional Use application within a 1-mile radius of the application site.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional Use to allow for multi-family (7 units) may be considered consistent with the land use, area zoning and uses.



File #: CU 2200
201909219

Planning & Zoning Commission Application Sussex County, Delaware

Sussex County Planning & Zoning Department
2 The Circle (P.O. Box 417) Georgetown, DE 19947
302-855-7878 ph. 302-854-5079 fax

RECEIVED

AUG 12 2019

SUSSEX COUNTY
PLANNING & ZONING

Type of Application: (please check applicable)

Conditional Use

Zoning Map Amendment

Site Address of Conditional Use/Zoning Map Amendment

20797 Sunset Lane Lewes, DE 19958

Type of Conditional Use Requested:

Change of zone from AR to MR. Conditional Use for 3 additional units. 3 apartments in one building and 2 apartments in another building.

Tax Map #: 234 7.00 100.00

Size of Parcel(s): .927 acres

Current Zoning: AR

Proposed Zoning: MR

Size of Building: 4144 sq. ft.

Land Use Classification: Coastal Area

Water Provider: Well

Sewer Provider: County Required

Applicant Information

Applicant Name: Mary and Victor Rico

Applicant Address: 31422 Indian Mission Road

City: Millsboro

State: DE

Zip Code: _____

Phone #: (302) 212-7545

E-mail: _____

Owner Information

Owner Name: same

Owner Address: _____

City: _____

State: _____

Zip Code: _____

Phone #: _____

E-mail: _____

Agent/Attorney/Engineer Information

Agent/Attorney/Engineer Name: Tim Willard 26 the Circle

Agent/Attorney/Engineer Address: _____

City: Georgetown

State: DE

Zip Code: 19947

Phone #: (302) 856-7777

E-mail: tim@fwsslaw.com



Check List for Sussex County Planning & Zoning Applications

The following shall be submitted with the application

Completed Application

Provide eight (8) copies of the Site Plan or Survey of the property

- Survey shall show the location of existing or proposed building(s), building setbacks, parking area, proposed entrance location, etc.
- Provide a PDF of Plans (may be e-mailed to a staff member)
- Deed or Legal description

Provide Fee \$500.00

Optional - Additional information for the Commission/Council to consider (ex. architectural elevations, photos, exhibit books, etc.) If provided submit 8 copies and they shall be submitted a minimum of ten (10) days prior to the Planning Commission meeting.

Please be aware that Public Notice will be sent to property owners within 200 feet of the subject site and County staff will come out to the subject site, take photos and place a sign on the site stating the date and time of the Public Hearings for the application.

DeIDOT Service Level Evaluation Request Response

PLUS Response Letter (if required)

The undersigned hereby certifies that the forms, exhibits, and statements contained in any papers or plans submitted as a part of this application are true and correct.

I also certify that I or an agent on my behalf shall attend all public hearing before the Planning and Zoning Commission and the Sussex County Council and any other hearing necessary for this application and that I will answer any questions to the best of my ability to respond to the present and future needs, the health, safety, morals, convenience, order, prosperity, and general welfare of the inhabitants of Sussex County, Delaware.

Signature of Applicant/Agent/Attorney

Date: 8/12/19

Signature of Owner

Date: _____

For office use only:

Date Submitted: 8/12/19

Fee: \$500.00 Check #: 17775

Staff accepting application: JR

Application & Case #: 201909219

Location of property: _____

Subdivision: _____

Date of PC Hearing: _____

Recommendation of PC Commission: _____

Date of CC Hearing: _____

Decision of CC: _____

File #: 021901
201909218

Planning & Zoning Commission Application Sussex County, Delaware

Sussex County Planning & Zoning Department
2 The Circle (P.O. Box 417) Georgetown, DE 19947
302-855-7878 ph. 302-854-5079 fax

RECEIVED

AUG 12 2019

SUSSEX COUNTY
PLANNING & ZONING

Type of Application: (please check applicable)

Conditional Use
Zoning Map Amendment

Site Address of Conditional Use/Zoning Map Amendment

20797 Sunset Lane Lewes, DE 19958

Type of Conditional Use Requested:

Change of zone from AR to MR. Conditional Use for 3 additional units. 3 apartments in one building and 2 apartments in another building.

Tax Map #: 234 7.00 100.00 Size of Parcel(s): .927 acres

Current Zoning: AR - I Proposed Zoning: MR Size of Building: 4144 sq. ft.

Land Use Classification: Coastal Area

Water Provider: Well Sewer Provider: County Required

Applicant Information

Applicant Name: Mary and Victor Rico

Applicant Address: 31422 Indian Mission Road

City: Millsboro State: DE Zip Code:

Phone #: (302) 212-7545 E-mail:

Owner Information

Owner Name: same

Owner Address:

City: State: Zip Code:

Phone #: E-mail:

Agent/Attorney/Engineer Information

Agent/Attorney/Engineer Name: Tim Willard 26 the Circle

Agent/Attorney/Engineer Address:

City: Georgetown State: DE Zip Code: 19947

Phone #: (302) 856-7777 E-mail: tim@fwsslaw.com



Check List for Sussex County Planning & Zoning Applications

The following shall be submitted with the application

- Completed Application**
- Provide eight (8) copies of the Site Plan or Survey of the property**
 - Survey shall show the location of existing or proposed building(s), building setbacks, parking area, proposed entrance location, etc.
 - Provide a PDF of Plans (may be e-mailed to a staff member)
 - Deed or Legal description
- Provide Fee \$500.00**
- Optional - Additional information for the Commission/Council to consider** (ex. architectural elevations, photos, exhibit books, etc.) If provided submit 8 copies and they shall be submitted a minimum of ten (10) days prior to the Planning Commission meeting.
- Please be aware that Public Notice will be sent to property owners within 200 feet of the subject site and County staff will come out to the subject site, take photos and place a sign on the site stating the date and time of the Public Hearings for the application.**
- DeIDOT Service Level Evaluation Request Response**
- PLUS Response Letter** (if required)

The undersigned hereby certifies that the forms, exhibits, and statements contained in any papers or plans submitted as a part of this application are true and correct.

I also certify that I or an agent on my behalf shall attend all public hearing before the Planning and Zoning Commission and the Sussex County Council and any other hearing necessary for this application and that I will answer any questions to the best of my ability to respond to the present and future needs, the health, safety, morals, convenience, order, prosperity, and general welfare of the inhabitants of Sussex County, Delaware.

Signature of Applicant/Agent/Attorney

T. Wild

Date:

8/12/19

Signature of Owner

Date:

For office use only:

Date Submitted:

8/12/19

Fee: \$500.00

Check #:

17776

Staff accepting application:

SR

Application & Case #:

201909218

Location of property: _____

Subdivision: _____

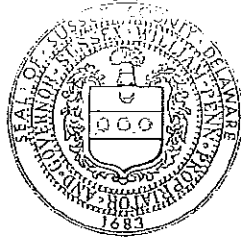
Date of PC Hearing: _____

Recommendation of PC Commission: _____

Date of CC Hearing: _____

Decision of CC: _____

PLANNING & ZONING
JANELLE M. CORNWELL, AICP
DIRECTOR
(302) 855-7878 T
(302) 854-5079 F



Sussex County
DELAWARE
sussexcountyde.gov

Service Level Evaluation Request Form

This form shall be submitted to the Planning and Zoning Office and a response shall be received back from DelDOT prior to the applicant being able to submit an application to the Planning and Zoning Office.

Date: 6/21/20

Site Information:

Site Address/Location: 20797 Sunset Lane, Lewes, DE 19958

Tax Parcel Number: 234-7.00-100.00 unit 1 and 2

Current Zoning: AR

Proposed Zoning: C/U

Land Use Classification: ESDD

Proposed Use(s): Unit 1, 3 apartments
Unit 2, 2 apartments
Pre-existing Condominimized '01

Square footage of any proposed buildings or number of units: 5 units, app 3144 sq. ft

Applicant Information:

Applicant's Name: Victor and Mary Rico c/o Tim Willard, Esq. 26 The Circle, Georgetown DE 19947

Applicant's Address: 32183 Powl Farm Road

City: Frankford State: DE Zip Code: 19945

Applicant's Phone Number: (302) 856-7777

Applicant's e-mail address: tim@fwsslaw.com



RECEIVED
JUN 21 2019
SUSSEX COUNTY
PLANNING & ZONING



STATE OF DELAWARE
DEPARTMENT OF TRANSPORTATION
800 BAY ROAD
P.O. BOX 778
DOVER, DELAWARE 19903

JENNIFER COHAN
SECRETARY

July 11, 2019

Ms. Janelle Cornwell, Director
Sussex County Planning & Zoning
P.O. Box 417
Georgetown, DE 19947

Dear Ms. Cornwell:

The Department has completed its review of a Service Level Evaluation Request for the **Victor and Mary Rico c/o Tim Willard, Esq.**, conditional application, which we received on June 21, 2019. This application is for an approximately 0.98-acre parcel (Tax Parcel: 234-7.00-100.00). The subject land is located on the northeast side of Delaware Route 24, approximately 1,550 feet northeast of the intersection of Delaware Route 24 and Camp Arrowhead Road (Sussex Road 279) / Fairfield Road. The subject land is currently zoned AR-1 (Agricultural Residential), and the applicant is seeking a conditional use approval to develop 5 apartment units.

Per the 2018 Delaware Vehicle Volume Summary, the annual average and summer average daily traffic volumes along the segment of Delaware Route 24 where the subject land is located, which is from Hollymount Road (Sussex Road 48) to Warrington Road (Sussex Road 275), are 19,142 and 24,636 vehicles per day, respectively.

Based on our review, we estimate that the above land use will generate fewer than 50 vehicle trips in any hour and fewer than 500 vehicle trips per day. These numbers of trips are DelDOT's minimum warrants for determining that a Traffic Impact Study (TIS) should be required for a particular development. Because the proposed land use would not meet these warrants, we consider the development's traffic impact to be negligible in the context of our agreement with the County regarding land development coordination and we do not recommend that the applicant be required to perform a TIS for the subject application. DelDOT's description of this application as negligible with regard to warranting a TIS does not mean that it is negligible in other respects. We recommend that the applicant not be required to perform a TIS for the subject application.

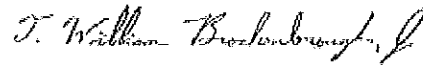
If the County approves this application, the applicant should be reminded that DelDOT requires compliance with State regulations regarding plan approvals and entrance permits, whether or not a TIS is required.



Ms. Janelle M. Cornwell
Page 2 of 2
July 11, 2019

Please contact Mr. Claudy Joinville, at (302) 760-2124, if you have questions concerning this correspondence.

Sincerely,



T. William Brockenbrough, Jr.
County Coordinator
Development Coordination

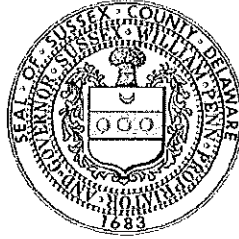
TWB:cjm

cc: Constance C. Holland, Coordinator, Cabinet Committee on State Planning Issues
Victor and Mary Rico c/o Tim Willard, Esq., Applicant
J. Marc Coté, Assistant Director, Development Coordination
Gemez Norwood, South District Public Works Manager, Maintenance & Operations
Susanne Laws, Sussex County Subdivision Coordinator, Development Coordination
Derek Sapp, Subdivision Manager, Development Coordination
Kevin Hickman, Subdivision Manager, Development Coordination
Brian Yates, Subdivision Manager, Development Coordination
John Andrescavage, Subdivision Manager, Development Coordination
Troy Brestel, Project Engineer, Development Coordination
Claudy Joinville, Project Engineer, Development Coordination

PLANNING & ZONING

JANELLE M. CORNWELL, AICP
DIRECTOR

(302) 855-7878 T
(302) 854-5079 F



Sussex County

DELAWARE
sussexcountyde.gov

Service Level Evaluation Request Form

This form **shall** be submitted to the Planning and Zoning Office and a response **shall** be received back from DelDOT prior to the applicant being able to submit an application to the Planning and Zoning Office.

