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**Sussex County**

DELAWARE  
sussexcountyde.gov

## PLEASE NOTE

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COUNTY ADMINISTRATIVE OFFICES  
2 THE CIRCLE | PO BOX 417  
GEORGETOWN, DELAWARE

July 5, 2022

ERI No: 0506#0681

Kenneth R. Christenbury, P.E.  
President, Axiom Engineering, LLC.  
18 Chestnut Street  
Georgetown, DE 19947

**RE: Westridge Shores Residential Planned Community  
Delineation of Regulated Wetlands &  
Absence of Federally Listed Threatened and Endangered Species &  
Other Species of Concern  
Tax Map Parcel: 234-17.00-165.00  
Indian River Hundred, Sussex County, Delaware**

Dear Mr. Christenbury,

Environmental Resources, Inc. (ERI) is providing this summary of findings regarding the identification of wetlands and water boundaries at Tax Map Parcel 234-34.00-17.00 located in the Indian Hundred, Sussex County, Delaware. This summary of findings has been updated from the letter ERI provided on May 23, 2022. As discussed at the conclusion of this letter, ERI in conjunction with DNREC's Division of Fish and Wildlife has investigated the property to confirm the presence or absence of an American bald eagle (*Haliaeetus leucocephalus*) nest. In summary, it was determined that no American bald eagle nests are on or adjacent to the subject property.

The 21.32 acre property is the location of the proposed Westwood Shores Residential planned community. The property fronts along Banks Road (SCR 298). The rear of the property fronts along the shoreline of Hopkins Prong. ERI identified 1.1 acres of wetlands subject to the Corps of Engineers Regulatory Program (Section 404 of the Clean Water Act of 1972) on the property. The wetlands border Hopkins Prong and consist of a mix of nontidal forested wetlands and tidally influenced emergent wetlands, which is mostly common reed (*Phragmites*).

The results of ERI's investigation were consistent with State and Federal wetland guidance Maps. In accordance with DNREC Wetland Map Sussex-095, there are no State regulated wetlands on this property.

For the purposes of Section 404 of the Clean Water Act of 1972 (CWA), wetlands are defined as those areas that are inundated or saturated by surface or groundwater at a frequency and duration to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soils conditions. Positive evidence of hydrophytic vegetation, hydric



soils, and wetland hydrology is needed for an area to be classified as wetlands. The boundary between wetlands and uplands is defined as the location where positive indicators of one of these three parameters are no longer present.

In their letter of May 18, 2018 (attached) the U.S. Army Corps of Engineers approved the wetland boundaries identified by ERI as shown on the site plans for this project. The approval letter is currently valid.

On May 23, 2022, ERI consulted with the U.S. Fish and Wildlife Service (Service) in regard to the presence of any federally listed protected under the Endangered Species Act (ESA) of 1973. There are no records for any ESA listed species or their critical habitats on this site. Recently the Service listed the Monarch Butterfly (*Danaus plexippus*) as a candidate species throughout the entire project area. No critical habitats are listed. This transitory species has specific habitat requirements that include the abundant presence of milkweed, an herbaceous plant. This plant is not found at the project location. The absence of ESA listed species was confirmed during ERI's site evaluation.

On late June 22, 2022, ERI was contacted by DNREC, Division of Fish and Wildlife biologist, Ms. Jordan Brown. Ms. Brown advised me that she had received a citizen report with a concern that an American bald eagle nest may be present on this property. While the American bald eagle is no longer an ESA listed species, it is a state species of concern and is federally protected under the Bald and Golden Eagle Act of 1940. A date for a site visit with Ms. Brown was arranged for July 5, 2022. Prior to that visit, ERI conducted a 4.5 hour walkover of the property on June 29, 2022, in order to evaluate the property prior to the DNREC meeting. No American bald eagle nest was found, and no eagle activity was observed during that visit.

On July 5<sup>th</sup> the site was once again inspected by ERI and Ms. Brown from the Division of Fish and Wildlife for several hours. That visit confirmed that no American bald eagle nest is present on the property. At the conclusion of the July 5<sup>th</sup> site visit Ms. Brown indicated that she would be providing a formal site visit report to ERI and that the report would likely be completed within the next two weeks. ERI will provide you with that report as soon as it is available.

Upon your review of ERI's findings, I am available at your convenience should you have any questions.

Sincerely,

ENVIRONMENTAL RESOURCES, INC.

Edward M. Launay, Principal  
PWS No. 875, Society of Wetland Scientists  
Corps of Engineers' Wetland Delineator Certification No. WDCP93MD0510036B

Enclosed: Corps PJD Letter & USFWS Consultation Letter



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
PHILADELPHIA DISTRICT CORPS OF ENGINEERS  
WANAMAKER BUILDING, 100 PENN SQUARE EAST  
PHILADELPHIA, PENNSYLVANIA 19107-3390

BANKS ROAD  
Joseph Reed  
506#0681

Regulatory Branch  
Application Section I

MAY 16 2018

SUBJECT: CENAP-OP-R-2018-325-85 (PJD)  
Project Name: Lands of Madeline Rodgers Smythe SX  
Latitude and Longitude: 38.652787° N / -75.179431° W (NAD 83)

Edward M. Launay  
Environmental Resources, Incorporated  
38173 DuPont Boulevard  
Post Office Box 169  
Selbyville, Delaware 19975

Dear Mr. Launay:

This letter is written with regard to your request for verification of a preliminary jurisdictional determination. The property associated with your request is located approximately 0.5 miles southeast of the intersection of John J. Williams Highway and Banks Road, on Banks Road, Tax Map Parcel 2-34-17.00-165.00, Millsboro, Sussex County, Delaware.

Pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, a Department of the Army permit is required for work or structures in navigable waters of the United States and the discharge of dredged and/or fill material into waters of the United States, including wetlands. Any proposal to perform the above activities within any waters of the United States, including wetlands, requires the prior approval of this office.

The plans identified on the following page depict all delineated waters and wetlands on the subject site that may be jurisdictional under Section 10 of the Rivers and Harbor Act and/or Section 404 of the Clean Water Act. This preliminary determination has been conducted to identify the location(s) of waters and wetlands that may be waters of the United States for the particular site identified in this request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are U.S. Department of Agriculture (USDA) program participants, or anticipate participating in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

This preliminary jurisdictional determination is non-binding and indicates that there may be waters of the United States, including wetlands, on the parcel. Preliminary JDs are advisory in nature and may not be appealed (See attached Notification of Appeal Form (Enclosure 1)); however, the applicant retains the right to request an approved Jurisdictional Determination, which may be appealed, for the site. Also enclosed (Enclosure 2) is a copy of the Preliminary

Jurisdictional Determination Form signed by the applicant or his agent agreeing to accept a preliminary jurisdictional determination. Please be aware that for purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a preliminary JD will treat all waters and wetlands that would be affected in any way by the permitted activity on the site as if they are jurisdictional waters of the U.S.

This letter is valid for a period of five (5) years. This preliminary jurisdictional determination is issued in accordance with current Federal regulations and is based upon the existing site conditions and information provided by you in your application. This office reserves the right to reevaluate and modify the preliminary jurisdictional determination at any time should existing site conditions or Federal regulations change, or should the information provided by you prove to be false, incomplete, or inaccurate.

If you have any questions regarding this matter, please contact Mr. Michael D. Yost at (267) 240-5278, by email at michael.d.yost@usace.army.mil or write to the above address.

Sincerely,



Michael D. Yost  
Biologist, Application Section I

\*\*\*\*\*

SUBJECT PROPERTY: The property is located approximately 0.5 miles southeast of the intersection of John J. Williams Highway and Banks Road, on Banks Road, Tax Map Parcel 2-34-17.00-165.00, Millsboro, Sussex County, Delaware. The parcel is 21.32 acre in size with 0.48 acres of forested wetlands and 0.47 acre of emergent wetlands.

\*\*\*\*\*

SURVEY DESCRIPTION: Plans prepared by Axiom Engineering LLC, dated February 20, 2017 and certified by Edward M. Launay on February 12, 2018 entitled: *LANDS OF~MADELINE RODGERS SMYTHE~BANKS ROAD~INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE*, 2 sheets.

\*\*\*\*\*

COMMENTS: This determination is based on a report prepared by Environmental Resources, Incorporated, dated February 12, 2018; no site inspection was performed by this office. This determination applies only to the specific project site referenced above.

\*\*\*\*\*

Enclosures





## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Chesapeake Bay Ecological Services Field Office  
177 Admiral Cochrane Drive  
Annapolis, MD 21401-7307  
Phone: (410) 573-4599 Fax: (410) 266-9127



<http://www.fws.gov/chesapeakebay/>  
<http://www.fws.gov/chesapeakebay/endsppweb/ProjectReview/Index.html>

In Reply Refer To:

May 23, 2022

Project Code: 2022-0045635

Project Name: Westwood Shores Residential Community

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

**Migratory Birds:** In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts see <https://www.fws.gov/birds/policies-and-regulations.php>.

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures see <https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds.php>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/birds/policies-and-regulations/executive-orders/e0-13186.php>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of

this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List
- USFWS National Wildlife Refuges and Fish Hatcheries
- Wetlands



## Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

**Chesapeake Bay Ecological Services Field Office**

177 Admiral Cochrane Drive

Annapolis, MD 21401-7307

(410) 573-4599

## Project Summary

Project Code: 2022-0045635

Event Code: None

Project Name: Westwood Shores Residential Community

Project Type: Residential Construction

Project Description: Construct a residential community on the upland portion of the property

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@38.652505399999995,-75.1797098746998,14z>



Counties: Sussex County, Delaware

## Endangered Species Act Species

There is a total of 1 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Note that 1 of these species should be considered only under certain conditions.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries<sup>1</sup>, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

- 
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

## Insects

NAME	STATUS
<b>Monarch Butterfly <i>Danaus plexippus</i></b> No critical habitat has been designated for this species. This species only needs to be considered under the following conditions: <ul style="list-style-type: none"> <li>▪ The monarch is a candidate species and not yet listed or proposed for listing. There are generally no section 7 requirements for candidate species (FAQ found here: <a href="https://www.fws.gov/savethemonarch/FAQ-Section7.html">https://www.fws.gov/savethemonarch/FAQ-Section7.html</a>).</li> </ul> Species profile: <a href="https://ecos.fws.gov/ecp/species/9743">https://ecos.fws.gov/ecp/species/9743</a>	Candidate

## Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.



## USFWS National Wildlife Refuge Lands And Fish Hatcheries

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGE LANDS OR FISH HATCHERIES WITHIN YOUR PROJECT AREA.

## Wetlands

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

Please note that the NWI data being shown may be out of date. We are currently working to update our NWI data set. We recommend you verify these results with a site visit to determine the actual extent of wetlands on site.

ESTUARINE AND MARINE DEEPWATER

- [Estuarine](#)

## IPaC User Contact Information

Agency: Environmental Resources Inc.

Name: Edward Launay

Address: PO Box 169

City: Selbyville

State: DE

Zip: 19975

Email: [elaunay@ericonsultants.com](mailto:elaunay@ericonsultants.com)

Phone: 3024369637





STATE OF DELAWARE  
**DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL**

DIVISION OF FISH & WILDLIFE  
RICHARDSON & ROBBINS BUILDING  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

**WILDLIFE  
SECTION**

PHONE  
(302) 739-9912

**Bald Eagle Site Visit Summary**

**Reason for Survey/ Inquiry:** “Westridge Shores” (previously Waterview Farms) is a proposed residential development in Sussex County, Delaware, along Banks Road. The tax parcel ID for this lot is 234-17.00-165.00. On Wednesday, June 22<sup>nd</sup>, a constituent reached out to the Delaware Division of Fish & Wildlife (DFW) to make a report of bald eagle sightings and their concern for a potential nearby nest within the boundaries of this property. Ms. Jordan Brown (DFW) reached out to Mr. Edward Launay of Environmental Resources, Inc. regarding this property. Mr. Launay obtained landowner permission from Mr. Joseph Reed of Boardwalk Development, LLC for a site visit to the property. A “Delaware Division of Fish & Wildlife Private Property Access Request and Release of Liability Agreement” was signed and is attached as **Appendix A**.

**Date(s) of Survey(s):** Tuesday, July 5<sup>th</sup>, 2022, 11:00AM

**Survey Summary:** Ms. Brown met with Mr. Launay on July 5<sup>th</sup> at the proposed “Westridge Shores/ Waterview Farms” subdivision. Ms. Brown and Mr. Launay completed a two-hour foot survey of the entire 21-acre property, including out to the Burton Prong portion of the Rehoboth Bay. Ms. Brown and Mr. Launay could not locate an eagle’s nest during this survey and no bald eagles were sighted during the survey. It should be noted that nest searching this late in the breeding season can be challenging given the dense canopy cover in Summer but that all efforts were made to efficiently locate a potential nest.

Please feel free to contact me with any questions or if you require additional information.

Sincerely,

Jordan Brown  
*Environmental Scientist III*  
*Raptor, Grassland, and Forest Bird Biologist*  
Phone: (302) 735-8658  
6180 Hay Point Landing Road  
Smyrna, DE 19977

cc: Thomas Wittig, [thomas\\_wittig@fws.gov](mailto:thomas_wittig@fws.gov) - or - 413-253-8577

## Appendix A.



STATE OF DELAWARE  
DEPARTMENT OF NATURAL RESOURCES AND  
ENVIRONMENTAL CONTROL  
DIVISION OF FISH & WILDLIFE  
RICHARDSON & ROBBINS BUILDING  
89 KINGS HIGHWAY  
DOVER, DELAWARE 19901

WILDLIFE  
SECTION

PHONE  
(302) 739-9912

### DELAWARE DIVISION OF FISH & WILDLIFE PRIVATE PROPERTY ACCESS REQUEST AND RELEASE OF LIABILITY AGREEMENT

As part of the Delaware Division of Fish & Wildlife's mission to conserve and manage Delaware's fish & wildlife resources on both public and privately-owned lands, we routinely conduct field surveys to monitor populations across the state. These surveys are routinely conducted by biologists and assisting personnel such as volunteers that work with our staff. Depending on the size of the property and the type of surveys being conducted, surveys could take as little as thirty minutes to complete but could last multiple hours or even span several days.

This agreement is intended to allow the Division of Fish & Wildlife and/or its assisting personnel permission access to your property and to release and hold harmless you from liability arising from granting access. Please review the included survey proposal describing the type of activities we are requesting permission to complete on your property. In the space provided below, please specify any restrictions to survey methods or time spent on your property. Additional questions or concerns about this project should be directed to the Delaware Division of Fish & Wildlife primary contact listed below.

---

#### Description of Survey to be Completed

Names of Division of Fish & Wildlife staff or assisting personnel requesting access to your properties: Jordan Brown and Laura Kwasnoski

Date/timeframe of surveys. JUNE, 2022.

Type of surveys being conducted: Conducting a site visit to the *Barndwark, Beretgout LLC* *TWP 22N-17E-1105.00* to confirm the presence of a bald eagle nest reported by the public. The nest is reported to be on the southeast location of the parcel but it is recommended that the entire parcel be surveyed for eagle nests. Data collected during this survey may be used in land use review projects submitted to our environmental review staff and a final report will be made to Thomas Wittig of USFWS.

---

## Appendix A. (continued)

cc: Thomas Wittig, [thomas\\_wittig@fws.gov](mailto:thomas_wittig@fws.gov) - or - 413-253-8577

Section to be completed by the landowner

Permission granted to the Delaware Division of Fish & Wildlife to conduct field surveys.

☒ Yes ☐ No

Name: Joseph Reed

Address: Boardwalk Development LLC 28555 Lewes-Georgetown Hwy,


City: Lewes State: DE Zip Code: 19958

Phone: 302 430 4060

Email: joe@reedventures.net

Please describe any restrictions to our proposed survey or other instructions that you want us to follow:

Site visit to be attended by Edward M. Lanning  
Environmental Resources Inc.

Signature of landowner: 

Date: 6/23/2022

Submit copy to:

Jordan Brown

Delaware Division of Fish & Wildlife

Species Conservation and Research Program

6180 Hay Point Landing Road

Smyrna, DE 19977

Office (302) 735-3600

Jordan.Brown@delaware.gov



# WESTRIDGE SHORES RPC

## CHANGE OF ZONE #1958

OWNER/APPLICANT:  
**BOARDWALK DEVELOPMENT, LLC**

INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE



PLANNING & ZONING COMMISSION

JUNE 9, 2022

SUSSEX COUNTY COUNCIL

JULY 12, 2022

 **AXIOM**  
ENGINEERING L.L.C.  
18 CHESTNUT STREET  
GEORGETOWN, DE 19947  
(302) 855-0810  
FAX: 855-0812  
E-MAIL: AXIOM@AXENG.COM  
WEB: WWW.AXENG.COM

 **ERI** ENVIRONMENTAL  
RESOURCES, INC.

ENVIRONMENTAL ASSESSMENT  
&  
PUBLIC FACILITY EVALUATION REPORT  
PREPARED FOR  
BOARDWALK DEVELOPMENT, LLC  
REGARDING THE  
**WESTRIDGE SHORES**  
RESIDENTIAL PLANNED COMMUNITY  
CHANGE OF ZONE #1844 - **#1958**

BALTIMORE HUNDRED  
SUSSEX COUNTY, DELAWARE

P & Z COMMISSION HEARING  
FEBRUARY 8, 2018 – **JUNE 9, 2022**

COUNTY COUNCIL HEARING  
MARCH 13, 2018 – **JULY 12, 2022**

PREPARED BY

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KENNETH R. CHRISTENBURY, P.E.



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EXECUTIVE SUMMARY  
CHANGE OF ZONE #1844 - #1958

Boardwalk Development, LLC proposes 54 single-family dwellings on 21.32 acres (2.54 DU/Ac.) on the east side of Banks Road, ½ mile south of Delaware Route 24. It is consistent with the character and trend of development in the area and in particular its immediate neighbors. The property is bordered as follows:

North: Shady Lane of a community with a mix of mobile homes, modular homes and stick-built homes with density of 2.67+/- DU/Ac. No sidewalks in the community.

East: Hopkins Prong

South: Dogwood Lane of Shawn's Hideaway trailer park with a density of 9.32+/- DU/Ac. Shawn's Hideaway contains 142 mobile homes and 115 travel trailers on 27.59 acres. Gravel and dirt roads. No sidewalks in the community.

West: Banks Road

Westridge Shores will have 42% open space, including preservation of over 6 acres of existing forest, installation of sidewalks on both street sides, protection of the forested wetlands, large wooded buffers along property lines of adjacent communities, installation of park benches, kayak racks and a community pier, and a gazebo.

The project will be served by an expansion of the Long Neck Sanitary Sewer District and Tidewater Utilities Water Company. The project is fully compliant with County Ordinance 99-9(c) and the County's Environmentally Sensitive Developing District Overlay Zone Ordinance / Coastal Area.

The application represents a superior plan with more open space and less density than the recorded plat which is now recorded for this property in the Office of the Recorder of Deeds in Plot Book 2, Page 88.

2

## PROJECT NARRATIVE

Boardwalk Development, LLC is proposing the development of 54 new detached single family lots. The project is Zoned AR-1, Agricultural-Residential (Exhibit 3 - Zoning Map), and is located in the Coastal Area (formerly Environmentally Sensitive Developing District Overlay Zone) (Exhibit 4- 2008 Comp Plan Map).

The subject property presently consists of 66 unimproved residential lots as depicted on Plat Book 2, Page 88, recorded April 17, 1956 and described in Deed Book 3372, Page 51. (Exhibit 5)

Change of Zone #1844 changed the zoning from AR-1 Agricultural/Residential to GR/RPC - General Residential District with Residential Planned Community overlay for 21.32 acres (Exhibit 6 - current Survey and Deed, CZ #1844 approved ordinance and Sketch Plan) with 54 residential lots. (Exhibit 7 - Zoning Application) and Sketch Plan (Exhibit 8). On May 27, 2017, the project was the subject of a Preliminary Land Use Service (PLUS) review. The project is located in a Level 3 area for State Strategies for Policies and Spending review (Exhibit 9). AXIOM submitted written responses to the PLUS comments on June 29, 2017 (Exhibit 10 - PLUS Response letter). On March 13, 2018, CZ #1844 was approved by Sussex County Council.

The availability of water and sewer to the property was delayed from the original 2020 projections received in the 2017 application. As a result, the RPC overlay from CZ #1844 has expired. CZ #1958 is essentially identical to the project approved under CZ #1844. Portions of this exhibit book that have been revised in support of CZ#1958 have been highlighted for clarity, the bulk of the exhibits require no updates as the project is essentially unchanged.

The site for the proposed Westridge Shores Residential Planned Community is currently vacant wooded lands. The following exhibits were prepared from publicly available data relevant to the project site:

- Exhibit 11 - 2007 Aerial Photo Overlay
- Exhibit 12 - 2015 Aerial Photo Overlay
- Exhibit 13 - 2007 State of Delaware Land Use Map
- Exhibit 14 - State of Delaware Lidar Topography map
- Exhibit 15 - Aerial photo of Project site
- Exhibit 16 - Flood Insurance Rate Map

Hopkins Prong includes a Federally regulated Floodplain, which is entirely located in lands to be owned by the project HOA (Exhibit 8 - sheet CZ-2.)



Based on the Soil Survey of Sussex County, Delaware, downloaded from the Natural Resource Conservation Service January 2017 (Exhibit QQ), the project site consists of several soil types, all associated with Hydrologic soil group A:

HSG	Soil name and Description	
A	EvD	Evesboro Loamy Sand, 5 to 15 percent slopes
A	FhA	Fort Mott-Henlopen complex, 0 to 2 percent slopes
A	FhB	Fort Mott-Henlopen complex, 2 to 5 percent slopes

The boundaries of the soil mapping units have been overlaid upon the project site area (Exhibit RR). Based on NRCS mapping, the entire site is located on well-drained soils.

## PROPOSED CONDITIONS

**Westridge Shores** development strategy regarding Environmentally Sensitive Development District / Coastal Areas constraints includes the following design approaches:

1. Stormwater- the stormwater management included an extended detention wet stormwater management pond to be equipped with an aeration fountain for both aesthetic and environmental enhancement. Final Site Plan approval shall be subject to Sussex Conservation District review and approval.
2. Water Supply - Tidewater Utilities has indicated that they are ready and willing to provide central water to the property. - A water main extension is proposed to go to construction in Fall 2022 (See Tidewater Utilities 5/12/2022 e-mail, TAB 3)
3. Wastewater treatment- Sussex County Engineering Department has issued an e-mail that the sanitary sewer extension being installed on the property is under construction and scheduled to be operational by Spring 2023 (See Sussex County Engineering Department 2/18/2022 e-mail TAB 3).
4. Traffic - A service Level Evaluation Request was filed with the Delaware Department of Transportation. On April 44, 2017, DelDOT's response indicated that a Traffic Impact Study would not be required for the project. On March 18, 2022, DelDOT issued a SLER response to the current application with similar results. (Exhibit 20).
5. Endangered Species and Habitat- The applicant is not aware of any endangered species or habitat on the property. PLUS Comments did not indicate the presence of endangered species (Exhibit 10).
6. Wetlands- To determine the exact extent of developable land, Environmental Resources, Inc. has been contracted to delineate the extent of Federal and state wetlands or Waters of the U.S. The limits of jurisdictional Waters of the U.S. have

been shown on the Site Plan (Exhibit 8-sheet CZ-3). Except for stormwater management outfall and a portion of the proposed community dock, no development is contemplated in the site's wetlands. All residential lots are proposed on uplands.

7. Agricultural and Forest - The Site Plan proposes the retention of 6.488 acres of existing wooded areas. (Exhibit 8)

8. The site contains no Excellent Groundwater Recharge areas or Wellhead Protection Areas.

9. Infrastructure- Roads, stormwater management and open space for this proposed project shall all be maintained by a homeowner's association in perpetuity. Utilities are to be maintained by the entities that own the respective utility.

10. The site design includes several amenities. The project's internal streets include sidewalks that tie in to the project's water-front open space community area. The community area will include a community dock, kayak racks, park benches and a gazebo (Exhibit 8 - sheet CZ-3).

## SUMMARY

The subject parcel is well suited to the proposed development. Central water and sewer are available to the property by 2023. Utilizing Sussex Conservation District approved Best Management Practices for stormwater management, and avoiding impacts to wetlands, the development of this parcel can proceed in an environmentally sensitive manner. The project has been designed in accordance with Chapter 99 of the Sussex County Code regarding subdivision (Exhibit 21), and the proposed construction is compatible with surrounding land uses (Exhibit 22). Draft Covenants and Restrictions have been provided to ensure the on-going needs of residents are addressed (Exhibit 23). Proposed Findings of Fact and Conditions of approval have been duplicated from the approval issued from CZ #1844. (TAB 25)

3

**From:** John J. Ashman  
**To:** [ken@axeng.com](mailto:ken@axeng.com)  
**Subject:** RE: 2021-05-14 AXIOM Markup of WRA sewer installation plan.pdf  
**Date:** Friday, February 18, 2022 12:37:52 PM

---

Ken,

No SSCE required for this one since the pipeline crosses the project and we have been coordinating the connection point.

Teal is starting construction on the Banks Road section in March and it is a one year contract.

John ← Sewer available 2023

---

**From:** ken@axeng.com <ken@axeng.com>  
**Sent:** Thursday, February 17, 2022 6:51 PM  
**To:** John J. Ashman <jashman@sussexcountyde.gov>  
**Subject:** 2021-05-14 AXIOM Markup of WRA sewer installation plan.pdf

**CAUTION:** This email originated from outside of the organization. Do not click links, open attachments, or reply unless you recognize the sender and know the content is safe. Contact the IT Helpdesk if you need assistance.

John,

Will we need to file a SSCE request for Joe's property on Banks Road? Joe intends to develop 54 lots on this property.

When is the sewer scheduled to be operational?

Thank you,

Ken

Kenneth R. Christenbury, P.E.  
President, Axiom Engineering, LLC  
18 Chestnut Street  
Georgetown, DE 19947  
Answering Service(302) 855-0810  
Office 302-858-4466  
Fax 855-0812

[ken@axeng.com](mailto:ken@axeng.com)  
[www.axeng.com](http://www.axeng.com)

**From:** [Joe Reed](#)  
**To:** [Ken Christenbury](#)  
**Subject:** Fwd: [EXTERNAL] Fwd: Banks Road parcel  
**Date:** Thursday, May 12, 2022 9:34:12 AM

---


FYI

----- Forwarded message -----

**From:** **Bruce Patrick** <[Bpatrick@middlesexwater.com](mailto:Bpatrick@middlesexwater.com)>  
**Date:** Thu, May 12, 2022 at 9:30 AM  
**Subject:** RE: [EXTERNAL] Fwd: Banks Road parcel  
**To:** Joe Reed <[joe@reedventures.net](mailto:joe@reedventures.net)>  
**Cc:** Brent Reed <[brent@reedventures.net](mailto:brent@reedventures.net)>, Brian Carbaugh <[bcarbaugh@middlesexwater.com](mailto:bcarbaugh@middlesexwater.com)>

Good morning Joe.

The water main is currently being designed and the design is expected to be complete this summer with construction starting in the fall. We are expecting construction to be complete by the end of the 2<sup>nd</sup> qtr. 2023.

 Water available 2023

The design includes a 12" water main along Banks Rd, from Rt. 24 to our existing system just north of Long Neck Rd.

The design alignment along Banks Rd. is generally along the south and west side of the road.

Please let me know if you need any additional information.

Thanks,

Bruce

**Bruce E. Patrick, P.E., MBA**



**Vice President & General Manager**

**TIDEWATER UTILITIES, INC.**

*"Southern Delaware's Premier Water Company Since 1964"*

Phone: 302-747-1336 Cell: 302-218-9335



[bpatrick@tuiwater.com](mailto:bpatrick@tuiwater.com)

**From:** Joe Reed [mailto:[joe@reedventures.net](mailto:joe@reedventures.net)]  
**Sent:** Wednesday, May 11, 2022 4:37 PM  
**To:** Bruce Patrick <[Bpatrick@middlesexwater.com](mailto:Bpatrick@middlesexwater.com)>  
**Cc:** Brent Reed <[brent@reedventures.net](mailto:brent@reedventures.net)>  
**Subject:** [EXTERNAL] Fwd: Banks Road parcel

**EXTERNAL EMAIL: The sender of this email is [joe@reedventures.net](mailto:joe@reedventures.net), exercise caution.**

---

Hello Bruce,

Is there any information on timing and/or a map you can share regarding TUI's Meadows District? My preliminary approval on the Westridge Shores property expired, but I'm back on the agenda for June 9th with the same plan. The engineer, Ken Christenbury, has asked for an update on the water service.

Thanks,

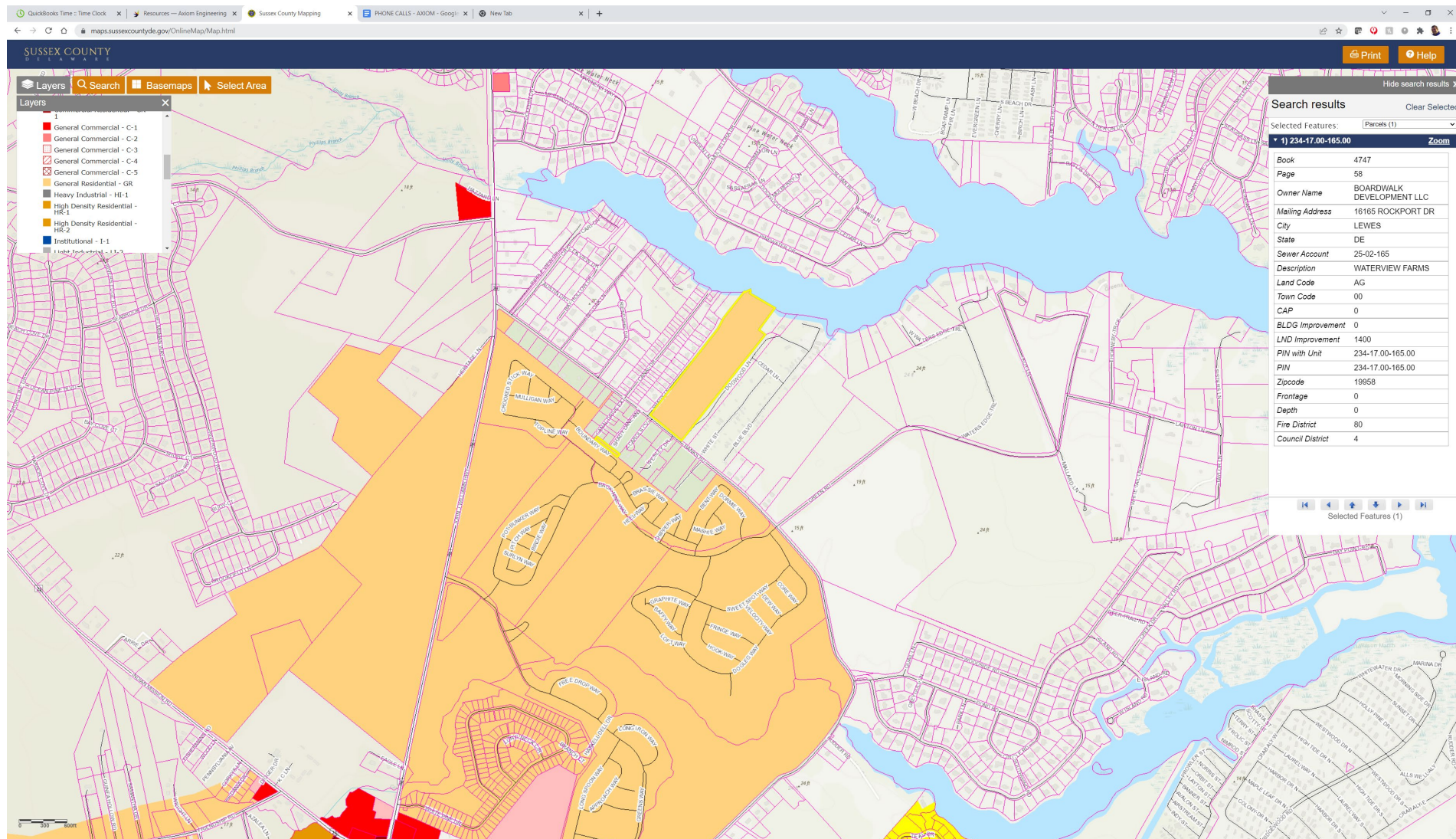
Joe

**Joe Reed**

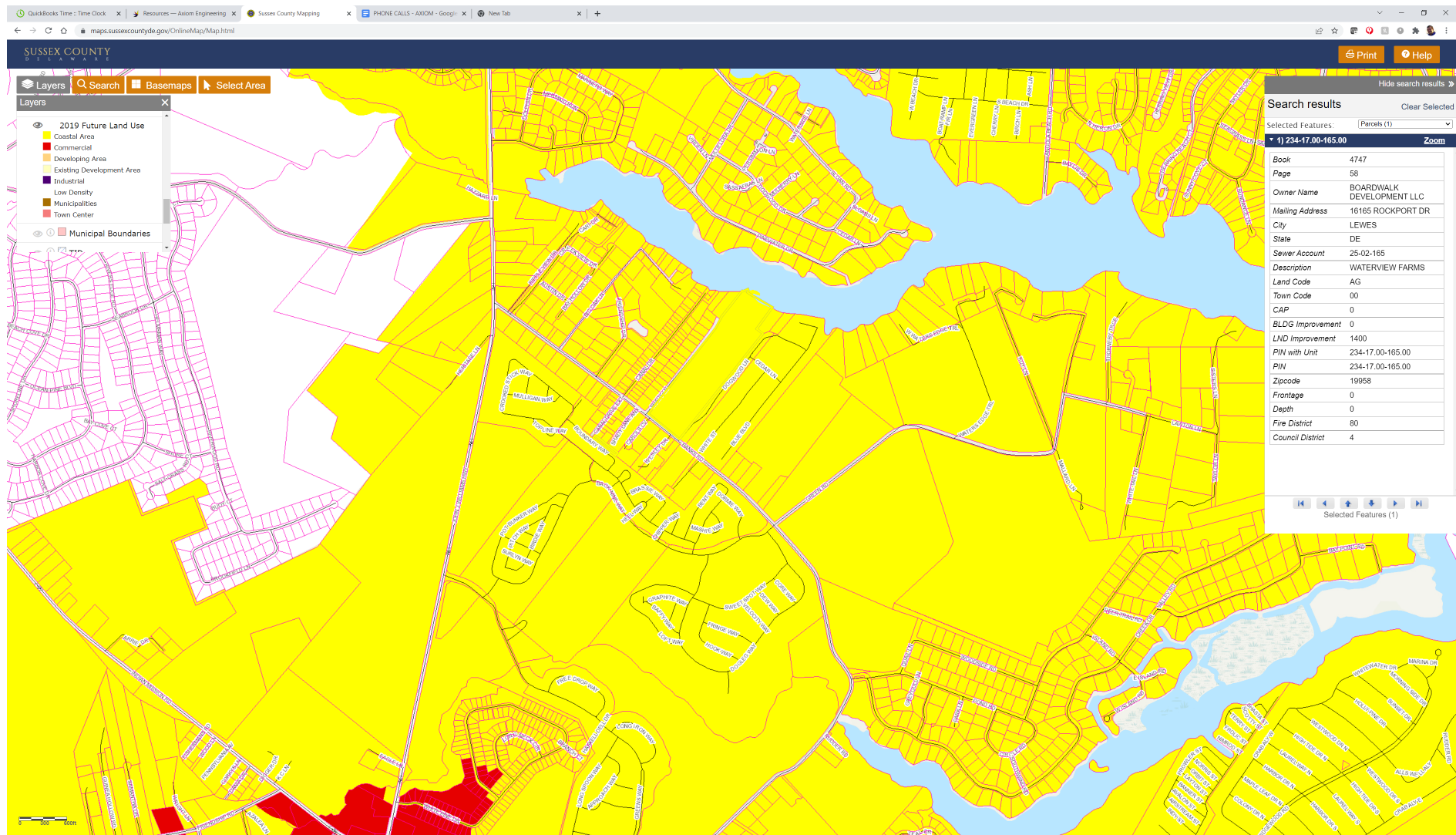
**302-430-4060**



4



Land is zoned GR. GR-RPC application since RPC expired in 2021



Future Land Use Map = Coastal Area

5



52587

BK 03372 2051

Tax Map # 2-34 17.00 165.00

PREPARED BY:

SERGOVIC &amp; ELLIS, P.A.

9 North Front Street

Georgetown, DE 19947-0875

THIS DEED, MADE this 10 day of October, in the year of our Lord two thousand six (2006),

**BETWEEN: MADELINE RODGERS SMYTHE, ATTORNEY-IN-FACT FOR ALBERTA RODGERS**, 18 Seckelpear Road, Levittown, PA 19056, party of the first part,

**-AND-**

**MADELINE RODGERS SMYTHE**, of 18 Seckelpear Road, Levittown, PA 19056, party of the second part;

**WITNESSETH**, That the said party of the first part, for and in consideration of the sum of ONE DOLLAR (\$1.00) Current Lawful Money of the United States of America and other good and valuable considerations, the receipt whereof is hereby acknowledged, hereby grants and conveys unto the said party of the second part, her heirs or assigns:

ALL those certain lots, tracts, pieces or parcels of land situate in Indian River Hundred, Sussex County and State of Delaware, as designated on a plot of Waterview Farms which is now of record in the Office of the Recorder of Deeds, Sussex County, Georgetown, Delaware, in Plot Book No. 2, page 88 as follows: Lots Nos. 35, 33, 31, 29, 27, 25, 23, 21, 19 and westerly 25' of Lot 17 in Block H; Lots Nos. 19, 21, 23, 25, 27, 29, 31, 33, 35 and westerly 25' of Lot 17 in Block G; Lots Nos. 20, 22, 24, 26, 28, 30, 32, 34, 36 and westerly 25' of Lot 18 in Block G; Lots Nos. 19, 21, 23, 25, 27, 29, 31, 33, 35 and westerly 25' of Lot 17, Block F; Lots Nos. 20, 22, 24, 26, 28, 30, 32, 34, 36 and westerly 25' of Lot 18 in Block G; Lots Nos. 19, 21, 23, 25, 27, 29, 31, 33, 35 and westerly 25' of Lot 17, Block F; Lots Nos. 20, 22, 24, 26, 28, 30, 32, 34, 36 and westerly 25' of Lot 18 in Block F; Lots Nos. 19, 21, 23, 25, 27, 29, 31, 33, 35 and westerly 25' of Lot 17 in Block E; Lots Nos. 20, 22, 24, 26, 28, 30, 32, 34, 36 and westerly 25' of Lot 18 in Block E; Lots Nos. 19, 21, 23, 25, 27, 29, 31, 33, 35 and westerly 25' of Lot 17 in Block D; Lots Nos. 20, 22, 24, 26, 28, 30, 32, 34, 36 and westerly 25' of Lot 18 in Block D; Lots Nos. 19, 21, 23, 25, 27, 29 and easterly 250' of Lot 31 and westerly 25' of Lot 17 in Block C; Lots Nos. 20, 22, 24 and westerly 25' of Lot 18 in Block C; Lots Nos. 19, 21, 23, 25, 27, 29, 31, 33 and easterly 45' of Lot 35 and westerly 15' of Lot 17 in Block A; Lots Nos. 20, 22, 24, 92, 94, 96, 97, 98, 99, 95, 100 in Block K; Lots Nos. 26, 28, 30, 32, 91, 92, 93, 94, 95, 96, 97, 98, 99 and 100 in Block L; Lots Nos. 34, 36, 91, 93, 95, 97 and 99 in Block M; Lots Nos. 24, 26, 28, 30, 32, 34, 36, 38, 40, 42 and 44 in Block O, together with all the streets, alleys or ways adjacent or contiguous to said lots as shown on the aforementioned plot6.

BEING the same land conveyed unto William J. Rodgers and Alberta Rodgers by a Deed of J. Paul Rodgers, et al., dated March 12, 1963 and filed for record in the Office of the Recorder of Deeds, in and for Sussex County at Georgetown, Delaware, in Deed Book 557, page 119. William J. Rodgers departed this life October 21, 1980 at which time the property passed unto Alberta Rodgers in its entirety by right of survivorship.

Consideration:	90.00	Exempt Code: A
County	State	Total
0.00	0.00	0.00
counter	Date: 10/13/2006	

83

IN WITNESS WHEREOF, the said party of the first part has hereunto set her hand and seal, the day and year aforesaid.

SIGNED, SEALED AND DELIVERED,  
IN THE PRESENCE OF:

Jennifer Perez  
Witness

Alberta Rodgers by Madeline Rodgers Smythe POA  
Alberta Rodgers by  
Madeline Rodgers Smythe, AIF

STATE OF PA :  
COUNTY OF Bucks : SS.

BE IT REMEMBERED, That on this 10 day of October, 2006, in the year of our LORD, two thousand six, personally came before me, The Subscriber, a Notary Public for the State and County aforesaid, Madeline Rodgers Smythe, Attorney-in-Fact for Alberta Rodgers, party to this Indenture known to me personally to be such, and acknowledged this Indenture to be her Deed.

GIVEN under my Hand and Seal of Office, the day and year aforesaid.

Samantha M. Simmers

Notary Public  
Samantha M. Simmers  
Print or Type Name  
Comm. Expires: 7-16-2010

Received

OCT 16 2006

ASSESSMENT DIVISION  
OF SUSSEX CTY.

Return to:  
Madeline Rodgers Smythe  
18 Seckelpear Road  
Levittown, PA 19056

RECORDER OF DEEDS  
JENNIFER GRADY

06 OCT 13 PM 1:03

SUSSEX COUNTY  
DOC. PURCHARGE PAID

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
SAMANTHA M. SIMMERS, NOTARY PUBLIC  
MIDDLETOWN TWP., BUCKS CO.  
MY COMMISSION EXPIRES JULY 16, 2010



6

28881

BK: 4747 PG: 58

PARCEL ID NO.: 234-17.00-165.00  
PREPARED BY:  
Parkowski, Guerke & Swayze, P.A.  
19354C Miller Road  
Rehoboth Beach DE 19971  
File No. R17-77R/

RETURN TO:  
Boardwalk Development, LLC  
317 Rehoboth Avenue  
Rehoboth Beach, DE 19971

THIS DEED, made this 14 day of July, A.D. 2017,

- BETWEEN -

PHILIP SMYTHE, JR. of 129 Forsythia Drive North, Levittown, PA 19056;  
MADELINE SMYTHE of 18 Secklepear Road, Levittown PA 19056; and NICHOLAS  
BILLY CAPPARELLI A/K/A WILLIAM BILLY SMYTHE, of 8445 Las Vegas Blvd.  
#2030, Las Vegas NV 89123, parties of the first part,

- AND -

BOARDWALK DEVELOPMENT, LLC, of 317 Rehoboth Avenue, Rehoboth Beach,  
DE 19971, party of the second part.

**WITNESSETH:** That the said parties of the first part, for and in consideration of the sum  
of **Seven Hundred Ninety-Nine Thousand and 00/100 Dollars (\$799,000.00)**, 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 its heirs and assigns, in fee simple, the following  
described lands, situate, lying and being in Sussex County, State of Delaware:

ALL that certain lot, piece or parcel of land situate, lying and being in Indian River  
Hundred, Sussex County, State of Delaware, and being more particularly described on a  
Boundary Survey of Lands of Madeline Rodgers Smythe, Banks Road, prepared by Axiom  
Engineering L.L.C., dated February 2, 2017, which may be found of record in the Office of the

CMB

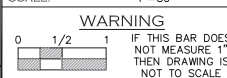
CMB





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 THERETO AND APPURTENANT.

ENGINEER:	
DESIGNER:	ESW
DRAFTER:	ESW
CHECKED BY:	
DATE:	2-2-17
SCALE:	1"=80'



**AXIOM**  
ENGINEERING L.L.C.

18 CHESTNUT STREET  
GEORGETOWN, DE 19947  
(302) 855-0810  
FAX: 855-0812  
E-MAIL: AXIOM@AXENG.COM  
WEB: WWW.AXENG.COM

BOUNDARY SURVEY  
LANDS OF  
MADELINE RODGERS SMYTHE  
BANKS ROAD  
INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE

S  
SHEET:

1 OF 1



Recorder of Deeds, Georgetown, Sussex County, Delaware, in Plot Book 249, page 92, as follows:

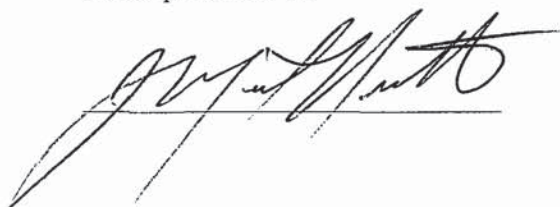
BEGINNING at a rebar set on the eastern right-of-way line of Banks Road (SCR298) 50' wide at the corner of Shady Lane (50' private road); thence along Shady Lane the following three courses: North 39 degrees 07 minutes 33 seconds East for a distance of 1,381.92 feet to a metal post found; thence North 27 degrees 14 minutes 15 seconds East for a distance of 159.58 feet to a rebar set at a metal post; thence North 39 degrees 07 minutes 33 seconds East and passing through a rebar set offset 13.77 feet from the end point, for a total distance of 405.18 feet to a point at or near the waterline of Hopkins Prong; thence along or near the waterline of Hopkins Prong, various courses and distances with a tie line bearing of South 59 degrees 03 minutes 31 seconds East for a distance of 406.76 feet to the corner of lands n/f Evelyn M. Abel; thence along said lands of Abel the following three courses: South 37 degrees 23 minutes 37 seconds West passing through a concrete monument found at 40.04 feet for a total distance of 340.04 feet to a concrete monument found; thence South 50 degrees 47 minutes 00 seconds East for a distance of 100.00 feet to a concrete monument found; thence South 39 degrees 12 minutes 50 seconds West and passing through a concrete monument found offset 5.93 feet from the end point, for a total distance of 1,652.86 feet to a point on the eastern right-of-way line of Banks Road (SCR298) 50' wide; thence along said Banks Road the following three courses: North 51 degrees 26 minutes 17 seconds West for a distance of 159.73 feet to a point; thence with a curve turning to the left with an arc length of 192.89', with a radius of 12,025.00', with a chord bearing of North 51 degrees 53 minutes 52 seconds West, with a chord length of 192.89' to a point; thence North 52 degrees 21 minutes 26 seconds West for a distance of 124.94 feet to the point of beginning, containing 21.32 acres  $\pm$ .

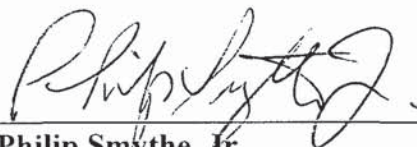
BEING the same lands conveyed to Madeline Rodgers Smythe, by deed of Madeline Rodgers Smythe, Attorney-in-Fact for Alberta Rodgers dated October 10, 2006, and recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, on October 13, 2006, in Deed Book 3372, page 51. The said Madeline Rodgers Smythe departed this life on or about May 6, 2016, and by operation of law, her interest in the aforesaid property passed to Philip Smythe, Jr., Madeline Smythe and Nicholas Billy Capparelli (a/k/a William Billy Smythe), the grantees herein.

**SUBJECT** to any and all restrictions, reservations, conditions, easements and agreements of record in the Office of the Recorder of Deeds, Georgetown, Sussex County, Delaware.

IN WITNESS WHEREOF, Philip Smythe, Jr., one of the parties 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:

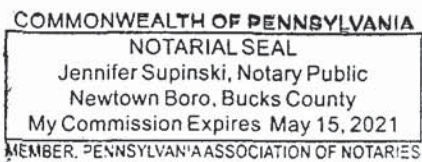


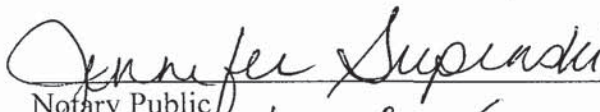
 (SEAL)  
Philip Smythe, Jr.

STATE OF Pennsylvania COUNTY OF Bucks : to-wit

BE IT REMEMBERED, that on the 14 day of July A.D. 2017, personally came before me, the subscriber, Philip Smythe, Jr., one of the parties 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: Jennifer Supinski  
My Commission Expires: 5/15/21

IN WITNESS WHEREOF, Madeline Smythe, one of the parties of the first part has hereunto set her hands and seals the day and year first above written.

Signed, Sealed and Delivered  
in the presence of:

(SEAL)  
Madeline Smythe

STATE OF Pennsylvania COUNTY OF Bucks : to-wit

BE IT REMEMBERED, that on this 14 day of July, A.D. 2017, personally came before me, the subscriber, Madeline Smythe, one of the parties of the first part to this Indenture, known to me personally to be such, and acknowledged this Indenture to be her act and deed.

GIVEN under my Hand and Seal of Office the day and year aforesaid.

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
Jennifer Supinski, Notary Public  
Newtown Boro, Bucks County  
My Commission Expires May 15, 2021  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

Notary Public  
Printed Name: Jennifer Supinski  
My Commission Expires: 5/15/21

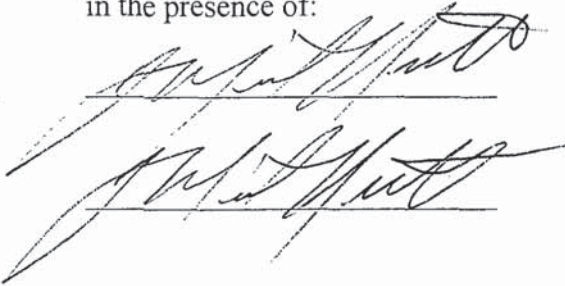
Consideration: 799,000.00


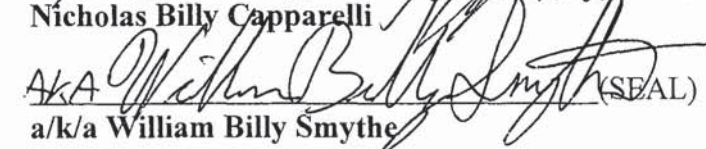
County 11,985.00  
State 11,985.00  
Town Total 23,970.00  
Received: Mary W Aug 02, 2017



IN WITNESS WHEREOF, Nicholas Billy Capparelli a/k/a William Billy Smythe, one of the parties 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:




 (SEAL)  
Nicholas Billy Capparelli  
AKA  (SEAL)  
a/k/a William Billy Smythe

STATE OF Pennsylvania, COUNTY OF Bucks : to-wit

BE IT REMEMBERED, that on this 14<sup>th</sup> day of July, A.D. 2017, personally came before me, the subscriber, Nicholas Billy Capparelli a/k/a William Billy Smythe, one of the parties 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.

COMMONWEALTH OF PENNSYLVANIA  
NOTARIAL SEAL  
Jennifer Supinski, Notary Public  
Newtown Boro, Bucks County  
My Commission Expires May 15, 2021  
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

  
Notary Public  
Printed Name: Jennifer Supinski  
My Commission Expires: 5/15/21

RECEIVED  
AUG 02, 2017  
ASSESSMENT DIVISION  
OF SUSSEX COUNTY

Recorder of Deeds  
Scott Dailey  
AUG 02, 2017 02:26P  
Sussex County  
Doc. Surcharge Paid

7

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 21.26 ACRES, MORE OR LESS

WHEREAS, on the 4th day of August 2017, a zoning application, denominated Change of Zone No. 1844, was filed on behalf of Boardwalk Development, LLC, aka Westridge Shores; and

WHEREAS, on the 8th day of February 2018, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 22nd day of February 2018, said Planning and Zoning Commission recommended that Change of Zone No. 1844 be approved with conditions; and

WHEREAS, on the 13th day of March 2018, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential District] and adding in lieu thereof the designation of GR-RPC General Residential District – Residential Planned Community as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying at the southeast corner of Shady Lane and Banks Road and being more particularly described in the attached legal description, as prepared by Axiom Engineering, LLC.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.



**This Ordinance was adopted subject to the following conditions:**

- A. The maximum number of lots shall not exceed 54 single family lots.**
- B. A homeowner's association shall be formed to provide for the perpetual maintenance, repair and replacement of buffers, stormwater management facilities, streets, amenities and other common areas.**
- 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 opened in a manner which is consistent with Best Management Practices.**
- G. Interior street design shall meet or exceed Sussex County's street design requirements. There shall also be sidewalks on both sides of all streets within the RPC.**
- H. No wetlands shall be included within any individual lots. Any wetland buffers required by Section 115-93(B) shall be shown on the Final Site Plan.**
- I. As stated by the Applicant, all amenities shall be completed prior to the issuance of the 27th building permit.**
- J. A 20 foot wide vegetated buffer shall be established along the perimeter of the site. This may include the existing trees. Trees shall be left to the extent possible and removal shall be minimized next to the Hopkins Prong.**
- K. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop area shall be shown on the Final Site Plan.**
- L. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**

- 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. 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.
- O. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2555 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 13TH DAY OF MARCH 2018.

  
ROBIN A. GRIFFITH  
CLERK OF THE COUNCIL

The Council found that the Change of Zone was appropriate legislative action based on the following Findings of Fact:

- A. This is the application of Boardwalk Development, LLC to amend the Comprehensive Zoning Map of Sussex County from an AR-1 Agricultural Residential District to a GR-RPC General Residential District – Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 21.26 acres, more or less [located at the southeast corner of Shady Lane and Banks Road] (Tax I.D. No. 234-17.00-165.00) (911 Address: None Available).
- B. Based on the record before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that Ken Christenbury with Axiom Engineering, LLC and Joseph Reed, owner of Boardwalk Development, LLC, were present on behalf of the application; that the Applicant proposes 54 single family dwellings on 21.32 acres which is a 2.54 density; that the site is consistent with the character and trend of the development in the area; that Shady Lane is a community with a mix of mobile homes, modular homes, stick built homes and has a density of 2.67 dwelling units per acre; that the adjoining Dogwood Lane Development has a density of 9.32 dwelling units per acre; that there are no sidewalks in either community; that they are proposing 43% open space including preservation of 6 1/2 acres of existing forest; that there will be sidewalks on both sides of the streets; that there will be protection of the forested wetlands; that there are large wooded buffers on both sides; that to the north, the minimum buffer is 68 feet wide and widens out as it gets farther back in the project; that along the waterfront, there is a 20 foot forested buffer; and that on the south side, open space is 50 to 100 feet deep.
- C. Council also found that the project will be served by Sussex County sewer and Tidewater Utilities will provide water; that the project is in the Environmentally Sensitive Developing Area and complies with that section of Code; that there is open space with amenities along the water for the entire community; that the property currently consists of 66 unimproved lots and they are proposing 54 lots; that they are proposing a change of zone from AR-1 to GR-RPC; that the project went to PLUS; that the project is located in the Level 3 Area in State Strategies; that the site will include stormwater management ponds and the Final Site Plan approval shall be subject to the Sussex Conservation District's final approval; that the Sussex County Engineering Department will construct sewer within two years; that the



DelDOT Service Level Evaluation did not require a Traffic Impact Study; that there are no known endangered species on the parcel; that they have provided a draft of covenants; and that the property will be compatible with the surrounding area and will be an improvement to the area.

**D. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 9) and Conditions (10A through 10O), as amended, Council found that:**

- 1. The property is currently zoned AR-1 (Agricultural Residential District). However, both the deed to the property and a recorded plot for the property reference 66 lots within the 21.16 acre parcel. This density is similar to the density permitted within the GR Zoning District.**
- 2. GR Zoning is also consistent with the adjoining Dogwood Lane Development, which has a density of 9.32 units per acre.**
- 3. The County Engineering Department has indicated that adequate wastewater capacity is available for the project as a GR-RPC. Central water will also be provided.**
- 4. With the conditions and stipulations placed upon it, the RPC designation is appropriate, since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. This project will maintain 43% open space, which includes 6.5 acres of existing forest. It also includes large wooded buffers on both sides of the site. There will also be amenities along the water available to the entire community.**
- 5. The project will not adversely affect the neighborhood or surrounding community. There are existing developments in the immediate area with similar characteristics. This is basically in-fill development, with a density similar to what exists in the immediate area.**
- 6. The proposed development will have a density of 2.54 units per acre, which is less than the 2.67 units per acre to the north, and the 9.32 units per acre to the south.**
- 7. According to the County's current Comprehensive Plan, the project is in a Developing Area.**
- 8. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.**
- 9. No parties appeared in opposition to the application.**
- 10. Based on the record and recommendation of the Planning & Zoning Commission, the Change of Zone is approved subject to fifteen (15) conditions (A - O), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**



NOTES:

- FORESTED BUFFERS, STREETS, STORMWATER MANAGEMENT FACILITIES AND OTHER COMMON AREAS SHALL BE MAINTAINED BY THE DEVELOPER UNTIL SUCH TIME AS A HOMEOWNER'S 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.
- FOREST BUFFERS SHALL PRIMARILY CONSIST OF EXISTING FOREST COVER TO BE RETAINED. FINAL SITE PLAN APPROVAL SHALL INCLUDE A FOREST BUFFER PLAN PREPARED BY A CERTIFIED FORESTER OR A REGISTERED LANDSCAPE ARCHITECT, IN ACCORDANCE WITH COUNTY CODE SECTION 99-24.
- ACCESS TO LOTS SHALL BE PROVIDED FROM THE SUBDIVISION STREETS PROPOSED WITH THIS PLAN. NO DIRECT ACCESS TO PUBLIC STREETS IS PROPOSED EXCEPT THE ENTRANCES SPECIFICALLY SHOWN ON THIS PLAN.
- FLOODPLAIN ZONE BOUNDARIES SHOWN WERE BASED UPON FLOOD INSURANCE RATE MAP (FIRM) NUMBER 10005C0343 K, DATED MARCH 16, 2015.
- THE BOUNDARY AND WETLAND LOCATION INFORMATION SHOWN ON THIS PLAN WAS TAKEN FROM A FIELD SURVEY PREPARED BY AXIOM ENGINEERING, LLC IN NOVEMBER 2013. TOPOGRAPHIC INFORMATION SHOWN WAS PROVIDED BY THE STATE OF DELAWARE. A FIELD SURVEY OF TOPOGRAPHIC INFORMATION MUST BE COMPLETED PRIOR TO PREPARATION OF CONSTRUCTION DRAWINGS.
- 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.
- ALL ENTRANCES SHALL CONFORM TO DELDOT'S DEVELOPMENT COORDINATION MANUAL AND SHALL BE SUBJECT TO ITS APPROVAL.
- SHRUBBERY, PLANTINGS, SIGNS AND/OR OTHER VISUAL BARRIERS THAT COULD OBSTRUCT THE SIGHT DISTANCE OF A DRIVER PREPARING TO ENTER THE ROADWAY ARE PROHIBITED WITHIN THE DEFINED DEPARTURE SIGHT TRIANGLE AREA ESTABLISHED ON THIS PLAN.
- UPON COMPLETION OF THE CONSTRUCTION OF THE SIDEWALK OR SHARED-USE PATH ACROSS THIS PROJECT'S FRONTAGE AND PHYSICAL CONNECTION TO ADJACENT EXISTING FACILITIES, THE DEVELOPER, THE PROPERTY OWNERS OR BOTH ASSOCIATED WITH THIS PROJECT, SHALL BE RESPONSIBLE TO REMOVE ANY EXISTING ROAD TIE-IN CONNECTIONS LOCATED ALONG ADJACENT PROPERTIES, AND RESTORE THE AREA TO GRASS. SUCH ACTIONS SHALL BE COMPLETED AT DELDOT'S DISCRETION, AND IN CONFORMANCE WITH DELDOT'S "SHARED-USE PATH AND/OR SIDEWALK" TERMINATION POLICY."
- SUBDIVISION STREETS CONSTRUCTED WITHIN THE LIMITS OF THE RIGHT-OF-WAY ARE PRIVATE AS SHOWN ON THIS PLAN AND ARE TO BE MAINTAINED BY THE DEVELOPER, PROPERTY OWNERS OR BOTH. THE STATE OF DELAWARE ASSUMES NO MAINTENANCE RESPONSIBILITIES FOR THE FUTURE MAINTENANCE OF THESE STREETS.
- AT SUCH TIME THE SHARED-USE PATH IS INSTALLED ALONG THE PROPERTY FRONTAGE OF SCR 298, THE SHARED-USE PATH SHALL BE THE RESPONSIBILITY OF THE DEVELOPER, THE PROPERTY OWNERS OR BOTH WITHIN THIS SUBDIVISION. THE STATE OF DELAWARE ASSUMES NO RESPONSIBILITY FOR THE FUTURE MAINTENANCE OF THE SHARED-USE PATH.
- THERE ARE NO TILLED AGRICULTURAL LANDS WITHIN 300' OF THE SUBJECT PROPERTY.
- DRAWINGS CZ-1, CZ-2, AND CZ-3, WHEN CONSTITUTE A "SKETCH PLAN" FOR THE PURPOSES OF SECTION 115-217.B OF THE ZONING ORDINANCE. IF THE PROPOSED CHANGE OF ZONE TO GR-RPC IS APPROVED BY COUNTY COUNCIL, A PRELIMINARY AND FINAL SITE PLAN WILL BE REQUIRED TO BE SUBMITTED AND APPROVED.

CONDITIONS OF APPROVAL - CZ #1844:

THIS APPROVAL IS SUBJECT TO THE FOLLOWING CONDITIONS:

- THE MAXIMUM NUMBER OF DWELLING UNITS SHALL NOT EXCEED 54.
- FINAL SITE PLAN REVIEW BY PLANNING AND ZONING SHALL BE REQUIRED.
- INTERIOR STREET DESIGN SHALL COMPLY WITH OR EXCEED SUSSEX COUNTY STANDARDS AND SHALL INCLUDE SIDEWALKS ON BOTH SIDES OF THE STREET AND STREET LIGHTING.
- ALL ENTRANCES, INTERSECTIONS, ROADWAY IMPROVEMENTS, AND MULTI-MODAL FACILITIES REQUIRED BY DELDOT SHALL BE COMPLETED BY THE APPLICANT AS REQUIRED BY DELDOT AND WITHIN THE TIME PERIODS REQUIRED.
- THE PROJECT'S AMENITY PACKAGE SHALL BE COMPLETE PRIOR TO THE ISSUANCE OF THE 27TH BUILDING PERMIT.
- ALL DWELLING UNITS SHALL BE SERVED BY A CENTRAL POTABLE DRINKING WATER SYSTEM DESIGNED AND CONSTRUCTED TO STATE STANDARDS.
- STORM WATER MANAGEMENT AND EROSION AND SEDIMENT CONTROL SHALL BE CONSTRUCTED IN ACCORDANCE WITH ALL APPLICABLE STATE AND COUNTY REQUIREMENTS AND SHALL BE OPERATED UTILIZING BEST MANAGEMENT PRACTICES TO PROVIDE POSITIVE GROUNDWATER RECHARGE.
- NO WETLANDS SHALL BE INCLUDED IN INDIVIDUAL LOTS.
- A HOMEOWNER'S ASSOCIATION SHALL BE FORMED TO PROVIDE FOR THE PERPETUAL MAINTENANCE, REPAIR AND REPLACEMENT OF BUFFERS, STORMWATER MANAGEMENT FACILITIES, STREETS, RECREATIONAL FACILITIES AND OTHER COMMON AREAS, IN COMPLIANCE WITH DUOGA.
- ROAD NAMING AND ADDRESSING SHALL BE SUBJECT TO THE APPROVAL OF THE SUSSEX COUNTY MAPPING AND ADDRESSING DEPARTMENT.
- FOREST BUFFERS HAVE BEEN PROVIDED AS REQUIRED BY CHAPTER 99 OF SUSSEX COUNTY CODE.
- THE APPLICANT SHALL COORDINATE AND COOPERATE WITH THE SCHOOL DISTRICT'S TRANSPORTATION MANAGER TO ESTABLISH A SCHOOL BUS STOP AREA, IF THE SCHOOL DISTRICT REQUIRES.

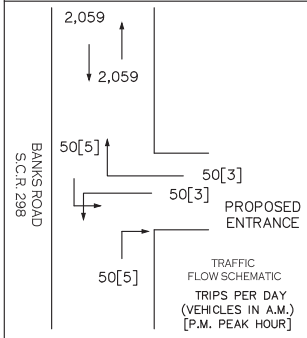
LEGEND

EX. PROPERTY LINE	---	CONCRETE MONUMENT FOUND	□
PROPOSED SUBDIVISION LINE	---	IRON PIPE FOUND	○
EX. ADJACENT PROPERTY LINES	---	IRON PIPE SET	●
EX. 404 WETLANDS		BENCHMARK	+
EX. MINOR CONTOUR	---22---	FEMA FLOODPLAIN BOUNDARY	---
EX. MAJOR CONTOUR	---20---	PR. CONTOUR	---
EX. BUILDING RESTRICTION LINES	---	PR. BUILDING RESTRICTION LINES	---
EX. ROAD CENTERLINE	---	PR. ROAD CENTERLINE	---
EX. EASEMENT	---	PR. EASEMENT	---
EX. BUILDING		PR. BUILDING	---
EX. SWALE	---	PR. SWALE	---
EX. SIDEWALK	---	PR. SIDEWALK	---
EX. CURB	---	PR. CURB	---
EX. STORM SEWER	---	PR. STORM SEWER CL.	---
EX. SANITARY SEWER	---	PR. SANITARY SEWER	---
EX. WOODS LINE	---	PR. WOODS LINE	---
EX. WATER LINE	---	PR. WATER LINE	---
EX. WELL	---	PR. WELL	---
TRAFFIC SIGN	---	PROPOSED LIGHT POLES	---
EX. ZONING BOUNDARY	---	PR. SPOT ELEVATION	---
EX. ELECTRIC LINES UTILITIES	---	PROPOSED DRAINAGE FLOW	---
EX. UTILITY POLES/LIGHT POLES	---	PR. INLET PROTECTION	---
EX. FENCE	---	PR. CULVERT INLET PROTECTION	---
EX. SPOT ELEVATION	---	PR. ROCK OUTLET PROTECTION	---
PR. DELDOT ENTRANCE PAVING	---	PR. FOREBAY	---
PR. ROTOMILL 1 1/4" & OVERLAY	---	CONSTRUCTION ENTRANCE	---
SOIL BORING	---	LIMIT OF DISTURBANCE	---
TEST PIT	---	SILT FENCE	---
EX. STREAM	---		
DRAINAGE DIVIDES	---		
TIME OF CONCENTRATION	---		

N.R.C.S. SOIL MAPPING UNITS:

- FHA - FORT MOTT-HENLOPEN COMPLEX, 0-2 PERCENT SLOPES
- FHB - FORT MOTT-HENLOPEN COMPLEX, 2-5 PERCENT SLOPES
- EVD - EVESBORO LOAMY SAND, 5-15 PERCENT SLOPES
- W - WATER

TRIP GENERATION - SCR. 198 (BANKS ROAD) ENTRANCE - FULL ACCESS



ROAD TRAFFIC DATA:

HIGHWAY FUNCTIONAL CLASSIFICATION = LOCAL ROAD  
POSTED SPEED LIMIT = 35 MPH  
AADT = 3,431 (FROM 2015 DELDOT TRAFFIC SUMMARY)  
10-YEAR PROJECTED AADT = 1.20 X AADT = 4,117  
COMMITTED DEVELOPMENTS =  
10-YEAR PROJECTED AADT + COMMITTED + SITE = 4,318  
DIRECTIONAL SPLIT = 50% ENTER / 50% EXIT  
PEAK HOUR = 18 TRIPS (SUNDAY PEAK HOUR OF GENERATOR)  
1% TRUCKS AND BUSES X 200 = 2 TRIPS  
SITE TRIPS GENERATED:  
SOURCE: ITE TRIP GENERATION MANUAL 9TH EDITION  
200 = ITE CODE 251 - 54 SENIOR ADULT HOUSING (DETACHED)

DIRECTIONAL DISTRIBUTION:  
50% TO AND FROM NORTH - 50% TO AND FROM SOUTH

WETLANDS CERTIFICATION:

I, EDWARD M. LAUNAY, PWS, STATE THAT THE BOUNDARIES OF WATERS OF THE UNITED STATES INCLUDING WETLANDS SUBJECT TO THE CORPS OF ENGINEERS REGULATORY PROGRAM DELINEATED ON 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.

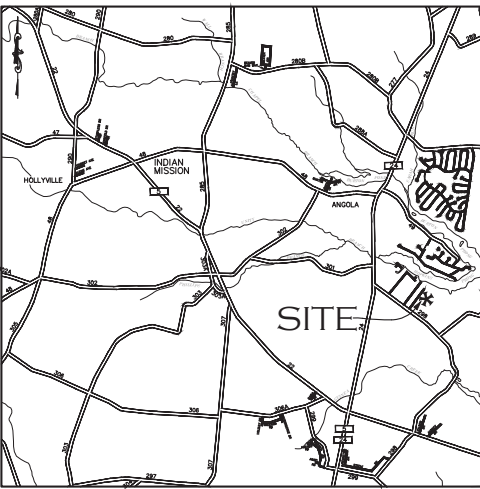
IN ACCORDANCE WITH DNREC TIDAL WETLAND MAP NO. SUSSEX-095, THERE ARE NO STATE REGULATED WETLANDS ON THE SITE.

EDWARD M. LAUNAY, DATE  
PWS NO. 875 - SOCIETY OF WETLAND SCIENTISTS  
USACE CERTIFIED WETLAND DELINEATOR WDOP93MD05100368  
ENVIRONMENTAL RESOURCES, INC.  
38173 DUPONT BLVD. - P.O. BOX 169 - SELBYVILLE, DE 19975  
PHONE: (302) 436-9637 E-MAIL: elaunay@ericonsultants.com

EQUITABLE OWNER'S CERTIFICATION:

I HEREBY CERTIFY THAT I AM THE EQUITABLE OWNER OF THE PROPERTY SHOWN AND DESCRIBED ON THIS PLAN, AND THAT THE SUBDIVISION SHOWN REPRESENTS MY ACT, AND THAT I DESIRE THE PROPERTY TO BE DEVELOPED AS SHOWN IN ACCORDANCE WITH ALL APPLICABLE LAWS, ORDINANCES AND REGULATIONS.  
I HEREBY CERTIFY THAT ALL CLEARING, GRADING, CONSTRUCTION AND/OR DEVELOPMENT WILL BE DONE PURSUANT TO THE APPROVED PLAN, AND THAT ALL RESPONSIBLE PERSONNEL INVOLVED IN THE LAND DISTURBING ACTIVITIES WILL HAVE A SEDIMENT AND STORMWATER MANAGEMENT CERTIFICATION FROM THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL. I HEREBY AUTHORIZE THE RIGHT OF ENTRY FOR PERIODIC ON SITE INSPECTIONS BY STATE OF DELAWARE, DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL COMPLIANCE PERSONNEL AND/OR AUTHORIZED AGENTS.

BOARDWALK DEVELOPMENT, LLC  
C/O JOSEPH REED  
317 REHOBOTH AVENUE  
REHOBOTH BEACH, DE 19971  
(302) 430-4060  
JREED@REMAX.NET



VICINITY MAP  
SCALE: 1" = 1 MILE

SITE DATA:

OWNER/DEVELOPER: BOARDWALK DEVELOPMENT, LLC  
C/O JOSEPH REED  
317 REHOBOTH AVENUE  
REHOBOTH BEACH, DE 19971

TAX MAP DEED REFERENCE: 2-34-17, PARCEL 165  
DB 4747 - PG 58  
PB 249 - PG 92

STATE INVESTMENT LEVEL: 3  
CURRENT ZONING: AR-1  
PROPOSED ZONING: GR-RPC  
EXISTING USE: VACANT FOREST LAND  
PROPOSED USE: SINGLE FAMILY DETACHED HOUSING

REQUIRED LOT SIZE: 60'  
MIN. WIDTH: 100'  
MIN. DEPTH: 7,500 SQ. FT.  
MIN. AREA:

BUILDING SETBACKS: 25'  
FRONT: 15'  
CORNER: 8'  
SIDE: 10'  
REAR:

\* REDUCED SETBACKS REQUESTED WITH RPC ZONING REQUEST

PROPOSED BUILDING HEIGHT: 42' MAX.

SITE AREA CALCULATIONS:

DEDICATION TO STATE OF DELAWARE	0.05± AC.
PRIVATE ROAD R.O.W.	2.67± AC.
LOTS	9.38± AC.
OPEN SPACE	9.21± AC. (43%)
TOTAL SITE AREA	21.32± AC.

OPEN SPACE CALCULATIONS:

WETLANDS (TIDAL)	0.48± AC.
WETLANDS (NON-TIDAL)	0.48± AC.
STORMWATER MANAGEMENT AREA	1.00± AC.
SANITARY EASEMENT	0.09± AC.
WATERFRONT COMMUNITY AREA	0.50± AC.
EXISTING FOREST TO REMAIN	6.66± AC.

PROPERTY IS PRESENTLY 100% FORESTED  
FOREST TO REMAIN 6.66± AC. (31% OF ENTIRE PARCEL)  
FOREST CLEARED 14.65± AC. (69% OF ENTIRE PARCEL)

PRESENTLY RECORDED LOTS: 66 (PB 2, PAGE 88)  
PRESENTLY RECORDED DENSITY: 3.10 DWELLING UNITS/ACRE  
PERMITTED RESIDENTIAL LOTS: 69  
PROPOSED RESIDENTIAL LOTS: 54  
PROPOSED DENSITY: 2.54 DWELLING UNITS/ACRE

WATER SUPPLY: TIDEWATER UTILITIES  
SEWAGE DISPOSAL: SUSSEX COUNTY

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 DATE

PRELIMINARY SITE PLAN

GR-RPC REZONING APPLICATION FOR  
WESTRIDGE SHORES  
RESIDENTIAL PLANNED COMMUNITY SITE PLAN

INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE

AXIOM  
ENGINEERING L.L.C.