Date: 6/21/20

Site Information:

Site Address/Location: 20797 Sunset Lane, Lewes, DE 19958

Tax Parcel Number: 234-7.00-100.00 unit 1 and 2

Current Zoning: AR

Proposed Zoning: C/U

Land Use Classification: ESDD

Proposed Use(s): Unit 1, 3 apartments
Unit 2, 2 apartments
Pre-existing Condominimized '01

Square footage of any proposed buildings or number of units: 5 units, app 3144 sq. ft

Applicant Information:

Applicant's Name: Victor and Mary Rico c/o Tim Willard, Esq. 26 The Circle, Georgetown DE 19947

Applicant's Address: 32183 Powll Farm Road

City: Frankford State: DE Zip Code: 19945

Applicant's Phone Number: (302) 856-7777

Applicant's e-mail address: tim@fwsslaw.com

RECEIVED
JUN 21 2019
SUSSEX COUNTY
PLANNING & ZONING



COUNTY ADMINISTRATIVE OFFICES
2 THE CIRCLE | PO BOX 417
GEORGETOWN, DELAWARE 19947

E-MAIL 8:42 AM
7/10/2019

Last updated 7-27-18



MEMORANDUM

TO: Janelle M. Cornwell

FROM: Debbie Absher, Director of Ag Programs

SUBJECT: LUPA

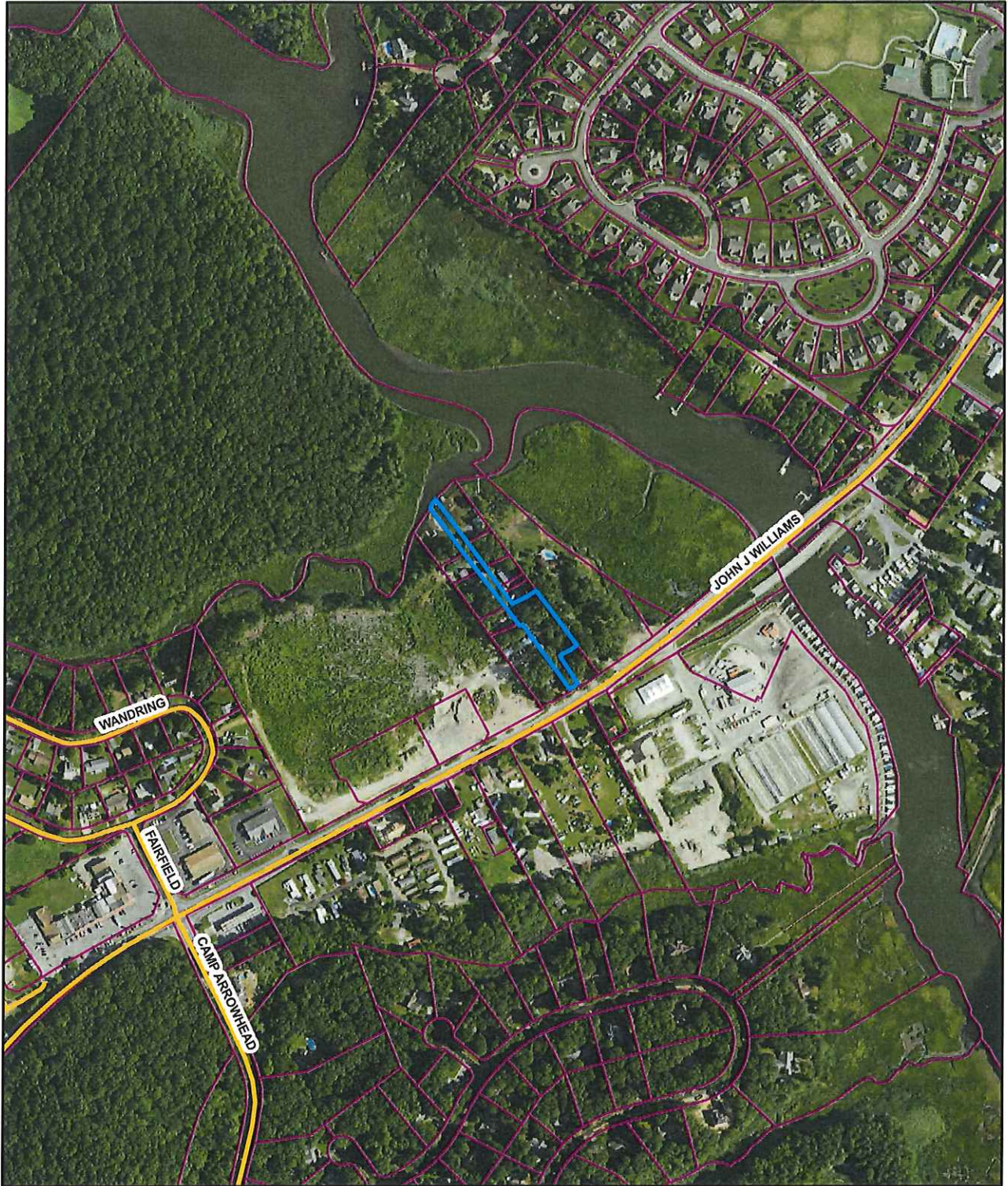
DATE: December 10, 2019

Attached you will find the comments for the following proposed zoning changes:

- 2019-25 – Workman's Crossing
- CU 2199 – OA-Rehoboth, LLC
- CZ 1900 – Michael P. Justice
- CU 2200 & CZ 1901 – Mary and Victor Rico

If you have any questions, I can be reached at 856-3990, ext. 3.

BJH
Enclosures

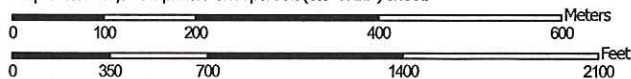


CU 2200 & CZ 1901
TM #234-7.00-100.00
Mary and Victor Rico

Soil Map—Sussex County, Delaware
(Mary and Victor Rico)










































Map Scale: 1:7,920 if printed on A portrait (8.5" x 11") sheet.



Map projection: Web Mercator Corner coordinates: WGS84 Edge tics: UTM Zone 18N WGS84

MAP LEGEND

- | | |
|--|---|
|  Area of Interest (AOI) |  Spoil Area |
|  Soil Map Unit Polygons |  Stony Spot |
|  Soil Map Unit Lines |  Very Stony Spot |
|  Soil Map Unit Points |  Wet Spot |
|  Special Point Features |  Other |
|  Blowout |  Special Line Features |
|  Borrow Pit |  Streams and Canals |
|  Clay Spot |  Transportation |
|  Closed Depression |  Rails |
|  Gravel Pit |  Interstate Highways |
|  Gravelly Spot |  US Routes |
|  Landfill |  Major Roads |
|  Lava Flow |  Local Roads |
|  Marsh or swamp |  Background |
|  Mine or Quarry |  Aerial Photography |
|  Miscellaneous Water | |
|  Perennial Water | |
|  Rock Outcrop | |
|  Saline Spot | |
|  Sandy Spot | |
|  Severely Eroded Spot | |
|  Sinkhole | |
|  Slide or Slip | |
|  Sodic Spot | |

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:24,000.

Warning: Soil Map may not be valid at this scale. Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

Soil Survey Area: Sussex County, Delaware
Survey Area Data: Version 20, Sep 13, 2019

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Nov 21, 2018—Mar 12, 2019

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres in AOI	Percent of AOI
DnC	Downer loamy sand, 5 to 10 percent slopes, Northern Tidewater Area	0.1	9.7%
DndB	Downer loamy sand, 2 to 5 percent slopes, Northern Tidewater Area	0.7	84.8%
HnA	Hammonton sandy loam, 0 to 2 percent slopes	0.0	5.5%
Totals for Area of Interest		0.9	100.0%

Selected Soil Interpretations

This report allows the customer to produce a report showing the results of the soil interpretation(s) of his or her choice. It is useful when a standard report that displays the results of the selected interpretation(s) is not available.

When customers select this report, they are presented with a list of interpretations with results for the selected map units. The customer may select up to three interpretations to be presented in table format.

For a description of the particular interpretations and their criteria, use the "Selected Survey Area Interpretation Descriptions" report.

Report—Selected Soil Interpretations

Selected Soil Interpretations—Sussex County, Delaware							
Map symbol and soil name	Pct. of map unit	ENG - Dwellings W/O Basements		ENG - Dwellings With Basements		ENG - Septic Tank Absorption Fields (DE)	
		Rating class and limiting features	Value	Rating class and limiting features	Value	Rating class and limiting features	Value
DnC—Downer loamy sand, 5 to 10 percent slopes, Northern Tidewater Area							
Downer	80	Not limited		Not limited		Very limited	
						Restricted permeability	0.99
DndB—Downer loamy sand, 2 to 5 percent slopes, Northern Tidewater Area							
Downer	80	Not limited		Not limited		Very limited	
						Restricted permeability	0.99
HnA—Hammonton sandy loam, 0 to 2 percent slopes							
Hammonton	80	Somewhat limited		Very limited		Very limited	
		Depth to saturated zone	0.39	Depth to saturated zone	1.00	Depth to saturated zone	1.00

Data Source Information

Soil Survey Area: Sussex County, Delaware
 Survey Area Data: Version 20, Sep 13, 2019

Prime and other Important Farmlands

This table lists the map units in the survey area that are considered important farmlands. Important farmlands consist of prime farmland, unique farmland, and farmland of statewide or local importance. This list does not constitute a recommendation for a particular land use.

In an effort to identify the extent and location of important farmlands, the Natural Resources Conservation Service, in cooperation with other interested Federal, State, and local government organizations, has inventoried land that can be used for the production of the Nation's food supply.

Prime farmland is of major importance in meeting the Nation's short- and long-range needs for food and fiber. Because the supply of high-quality farmland is limited, the U.S. Department of Agriculture recognizes that responsible levels of government, as well as individuals, should encourage and facilitate the wise use of our Nation's prime farmland.

Prime farmland, as defined by the U.S. Department of Agriculture, is land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops and is available for these uses. It could be cultivated land, pastureland, forestland, or other land, but it is not urban or built-up land or water areas. The soil quality, growing season, and moisture supply are those needed for the soil to economically produce sustained high yields of crops when proper management, including water management, and acceptable farming methods are applied. In general, prime farmland has an adequate and dependable supply of moisture from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, an acceptable salt and sodium content, and few or no rocks. The water supply is dependable and of adequate quality. Prime farmland is permeable to water and air. It is not excessively erodible or saturated with water for long periods, and it either is not frequently flooded during the growing season or is protected from flooding. Slope ranges mainly from 0 to 6 percent. More detailed information about the criteria for prime farmland is available at the local office of the Natural Resources Conservation Service.

For some of the soils identified in the table as prime farmland, measures that overcome a hazard or limitation, such as flooding, wetness, and droughtiness, are needed. Onsite evaluation is needed to determine whether or not the hazard or limitation has been overcome by corrective measures.

A recent trend in land use in some areas has been the loss of some prime farmland to industrial and urban uses. The loss of prime farmland to other uses puts pressure on marginal lands, which generally are more erodible, droughty, and less productive and cannot be easily cultivated.

Unique farmland is land other than prime farmland that is used for the production of specific high-value food and fiber crops, such as citrus, tree nuts, olives, cranberries, and other fruits and vegetables. It has the special combination of soil quality, growing season, moisture supply, temperature, humidity, air drainage, elevation, and aspect needed for the soil to economically produce sustainable high yields of these crops when properly managed. The water supply is dependable and of adequate quality. Nearness to markets is an additional consideration. Unique farmland is not based on national criteria. It commonly is in areas where there is a special microclimate, such as the wine country in California.

In some areas, land that does not meet the criteria for prime or unique farmland is considered to be *farmland of statewide importance* for the production of food, feed, fiber, forage, and oilseed crops. The criteria for defining and delineating farmland of statewide importance are determined by the appropriate State agencies. Generally, this land includes areas of soils that nearly meet the requirements for prime farmland and that economically produce high yields of crops when treated and managed according to acceptable farming methods. Some areas may produce as high a yield as prime farmland if conditions are favorable. Farmland of statewide importance may include tracts of land that have been designated for agriculture by State law.

In some areas that are not identified as having national or statewide importance, land is considered to be *farmland of local importance* for the production of food, feed, fiber, forage, and oilseed crops. This farmland is identified by the appropriate local agencies. Farmland of local importance may include tracts of land that have been designated for agriculture by local ordinance.

Report—Prime and other Important Farmlands

Prime and other Important Farmlands—Sussex County, Delaware		
Map Symbol	Map Unit Name	Farmland Classification
DnC	Downer loamy sand, 5 to 10 percent slopes, Northern Tidewater Area	Farmland of statewide importance
DndB	Downer loamy sand, 2 to 5 percent slopes, Northern Tidewater Area	All areas are prime farmland
HnA	Hammonton sandy loam, 0 to 2 percent slopes	All areas are prime farmland

Data Source Information

Soil Survey Area: Sussex County, Delaware
 Survey Area Data: Version 20, Sep 13, 2019

SOILS

ADD ANY ADDITIONAL INFORMATION THAT MAY BE CONSIDERED PERTINENT:

SOILS:

DnB Downer loamy sand, 2 to 5 percent slopes
DnC Downer loamy sand, 5 to 10 percent slopes
HnA Hammonton sandy loam, 0 to 2 percent slopes

- A. SUITABILITY OF SOILS INTENDED USE:
See attached table for suitability.

- B. EVALUATE THE SOILS INCLUDED IN THIS PROJECT WITH RESPECT TO EROSION AND SEDIMENTATION CONTROL:
 1. DURING CONSTRUCTION:

Follow recommended erosion and sediment control practices.

 2. AFTER CONSTRUCTION:

Maintain vegetation.

- C. FARMLAND RATING (PRIME, UNIQUE, STATEWIDE IMPORTANCE, ETC.):
See attached table(s) for ratings.

- D. ADDITIONAL COMMENTS (IF APPLICABLE):

DRAINAGE AND FLOODING

Add any additional information that may be considered pertinent:

DRAINAGE:

- A. Any Storm flood hazard area affected? Yes No
- B. Would the proposed project necessitate any off-site drainage improvements?
Possibly
- C. Would the proposed project necessitate any on-site drainage improvements?
Possibly
- D. Any Tax Ditch affected? Yes No

Additional Comments (if applicable)

All landowners, developers, and site designers are strongly encouraged to thoroughly investigate the presence of easements or right-of-ways along tax ditches. These documents are located in the Prothonotary's Office and/or with the Recorder of Deeds. If a stormwater management facility is proposed along a stream or ditch, the Sussex Conservation District will require verification of any easements. Before you start any project design, please look into this matter by calling the Division of Soil and Water Conservation-Drainage Program at (302) 855-1930 or the Sussex Conservation District Sediment and Stormwater Program at (302) 856-7219 for more information.

SUSSEX COUNTY ENGINEERING DEPARTMENT
UTILITY PLANNING DIVISION
C/U & C/Z COMMENTS

TO: **Janelle Cornwell**

REVIEWER: **Chris Calio**

DATE: **11/21/2019**

APPLICATION: **CU 2200 & CZ 1901 Mary and Victor Rico**

APPLICANT: **Mary and Victor Rico**

FILE NO: **ANG-4.06**

TAX MAP &
PARCEL(S): **234-7.00-100.00**

LOCATION: **20797 Sunset Lane. North side of John J. Williams Highway,
approximately 0.28 mile northeast of Camp Arrowhead Road.**

NO. OF UNITS: **Multi-family (7 units) – Upzoning from AR-1 to MR.**

GROSS
ACREAGE: **0.927**

SYSTEM DESIGN ASSUMPTION, MAXIMUM NO. OF UNITS/ACRE: **4**

SEWER:

- (1). Is the project in a County operated and maintained sanitary sewer and/or water district?
Yes No
- a. If yes, see question (2).
b. If no, see question (7).
- (2). Which County Tier Area is project in? **Tier 1**
- (3). Is wastewater capacity available for the project? **Yes, As Proposed** If not, what capacity is available? **N/A.**
- (4). Is a Construction Agreement required? **Yes** If yes, contact Utility Engineering at (302) 855-7717.
- (5). Are there any System Connection Charge (SCC) credits for the project? **No** If yes, how many? **There are currently 2 EDU's connected on this parcel.** Is it likely that additional SCCs will be required? **Yes**
If yes, the current System Connection Charge Rate is **Unified \$6,360.00** per EDU. Please contact **Nicole Bixby** at **302-855-7719** for additional information on charges.