18 CHESTNUT STREET  
GEORGETOWN, DE 19947  
(302) 855-0810  
FAX: 855-0812  
WWW.AXIOMENGINEERING.COM

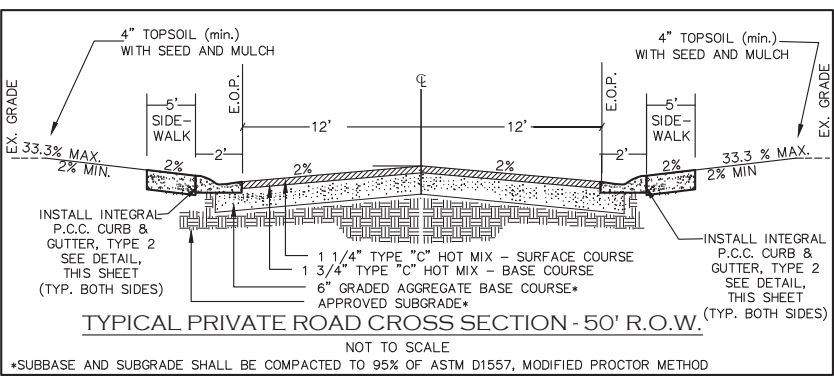
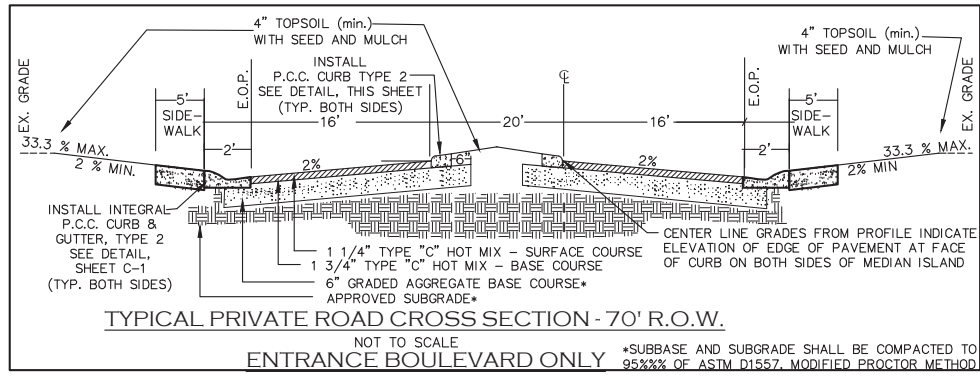
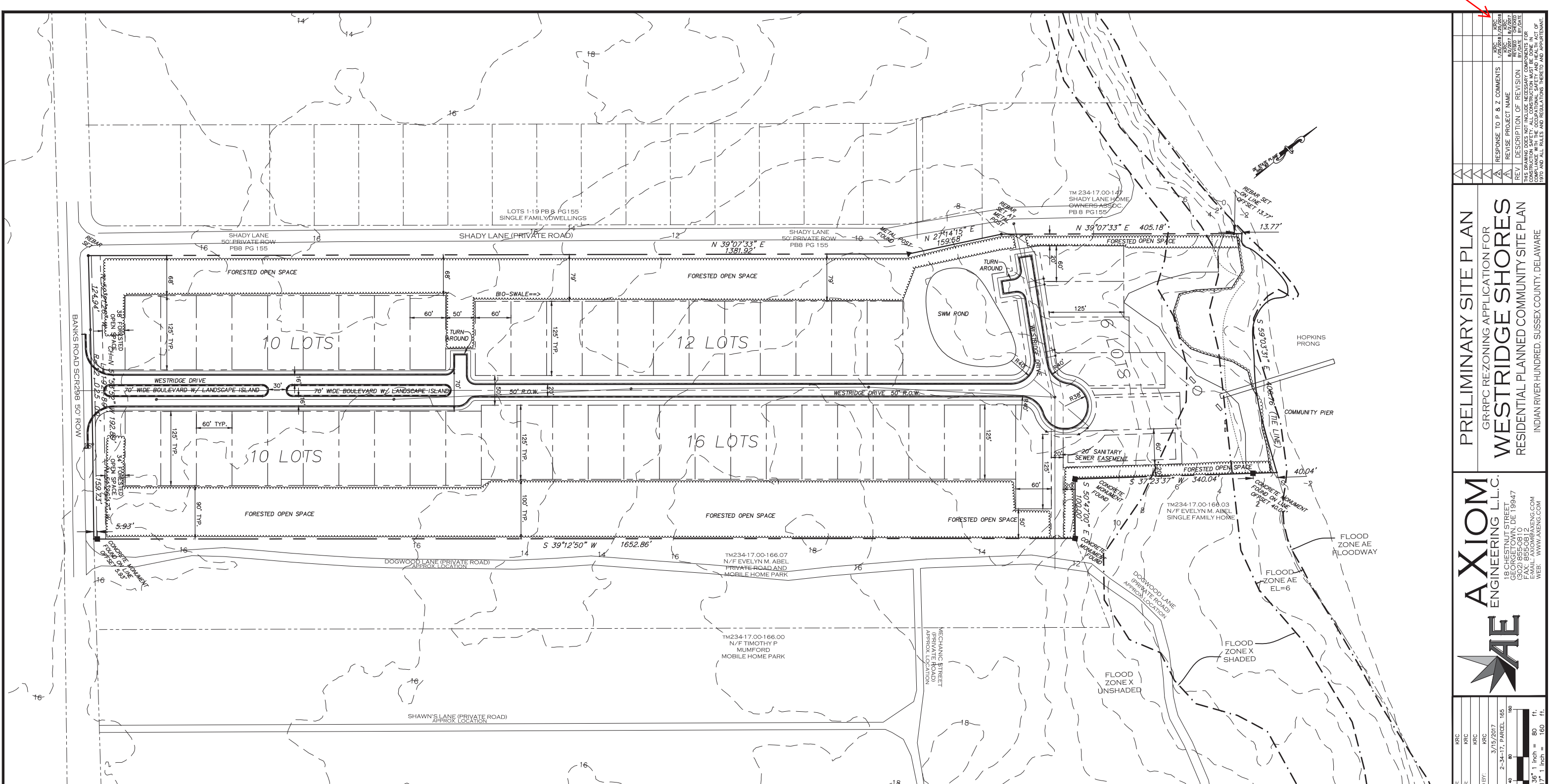
ENGINEER:	KRC
DESIGNER:	KRC
DRAWN BY:	KRC
CHECKED BY:	KRC
DATE:	3/15/2017
TAX MAP:	2-34-17, PARCEL 165



PROJECT NO:  
0233-1701

DRAWING:  
CZ-1

SHEET:  
1 OF 3



<b>PRELIMINARY SITE PLAN</b>	
GRPC REZONING APPLICATION FOR <b>WESTRIDGE SHORES</b> RESIDENTIAL PLANNED COMMUNITY SITE PLAN INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE	
<b>AXIOM ENGINEERING L.L.C.</b> 18 CHESTNUT STREET GEORGETOWN, DE 19647 TEL: 302.855.0810 FAX: 302.855.0812 WEB: WWW.AXIOM-ENG.COM	
ENGINEER: KRC	DESIGNER: KRC
DRAWN: KRC	CHECKED BY: KRC
DATE: 3/15/2017	TAX MAP: 2-34-17, PARCEL 165
11" x 17" 1 inch = 80 ft.	
PROJECT NO: 0233-1701	DRAWING: CZ-2
SHEET: 2 OF 3	
SEAL	







8

## 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**

north side of Banks Road (S.C.R. 298), 1/2 mile east of Rt.24

**Type of Conditional Use Requested:**

Tax Map #: 2-34-17, Parcel 165

Size of Parcel(s): 21.26 ac.

Current Zoning: AR-1

Proposed Zoning: GR/RPC

Size of Building: \_\_\_\_\_

Land Use Classification: Mixed Residential Areas

Water Provider: Tidewater

Sewer Provider: Sussex County

**Applicant Information**

Applicant Name: Boardwalk Development, LLC

Applicant Address: 28855 Lewes Georgetown Highway, Suite B

City: Lewes

State: DE

Zip Code: 19958

Phone #: (302) 430-4060

E-mail: joe@reedventures.net

**Owner Information**

Owner Name: Boardwalk Development, LLC

Owner Address: 28855 Lewes Georgetown Highway, Suite B

City: Lewes

State: DE

Zip Code: 19958

Phone #: (302) 430-4060

E-mail: joe@reedventures.net

**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.**
- ✓ **DelDOT 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: 10/8/21

**Signature of Owner**

  
\_\_\_\_\_

Date: 10/8/21

**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: \_\_\_\_\_

## SITE DATA:

OWNER/DEVELOPER:	BOARDWALK DEVELOPMENT, LLC C/O JOSEPH REED 28855 LEWES-GEORGETOWN HIGHWAY LEWES, DE 19958
TAX MAP	2-34-17, PARCEL 165
DEED REFERENCE	DB 4747 - PG 58 PB 249 - PG 92
STATE INVESTMENT LEVEL	3
CURRENT ZONING	GR
PROPOSED ZONING	GR-RPC
EXISTING USE	VACANT FOREST LANDS
PROPOSED USE	SINGLE FAMILY DETACHED HOUSING
REQUIRED LOT SIZE	
• MIN. WIDTH	60'
• MIN. DEPTH	100'
• MIN. AREA	7,500 SQ. FT.
BUILDING SETBACKS	
• FRONT	25'*
• CORNER	15'
• SIDE	8'*
• REAR	10'
* REDUCED SETBACKS REQUESTED WITH RPC ZONING REQUEST	
PROPOSED BUILDING HEIGHT	42' MAX.
<u>SITE AREA CALCULATIONS:</u>	
DEDICATION TO STATE OF DELAWARE	0.055± AC.
PRIVATE ROAD R.O.W.	2.670± AC.
LOTS	9.556± AC.
<u>OPEN SPACE</u>	<u>9.035± AC. (42%)</u>
TOTAL SITE AREA	21.316± AC.
<u>OPEN SPACE CALCULATIONS:</u>	
EMERGENT WETLANDS	0.479± AC.
PALUSTRINE FORESTED WETLANDS	0.478± AC.
WATERFRONT COMMUNITY AMMENITY AREA	0.500± AC.
STORMWATER MANAGEMENT AREA	1.000± AC.
EXISTING UPLAND FOREST TO REMAIN	6.488± AC.
<u>SANITARY EASEMENT</u>	<u>0.090± AC.</u>
TOTAL OPEN SPACE	9.035± AC
NET DEVELOPMENT AREA	15.946± AC. (75% OF GROSS ACREAGE)
PRESENTLY RECORDED LOTS	66 (PB 2, PAGE 88)
PRESENTLY RECORDED DENSITY	3.10 DWELLING UNITS/ACRE PER PB 2- PG 88
PERMITTED RESIDENTIAL LOTS	69
PROPOSED RESIDENTIAL LOTS	54
PROPOSED DENSITY	2.54 DWELLING UNITS/ACRE
WATER SUPPLY	TIDEWATER UTILITIES
SEWAGE DISPOSAL	SUSSEX COUNTY



NOTES:

1. 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.
2. FOREST BUFFERS SHALL PRIMARILY CONSIST OF EXISTING FOREST COVER TO BE RETAINED. FINAL SITE PLAN APPROVAL SHALL INCLUDE A FOREST BUFFER PLAN PREPARED BY A CERTIFIED FORESTER OR REGISTERED LANDSCAPE ARCHITECT, IN ACCORDANCE WITH COUNTY CODE SECTION 99-24.
3. ACCESS TO LOTS SHALL BE PROVIDED FROM THE SUBDIVISION STREETS PROPOSED WITH THIS PLAN. NO DIRECT ACCESS TO PUBLIC STREETS IS PROPOSED EXCEPT THE ENTRANCES SPECIFICALLY SHOWN ON THIS PLAN.
4. FLOODPLAIN ZONE BOUNDARIES SHOWN WERE BASED UPON FLOOD INSURANCE RATE MAP (FIRM) NUMBER 10005C0343 K, DATED MARCH 16, 2015.
5. THE BOUNDARY AND WETLAND LOCATION INFORMATION SHOWN ON THIS PLAT WAS TAKEN FROM A FIELD SURVEY PREPARED BY AXIOM ENGINEERING, LLC IN FEBRUARY 2017. TOPOGRAPHIC INFORMATION WAS OBTAINED BY A FIELD SURVEY BY AXIOM ENGINEERING IN MARCH 2022.
6. 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.
7. 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.
8. ALL FIRE LANES, FIRE HYDRANTS, AND FIRE DEPARTMENT CONNECTIONS SHALL BE MARKED IN ACCORDANCE WITH THE STATE FIRE PREVENTION REGULATIONS.
9. ALL ENTRANCES SHALL CONFORM TO DELDOT'S DEVELOPMENT COORDINATION MANUAL AND SHALL BE SUBJECT TO ITS APPROVAL.
10. SHRUBBERY, PLANTINGS, SIGNS AND/OR OTHER VISUAL BARRIERS THAT COULD OBSTRUCT THE SIGHT DISTANCE OF A DRIVER PREPARING TO ENTER THE ROADWAY ARE PROHIBITED WITHIN THE DEFINED DEPARTURE SIGHT TRIANGLE AREA ESTABLISHED ON THIS PLAN.
11. UPON COMPLETION OF THE CONSTRUCTION OF THE SIDEWALK OR SHARED-USE PATH ACROSS THIS PROJECT'S FRONTAGE AND PHYSICAL CONNECTION TO ADJACENT EXISTING FACILITIES, THE DEVELOPER, THE PROPERTY OWNERS OR BOTH ASSOCIATED WITH THIS PROJECT, SHALL BE RESPONSIBLE TO REMOVE ANY EXISTING ROAD TIE-IN CONNECTIONS LOCATED ALONG ADJACENT PROPERTIES, AND RESTORE THE AREA TO GRASS. SUCH ACTIONS SHALL BE COMPLETED AT DELDOT'S DISCRETION, AND IN CONFORMANCE WITH DELDOT'S "SHARED-USE PATH AND/OR SIDEWALK TERMINATION POLICY."
12. SUBDIVISION STREETS CONSTRUCTED WITHIN THE LIMITS OF THE RIGHT-OF-WAY ARE PRIVATE AS SHOWN ON THIS PLAN AND ARE TO BE MAINTAINED BY THE DEVELOPER, PROPERTY OWNERS OR BOTH. THE STATE OF DELAWARE ASSUMES NO MAINTENANCE RESPONSIBILITIES FOR THE FUTURE MAINTENANCE OF THESE STREETS.
13. AT SUCH TIME THE SHARED-USE PATH IS INSTALLED ALONG THE PROPERTY FRONTAGE OF SCR 298, THE SHARED-USE PATH SHALL BE THE RESPONSIBILITY OF THE DEVELOPER, THE PROPERTY OWNERS OR BOTH WITHIN THIS SUBDIVISION. THE STATE OF DELAWARE ASSUMES NO RESPONSIBILITY FOR THE FUTURE MAINTENANCE OF THE SHARED-USE PATH.
14. THERE ARE NO TILLED AGRICULTURAL LANDS WITHIN 300' OF THE SUBJECT PROPERTY.
15. DRAWINGS CZ-1, CZ-2, AND CZ-3, WHEN CONSTITUTE A "SKETCH PLAN" FOR THE PURPOSES OF SECTION 115-217.B OF THE ZONING ORDINANCE. IF THE PROPOSED CHANGE OF ZONE TO GR-RPC IS APPROVED BY COUNTY COUNCIL, A PRELIMINARY AND FINAL SITE PLAN WILL BE REQUIRED TO BE SUBMITTED AND APPROVED.

CONDITIONS OF APPROVAL:

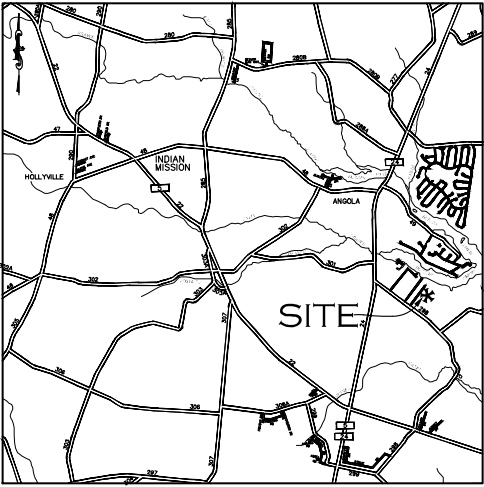
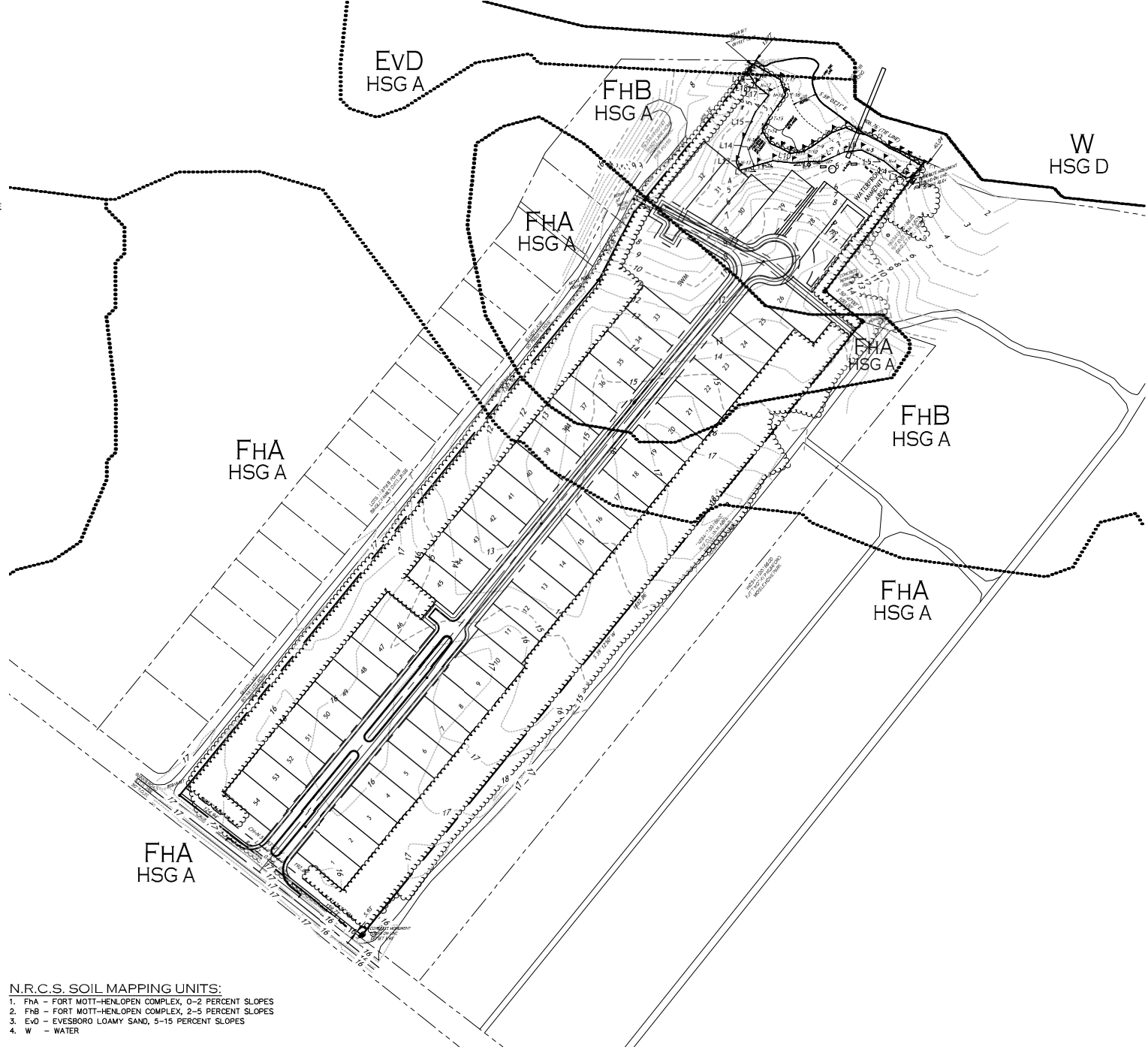
- A. THE MAXIMUM NUMBER OF LOTS SHALL NOT EXCEED 54 SINGLE FAMILY LOTS.
- B. A HOMEOWNER'S ASSOCIATION SHALL BE FORMED TO PROVIDE FOR THE PERPETUAL MAINTENANCE, REPAIR AND REPLACEMENT OF BUFFERS, STORMWATER MANAGEMENT FACILITIES, STREETS, AMENITIES AND OTHER COMMON AREAS.
- C. ALL ENTRANCES, INTERSECTIONS, 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. HE RPC SHALL BE SERVED BY CENTRAL WATER.
- F. TORMWATER MANAGEMENT AND EROSION AND SEDIMENTATION CONTROL FACILITIES SHALL BE CONSTRUCTED IN ACCORDANCE WITH ALL APPLICABLE STATE AND COUNTY REQUIREMENTS. THESE FACILITIES SHALL BE OPENED IN A MANNER WHICH IS CONSISTENT WITH BEST MANAGEMENT PRACTICES.
- G. INTERIOR STREET DESIGN SHALL MEET OR EXCEED SUSSEX COUNTY'S STREET DESIGN REQUIREMENTS. THERE SHALL ALSO BE SIDEWALKS ON BOTH SIDES OF ALL STREETS WITHIN THE RPC.
- H. NO WETLANDS SHALL BE INCLUDED WITHIN ANY INDIVIDUAL LOTS. ANY WETLAND BUFFERS REQUIRED BY SECTION 115-93(B) SHALL BE SHOWN ON THE FINAL SITE PLAN.
- I. AS STATED BY THE APPLICANT, ALL AMENITIES SHALL BE COMPLETED PRIOR TO THE ISSUANCE OF THE 27TH BUILDING PERMIT.
- J. A 20 FOOT WIDE VEGETATED BUFFER SHALL BE ESTABLISHED ALONG THE PERIMETER OF THE SITE. THIS MAY INCLUDE THE EXISTING TREES. TREES SHALL BE LEFT TO THE EXTENT POSSIBLE AND REMOVAL SHALL BE MINIMIZED NEXT TO THE HOPKINS PRONG.
- K. IF REQUESTED BY THE LOCAL SCHOOL DISTRICT, A SCHOOL BUS STOP SHALL BE PROVIDED. THE LOCATION OF THE BUS STOP AREA SHALL BE SHOWN ON THE FINAL SITE PLAN.
- L. ROAD NAMING AND ADDRESSING SHALL BE SUBJECT TO THE REVIEW AND APPROVAL OF THE SUSSEX COUNTY MAPPING AND ADDRESSING DEPARTMENT.
- 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. 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.
- O. THE FINAL SITE PLAN SHALL BE SUBJECT TO THE REVIEW AND APPROVAL OF THE PLANNING AND ZONING COMMISSION.

LEGEND

EX. PROPERTY LINE	---	CONCRETE MONUMENT FOUND	□
PROPOSED SUBDIVISION LINE	---	IRON PIPE FOUND	•
EX. ADJACENT PROPERTY LINES	---	IRON PIPE SET	•
EX. 404 WETLANDS		BENCHMARK	•
EX. MINOR CONTOUR	---22---	FEMA FLOODPLAIN BOUNDARY	---
EX. MAJOR CONTOUR	---20---	PR. CONTOUR	---
EX. BUILDING RESTRICTION LINES	---	PR. BUILDING RESTRICTION LINES	---
EX. ROAD CENTERLINE	---	PR. ROAD CENTERLINE	---
EX. EASEMENT	---	PR. EASEMENT	---
EX. BUILDING		PR. BUILDING	---
EX. SWALE	---	PR. SWALE	---
EX. SIDEWALK	---	PR. SIDEWALK	---
EX. CURB	---	PR. CURB	---
EX. STORM SEWER	---	PR. STORM SEWER CL.	---
EX. SANITARY SEWER	---	PR. SANITARY SEWER	---
EX. WOODS LINE	---	PR. WOODS LINE	---
EX. WATER LINE	---	PR. WATER LINE	---
EX. WELL	---	PR. WELL	---
TRAFFIC SIGN	---	PR. TRAFFIC SIGN	---
EX. ZONING BOUNDARY	---	PR. ZONING BOUNDARY	---
EX. ELECTRIC LINES UTILITIES	---	PR. ELECTRIC LINES UTILITIES	---
EX. UTILITY POLES/LIGHT POLES	---	PR. UTILITY POLES/LIGHT POLES	---
EX. FENCE	---	PR. FENCE	---
EX. SPOT ELEVATION	---	PR. SPOT ELEVATION	---
PR. DELDOT ENTRANCE PAVING	---	PR. DELDOT ENTRANCE PAVING	---
PR. ROTOMILL 1 1/4" & OVERLAY	---	PR. ROTOMILL 1 1/4" & OVERLAY	---
SOIL BORING	---	PR. SOIL BORING	---
TEST PIT	---	PR. TEST PIT	---
EX. STREAM	---	PR. EX. STREAM	---
DRAINAGE DIVIDES	---	PR. DRAINAGE DIVIDES	---
TIME OF CONCENTRATION	---	PR. TIME OF CONCENTRATION	---

# WESTRIDGE SHORES

## RESIDENTIAL PLANNED COMMUNITY



VICINITY MAP  
SCALE: 1" = 1 MILE

SITE DATA:

OWNER/DEVELOPER:	BOARDWALK DEVELOPMENT, LLC C/O JOSEPH REED 28855 LEWES-GEORGETOWN HIGHWAY LEWES, DE 19958
TAX MAP:	2-34-17, PARCEL 165
DEED REFERENCE:	DB 4747 - PG 58 PB 249 - PG 92
STATE INVESTMENT LEVEL:	3
CURRENT ZONING:	GR
PROPOSED ZONING:	GR-RPC
EXISTING USE:	VACANT FOREST LANDS
PROPOSED USE:	SINGLE FAMILY DETACHED HOUSING
REQUIRED LOT SIZE:	60'
MIN. WIDTH:	100'
MIN. DEPTH:	7,500 SQ. FT.
MIN. AREA:	
BUILDING SETBACKS:	
FRONT:	25'
CORNER:	15'
SIDE:	8'
REAR:	10'
* REDUCED SETBACKS REQUESTED WITH RPC ZONING REQUEST	
PROPOSED BUILDING HEIGHT:	42' MAX.
SITE AREA CALCULATIONS:	
DEDICATION TO STATE OF DELAWARE:	0.055± AC.
PRIVATE ROAD R.O.W.:	2.670± AC.
LOTS:	9.556± AC.
OPEN SPACE:	9.035± AC. (42%)
TOTAL SITE AREA:	21.316± AC.
OPEN SPACE CALCULATIONS:	
EMERGENT WETLANDS:	0.479± AC.
PALUSTRINE FORESTED WETLANDS:	0.478± AC.
WATERFRONT COMMUNITY AMMUNITY AREA:	0.500± AC.
STORMWATER MANAGEMENT AREA:	1.000± AC.
EXISTING UPLAND FOREST TO REMAIN:	6.488± AC.
SANITARY EASEMENT:	0.090± AC.
TOTAL OPEN SPACE:	9.035± AC.
NET DEVELOPMENT AREA:	15.946± AC. (75% OF GROSS ACREAGE)
PRESENTLY RECORDED LOTS:	66 (PB 2, PAGE 88)
PRESENTLY RECORDED DENSITY:	3.10 DWELLING UNITS/ACRE PER PB 2- PG 88
PERMITTED RESIDENTIAL LOTS:	69
PROPOSED RESIDENTIAL LOTS:	54
PROPOSED DENSITY:	2.54 DWELLING UNITS/ACRE
WATER SUPPLY:	TIDewater 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 SUBDIVISION SHOWN REPRESENTS MY ACT, AND THAT I DESIRE THE PROPERTY TO BE DEVELOPED AS SHOWN IN ACCORDANCE WITH ALL APPLICABLE LAWS, ORDINANCES AND REGULATIONS. I HEREBY CERTIFY THAT ALL CLEARING, GRADING, CONSTRUCTION AND/OR DEVELOPMENT WILL BE DONE PURSUANT TO THE APPROVED PLAN, AND THAT ALL RESPONSIBLE PERSONNEL INVOLVED IN THE LAND DISTURBING ACTIVITIES WILL HAVE A SEDIMENT AND STORMWATER MANAGEMENT CERTIFICATION FROM THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL. I HEREBY AUTHORIZE THE RIGHT OF ENTRY FOR PERIODIC ON SITE INSPECTIONS BY STATE OF DELAWARE, DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL COMPLIANCE PERSONNEL AND/OR AUTHORIZED AGENTS.

WETLANDS CERTIFICATION:

I, EDWARD M. LAUNAY, PWS, 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, 9-36-1990, 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 MAP NO. SUSSEX-095, THERE ARE NO STATE REGULATED WETLANDS ON THE SITE.

EDWARD M. LAUNAY, PWS NO. 875 - SOCIETY OF WETLAND SCIENTISTS  
USACE CERTIFIED WETLAND DELINEATOR WDCP3MBD0510036B  
ENVIRONMENTAL RESOURCES, INC.  
38173 DUPONT BLVD. - P.O. BOX 169 - SELBYVILLE, DE 19975  
PHONE: (302) 436-9637 E-MAIL: elauhay@ericonsultants.com

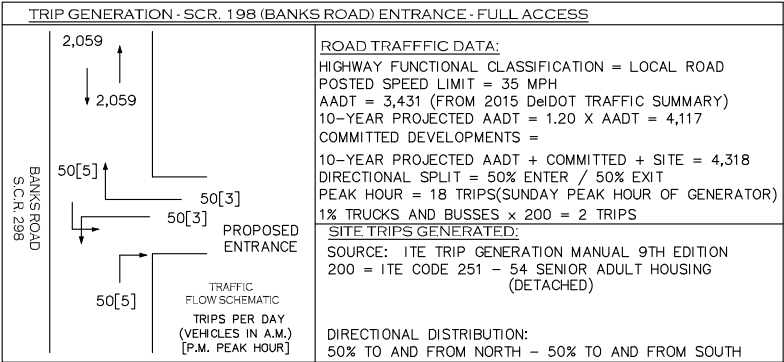
ENGINEER'S CERTIFICATION:

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 DATE

N.R.C.S. SOIL MAPPING UNITS:

1. FFA - FORT MOTT-HENLOPEN COMPLEX, 0-2 PERCENT SLOPES
2. FHB - FORT MOTT-HENLOPEN COMPLEX, 2-5 PERCENT SLOPES
3. EVD - EVESBORO LOAMY SAND, 5-15 PERCENT SLOPES
4. W - WATER



ROAD TRAFFIC DATA:

HIGHWAY FUNCTIONAL CLASSIFICATION = LOCAL ROAD  
POSTED SPEED LIMIT = 35 MPH  
AADT = 3,431 (FROM 2015 DELDOT TRAFFIC SUMMARY)  
10-YEAR PROJECTED AADT = 1,20 X AADT = 4,117  
COMMITTED DEVELOPMENTS =  
10-YEAR PROJECTED AADT + COMMITTED + SITE = 4,318  
DIRECTIONAL SPLIT = 50% ENTER / 50% EXIT  
PEAK HOUR = 18 TRIPS(SUNDAY PEAK HOUR OF GENERATOR)  
1% TRUCKS AND BUSES X 200 = 2 TRIPS  
SITE TRIPS GENERATED:  
SOURCE: ITE TRIP GENERATION MANUAL 9TH EDITION  
200 = ITE CODE 251 - 54 SENIOR ADULT HOUSING (DETACHED)

DIRECTIONAL DISTRIBUTION:  
50% TO AND FROM NORTH - 50% TO AND FROM SOUTH

SKETCH PLAN COVER SHEET

RPC SKETCH PLAN FOR  
**WESTRIDGE SHORES**  
SCR 298 - BANKS ROAD  
INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE

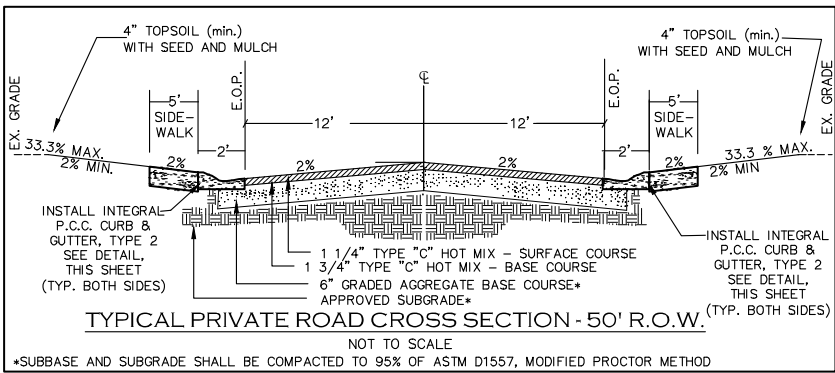
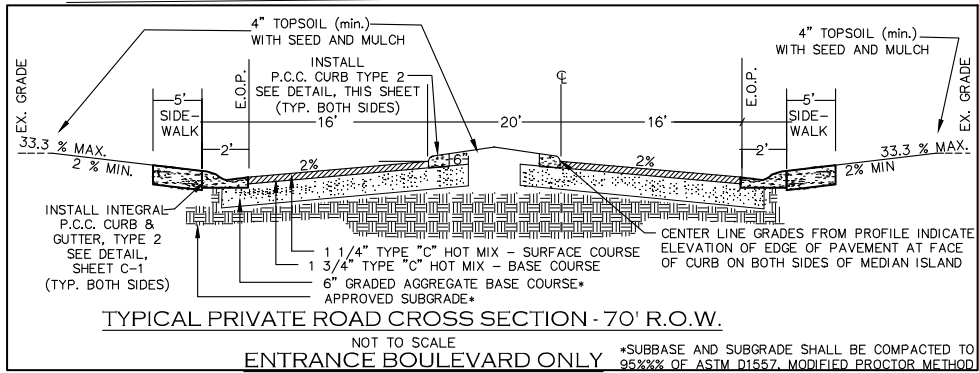
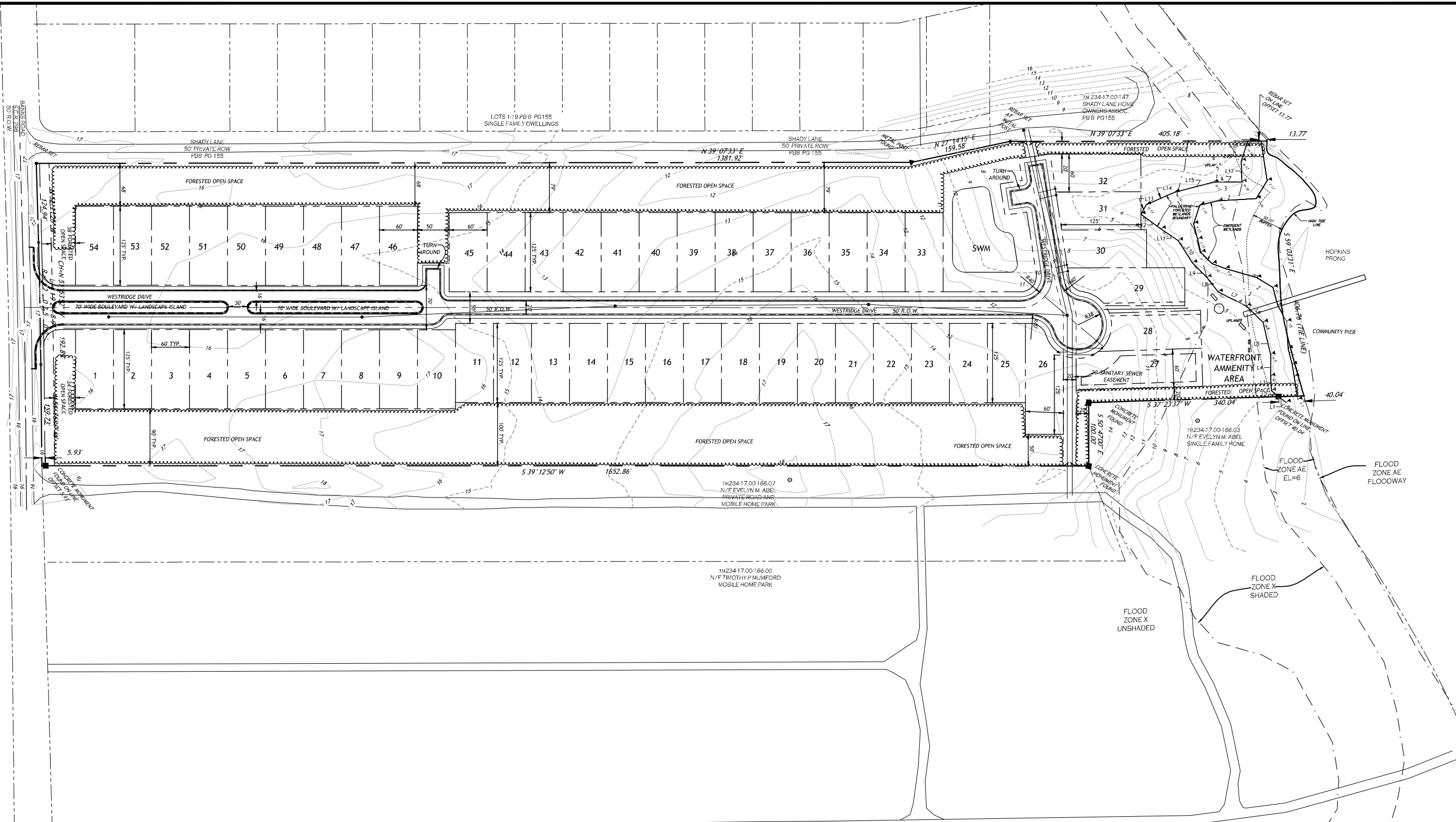
**AXIOM ENGINEERING L.L.C.**  
18 CHESTNUT STREET  
GEORGETOWN, DE 19947  
FAX: 855-0812  
WWW.AXIOM-ENG.COM

**AE**

ENGINEER: KRC  
DESIGNER: KRC  
DRAFTER: KRC  
CHECKED BY: KRC  
DATE: 3/15/2017  
TAX MAP: 2-34-17, PARCEL 165

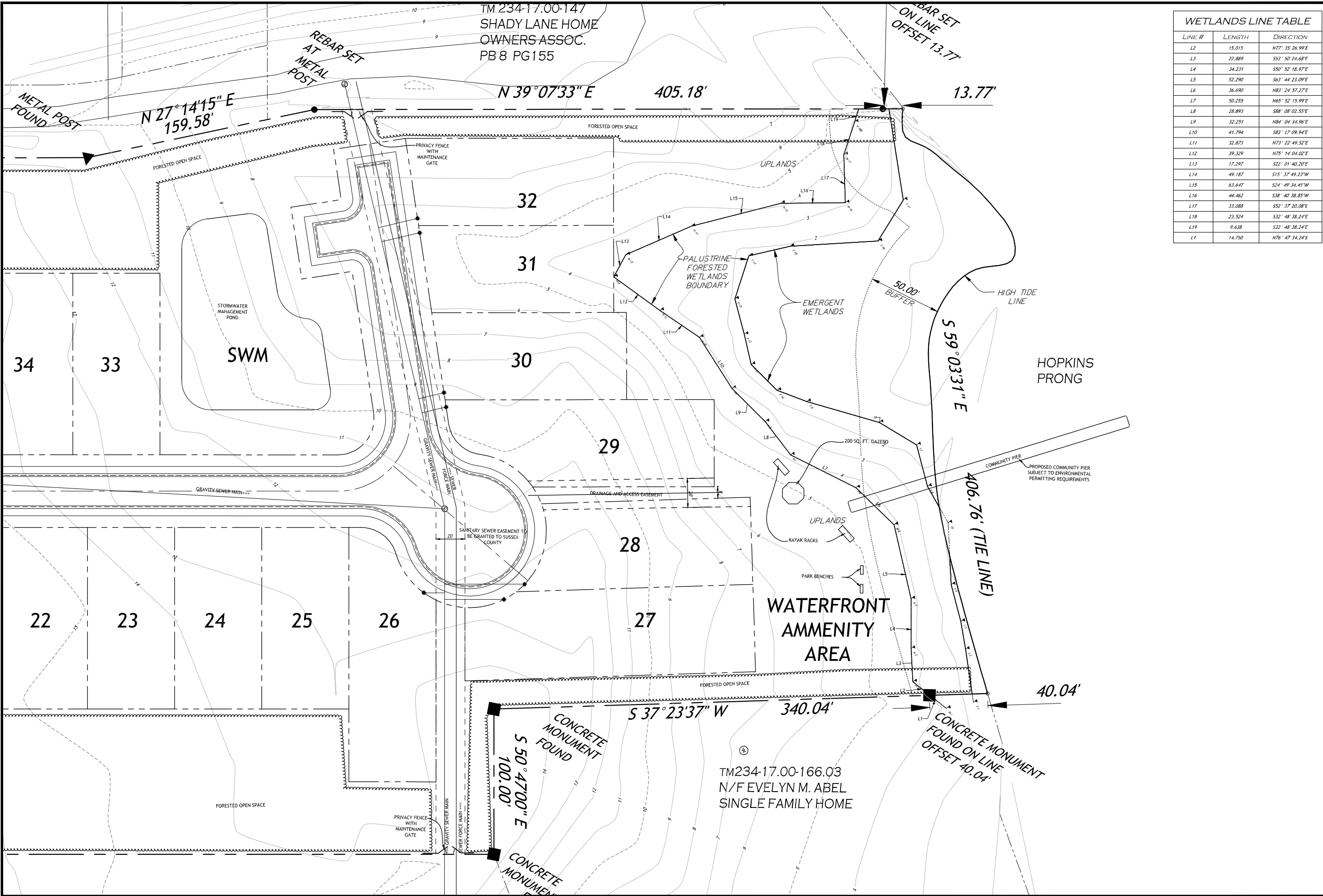
SEAL

PROJECT NO: 0233-1701  
DRAWING: CZ-1  
SHEET: 1 OF 3



PROJECT NO. 0233-1701		DRAWING CZ-2		SHEET 2 OF 3	
ENGINEER KRC		DESIGNER KRC		DRAFTER KRC	
CHECKED BY KRC		DATE 3/15/2017		TAX MAP 2-34-17, PARCEL 165	
No. 14533		Seal		11" x 17" 1 inch = 160 ft.	
PC SKETCH PLAN FOR <b>WESTRIDGE SHORES</b> SCR 298 - BANKS ROAD INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE					
<b>AXIOM</b> ENGINEERING L.L.C. 18 CHESTNUT STREET GEORGETOWN, DE 19947 TEL: 855-0812 FAX: 855-0812 WEB: WWW.AXIOM-ENG.COM					
UPDATE TOPOGRAPHY KRC 3/15/2017 RESPONSE TO P & Z COMMENTS KRC 3/15/2017 REVISE PROJECT NAME KRC 3/15/2017 REV DESCRIPTION OF REVISION KRC 3/15/2017 THIS DRAWING DOES NOT INCLUDE NECESSARY COMPONENTS FOR COMPLIANCE WITH THE OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970 AND ALL RULES AND REGULATIONS THEREOF AND APPROPRIATE.					





WETLANDS LINE TABLE		
LINE #	LENGTH	DIRECTION
L2	15.015	N77° 35' 26.99"E
L3	22.889	S53° 50' 24.68"E
L4	34.231	S50° 52' 18.97"E
L5	52.290	S63° 44' 23.09"E
L6	36.690	N83° 24' 57.27"E
L7	50.255	N65° 52' 15.99"E
L8	28.893	S88° 08' 02.55"E
L9	32.251	N84° 04' 34.96"E
L10	41.794	S83° 17' 09.94"E
L11	32.873	N73° 22' 49.52"E
L12	39.329	N75° 14' 04.02"E
L13	17.297	S22° 01' 40.20"E
L14	49.187	S15° 37' 49.23"W
L15	63.647	S24° 49' 34.41"W
L16	44.462	S38° 40' 38.85"W
L17	33.088	S52° 37' 20.08"E
L18	23.524	S32° 48' 38.24"E
L19	9.638	S32° 48' 38.24"E
L1	14.750	N76° 47' 34.24"E

PROJECT NO:  
0233-1701

DRAWING:  
CZ-3

SHEET:  
3 OF 3

ENGINEER:  
DESIGNER:  
DRAFTER:  
CHECKED BY:  
DATE:  
TAX MAP:

KRC  
KRC  
KRC  
KRC  
3/15/2017  
2-34-17, PARCEL 165

11" x 17" = 1 inch = 160 ft.

24" x 36" = 1 inch = 80 ft.

SEAL

STATE OF DELAWARE  
COUNTY OF SUSSEX  
No. 14533  
Professional Engineer  
Date: 3/15/2017

SKETCH PLAN

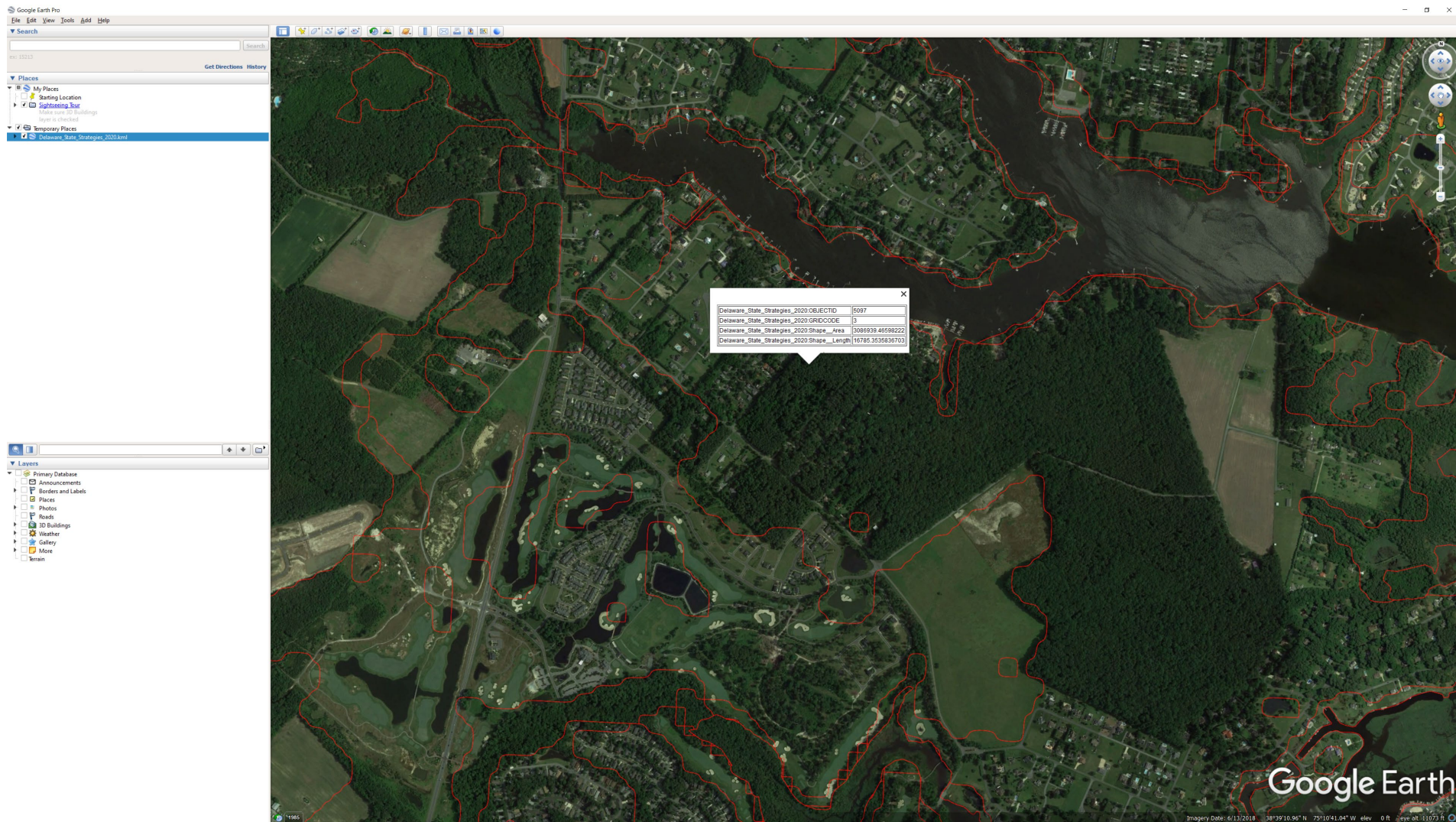
RPC SKETCH PLAN FOR  
WESTRIDGE SHORES  
SCR 298 - BANKS ROAD  
INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE

AXIOM  
ENGINEERING L.L.C.

18 CHESTNUT STREET  
GEORGETOWN, DE 19947  
(302) 855-0810  
FAX: 855-0812  
WWW.AXIOM-ENG.COM

9





State Strategies Level 3 mapping

10

June 29, 2017

Office of State Planning Coordination  
122 William Penn Street - Suite 302  
Dover, DE 19901

Attn: Constance C. Holland, AICP

RE: PLUS review 2017-05-04; Creekridge RPC

Dear Ms. Holland:

Axiom Engineering is in receipt of comments resulting from our May 24, 2017 meeting with State agency planners. Comments received are shown in black, Axiom Engineering's responses are shown underlined and printed in red.

**Code Requirements/Agency Permitting Requirements**

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

- The site access on Banks Road (Sussex Road 298) must be designed and built in accordance with DelDOT's Development Coordination Manual (formerly the Standards and Regulations for Subdivision Streets and State Highway Access), which is available at <http://www.deldot.gov/information/business/subdivisions/changes/index.shtml>.
- Per Section 2.2.2.1 of the Development Coordination 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. DelDOT anticipates that the proposed development would generate 182 vehicle trip ends per day on weekdays (somewhat less than the 200 trips on the PLUS application) and 15 vehicle trip ends during the weekday evening peak hour of Banks Road. Therefore the proposed development does not meet those warrants and a TIS is not required.

Thank you for acknowledging that the project will not require a TIS.

- Per Section 2.3.2 of the Development Coordination Manual, DelDOT may require a Traffic Operational Analysis (TOA) for a development generating 200 or more vehicle trip ends per day if they identify a potential problem in the operation of a site access. Because DelDOT anticipates that the proposed development would generate 182 vehicle trip ends per day on weekdays (somewhat less than the 200 trips on the PLUS application) a TOA will not be required.



Thank you for acknowledging that the project will not require a TOA.

- 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 [http://www.deldot.gov/information/business/subdivisions/Meeting\\_Request\\_Form.pdf](http://www.deldot.gov/information/business/subdivisions/Meeting_Request_Form.pdf). DelDOT anticipates having more detailed comments to offer at that time.

Acknowledged.

- As necessary, in accordance with Section 3.2.5 and Figure 3.2.5-a of the Manual, DelDOT will require dedication of right-of-way along the site's frontage on Banks Road. By this regulation, this dedication is to provide a minimum of 30 feet of right-of-way from the right-of-way centerline on Banks 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."**

Based upon out field survey, the the project will require a 5' dedication.

- 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 Banks 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 to the State of Delaware, as per this plat."**

The required permanent easement will be included on the plan.

- As per the Delaware Strategies for State Policies and Spending, this development is primarily in Investment Level 3. Referring to Section 3.5.4.2.A of the Manual, developments in Level 3 and 4 Areas are required to install a sidewalk or Shared Use Path if the project abuts to an existing facility, which this one does not. If the project does not abut to an existing facility, it will be at the Subdivision Engineer's discretion. No fee in lieu of construction will be required. The requirement or lack thereof should be addressed at the Pre-Submittal Meeting mentioned above but it is likely that DelDOT will require a Shared Use Path.

There are no adjacent sidewalks or Shared Use Paths on Banks Road. The applicant requests that this requirement be waived.

- In accordance with Section 3.8 of the Development Coordination 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 Banks Road.

Acknowledged.



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

**Executive Summary**

Development of this parcel will result in increased impervious surface and new sources of greenhouse gas emissions. Opportunities exist to reduce the environmental impact on-site through appropriate use of pollution control strategies, reduced tree clearing and nature-based infrastructure. DNREC would like to see increased buffers and considerations of the existing flood plain and wellhead protection area. DNREC has outlined a number of best management practices to assist in protecting these resources and the overall health of the community.

The State of Delaware is threatened by climate change and has a goal of reducing greenhouse gas emissions by 30 percent by 2030. Appropriate development that provides access to public transportation, opportunities to walk and bike to shopping and recreation, and that employs energy efficient building standards are among key strategies to meet these goals. We encourage the use of high performance building standards and consideration of alternative energy sources to promote clean sustainable energy and reduce greenhouse gas emissions. This could mean siting the buildings to take advantage of solar and geothermal systems, and/or including infrastructure for electric vehicle charging stations (funding assistance may be found at [www.de.gov/cleantransportation](http://www.de.gov/cleantransportation)). It is further recommended that an abundant use of native vegetation and shade trees throughout the landscape, as well as pervious pavement and green infrastructure, where practicable, to absorb carbon dioxide, protect water quality and provide relief to residents on hot days.

The following pages provide information about applicable regulations and detailed recommendations associated with this project, from various DNREC Divisions. DNREC would like to be a partner in creating appropriate development that protects and highlights the environment as a natural amenity of the landscape. The Department has resources and expertise that are available to help make this a reality, often at no expense to the landowner.

**Water Quality and TMDLs.**

- The project is located in the low nutrient reduction zone of the greater Inland Bays watershed. In this watershed, Total Maximum Daily Load (TMDL) pollutant reduction targets call for a 40 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for a 40 percent reduction (17 percent for marine waters) in bacteria from baseline conditions. A TMDL is the maximum level of pollution allowed for a given pollutant below which a “water quality limited waterbody” can assimilate and still meet State water quality standards (e.g., dissolved oxygen, nutrients, and bacteria; *State of Delaware Surface Water Quality Standards, as amended July 11, 2004*) to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. Please view the following web link for further information on the regulatory requirements and technical analysis involved in the development of the specific TMDLs:

<http://www.dnrec.delaware.gov/swc/wa/Pages/WatershedAssessmentTMDLs.aspx>

- The Inland Bays Pollution Control Strategy (PCS) and the accompanying regulations can be reviewed here:  
<http://regulations.delaware.gov/documents/November2008c.pdf>.

Background information about the PCS with guidance documents and mapping tools can be retrieved here:

[http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/ib\\_pcs.htm](http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/ib_pcs.htm)

Sussex Conservation District procedures shall be followed in the design of the stormwater management system.

- A nutrient management plan is required under the *Delaware Nutrient Management Law* (3 *Del.C.*, Chapter 22) for all persons or entities who apply nutrients to lands or areas of open space in excess of 10 acres. This project's open space may exceed this 10-acre threshold. Please contact the Delaware Nutrient Management Program at (302) 739-4811 for further information concerning compliance requirements, or, view additional information here: <http://dda.delaware.gov/nutrients/index.shtml>

The project will not have nutrients applied to 10 acres of open space, no Nutrient Management plan is required.

### **Flood Management**

- The topography on the site plan shows one lot fully below elevation 6 as well as portions of several other lots. This lot is not designated in the floodplain per FEMA's effective floodplain boundary. Sussex County's floodplain ordinance does require land below the base flood elevation to be permitted as if it were in the floodplain. Any development that occurs on land below the base flood elevation would have to meet the County's floodplain regulations. DNREC We discourage filling these naturally occurring flood fringe areas as it has the unintended consequence of pushing floodwater somewhere else and adversely affecting adjacent property. DNREC encourages leaving the low lying areas undeveloped so flood water has a place to go and doesn't put structures and the public at risk.

Construction below the base flood elevation shall be completed in accordance with Sussex County Floodplain Ordinances and the requirements of the Federal Emergency Management Agency.

### **Water Supply**

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

- All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take four weeks to process, which allows the necessary time for technical review and advertising.
- A Potential Contamination Source exists in the area, and any well permit applications will undergo a detailed review that may increase turnaround time and may require site specific conditions/recommendations.
  - Baywood Spray Irrigation located within 1000 feet of the proposed project

The developer intends to connect to central water from Tidewater Utilities. It is not anticipated that any wells will be required on the project site.

### **Source Water Protection**

- DNREC has determined that the project falls partially within a wellhead protection area for Sussex County (see map). The wellhead protection area protects a well owned by Shawn's Hideaway.
- Wellhead protection areas are surface and subsurface areas surrounding a public water supply well where land use activities or impervious cover may adversely affect the quantity and quality of ground water moving toward such wells.
  - DNREC appreciates the developer's efforts to not develop within the wellhead.

The applicant appreciates DNREC's acknowledgement that the project has been proposed with no impact to the wellhead protection area.

PLUS 2017-05-04 - Creekridge RPC



Legend

- PLUS Project Location
- Wethead Protection Area

April January 2017. This map is provided by the DWR solely for display and reference purposes and is subject to change without notice. DWR will not be held responsible for the assumed accuracy contained in the map or for the use of the map for any other purpose.



## Sediment and Erosion Control/Stormwater Management

- A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. 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.

## Air Quality

- The applicant shall comply with all applicable Delaware air quality regulations. Please note that the following regulations in Table 1 – Potential Regulatory Requirements may apply to your project:

<b>Table 1: Potential Regulatory Requirements</b>	
<b>Regulation</b>	<b>Requirements</b>
<b>7 DE Admin. Code 1106</b> - Particulate Emissions from Construction and Materials Handling	<ul style="list-style-type: none"><li>• Use dust suppressants and measures to prevent transport of dust off-site from material stockpile, material movement and use of unpaved roads.</li><li>• Use covers on trucks that transport material to and from site to prevent visible emissions.</li></ul>
<b>7 DE Admin. Code 1113</b> – Open Burning	<ul style="list-style-type: none"><li>• Prohibit open burns statewide during the Ozone Season from May 1-Sept. 30 each year.</li><li>• Prohibit the burning of land clearing debris.</li><li>• Prohibit the burning of trash or building materials/debris.</li></ul>
<b>7 DE Admin. Code 1135</b> – Conformity of General Federal Actions to the State Implementation Plan	<ul style="list-style-type: none"><li>• Require, for any “federal action,” a conformity determination for each pollutant where the total of direct and indirect emissions would equal or exceed any of the de minimus levels (See Section 3.2.1)</li></ul>
<b>7 DE Admin. Code 1141</b> – Limiting Emissions of Volatile Organic Compounds from Consumer and	<ul style="list-style-type: none"><li>• Use structural/ paint coatings that are low in Volatile Organic Compounds.</li><li>• Use covers on paint containers when paint containers are not in use.</li></ul>

Commercial Products	
<b>7 DE Admin. Code 1144</b> – Control of Stationary Generator Emissions	<ul style="list-style-type: none"> <li>• Ensure that emissions of nitrogen oxides (NO<sub>x</sub>), non-methane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO<sub>2</sub>), carbon monoxide (CO), and carbon dioxide (CO<sub>2</sub>) from emergency generators meet the emissions limits established. (See section 3.2).</li> <li>• Maintain recordkeeping and reporting requirements.</li> </ul>
<b>7 DE Admin. Code 1145</b> – Excessive Idling of Heavy Duty Vehicles	<ul style="list-style-type: none"> <li>• Restrict idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes.</li> </ul>

For a complete listing of all Delaware applicable regulations, please look at our website: <http://www.awm.delaware.gov/AQM/Pages/AirRegulations.aspx>.

### Acknowledged.

### **Tank Management**

- If a release of a Regulated Substance occurs at the proposed project site, compliance of *7 Del.C., Chapter 60*; *7 Del.C., Chapter 74* and *DE Admin. Code 1351*, State of Delaware Regulations Governing Underground Storage Tank Systems (the UST Regulations) is required.
- Per the UST Regulations: Part E, § 1. Reporting Requirements: Any indication of a Release of a Regulated Substance that is discovered by any Person, including but not limited to environmental consultants, contractors, utility companies, financial institutions, real estate transfer companies, UST Owners or Operators, or Responsible Parties shall be reported within 24 hours to:
  - The Department's 24-hour Release Hot Line (800) 662-8802; and
  - The DNREC Tank Management Section (302) 395-2500.
- If any aboveground storage tanks (ASTs) less than 12,500 gallons are installed, they must be registered with the TMS. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by the DNREC Tank Management Section.
- For more information, go to: <http://www.dnrec.delaware.gov/tanks/Pages/default.aspx> or contact Ross D. Elliott with further questions at (302) 395-2500, or [Ross.Elliott@state.de.us](mailto:Ross.Elliott@state.de.us)

### **State Historic Preservation Office – Contact Terrence Burns 736-7404**

- There is no known archaeological site or National Register listed property, on this parcel. However, the developer should be aware of the Unmarked Human Burials and Human Skeletal Remains Law.

Abandoned or unmarked family cemeteries are very common in the State of Delaware. They are usually in rural or open space areas, and sometimes near or within the boundary of an historic farm site. Even a marked cemetery can frequently have unmarked graves or burials outside of the known boundary line or limit. Disturbing unmarked graves or burials triggers the Delaware's Unmarked Human Burials and Human Skeletal Remains Law (Del. C. Title 7, Ch. 54), and such remains or discoveries can result in substantial delays while the procedures required under this law are carried out. If there is a discovery of any unmarked graves, burials or a cemetery, it is very costly to have them archaeologically excavated and the burials moved. The Division of Historical & Cultural Affairs recommends that owners and/or developers have a qualified archaeological consultant investigate their project area, to the full extent, to see if there is any unmarked cemetery, graves, or burial sites. In the event of such a discovery, the Division of Historical & Cultural Affairs also recommends that the plans be re-drawn to leave the full extent of the cemeteries or any burials on its own parcel or in the open space area of the development, with the responsibility for its maintenance lying with the landowner association or development. If you would like to see more information, please review the following websites: [www.history.delaware.gov/preservation/umhr.shtml](http://www.history.delaware.gov/preservation/umhr.shtml) and [www.history.delaware.gov/preservation/cemeteries.shtml](http://www.history.delaware.gov/preservation/cemeteries.shtml).

Therefore, prior to any demolition or ground-disturbing activities, the developer should hire an archaeological consultant, to examine the parcel for archaeological resources and plan to avoid those sites or areas.

- 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. Owners and developers who may plan to apply for an Army Corps of Engineers permit or for federal funding, such as HUD or USDA grants, should be aware of the National Historic Preservation Act of 1966 (as amended). Regulations promulgated for Section 106 of this Act stipulate that no ground-disturbing or demolition activities should take place before the Corps or other involved federal agency determines the area of potential effect of the project undertaking. These stipulations are in place to allow for comment from the public, the Delaware State Historic Preservation Office, and the Advisory Council for Historic Preservation about the project's effects on historic properties. Furthermore, any preconstruction activities without adherence to these stipulations may jeopardize the issuance of any permit or funds. If you need 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](http://www.achp.gov).

**Acknowledged.**

**Delaware State Fire Marshall's Office – Contact John Rudd 739-4394**

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:**

- All premises, which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. This means that the access road to the subdivision from Banks Road must be constructed so fire department apparatus may negotiate it. If a “center island” is placed at an entrance into the subdivision, it shall be arranged in such a manner that it will not adversely affect quick and unimpeded travel of fire apparatus into the subdivision.

**What design vehicle is required to maneuver past the proposed entrance island?**

- 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.

**The lots have a 30' front yard setback.**

- 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 plan includes the required turn around. The cul-de-sac shown on sheet CZ-2 meets the required radius.**

- 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.

**Gates and speed bumps are not anticipated for the project.**



- **Gas Piping and System Information:**

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

- **Required Notes:**

- Provide a note on the final plans submitted for review to read “ All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”
- Name of Water Supplier
- Proposed Use
- National Fire Protection Association (NFPA) Construction Type
- Townhouse 2-hr separation wall details shall be shown on site plans
- 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 all PLUS and Technical Advisory Committee (TAC) comments be addressed prior to submitting plans for review.
- Please be advised that as of August 1, 2015, all new plan submittals and re-submittals, including major, minor and commercial plans, shall now be uploaded via the PDCA (Planning Development Coordination Application) with any review fee paid online via credit card or electronic check. Guidance on how to do this is available on our website at <http://www.deldot.gov/information/business/subdivisions/>
- Please be advised that the Standard General Notes have been updated and posted to the DelDOT website. Please begin using the new versions and look for the revision date of July 20, 2016. The notes can be found at [http://www.deldot.gov/information/business/subdivisions/Sheet\\_Notes.doc?073116](http://www.deldot.gov/information/business/subdivisions/Sheet_Notes.doc?073116)

Acknowledged.

### **Flooding and Sea Level Rise**

- The planned development lies within an area that will be subject to direct and permanent inundation from sea level rise (<http://de.gov/slrmmap>).

Sea levels in Delaware have risen by about a foot over the past by sea level rise of 1.5 meters. In the short-term, sea level rise on this parcel, combined with periodic coastal flooding events, may result in repetitive flood damage to roads and significant difficulties maintaining storm water, drainage and other infrastructure. In the long-term, this increased flood and inundation risk could result in costly public and private flood abatement and drainage projects and an eventual abandonment of structures.

- Lots within flood prone areas should be eliminated.
- Any structures that are built within an area mapped as both floodplain and sea level rise zone should be constructed with 18 inches of freeboard plus additional freeboard to accommodate future sea levels.
- Access roads should be designed to be flood resilient for the entirety of your project's design life span. This includes ensuring that the roadway functions for the 1% chance flood plus anticipated future sea level rise.<sup>1</sup>

### **Acknowledged.**

### **Fish and Wildlife**

- This project would require the removal of more than half of the forest within the parcel. DNREC strongly recommends that the site plan be reconfigured in order to minimize the amount of tree clearing necessary. DNREC recommends a 100-foot buffer be left between the development and Hopkins Prong. This buffer should not be a maintained lawn area, and should not contain lot lines or infrastructure. It is also recommended that the buffer area be comprised of the existing vegetation or planted with Delaware native species of trees, shrubs, grasses or wildflowers.

### **Acknowledged.**

### **Request for Site Survey**

- Additionally, in order to provide more informed comments, DNREC requests the opportunity to conduct a survey to evaluate habitat and determine the potential for species of conservation concern. Please note that DNREC scientists have extensive knowledge of the flora and fauna of the state. The survey will be conducted at no expense to the landowner. In the event that authorizations will be needed from DNREC's Coastal Management Program and/or Wetlands and Subaqueous Lands Section, they will require complete and up to date info from the Wildlife Species and Conservation Research Program as part of their review. Therefore, allowing access to the site will increase the efficiency of the State authorization process.

Please contact Kate Fleming at (302) 735-8658 or [Kate.Fleming@state.de.us](mailto:Kate.Fleming@state.de.us) to schedule the site visit.

Acknowledged.

**Recycling**

- Though it may not be the case here, some residents have expressed concerns about the storage of trash and recycling containers in high density communities. Those involved with the planning of new facilities should give consideration to space for collection of recyclables. The Universal Recycling Law (7 *Del.C.*, §6053) requires all waste service providers to provide recycling collection to their residential customers including providing a recycling cart. For more information or assistance related to recycling requirements, benefits, tools, and assistance, please contact Bill Miller at (302) 739-9403 or [bill.miller@state.de.us](mailto:bill.miller@state.de.us).

Acknowledged.

**Additional information on TMDLs and water quality**

- Compliance with the specified TMDL nutrient and bacterial reduction requirements specified for the Inland Bays watershed can be facilitated by adherence to the strategies and requirements described in the Inland Bays PCS, and the implementation of the following recommended BMPs, which would:
  - Preserve and/or maintain as much of the existing forested area as possible. Given the environmental sensitivity (e.g., water quality and wildlife habitat) of the greater Inland Bays watershed, the Division of Watershed Stewardship strongly opposes the applicant's apparent plan to remove most of the existing forestland in this parcel to accommodate this development. DNREC believes that the developer should scale-back the extent of this development and make greater effort to retain/preserve more of the existing forestland than they have currently proposed. Moreover we further suggest additional native tree, shrub and/or native herbaceous vegetation plantings in areas of open space, wherever possible. Additionally, removing forest cover (which appears to be the applicant's intent) to accommodate a stormwater management pond is not considered an environmentally acceptable practice and should be avoided.
  - Conduct a United States Army Corps of Engineers (USACE) approved wetlands delineation by contacting a qualified soils scientist (Delaware licensed Class D soil scientist) to map the soils in this parcel. DNREC strongly discourages building on hydric soils as these soils provide benefits for water quality and flood protection. A list of qualified soil scientists can be obtained from Ground Water Discharges branch; the GWDB can be reached by phone at 739-9947. Also, please contact the Subaqueous Land section to schedule an evaluation/delineation of the tidal wetlands in this

parcel. The Subaqueous Lands section can be reached by phone at (302) 739-9378.

- Maintain a vegetated buffer of at least 100 feet from the adjoining wetlands and waterbodies. Based on a review of existing buffer research by Castelle et al. (Castelle, A. J., A. W. Johnson and C. Conolly. 1994. Wetland and Stream Buffer Requirements – A Review. J. Environ. Qual. 23: 878-882.), an adequately-sized buffer that effectively protects wetlands and streams, in most circumstances, is about 100 feet in width. In recognition of this research and the need to protect water quality, the Watershed Assessment Section recommends that the applicant maintain/establish this aforementioned 100-foot buffer width (planted in native vegetation) from all waterbodies (including ponds & hydric soils) and all non-tidal and tidal wetlands (i.e., a USACE approved field wetlands delineation for non-tidal wetlands and State approved wetlands delineation for tidal wetlands). According to information presented in the PLUS application, the applicant does not intend to maintain a buffer from the adjoining wetlands and waterbody. Not maintaining a vegetated buffer is considered an environmentally unacceptable best management practice. DNEC strongly urges the applicant reconsider their project design with the above-mentioned recommended 100-foot buffer width

#### Acknowledged.

- Also, based on information presented in the PLUS application, a wetland delineation was conducted but not submitted to the State for review. The wetland delineation was also not approved by the USACE as per our recommendation.
  - Employ green-technology storm water management such as rain gardens or rainwater catchment systems as best management practices to mitigate or reduce nutrient and bacterial pollutant runoff. We strongly discourage the construction of open-water stormwater management structures, as currently proposed.
  - Use pervious paving materials, when compatible or consistent with water quality concerns in areas designated as locations of excellent recharge (e.g., well head protection areas), as determined/assessed by a DNREC hydrogeologist, instead of conventional paving materials to help reduce the amount of water and pollutant runoff draining to adjoining streams and wetlands. Pervious pavers are especially recommended for the large area designated for parking in this project.
  - Assess nutrient and bacterial pollutant loading at the preliminary project design phase. To this end, the Watershed Assessment Section has developed a methodology known as the “Nutrient Load Assessment Protocol.” The protocol is a tool used to assess changes in nutrient loading resulting from

the conversion of individual or combined land parcels to a changed land use; thus providing applicants and governmental entities with quantitative information about the project's impact(s) on baseline water quality.

<b>Table 2: Projected Air Quality Emissions for the Creekridge RPC</b>					
Emissions Attributable to Creekridge RPC (Tons per Year)	Volatile Organic Compounds (VOC)	Nitrogen Oxides (NO <sub>x</sub> )	Sulfur Dioxide (SO <sub>2</sub> )	Fine Particulate Matter (PM <sub>2.5</sub> )	Carbon Dioxide (CO <sub>2</sub> )
Area source emissions	1.7	0.2	0.2	0.2	6.8
Power emissions	*	0.7	2.3	*	339.9
Mobile emissions	2.5	2.6	0.1	0.0	1,596.0
Total emissions	4.2	3.5	2.6	0.2	1,942.7

We strongly encourage the applicant/developer use this protocol to design and implement the most effective best management practices. Please contact John Martin of the Division of Watershed Stewardship for more information on the protocol, at (302) 739-9939.

Acknowledged.

#### **Additional information on tank management**

- When contamination is encountered, PVC pipe materials should be replaced with ductile steel and nitrile rubber gaskets in the contaminated areas.

Acknowledged.

#### **Additional information on air quality**

- Based on the information provided, the three air emissions components (i.e., area, electric power generation, and mobile sources) were quantified. Table 2 – Projected Air Quality Emissions represents the potential impact the Creekridge RPC development may have on air quality.



*\*Indicates data is not available.*

Note that emissions associated with the actual construction of the subdivision, including automobile and truck traffic from working in, or delivering products to the site, as well as site preparation, earth moving activities, road paving and other miscellaneous air emissions, are not reflected in the table above.

- New developments may emit, or cause to be emitted, additional air contaminants into Delaware's air, which will negatively impact public health, safety and welfare. These negative impacts are attributable to:
  - Emissions that form ozone and fine particulate matter;
  - The emission of greenhouse gases which are associated with climate change, and
  - The emission of air toxics.
- Site-specific recommendations for this project:
  - Inclusion of bike racks in common areas and expansion of the bicycle/pedestrian network through sidewalks and bike lanes which also promote alternative forms of transportation. There are no identified bike paths or sidewalks in the proposed plan.
  - Planting of native shade trees to clean the air of localized pollutants and cut down on energy/cooling costs.
  - Work with Delaware Transit Corp to include more convenient transit access to this development.
  - The use of Recycled Content Materials (carpet, concrete, countertops, furniture, siding, of reclaimed asphalt pavement, etc.) which reduces landfill waste, is sustainable and more economically

feasible than other material types. Sustainable pavements (or cool pavement choices with higher albedo) reflect 40 percent more sunlight than warm pavements which only reflect 10 percent.

- Use of energy efficient products in construction to lessen the power source emissions of the project and costs.
- Take advantage of compact building design to preserve open space. Open space protects animals and plants and conserves their habitat as well as moderates temperatures and combats air pollution.
- At least two parking spaces in common areas dedicated to alternative fueled vehicle (electric vehicle (EV), hybrid electric vehicle (HEV), low emission vehicle (LEV)) use and charging.

#### Acknowledged.

- Native Delaware Tree Plantings: Implementation of a Green Streetscape is highly encouraged for the subdivision plan. Green streetscapes are key in reducing negative air quality impacts and beautifying existing conditions. Green infrastructure solves many environmental problems while providing a myriad of benefits for the community including the cleaner air, proper management of storm water, safe multi-modal transportation options, beautifying neighborhoods and increasing property values.
- Native trees reduce emissions by trapping dust particles and replenishing oxygen. Every effort should be made to ensure as many original trees are preserved as possible. Trees also reduce energy emissions by cooling during the summer and by providing wind breaks in the winter, whereby reducing air conditioning needs by up to 30 percent and saving 20 to 50 percent on fuel costs. All urban trees that are selected should be native to Delaware and preferably low VOC emitting trees. Every tree has a different biogenic emissions rate by which they release VOC's into our atmosphere. VOC's are a component of smog and when mixed with other gases in the atmosphere (nitrogen oxide or NOx) in the presence of sunlight can contribute to air pollution risks. As a general reminder, the best trees to plant are those that have a large leaf surface area at maturity, contain leaf characteristics that are amenable to particle collection from particulate matter (PM) such as those that have hairy or sticky leaves and have high transpiration rates which result in relatively high temperature reduction. White pines, Heritage River Birch, and American Beech fall within these categories and contain these characteristics and are mentioned in the landscaping plan.