- (6). Is the project capable of being annexed into a Sussex County sanitary sewer district? **N/A**
- Attached is a copy of the Policy for Extending District Boundaries in a Sussex County Water and/or Sanitary Sewer District.
- (7). Is project adjacent to the Unified Sewer District? **N/A**
- (8). Comments: **There are already 7 units on this parcel according to the addressing on the tax map.**
- (9). Is a Sewer System Concept Evaluation required? **No**
- (10). Is a Use of Existing Infrastructure Agreement Required? **No**

UTILITY PLANNING APPROVAL:



John J. Ashman
Director of Utility Planning

Xc: Hans M. Medlarz, P.E.
Jayne Dickerson
Nicole Bixby

DECLARATION PLAN

LOVE CREEK COTTAGES CONDOMINIUM

ON SUNSET LANE & AREA ENCOMPASSING ALL OF SUNSET LANE

ON WESTERLY SIDE OF ROUTE 24
INDIAN RIVER HUNDRED,
SUSSEX COUNTY DELAWARE

MARGATE & ESCHENBACH, REGISTERED SURVEYORS
P.O. BOX 142, TRENHOBTH BEACH, DE 19971

SHEET 1 OF 2

OWNER'S CERTIFICATION

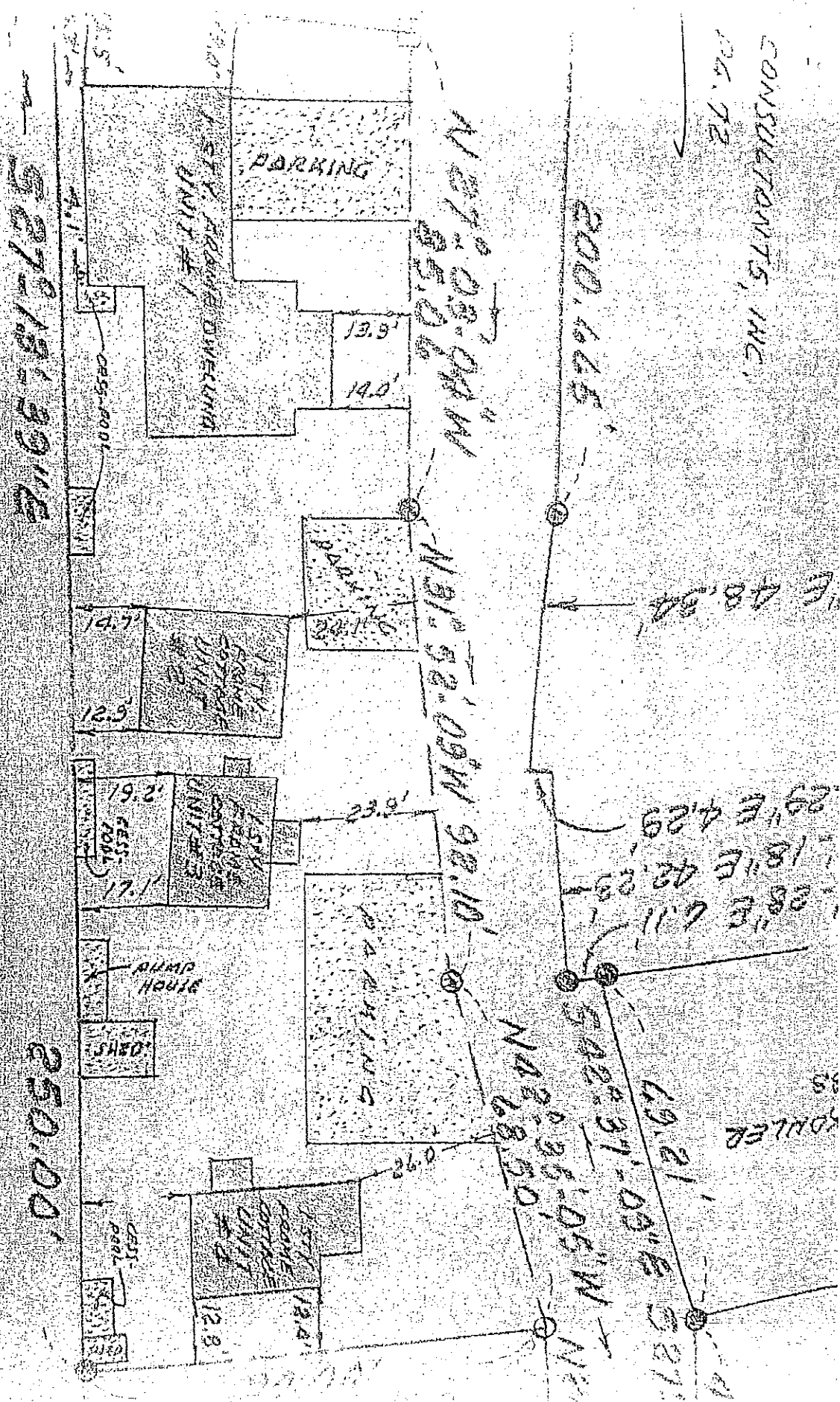
THIS DOCUMENT SHOWS THE PROPERTY, THE LOCATION,
AND THE UNIT DESIGNATION FOR THE CONDOMINIUM,
INCLUDING THE UNITS AND SETS FORTH THE NAME BY WHICH THE
CONDOMINIUM IS TO BE KNOWN AND THE UNIT DESIGNATION FOR

LAND OWNERSHIP

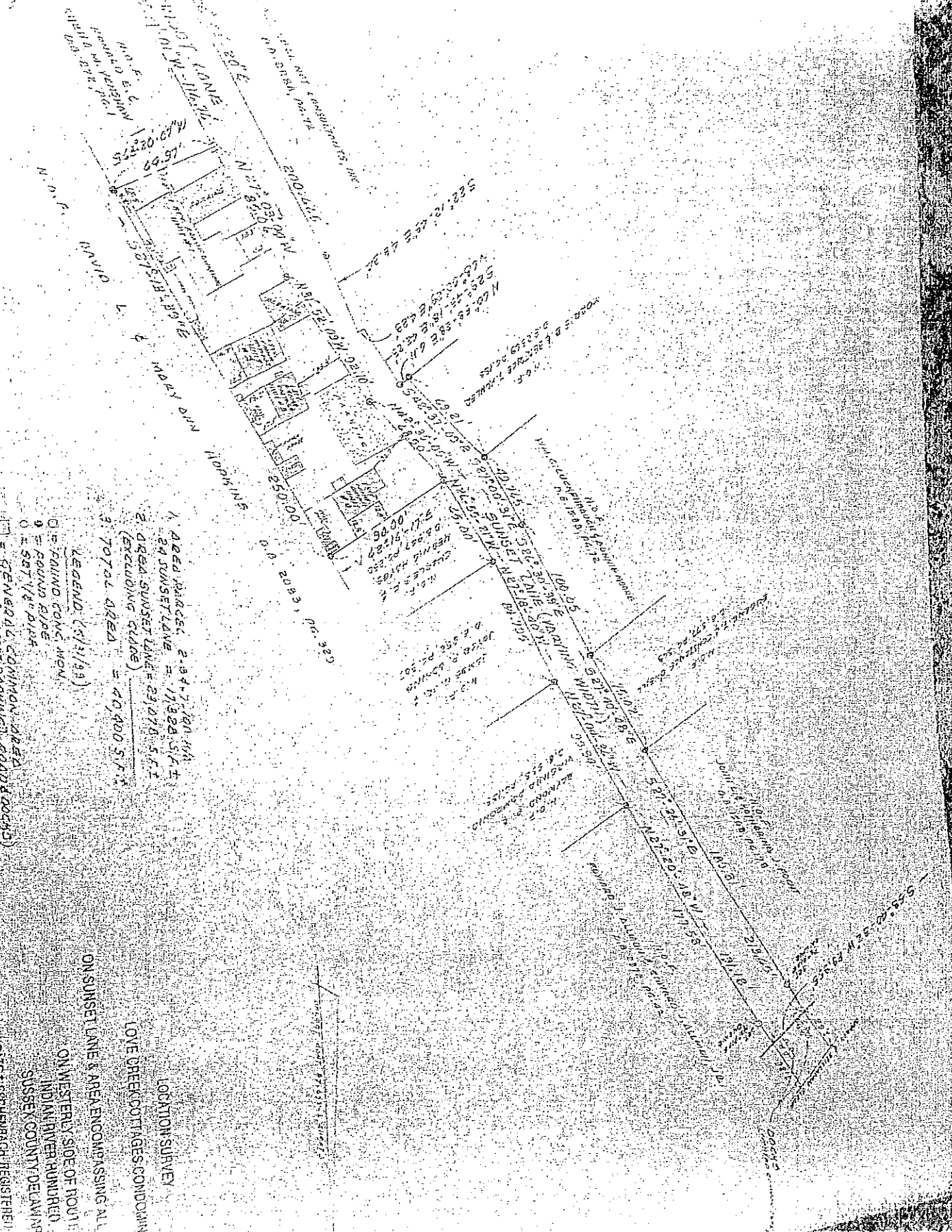
LAND SHALL BE IN COMMON OWNERSHIP UNDER A CONDOMINIUM REGIME
CREATED PURSUANT TO THE UNIT PROPERTY ACT, TITLE 25, SECTION 2201 et
seq. OF THE DELAWARE CODE AS AMENDED.

FILE COPY

CONSULTANTS, INC.
06.72



DAVID L. & MARY ANN HOPKINS D.B. CO.



- 1. AREA PLACED: 2,847.70 SQ. FT.
- 2. AREA SUNSET LANE = 17,928.51 SQ. FT.
- 3. AREA SUNSET LANE = 29,270.51 SQ. FT. (EXCLUDING RIGGS)
- 4. TOTAL AREA = 40,000.51 SQ. FT.

LEGEND (5/31/99)

- = PAVED CONC. MON.
- = ROUND PIPE
- = 50T 18" PIPE

REMOVAL COMMON AREA
 (LAND [EXCISED] PLANNING, ROADWAY (2005))
 (PARKING, CEILING, SWEET PLANT (2005))

ON SUNSET LANE & AREA ENCOMPASSING ALL THE

ON WESTERN SIDE OF ROUTE
 INDIANVER HUNDRED
 SUSSEX COUNTY DELAWARE

WINGATE & ESCHENBACH REGISTERED SURVEYORS
 P.O. BOX 124, INDIANVER DELAWARE 19111

SCALE: 1" = 40'

A
U
C
T
I
O
N

ABSOLUTE

WATER VIEW

Home off Rt. 24
at "LOVE CREEK"
near Angola, Delaware



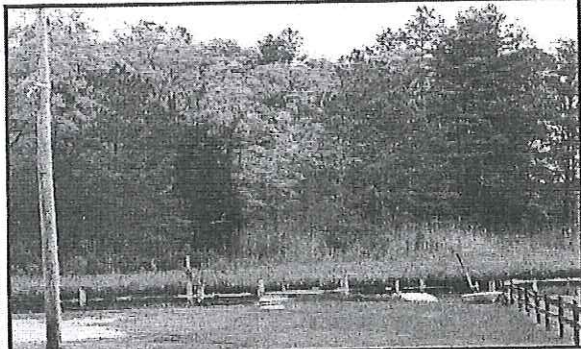
ON SITE RAIN OR SHINE

20791 Sunset Lane Just West of Love Creek Bridge

SAT., MAY 28TH 12 NOON

- ☆ 2 Bedrooms 1 1/2 Baths
- ☆ Single Family Home with its Proportionate Share of Ground and Common Elements
- ☆ Northern View of Love Creek
- ☆ Close to Bay, Beaches and Marinas
- ☆ Fixer Upper - Remodel to your own Specs
- ☆ Home Sold in "As Is" Condition in Every Respect
- ☆ Shared Well and Separate Cesspool/Septic
- ☆ Gas Fireplace, Storage Shed and 2 Decks
- ☆ Condo Fees \$260 per year

Common Area Boat Dock in Rear of Community



AUCTIONEER'S NOTE: LOCATION!! LOCATION!! An affordable cottage in a condo community at Love Creek, near Lewes, Delaware. Close to fishing, crabbing and Rehoboth Beach. Absolute Sale, Regardless of Price!!

EMMERT & AUCTION ASSOCIATES

"We Bring Buyer & Seller Together"
(302) 227-1433 Day • (302) 227-3946 Fax • (302) 542-5026
emmertauction.com

CALL Butch or Will For More Details and Private Showing

TERMS OF SALE: Home sold by order of the Court of Chancery of the State of Delaware. A 10% deposit is required on day of sale with the balance due and payable in cash or certified check at final closing in 30 days when good unencumbered marketable title will be delivered. A 3% buyer's premium to be added to the final bid price!!