#### Acknowledged.

- **Energy Efficiency:** Constructing with only energy efficient products can help your housing units immensely, not only in terms of environmental sustainability but financially. Energy Star qualified products are up to 30 percent more energy efficient. Savings come from building envelope upgrades, high performance windows, controlled air infiltration, upgraded heating and air conditioning systems, tight duct systems and upgraded water-heating equipment. Every percentage of energy efficiency translates into a percent reduction in pollution. The Energy Star Program is an excellent way to save on energy costs and reduce air pollution. Providing shade for parking areas can also be of added benefit to this facility. Some approaches may include architectural devices, vegetation, or solar panels. Providing shade for parking areas helps to reduce heat island impacts, and, by extension, helps to minimize the potential for localized ground-level ozone formation. Such measures can also have the additional benefit of channeling or infiltrating storm water. For more about energy efficient options, please see: <https://www.energystar.gov/> or <https://www.epa.gov/greeningepa/energy-efficiency-epa>.
- **Clean Fuel Measures:** This measure helps to reduce localized air pollution by supporting the use of clean diesel powered vehicles and charging infrastructure. It would be ideal to include at least one charging station in common areas. Vehicle charging should also be an option included in the homes for accommodation of those with electric vehicles (EVs) and could be marketed as a unique selling feature. For a site map of local alternative fueling sites, please visit the Alternative Fuels Data Center website here: <http://www.afdc.energy.gov/locator/stations/>.
- **Multi-modal travel:** A component of improving existing air quality levels is to maximize multi-modal travel through bike lanes, sidewalks and convenient access to transit opportunities. No bike paths or sidewalks were included in the development plan. DNREC encourages the developer to improve its existing sidewalks and crosswalks and to add sharrows or bike lanes where needed to encourage multi-modal travel opportunities. (Sharrows and striping are the easiest and most cost effective option.). Multi-modal travel can significantly reduce mobile source emissions. For every vehicle trip that is replaced by the use of a sidewalk or bike path, 7 pounds of VOC and 11.5 pounds of NOx are reduced each year.
- **Transit** is also an important component of multimodal travel opportunities. GIS evaluation of the area has concluded that the nearest transit stop/facility is located to the west at the intersection of Delaware Route 24 and Holly Lake Road (Bus Route 215). It is suggested that more transit opportunities be made for local residents in the Bank Road area. For more information on DART Bus Routes in your area, please visit [www.dartfirststate.com](http://www.dartfirststate.com). Also, for more information on the impacts of multimodal access on air quality please see the EPA's website: <https://www3.epa.gov/otaq/>.
- Should the developer have any more questions or concerns, the DNREC Division of Air Quality (DAQ) point of contact is Lauren DeVore, and she may be reached at (302) 739-9437 or [lauren.devore@state.de.us](mailto:lauren.devore@state.de.us). The applicant is encouraged to

contact DAQ to discuss the emission mitigation measures that will be incorporated into the Creekridge RPC subdivision project. We look forward to working together with you on this project to achieve our shared air quality goals.

Acknowledged.

#### **Soils Assessment**

- Based on soils survey mapping update, Fort Mott-Henlopen complex (FhA & FhB) is the primary soil mapping units mapped in the immediate vicinity of the proposed project. Fort Mott-Henlopen complex is a well-drained soil mapping unit that is considered to have few to moderate limitations for development (Figure 1).

Acknowledged.

#### **Delaware State Fire Marshall's Office – Contact John Rudd 739-4394**

- 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](http://www.statefiremarshal.delaware.gov), technical services link, plan review, applications or brochures.

Acknowledged.

#### **Sussex County Housing Coordinator & Fair Housing Compliance Officer – Contact Brandy Nauman 855-7777**

- Sussex County endeavors to promote non-discrimination and affordable housing whenever possible throughout the County. In this regard, the developer and associated financial institutions are encouraged to provide and finance affordable housing opportunities to Sussex County residents in all new developments, and affirmatively market those affordable housing units to diverse populations.
- For questions about opportunities available for affordable housing projects within Sussex County, please consult Sussex County's "Affordable Housing Support Policy". The policy along with other resources are available on the County's Affordable & Fair Housing Resource Center website: [www.sussexcountysde.gov/affordable-and-fair-housing-resource-center](http://www.sussexcountysde.gov/affordable-and-fair-housing-resource-center). The County's Community Development & Housing Department can advise about existing affordable housing opportunities in Sussex County and the appropriate

County Department to contact regarding specific development issues concerning future affordable housing projects within Sussex County.

- The Community Development & Housing Department can also explain and assist with any financial support or incentives that may be available to a project from federal, state and county sources, as well as private funding sources that also promote affordable housing in Sussex County.
- Please understand that all residential projects, including Affordable Housing Projects are subject to the applicable provisions of the Sussex County Subdivision and Zoning Codes, and the approval processes set forth in those Codes.

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](mailto:ken@axeng.com)

Sincerely,

Kenneth R. Christenbury, P.E.  
President, Axiom Engineering, LLC





**11**








12



NOTE: SCALE INDICATED IS APPROXIMATE. NO FIELD SURVEY WAS PERFORMED OR IS IMPLIED BY THIS DRAWING.

**SITE**

Image courtesy of USGS Earthstar Geographics SIO © 2017 Microsoft Corporation



**AXIOM**  
ENGINEERING L.L.C.

18 CHESTNUT STREET  
GORTON TOWN, DE 19947  
(302) 855-0810  
FAX: (302) 855-0811  
EMAIL: [AXIOM@AXIOM.COM](mailto:AXIOM@AXIOM.COM)  
WEB: [WWW.AXIOM.COM](http://WWW.AXIOM.COM)

PROJECT NO:	0233-1701
DESIGNER	KRC
DRAWER	KRC
CHECKED BY:	KRC
DATE:	1/23/2017
TAX MAP:	TM 2-34-17, PARCEL 185

DRAWING:

**CR- 2**

SHEET:

**2 OF 6**

ENGINEER:

KRC

SEAL

24" x 36", 1 inch = 200 ft.  
 11" x 17", 1 inch = 400 ft.



13



NOTE: SCALE INDICATED IS APPROXIMATE. NO FIELD SURVEY WAS PERFORMED OR IS IMPLIED BY THIS DRAWING.

SITE

Image courtesy of USGS Earthstar Geographics SIO © 2017 Microsoft Corporation



Image courtesy of USGS Earthstar Geographics SIO © 2017 Microsoft Corporation

PROJECT NO: <b>0233-1701</b>		ENGINEER: KRC	 <b>AXIOM</b> ENGINEERING L.L.C. 18 CHESTNUT STREET GEORGETOWN, DE 19947 (302) 855-0810 EMAIL: AXIOM@AXIOM.COM WEB: WWW.AXIOM.COM	PUBLIC DATA REFERENCED TO <b>WESTRIDGE SHORES RPC</b> <b>FORMERLY CREEKRIDGE RPC</b> INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE	REV	DESCRIPTION OF REVISION	REVISION BY DATE	
DRAWING: <b>CR- 3</b>		DESIGNER: KRC						△
SHEET: <b>3 OF 6</b>		DRAFTER: KRC						△
		CHECKED BY: KRC						△
		DATE: 1/23/2017						△
		TAX MAP: TM 2-34-17, PARCEL 165	△					
		0 100 200 300 400	△					
		24" x 36" 1 inch = 400 ft. 11" x 17" 1 inch = 200 ft.	△					
SEAL _____								



14



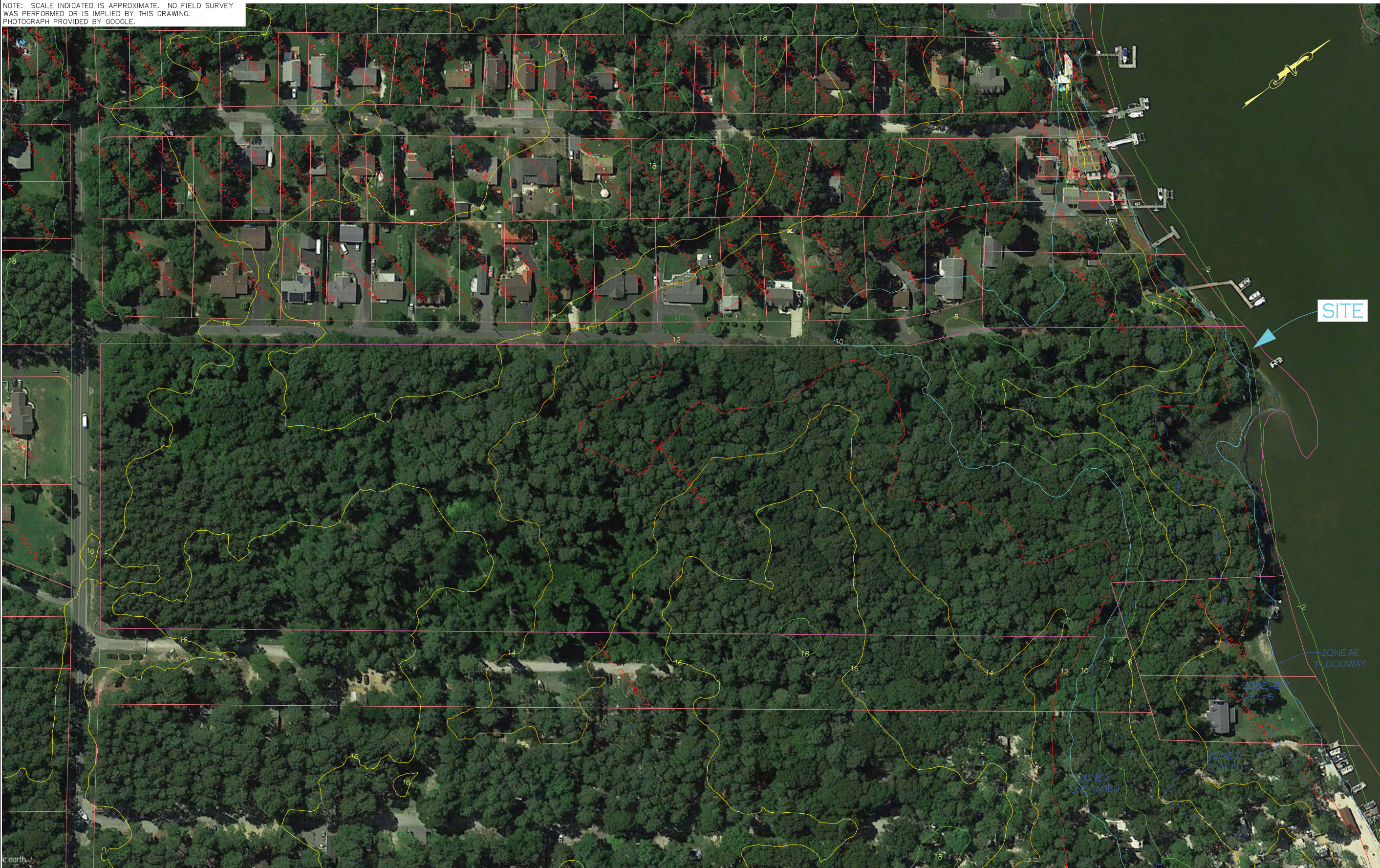




15



NOTE: SCALE INDICATED IS APPROXIMATE. NO FIELD SURVEY WAS PERFORMED OR IS IMPLIED BY THIS DRAWING. PHOTOGRAPH PROVIDED BY GOOGLE.



TOPOGRAPHIC CONTOUR LEGEND

- 0 CONTOUR
- 8 CONTOUR
- 6 CONTOUR
- 4 CONTOUR
- 2 CONTOUR

NOTE: SCALE INDICATED IS APPROXIMATE. NO FIELD SURVEY WAS PERFORMED OR IS IMPLIED BY THIS DRAWING. PHOTO PROVIDED BY GOOGLE.

PROJECT NO: 0233-1701		DRAWING: CR- 6		SHEET: 6 OF 6	
ENGINEER: KRC		DESIGNER: KRC		CHECKED BY: KRC	
DATE: 1/23/2017		TAX MAP: TM 2-34-17, PARCEL 165		SCALE: 24" x 36" 1 inch = 80 ft. 11" x 17" 1 inch = 160 ft.	
AXIOM ENGINEERING L.L.C. 18 CHESTNUT STREET, GEORGETOWN, DE 19347 (302) 855-0810 FAX: 855-0812 EMAIL: AXIOM@AXIOM.COM WEB: WWW.AXIOM-ENG.COM		SITE DETAIL PUBLIC DATA REFERENCED TO WESTRIDGE SHORES RPC FORMERLY CREEKRIDGE RPC INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE		REV DESCRIPTION OF REVISION REVISION BY/DATE	



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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 **floodways** 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 0.0' 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 **floodways** were computed at cross sections and interpolated between cross sections. The floodways 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  
SSMO-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 floodways 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.

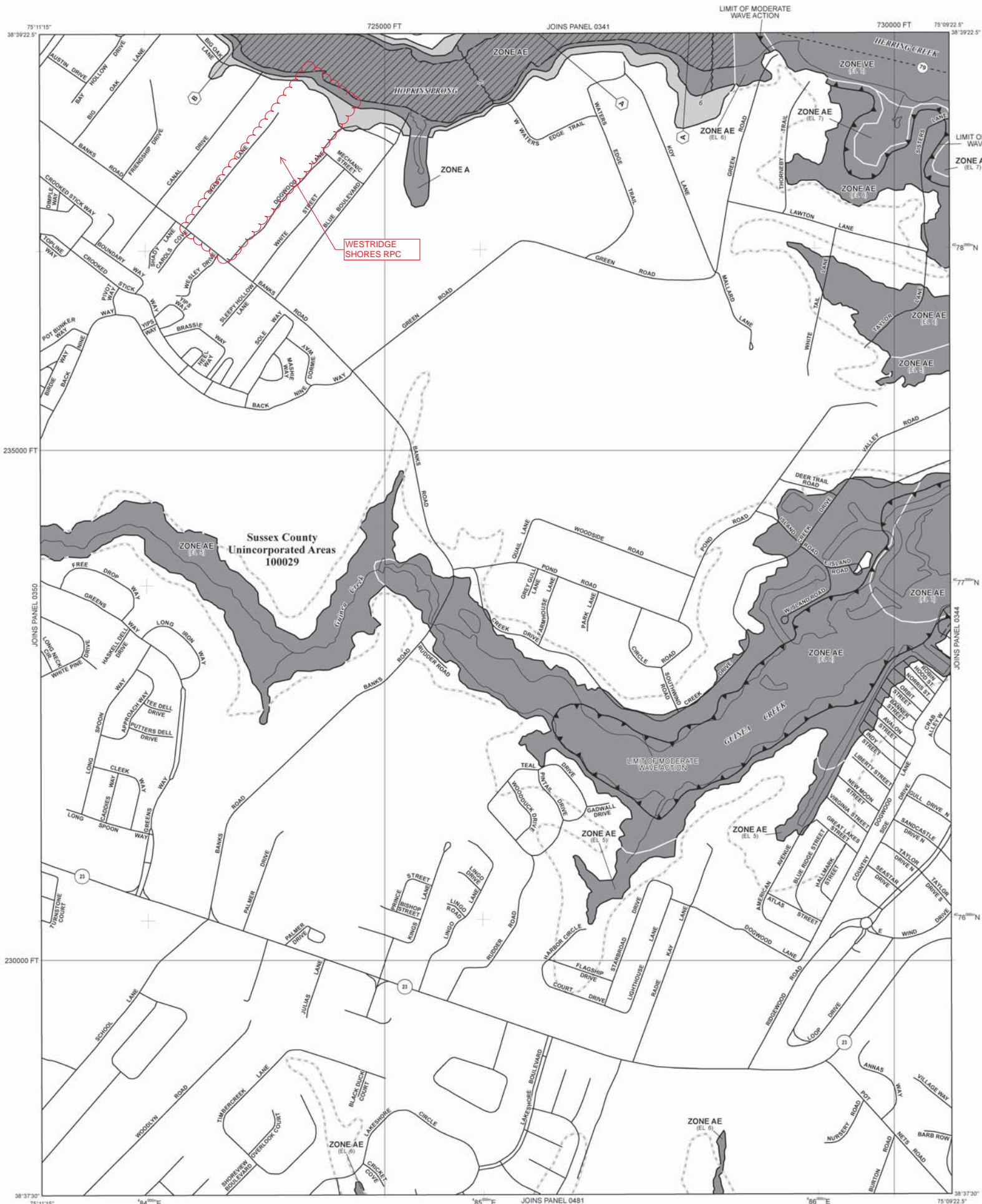
**Corporate limits** shown on this map are based on the best data available at the time of publication. Because changes due to annexations or de-annexations may have occurred after this map was published, map users should contact appropriate community officials to verify current corporate limit locations.

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/fip/>.



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 deteriorated. 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
- Floodway 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\*  
Base Flood Elevation value where uniform within zone; elevation in feet\*

\* Referenced to the North American Vertical Datum of 1988

Cross section line

Transect line

Geographic coordinates referenced to the North American Datum of 1983 (NAD 83), Western Hemisphere

1000-meter Universal Transverse Mercator grid values, zone 18N

5000-foot grid values: Delaware State Plane coordinate system (FIPSZONE 0700), Transverse Mercator projection

Bench mark (see explanation in Notes to Users section of this FIRM panel)

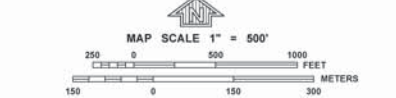
MAP REPOSITORY  
Refer to listing of Map Repositories on Map Index

EFFECTIVE DATE OF COUNTYWIDE FLOOD INSURANCE RATE MAP  
JUNE 16, 1999

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 1-800-638-6620.



PANEL 0343K

**FIRM**  
FLOOD INSURANCE RATE MAP

**SUSSEX COUNTY, DELAWARE AND INCORPORATED AREAS**

PANEL 343 OF 660

(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

CONTAINS:  
COMMUNITY NUMBER PANEL SUFFIX  
SUSSEX COUNTY 100029 0343 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  
10005C0343K

MAP REVISED  
MARCH 16, 2015

Federal Emergency Management Agency

**17**

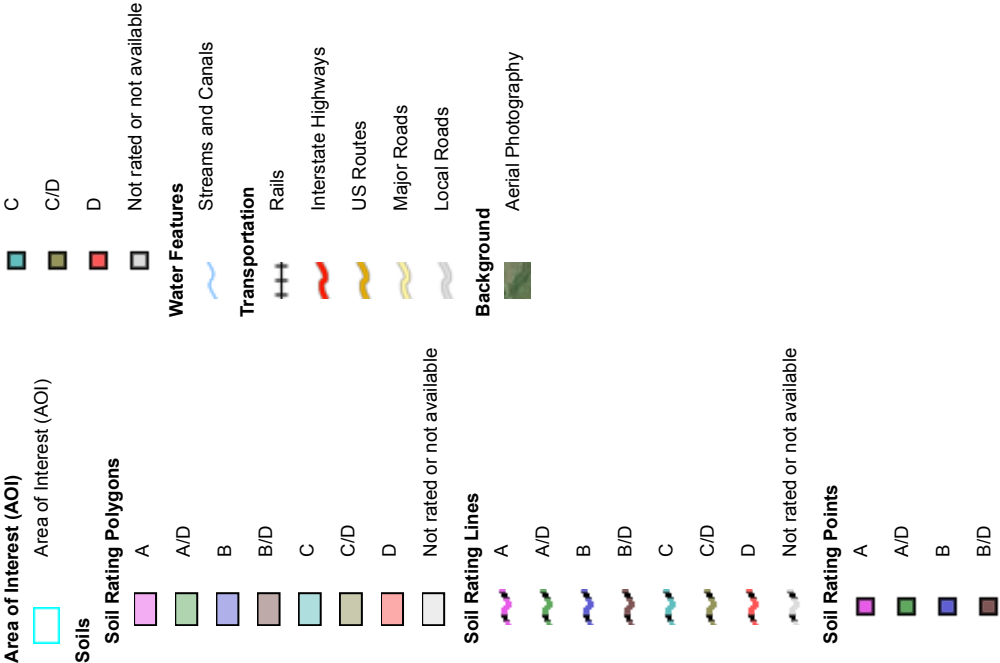


Hydrologic Soil Group—Sussex County, Delaware  
(0233-1701 Hopkins Prong)



Map projection: Web Mercator Corner coordinates: WGS84 Edge tics: UTM Zone 18N WGS84

MAP LEGEND



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 16, Sep 22, 2016

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

Date(s) aerial images were photographed: Jun 17, 2010—Jul 4, 2010

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

Hydrologic Soil Group— Summary by Map Unit — Sussex County, Delaware (DE005)				
Map unit symbol	Map unit name	Rating	Acres in AOI	Percent of AOI
AsA	Askecksy loamy sand, 0 to 2 percent slopes	A/D	2.6	0.3%
Br	Broadkill mucky peat, very frequently flooded, tidal	B/D	2.3	0.2%
DnA	Downer loamy sand, 0 to 2 percent slopes	A	119.7	12.6%
EvD	Evesboro loamy sand, 5 to 15 percent slopes	A	5.5	0.6%
FhA	Fort Mott-Henlopen complex, 0 to 2 percent slopes	A	384.1	40.5%
FhB	Fort Mott-Henlopen complex, 2 to 5 percent slopes	A	152.8	16.1%
FmA	Fort Mott loamy sand, 0 to 2 percent slopes	A	114.8	12.1%
HpA	Henlopen loamy sand, 0 to 2 percent slopes	A	4.4	0.5%
HpB	Henlopen loamy sand, 2 to 5 percent slopes	A	12.4	1.3%
LO	Longmarsh and Indiantown soils, frequently flooded	B/D	3.4	0.4%
PpA	Pepperbox loamy sand, 0 to 2 percent slopes	A	4.5	0.5%
PrA	Pepperbox-Rockawalkin complex, 0 to 2 percent slopes	A	12.9	1.4%
RoA	Rosedale loamy sand, 0 to 2 percent slopes	A	9.0	0.9%
UbB	Udorthents, borrow area, 0 to 5 percent slopes	C	6.3	0.7%
W	Water		114.7	12.1%
<b>Totals for Area of Interest</b>			<b>949.3</b>	<b>100.0%</b>



## 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

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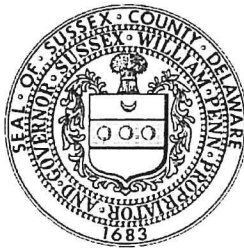




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## ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
PUBLIC WORKS	(302) 855-7703
RECORDS MANAGEMENT	(302) 854-5033
UTILITY ENGINEERING	(302) 855-7717
UTILITY PERMITS	(302) 855-7719
UTILITY PLANNING	(302) 855-1299
FAX	(302) 855-7799



# Sussex County


DELAWARE  
sussexcountype.gov

HANS M. MEDLARZ, P.E.  
COUNTY ENGINEER

JOHN J. ASHMAN  
DIRECTOR OF UTILITY PLANNING

## MEMORANDUM

TO: Janelle Cornwell  
Planning and Zoning Manager

FROM: John J. Ashman   
Director of Utility Planning

REF: T.A.C. COMMENTS FOR  
SEPTEMBER 2017-2

DATE: September 20, 2017

Attached, please find the Engineering Department's comments for the Technical Advisory Committee for the TAC requests for the month. Any questions please feel free to call me at 856-6258.

### Attachments

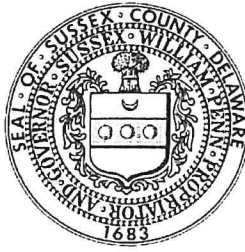
cc: Jayne Ellen Dickerson with attachments  
Reviewer with attachments  
Planning Tech with attachments  
Applicant with attachments  
File with attachments



COUNTY ADMINISTRATIVE OFFICES  
2 THE CIRCLE | PO BOX 589  
GEORGETOWN, DELAWARE 19947

## ENGINEERING DEPARTMENT

ADMINISTRATION	(302) 855-7718
AIRPORT & INDUSTRIAL PARK	(302) 855-7774
ENVIRONMENTAL SERVICES	(302) 855-7730
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UTILITY PERMITS	(302) 855-7719
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FAX	(302) 855-7799



# Sussex County

DELAWARE  
sussexcountyde.gov

HANS M. MEDLARZ, P.E.  
COUNTY ENGINEER

MICHAEL E. BRADY  
DIRECTOR OF PUBLIC WORKS

September 20, 2017

REF: **T. A. C. COMMENTS  
WESTRIDGE SHORES  
LONG NECK SANITARY SEWER DISTRICT  
SUSSEX COUNTY ENGINEERING DEPARTMENT  
SUSSEX COUNTY TAX MAP NUMBER  
234-17.00 PARCEL 165.00  
PROJECT CLASS-1  
AGREEMENT NO. 1075**

The following comments are the result of the Sussex County Engineering Department's review of the preliminary site plan for the above referenced project:

### PUBLIC WORKS DIVISION COMMENTS

1. Proposed developments with private roads or projects required by the County to conform to or exceed the County street design requirements shall be regulated by and conform to Sussex County Code and the comments here listed.
2. Please note that aspects of the street design presented by the proposed plan dated, March 15, 2017, do not conform to current requirements. Please contact the Division for specific information.
3. Project Construction Drawings shall show, in detail, the proposed improvements. The work required includes preparation and delivery of an AutoCAD 2012 digitized plan showing existing and proposed lines, grades, topography and features in a given area, which was utilized in preparing plans for construction. The individual sheet types will be in a separate design to show plan views on sheets separate from profile views. In addition, each sheet of the plans shall be submitted in a PDF format.
4. All work shall be geo-referenced to the Delaware State Grid System NAD-83 (HARN) and provided in an AutoCAD 2012 format. North will always be shown in an up direction on all plans.
5. Topographic contours at one-foot intervals shall be shown and referenced to United States Geological Survey Mean Sea Level Datum NAVD 1988 Datum.
6. The plans shall be provided on 24" x 36" drawing sheets at a scale of 1" = 50'.

The plans shall show and address the following items at minimum:



COUNTY ADMINISTRATIVE OFFICES WEST COMPLEX  
22215 DUPONT BOULEVARD | PO BOX 589  
GEORGETOWN, DELAWARE 19947



7. The project requires professional land surveying services to accurately delineate, and show the following items but is not limited to the following: all property and right-of-way lines, established at a minimum, two (2) horizontal and vertical control concrete project benchmarks, survey monuments, easements, existing and proposed topographic contours at 1-foot vertical intervals and spot elevations as necessary to establish grades, the locations of all existing structures, highway and roadway pavements, shoulders, curbs, driveways, sidewalks, lighting structures, traffic control signs, and all public and private utilities, including, but not limited to, electric power and telephone lines, poles and boxes, underground electric, telephone, and communication lines, potable water lines, fire hydrants and valve boxes, gas lines, wells, sanitary sewers including septic systems, rim and invert elevations of manholes and cleanouts, and the rims and invert elevations and type of storm water structures, drainage ditches, ponds, streams and waterways, flood zones and flood zone boundaries and elevations, and State and Federal wetlands, trees, cemeteries and historic features, and the finished floor elevations of buildings.
8. Plans shall show the seal and signature of a registered Delaware land surveyor or registered Delaware professional engineer.
9. The plan requires a Certification Signature and/or a Certification Block for the Delaware Professional Engineer or Delaware Land Surveyor.
10. The plan requires a Certification Signature and/or a Certification Block for the Owner or Representative of the Owner.
11. The plan requires a Certification Signature and/or a Certification Block for the Professional Wetlands Delineator.
12. The name, address, phone number and contact person's name of the Owner of Record, the Developer and the Engineer or Surveyor preparing the plan.
13. Indicate the location of all wetlands (both state and federal), in order to facilitate compliance with County, State and Federal requirements.
14. Define the courses and distances of the property perimeter and the approximate acreage contained therein. Establish and set in the field two (2) CONCRETE MONUMENT project bench marks, preferably at property perimeter corners, geo-referenced to the Delaware State Plane Coordinate system NAD 83 and show the location including the North and East coordinates of the marks on the plans.
15. Indicate the development construction phases proposed showing the boundaries of each phase. Phasing boundaries shall include buildings, residential units, amenities, roads, storm water management facilities, wastewater systems and all other improvements and utilities required to service each phase.
16. Show the layout, width and names of all streets, alleys, crosswalks and easements proposed to be dedicated for private or public use. Street names shall not duplicate nor closely resemble existing street names in the same hundred or postal district, except for extensions of existing streets.
17. When on site individual septic tank systems are to be used and the lot topography is to be modified by cuts and fills it is required that the Design Engineer contact the

Delaware Department of Natural Resources and Environmental Control, Division of Groundwater Water Discharge Section, 20653 DuPont Boulevard, Unit 5, Georgetown, DE 19947 phone number 302-856-4561 subject to mass grading operations for documented approval.

18. Provide the limits and elevations of the one-hundred (100) year flood. This may require the design engineer to complete an analysis and provide a report including the depiction of the subject watershed(s), calculations and other technical data necessary to determine the limits and elevations base flood.
19. The right-of-way of all cul-de-sacs shall be no less than 106 feet in diameter.
20. False berms shall not be utilized to create roadside drainage swale back slopes.
21. For parking lots and drives, provide spot elevations at the edge of pavement, right-of-way or travel way centerline, at changes in grade, and high points and low points, to the nearest drainage facilities. Show the limits of the various surface materials and provide construction sections.
22. Provide and show the locations and details of all ADA compliant accessible walks and ramp features.
23. If the site has a cemetery located on it the Developer shall contact the Delaware State Historic Preservation Office, and satisfy the requirements of that Office prior to beginning any construction activity. This area shall not be disturbed by this project. Adequate access to the site and buffers to protect the site, shall be provided.
24. Private rights-of-way adjacent to and abutting parcels not part of the project shall be located and designed to provide adequate buffer so that construction activities do not encroach onto adjacent properties.
25. Provide statements explaining how and when the developer proposes to provide and install the required water supply, sewers or other means of sewage disposal, street pavement, drainage structures and any other required improvements.
26. Provide statements concerning any proposed deed restrictions to be imposed by the owner.
27. Where special physical conditions exist, which may act as constraints on normal development or may preclude development, the developer may be required to submit special technical data, studies or investigations. This information must be prepared by individuals technically qualified to perform such work. Additional information may include but is not limited to the following: on-site sanitary sewage disposal feasibility, water supply surveys, such as test well drilling, storm water runoff computations and identification of areas subject to periodic flooding.
28. If special conditions are found to exist, the Engineering Department may elect to withhold approval of a construction plan until it is determined that it is technically feasible to overcome such conditions. The Engineering Department may then require the developer to incorporate specific improvement design criteria into the plat as a condition to its approval.
29. When special studies or investigations pertain to a regulatory program of another public

agency, the developer shall submit the results of these studies or investigations to said public agencies for technical review and approval. Approvals and/or written comments from these agencies shall be supplied to Sussex County by the developer.

UTILITY PLANNING DIVISION COMMENTS

REVIEWER: ROB DAVIS  
APPLICATION: WESTRIDGE SHORES  
APPLICANT: BOARDWALK DEVELOPMENT, LLC  
FILE NO: HC – 1.08  
TAX MAP &  
PARCEL(S): 234-17.00 PARCEL 165.00  
LOCATION: Northeast of Banks Road (Road 298) .  
NO. OF UNITS: 54  
GROSS  
ACREAGE: 21.32

COUNTY SEWER ALLOCATION  
OF 4 UNITS PER ACRE



SYSTEM DESIGN ASSUMPTION, MAXIMUM NO. OF UNITS/ACRE: 4.0

**SEWER:**

- (1). Is the project in a County operated and maintained sanitary sewer and/or water district?

Yes **X**

☐ No

- a. If yes, see question (2).  
b. If no, see question (7).

- (2). Which planning area or sewer district is it in? **Sussex County Unified Sanitary Sewer District – Herring Creek Area**

- (3). **Is wastewater capacity available for the project? Yes.** If not, what capacity is available? \_\_\_\_\_.



- (4). Is Ordinance 38 required? **Yes**. If yes, contact Mr. Brad Hawkes, Director of Utility Engineering at (302) 855-7717.
- (5). Are there any System Connection Charge (SCC) credits for the project? **No**. If yes, how many? \_\_\_\_\_. Is it likely that additional SCCs will be required? **Yes**. If yes, the current System Connection Charge Rate is **\$6,360.00** per EDU. Please contact **Jayne Dickerson, Utility Permits Division** at **302 855-7719** for additional information on charges.

- (6). Location and size of lateral(s) or connection point(s):

**Sewer service has not been extended to the parcel at this time.**

- (7). Is the project capable of being annexed into a County operated 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.

- (8). Which sewer district is it adjacent to: **N/A**.

- (9). Conformity to the **Herring Creek Sewer District: Engineering Report and Environmental Review**, or undertaking an amendment will be required.

- (10). Other: **The project proposes a residential planned community of single family lots. The project is located within the boundary of the Sussex County Unified Sanitary Sewer District, Herring Creek area. Connection to the sewer system is mandatory.**

**Sewer service has not been extended to the parcel at this time. The proposed connection point is to a future gravity sewer that will cross the parcel near the parcel's eastern end. A connection point could be available as early as the spring of 2020.**

↖ **UPDATED TO SPRING 2023 -  
SEE TAB 3**

**Sussex County requires design and construction of the collection and transmission system to meet Sussex County sewer standards and specifications. A sewer concept plan must be submitted to the Sussex County Engineering Department for review and approval prior to the design of the sewer system. A checklist for preparing concept plans is attached. Conformity to the approved concept plan will be required.**

- (11). ☒ A concept plan is required.  
☐ A concept plan is not required.

## MAPPING & ADDRESSING

MEGAN NEHRBAS  
MANAGER OF GEOGRAPHIC  
INFORMATION SYSTEMS (GIS)  
(302) 855-1176 T  
(302) 853-5889 F



**Sussex County**  
DELAWARE  
sussexcountyde.gov

**August 17, 2017**

Attn: Kenneth R. Christenbury, P.E.  
Axiom Engineering LLC.  
18 Chestnut St.  
Georgetown, De. 19947

RE: **Westridge Shores**

I have received proposed street names for the new subdivision, **Westridge Shores**, located in Millsboro. In reviewing the proposed street name(s) the following have been **approved**:

<b>Westridge Reach</b>		

Use only **approved** road names that you have written confirmation for or you will be required to rerecord.

Upon final approval of **Westridge Shores**, please forward a copy of the recorded site plan to my attention. Our office would appreciate a digital copy if at all possible for the purpose of addressing. Should you have any questions, please contact the **Sussex County Addressing Department** at 302-855-1176.

Sincerely,

*Terri L. Dukes*

Terri L Dukes  
Addressing Technician II

CC: Jennifer Norwood  
Planning & Zoning



COUNTY ADMINISTRATIVE OFFICES  
2 THE CIRCLE | PO BOX 589  
GEORGETOWN, DELAWARE 19947

20





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

NICOLE MAJESKI  
SECRETARY

March 18, 2022

Mr. Jamie Whitehouse, Director  
Sussex County Planning & Zoning  
P.O. Box 417  
Georgetown, DE 19947

Dear Mr. Whitehouse:

The Department has completed its review of a Service Level Evaluation Request for the **Boardwalk Development, LLC** proposed land use application, which we received on February 28, 2022. This application is for an approximately 21.32-acre parcel (Tax Parcel: 234-17.00-165.00). The subject land is located on the north side of Banks Road (Sussex Road 298) about 2,400 feet southeast of the intersection with John J. Williams Highway (State Road 24). The subject land is currently zoned GR (General Residential), with a proposed zoning of GR-RPC (General Residential) with a Residential Planned Community overlay, to build 54 age-restricted single-family detached houses.

Per the 2019 Delaware Vehicle Volume Summary, the annual average daily traffic volumes along the section of Banks Road, from John J Williams Highway to Long Neck Road (State Route 23), is 3,921 vehicles per day.

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.



Mr. Jamie Whitehouse

Page 2 of 2

March 18, 2022

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 Ms. Annamaria Furmato, at [Annamaria.Furmato@delaware.gov](mailto:Annamaria.Furmato@delaware.gov), if you have questions concerning this correspondence.

Sincerely,



Claudy Joinville  
Project Engineer  
Development Coordination

CJ:afm

cc: Boardwalk Development, LLC, Applicant  
Christin Scott, Sussex County Planning & Zoning  
Todd Sammons, Assistant Director, Development Coordination  
T. William Brockenbrough, County Coordinator, Development Coordination  
Scott Rust, South District Public Works Manager, Maintenance & Operations  
Steve McCabe, Sussex County Review 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  
James Argo, South District Project Reviewer, Maintenance & Operations  
Annamaria Furmato, Project Engineer, Development Coordination

**21**



## Compliance with Subdivision Ordinance § 99-9C

In the design and layout of Westridge Shores Residential Planned Community, the following items have been considered as required by the Subdivision Ordinance:

§ 99-C(1) Integration of the proposed subdivision into existing terrain and surrounding landscape: Westridge Shores Residential Planned Community is located adjacent to existing mobile home parks. All of the adjacent properties are buffered by variable width forest buffesrs a minimum of 20' wide and a maximum of 100' wide. The existing forest will be reviewed by a certified forester or registered landscape architect to determine if the existing forest should remain as is, be planted or thinned for compliance with § 99-5 Forest buffer definition

§ 99-C(2) Minimal use of wetlands and floodplains: Wetlands and floodplains are limited the shore of Hopkins Prong. All regulated wetlands and floodplains are to remain in common open space.

§ 99-C(3) Preservation of natural and historical features: 6.66 ac. of existing forest is to remain, and placed in common ownership by the community homeowner's association.

§ 99-C(4) Preservation of open space and scenic views: By utilizing the Residentail Planned Community overlay, 43% of the property, or 9.21 acres, will be preserved as common open space. 6.66 acres of existing wooded lands are included in this preserved open space.

§ 99-C(5) Minimization of tree, vegetation and soil removal and grade changes: The proposed design allows for the conservation of 6.66 acres of the existing forest land. 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 the Sussex County Unified Sanitary Sewer District - Herring Creek Area, and is scheduled to be able to connect to sewer by the year 2020.

§ 99-C(9) Prevention of pollution of surface and groundwater: The project 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: Sidewalks have been proposed for the project streets, which connects to the project's waterfront open space by a pedestrian trail.

§ 99-C(12) Effect on area property values: The development of Westridge Shores with quality attached single family homes, recreational facilities and infrastructure will increase the value of the subject property, thereby likely increasing the value of

surrounding property. Also, the retention of the perimeter forest as open space will likely improve their values as well.