FILE COPY Applicant Exhibit

TW
M

ez/1901 + c2202
Received 12-12-2009

83352

02646 268

TAX MAP NO.: 2-34 7.00 100.00
PREPARED BY AND RETURN TO: 2-7-03
THE LAW OFFICE OF GREGORY W. WILLIAMS
402 REHOBOTH AVENUE, P. O. BOX 739
REHOBOTH BEACH, DE 19971

DECLARATION SUBMITTING REAL PROPERTY TO
PROVISIONS OF THE DELAWARE UNIT PROPERTY ACT
25 DEL. C. SECTIONS 2201, ET SEQ.
OF
LOVE CREEK COTTAGES CONDOMINIUM

MICHAEL BACHER and JO-ANN BACHER of Lewes, Delaware 19958, (hereinafter sometimes referred to as "Declarant"), does hereby declare:

1. Intent of Submission and Description of Property. MICHAEL BACHER and JO-ANN BACHER, as owners of legal title to the land herein described, hereby submits certain real property described in Schedule "A" annexed hereto, together with the building and improvements thereon erected and owned by the Declarant in fee simple absolute (hereinafter called the "Property"), to the provisions of the Unit Property Act of the State of Delaware (25 Del. C. Sec. 2201-2240, as amended), in order to create a plan of condominium ownership in such Property. The Property consists of Units and Common Elements as shown on the Declaration Plan dated the 29th day of October, A.D. 2001, which Declaration Plan is recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, in Plot Book 12, at page 347.

2. Definitions. The terms used in this Declaration and in the attached Code of Regulations shall have the following meanings:

(a) "Association of Owners" means all of the Unit Owners acting as a group in accordance with the Code of Regulations, which shall be incorporated as "LOVE CREEK COTTAGES CONDOMINIUM ASSOCIATION OF OWNERS, INC."

(b) "Buildings" means the single-unit buildings used or intended to be used for residential purposes (including leasing of units for residential purposes) or for any other lawful purpose or for any combination of such uses.

(c) "Code of Regulations" means such governing regulations as are adopted pursuant to the Delaware Unit Property Act for the regulation and management of the property, including such amendments thereof as may be adopted from time to time.

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(d) "Common Elements" means and includes:

- (1) The Land upon which the Buildings are located; and
- (2) Installation of all central services and utilities; and
- (3) All apparatus and installations existing for common use; and
- (4) Such facilities as may be designated in the Declaration as Common Elements.

(e) "Common Expenses" means and includes:

- (1) All sums lawfully assessed against the Unit Owners by the Council;
- (2) Expenses of administration, maintenance, repair and replacement of the Common Elements, including repair and replacement reserves as may be established;
- (3) Expenses agreed upon as Common Expenses by the Unit Owners;
- (4) Expenses declared Common Expenses by the provisions of the Unit Property Act or by this Declaration or the Code of Regulations;
- (5) Premiums for insurance policies required to be purchased by the Council pursuant to the Code of Regulations; and
- (6) All valid charges against the condominium as a whole.

(f) "Council" means a board of natural individuals of the number stated in the Code of Regulations all of whom shall be either residents of the State of Delaware or Unit Owners as defined herein, but need not be both, who shall be elected by the Unit Owners, as hereinafter defined, and who shall manage the business operation and affairs of the Property on behalf of the Unit Owners and in compliance with and subject to the provisions of the Delaware Unit Property Act, this Declaration and the Code of Regulations, and such other regulations as may be promulgated.

(g) "Declaration" means these presents by which the Owner in fee simple of this Property submits it to the provisions of the Delaware Unit Property Act and all amendments thereof.

(h) "Declaration Plan" means a survey of the entire Property which is recorded simultaneously with this Declaration in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, and which complies with 25 Del. C. Sec. 2220.

(i) "Limited Common Element" means a portion of the common elements

allocated by the Declaration or the Declaration Plan for the exclusive use of one or more of the Units.

(j) "Majority" or "Majority of the Unit Owners" means the unanimous consent of the Unit Owners.

(k) "Managing Agent" means a professional Managing Agent employed by the Council to perform such duties and services as the Council shall authorize in conformance with this Declaration and the Code of Regulations.

(l) "Declarant" (if and when used) means MICHAEL BACHER and JO-ANN BACHER.

(m) "Percentage Interest" means the Percentage Interest of each Unit in the Common Elements as set forth in Schedule "B" attached hereto.

(n) "Property" means the land and the Buildings and all other improvements and structures thereon, owned in fee simple and all easements, rights, and appurtenances belonging thereto which have been submitted to the provisions of the Unit Property Act, and all articles of personal property intended for use in connection therewith.

(o) "Recorded" means that an instrument has been duly entered of record in the Office of the Recorder of Deeds in Sussex County, the County in which this Property is situate.

(p) "Recorder" means the Office of the Recorder of Deeds of Sussex County, Delaware located in Georgetown, Delaware.

(q) "Revocation" means an instrument signed by all of the Unit Owners and by all holders of liens against the Units by which the Property is removed from the provisions of the Unit Property Act.

(r) "Rules and Regulations" means such Rules and Regulations as may be adopted from time to time by the Declarant or Council that are deemed necessary for the enjoyment of the Condominium provided they are not in conflict with the Unit Property Act, this Declaration or the Code of Regulations.

(s) "Unit" means a Unit as defined by 25 Del. C. Sec. 2202(14) of the Unit Property Act, and consists of the Buildings which are separately described on the Declaration Plan.

(t) "Unit Designation" means the number, letter or combination thereof designating a Unit in the Declaration Plan.

02646 271

(u) "Unit Owner" means any person, corporation, partnership, association, trust or other legal entity or any combination thereof, which owns title to a Unit.

(v) "Unit Property Act" means 25 Del. C. §2201, et seq.

3. Name of Condominium. This Condominium shall be known as "LOVE CREEK COTTAGES CONDOMINIUM."

4. Buildings. There are four (4) buildings as such are erected on the property as described in Schedule "A". The locations, dimensions and areas of the buildings on the property are shown on the Declaration Plan. The buildings each consist of one (1) story and contain one (1) Unit each.

5. Units. LOVE CREEK COTTAGES CONDOMINIUM consists of four (4) Units located in four (4) buildings. The Unit number/letter designation and the percentage interest of each Unit in the common elements and the share of each Unit in the common expenses are listed in Schedule "B" which is annexed hereto and made a part hereof. The location of said Units is delineated on the Declaration Plan, which is of record in the Office of the Recorder of Deeds, in and for Sussex County, Delaware. Each Unit consists of the entire building, as shown upon the Declaration Plan including, but not limited to, the foundation, walls, flooring, windows, doors, steps, porches, HVAC units, stairs, and roof of the building.

6. Common Elements.

(a) "Common Elements" means and includes the definition thereof as set forth in Section 2202(3) of the Unit Property Act and as defined in this Declaration. It includes all land, together with and subject to any public utility easements now of record or to be given in the future either by the Declarant or the Council for sanitary and storm sewer use, water line, electric, telephone and cable T.V., transmission lines, sewage lift stations or other similar necessary or desirable utility functions.

(b) The driveway leading into each parking area and the walkways, if any, leading into the front and rear of each of the buildings shall be Limited Common Elements appurtenant to the Units served by the same as shown upon the Declaration Plan. The fences outlining the perimeter or interior boundaries of the property, if any, shall be General Common Elements.

(c) All lighting fixtures, equipment and wiring installed to illuminate any of the Common Elements shall be General Common Elements.

(d) Installation of all central services and utilities, which serve as the main distribution lines, shall be part of the General Common Elements.

(e) All apparatus and installations existing for common use shall be General Common Elements.

(f) The parking areas shall be Limited Common Elements as shown upon the Declaration Plan.

(g) Such further Limited or General Common Elements as are shown upon the Declaration Plan.

(h) The septic systems or cesspools serving each Unit shall be Limited Common Elements appurtenant to each Unit or Units served by a septic system or cesspool. The cost of maintaining and repairing a septic system or cesspool shall be an expense of the Unit it serves, or, in the case of a septic system or cesspool serving more than one (1) Unit, an expense shared equally by the Unit Owners served by said septic system or cesspool.

(i) Sunset Lane shall be a General Common Element. Sunset Lane may be subject to the rights of others to use the same for ingress, egress, and regress to and from Rt. 24.

(j) The dock/pier located at the terminus of Sunset Lane shall be a General Common Element.

7. Use of Units. Each Unit and the Common Elements shall be occupied and used as follows:

(a) No part of the Property shall be used for other than housing and the related common purposes for which the Property was designated. Each Unit shall be used only for residential purposes and shall be occupied only by as many persons as do not burden the Unit or Common Elements.

(b) Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance for the Property, or the contents thereof, applicable for residential use, without the prior written consent of the Council. No Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the Property, or the contents thereof, or which would be in violation of any law.

(c) No immoral, improper, offensive or unlawful use shall be made of the Property or any part thereof. All laws, zoning ordinances, orders, rules, regulations, or requirements of any governmental agency having jurisdiction thereof, relating to any portion of the Property shall be observed and complied with, by and at the sole expense of the Unit Owner or the Council, whichever shall have the obligation to maintain or repair such portion of the Property.

(d) Nothing shall be done in any Unit or in, on, or to the Common Elements which will impair the structural integrity of the Property or which would structurally change the Buildings, except as is otherwise provided in the Code of Regulations or this Declaration.

(e) Except for residential use permitted by paragraph (a) of this section, no industry, business, trade, occupation, or otherwise, designated for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted on any part of the Property.

(f) A Unit Owner shall not change the exterior appearance of his Unit (by painting it a different color, adding fixtures thereto, or otherwise) without obtaining the prior written approval of the Council.

(g) The Common Elements shall be used only for the furnishing of the services and facilities for which they were reasonably suited and which are incident to the use and occupancy of the Units.

(h) All parts of the Unit which are exposed to the elements, including by way of illustration and not limitation, the stoop, windows and doors, shall not be changed or the appearance of such be changed without obtaining the prior written approval of the Council.

8. Decoration and Fixturing of Interior Surfaces of Walls and Ceilings. Each Unit Owner shall have the right, at any time and from time to time, to install, at his own cost and expense, such decorations, additions, fixtures, and coverings (including without limitation, painting, finishing, wall papering and carpeting) to the surfaces of walls and ceilings which face the interior of his Unit, provided that the same do not impair the structural integrity of the Buildings.

9. Members of the Council. The names of the first members of the Council to serve until their successors are chosen and qualified pursuant to the Code of Regulations are:

1. MICHAEL BACHER
2. JO-ANN BACHER
3. MELISSA A. BACHER

10. Interim Decisions of Council and Association. From the date of the first conveyance of a Unit in Love Creek Cottages Condominium until the date of the second conveyance of a Unit in Love Creek Cottages Condominium, all decisions of the Council and the Association shall be by a unanimous vote of all of the Council members and all of the Association members, notwithstanding anything to the contrary contained within this Declaration or the Code of Regulations.

11. Consequences of Eminent Domain. In the event that all or any portion of the Property is threatened by exercise of the power of eminent domain, or becomes the subject of condemnation proceedings, each Unit Owner whose Unit, exclusive of his undivided interest in the Common Elements, is directly threatened shall have the right to demand and receive compensation for his Unit, including his interest in the Common Elements. No Unit Owner whose interest in only the Common Elements is threatened shall have a similar right, but the Council alone with respect to such Common Elements shall demand and receive compensation, which shall be allocated to the respective Unit Owners according to their undivided interest in the Common Elements.

12. Pipe Ducts, Cables, Wires, Conduits, Public Utility Lines and Other Common Elements Located Inside of Units; Support. Each Unit Owner shall have an easement in common with the Owner of the other Unit to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements located in the other Unit or its Limited Common Elements and serving his Unit. Each Unit shall be subject to an easement in favor of the other Unit Owner of the other Unit to use pipes, ducts, cables, wires, conduits, public utility lines and other Common Elements serving such other Unit and located in such Unit or its Limited Common Elements. The Council or its representative shall have a right of access to each Unit and its Limited Common Elements to inspect the same, to remove violations therefrom and to maintain, repair or replace the Limited or General Common Elements contained therein, thereon, or thereunder.

13. Units Subject to Declaration, Code of Regulations and Rules and Regulations. All present and future Unit Owners, lessees, mortgagees, tenants and occupants of Units shall be subject to, and shall comply with, the provisions of this Declaration, the Code of Regulations, and the rules and regulations, as they may be amended from time to time. The acceptance of a deed of conveyance or other transfer document or the entering into of a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Code of Regulations, and the rules and regulations, as they may be amended from time to time, are accepted and ratified by such owner, tenant, or occupant and all of such provisions shall be deemed and taken to be enforceable equitable servitudes and covenants running with the Land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated at length in each and every deed or conveyance or lease thereof.

14. Unit Ownership and Ownership of Common Elements. Each Unit Owner shall own his Unit and the Percentage Interest in such Unit in the Common Elements, including the Land.

15. Amendment to Declaration. This Declaration, except as otherwise herein provided, may be amended only by the unanimous vote of the Unit Owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the Code of Regulations, provided, however, that any such proposed amendment shall have been approved in writing by the mortgagee or mortgagees holding mortgages constituting first liens on more than fifty percent (50%) of the Units subject to mortgages. No such amendment shall be effective until duly recorded. Provided, however, except as otherwise herein provided, the Percentage Interest shall not be changed except by unanimous consent of all the Unit Owners affected thereby, which change shall be evidenced by an appropriate amendatory declaration to such affect, duly recorded.

16. No Revocation or Partition. The Common Elements shall remain undivided and no Unit Owner or any other person shall bring any action for partition or division thereof, except in the event of substantial destruction as provided in the Code of Regulations and the Unit Property Act. Except in the event of substantial destruction as provided in the Code of Regulations and the Unit Property Act, the dedication of the Property under the Unit Property Act shall not be waived or revoked unless all of the Unit Owners and the Mortgagees of all of the mortgages covering the Units and all other lien holders unanimously agree to such revocation or waiver. The Percentage Interests shall not be separated from the Unit to which they appertain and shall be deemed conveyed, leased or encumbered with the Unit though the interest is not expressly mentioned or described in the conveyance or other instrument.


17. Invalidity. The invalidity of any provision of this Declaration shall not be deemed to impair or affect in any manner the validity, enforceability, or effect of the remainder of this Declaration, and, in such event, all of the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

18. Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.


19. Gender. The use of the Masculine gender in this Declaration shall be deemed to refer to the Feminine Gender and Neuter Genders and the use of the singular shall be deemed to refer to the plural, and vice versa, whenever the context so requires.

20. Arbitration. In the event of a dispute among Unit Owners, which dispute cannot be resolved by the majority vote of the Unit Owners, any Unit Owner may call for the appointment of an arbitrator to resolve the dispute. In the event the Unit Owners are not able to select an arbitrator, the arbitrator shall be the then-President of the Sussex County Bar Association. All arbitration fees shall be common expenses of the Association. The arbitration shall occur within sixty (60) days of the appointment of the Arbitrator.

IN WITNESS WHEREOF, the party hereto has hereunto set its hand and seal this 5th day of November, 2001.



Witness



MICHAEL BACHER (SEAL)



Witness



JO-ANN BACHER (SEAL)

EX 02646 #276

STATE OF DELAWARE)
) SS:
COUNTY OF SUSSEX)

BE IT REMEMBERED, that on this 5th day of March, A.D. 2001, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, MICHAEL BACHER, party to this Indenture, known to me personally to be such, and he acknowledged this Indenture to be his act and deed.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.



Notary Public

JAMES P. BECKER
NOTARIAL OFFICER PURSUANT TO
29 DEL. CODE. SECT. 4323(3)
ATTORNEY AT LAW - DELAWARE
ID #3711

Print Name: _____

Commission Expires: _____

STATE OF DELAWARE)
) SS:
COUNTY OF SUSSEX)

BE IT REMEMBERED, that on this 5th day of March, A.D. 2001, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, JO-ANN BACHER, party to this Indenture, known to me personally to be such, and she acknowledged this Indenture to be her act and deed.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.



Notary Public

JAMES P. BECKER
NOTARIAL OFFICER PURSUANT TO
29 DEL. CODE. SECT. 4323(3)
ATTORNEY AT LAW - DELAWARE
ID #3711

Print Name: _____

Commission Expires: _____

SCHEDULE "A"

LOVE CREEK COTTAGES CONDOMINIUM

Legal Description

ALL that certain lot, piece or parcel of land situate, lying and being in Indian River Hundred, Sussex County, Delaware, and being more particularly described in accordance with the Declaration Plan dated the 29th day of October, 2001, as follows, to wit:

BEGINNING at a point on the north side of State Route 24, a corner for this land and lands now or formerly of Ronald E. and Sheila M. Yenshaw; thence by and with lands of said Ronald E. and Sheila M. Yenshaw (1) North 26 degrees 31 minutes 01 seconds West 116.76 feet and (2) North 68 degrees 20 minutes 07 seconds East 64.97 feet to a point; thence by and with lands of others the following 18 courses and distances: (1) North 27 degrees 13 minutes 39 seconds West 250.00 feet, (2) South 62 degrees 16 minutes 17 seconds West 90.00 feet, (3) North 26 degrees 55 minutes 21 seconds West 65.00 feet, (4) North 27 degrees 18 minutes 40 seconds West 84.795 feet, (5) North 27 degrees 04 minutes 36 seconds West 99.94 feet, (6) North 27 degrees 20 minutes 48 seconds West 177.58 feet, and continuing an additional approximate distance of 32 feet to the centerline of Stillman Glade, (7) approximately 30.00 feet in a southwesterly direction along the centerline of Stillman Glade, (8) South 27 degrees 25 minute 31 seconds East approximately 242.65 feet, (9) South 27 degrees 40 minutes 48 seconds East 75.02 feet, (10) South 26 degrees 30 minutes 39 seconds East 100.05 feet, (11) South 27 degrees 00 minutes 31 seconds East 49.765 feet, (12) South 42 degrees 37 minutes 09 seconds East 69.21 feet, (13) North 60 degrees 58 minutes 28 seconds East 6.11 feet, (14) South 29 degrees 43 minutes 18 seconds East 42.23 feet, (15) North 68 degrees 00 minutes 29 seconds East 4.29 feet, (16) South 22 degrees 12 minutes 49 seconds East 48.34 feet, (17) South 26 degrees 56 minutes 20 seconds East 200.665 feet, and (18) North 66 degrees 51 minutes 39 seconds East 28.51 feet to the point and place of beginning.

Subject to rights of others to use Sunset Lane as a means of ingress and egress in order to access Route 24.

BK 02646 #278

SCHEDULE "B"

LOVE CREEK COTTAGES CONDOMINIUM

The following represent the respective percentage of ownership in the Common Elements for each Unit which shall be utilized for purposes of determining voting rights and the percentage share of each Unit for the expenses of and relating to the various rights in the Common Elements, irrespective of any market or sales value.

<u>Unit</u>	<u>Type</u>	<u>Percentage</u>
1	2 Bedrooms, One Bath	35.00
2	2 Bedrooms, Two Baths	20.00
3	2 Bedrooms, One Bath	20.00
4	2 Bedrooms, One Bath	<u>25.00</u>
		100.00%

RECORDED OF DEEDS
NOV 08 2001
01 NOV -8 AM 10:33
SUSSEX COUNTY
DOC. SURCHARGE PAID

Received

NOV 09 2001

ASSESSMENT DIVISION
OF SUSSEX CTY.

83353

02646 279

TAX MAP NO.: 2-34 7.00 100.00
PREPARED BY AND RETURN TO: 2-1-02
LAW OFFICE OF GREGORY W. WILLIAMS
402 REHOBOTH AVENUE, P. O. BOX 739
REHOBOTH BEACH, DE 19971

CODE OF REGULATIONS

FOR

LOVE CREEK COTTAGES CONDOMINIUM
Sussex County, Delaware

ARTICLE I

PLAN OF OWNERSHIP

Section 1. Unit Ownership. The property located in Indian River Hundred, Sussex County, Delaware, (hereinafter called the "Property"), has been submitted to the provisions of the Unit Property Act of the State of Delaware, 25 Del. C. Sections 2201 through 2240, as amended, by the Declaration recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, simultaneously herewith, in Deed Book 2646, at page 268, and shall hereinafter be known as "LOVE CREEK COTTAGES CONDOMINIUM," (hereinafter called the "Condominium") and as shown on the Declaration Plan recorded in the Office of the Recorder of Deeds in and for Sussex County, Delaware, in Plot Book 72, Page 347.

Section 2. Applicability of Code of Regulations. The provisions of this Code of Regulations are applicable to the Property of the Condominium and to the use and occupancy thereof. All present and future owners, mortgagees, lessees, and occupants of Units and their employees, and any other person who may use the facilities of the Property in any manner, are subject to this Code of Regulations, the Declaration and any Rules and Regulations hereinafter promulgated. The acceptance of a deed or transfer document or the entering into of a lease or the act of occupancy of a Unit shall conclusively establish the acceptance and ratification of this Code of Regulations, any Rules and Restrictions and the provisions of the Declaration, as they may be amended from time to time, by the person so acquiring, leasing, or occupying a Unit and shall constitute and evidence an agreement by such person to comply with the same.

Section 3. Office. The office of the Condominium and of the Council shall be located at the Condominium or at such other place as may be designated from time to time by the Council.

ARTICLE II

ASSOCIATION OF OWNERS

Section 1. Composition. All of the Owners of Units contained in the Condominium, acting as a group in accordance with the Unit Property Act, the Declaration and this Code of Regulations, shall constitute the "Association of Owners", which shall be incorporated as "LOVE CREEK COTTAGES Condominium Association of Owners, Inc.", who shall have the responsibility of administering the Condominium, establishing the means and methods of collecting the contributions

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of the Common Expenses, arranging for the management of the Condominium, and performing all of the other acts that may be required to be performed by the Association of Owners, by the Unit Property Act and the Declaration. Except as to those matters which the Unit Property Act specifically requires to be performed by the vote of the Owners of the Units, the administration of the foregoing responsibilities shall be performed by the Council as more particularly set forth in Article III.

Section 2. Annual Meeting. The Declarant shall notify the Owners of all of the Units, and the first annual meeting of the Association of Owners shall be held no later than June 1, 2002, thereafter on a call issued by the Declarant. At such meeting the persons designated by the Declarant shall resign as members of the Council, and all of the Unit Owners shall elect a new Council. Thereafter, the annual meetings of the Association of Owners shall be at such time as the Council may designate. At such annual meetings the Council shall be elected by ballot of the Unit Owners in accordance with the requirements of Section 4 of Article III of this Code of Regulations. The Association of Owners may transact such other business at such meeting as may properly come before them.

Section 3. Place of Meeting. Meetings of the Association of Owners shall be held at a suitable place convenient to the Unit Owners as may be designated by the Council.

Section 4. Special Meetings. It shall be the duty of the President to call a special meeting of the Association of Owners if so directed by Resolution of the Council or upon a petition signed and presented to the Secretary of the Unit Owners owning no less than 50% of the percentage interests of all Unit Owners. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5. Notice of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting of the Unit Owners, at least ten (10) days but not more than twenty (20) days prior to such meeting, stating the purpose thereof as well as the time and place where it is to be held, to each Unit Owner of record, at such address as each Unit Owner shall have designated by notice in writing to the Secretary. The mailing of a notice of meeting in the manner provided in this Section shall be considered service of notice.

Section 6. Adjournment of Meetings. If any meetings of the Association of Owners cannot be held because a quorum is not present, the Unit Owners owning a majority of the percentage interests who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called.

Section 7. Order of Business. The order of business at all annual meetings of the Association of Owners shall be as follows:

- (a) Roll call.
- (b) Proof of Notice of meeting.
- (c) Reading of minutes of preceding meeting.
- (d) Reports of officers.
- (e) Reports of the Council.
- (f) Reports of committees.
- (g) Election of inspectors of election (when so required).
- (h) Election of members of Council (when so required).
- (i) Unfinished business.
- (j) New business.

Section 8. Title to Units. Title to units may be taken in the name of an individual or in the names of two or more persons, as tenants in common or as joint tenants or as tenants by the entirety, or in the name of a corporation, partnership or any other legally-recognized entity, or in the name of a fiduciary.

Section 9. Voting. Voting at all meetings of the Association of Owners shall be on a percentage basis and the percentages of the vote to which each Unit Owner is entitled shall be the percentage interest assigned to his Unit in the Declaration. Where the ownership of a Unit shall be in more than one person, then the person who shall be entitled to enter the vote of that Unit shall be the person named in a certificate signed by all of the owners of the Unit and filed with the Secretary. Such certificate shall be valid until revoked by a subsequent certificate. Whenever the approval or disapproval of a Unit Owner is required by the Unit Property Act, the Declaration or this Code of Regulations, such approval or disapproval shall only be made by the person who would be entitled to cast the vote for the Unit Owner at any meeting of the Association of Owners. Except where a greater number is required by the Unit Property Act, the Declaration or this Code of Regulations, a majority of the Unit Owners is required to adopt decisions at any meeting of the Association of Owners.

Section 10. Proxies. A vote may be cast in person or by proxy. Proxies shall be valid only for the particular meeting designated therein and must be filed with the Secretary before the appointed time of the meeting.

Section 11. Majority of Unit Owners. As used in this Code of Regulations, the term "majority of the Unit Owners" shall mean all of the Unit Owners.

Section 12. Quorum. Except as otherwise provided in this Code of Regulations, the presence in person or by proxy of all of the Unit Owners shall constitute a quorum at all meetings of the Association of Owners.

Section 13. Conduct of Meeting. The President shall preside over all meetings of the Association of Owners and the Secretary-Treasurer shall keep the minutes for the meeting and record in a Minute Book all resolutions adopted at the meeting as well as a record of all transactions occurring thereat. Roberts Rules of Order shall govern the conduct of all meetings of the Association of Owners when not in conflict with the Declaration, this Code of Regulations or the Unit Property Act.

ARTICLE III

COUNCIL

Section 1. Number and Qualification. There shall be three (3) members of the Council, each of whom shall either be a resident of the State of Delaware or a Unit Owner, but need not be both; provided, however, that each Unit shall be represented on the Council by the unit owner or representative thereof.

Section 2. Powers and Duties. The affairs of the Condominium shall be governed by the Council. The Council shall have all of the powers and duties necessary for the administration of the affairs of the Condominium and may do all such acts and things as are not by the Unit Property Act or by this Code of Regulations directed to be exercised and done by the Association of Owners. The Council shall have the power from time to time to adopt any Rules and Regulations deemed necessary for the enjoyment of the Condominium provided such Rules and Regulations shall not be in conflict with the Unit Property Act or the Declaration or this Code of Regulations. The Council

shall delegate to one of its members the authority to act on behalf of the Council on all matters relating to the duties of the managing agent, if any, which might arise between meetings of the Council. In addition to the duties imposed by this Code of Regulations or by any resolution of the Association of Owners that may thereafter be adopted, the Council shall have the power to, and be responsible for, the following:

(a) Preparation of an annual budget, in which there shall be established the contribution of each Unit Owner to the common expenses.

(b) Making assessments against the Unit Owners to defray the costs and expenses of the Condominium, establishing the means and methods of collecting such assessments from the Unit Owners, and establishing the period of the installment payment of the annual assessment for common expenses. Unless otherwise determined by the Council, the annual assessment against each Unit Owner for his proportionate share of the common expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month.

(c) Providing for the operation, care, upkeep, maintenance, and surveillance of all of the common elements and services of the Condominium.

(d) Designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair and replacement of the common elements, and providing services for the Property, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies and materials to be used by such personnel in the performance of their duties, which supplies and equipment shall be deemed the common property of the Unit Owners.

(e) Collecting the assessments against the Unit Owners, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to carry out the administration of the Property.

(f) Making and amending Rules and Regulations, if any, respecting the use of the Property.

(g) Opening of bank accounts on behalf of the Condominium and designating the signatories required therefor.

(h) Making, or contracting for the making of, repairs, additions, and improvements to, or alterations of, the Property and repairs to, and restoration of, the Property in accordance with the other provisions of this Code of Regulations.

(i) Enforcing by legal means the provisions of the Declaration, this Code of Regulations and the Rules and Regulations for the use of the Property adopted by it, and bringing any proceedings which may be instituted on behalf of the Unit Owners.