§ 99-C(13) Preservation and conservation of farmland: The property is not in the immediate vicinity of farmland. The development of this parcel delays the demand to develop other agricultural properties in the county into residential properties.

§ 99-C(14) Effect on schools, public buildings and community facilities: A school bus stop shelter will be provided if requested by the school district. The 54 lots proposed are anticipated to be marketed to retirees, and are likely to have a positive effect on the school district by increasing property taxes.

§ 99-C(15) Effect on area roadways and public transportation: DELDOT has issued a Service Level Evaluation response indicating that the proposed project does not require a Traffic Impact Study. 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: Westridge Shores Subdivision, as proposed, is consistent with other existing land uses in the vicinity. Westridge Shores proposed density is only 2.54 dwellings per acre. The surrounding properties are as follows:

- North: Shady Lane of a community with a mix of mobile homes, modular homes and stick-built homes with density of 2.67+/- DU/Ac. No sidewalks in the community.
- East: Hopkins Prong
- South: Dogwood Lane of Shawn's Hideaway trailer park with a density of 9.32+/- DU/Ac. Shawn's Hideaway contains 142 mobile homes and 115 travel trailers on 27.59 acres. Gravel and dirt roads. No sidewalks in the community.
- West: Banks Road

§ 99-C(17) Effect on area waterways: The preservation of much of the existing forest cover and the use of Sussex Conservation District Best Management Practices will enhance the quality of both surface and groundwater discharges from the site.



**22**



3271 Shady Lane view east





3273 Shady Lane residence





3274 Shady Lane residence





3275 Shady Lane residence





3276 Shady Lane view west





3278 Banks Road view south





3279 Dogwood Lane entrance





3283 Shawn's Hideway street





3284 Shawn's Hideaway sample trailer





3285 Shawn's Hideaway dirt street





3286 Dogwood Lane view east





3287 Adjacent house on parcel #166.03 (Abel property)





3289 Dogwood Lane view west





3296 Dogwood Lane view east





3298 Shawn's Hideaway street





3299 Shawn's Hideaway residence





3300 Banks Road view north





3303 Banks Road residence





3304 Banks Road residence

23

Tax Parcel: 234-17.00-#165

**Prepared by and return to:**  
Boardwalk Development, LLC  
317 Rehoboth Avenue  
Rehoboth Beach, DE 19971

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND  
RESTRICTIONS FOR**

**WESTRIDGE SHORES**

This Declaration of Covenants, Conditions, Easements and Restrictions is made this \_\_\_\_ day of January, 2018, by Boardwalk Development, LLC, a Delaware corporation (hereinafter referred to as "Developer").

**RECITALS**

**WHEREAS**, the Developer is the fee simple owner of certain real property located in Sussex County, State of Delaware, said property being more particularly described in *Exhibit "A"* attached hereto as a part hereof, also being lots 1 to 54 shown on that certain plat of the "Westridge Shores Subdivision" dated \_\_\_\_\_, recorded in the Office of the Recorder of Deeds of Sussex County in Georgetown, Delaware, in Plot Book \_\_\_\_\_ Page \_\_\_\_\_; and said real property being hereinafter referred to as the "Property"; and

**WHEREAS**, the Developer proposes to create on the Property an age-restricted planned community by subdividing the area into lots for single family detached houses together with certain interests set forth below in easements, leases and licenses; and

**WHEREAS**, the Developer imposes these covenants and restrictions in order efficiently to preserve the values and amenities in said community; and establishes the authority of a corporation to which will be delegated and assigned the powers of maintaining and administering any community facilities, common lands and recreation amenities and administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created; and

**WHEREAS**, the Developer will incorporate under the laws of the State of Delaware, as a non-profit corporation, Westridge Shores Homeowners Association, Inc., or a similarly named corporation, for the purpose of exercising the functions aforesaid; and

**WHEREAS**, the Developer plans to set aside certain interests in the Property and, except as may otherwise herein be provided, impose upon certain portions of the Property



the conditions that they be held as common areas, (i.e. entrance areas, common areas, roadways, etc.) in which owners of home lots will have rights and easements of use and enjoyment therein in common with others, the ultimate title of which shall be placed in the Westridge Shores Homeowners Association, Inc. or its assigns, and

**WHEREAS**, the Developer desires to provide a flexible and reasonable procedure for the overall development of the Property and to establish a method for the administration, maintenance, preservation, use and enjoyment of such Property, which is now submitted to this Declaration.

**NOW THEREFORE**, the Developer hereby declares that all of the Property, subjected to this Declaration hereafter, shall be held, mortgaged, transferred, sold, conveyed, leased, occupied and used subordinate and subject to all easements, rights of way and restrictions previously placed upon the Property as recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware, by the Developer or its predecessors in title and to the following easements, restrictions, covenants, conditions, liens and charges set forth herein, which are for the purpose of protecting the value and desirability of and which shall run with the real property submitted to this Declaration and which shall be binding upon all parties having any right, title, lien or other interest in the described property or any part thereof, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner thereof.

## **ARTICLE I**

### **DEFINITIONS**

Words and terms shall have the meaning set forth below for all purposes of this Declaration unless the context shall require otherwise, and such definitions shall apply to the singular and plural forms of any such word or term.

**AGE RESTRICTION** – Shall mean this Development shall comply with the provisions of the Department of Housing and Urban Development Housing for Older Persons Act of 1995.

**ASSESSMENT** - Shall mean an Owner's share of the Common Expenses and funding reserves.

**ASSOCIATION** - Shall mean Westridge Shores Homeowners Association, Inc., a Delaware membership, non-profit, non-stock corporation, its successors and assigns.

**BOARD OF DIRECTORS** - Shall mean the governing body of the Association, also referred to as "Board."

**BY-LAWS** - Shall mean the By-Laws of the Association as amended from time to time.

**COMMON AREA** - Shall mean all real and personal property in the Development now or hereafter owned or leased by the Association or otherwise held for the common use and enjoyment of the Owners. The Developer shall have the right from time to time to designate as Common Area any portion of the Development and to withdraw property from such designation. Common Area is not intended for, or dedicated to, use by the general public, and the general public shall have no right to use or enjoyment thereof, provided, however, that nothing herein contained, nor any recorded plat, shall be deemed to prohibit the Developer, in its sole and absolute discretion, from conveying same to a federal, state or municipal government or to any body or agency thereof. Specifically included in the Common Area are Utility Systems not dedicated to a governmental agency or to another entity, maintenance areas, roads not dedicated to a governmental agency, swales, parking lots and spaces, green areas, fencing, sidewalks, signage, site lighting, street lighting, ponds, easement areas designated as Common Area, access easements across other real property, parks and Recreational Facility (as hereinafter defined), such other lands and/or improvements as the Developer may, in its absolute and sole discretion, make subject to this Declaration and designate as Common Area by subsequent amendment or supplement. Nothing herein contained, nor any recorded plat shall be deemed to create a Common Area, nor shall the Association or any Owner be entitled to any right, title or interest in any of the Developer's property unless and until Developer shall formally include such property in the Common Area by a supplemental or amended Declaration.

**COMMON EXPENSES** - Shall mean and include the actual and estimated expenses incurred by or on behalf of the Association in accordance with the provisions and intent of this Declaration and shall include amounts necessary to establish and maintain any reserve fund(s) determined to be necessary and appropriate by the Board of Directors.

**DECLARATION** - Shall mean this Declaration and all supplements and amendments to this Declaration recorded in the Office of the Recorder of Deeds, in and for Sussex County, Delaware.

**DEVELOPER** - Shall mean Boardwalk Development, LLC, a Delaware corporation, and the successors and assigns as to all or any portion of the interests of Boardwalk Development, LLC, in the Property and the Development. By specific amendment of this Declaration, the Developer may designate the Association as its successor from such time and for such purposes as shall be stated in such amendment.

**DEVELOPER'S UTILITY RIGHTS** - Shall mean those legal rights to provide for utility infrastructure for the Development including the right to identify, locate, place, operate and maintain the utility infrastructure for the Development and specifically including the right to dedicate, bargain and sell and/or grant easements to effect the same.

**DEVELOPMENT** - Shall mean with an initial capital letter, the Property, together with all appurtenant easements, leases and licenses as they are described in this Declaration and as are enlarged, diminished or otherwise modified at any time and from time to time by amendment of this Declaration duly recorded.

**DEVELOPMENT PLAT** - Shall mean any plat for any portion of the Property and any such plat or amended plat which the Developer from time to time causes to be recorded in the Office of the Recorder of Deeds for Sussex County; specifically, the first plat of the Property as recorded in the Office of the Recorder of Deeds of Sussex County, at Georgetown, Delaware, in Plot Book \_\_\_\_ at page \_\_\_\_.

**FORECLOSURE** - Shall mean a conveyance of property pursuant to judicial foreclosure of a Mortgage or by a deed given in lieu of a judicial foreclosure.

**LEASE** - Shall mean any agreement for the use of property in the Development, whether oral or written, whether in exchange for payment of rent or for other or no consideration, and whether for a term of hours, days, months or years.

**LOT** - Shall mean and refer to any plot of land (with the exception of the Common Area), regardless of size, whether vacant or improved with a single-family detached dwelling, shown upon any recorded subdivision plat or map of the property.

**MEMBER** - Shall mean and refer to all of those Owners who are members of the Association as provided in Article III, Section 3.1 of this Declaration.

**MORTGAGE** - Shall mean a Mortgage to a person, bank, trust company, insurance company, pension fund, other commercial lender (whether organized as a corporation, partnership, or otherwise), or to an organization such as, but not limited to, the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, which participates in any way in a secondary market for mortgages.

**MORTGAGEE** - Shall mean, when spelled with an initial capital letter, a holder of a Mortgage.

**OCCUPANT** - Shall mean, any person, including, without limitation, any Owner, member of an Owner's immediate family, guest, tenant or other lawful user of a Lot in the Development.

**OWNER** - Shall mean, when spelled with an initial capital letter, the Developer and any one or more persons or entities holding fee-simple title of record in a Lot in the Development.



**PARTICIPATING BUILDER** – Shall mean an entity other than the Developer that, in the ordinary course of such entity's business, constructs residential structures on any portion of the Development, including the Lots.

**PROFESSIONAL MANAGEMENT AGENT** - Shall mean a professionally licensed individual or organization whose primary business is management of residential properties and who shall be capable of being bonded.

**PROPERTY** - Shall mean the "Property" as defined in the first Recital paragraph of this Declaration.

**RECREATIONAL FACILITY** - Shall mean that part of the Common Areas as will be described on a plot.

**SUBDIVISION** - Shall mean and refer to the Development.

**UTILITY SYSTEM(S)** - Shall mean and refer to the utilities, including but not limited to sewer lines, mains and appurtenances; the water mains, water laterals, valves, meter pits and meters, and appurtenances; stormwater drainage culverts, swales, pipes, and appurtenances, including specifically, any siltation and/or retention ponds as required by any federal, state or local agency; irrigation well, distribution lines, sprinkler heads and appurtenances; television cable and its various attendant services, telephone service to include teletype, computer, telex, news service, or computer or any like instrument used in the transmission, reception or retrieval of messages, facts, or information, gas, or other utility lines and wires.

## ARTICLE II

### PLAN OF DEVELOPMENT

#### **Section 2.1. Plan of Development.**

**2.1.1.** The Development shall consist of all the Property described in *Exhibit "A"* attached hereto. All property within the Development shall be subject to the covenants, easements and restrictions set forth in this Declaration. For so long as Developer owns any lot or any interest in the Property, Developer shall have the right, but not the obligation, to make improvements and changes to the Common Area and to any or all Lots or any other property owned by Developer, including but not limited to the following: (1) installation and maintenance of any improvements in and to any Common Area or Recreational Facility, (2) changes in the location of the boundaries of the Common Area, any Utility System, any Recreational Facility and any Lot owned by Developer, (3) installation and maintenance of the whole or parts of any utility system or facility; and (4) installation of security and/or refuse facilities. The Developer or Association shall have the right to collect reasonable fees and charges for activities or the use of its facilities.

**2.1.2.** Except as otherwise expressly stated in this Declaration, Developer reserves the right to plan, design, develop, construct, maintain and manage, as Developer deems appropriate for its purposes, the Common Area and Developer-owned Lots. This reservation of right includes, without limitation, the right to change the number, shape, size and location of Lots, the shape, size and location of Common Area, Utility Systems, Recreational Facility or any part thereof.

**2.1.3.** Developer shall have the right, in its sole discretion, at any time and from time to time, to convey to the Association any Common Area and any other property owned by the Developer contained within the Property or any portion or portions thereof, and such property shall be subject to the lien of taxes not yet due and payable, all easements and restrictions of record, utility easements serving or otherwise encumbering the Property and any exceptions which would be disclosed by an accurate survey or physical inspection of such parcel(s).

**2.1.4.** The Declarant shall retain control of such Common Areas until such time as the Declarant transfers control of the Association to the Class A Members.

**Section 2.2. Age Restriction.** Through this Declaration, the occupancy within this Development shall be restricted to persons 55 years of age or older in accordance with the Department of Housing and Urban Development Housing for Older Persons Act of 1995 (the "Act"). Consistent with the provisions of the Act, one or more residents of at least eighty percent (80%) of the Lots situated in the Development from time to time shall be fifty-five (55) years of age or older.

**Section 2.3. Interest Subject to Plan of Development.** Every grantee of a Lot or any other portion of the Development shall purchase such Lot or other property, and every holder of a mortgage or other lien, or a security interest in, a Lot or other portion of the Development shall take such title, lien or security interest with notice of the Developer's plan of development as set forth herein and other provisions of this Declaration, and no conveyance of, lien on, or security interest in a Lot or other portion of the Development shall have any effect on the right of the Developer to convey any interest therein by deed, lease, declaration, mortgage or other means or instrument to a purchaser, lender, or other party. Any provision of this Declaration to the contrary notwithstanding, the provisions of this Article II may not be abrogated, modified, rescinded, supplemented or amended or otherwise affected, in whole or in part except by Developer or with the written consent of Developer.

**Section 2.4. Utilities and Related Facilities.** Developer, any affiliate of Developer or contractor of Developer, may own any Utility Systems or any part of them, serving the Development. Notwithstanding the foregoing, Developer, or any affiliate, owning such system and facilities, or any part of them, shall have the right but not the obligation, to make any part or all of any such system and facilities a part of the Common Area or, at any

time and from time to time, convey any part or all of any such system and facilities to the Association, a club, a municipality, public authority, governmental agency, public service district or a public or private utility operator.

### ARTICLE III

#### THE ASSOCIATION; MEMBERSHIP AND VOTING RIGHTS

**Section 3.1. Membership.** Every person or entity who is an Owner of a Lot shall be a member of the Association and shall enjoy all of the benefits of such membership. Membership shall be appurtenant to, and may not be separated from, ownership of a Lot. Conveyance of a Lot shall, without need to specifically provide therein, terminate membership of the grantor in the Association with respect to the Lot conveyed; and, by accepting the conveyance, the grantee shall be deemed to accept membership in the Association.

**Section 3.2. Transfer of Membership.** Every conveyance of a Lot, without need for any provision therein, shall transfer the Association membership of the grantor with respect to that Lot; and, by accepting such conveyance, the grantee shall accept Association membership with respect to that Lot. It shall be the express responsibility of the grantee to provide all required documentation, including but not limited to name, address and settlement sheet, to the Association upon acceptance of the conveyance of any Lot.

**Section 3.3. Voting Rights.**

**3.3.1.** Class A members shall be all of the owners except the Developer. Class A members shall have one vote for each Lot owned; the owners of a Lot with more than one owner shall share a single vote.

**3.3.2.** The sole Class B member shall be the Developer. The Class B member shall be entitled to three (3) votes for each Lot in which it holds the interest required for membership under Section 3.1. above. Class B membership shall be converted to Class A membership upon the earlier of (1) the Developer owning no Lots, or (2) December 31, 2030.

**3.3.3.** A vote assigned to a Lot shall be cast by one natural person, as a block, and without splitting. A corporation or other entity shall vote by a person named in a certificate signed by the President, Vice-President or person with authority, attested by the Secretary or an Assistant Secretary, and with the corporate or appropriate seal affixed. A partnership shall vote by a person named in a certificate signed by all of the general partners. In the case of a Lot with more than one party holding record title, the vote shall be cast by a person designated in a certificate signed by all of the holders of record title. No vote shall be cast by a person named in a certificate given pursuant to this paragraph until the certificate is



filed with the Secretary of the Association. Such a certificate shall remain in effect until a new certificate is filed.

**3.3.4.** Members may vote by a written proxy which shall be good only for the single meeting being held, and any recess or adjournments thereof, at the place and time, and on the date, stated in the proxy, and the proxy shall be filed with the Secretary before the meeting is called to order. Every proxy shall be revocable and shall automatically cease upon conveyance of the Member's Lot.

**Section 3.4. Incorporation.** The Developer shall establish the Association by the filing of a Certificate of Incorporation of the Association when the Developer, at its sole discretion, deems the creation of such Association is appropriate, except that the Certificate of Incorporation shall be filed by the Developer.

**Section 3.5. Responsibilities of the Association.** The Developer has established the Association for the purpose of maintaining and administering the Common Area; providing common services; administering and enforcing covenants, conditions and restrictions contained herein; adopting and enforcing rules and regulations; and levying, collecting and disbursing the Assessments and other charges provided for herein. The Association shall also have the power to provide, and shall provide the following:

**3.5.1.** Operation, care and maintenance of all Common Area, Utility Systems and Recreational Facility;

**3.5.2.** Insect and pest control to the extent that the Board of Directors deems it necessary or desirable, and whether or not it supplements any service provided by any government or other agency;

**3.5.3.** Enforcement of all covenants and restrictions affecting the Development;

**3.5.4.** Establish and operate the Westridge Shores Architectural Board;

**3.5.5.** Management, legal, accounting, information about membership and other services as may be required to achieve the highest integrity of the Association and a high level of informed participation by members;

**3.5.6.** Prudent insurance coverage, either independently or in common with the Developer, of the Association, of the Common Areas, of the actions taken on behalf of the Association by its directors and officers, and of such other persons, properties, and activities as the Board of Directors shall deem appropriate.

**3.5.7.** Maintain and preserve wooded areas, if any, in the Common Area.

**3.5.8.** And perform any of the functions or services delegated to the Association in any instrument applicable to the Development;

**3.5.9.** Any and all other services the Board of Directors deems necessary or desirable to further the interests of the Development, of the Owners, or of both.

**Section 3.6. Board of Directors.** Prior to full completion of the Development, the Board of Directors shall consist of three (3) directors as shall have been designated by the Developer. When one hundred percent (100%) of the proposed Lots in the Development are constructed and settled, or until December 31, 2030, whichever is sooner, the Board of Directors shall consist of five (5) directors, all of whom shall be Owners, and all of whom shall be elected at large, as established in the Bylaws of the Association. The Board of Directors shall have the power to perform all rights and duties of the Association unless otherwise specifically reserved to the Association membership in this Declaration or in the Articles of Incorporation or Bylaws of the Association.

**Section 3.7. Rules and Regulations.** The Board of Directors of the Association may from time to time adopt rules and regulations governing the use of Common Area, of Lots and of the Recreational Facility.

**Section 3.8. Managing Agent.** The Association may employ a Professional Managing Agent at a compensation to be established by the Board of Directors to perform such duties as the Board of Directors shall authorize, except that making assessments and rules and providing that any action by managing agent with respect to hiring and dismissal of personnel, opening bank accounts and designating signatories there to and enforcing rules by legal action shall require the prior written consent thereto of the Board of Directors.

**Section 3.9. Limitations.**

**3.9.1.** The Board of Directors shall have the exclusive right to initiate any form of Legal Proceedings as it deems necessary and appropriate related to the use, operation or maintenance of the Common Area, or on behalf of the Association and the welfare of the Owners, subject to the following requirements.

**3.9.2.** "Legal Proceedings", as used in this Article, shall mean the institution of any form of action or suit, except the filing and enforcement of liens, the initiation of legal action for routine common expense assessment collection matters, legal actions required to enforce provisions of the Declaration, rules and regulations with respect to the Common Area or enforcement of service contracts between the Association and non-Developer contractors.

**3.9.3.** All claims, counterclaims, disputes and other matters in question between the Association or the Owners with the Developer arising out of or relating to the obligations of the Developer under the Declaration or any other statute, regulation, ordinance or the

defense of any claims or actions relating the Common area or the breach thereof shall be decided by arbitration in accordance with the Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations and restrictions stated in paragraphs 3.9.5 below. This Agreement so to arbitrate and any other agreement or consent to arbitrate entered into in accordance herewith as provided in this paragraph will be specifically enforceable under the laws of the State of Delaware.

**3.9.4.** Notice of demand for arbitration must be filed in writing with the other parties to the Declaration and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

**3.9.5.** All demands for arbitration and all answering statements thereto which include any monetary claim must contain a statement identifying the total sum or value in controversy as alleged by the party making such demand or answering statement and the arbitrators will not have jurisdiction, power or authority to render a monetary award in response thereto against any party which totals more than such stated amount (exclusive of interest and costs).

**3.9.6.** The limitations and restrictions contained in paragraph 3.9.5. may be waived in whole or in part upon written consent of the Association and Developer as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or consent to arbitrate any other claim, counterclaim, dispute or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute or other matter in question which is not specifically described in such consent or which is with any party not specifically described therein.

**3.9.7.** The award rendered by the arbitrators shall be final; judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modification or appeal except to the extent permitted by Section 10 and 11 of the Federal Arbitration Act (9 U.S. C. Sections 10 and 11).

**3.9.8.** Due to the potential adverse financial impact of pursuing Legal Proceedings, the decision to initiate any Legal Proceedings must be made by a resolution duly adopted at a properly noticed regular or special meeting of the Association held for such purpose. Such resolution shall require the affirmative vote of the Lot owners representing not less than sixty-seven (67%) of the Class A Members and their mortgagees. If the Association shall incur or potentially be obligated as a result of such resolution to incur attorney's fees, expert fees or other costs associated with such legal proceedings totaling in excess of \$25,000 or if the amount recoverable by an attorney for the Association pursuant to a contingency fee agreement shall exceed \$50,000, then such resolution shall require the affirmative vote of the Lot owners representing not less than seventy-five (75%) of the



Class A Members and their mortgagees. Neither the Board, the Association nor the Owners shall borrow on behalf of the Association nor use any funds from reserves of the Association to pay such legal costs, but the same shall be paid from and limited to the amounts provided in the annual budget for such expenditures for the fiscal year or shall be raised by special assessment levied against the Owners for such purpose. If such Legal Proceedings are not concluded within 1 year of the date of such resolution, the continued prosecution of such Legal Proceedings beyond such period must be reaffirmed annually at a special meeting held for such purpose by the percentage vote of the Association as was required to adopt the original resolution. If the continued prosecution of such Legal Proceedings is not reaffirmed, the action shall be discontinued and the Board shall have no further authority to act as the attorney-in-fact for the Association in the further prosecution or defense of such Legal Proceedings but may, with the affirmative vote of a majority of the vote in the Association, act as its attorney-in-fact with respect to any settlement or compromise of such Legal Proceedings; provided the same is completed within six (6) months thereafter. If the Association, by resolution approved in accordance with this section, authorizes the Board to initiate Legal Proceedings, then the decisions relating to the conduct of the Legal Proceedings shall be made by the Board for such purposes. Any action regarding the conduct of the Legal Proceedings shall be approved by a percentage vote of seventy-five (75%) or more of the Board. Decisions regarding the conduct of any Legal Proceedings are non-delegable. Notwithstanding anything contained herein on in the Declaration to the contrary, the provisions of this Section shall not be modified or amended without Developer's written consent so long as Developer owns any property within the Development; thereafter this Section shall not be modified or amended except by a written instrument, executed by the Owners representing not less than eighty-five (85%) of the Class A Members and their mortgagees, and be recorded among the land records of Sussex County.

**Section 3.10. Assignment of Obligations.** At the request of the Developer, the Association shall accept assignment and delegation of any or all rights and obligations of the Developer under this Declaration.

**Section 3.11. Fines.** In addition to the means for enforcement provided elsewhere in this Declaration, the Association shall have the right to levy fines against an Owner or such Owner's guests, relatives, lessees or invitees, in the manner set forth herein, and such fines shall be collectible in the same manner as any other assessment such that the Association shall have a lien against the Lot, as provided in this Declaration, and the Bylaws and the Certificate of Incorporation of the Association and such fine(s) shall also become the binding personal obligation of such Owner.

## ARTICLE IV

### PROPERTY RIGHTS IN THE COMMON AREA

**Section 4.1. Owners' Easements of Enjoyment.** Every Owner shall have a right and easement of enjoyment in and to the Common Area and such easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

**4.1.1.** The right of the Developer or the Association to charge reasonable admission and other fees for the use of any facility which may be situated upon the Westridge Shores Common Area from time to time;

**4.1.2.** The right of the Developer or the Association to suspend a Lot or Owner's voting rights and right to use any of the Westridge Shores Common Area for a period in which the Owner is in default in the payment of any assessment, fee, penalty, interest or any other charge outstanding. Additionally, such rights may be suspended by notice from the Board of Directors for such a period not to exceed ninety (90) days for any single and nonrecurring infraction of the Association's published rules and regulations or breach of or default under any of the covenants or provisions of the Declaration. If any such infraction, breach or default is continuous or recurring, then such rights may be suspended for a period commencing on the date the owner is given notice of the cause for such suspension and ending not more than ninety (90) days after the date such infraction, breach or default ceases or is remedied;

**4.1.3.** The Developer's Utility Rights;

**4.1.4.** The right of the Association, subject to the Developer's Utility Rights, to dedicate or transfer all or any part of the Westridge Shores Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members of the Association. No such transfer or dedication except for the dedications or transfer of utility easements by the Association or any dedication or transfer made in the exercise of the Developer's Utility Rights, shall be effective unless approved by more than sixty-seven percent (67%) of the votes entitled to be cast by all of the members of the Association;

**4.1.5.** The right of the Association to limit the number of guests, visitors, licensees, invitees, or lessees of Owner utilizing such Common Areas;

**4.1.6.** The right of the Developer and the Association to establish uniform rules and regulations pertaining to the use of such Common Areas;

**4.1.7.** The right of the Association, in accordance with its Certificate of Incorporation and Bylaws, and with the consent of the Declarant (for so long as the Declarant shall own any portion of the Property or Development) and two-thirds (2/3) of the total votes of the Members, to borrow money for the purpose of improving such Common Areas in a manner designed to promote the enjoyment and welfare of the Members and in aid thereof after conveyance of title therein to the Association, to mortgage any portion of such Common Areas;

**4.1.8.** The right of the Association to take such steps as are reasonable necessary to protect the property of the Association against mortgage default and foreclosures; provided, however, that the same are in conformity with the other provisions of this Declaration;

**4.1.9.** The right of the Association, acting by and through the Board, to grant easements, licenses or other rights of use of such Common Areas to persons or entities that are not Members of the Association for such consideration and on such terms and conditions as the Board may from time to time consider appropriate or in the best interest of the Association, Property or Development;

**4.1.10.** The rights of parties holding rights under easements reserved; and

**4.1.11.** Other rights of the Developer set forth in this Declaration.

**Section 4.2. Title to Common Area.** The Developer hereby may convey to the Association, in such portions as may be convenient to the Developer, by limited warranty deed or deeds, any title in fee simple to the Common Area then retained by the Developer, subject, however to liens of unpaid taxes not then due and payable, to liens and encumbrances of record, to conditions shown by a survey, to conditions shown by an inspection thereof, and to the terms and provisions of this Declaration.

**Section 4.3. Restrictions Upon Owners' Rights.** All titles, leaseholds, and other interests in, and all liens upon, property in the Development shall be held subject to the following:

**4.3.1.** The right of the Developer, and of the Association, to dedicate, transfer or convey all or any of the Common Area, with or without consideration, to any successor association, governmental body, district, agency or authority, or to any public or private utility, provided that it shall promote the interests of the Owners;

**4.3.2.** Easements and rights-of-way through, under, over and across the Common Area, for the installation, maintenance and inspection of lines and appurtenances for the Utility Systems including but not limited to utilities, signage, wastewater collection, treatment and disposal system, public or private water, storm sewer, drainage, electric, fuel oil, gas and other utilities and services, specifically including any telephone, television, irrigation or lawn-sprinkler systems or facility, and the right of the Developer to grant and reserve easements and right-of-way through, over and upon and across the Lots and/or Common Area for the completion of the Development, for the operation and maintenance of the Common Area, and for the benefit of the Owners;

**4.3.3.** The right of invitees of the Developer or an Owner to use the parking lots and other necessary portions of the Common Area for ingress and egress;



**4.3.4.** The right of the Association to provide penalties and suspend the rights of any Owner for any period during which any Assessment remains unpaid and for any infraction of this Declaration or the Associations' published rules and regulations;

**4.3.5.** The right of the Developer and the Association, respectively and from time to time, to fix and collect assessments, and to fix fees, charges and penalties.

**Section 4.4. Additional Structures.** Neither the Association nor any Owner or any group of Owners shall, without the prior written approval of Developer and the Westridge Shores Architectural Board, allow or cause any structure or other improvement to be placed in or on the Common Area.

**Section 4.5. Easements for Developer.** During the period that Developer owns any Common Area, or owns any Lot primarily for the purpose of sale or that any Participating Builder has any building or improvements under construction, or has any constructed home on a Lot not sold to an independent third party home purchaser, Developer and/or Participating Builder, as applicable, shall have an alienable and transferable right and easement on, over, through, under and across the Common Area for the purpose of constructing or improving Lots, any improvements to the Common Area, and for installing, maintaining, repairing and replacing such other improvements to the Development (including the Recreational Facility and other portions of the Common Area) as are contemplated by this Declaration or as Developer or Participating Builder, in its absolute and sole discretion, deems in the best interest of the Development, including without limitation any improvements or changes permitted and described in this Declaration, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided that in no event shall Developer have the obligation to do any of the foregoing.

**Section 4.6. Changes in Boundaries; Additions to Common Area.** Developer shall have the right to change and realign the boundaries of the Common Area, any Lot or other portion of the Development owned by Developer, including the realignment of boundaries between adjacent Lots and Common Area.

**Section 4.7. Easement for Utilities/Utility Systems.** There is hereby reserved for the benefit of Developer and the Association the power to grant and accept easements to and from any private or public authority, agency, public service district, public or private utility or other person upon, over, under and across (1) all the Common Area or (2) an area on any Lot intended for improvement as a single-family dwelling ten feet (10') in width along the interior side of the perimeter boundary lines of the subdivision, and five feet (5') in width along the boundary lines of each Lot for a total easement width of at least ten feet (10') along a lot line common to two (2) Lots, for the purpose of installing, replacing, repairing, maintaining and using Utility Systems. For so long as Developer or any Participating Builder owns any portion of the Common Area or owns any Lot or has a

home under construction primarily for the purpose of sale, the Association may not grant or accept any such easement without the prior written consent of Developer and Participating Builder. To the extent feasible, all systems, utilities and facilities in the Development shall be located underground. All of such easements shall be deemed to include permission (1) to erect and maintain pipes, lines, manholes, pumps and other necessary equipment and facilities, (2) to cut and remove any trees, bushes or shrubbery, (3) to grade, excavate or fill, or (4) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement and use. No building, structure or other permanent obstruction of any kind whatsoever shall be placed on or in the easement described above.

**Section 4.8. Sales Offices, Rental Offices, Property Management Offices and Construction Offices.** Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Developer and Participating Builder, until the Developer owns no Lots or until December 31, 2030, whichever is sooner, the perpetual, alienable and transferable right and easement in and to the Development for the maintenance of signs, sales offices, rental offices, property management offices, construction offices, business offices and model or sample homes, together with such other facilities as in the sole and absolute discretion of Developer or Participating Builder may be convenient or necessary to the completion, management, rental, improvement and/or sale of homes, Lots or Common Area.

**Section 4.9. Easements for Annexed Property.** Not Applicable.

**Section 4.10. Dedication of Roads and Alleys.** The Developer may cause some or all of the roads and alleys in the Development to be dedicated to the State of Delaware as public roads and alleys at such time, and on such terms and conditions, as the Developer, in its sole and absolute discretion, deems in the best interests to the Development. Until such time as all streets, roads and alleys are dedicated as public roads, and such dedication is accepted by the State, if ever, all deeds to lots in the Development shall comply with Section 9623 of Title 9 of the Delaware Code by containing a statement that such private streets and roads are not maintained by the State.

**Section 4.11. Delegation of Owner's Rights.** An Owner may delegate to the Owner's family members, tenants, and invitees, in accordance with the By-Laws and the Rules and Regulations established by the Developer or Association and not otherwise, the Owner's respective right to enjoyment of the Common Area.

**Section 4.12. Access.** All Owners, by accepting title to Lots conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress and egress to and from such Lots and acknowledge and agree that such access, ingress and egress to and from such streets, sidewalks, and walkways, and trails located within the Development from time to time, provided that pedestrian and vehicular access to and from all Lots shall be permitted at all times, subject to the rules and regulations provided for herein.

**Section 4.13. Easements for Association.** The Association shall have a general right and easement for the benefit of the Association, its directors, officers, agents and employees, including but not limited to any Professional Managing Agent employed by the Association and any employees of such manager, to enter upon and into any Lot or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or occupant, as the case may be.

**Section 4.14. Maintenance Easement.** Subject to the other terms of this Declaration, the Developer or the Association shall have the right and easement to enter upon any unimproved portions of any Lot for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety and appearance within the Development; provided that such easements shall not impose any duty or obligation upon the Developer or the Association to perform any such actions. Furthermore, there is hereby reserved for the benefit of the Developer and the Association an easement, but not an obligation, to enter upon any unimproved portions of Lots located within twenty feet (20') from the water's edge of any pond or other body of water within the Development for the purpose of mowing such area and keeping same clear and free from unsightly growth and trash, as well as for the purpose of maintaining such body of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards.

**Section 4.15. Environmental Easement.** The Developer or the Association shall have an alienable, transferable and perpetual right and easement on, over and across all unimproved portions of the Common Area and Lots for the purposes of taking any action necessary to effect compliance with environmental rules, regulations and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include without limitation the right to implement erosion control procedures and practices, the right to drain standing water and the right to dispense pesticides.

**Section 4.16. Wells and Effluent.** The Developer or the Association shall have an alienable, transferable and perpetual right and easement to (1) pump water from ponds and other bodies of water located within the Development for the purpose of irrigating any portions of the Development, for fire control and for other purposes, (2) drill, install, locate, maintain and use wells, pumping stations, water towers, siltation basins and tanks and related water and sewer treatment facilities and systems within the Common Area.

**Section 4.17. No Partition.** There shall be no judicial partition of the Development or any part thereof, nor shall any person acquiring any interest in the Development or any part



thereof seek any such judicial partition unless the Development has been removed from the provisions of this Declaration.

**Section 4.18. Jurisdiction.** Notice is hereby given of the restriction that as to any portion of any Lot within the Development which may contain submerged land or other critical areas, all activities on or over and all uses of such land or other critical areas are subject to the jurisdiction of the U.S. Army Corps of Engineers and/or the State of Delaware. An Owner is liable for any damages to, any inappropriate or unpermitted uses of, and any duties or responsibilities concerning any portion of the Owner's respective property which is submerged land, wetlands or other critical area.

## ARTICLE V

### MAINTENANCE

#### **Section 5.1. Association's Responsibility.**

**5.1.1** Subject to the Developer's rights otherwise provided in this document, the Association shall have the right to make or cause to be made alterations, modifications, improvements, repairs, maintenance and replacements to the Common Area, and to portions of buildings and lots designated herein. The cost thereof shall be assessed as Common Expenses and collected from the Owners according to their respective interests in the Common Area.

**5.1.2** Except as may be herein otherwise specifically provided, the Association shall maintain, keep in good repair and replace as needed all portions of the Common Area including but not limited to, (1) all Common Area, ponds, landscaped areas, natural areas, buffer areas, stormwater management areas, surface drainage facilities, erosion and sedimentation control facilities, the Recreational Facility and all other improvements situated within the Development, (2) such Utility Systems and facilities which are a part of the Common Area and which are not maintained by the Developer, a public authority, public service district, or another public or private party. The Association shall not be liable for injury or damage to any person or property (1) caused by any cause or act of God, or an Owner or any other person, (2) resulting from any rain or other surface water which may leak or flow from any portion of the Common Area, or (3) resulting from any failure or neglect of repair by the Association. The Association shall not be liable to any Owner or invitee of an Owner for loss or damage, by theft or otherwise, of any property stored or left in or upon any portion of the Common Area or any other portion of the Development. No diminution or abatement of Assessments or any dues or charges payable to the Association shall be claimed or allowed by reason of any alleged failure of the Association to take some required action or to perform some required function, or for inconvenience or discomfort arising from the Association making improvements or repairs or from the Association taking any action to comply with any law, ordinance, order or

other directive of any court or other governmental authority, the obligation to pay such Assessments being a separate and independent covenant on the part of each Owner.

**5.1.3** In the event that any maintenance, repair or replacement performed by the Developer or the Association arises out of any failure of an Owner to perform the obligations imposed by Section 5.2 or arises out of any willful or negligent act of an Owner, of a member of an Owner's family, of an Owner's invitee, or tenant, and is not covered or paid for by insurance in whole or in part, then, in either event, the Developer or the Association, may charge such Owner and all other persons responsible with the expenses, including reasonable attorney's fees and costs, incurred together with a reasonable amount to cover the cost of the time spent by the personnel of the Developer, the Association, or a property manager in arranging such maintenance, repair or replacement. No such maintenance, repair or replacement shall be undertaken by the Developer or Association, except in an emergency, without giving the Owner notice of the action required and an opportunity to undertake such action. The Developer need not undertake any such action, but may do so. In the event that the Developer undertakes such action, the Association shall promptly reimburse the Developer for the Developer's costs and expenses. The Association shall have a lien on the Lot of the responsible Owner for all such charges, costs and expense.