(j) Obtaining and carrying insurance against casualties and liabilities, as provided in Article VI of this Code of Regulations, and paying the premium cost thereof.

(k) Pay the cost of all services rendered to the Condominium and not billed to Unit Owners of individual Units.

(l) Keeping books with detailed accounts in chronological order of the receipts and expenditures affecting the Property, and the administration of the Condominium, specifying the maintenance and repair expenses of the common elements and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Unit Owners, their duly authorized agents or attorneys, during general business hours on working days at the time and in the manner that shall be set and announced by the Council for the general knowledge of the Unit Owners. All books and records shall be kept in accordance with good and accepted accounting practices, and the same may be audited at least once a year by an outside auditor employed by the Council who shall not be a resident of the Condominium or an owner of a Unit therein, unless authorized by the Council, and the cost of such audit shall be a common expense.

(m) Notifying the mortgagees of any Unit of any default by the Unit Owner whenever requested in writing by such mortgagee to send such notice.

(n) To do such other things and acts not inconsistent with the Unit Property Act and with the Declaration which it may be authorized to do by a resolution of the Association of Owners.

Section 3. Managing Agent. The Council may (but is not required to) employ for the Condominium a professional managing agent at a compensation established by the Council, to perform such duties and services as the Council shall authorize, including, but not limited to, the duties listed in paragraphs (a), (c), (d), (e), (h), (j), (k), (l), (m), and (n) of Section 2 of this Article III. The Council may delegate to the managing agent all of the powers granted to the Council by this Code of Regulations other than the powers set forth in paragraphs (b), (f), (g), and (i) of Section 2 of this Article III.

Section 4. Election and Term of Office. At the first annual meeting of the Association of Owners, the term of office of each member of the Council shall be fixed for two (2) years. At the expiration of the initial term of each respective member of the Council, his successor shall be elected to serve for a term of two (2) years. The members of the Council shall hold office until their respective successors shall have been selected by the Association of Owners.

Section 5. Removal of Members of the Council. At any regular or special meeting of the Association of Owners duly called, any one or more of the members of the Council may be removed with or without any cause by a majority of the Unit Owners, and a successors may then and there be elected to fill the vacancy thus created. Any member of the Council whose removal has been proposed by the Unit Owners shall be given at least ten (10) days' notice of the calling of the meeting and the purpose thereof and he shall be given an opportunity to be heard at the meeting.

Section 6. Vacancies. Vacancies in the Council caused by any reason other than the removal of a member by a vote of the Association of Owners shall be filled by a vote of a majority of the remaining members of the Council at a special meeting of the Council held for that purpose promptly after the occurrence of any such vacancy, even though the members present at such meeting may constitute less than a quorum, and each person so elected shall be a member of the Council for the remainder of the term of the member so removed and until a successor shall be elected at the next meeting of the Association of Owners.

Section 7. Organization Meeting. The first meeting of the members of the Council following the annual meeting of the Association of Owners shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Association of Owners at the meeting which such Council

shall have been elected, and no notice shall be necessary to the newly elected members of the Council in order legally to constitute such meeting provided a majority of the whole Council shall be present thereat.

Section 8. Regular Meetings. Regular meetings of the Council may be held at such time and place as shall be determined from time to time by a majority of the members, but at least two such meetings shall be held during each fiscal year. Notice of regular meetings of the Council shall be given to each member, by mail or telegraph, at least three (3) business days prior to the day named for such meeting.

Section 9. Special Meetings. Special meetings of the Council may be called by the President on three (3) business days' notice to each member given by mail or telegraph, which notice shall state the time, place and purpose of the meeting. Special meetings of the Council shall be called by the President or Secretary-Treasurer in like manner and on like notice on the written request of at least three (3) members.

Section 10. Waiver of Notice. Any member may, at any time, in writing waive notice of any meeting of the Council, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a member at any meeting the Council shall constitute a waiver of notice by him at the time and place of such meeting. If all members are present at any meeting of the Council, no notice shall be required and any business may be transacted at such meeting.

Section 11. Quorum of Council. At all meetings of the Council, two (2) members shall constitute a quorum for the transaction of business, and the votes of the two (2) of the members present at any meeting at which a quorum is present shall constitute the decisions of the Council.

Section 12. Fidelity Bonds. The Council may require adequate fidelity bonds for all officers and employees of the Condominium handling or responsible for Condominium funds. The premiums of such bonds shall constitute a common expense.

Section 13. Compensation. No member shall receive any compensation from the Condominium for acting as such.

Section 14. Conduct of Meeting. The President shall preside over all meetings of the Council and the Secretary-Treasurer shall keep a minute book of the Council recording therein all resolutions adopted by the Council and a record of all transactions and proceedings occurring at such meetings. Roberts Rules of Order shall govern the conduct of the meetings of the Council when not in conflict with the Declaration, this Code of Regulations or the Unit Property Act.

Section 15. Liability of the Members of the Council. The members of the Council shall not be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Unit Owners shall indemnify and hold harmless each of the members from and against all contractual liability to others arising out of contracts made by the Council on behalf of the Unit Owners unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or of this Code of Regulations. It is intended that the members of the Council shall have no personal liability with respect to any contract made by them on behalf of the Unit Owners. It is also intended that the liability of any Unit Owner arising out of any contract made by the Council or out of the aforesaid indemnity in favor of the members of the Council shall be limited to such proportion of the total liability thereunder as his percentage interest bears to the percentage interests of all of the Unit Owners. Every agreement made by the Council or by the managing agent on behalf of the Unit Owners shall, if obtainable, provide that the members of the Council, or the managing agent, as the case may be, are acting only as agents for the

Unit Owners and shall have no personal liability thereunder (except as Unit Owners), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage interest bears to the percentage interests of all Unit Owners. The Unit Owners shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding by reason of the fact that he is or was a member of the Council, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believes to be in or not opposed to the best interests of the Unit Owners.

ARTICLE IV

OFFICERS

Section 1. Designation. The principal officers of the Condominium shall be the President, the Vice-President, and the Secretary-Treasurer, all of whom shall be elected by the Council. The President shall be a member of the Council. Any other officers may be, but shall not be required to be, members of the Council.

Section 2. Election of Officers. The officers of the Condominium shall be elected annually by the Council at the organization meeting of each new Council and shall hold office at the pleasure of the Council. Any vacancy in an office shall be filled by the Council at a regular meeting or special meeting called for such purpose.

Section 3. Removal of Officers. Upon the affirmative vote of a majority of the members of the Council, any officer may be removed, either with or without cause, and his successor may be elected at any regular meeting of the Council or at any special meeting of the Council called for such purpose.

Section 4. President. The President shall be the chief executive of the Condominium. He shall preside at all meetings of the Association of Owners and the Council. He shall have all of the general powers and duties which are incident to the office of president of a stock corporation organized under the General Corporation Law of the State of Delaware, including but not limited to, the power to appoint committees from among the Unit Owners from time to time as he may in his discretion decide is appropriate to assist in the conduct of the affairs of the Condominium.

Section 5. Vice-President. The Vice-President shall take the place of the President and perform his duties whenever the President shall be absent or unable to act. If neither the President nor the Vice-President is able to act, the Council shall appoint some other members of the Council to act in the place of the President, on an interim basis. The Vice-President shall also perform such duties as shall from time to time be imposed upon him by the Council or by the President.

Section 6. Secretary-Treasurer. The Secretary-Treasurer shall keep the minutes of all meetings of the Association of Owners and of the Council, he shall have charge of such books and papers as the Council may direct; he shall have the responsibility for Condominium funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, and for the preparation of all required financial data; he shall be responsible for the deposit of all monies and other valuable effects in the name of the Council, or the managing agent, in such depositories as may from time to time be designated by the Council, and he shall, in general, perform all the duties incident to the office of secretary and treasurer of a stock corporation organized under the General Corporation Law of the State of Delaware.

Section 7. Agreements, Contracts, Deeds, Checks, etc. All agreements, contracts, deeds, leases, checks and other instruments of the Condominium for expenditures or obligations of over \$500.00, shall be executed by any two officers of the Condominium or by such other person or persons as may be designated by the Council. All such instruments for expenditures or obligations of less than \$500.00, may be executed by any one officer of the Condominium or by such other person as may be designated by the Council.

Section 8. Compensation of Officers. No officer shall receive any compensation from the Council for acting as such.

ARTICLE V

OPERATION OF THE PROPERTY

Section 1. Determination of Common Expenses and Assessments Against Unit Owners.

(a) Fiscal Year. The fiscal year of the Condominium shall consist of the twelve month period commencing on January 1 of each year and terminating on December 31 of the same year.

(b) Preparation and Approval of Budget. Each year on or before August 1st, the Council shall adopt a budget for the Condominium containing as estimate of the total amount which it considers necessary to pay the cost of maintenance, management, operation, repair and replacement of the Common Elements and those parts of the Units as to which it is the responsibility of the Council to maintain, repair and replace, and the cost of wages, materials, insurance premiums, services, supplies and other expenses that may be declared to be Common Expenses by the Unit Property Act, this Code of Regulations or a resolution of the Association of Owners, and which will be required during the ensuing fiscal year of the administration, operation, maintenance and repair of the property and the rendering of the Unit Owners of all related services. Such budget shall also include such reasonable amounts as the Council considers necessary to provide working capital for the Condominium, a general operating reserve, and reserves for contingencies and replacements. The Council shall send to each Unit Owner a copy of the budget, in a reasonably itemized form which sets forth the amount of the Common Expenses payable by each Unit Owner, on or before November 1, preceding the fiscal year to which the budget applies. The said budget shall constitute the basis for determining each Unit Owner's contribution for the Common Expenses for the Condominium.

(c) Assessment and Payment of Common Expenses. The total amount of the estimated funds required for the operation of the property set forth in the budget for the fiscal year adopted by the Council shall be assessed against each Unit Owner in proportion to his respective percentage interest, and shall be a lien against each Unit Owner's unit as of the first day of the fiscal year to which such budget applies. On or before the first day of each fiscal year, and the first day of each of the succeeding eleven (11) months in such fiscal year, each Unit Owner shall be obligated to pay to the Council or the managing agent (as determined by the Council), one-twelfth (1/12) of the assessment for such fiscal year made pursuant to the foregoing provisions; provided, however, if the Council so determines, assessments may be collected quarterly in which event each Unit Owner shall be obligated to pay to the Council or the managing agent (as determined by the Council) one-fourth (1/4) of the assessment for such fiscal year on the first day of each fiscal year, and one-fourth (1/4) on the first day of the fourth, seventh, and tenth months of each fiscal year. Within sixty (60) days after the end of each fiscal year, the Council shall supply to all Unit Owners an itemized accounting of the Common Expenses for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Council for such fiscal

year, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, if the Council deems it advisable, be credited according to each Unit Owner's percentage interest to the next monthly installments due from Unit Owners under the current fiscal year's budget, until exhausted, and any net shortage shall, if the Council deems it advisable, be added according to each Unit Owner's percentage interest to the installments due to the succeeding six (6) months after the rendering of the accounting.

(d) Reserves. The Council may build up and maintain reasonable reserves for working capital, operations, contingencies, and replacements. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. If the reserves are inadequate for any reason, including non-payment of any Unit Owner's assessments, the Council may at any time levy a further assessment, which shall be assessed against the Unit Owners according to their respective percentage interests, and which may be payable in a lump sum or in installments as the Council may determine. The Council shall serve notice of any such further assessment on all Unit Owners by a statement in writing giving the amount and reasons therefor, and such further assessments shall, unless otherwise specified in the notice, become effective with the next monthly (or quarterly, if payments are required by the Council to be made quarterly) payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All Unit Owners shall be obligated to pay the adjusted monthly (or quarterly) amount or, if the additional assessment is not payable in installments, the amount of such assessment.

(e) Initial Assessment. An initial payment, in addition to all assessments, of TWO HUNDRED DOLLARS (\$200.00) for each of the units is hereby levied to provide the initial working capital of the Condominium and is payable by each Unit Owner upon the initial conveyance of his Unit. When the first Council appointed by the Owner and under this Code of Regulations takes office, it shall determine the budget, as defined in this Section, for the period commencing upon the sale of the first Unit by the Owner and ending on December 31 of the fiscal year in which such first sale occurs. Assessments shall be levied against the Unit Owners during said period as provided in paragraph (c) of this Section. Any units not conveyed by Owner within three (3) years of the date hereof shall be liable for the initial assessment described herein.

(f) Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Council to prepare or adopt the annual budget for any fiscal year shall not constitute a waiver or release in any manner of a Unit Owner's obligation to pay his allocable share of the Common Expenses as herein provided, whenever the same shall be determined, and in the absence of any annual budget or adjusted budget, each Unit Owner shall continue to pay the monthly charge at the then existing monthly rate established for the previous fiscal period until the monthly payment which is due more than ten (10) days after such new annual or adjusted budget shall have been mailed or delivered.

(g) Accounts. All sums collected by the Council with respect to assessments against the Unit Owners may be co-mingled into a single fund, but shall be held for each Unit Owner in accordance with his percentage interest.

Section 2. Payment of Common Expenses. All Unit Owners shall be obligated to pay the Common Expenses assessed by the Council pursuant to the provisions of Section 1 of this Article V. No Unit Owner may exempt himself from liability for his contribution toward common expenses by waiver of the use of enjoyment of any of the Common Elements or by abandonment of his Unit. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against the latter for his proportionate share of the common expenses up to the time of the conveyance, without prejudice to the purchaser's right to recover from the selling Unit

Owner the amounts paid by the purchaser therefor; provided, however, that any such purchaser shall be entitled to a statement from the Council or managing agent setting forth the amount of the unpaid assessments against the selling Unit Owner and such purchaser shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments in excess of the amount therein set forth; and provided, further, that if a mortgagee of a first mortgage of record or other purchaser of a Unit obtains title to the Unit as a result of foreclosure of a first mortgage, such purchaser, its successors and assigns shall not be liable for, and such Unit shall not be subject to, a lien for the payment of common expenses assessed prior to the acquisition of title to such Unit by such purchaser pursuant to the foreclosure sale. Such unpaid share of the common expenses assessed prior to the acquisition of title to such Unit by such purchaser pursuant to the foreclosure sale shall be collectible from all Unit Owners, including the purchaser of the foreclosure sale, in proportion to their respective percentage interests.

Section 3. Collection of Assessments. The Council shall take prompt action to collect any assessments for common expenses due from any Unit Owner which remain unpaid for more than thirty (30) days from the due date for payment thereof.

Section 4. Statement of Common Expenses. The Council shall promptly provide any Unit Owner so requesting the same in writing, with a written statement of all unpaid assessments for common expenses due from such Unit Owner.

Section 5. Maintenance and Repair.

(a) By the Council. The Council shall be responsible for the maintenance, repair and replacement (unless necessitated by the negligence, misuse or neglect of a Unit Owner, in which case such expense shall be charged to such Unit Owner) of the following, the costs of which shall be charged to all Unit Owners as a common expense:

(1) The entire common water facilities and systems that are declared common elements, including all conduits, ducts, plumbing wiring and other facilities for the furnishing of such utility services into all Units, but excluding therefrom all plumbing, fixtures, systems and parts thereof which are located inside the Unit; and including all catch basins and television master antenna or cable systems located outside the specific boundaries of any Unit.

(b) By the Unit Owner. Each Unit Owner shall be responsible for the maintenance, repair and replacement at his own expense, of the following:

The entire Building or Unit, whether interior or exterior, including, but not limited to, entrance doors to the Unit, all windows, storm windows, and screens, the interior storage area, electric panel, and the same shall be operated, maintained and replaced, if and when necessary, as part of the Unit at the expense of the Owner of said Unit; also by the Unit Owner, any interior walls, interior ceiling and floors, kitchen and bathroom fixtures and equipment, refrigerator and range, lighting, water heater, heating and air-conditioning unit, and those parts of the plumbing system which solely benefit his Unit; decks or porches as shown upon the Declaration Plan; steps and stairs leading solely to an individual unit. Each Unit Owner shall keep the interior and exterior of his Unit and its equipment and appurtenances in good order, condition and repair and in a clean and sanitary condition, and shall do all redecorating, painting and varnishing which may at any time be necessary to maintain the good appearance and condition of his Unit. In addition, each Unit Owner shall be responsible for all damages to any and all other Units or to the common elements

resulting from his failure to make any of the repairs required to be made by him by this Section. Each Unit Owner shall perform his responsibility in such manner as shall not unreasonably disturb or interfere with the other Unit Owners. Each Unit Owner shall promptly report to the Council or the managing agent any defect or need for repairs for which the Council is responsible.

(c) Manner of Repair and Replacement. All repairs and replacement shall be substantially similar to the original construction and installation. The method of approving payment vouchers for all repairs and replacement shall be determined by the Unit Owner affected thereby.

Section 6. Additions, Alterations or Improvements by the Council. Whenever in the judgment of the Council the common elements shall require additions, alterations, or improvements costing in excess of ONE THOUSAND DOLLARS (\$1,000.00) during any twelve (12) consecutive months, and the making of such additions, alterations or improvement shall have been approved by a majority of the Unit Owners, the Council shall proceed with such additions, with the cost thereof as a common expense. Any additions, alterations or improvements costing ONE THOUSAND DOLLARS (\$1,000.00) or less during any period of twelve (12) consecutive months may be made by the Council without the approval of the Unit Owners and the cost thereof shall constitute a part of the common expenses.

Section 7. Additions, Alterations or Improvements By Unit Owners. No Unit Owner shall make any structural addition, alteration or improvement in or to his Unit without the prior written consent thereto of the Council, which consent shall not unreasonably be denied. The Council shall be obligated to answer any written request by a Unit Owner for approval of a proposed structural addition, alteration or improvement in such Unit Owner's unit within sixty (60) days after such request, and its failure to do so within the stipulated time shall constitute a consent by the Council to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any Unit may be executed by the Council without, however, incurring any liability on the part of the Council or any of them to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having any claim for injury to person or damage to property arising therefrom.

Section 8. Restrictions on Use of Units. Each Unit and the common elements shall be occupied and used in accordance with the provisions of the Declaration.

Section 9. Right to Access. DELETED.

Section 10. Rules and Regulations. Rules and regulations concerning the operation and use of the common elements may be promulgated and amended by the Council, provided that such rules and regulations are not contrary to or inconsistent with the Unit Property Act, the Declaration or this Code of Regulations. Copies of the rules and regulations shall be furnished by the Council and each Unit Owner prior to the time when the same shall become effective.

Section 11. Electricity. Electricity for the Units shall be supplied by the Delaware Electric Cooperative serving the Units directly to each Unit through separate meters and each Unit Owner shall be required to pay the bills for electricity consumed or used in his Unit. The electricity serving the common elements, if any, shall be separately metered, and the Council shall pay all bills for electricity consumed in such portions of the common elements as a common expense, including, but not limited to, the cost of electricity for the pump house serving all of the Units.

Section 12. Sewer and Water. The individual Unit Owners shall maintain the septic system or cesspool appurtenant to their respective Units as Limited Common Elements. In the event a septic system or cesspool serves more than one Unit, the cost of maintaining the same shall be shared equally by the Unit Owners being served by the same. Water service is provided to all four (4) Units by a well and pump house, the maintenance of same being a common expense.

ARTICLE VI

INSURANCE

Section 1. Authority to Purchase. Except as otherwise provided in Section 3 of this Article VI, all insurance policies relating to the property shall be purchased by the Council as trustee for the Unit Owners and their respective mortgagees, as their interests may appear, which insurance shall be to the extent available, at least the following:

(a) Public Liability Insurance in such amounts and in such form as may be considered appropriate by the Council including, but not limited to, water damage, legal liability, hired automobile, non-owned automobile and any and all other liability incident to the ownership and/or use of the Condominium project or any portion thereof; and

(b) Workmen's compensation insurance to the extent necessary to comply with any applicable law; and

(c) Such other policies of insurance, including insurance for other risks of a similar or dissimilar nature, as are or shall hereafter be considered appropriate by the Council.

Section 2. Limitations. Any insurance obtained pursuant to the requirements of this Article, shall be subject to the following provisions:

(a) All policies shall be written with a company or companies licensed to do business in the State of Delaware and holding a rating of "A+" or better in "Best's Insurance Guide."

(b) All policies shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to any and all insureds named thereon, including any and all mortgagees of the Units and shall further provide that the coverage thereof shall not be terminated for non-payment of premiums without thirty (30) days' notice to all of the insureds, including all mortgagees of the Units. Duplicated originals of the insurance policies and all endorsements thereto, together with proof of payment or premiums, shall be delivered to all Unit Owners of their request and shall be delivered to all mortgagees of Condominium units at the times such policies are issued and at least thirty (30) days prior to the expiration of the then current policies.

(c) All policies shall contain a waiver of subrogation by the insurer as to any claims against the Council, the Unit Owner and/or their respective agents, employees or invitees, and of any defenses based upon co-insurance or invalidity arising from the acts of the insured. Said policies cannot be cancelled, invalidated or suspended on account of any conduct of the Council, the Unit Owner and/or their respective agents, employees or invitees, and of any defenses based upon co-insurance or invalidity arising from the acts of the insured. Said policies cannot be cancelled, invalidated or suspended on account of any conduct of the Council, the Unit Owner, and/or their agents, employees or invitees.

(d) All policies shall contain the standard mortgage clause. In the event a mortgagee endorsement has been issued as to a Unit, the proceeds payable shall be held in trust for the mortgagee and the Unit Owner as their interests may appear.

Section 3. Separate Insurance. Each Unit Owner shall have the right at his own expense, to obtain fire and other hazard insurance for his own Unit and for his own benefit and to obtain insurance coverage upon his personal property and for his personal liability.

(a) Each Unit Owner shall be required to notify the Council of all improvements made by the Unit Owner to his Unit, the value of which is in excess of TEN THOUSAND DOLLARS (\$10,000.00).

(b) Any Unit Owner who obtains individual insurance policies covering his Unit shall be required to file a copy of such individual policy or policies with the Council within thirty (30) days after the purchase of such insurance.

Section 4. Premiums. Premiums upon all insurance policies purchased by the Council shall be deemed to be a common expense.

ARTICLE VII

REPAIR AND RECONSTRUCTION AFTER FIRE OR OTHER CASUALTY

Section 1. When Repair and Reconstruction are Required. In the event of damage to or destruction of all or any of the buildings as a result of fire, or other casualty it shall be the responsibility of the Unit Owner to repair or restore his Unit.

ARTICLE VIII

SALES, LEASES, AND ALIENATION OF UNITS

Section 1. No Severance of Ownership. No Unit Owner shall execute any deed, lease, mortgage, or other instrument conveying or mortgaging the title to his Unit without including therein the undivided interest of such Unit in the common elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, or other instrument purporting to affect one or more of such interests, without including all such interests, shall be deemed and taken to include the interest or interests, so omitted, even though the latter shall not be expressly mentioned or described therein. No part of the interests in the common elements of any Unit may be sold, leased, transferred, given, devised, or otherwise disposed of, except as part of the Unit to which such interests are appurtenant, or as part of a sale, lease, transfer, gift, devise or other disposition of such part of the interests in the common elements of all Units.

Section 2. Payment of Assessments. No Unit Owner shall be permitted to convey, mortgage, hypothecate, sell, lease, give, or devise his Unit unless and until he (or his personal representative) shall have paid in full to the Council all unpaid common expenses theretofore assessed by the Council against his Unit and payable prior to the date of conveyance, except permitted mortgages.

ARTICLE IX

MORTGAGES

Section 1. Notice to the Council. A Unit Owner who mortgages his Unit shall notify the Council of the name and address of his mortgagee and shall file a conformed copy of the note and mortgage with the Council.

Section 2. Notice of Unpaid Assessments for Common Expenses. The Council, whenever so requested in writing by a mortgagee of a Unit, shall promptly report any then unpaid assessments for common expenses due from, or any other default by, the Unit Owner of the mortgaged Unit.

Section 3. Notice of Default. The Council, when giving notice to a Unit Owner of a default in paying the assessment for common expenses or any other default, shall send a copy of such notice of each holder of a mortgage covering such Unit Owner's unit whose name and address has theretofore been furnished to the Council.

ARTICLE X

COMPLIANCE AND DEFAULT

Section 1. Relief. Each Unit Owner shall be governed by, and shall comply with, all of the terms of the Declaration, this Code of Regulations, and any amendments of the same. A default by a Unit Owner shall entitle the Association of Owners, acting through its Council or through the managing agent, to the following relief:

(a) Legal Proceedings. Failure to comply with any of the terms of the Declaration, this Code of Regulations, and the Rules and Regulations shall be grounds for relief which may include, without limiting the same, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in this Code of Regulations, or any combination thereof, and all of which relief may be sought by the Association of Owners, the Council, the managing agent, or, if appropriate, by an aggrieved Unit Owner.

(b) Additional Liability. Each Unit Owner shall be liable for the expense of all maintenance, repair or replacement rendered necessary by his act, neglect or carelessness of any member of his family or his employees, agents or licensees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Council. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of any Unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver of any insurance company of its rights to subrogation.

(c) Costs and Attorney's Fees. In any proceeding arising out of any alleged default by a Unit Owner, the prevailing party shall be entitled to recover the costs of the proceedings, and such reasonable attorneys' fees as may be determined by the court.

(d) No Waiver of Rights. The failure of the Association of Owners, the Council, or of a Unit Owner to enforce any right, provisions, covenant, or condition which may be granted by the Declaration, this Code of Regulations or the Rules and Regulations shall not constitute a waiver of the right of the Association of Owners, the Council or the Unit Owner to enforce such rights, provisions, covenant, or condition in the future. All rights, remedies and privileges granted to the Association of Owners, the Council, or any Unit Owner pursuant to any terms, provision, covenant,

or condition of the Declaration, this Code of Regulations, or the Rules and Regulations shall be deemed to be cumulative, and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such privileges as may be granted to such party by the Declaration, this Code of Regulations or the Rules and Regulations, or at law or in equity.

(e) Interest. In the event of a default by any Unit Owner in paying any common expenses or other sum assessed against him which continues for a period in excess of thirty (30) days such Unit Owner shall be obligated to pay interest on the amounts due at the legal rate of interest provided on judgment in the State of Delaware from the due date thereof.

(f) Abatement and Enjoinment of Violations by Unit Owners. The violation of any rule or regulation adopted by the Council, or the breach of any regulation contained herein, or the breach of any provision of the Declaration, shall give the Council the right, in addition to any other rights pursuant to law or set forth in this Code of Regulations: (a) to enter the Unit in which, or as to which, such violation or breach exists and summarily to abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Council shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

Section 2. Lien for Contributions.

(a) The total annual contribution of each Unit Owner for the common expenses pursuant to Article V, Section 1 of this Code of Regulations is hereby declared to be a lien levied against the Unit of such Unit Owner, which lien shall be effective as of the first day of each fiscal year of the Condominium. The Council, or the managing agent, may file or record such other or further notice of lien, or such other or further document as may be required by the then laws of the State of Delaware to confirm the establishment of such lien.

(b) In any case where an assessment against a Unit Owner is payable in installments, upon a default by such Unit Owner in the payment of any single installment, which continues for thirty (30) days after written notice of such default has been sent to the Unit Owner, the maturity of the remaining total of the unpaid installations of such assessments may be accelerated, at the option of the Council and the then balance owing may be declared due and payable in full by the service of notice to such effect upon the defaulting Unit Owner by the Council or the managing agent.

(c) The lien for contribution may be foreclosed in the manner provided by the laws of the State of Delaware by suit brought in the name of the Council, or the managing agent, acting on behalf of the Association of Owners. During the pendency of such suit the Unit Owner shall be required to pay a reasonable rental of the unit for any period prior to sale pursuant to any judgment or order of any court having jurisdiction over such sale. The plaintiff in such proceeding shall have the right to the appointment of a receiver, if available under the then laws of the State of Delaware.