**Section 5.2. Owner's Responsibility.**

**5.2.1.** All maintenance and repair of structures, grass, landscaping and other improvements which are not Common Area shall be the responsibility of the Owner thereof.

**5.2.2.** Cutting and fertilization of the grass on the Lots shall be the responsibility of the Owner. Maintenance, repair and replacement of the irrigation system, landscape beds, flowers, shrubs and trees on the Lots shall be the responsibility of the Owner thereof.

**5.2.3.** The maintenance and repair of all Common Areas (including the Recreational Facility, if any, and Utility Systems) shall be the responsibility of the Association.

**5.2.4.** Developer shall be responsible for the maintenance and repair of structures, lawns, landscaping and other improvements on Developer-owned portions of the Property which are not Common Area.

**5.2.5.** The Association shall provide maintenance and repair which an Owner fails to provide and shall charge the respective Owner for the cost thereof, including an amount determined by the Association, in its sole and absolute judgment, to reimburse the Association for the time spent in arranging such maintenance or repair by personnel of the Association or of any property manager retained by the Association as well as reasonable attorney's fees and costs incurred. The Association shall have a lien on the Lot of the responsible Owner for all such charges, costs and expense. No Owner shall (1) decorate,

relocate or otherwise alter the exterior or any portion of the exterior of any structure without the prior written approval of the Westridge Shores Architectural Board, or (2) do any work which, in the reasonable opinion of the Westridge Shores Architectural Board, will jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or hereditament thereto, without the prior written approval of the Westridge Shores Architectural Board.

**5.2.6.** All maintenance of the surface area, lawns, landscaping and wooded areas, if any, in the easement areas shall be the responsibility of the Owner thereof.

**5.2.7.** No Owner shall modify the irrigation system on any Lot without the prior written approval of the Westridge Shores Architectural Board. The cost of any and all modifications shall be the responsibility solely of the Owner of the said Lot.

## **ARTICLE VI**

### **ASSESSMENTS**

**Section 6.1. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, safety and welfare of the residents in the Property, the provision of services and facilities authorized by the Board of Directors, taxes and other expenses of the Association, and for the improvement, maintenance, repair and replacement of the Common Areas located in the Property, and for services and facilities devoted to this purpose and related to the use and enjoyment of the Common Areas; the payment of taxes and insurance premiums for the Common Areas, utility services used in or for the Common Areas; for the cost of labor, equipment, materials, management and supervision thereof; and for operating reserve funds and reserve funds for repair and replacement of the Common Areas and facilities thereon and other contingencies. Assessments also may be levied to accomplish the purpose and duties of the Association and all other costs and expenses incurred by the Association in the proper conduct of its activities; including but not limited to the maintenance, repair or replacement of any property or facilities serving or appurtenant to the Development that the Association is obligated or elects to maintain, whether or not such property or facilities are owned by the Association or are located within the Development.

**Section 6.2. Creation of Lien and Personal Obligation of Assessments.** The Developer, for itself and its successors and assigns, and for each Lot within the Development, 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) special assessments (including but not limited to "initial assessments" provided for below) for capital improvements, operations, repair, replacement and reserve funds, such assessments to be fixed, established and collected as hereinafter provided; and (3) fees established by the Board of Directors. The annual and



special assessments and fees, together with penalties, interest, costs and reasonable attorney's fees, shall be a charge on the land, and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment or fee, together with penalties, 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 fell due. A personal obligation for any 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. No assessments shall be due from any Lots owned by the Developer or any Participating Builder.

### **Section 6.3. Computation of Assessment.**

**6.3.1.** Until the beginning of the next fiscal year of the Association following the first conveyance of a Lot to a Class A Member, the applicable annual assessment (if any) shall be the amount established by the Developer in its sole discretion. Thereafter, it shall be the duty of the Board of Directors, at least sixty (60) days before the beginning of the fiscal year and thirty (30) days prior to the annual meeting, to prepare a budget and determine the annual assessment covering the estimated costs of operating the Association during the coming year. The Board shall cause a copy of the budget and the amount of the annual assessment to be levied against each Lot for the following year to be delivered to each Owner at least fifteen (15) days prior to the meeting. The budget shall be approved by majority vote of the Board of Directors; provided, however, that any budget under consideration by the Board of Directors pursuant to this Section 6.3.1. that would result in an increase in the annual assessments payable by the Members in excess of the amounts permitted under Section 6.3.6. below, shall be approved by the affirmative vote of Members entitled to cast not less than sixty-seven percent (67%) of the votes of the Members present, in person or by proxy, and voting at the annual meeting or any meeting of the Association duly called for this purpose.

**6.3.2.** Notwithstanding the foregoing, however, in the event the Board of Directors disapproves the proposed budget or the Board of Directors fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the then current year shall continue for the succeeding year or years.

**6.3.3.** All assessments shall be allocated equally among all Lots excepting exempt lands as hereinafter provided.

**6.3.4.** The initial assessments shall be as provided in Section 6.8.

**6.3.5.** In addition to the Annual Assessment authorized by Section 6.2. hereof, the Board of Directors of the Association may levy in any assessment year one or more special assessments applicable to that year only, for the purpose of defraying in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital

improvement upon or in the Common Areas, including the necessary fixtures and personal property related thereon, and for operating the Common Areas, for which a reserve fund does not exist or is not adequate, and including operating cost overruns due to extraordinary conditions; provided that any such assessment shall have the assent of a majority of a quorum of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose and such assessments shall be subject to the limitations set forth in Section 6.3.10 of this Declaration.

**6.3.6.** In the year Developer withdraws from control of the Association, the Board of Directors may increase the annual assessment without limit. In subsequent years, the Board of Directors may, without the consent of the members, increase the annual assessment in an amount not to exceed twenty percent (20%) of the annual assessment for the preceding fiscal year plus the amount by which any ad valorem real estate taxes and insurance premiums payable by the Association have increased over the amount payable for the same or similar items for the previous year.

**6.3.7.** The maximum annual assessment may be increased above twenty percent (20%) upon approval of sixty-seven percent (67%) of the votes of the then Class A members and sixty-seven (67%) of the votes of the then Class B members, in person or by proxy at a meeting duly called for this purpose.

**6.3.8.** The Board of Directors may from time to time fix the annual assessment at an amount not in excess of the maximum.

**6.3.9.** The Board of Directors shall establish and maintain a reserve fund for replacements of the Common Area by the allocation and payment to such reserve fund of an amount to be designated from time to time by the Board of Directors. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited in any banking account institution, the accounts of which are insured by any state or an agency of the United States of America or may, in the discretion of the Board of Directors, be invested in obligations of, or fully guaranteed as to principal by the United States of America. The reserve for replacements of the Common Areas may be expended only for the purpose of effecting the replacement of the Common Areas, Utility Systems, and/or major repairs to any equipment or replacement thereof, and for start-up expenses and operating contingencies of a nonrecurring nature relating to the Common Areas. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider necessary or appropriate. The proportional interest of a member in any such reserve shall be considered an appurtenance of his Lot and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Lot to which it ascertains and shall be deemed to be transferred with such Lot.

**6.3.10.** In no event shall an annual assessment or special assessment include any amount for "Community Amenities" (as such term is used in the context of 25 Del. C. Section

317) that have not been opened or made available for Class A Members and that are intended for the use of the Class A Members.

**6.3.11.** The Association may also levy a special assessment against any Owner to reimburse the Association for costs incurred in bringing the Owner or such Owner's Lot into compliance with the provisions of this Declaration, or the Certificate of Incorporation, Bylaws and rules and regulations of the Association, or any applicable Laws; provided such special assessment may only be levied upon the affirmative vote of a majority of the Board of Directors, after notice and an opportunity for a hearing has been provided to the Owner.

**6.3.12.** Notwithstanding anything contained in this Declaration to the contrary, in addition to any other rights and remedies available to the Association as provided herein, or at law or in equity, the Association shall have the right (but not the obligation or duty) to discontinue all or a portion of the services provided to any such Owner by the Association until such time as full payment is received as provided herein above.

**Section 6.4. 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 due as hereinabove provided, then such Assessment shall be deemed delinquent and together with such interest 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 then Owner. In addition to such lien rights, the personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation and 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 due date, the assessment shall bear interest from the date of delinquency at the legal interest rate authorized by 6 Del. C., Section 2301, as amended, and the Association may bring a 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 above provided and reasonable attorney's fees, together with the costs of the action. No Owner of a Lot may waive or otherwise escape liability or the Assessment provided for herein by non-use of the Common Areas or abandonment of said Lot.

**Section 6.5. Assessment Lien.** The lien of the assessment 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. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, provided that no Participating Builder shall be subject to any assessment.

**Section 6.6. Exceptions for Assessments.** The following property subject to this Declaration shall be exempt from the assessments, charges and liens created herein:



**6.6.1.** All properties dedicated to and accepted by a governmental body, agency or authority and devoted to public use;

**6.6.2.** All Common Areas;

**6.6.3.** All vacant Lots owned by the Developer, any successor Developer or Joseph P. Reed, and not sold or leased to third persons.

**6.6.4. Section 6.7. Uniform Rate of Assessment.** Both annual and special Assessments must be fixed for each Lot at the same amount as for every other Lot, and shall be collected in one installment or more, as the Board of Directors may from time to time decide.

**Section 6.8. Initial Assessment.** At the time the Developer conveys a Lot to the first buyer of the Lot after its construction; such first buyer shall pay to the Association an Initial Assessment set by the Developer. Initial Assessments shall be used by the Association as working capital to insure availability of cash for expected and unexpected expenditures, or to acquire equipment or service deemed necessary by the Association. Initial Assessments shall be paid in addition to regular Assessments. With respect to assessments related to “Community Amenities” (as such term is used in the context of 25 Del. C. Section 317) initial assessments may be imposed as a special assessment hereunder upon such Common Amenities becoming open or available for use by Class A Members, and may at such time include amounts for operating and replacement reserves. This section shall not apply to any Participating Builder.

## **ARTICLE VII**

### **ARCHITECTURAL CONTROL**

**Section 7.1. Authority.** The Developer or Board of Directors shall have the authority and standing, on behalf of the Association to enforce in courts of competent jurisdiction decisions of the Board established in Section 7.2 of this Article. This Article may not be amended without the Developer’s written consent so long as the Developer owns any property within the Development. No alteration, modification or construction, which term shall include within its definition, changing the exterior appearance of any building, wall, fence or other structural improvement, staking, clearing, excavation, grading and other site work or removal of plants, trees or shrubs, shall take place except in strict compliance with this Article, until the requirements thereof have been fully met, and until the approval of the Westridge Shores Architectural Board (“WSAB”) has been obtained.

**Section 7.2. Westridge Shores Architectural Board.**

(a) The Westridge Shores Architectural Board shall have exclusive jurisdiction over all original construction, modifications, additions or alterations made on or to all

existing improvements and the open space, if any, appurtenant thereto, on all property within the Development, including landscaping and grading. In order to protect the visual integrity, architectural spirit and long-term property values of the Development, the Westridge Shores Architectural Board shall prepare and, on behalf of the Developer or Board of Directors, shall promulgate design and development guidelines and application and review procedures, all as part of the Westridge Shores Design Standards and Guidelines ("Westridge Shores Standards") and may establish reasonable fees for review, provided that such fees shall not be applicable to construction or alterations by a Participating Builder. Westridge Shores Standards shall incorporate all restrictions and guidelines relating to development and construction contained in this Declaration as well as restrictions and guidelines with respect to location of structures upon property, foundations, size, length, design of structures, driveway and parking requirements and landscaping requirements. Copies shall be available from the Westridge Shores Architectural Board for review. Unless otherwise provided in this Declaration, the guidelines and procedures shall be those of the Developer or Association and the Westridge Shores Architectural Board shall have sole and full authority to prepare and to amend the Westridge Shores Standards. The Westridge Shores Architectural Board shall make Westridge Shores Standards available to owners.

(b) The Westridge Shores Architectural Board shall initially consist of three (3) members, all appointed by the Developer, and who shall serve until such time as their successors are designated by the Developer or Board of Directors as provided below. Declarant may remove with or without cause any Westridge Shores Architectural Board member appointed by Declarant at any time by written notice to such member. At such time as Developer deems appropriate, the Board of Directors of the Association shall have the right to appoint a maximum of two (2) additional members. At no time shall the Westridge Shores Architectural Board have less than three (3) members nor more than five (5) members. At such time as one hundred percent (100%) of all property within the Development has been developed, improved or conveyed to purchasers in the normal course of development and sale, the Board of Directors shall appoint all members of the Westridge Shores Architectural Board. Thereafter, the regular term of office for each Westridge Shores Architectural Board member appointed by the Board of Directors shall be one (1) year, measured from the date of such member's appointment. Upon death or resignation of any such member, a successor or successors appointed by the Board of Directors to fill such a vacancy shall serve the remainder of the term of the former member. The Westridge Shores Architectural Board shall select its own Chairman and he, or in his absence the Vice Chairman, shall be presiding officer of its meetings. The Developer may, at its option, delegate to the Board of Directors, its right to appoint one (1) or more members of the Westridge Shores Architectural Board. Anything elsewhere contained herein to the contrary notwithstanding, the Developer shall retain an absolute veto over any decision by the Westridge Shores Architectural Board so long as Developer owns any Lot or Common Area within the Development.

**Section 7.3. Meeting and Decisions of the Board.** The Westridge Shores Architectural Board shall establish times, dates and frequency of meetings. A quorum of a simple majority of the members shall be required to review and take action on applications for approval. The Board shall appoint a secretary who shall prepare minutes of each Board meeting including all decisions of the Board. If the Westridge Shores Architectural Board fails to approve or deny an application within thirty (30) days of receipt of the complete application by and payment of fees to the Board, the party making the submission for approval shall deliver written notice to the Westridge Shores Architectural Board of its failure to act, and, if approval is not granted or denied within fifteen (15) days thereafter, the plans and specifications shall be deemed to be denied. It is further specifically provided that if any proposed application for action will affect drainage of stormwater, such application shall include a certification of non-effect of said plans from a professional engineer licensed in the State of Delaware.

**Section 7.4. No Waiver of Future Approvals.** The approval of the Westridge Shores Architectural Board of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of such Board, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specification, drawings, or matter subsequently or additionally submitted for approval or consent.

**Section 7.5. Variance.** The Westridge Shores Architectural Board may authorize variances from compliance with any of the provisions of the Westridge Shores Standards when circumstances such as topography, natural obstructions, hardship or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of the Declaration, or (c) prevent the Westridge Shores Architectural Board from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

**Section 7.6. Review and Control by the Westridge Shores Architectural Board.**

**7.6.1.** No building, outside attached shower, fence, wall, deck, patio, bulkhead, retaining wall, swimming pool, tennis court, septic system, parking area, garage, and/or paving for driveways or garages, or other any other structure of any kind shall be erected, placed or altered nor shall a building permit from Sussex County for such improvement or construction for such improvement be applied for on any improved or unimproved property in the Development until all fees to the Association have been paid and complete sets of building plans and elevations, specifications, and site plan (showing the proposed location of such building, drives and parking areas, etc.) shall have been reviewed and approved in writing by the Westridge Shores Architectural Board. The number of plans required shall be established by the Westridge Shores Architectural Board with the



intention that there shall be at least one (1) complete set of plans and specification for each member of the Westridge Shores Architectural Board and one (1) additional set for the Association's files. In reviewing such materials, the Westridge Shores Architectural Board shall consider such things as aesthetic appearance, harmony with surrounding improvements, compliance with this Declaration and any additional criteria adopted by the Westridge Shores Architectural Board as part of the Westridge Shores Standards. Approval or disapproval of plans, locations or specifications may be based by the Westridge Shores Architectural Board upon any ground incorporated within the Westridge Shores Standards including purely aesthetic considerations, which in the sole discretion of the Westridge Shores Architectural Board, shall be sufficient. No painting, staining, changes in color, finish materials or alteration to the exterior facade of any structure shall be undertaken until approval has been obtained in writing from the Westridge Shores Architectural Board. This provision shall not apply to repainting the same color. There shall be no submission review fees required of Developer or any Participating Builder.

**7.6.2.** No completed structure shall be deemed to be in compliance with this Declaration unless and until a Certificate of Compliance has been issued by the Westridge Shores Architectural Board. A Certificate of Compliance will not be unreasonably withheld if the structure is completed pursuant to the approved plans.

**7.6.3.** Neither Developer nor any member of the Westridge Shores Architectural Board shall be responsible or liable in any way for any defects in any plans or specifications approved by the Developer or the Westridge Shores Architectural Board, nor for any structural defects in any work done according to such plans and specifications approved by the Developer or the Westridge Shores Architectural Board. Further, neither Developer nor any member of the Westridge Shores Architectural Board shall be liable for damages to anyone submitting plans or specifications for approval under this Section, or to any owner of property affected by this Declaration by reason of mistake in judgment, negligence, or non-feasance arising out of or in connection with the approval or disapproval of or failure to approve or disapprove of any such plans or specifications. Every person who submits plans or specifications, and every Owner of any Lot agrees, that such Owner will not bring any action or suit against Developer, or any member of the Westridge Shores Architectural Board, to recover for any such damage. No approval of plans, location or specification shall be construed as representing or implying that such plans, specification or standards will, if followed, result in a properly designed residence. Such approvals and standards shall in no event be construed as representing or guaranteeing that any residence or improvement hereto will be built in a good workmanlike manner. The property owner shall have sole responsibility for compliance with approved plans and does hereby hold the Westridge Shores Architectural Board and the Developer harmless for any failure thereof caused by the property owner's architect or builder.

**7.6.4.** Architectural and design review shall be directed towards attaining the following objectives for the Development, and the Developer or Association may adopt reasonable

standards, rules, and regulations deemed necessary or convenient in attaining such objectives:

**7.6.4.1.** Preventing excessive or unsightly grading, indiscriminate earth moving or clearing of property, or removal of trees and vegetation which could cause disruption of natural water courses or alter natural or designed land forms.

**7.6.4.2.** Ensuring that the location and configuration of structures are visually harmonious with the terrain, with the vegetation of the residential Lot and with surrounding residential lots and structures, and do not unnecessarily block scenic views from existing structures, walks or roads or tend to dominate any general development or natural landscape.

**7.6.4.3.** Ensuring that the architectural design of structures and their materials and colors are visually harmonious with the Development's overall appearance, history and cultural heritage, with surrounding development, with natural land forms and native vegetation, and with development plans approved by the Developer, or by a governmental or public authority, if any, for the areas in which the structures are proposed to be located.

**7.6.4.4.** Ensuring that the Development structure, building or landscaping complies with the provisions of this Declaration.

**7.6.4.5.** Promoting building design and construction techniques that respond to energy consumption and environmental quality considerations such as heat loss, air emissions and run-off water quality.

**7.6.5.** The approval of the Westridge Shores Architectural Board shall not be required for matters of interior decoration only.

**Section 7.7. Application Fees.** The Board of Directors of the Association shall have the right to set and charge a reasonable fee for applications for home improvement alterations, additions, construction of accessory structures, garages or fences to defray architectural review costs. Participating Builder shall not be subject to such fees.

**Section 7.8. Entry on a Property.** The Westridge Shores Architectural Board or any of its representatives shall have the right to enter any improved lot or unimproved lot within Westridge Shores for the purpose of determining compliance with these covenants and the Westridge Shores Standards, and with decisions of the Westridge Shores Architectural Board, pending or completed, which affect that property. Entering a property for this purpose shall not be deemed trespass.

## ARTICLE VIII

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**USE RESTRICTIONS**

In order to protect the appearance and beauty of the vegetation, topography or other natural features within Westridge Shores, the following controls are hereby established.

**Section 8.1. Residential Use Only.**

The Owners of Lots in the Development acknowledge and recognize that Westridge Shores is a community planned to achieve the goals and objectives of providing an environment for families to live and enjoy the peace and quiet of an attractive and distinctive residential community. In order to achieve a neighborhood of serenity and peaceful use, the Owners agree and covenant that the homes in the Development shall only be used for single-family residential purposes exclusively. Occupancy shall comply with the Housing for Older Persons Act as defined in Section 2.2. No groups, except families shall reside, occupy, rent or use a dwelling in the Development. No business activity of any kind, including by example but not limited to, rooming house, boarding house, gift shop, antique shop, professional office or beauty/barber shop or the like or any trade of any kind whatsoever including yard sales, garage sales or the like shall be carried on upon any Lot or in any structure on a Lot; provided, however, that nothing contained herein shall be construed so as to prohibit home offices so long as no stock in trade is kept or commodities sold, there are no employees, patrons, customers or clients and no signs. Nothing herein shall be construed to prevent the Developer or a Participating Builder from constructing dwellings to be sold or leased, from showing Lots, dwellings or models for the purpose of selling or leasing a Lot or dwelling shown for another or from placing and maintaining signs, structures, storage places, facilities and offices it deems necessary.

**Section 8.2. Fences, Boundary Wall, Boundary Line Hedge and Shrubbery.** Fences, boundary walls, boundary line hedges and shrubberies shall only be permitted if the following requirements are met:

**8.2.1.** Fences, boundary walls, boundary line hedges and shrubberies shall be prohibited within the front yard area of the lots and in general, shall not be closer to the front of the lot than the front of the dwelling unit. The height of any such fence, boundary wall, boundary line hedge or shrubbery along the side of a unit shall not exceed eight feet (8'-0"). Material, color, type and style of fence and boundary wall shall be limited to those which are viewed by the Westridge Shores Architectural Board to be aesthetically pleasing when installed in a residential setting. The Westridge Shores Architectural Board shall endeavor to maintain consistency in fence design and appearance within the Development.

**8.2.2.** Prior written approval shall be obtained from the Westridge Shores Architectural Board.

**8.2.3.** Any fence, boundary wall, boundary line hedge or shrubbery along the side or rear of any Lot shall not extend over any Utility System or easement on said Lot, and shall not



exceed eight feet (8'). The heights or elevations of any fence or wall shall be measured from the existing elevations of the Lot.

**Section 8.3. Pools, Hot tubs.** No above-ground swimming pools whatsoever shall be erected or allowed to remain in the Development. "Hot tubs", "jacuzzis" and the like shall be prohibited except when placed in the area at the rear of a dwelling and within lines measured and running in a parallel line from each rear corner of such dwelling to the rear Lot lines and only after obtaining prior written approval of the Westridge Shores Architectural Board.

**Section 8.4. Temporary Structures, Vehicles, Boats and Trailers.** Except as may otherwise be provided in this Declaration, no structure of a temporary character shall be placed upon any Lot at any time; provided, however, that this prohibition shall not apply to shelters or other structures constructed or used by a Participating Builder, or approved by the Developer and used by a contractor during construction of a dwelling, it being clearly understood that the latter temporary shelters may not, at any time, be used for residence or remain on the Lot after completion of construction. Except for construction related trailers used by Participating Builder, no trailer, mobile home, double-wide, park model trailer, motor home, tent, barn, camper, bus, or other similar vehicle, out-building, structure, horse/livestock trailer, boat or trailer shall be placed, kept or parked on any Lot or on any portion of the Common Area, except as may be stored within the enclosed garage, at any time either temporarily or permanently unless the Developer or the Association designates one or more areas in the development for regulated storage and long-term parking.

**Section 8.5. Mining and Drilling Prohibition.** No oil or natural gas drilling, refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, and no derrick or other structure designed for use in boring for oil or natural gas shall be stored, erected, maintained or permitted in the Development.

**Section 8.6. Use and Height Restrictions.** No structure shall be erected, placed or permitted to remain on any Lot in excess of three (3) stories in height, and in no instance shall any structure exceed forty-two feet (42') in height above the first floor finished elevation.

**Section 8.7. Setbacks and Building Lines.** Each dwelling which shall be erected on any Lot shall be situated on such Lot in accordance with the building and setback lines established by Developer and authorized by Sussex County zoning regulations. No structure shall be placed on or over any easement on any Lot. Developer shall determine, at its sole discretion, placement of all dwellings, garages and accessory uses. The Developer shall have the power and authority to promulgate and publish setback requirements for each Lot. In certain cases, the Developer may require an Owner to seek a variance from Sussex County Zoning Ordinance if necessary to protect important trees, vistas or to preserve aesthetic value.

**Section 8.8. Restriction on Materials.**

**8.8.1.** All structures constructed or placed on any Lot shall be built of good quality and new material, and no used structures or old buildings or parts thereof shall be relocated or placed on any such Lot.

**8.8.2.** No structures constructed or placed on any Lot shall have an exterior finish of cinder block, grooved plywood, T-111, or plywood above grade.

**8.8.3.** All roofing shall be made of tile, architectural grade asphalt shingles or a material similar thereto which has been approved by the Westridge Shores Architectural Board. The minimum roof pitch shall be 6/12.

**8.8.4.** All driveways and parking areas shall have a hard, dustless surface, such as asphalt, concrete, brick, paver or such similar material as may be approved by the Westridge Shores Architectural Board.

**Section 8.9. Mobile Home Restriction.** Except for construction related trailers used by Participating Builder, no mobile home, trailer, doublewide, manufactured, or similar type structure shall be permitted, placed or constructed on any Lot in the Development.

**Section 8.10. Re-Building Requirement.** Any dwelling or out-building on any Lot which may be destroyed in whole or in part by fire, windstorm or any other cause or act of God must be rebuilt and the structure restored to a natural condition, within nine (9) months or such shorter period of time as may be reasonable; all debris must be removed within fourteen (14) days.

**Section 8.11. Elevation and Drainage Changes.** No changes in the elevation, topography or drainage characteristics of the Development by any Owner other than a Participating Builder shall be made so as to materially affect the surface elevation or natural drainage of surrounding Lots and without the prior written approval of the Developer or Westridge Shores Architectural Board. Nor shall any fill be used to extend any property into any state or federal wetlands, to increase the size of a Lot by filling in water it abuts, or to fill in any waterway, wetland or storm drainage area of the Development for any purpose whatsoever.

**Section 8.12. Tree Removal.** The removal of trees, shrubs and other plant material shall be limited to removal of those materials essential for house construction and driveway installation only. The Westridge Shores Architectural Board shall further have the authority to require any Owner removing a tree in violation of this clause to replace the same with a tree of the same species or a different species with a caliper of two inches (2") or greater at such Owner's cost and expense.

**Section 8.13. Clotheslines.** No clothesline or drying yards shall be located upon any Lot in the Development, nor shall towels, blankets or the like be hung or placed on the front or rear porch, decks, railing or fences or any dwelling or Lot, except with the written permission of the Developer or Westridge Shores Architectural Board. Permission may be granted by the Developer or Westridge Shores Architectural Board when the clothesline, drying yard, or other exposure of clothes to the air for drying can be effected behind shrubbery, trellis or another type of screen so as not to be seen from another Lot or Common Area, including, but not limited to, streets or roadways in the Development.

**Section 8.14. Sewer and Water System.** No surface toilets or septic tanks shall be permitted in the Development (other than those utilized by the Developer or any Participating Builder). A purchaser of a Lot assumes responsibility for attaching water connections, plumbing fixtures, dishwashers, toilets and sewage disposal system to the central sewer and water systems of the Development.

**Section 8.15. Garbage/Trash Disposal.** Each Owner shall provide garbage and trash receptacles or similar facilities in accordance with reasonable standards established by the Developer or the Association, which receptacles shall be placed only at the front of the dwelling in an enclosure approved by the Developer or Association and placed adjacent to the driveway for the dwelling in a location approved by the Developer or Association. If an Owner does not have a receptacle or similar facility approved by the Developer or Association, all garbage and trash must be kept in the Owner's garage and may only be placed outside on the designated trash pick-up day for Owner's Lot. The Developer or Association may from time to time adopt rules and regulations for the sorting of garbage and trash into separate receptacles or other handling according to the nature of the materials or otherwise to aid in recycling or other processes with beneficial impact on the environment. No garbage or trash incinerator shall be permitted. No burning, burying or other disposal of garbage or trash on any Lot or within the Development shall be permitted. The Developer or Association may from time to time adopt rules and regulations, including designation of the persons and methods, for garbage/trash collections and disposal, and all Owners shall be bound thereby. Owners and the Association shall use professional commercial garbage and trash removal services. Notwithstanding the foregoing, the provisions of this Section 8.15 shall not apply to any Participating Builder.

**Section 8.16. Sign Controls.** No signs of any character shall be erected on any Lot, placed in the window of any dwelling or structure located on a Lot, or displayed to the public in any manner on any Lot. This restriction shall not apply to signs used by the Developer or Participating Builder to identify and advertise the subdivision as a whole, nor to Developer's or Participating Builder's signs for selling Lots and/or houses.

**Section 8.17. Natural Buffer Zone.** No Lot Owner and no Lot Owner's family, guests, tenants, agents or employees shall disturb any natural buffer zone in any manner and/or for any reason. Owners of Lots adjoining and/or including a natural buffer zone shall be



responsible for advising their contractor or subcontractors of the natural buffer zone and will ensure no encroachment or clearing of said area. If a natural buffer zone is disturbed, the Lot Owner responsible shall be required to pay all costs incurred by the Developer and the Association, including reasonable attorney's fees and costs, as a result of its attempt to restore the area to its natural state.

**Section 8.18. Exclusion of Above Ground Utilities.** All electrical service, wires, pipes, lines, telephone, cable television (CATV) lines and utility services of any type shall be placed in appropriate conduit underground as possible and no outside electrical lines shall be placed overhead. No exposed or exterior radio or television transmission or receiving antenna shall be erected, placed or maintained on any part of the Development except those master facilities approved by the Developer, provided, however, that the normal service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the Development. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

**Section 8.19. Junk or Disabled Vehicles.** No stripped, partially wrecked, unlicensed or invalidly licensed, disabled or junk motor vehicle or part thereof, shall be permitted to be parked or kept in the Development. The following activities are prohibited: vehicle repair, bodywork, oil change, engine maintenance and the like except cleaning and washing Owners' own vehicles; no vehicles shall be maintained on jacks or blocks except temporary usage for emergency tire change.

**Section 8.20. Perimeter Access.** There shall be no access to any Lot on the perimeter of the Development except from designated roads within the development; provided, however, that Developer and Participating Builder reserves the right to construct and operate temporary construction roads during the construction and development period.

**Section 8.21. Rentals.** The Developer or Association may from time to time adopt rules and regulations pertaining to the rental of dwellings. Owners of rented dwellings shall be personally liable for the failure of a tenant or any invitee of a tenant to abide by rules and regulations pertaining to the use or occupancy of the Development.

**Section 8.22. Accessory Structures.**

**8.22.1** No accessory structure shall be constructed upon any Lot, except an exterior attached shower, a shed, mailbox, doghouse, birdhouse, garage, swing set or similar play structure, or to a free-standing pole or individual flagpole of aluminum, fiberglass or other material approved by the Developer or Association which has been approved in writing by the WSAB prior to installation or construction.

**8.22.2** All mailboxes shall be as designed and installed by the Developer. Mailbox structures may be found acceptable, by special exception, only if they are uniform and

after concise plans for same have been submitted to and reviewed by the Westridge Shores Architectural Board.

**8.22.3.** Detached garages, exterior attached showers, and sheds shall conform in appearance to the style of the dwelling and shall be constructed with the same exterior siding and roofing materials and colors as the dwelling.

**8.22.4.** No such structure except a mailbox and/or flagpole shall be placed closer to the front Lot boundary than the closer of the rear line of the dwelling or of the front line of the garage.

**8.22.5** A flagpole shall not exceed twenty four feet (24') in height.

**Section 8.23. Landscaping.** Owners are encouraged to provide landscaping for their Lots; provided, however, that Developer reserves the right to reasonably restrict the placement of landscaping, fences or other impediments to the enjoyment of views. No vegetable garden shall be located in the area between the front lot line and the front of the dwelling. Grasses, lawn growth or weeds shall be limited to a maximum of four inches (4") in height. Developer reserves the right to enter onto any Lot after notice and an opportunity to maintain landscaping and grass height, and cut any grass or weeds which continue to exceed four inches (4") in height after said notice, and to assess the cost to the Owner thereof, pursuant to Section 5.1.3.

**Section 8.24. Special Hazards.** Each Owner accepts and assumes all the risks and hazards of ownership or occupancy attendant to the ownership of such Owner's Lot, including but not limited to its proximity to any Recreational Facility or Common Area or any bodies of water in or near the Development, and agrees hereby to hold the Developer and the Association harmless and shall indemnify the Developer or the Association for all losses, costs and expenses, including attorney's fees for all such risks and hazards. Specifically, the Developer does hereby disclaim any and all liability for any property damage or personal injury resulting from acts, activity or erosion along the bank of all ditches, streams, other bodies of water or watercourses located in the Development.

**Section 8.25. Traffic Regulations.** The Developer and the Association may from time to time adopt additional rules and regulations pertaining to vehicular and pedestrian traffic in the Development as it or they deem appropriate and necessary.

**Section 8.26. Alteration of Common Area.** No person shall alter in any way any Common Area except with the written permission of the Developer or Association.

**Section 8.27. Easements and Encroachments.** No building or part of a building, including porches or projections of any kind, shall be erected so as to extend over or across any of the building lines as hereinafter established. Provided, however, if any portion of any Common Area unintentionally encroaches upon a Lot or any part thereof,

whether by settlement or otherwise, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. If any portion of improvements to a Lot or Lots unintentionally encroaches upon a Lot or any portion thereof, whether by settlement or otherwise, a valid easement for encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event any improvement or part thereof is partially or totally destroyed and then rebuilt, any encroachment of any Common Area upon a Lot or Lots or encroachment of a Lot or Lots upon any Common Area or upon an adjoining Lot or Lots resulting because of such rebuilding, shall be permitted, and a valid easement shall exist for the maintenance of such encroachments so long as the same stand. Such encroachments and easements shall not be considered or determined to be encumbrances either on any Common Area or any Lot or Lots, and no Owner shall be entitled to damages or injunctive relief because of the construction, re-construction or maintenance thereof.

**Section 8.28. Alteration of Building Lines in the Best Interest of Development.**

Where because of size, natural terrain, or other reason it is in the best interest of the Development that any building lines be altered, the Developer may make such alteration in its sole and absolute discretion. The Developer specifically reserves the right to assign to the Westridge Shores Architectural Board this right to alter building lines.

**Section 8.29. Developer, Participating Builder and Association Exempt.** None of the foregoing restrictions shall be applicable to the activities of: (a) the Developer or Participating Builder, its officers, employees, agents or assigns, in the development, marketing and sale of Lots or other parcels within the Project; or (b) the Association, its officers, employees and agents in connection with the proper maintenance, repair, replacement and improvement of the Utility Systems and/or Common Areas.

**Section 8.30. Pets.** No animals, livestock, birds, or fowl shall be kept or maintained on any part of the Development except animals commonly recognized as domestic pets, such as dogs, cats, pet fish and birds, which may be housed on a Lot in reasonable numbers (not to exceed three) as pets for the pleasure and use of the Owner but not for any commercial use or purpose. All animals must be fenced or shall be kept on a lead or leash when they are off the Owner's Lot and must be under the Owner's control at all times. No animal shall become a nuisance to other resident by barking or other acts and the Owner is responsible for removing his or her animal from the property of another. The Owner of any animal is responsible for and liable for any happenstance or accident which may occur in connection with or arising from a loose, uncontrolled or vicious animal. Non-owners (e.g. renters or lessees) may not keep any pets without the prior written approval of the Owner and any such approval must be filed with the Association.

**Section 8.31 Storage of Toxic or Hazardous Materials.** No toxic or hazardous substances as defined by environmental law shall be used, disposed, stored or released on any Lot or in the Development except for use with an outdoor grill in a tank holding thirty (30) pounds or less of natural gas or propane.



**Section 8.32 Antennae and Satellite Dishes/Receivers.** – Installation of antennas, including satellite dishes and receivers, shall be governed by this Section and such other additional reasonable rules and regulations regarding the location and screening of any such items that the Board shall impose from time to time. The Federal Communications Commission (the “FCC”) adopted a rule effective October 14, 1996 (the “FCC Rule”), preempting certain restrictions concerning the installation, maintenance, and use of direct broadcast satellite, television broadcast, and multipoint distribution service antennas (collectively, “Antennas”). The requirements set forth in this Section are generally consistent with the FCC Rule; however, because the FCC Rule is subject to change or modification, the Board reserves the right to amend or modify any requirements governing installation, maintenance, and use of Antennas, which may be more restrictive than as set forth herein and which may, in the discretion of the Board, be applied retroactively. Antennas not covered by the FCC Rule, including satellite dishes in excess of one (1) meter in diameter, shall not be installed on the exterior portions of any Lot or Common Facility without prior written approval as required by Article XIII. Antennas covered by the FCC Rule, including satellite dishes of one (1) meter or less in diameter, are permitted within a Lot, provided such Antennas shall not be visible from the front elevation of the Lot; provided, however, that nothing herein requires installation of such an Antenna in a location from which an acceptable quality signal cannot be received, as certified in writing by a licensed installer.