(d) Suit to recover a money judgment for unpaid contributions shall be maintained without foreclosing or waiving the lien securing the same, and foreclosure shall be maintainable notwithstanding the pendency of any suit to recover a money judgment.

(e) The lien for contributions shall be subordinate to liens of any first mortgagee or the lien of any landlord's lien by Unit Owner or its successors or assigns.

ARTICLE XI

MISCELLANEOUS

Section 1. Notices. All notices, demands, bills, statements, or other communications under this Code of Regulations shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by registered or certified mail, return receipt requested, first class postage prepaid; (1) if to a Unit Owner, at the address which the Unit Owner shall designate in writing and file with the Secretary, or if no such address is designated, at the address of the Unit of such Unit Owner, or (2) if to the Association of Owners, the Council or the managing agent, at the principal office of the managing agent or at such other address as shall be designated by notice in writing to the Unit Owners pursuant to this Section.

Section 2. Invalidity. The invalidity of any part of this Code of Regulations shall not impair or affect in any manner the validity, enforceability or effect of the balance of this Code of Regulations.

Section 3. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit or describe the scope of this Code of Regulations, or the intent of any provision thereof.

Section 4. Gender. The use of the masculine gender in this Code of Regulations shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural, whenever the context so requires.

ARTICLE XII

AMENDMENTS TO CODE OF REGULATIONS

Section 1. Amendments. Except as otherwise provided hereinabove or hereinbelow, this Code of Regulations may be modified and amended either by unanimous vote of the Unit Owners at any regular or special meeting, provided that notice of the proposed amendment shall have been given to each Unit Owner at least ten (10) days in advance of such meeting.


Section 2. Recording. A modification or amendment of this Code of Regulations shall become effective only if such modification or amendment is recorded in the Office of the Recorder of Deeds in and for Sussex County, Delaware.

Section 3. Conflicts. No modification or amendments of this Code of Regulations may be adopted which shall be inconsistent with the provisions of the Unit Property Act. A modification or amendment once adopted and recorded as provided for herein shall then constitute part of the official Code of Regulations of the Condominium, and all Unit Owners shall be bound to abide by such modification or amendment.

Section 4. Approval of Mortgagees. This Code of Regulations contains provisions concerning various rights, priorities, remedies, and interests of the mortgagees of Units. Such provisions herein are to be construed as covenants for the protection of the mortgagees on which they may rely in making loans secured by mortgages on the Units. Accordingly, no amendment or modification of this Code of Regulations impairing or affecting such rights, priorities, remedies or

interests of a mortgagee shall be adopted without the prior written consent of such mortgagee. If there is more than one mortgagee holding mortgages on the Units, it shall be sufficient to obtain the written consent of the mortgagee or mortgagees holding mortgages on more than fifty percent (50%) of the Units encumbered by mortgages.

IN WITNESS WHEREOF, the party hereto has hereunto set his hand and seal this 5th day of March, 2001.




Witness



MICHAEL BACHER (SEAL)




Witness

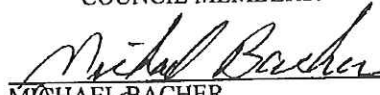


JOANN BACHER (SEAL)


COUNCIL MEMBERS:



Witness




MICHAEL BACHER (SEAL)



Witness



JOANN BACHER (SEAL)



Witness




MELISSA A. BACHER (SEAL)

STATE OF DELAWARE)
) SS:
COUNTY OF SUSSEX)

BE IT REMEMBERED, that on this 5th day of November, A.D. 2001, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, MICHAEL BACHER, Individually and as Council Member, party to this Indenture, known to me personally to be such, and he acknowledged this Indenture to be his act and deed.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.



Notary Public

JAMES P. BECKER
NOTARIAL OFFICER PURSUANT TO
29 DEL. CODE. SECT. 4323(3)
ATTORNEY AT LAW - DELAWARE
ID #3711

Print Name: _____
Commission Expires: _____

STATE OF DELAWARE)
) SS:
COUNTY OF SUSSEX)

BE IT REMEMBERED, that on this 5th day of November, A.D. 2001, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, JO-ANN BACHER, Individually and as Council Member, party to this Indenture, known to me personally to be such, and she acknowledged this Indenture to be her act and deed.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.



Notary Public

JAMES P. BECKER
NOTARIAL OFFICER PURSUANT TO
29 DEL. CODE. SECT. 4323(3)
ATTORNEY AT LAW - DELAWARE
ID #3711

Print Name: _____
Commission Expires: _____

Google Maps Sunset Ln



Imagery ©2019 Maxar Technologies, U.S. Geological Survey, USDA Farm Service Agency, Map data ©2019 Google 200 ft

Google Maps Sunset Ln



Map data ©2019 Google 200 ft

We are the property owners on Sunset Lane and received your notices of two applications before the Planning and Zoning Commission and to be addressed at the next Planning and Zoning Commission Public Hearing and next County Council Public Hearing.

The applications before the Commission are for the re-zoning of Tax Parcel 234-7.00-100.00 (20797 Sunset Lane) to MR Medium-Density Residential District and to grant Conditional Use in this newly re-zoned Medium-Density Residential District for Multi-Family (7 Units) to be located on the Tax Parcel in question.

Let it be known that we the Home Owners of Sunset Lane are STRONGLY AGAINST both applications. Granting these applications will result in irreparable damage our way of life and will negatively impact the value of our homes.

We ask that you VOTE "NO" to these proposals.

Sincerely,

[type name here]

Signature on Reverse Side !!

RECEIVED
DEC 11 2019
SUSSEX COUNTY
PLANNING & ZONING

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20749 Edward Milman
Edward J. Milman Jr.

20765 Joyce Adkins
Joyce Adkins

Will + Don
Finn

20748 John Focht



20757 Kate Aldermick

Signed Separate Sheet!!

Chere

20758 Oneill Fisher

Antonia O'Neill

20764 Bonnie Moore.

Bonnie A. Moore

BRANKING ROOM
RECEIVED
MAY 1 1964

We are the property owners on Sunset Lane and received your notices of two applications before the Planning and Zoning Commission and to be addressed at the next Planning and Zoning Commission Public Hearing and next County Council Public Hearing.

The applications before the Commission are for the re-zoning of Tax Parcel 234-7.00-100.00 (20797 Sunset Lane) to MR Medium-Density Residential District and to grant Conditional Use in this newly re-zoned Medium-Density Residential District for Multi-Family (7 Units) to be located on the Tax Parcel in question.

Let it be known that we the Home Owners of Sunset Lane are STRONGLY AGAINST both applications. Granting these applications will result in irreparable damage our way of life and will negatively impact the value of our homes.

We ask that you VOTE "NO" to these proposals.

Sincerely,
[type name here] *Kathleen Adamek* 20157 *Sunset Lane* *houses DE*

RECEIVED
DEC 11 2019
SUSSEX COUNTY
PLANNING & ZONING

This communication is for use by the intended recipient and contains information that may be Privileged, confidential or copyrighted under applicable law. If you are not the intended recipient, you are hereby formally notified that any use, copying or distribution of this e-mail in whole or in part, is strictly prohibited. Please notify the sender by return e-mail and delete this e-mail from your system. Unless explicitly and conspicuously designated as "E-Contract Intended", this e-mail does not constitute a contract offer, a contract amendment, or an acceptance of a contract offer. This e-mail does not constitute a consent to the use of sender's contact information for direct marketing purposes or for transfers of data to third parties.

From: Fink, William <william.fink@dupont.com>

To: fochtsauto@aol.com <fochtsauto@aol.com>

Subject: Vote No to Conditional Use

Date: Tue, Dec 10, 2019 12:13 pm

Attachments: No to Sunset Lane zoning change - for signature.docx (61K), Sunset Lane Neighbors - No to Re-Zoning.pdf (63K)

Hi John, Attached is the letter we talked about. I also attached one where I signed it and scanned. Use either one. I already sent a letter with just my and Donna's signatures.

Tommy O'Neil checked with the county and the letter can be emailed. So everyone could email their own letter. So, I have copied the letter below. You (we) could email the letter to people and they could copy paste the letter into a new email and send to the County.

Tommy's message was: The lady at Sussex County I spoke with is Ann Lepore. Her email is Ann.Lepore@sussexcountype.gov She needs everything by tomorrow so she can have it ready for the meeting on Thursday. Her phone number is 302-855-7878.

Thanks John!
(Dave can sign too...just add his name and address with a pen)

From: [enter name and address]
December 10, 2019

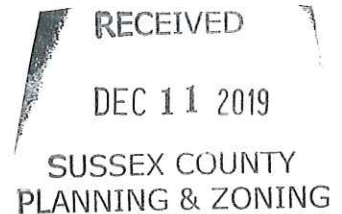
To: Sussex County
Planning and Zoning Department
County Administrative Office Building
2 The Circle
Georgetown, DE 19947

Dear Sussex County:

RECEIVED
DEC 11 2019
SUSSEX COUNTY
PLANNING & ZONING

William and Donna Fink
25 Sleighride Rd.
Glen Mills, PA 19342
December 9, 2019

Sussex County
Planning and Zoning Department
County Administrative Office Building
2 The Circle
Georgetown, DE 19947



Dear Sussex County:

We are the owners of 20773 Sunset Lane and received your notices of two applications before the Planning and Zoning Commission and to be addressed at the next Planning and Zoning Commission Public Hearing and next County Council Public Hearing.

The applications before the Commission are for the re-zoning of Tax Parcel 234-7.00-100.00 (20797 Sunset Lane) to MR Medium-Density Residential District and to grant Conditional Use in this newly re-zoned Medium-Density Residential District for Multi-Family (7 Units) to be located on the Tax Parcel in question.

Let it be known that William and Donna Fink of 20773 Sunset Lane are **STRONGLY AGAINST** both applications. Granting these applications will make assault on our pursuit of happiness. We purchased our parcel on Sunset Lane, in part, for the serenity of the neighborhood.

The two proposed changes, if approved, would irreversibly alter the Sunset Lane neighborhood. We have already seen what the changes will do (changes were made without the now sought re-zoning and conditional use). Our drive down the short, narrow, dead-end, gravel Sunset Lane is now overcrowded by the multitude of parked cars from the out-of-compliance multi-family dwellings and their commercial style trash dumpster that sits at the lane's edge. Enjoyment of property and value of property will decrease if the applications are approved and that would not be fair to the rest of us.

Please vote **NO** to these proposals. They would benefit just one home owner and harm the rest of us on Sunset Lane. Thank you for your consideration of this objection.

Sincerely,

A handwritten signature in blue ink, appearing to read "W. Fink / Donna Fink". The signature is written in a cursive style.

William and Donna Fink

We are the property owners on Sunset Lane and received your notices of two applications before the Planning and Zoning Commission and to be addressed at the next Planning and Zoning Commission Public Hearing and next County Council Public Hearing.

The applications before the Commission are for the re-zoning of Tax Parcel 234-7.00-100.00 (20797 Sunset Lane) to MR Medium-Density Residential District and to grant Conditional Use in this newly re-zoned Medium-Density Residential District for Multi-Family (7 Units) to be located on the Tax Parcel in question.

Let it be known that we the Home Owners of Sunset Lane are STRONGLY AGAINST both applications. Granting these applications will result in irreparable damage our way of life and will negatively impact the value of our homes.

We ask that you VOTE "NO" to these proposals.

Sincerely,


Sheree Connor
20778 Sunset Lane

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Ann Lepore

02
C2-1901

From: Christine Record <chrissyrecord@bellsouth.net>
Sent: Wednesday, December 11, 2019 10:39 AM
To: Ann Lepore
Subject: Rezoning Concern for Sunset Lane

ATTENTION: DE Planning and Zoning Commission

Since 1960, the spirit of Sunset Lane has been that of retirement and vacation for the families that desire to live there. Never was the intention to zone this land to be multi-family housing.

The home at 20758 Sunset Lane has been in our family since 1962. It has served as a retirement home for my parents. The home will be passed down to each generation. This initial purchase of land was never intended for multi-family housing, but for single family housing.

With multi-family housing come a lot of concerns: more people in isolated area, water, sewer, and traffic. But the biggest concern, this is not proper living conditions with the square footage of the 3 smaller units. Even according to coding regulations, there is not enough square footage for multiple families: Title 31, Chapter 41 DE state housing code.

I respectfully oppose multi-family dwelling in this small retirement and vacation community as this will change the entire culture of this community. I appreciate your kind consideration in keeping the zoning regulations in the spirit of the community in which it was built. Thank you.

Respectfully yours,

Christine Record
On behalf of Constance O'Neill
20758 Sunset Lane

Mary C. Keithley
20791 Sunset Lane
Unit 1
Lewes, DE 19958

RECEIVED
JAN 13 2020
SUSSEX COUNTY
PLANNING & ZONING

January 10, 2020

Sussex County Planning & Zoning Commission
The Sussex County Council
County Administration Building
2 The Circle
PO Box 589
Georgetown, DE 19947

RE: Mary & Victor Rico

Case No. C/2 1901

20791 Sunset Lane, Lewes, DE 19958

To whom it may concern:

I am writing on behalf of my landlords, Mary and Victor Rico, in regard to their zoning change request referenced above. I am their tenant at 20791 Sunset Lane, Unit 1. I understand that they are seeking a zoning change from AR-1 (Agricultural) to MR (Medium Density Residential).

The Rico's have been excellent landlords. The unit I occupy was updated inside as well as clean when I moved in and everything was in working order. They maintain the property inside and out and there is sufficient parking for both residents and guests. Any repairs or issues have always been addressed within 24 hours and often the same day. They are prompt and communicative. There has never been a time that they have not met needs or expectations.

I support their request and ask that it be granted. Please feel free to contact me if you have any questions. I can be reached via email at mkeithley3084@gmail.com or phone at 302-500-2420.

Regards,



Mary C. Keithley