**Section 8.33. Completion of Construction.** Except for construction by a Participating Builder, once the construction of any building or structure on a Lot has commenced, such construction shall proceed without delay and shall be completed in accordance with the time line established by the Owner and the Westridge Shores Architectural Board, except where such completion is impossible or would result in great hardship to the owner of builder due to strikes, fires or national emergencies or natural calamities. Cessation of work, whether such work be construction or demolition work, once started and before completion thereof for a continuous period of sixty (60) days shall be *prima facie* evidence of an intent to abandon the work in its partially completed or demolished state and shall be deemed to be a public and private nuisance. The Developer and Westridge Shores Architectural Board shall have the power to seek and demand an injunction from the Court of Chancery of the State of Delaware to compel the completion or demolition of the work within sixty (60) days.

**Section 8.34. Agricultural Notice.** This property is located in the vicinity of land used primarily for agricultural purposes on which normal agricultural uses and activities have been afforded the highest priority use 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 this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities.

**Section 8.35. Wetlands Notice.** 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.

## ARTICLE IX

### INSURANCE

#### **Section 9.1. Required Coverage.**

**9.1.1.** The Developer or the Board of Directors of the Association, or its duly-authorized agent, shall be required to obtain, maintain and pay the premiums, as a common expense, upon a special form policy of property insurance covering all the Common Areas and Utility Systems, including fixtures and building service equipment, to the extent that they are a part of the Common Areas of the Association, as well as common personal property and supplies.

**9.1.2.** The insurance policy shall afford, as a minimum, protection against loss or damage by fire and other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "All Risk" endorsement, where such is available. The policy shall be in an amount equal to one hundred percent (100%) of the current replacement cost of the Common Areas (less a deductible deemed reasonable by the Board of Directors) and shall name the Association as the named insured.

**Section 9.2. Individual Insurance.** By virtue of taking title to a Lot, each Owner covenants and agrees with all other Owners and with the Developer and the Association that each Individual Owner shall carry blanket all-risk casualty insurance on the Lot and structures constructed on the Lot in accordance with the standards set forth in this Article. Each individual Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction to the Lot and structures constructed on the Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structures in a manner consistent with the original construction. In the event that a detached single-family dwelling is totally destroyed and the Owner determines not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction of the dwelling. The Board of Directors may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lot and the standard for returning the Lot to its natural state in the event the Owner decides not to rebuild or reconstruct.

## ARTICLE X

## CONDEMNATION

**Section 10.1 Award.** Whenever all or any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain (or conveyed in lieu of or under threat of condemnation), each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as Trustee for all Owners to be disbursed as follows:

**Section 10.2. Approval.** If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking the Developer and at least seventy-five percent (75%) of the Class "A" Members of the Association shall otherwise agree, the Association shall restore or replace such improvement so taken on the remaining land included in the Common Area to the extent lands are available therefor, in accordance with plans approved by the Board of Directors of the Association. If such improvements are to be repaired or restored, the above provisions in Article IX hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board of Directors of the Association shall determine.

## ARTICLE XI

### MORTGAGEES RIGHTS

**Section 11.1. Changes Required by Lenders.** Notwithstanding any provision to the contrary contained in the Articles of Incorporation or By-Laws of the Association or this Declaration, the Developer shall have and hereby reserves the right to make modifications, additions or deletions to the Declaration, the Certificate of Incorporation and the By-Laws of the Association if such modifications, additions or deletions are required by the Veterans Administration, Federal Housing Administration, Federal Home Loan Mortgage Corporation or Federal National Mortgage Association. The Developer further reserves the right to waive in writing any exemption, right or privilege granted or reserved to the Developer by this Declaration or the Certificate of Incorporation or the By-Laws of the Association.

**Section 11.2. Developer Reserved Rights.** No amendment to this Declaration may remove, revoke or modify any right, reservation or privilege of the Developer without the prior written consent of the Developer.



**Section 11.3. Failure to Respond.** Any Mortgagee who receives a written request to approve any additions or amendments who fails to submit a response within thirty (30) days shall be deemed to have approved such request.

**Section 11.4. Additional Rights of Mortgagees - Notice.**

**11.4.1.** The Association shall promptly notify all Mortgagees who hold first mortgages on any Lot for which any assessment levied pursuant to the Declaration, or any installment thereof, becomes delinquent for a period in excess of sixty (60) days and the Association shall promptly notify said Mortgagee with respect to which any default in any other provision of this Declaration remains uncured for a period in excess of sixty (60) days following the date of such default. Any failure to give any such notice shall not affect the validity or priority of any first mortgage on any unit and the protection extended in this Declaration to the holder of any such mortgage shall not be altered, modified or diminished by reason of such failure.

**11.4. 2.** No suit or other proceeding may be brought to foreclose the lien for any assessment levied pursuant to this Declaration except after ten (10) days written notice to the holder of the first mortgage on the Lot which is the subject matter of such suit or proceeding.

**11.4. 3.** Any first mortgagee of any Lot may pay any taxes, utility charges or other charges or other charge levied against the Common Areas which are in default and which may or have become a charge or lien against any of the Common Areas and any such first mortgagee may pay any overdue premiums on any hazard insurance policy or secure new hazard insurance coverage on the lapse of any policy, with respect to the Common Areas. Any first mortgagee who advances any such payment shall be due immediate reimbursement of the amount so advanced from the Association.

**ARTICLE XII**

**GENERAL PROVISIONS**

**Section 12.1. Enforcement.** The Developer, the Association, and any Owner shall have the right to enforce, by any proceedings at law or in equity, all of the restrictions, conditions, covenants, easements, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure of the Developer, the Association, or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed as a waiver of the right to do so thereafter. The Developer and the Association shall have the right to adopt reasonable rules and regulations for enforcing the provisions hereof or any other rule or regulation, including the right to set and collect fines which shall be liens against Lots.

**Section 12.2. Severability.** Invalidity of any covenants or restrictions or any term, phrase or clause of this Declaration by the adjudication of any court or tribunal shall in no way affect the other provision hereof which are hereby declared to be severable and which shall remain in full force and effect.

**Section 12.3. Assignment and Delegation.** The Developer shall have the right to assign to any one (1) or more persons, firms, corporations, partnerships or associations any and all rights, powers, titles, easements and estates reserved or given to the Developer in this Declaration. Further, the Developer reserves the right to convey, assign or delegate to the Association, and the Association shall accept, any or all of the Developer's rights and obligations set forth in this Declaration.

**Section 12.4. Irrevocable Power of Attorney.** The Developer is hereby granted an irrevocable power of attorney coupled with an interest to amend this Declaration as provided in this Section and to take all other action convenient or necessary to give effect to any or all of the rights reserved to Developer in this Declaration. Every party accepting an interest in any part of the Property, whether it be title, a lien, or any other interest, and whether it be transferred by a deed, a mortgage, a judgment, a last will and testament, or otherwise, shall thereby specifically accept the reservation of Developer's rights as provided in this Declaration, and shall also thereby grant to Developer this irrevocable power of attorney coupled with an interest. The Developer may require that a party accepting any such interest in the Property shall execute a separate and written power of attorney coupled with an interest and record it in the Office of the Recorder of Deeds of Sussex County, Delaware. However, the power of attorney coupled with an interest provided by this paragraph shall be deemed fully granted to Developer when any such interest is acquired, whether or not such separate and written power of attorney coupled with an interest is executed and recorded.

**Section 12.5. Rights and Liabilities of Participating Builder.**

(a) Participating Builder does not and shall not assume or be responsible for any liabilities, warranties or obligations which have or may accrue to Developer, including, but not limited to, any liabilities, warranties or obligations concerning any Lots, the Common Areas or Recreational Facilities, any buildings or other improvements constructed, or to be constructed, by or on behalf of, Developer.

(b) No Participating Builder makes any representation or warranty whatsoever, whether express or implied, with respect to any Lots, Common Areas, Recreational Facilities, buildings or other improvements constructed or sold by parties other than the Participating Builder, nor has any Participating Builder authorized any other party to make any such representation or warranty, and such other parties are without legal authority to enforce or make any such representation or warranty. No Participating Builder shall assume or be responsible for, and each Owner of any Lot expressly waives any all claims against each Participating Builder for any liabilities, warranties or obligations which may

accrue to Developer or any assignee under the Declaration or pursuant to law in connection with Developer's or any assignee's status as Developer under this Declaration.

**Section 12.6. Duration and Amendments.**

**12.6.1.** Except as may otherwise be provided in this Declaration, the Restrictions of this Declaration run with and bind the Property and shall inure to the benefit of and be enforceable by the Association, or the Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors or assigns, as the case may be, in perpetuity; subject, however, to the provision that the Developer, until all Lots in the Development have been conveyed by the Developer and the Developer has withdrawn from control of the Association, shall have the power to waive, abandon, terminate, modify, alter, change, amend, eliminate or add to these restrictions and this Declaration. Upon the Developer's conveyance of its last Lot and/or upon its withdrawal from the control of the Association, the Association or its successors, by with the vote or written consent of sixty-six percent (66%) of the then Owners of Lots, shall have the power to waive, abandon, terminate, modify, alter, change, amend, eliminate or add to these restrictions and this Declaration at any time hereafter. Any such waiver, abandonment, termination, modification, alteration, change, amendment, elimination, or additions shall take effect when a copy thereof, executed and acknowledged by the Association or its successors in accord with the usual form of execution and acknowledgment of deeds, together with the written consents of the requisite number of owners or by a certificate by the Association verified under oath by the President thereof, or in the case of his/her absence or inability, by any Vice President thereof, setting forth the time, manner and result of the taking of the vote of the members, have been filed for record in the Office of the Recorder of Deeds, in and for Sussex County, and the same shall thereafter remain in effect in perpetuity unless otherwise provided.

**12.6.2.** Any amendment made pursuant to this Section shall be certified by Developer as having been duly approved by Developer and, if any, by the Owners and shall be effective only upon recordation or at such alternate date as shall be specified in the amendment. Every Owner or occupant, by accepting a conveyance or occupancy of a Lot shall be deemed to have agreed to be bound by such amendments as are permitted hereby, and to agree further that, if requested to do so by Developer, such will consent to the amendment of this Declaration or any other instruments relating to the Development.

**12.6.3.** Developer is hereby granted an irrevocable power of attorney coupled with an interest to amend this Declaration as provided in this Section and to take all other action convenient or necessary to give effect to any or all of the rights reserved to Developer in this Declaration. Every party accepting an interest in any part of the Property, whether it be title, a lien, or any other interest, and whether it be transferred by a deed, a mortgage, a judgment, a last will and testament, or otherwise, shall thereby specifically accept the reservation of Developer's rights as provided in this Declaration, and shall also thereby grant to Developer this irrevocable power of attorney coupled with an interest. The



Developer may require that a party accepting any such interest in the Property shall execute a separate and written power of attorney coupled with an interest in a form acceptable to Developer and record it in the Office of the Recorder of Deeds of Sussex County, Delaware. However, the power of attorney coupled with an interest provided by this paragraph shall be deemed fully granted to Developer when any such interest is acquired, whether or not such separate and written power of attorney coupled with an interest is executed and recorded.

**Section 12.7. Dedication of Common Area.** Except as may otherwise be provided in this Declaration, every road, body of water, Common Area, Utility System, and other amenity within the Development is private, and neither the Developer's recording of any instrument or plan, or any other act of the Developer with respect to the Property is, or is intended to be, or shall be construed to be, a dedication to the public of any part of the Development except as may otherwise be provided herein. The use and enjoyment of every part of the Development is reserved to the Developer, to those who, from time to time, are Owner members of the Association and to the invitees thereof. Such use shall be subject to such rules and regulations as may be prescribed by the Developer or the Association, as the case may be.

**Section 12.8. Time is of the Essence.** It is agreed that time is of the essence with regard to the provisions of this Declaration.

**Section 12.9. Remedies for Violation of Restrictions.** Except as may otherwise be provided in this Declaration, in the event of a violation or breach of any of these restrictions by an Owner or agent of an Owner, by an occupant or agent of an occupant, or by another party, then the Owners of Lots in the Development, the Developer and the Association, or any of them, jointly or severally, shall have the right to proceed at law or in equity to compel compliance therewith, or to prevent the violation or breach thereof. In addition to the foregoing, the Developer and the Association shall have the right, whenever any improvement or structure is built or placed in violation of this Declaration, to enter upon the property where such violation exists, and summarily abate or remove the same at the expense of the Owner, if after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. The Association is hereby granted a perpetual easement across each Lot for the purpose of enforcing its right under this Section, and no such entry and abatement or removal shall be deemed a trespass. The Association may also maintain such watchmen and erect, maintain and control, at its discretion, such gate houses, or adopt at its discretion other measures to enforce the rights mentioned in this Declaration, and such watchmen or gate houses shall not constitute the creation or maintenance of a nuisance or obstruction nor constitute any limitation or annulment of the grant of free and uninterrupted use of the Common Areas, including streets and roadways, of Owners. The failure to enforce any rights, reservation, restriction or condition contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so thereafter as to the same breach or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement. Should any

person employ counsel to enforce any of the foregoing covenants, conditions, reservations or restrictions, because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the Owner of such Lot or Lots in breach thereof. The Developer shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself.

**Section 12.10. Rule Against Perpetuities.** In the event that any of the provisions hereof are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of Delaware, and such provision shall be fully effective for said reduced period of time.

**Section 12.11. Binding Effect.** This Declaration shall bind, and inure to the benefit of, the respective heirs, devisees, representatives, successors, successors in title and/or assigns of anyone or anything who/which purchases or takes any interest in any property which is subject to this Declaration.

**IN WITNESS WHEREOF**, the Developer has hereunto set its hand and seal the day and year aforesaid.

**BOARDWALK DEVELOPMENT, LLC**

BY: \_\_\_\_\_

**Joseph P. Reed**

(Seal)

**STATE OF DELAWARE :  
: ss.  
COUNTY OF SUSSEX :**

**BE IT REMEMBERED**, That on this \_\_\_\_ day of \_\_\_\_\_, A.D. 2018, personally came before me, The Subscriber, a Notary Public for the State and County aforesaid, Joseph P. Reed, managing member of Boardwalk Development, LLC, a limited liability company of the State of Delaware, 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 the Deed of the said limited liability company; that the signature of the Manager is in his own proper handwriting; and that the act of signing, sealing, acknowledging and delivering the

said Indenture was first duly authorized by resolution of the members of the said limited liability company.

**GIVEN** under my Hand and Seal of Office, the day and year aforesaid.

\_\_\_\_\_  
**NOTARY PUBLIC**

COMMISSION EXPIRES:

\_\_\_\_\_  
TYPE OR PRINT NAME OF NOTARY



44  
**EXHIBIT A**

**\* LEGAL DESCRIPTION TO BE ATTACHED**

DRAFT

24

July 5, 2022

ERI No: 0506#0681

Kenneth R. Christenbury, P.E.  
President, Axiom Engineering, LLC.  
18 Chestnut Street  
Georgetown, DE 19947

**RE: Westridge Shores Residential Planned Community  
Delineation of Regulated Wetlands &  
Absence of Federally Listed Threatened and Endangered Species &  
Other Species of Concern  
Tax Map Parcel: 234-17.00-165.00  
Indian River Hundred, Sussex County, Delaware**

Dear Mr. Christenbury,

Environmental Resources, Inc. (ERI) is providing this summary of findings regarding the identification of wetlands and water boundaries at Tax Map Parcel 234-34.00-17.00 located in the Indian Hundred, Sussex County, Delaware. This summary of findings has been updated from the letter ERI provided on May 23, 2022. As discussed at the conclusion of this letter, ERI in conjunction with DNREC's Division of Fish and Wildlife has investigated the property to confirm the presence or absence of an American bald eagle (*Haliaeetus leucocephalus*) nest. In summary, it was determined that no American bald eagle nests are on or adjacent to the subject property.

The 21.32 acre property is the location of the proposed Westwood Shores Residential planned community. The property fronts along Banks Road (SCR 298). The rear of the property fronts along the shoreline of Hopkins Prong. ERI identified 1.1 acres of wetlands subject to the Corps of Engineers Regulatory Program (Section 404 of the Clean Water Act of 1972) on the property. The wetlands border Hopkins Prong and consist of a mix of nontidal forested wetlands and tidally influenced emergent wetlands, which is mostly common reed (*Phragmites*).

The results of ERI's investigation were consistent with State and Federal wetland guidance Maps. In accordance with DNREC Wetland Map Sussex-095, there are no State regulated wetlands on this property.

For the purposes of Section 404 of the Clean Water Act of 1972 (CWA), wetlands are defined as those areas that are inundated or saturated by surface or groundwater at a frequency and duration to support, and that under normal conditions do support, a prevalence of vegetation typically adapted for life in saturated soils conditions. Positive evidence of hydrophytic vegetation, hydric



soils, and wetland hydrology is needed for an area to be classified as wetlands. The boundary between wetlands and uplands is defined as the location where positive indicators of one of these three parameters are no longer present.

In their letter of May 18, 2018 (attached) the U.S. Army Corps of Engineers approved the wetland boundaries identified by ERI as shown on the site plans for this project. The approval letter is currently valid.

On May 23, 2022, ERI consulted with the U.S. Fish and Wildlife Service (Service) in regard to the presence of any federally listed protected under the Endangered Species Act (ESA) of 1973. There are no records for any ESA listed species or their critical habitats on this site. Recently the Service listed the Monarch Butterfly (*Danaus plexippus*) as a candidate species throughout the entire project area. No critical habitats are listed. This transitory species has specific habitat requirements that include the abundant presence of milkweed, an herbaceous plant. This plant is not found at the project location. The absence of ESA listed species was confirmed during ERI's site evaluation.

On late June 22, 2022, ERI was contacted by DNREC, Division of Fish and Wildlife biologist, Ms. Jordan Brown. Ms. Brown advised me that she had received a citizen report with a concern that an American bald eagle nest may be present on this property. While the American bald eagle is no longer an ESA listed species, it is a state species of concern and is federally protected under the Bald and Golden Eagle Act of 1940. A date for a site visit with Ms. Brown was arranged for July 5, 2022. Prior to that visit, ERI conducted a 4.5 hour walkover of the property on June 29, 2022, in order to evaluate the property prior to the DNREC meeting. No American bald eagle nest was found, and no eagle activity was observed during that visit.

On July 5<sup>th</sup> the site was once again inspected by ERI and Ms. Brown from the Division of Fish and Wildlife for several hours. That visit confirmed that no American bald eagle nest is present on the property. At the conclusion of the July 5<sup>th</sup> site visit Ms. Brown indicated that she would be providing a formal site visit report to ERI and that the report would likely be completed within the next two weeks. ERI will provide you with that report as soon as it is available.

Upon your review of ERI's findings, I am available at your convenience should you have any questions.

Sincerely,

ENVIRONMENTAL RESOURCES, INC.

Edward M. Launay, Principal  
PWS No. 875, Society of Wetland Scientists  
Corps of Engineers' Wetland Delineator Certification No. WDCP93MD0510036B

Enclosed: Corps PJD Letter & USFWS Consultation Letter



REPLY TO  
ATTENTION OF

DEPARTMENT OF THE ARMY  
PHILADELPHIA DISTRICT CORPS OF ENGINEERS  
WANAMAKER BUILDING, 100 PENN SQUARE EAST  
PHILADELPHIA, PENNSYLVANIA 19107-3390

BANKS ROAD  
Joseph Reed  
506#0681

Regulatory Branch  
Application Section I

MAY 16 2018

SUBJECT: CENAP-OP-R-2018-325-85 (PJD)  
Project Name: Lands of Madeline Rodgers Smythe SX  
Latitude and Longitude: 38.652787° N / -75.179431° W (NAD 83)

Edward M. Launay  
Environmental Resources, Incorporated  
38173 DuPont Boulevard  
Post Office Box 169  
Selbyville, Delaware 19975

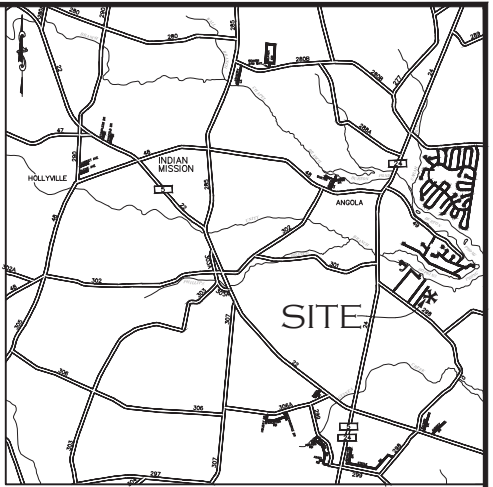
Dear Mr. Launay:

This letter is written with regard to your request for verification of a preliminary jurisdictional determination. The property associated with your request is located approximately 0.5 miles southeast of the intersection of John J. Williams Highway and Banks Road, on Banks Road, Tax Map Parcel 2-34-17.00-165.00, Millsboro, Sussex County, Delaware.

Pursuant to Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act, a Department of the Army permit is required for work or structures in navigable waters of the United States and the discharge of dredged and/or fill material into waters of the United States, including wetlands. Any proposal to perform the above activities within any waters of the United States, including wetlands, requires the prior approval of this office.

The plans identified on the following page depict all delineated waters and wetlands on the subject site that may be jurisdictional under Section 10 of the Rivers and Harbor Act and/or Section 404 of the Clean Water Act. This preliminary determination has been conducted to identify the location(s) of waters and wetlands that may be waters of the United States for the particular site identified in this request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are U.S. Department of Agriculture (USDA) program participants, or anticipate participating in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service prior to starting work.

This preliminary jurisdictional determination is non-binding and indicates that there may be waters of the United States, including wetlands, on the parcel. Preliminary JDs are advisory in nature and may not be appealed (See attached Notification of Appeal Form (Enclosure 1)); however, the applicant retains the right to request an approved Jurisdictional Determination, which may be appealed, for the site. Also enclosed (Enclosure 2) is a copy of the Preliminary



NOTES:

1. FLOODPLAIN ZONE BOUNDARIES SHOWN WERE BASED UPON FLOOD INSURANCE RATE MAP (FIRM) NUMBER 10005C0343 K, DATED MARCH 16, 2015.
2. THE BOUNDARY AND WETLAND LOCATION INFORMATION SHOWN ON THIS PLAT WAS TAKEN FROM A FIELD SURVEY PREPARED BY AXIOM ENGINEERING, LLC IN NOVEMBER 2013. TOPOGRAPHIC INFORMATION SHOWN WAS PROVIDED BY THE STATE OF DELAWARE. A FIELD SURVEY OF TOPOGRAPHIC INFORMATION MUST BE COMPLETED PRIOR TO PREPARATION OF CONSTRUCTION DRAWINGS.
3. 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.

SITE DATA:

TAX MAP	2-34-17, PARCEL 165
DEED REFERENCE	DB 3372 - PG 051
CURRENT ZONING	AR-1
EXISTING USE	VACANT
TOTAL SITE AREA	21.32± AC.

WETLANDS CERTIFICATION:

I, EDWARD M. LAUNAY, PWS, STATE THAT THE BOUNDARIES OF WATERS OF THE UNITED STATES INCLUDING WETLANDS SUBJECT TO THE CORPS OF ENGINEERS REGULATORY PROGRAM DELINEATED UPON THIS MAP HAVE BEEN PREPARED BY ME OR MY PROFESSIONAL JUDGMENT IN ACCORDANCE WITH THE 1987 CORPS OF ENGINEERS WETLANDS DELINEATION MANUAL, REGULATIONS AND SUPPLEMENTAL GUIDANCE (33 CFR 328.30)(8), WATERS OF THE U.S. DEFINITION/CECW-09, 10-7-1991, QUESTIONS AND ANSWERS ON THE 1987 DEFINITION/CECW-09, 9-8-1990, ROL 90-7/CECW-09, 3-3-1991, AND CLARIFICATION/QUESTIONS AND ANSWERS ON THE 1987 MANUAL). THIS DELINEATION HAS NOT BEEN CONDUCTED FOR USDA PROGRAM OR AGRICULTURAL PURPOSES.

IN ACCORDANCE WITH DNREC TIDAL WETLAND MAP NO. SUSSEX-095,  
THERE ARE NO STATE REGULATED WETLANDS ON THE SITE.

EDWARD M. LAUNAY, DATE  
PWS NO. 875 - SOCIETY OF WETLAND SCIENTISTS  
USACE CERTIFIED WETLAND DELINEATOR WDCP93MD0510036B  
ENVIRONMENTAL RESOURCES, INC.  
38173 DUPONT BLVD. - P.O. BOX 169 - SELBYVILLE, DE 19975  
PHONE: (302) 436-9637 E-MAIL: elaunay@ericonsultants.com

## 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 DATE

BOUNDARY OF WATERS OF THE UNITED STATES INCLUDING WETLANDS  
SUBJECT TO THE CORPS OF ENGINEERS REGULATORY PROGRAM

PROJECT NO:

DRAWING:

WD-1

1 OF 2

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 THERETO AND APPURTENANT.

ENGINEER:	KRC
DESIGNER:	KRC
DRAFTER:	KRC
CHECKED BY:	KRC
DATE:	2/20/2017
TAX MAP:	2-34-17, PARCEL 165

24" x 36" 1 inch = 100 ft.  
 11" x 17" 1 inch = 200 ft.

SEAL



**AXIOM**  
ENGINEERING L.L.C.

18 CHESTNUT STREET  
GEORGETOWN, DE 19947  
(302) 855-0810  
FAX: 855-0812  
E-MAIL: AXIOM@AXENG.COM  
WEB: WWW.AXENG.COM

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REV	DESCRIPTION OF REVISION	REVISED BY/DATE	CHECKED BY/DATE

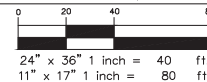


Line Table		
Line #	Length	Direction
L2	15.015	N77° 35' 26.99"E
L3	22.889	S53° 50' 24.68"E
L4	34.231	S50° 52' 18.97"E
L5	52.290	S63° 44' 23.09"E
L6	36.690	N83° 24' 57.27"E
L7	50.255	N65° 52' 15.99"E
L8	28.893	S88° 08' 02.55"E
L9	32.251	N84° 04' 34.96"E
L10	41.794	S83° 17' 09.94"E
L11	32.873	N73° 22' 49.52"E
L12	39.329	N75° 14' 04.02"E
L13	17.297	S22° 01' 40.20"E
L14	49.187	S15° 37' 49.23"W
L15	63.647	S24° 49' 34.81"W
L16	44.462	S38° 40' 38.05"W
L17	33.088	S52° 37' 20.08"E
L18	23.524	S32° 48' 38.24"E
L19	9.638	S32° 48' 38.24"E
L1	14.750	N76° 47' 34.24"E

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REV	DESCRIPTION OF REVISION	REVISED BY/DATE	CHECKED BY/DATE

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ENGINEER:	KRC
DESIGNER:	KRC
DRAFTER:	KRC
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DATE:	2/20/2017
TAX MAP:	2-34-17, PARCEL 165



SEAL



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LANDS OF  
MADELINE RODGERS SMYTHE  
BANKS ROAD  
INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE

DRAWING:  
WD-2

2 OF 2

Jurisdictional Determination Form signed by the applicant or his agent agreeing to accept a preliminary jurisdictional determination. Please be aware that for purposes of computation of impacts, compensatory mitigation requirements, and other resource protection measures, a permit decision made on the basis of a preliminary JD will treat all waters and wetlands that would be affected in any way by the permitted activity on the site as if they are jurisdictional waters of the U.S.

This letter is valid for a period of five (5) years. This preliminary jurisdictional determination is issued in accordance with current Federal regulations and is based upon the existing site conditions and information provided by you in your application. This office reserves the right to reevaluate and modify the preliminary jurisdictional determination at any time should existing site conditions or Federal regulations change, or should the information provided by you prove to be false, incomplete, or inaccurate.

If you have any questions regarding this matter, please contact Mr. Michael D. Yost at (267) 240-5278, by email at michael.d.yost@usace.army.mil or write to the above address.

Sincerely,



Michael D. Yost  
Biologist, Application Section I

\*\*\*\*\*

SUBJECT PROPERTY: The property is located approximately 0.5 miles southeast of the intersection of John J. Williams Highway and Banks Road, on Banks Road, Tax Map Parcel 2-34-17.00-165.00, Millsboro, Sussex County, Delaware. The parcel is 21.32 acre in size with 0.48 acres of forested wetlands and 0.47 acre of emergent wetlands.

\*\*\*\*\*

SURVEY DESCRIPTION: Plans prepared by Axiom Engineering LLC, dated February 20, 2017 and certified by Edward M. Launay on February 12, 2018 entitled: *LANDS OF~MADELINE RODGERS SMYTHE~BANKS ROAD~INDIAN RIVER HUNDRED, SUSSEX COUNTY, DELAWARE*, 2 sheets.

\*\*\*\*\*

COMMENTS: This determination is based on a report prepared by Environmental Resources, Incorporated, dated February 12, 2018; no site inspection was performed by this office. This determination applies only to the specific project site referenced above.

\*\*\*\*\*

Enclosures



## United States Department of the Interior

FISH AND WILDLIFE SERVICE  
Chesapeake Bay Ecological Services Field Office  
177 Admiral Cochrane Drive  
Annapolis, MD 21401-7307  
Phone: (410) 573-4599 Fax: (410) 266-9127



<http://www.fws.gov/chesapeakebay/>

<http://www.fws.gov/chesapeakebay/endsppweb/ProjectReview/Index.html>

In Reply Refer To:

May 23, 2022

Project Code: 2022-0045635

Project Name: Westwood Shores Residential Community

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.



A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2)(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

**Migratory Birds:** In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts see <https://www.fws.gov/birds/policies-and-regulations.php>.

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures see <https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds.php>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/birds/policies-and-regulations/executive-orders/e0-13186.php>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Code in the header of

this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List
- USFWS National Wildlife Refuges and Fish Hatcheries
- Wetlands

## Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

**Chesapeake Bay Ecological Services Field Office**

177 Admiral Cochrane Drive

Annapolis, MD 21401-7307

(410) 573-4599



## Project Summary

Project Code: 2022-0045635

Event Code: None

Project Name: Westwood Shores Residential Community

Project Type: Residential Construction

Project Description: Construct a residential community on the upland portion of the property

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@38.652505399999995,-75.1797098746998,14z>



Counties: Sussex County, Delaware

## Endangered Species Act Species

There is a total of 1 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. Note that 1 of these species should be considered only under certain conditions.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries<sup>1</sup>, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

- 
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

## Insects

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> No critical habitat has been designated for this species. This species only needs to be considered under the following conditions: <ul style="list-style-type: none"> <li>▪ The monarch is a candidate species and not yet listed or proposed for listing. There are generally no section 7 requirements for candidate species (FAQ found here: <a href="https://www.fws.gov/savethemonarch/FAQ-Section7.html">https://www.fws.gov/savethemonarch/FAQ-Section7.html</a>).</li> </ul> Species profile: <a href="https://ecos.fws.gov/ecp/species/9743">https://ecos.fws.gov/ecp/species/9743</a>	Candidate

## Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

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## USFWS National Wildlife Refuge Lands And Fish Hatcheries

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGE LANDS OR FISH HATCHERIES WITHIN YOUR PROJECT AREA.

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## Wetlands

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

Please note that the NWI data being shown may be out of date. We are currently working to update our NWI data set. We recommend you verify these results with a site visit to determine the actual extent of wetlands on site.

ESTUARINE AND MARINE DEEPWATER

- [Estuarine](#)
-

## **IPaC User Contact Information**

Agency: Environmental Resources Inc.

Name: Edward Launay

Address: PO Box 169

City: Selbyville

State: DE

Zip: 19975

Email: [elaunay@ericonsultants.com](mailto:elaunay@ericonsultants.com)

Phone: 3024369637

25

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN ~~AR-1 AGRICULTURAL RESIDENTIAL DISTRICT~~ TO A GR-RPC GENERAL RESIDENTIAL DISTRICT - RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 21.26 ACRES, MORE OR LESS

WHEREAS, on the ~~4th day of August 2017~~, a zoning application, denominated Change of Zone No. 1844, was filed on behalf of Boardwalk Development, LLC, aka Westridge Shores; and

WHEREAS, on the 8th day of February 2018, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the ~~22nd day of February 2018~~, said Planning and Zoning Commission recommended that Change of Zone No. 1844 be approved with conditions; and

WHEREAS, on the 13th day of ~~March~~ 2018, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of ~~[AR-1 Agricultural Residential District]~~ and adding in lieu thereof the designation of GR-RPC General Residential District – Residential Planned Community as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Indian River Hundred, Sussex County, Delaware, and lying at the southeast corner of Shady Lane and Banks Road and being more particularly described in the attached legal description, as prepared by Axiom Engineering, LLC.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

8TH DAY OF OCTOBER, 2021

1958

9TH DAY OF JUNE 2022

12TH DAY OF JULY

2022

2018  
APPROVAL  
TO BE  
AMMENDED  
AS  
NECESSARY

GR- GENERAL



**This Ordinance was adopted subject to the following conditions:**

- A. The maximum number of lots shall not exceed 54 single family lots.**
- B. A homeowner's association shall be formed to provide for the perpetual maintenance, repair and replacement of buffers, stormwater management facilities, streets, amenities and other common areas.**
- 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 opened in a manner which is consistent with Best Management Practices.**
- G. Interior street design shall meet or exceed Sussex County's street design requirements. There shall also be sidewalks on both sides of all streets within the RPC.**
- H. No wetlands shall be included within any individual lots. Any wetland buffers required by Section 115-93(B) shall be shown on the Final Site Plan.**
- I. As stated by the Applicant, all amenities shall be completed prior to the issuance of the 27th building permit.**
- J. A 20 foot wide vegetated buffer shall be established along the perimeter of the site. This may include the existing trees. Trees shall be left to the extent possible and removal shall be minimized next to the Hopkins Prong.**
- K. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop area shall be shown on the Final Site Plan.**
- L. Road naming and addressing shall be subject to the review and approval of the Sussex County Mapping and Addressing Department.**

- 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. 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.
- O. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2555 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 13TH DAY OF MARCH 2018.

  
ROBIN A. GRIFFITH  
CLERK OF THE COUNCIL

The Council found that the Change of Zone was appropriate legislative action based on the following Findings of Fact:

- A. This is the application of Boardwalk Development, LLC to amend the Comprehensive Zoning Map of Sussex County from an ~~AK-1 Agricultural Residential District~~ to a GR-RPC General Residential District – Residential Planned Community for a certain parcel of land lying and being in Indian River Hundred, Sussex County, containing 21.26 acres, more or less [located at the southeast corner of Shady Lane and Banks Road] (Tax I.D. No. 234-17.00-165.00) (911 Address: None Available). GR-GENERAL
- B. Based on the record before the Planning and Zoning Commission and the public hearing before the Sussex County Council, Council found that Ken Christenbury with Axiom Engineering, LLC and Joseph Reed, owner of Boardwalk Development, LLC, were present on behalf of the application; that the Applicant proposes 54 single family dwellings on 21.32 acres which is a 2.54 density; that the site is consistent with the character and trend of the development in the area; that Shady Lane is a community with a mix of mobile homes, modular homes, stick built homes and has a density of 2.67 dwelling units per acre; that the adjoining Dogwood Lane Development has a density of 9.32 dwelling units per acre; that there are no sidewalks in either community; that they are proposing 43% open space including preservation of 6 1/2 acres of existing forest; that there will be sidewalks on both sides of the streets; that there will be protection of the forested wetlands; that there are large wooded buffers on both sides; that to the north, the minimum buffer is 68 feet wide and widens out as it gets farther back in the project; that along the waterfront, there is a 20 foot forested buffer; and that on the south side, open space is 50 to 100 feet deep.
- C. Council also found that the project will be served by Sussex County sewer and Tidewater Utilities will provide water; that the project is in the ~~Environmentally Sensitive Developing Area~~ and complies with that section of Code; that there is open space with amenities along the water for the entire community; that the property Coastal ~~currently consists of 66 unimproved lots~~ and they are proposing 54 lots; that they are proposing a change of zone from ~~AK-1~~ GR to GR-RPC; that the project went to PLUS; that the project is located in the Level 3 Area in State Strategies; that the site will include stormwater management ponds and the Final Site Plan approval shall be subject to the Sussex Conservation District's final approval; that the Sussex County Engineering Department will construct sewer within two years; that the



DelDOT Service Level Evaluation did not require a Traffic Impact Study; that there are no known endangered species on the parcel; that they have provided a draft of covenants; and that the property will be compatible with the surrounding area and will be an improvement to the area.

D. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 9) and Conditions (10A through 10O), as amended, Council found that:

GR (General

1. The property is currently zoned ~~AR-1~~ (Agricultural Residential District). However, both the deed to the property and a recorded plot for the property reference 66 lots within the 21.16 acre parcel. This density is similar to the density permitted within the GR Zoning District.

~~2. GR Zoning is also consistent with the adjoining Dogwood Lane Development, which has a density of 9.32 units per acre.~~

3. The County Engineering Department has indicated that adequate wastewater capacity is available for the project as a GR-RPC. Central water will also be provided.

4. With the conditions and stipulations placed upon it, the RPC designation is appropriate, since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. This project will maintain 43% open space, which includes 6.5 acres of existing forest. It also includes large wooded buffers on both sides of the site. There will also be amenities along the water available to the entire community.

5. The project will not adversely affect the neighborhood or surrounding community. There are existing developments in the immediate area with similar characteristics. This is basically in-fill development, with a density similar to what exists in the immediate area.

6. The proposed development will have a density of 2.54 units per acre, which is less than the 2.67 units per acre to the north, and the 9.32 units per acre to the south.

7. According to the County's current Comprehensive Plan, the project is in a ~~Developing Area~~.

Coastal

8. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.

9. No parties appeared in opposition to the application.

10. Based on the record and recommendation of the Planning & Zoning Commission, the Change of Zone is approved subject to fifteen (15) conditions (A - O), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.

