



David C. Hutt
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August 9, 2022

VIA: Hand Delivery

The Honorable Michael H. Vincent
The Honorable Cynthia Green
The Honorable Mark Schaeffer
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
c/o Todd F. Lawson, Sussex County Administrator
Sussex County Building
2 The Circle
Georgetown, DE 19947

Re: Howeth Property, now known as School Lane
2045 FLUM Amendment, CZ #1949, CU #2304
Sussex County Tax Parcel No. 334-12.00-16.04

Dear Council Members:

This firm represents J.G. Townsend, Jr., & Co. (“JGT”), the owner of the above-referenced property and applicant for the above-referenced applications. At the conclusion of the public hearing on July 26, 2022, Mr. Schaeffer made a motion requesting that the applicant see if the entirety of the woods on the property could be preserved with a similar number of units. The applicant undertook the challenge of addressing this unprecedented request—*i.e.*, preservation of all the woods on a property despite the fact that the only landscaping/woods that are required to be maintained are those within the twenty-foot buffer around the perimeter of the proposed project. The short answer to Council’s question is that it is not possible to accomplish the requested task and meet all the regulations for developing the property, *e.g.*, storm-water management and parking. However, the applicant provided further instruction to the design team and its environmental professionals to see if there were other opportunities to address the questions that were raised during the public hearing.

To address the questions, it is important to recall the history of the property and design process for the site described by me and Mr. Lardner during the public hearing on July 26th. As was demonstrated, for more than a decade the owner has been working with the State of Delaware and the Cape Henlopen School District on the development of this parcel and the surrounding area. The proposed residential component is the last part of that development plan.

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It was surprising to hear the statements of several members of the public during the public hearing, demanding that all the woods on the property be preserved. Neither the applicant nor any of its professionals could locate a similar project where all the woods on a site were required to be preserved. More importantly, as was discussed at some length during the public hearing by me, Mr. Lardner and Mr. Launay, the preservation of the woods and wetlands were some of the driving factors in the design of the project and the pending applications.

For example, a standard, as zoned, by-right subdivision of the property (20,000 square foot lots) results in a 25-lot subdivision with the loss of eighty-three percent (83%) of the woods on the site and the filling of existing non-regulated wetlands similar to what occurred when the adjacent Saddle Ridge community was developed. A design for a potential layout of a 25-lot standard subdivision is attached as Exhibit A for Council's review and comparison to the proposed townhome project. Of course, a standard subdivision would not require any of the pending applications, *i.e.*, the requested Future Land Use Map Amendment, change of zone or conditional use. Instead, there would be a single subdivision application and a public hearing before the Planning Commission to confirm that the application met the requirements found in Chapter 99 (Subdivision of Land) of the Sussex County Code.

During its initial design process for this site, the applicant recognized the existence of both the wetland area and the wooded area on the property and looked for alternatives to the standard, by-right subdivision that would present a similar return while preserving more of the wooded area. The result of those considerations and that planning was the townhome project presented to Council on July 26th which preserved fifty-eight percent (58%) of the existing woods.

In listening to the public's comments and reading the written submissions, two of the primary themes were the preservation of existing trees and creating continuity (contiguous connection) with the forest around the Hetty Fisher Pond. During the public hearing, the applicant confirmed its intention to preserve existing trees within the buffer. With respect to protecting the continuity of the wooded areas, Council may recall that Mr. Launay, the only licensed professional who spoke on the subject, issued a written report and confirmed in his presentation that the nearest point of the Hetty Fisher Pond was more than 700' away. Thus, this proposed project is at the end of the line and is not a corridor connecting wildlife areas, which is best demonstrated by the terminus of the wooded area being the multiple lanes of Route 24.

After listening to the concerns raised during the public hearing, and in its further attempts to preserve the wooded area with a connection to the wooded areas on adjacent properties, the applicant authorized Mr. Lardner to see if a similar number of units would be able to be placed solely within the tilled (open) area of the property. As indicated at the outset of this letter, that review demonstrated that it is not possible to accomplish the preservation of all the woods. However, the applicant spoke with the design team and its environmental professionals about the appropriate connection to provide for the woods proposed to be preserved on this property with the woods on adjacent properties.

Specifically, the applicant asked Mr. Launay if there were standards for maintaining connectivity for wooded areas. Mr. Launay advised that the minimum width for maintaining forest continuity and travel corridor is generally accepted as being between 35 and 50 feet. Mr. Launay's discussion of that standard and this property is found in his letter dated August 9, 2022, attached hereto as Exhibit B. Using this information, the design team worked with Mr. Launay preparing a revised site plan removing the four (4) units at the end of Road C resulting in an additional fifty-two feet (52') of woods to remain to enhance the continuity between the woods on this property and the adjacent woods which exist at this time. A copy of the revised site plan is attached hereto as Exhibit B. While the twenty-foot (20') landscaped buffer for the proposed project as well as the existing twenty-foot (20') landscaped buffer in Saddle Ridge would have met the area needed to maintain forest continuity, the applicant removed four units to more than double the corridor leaving a corridor with an overall width of ninety-two feet (92').

JGT trusts that this information helps Council and demonstrates that any development of this property will require removal of some (or even all) of the wooded area. The application, as filed and presented, sought to maintain more than half of those woods and to preserve the wetlands within those woods. With the additional buffer area proposed along the western boundary more of the existing woods are preserved and a substantial connection is made to the wooded area on the adjacent properties.

Should Council accept the unanimous recommendation of the Planning Commission for these applications, the applicant respectfully suggests that the following conditions of approval be modified for Conditional Use No. 2304 (removing the language with a ~~strike through~~ and adding the underlined language) to match these proposed changes to the plan:

11. This recommendation is subject to the following conditions:
 - A. There shall be no more than 8480 units within the development.
 - K. A 20-foot-wide forested buffer shall be installed along the northern, and eastern, ~~and western~~ perimeters of the development and the two outparcels along Route 24. This buffer area shall comply with the planting requirements for such a buffer as contained in Section 99-5 of the Sussex County Code. Along the western perimeter, there shall be a minimum seventy-two-foot-wide (72') forested buffer to connect the existing woods to the wooded areas on adjacent properties. Clearing, disturbance or altering of existing vegetation in these perimeter buffers shall be limited to only accommodate the proposed construction and for the removal of dead or dying trees that pose a threat to public safety or adjacent properties.

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JGT thanks Council for the opportunity to further address the concerns raised during the public hearing.

Respectfully submitted,

MORRIS JAMES LLP

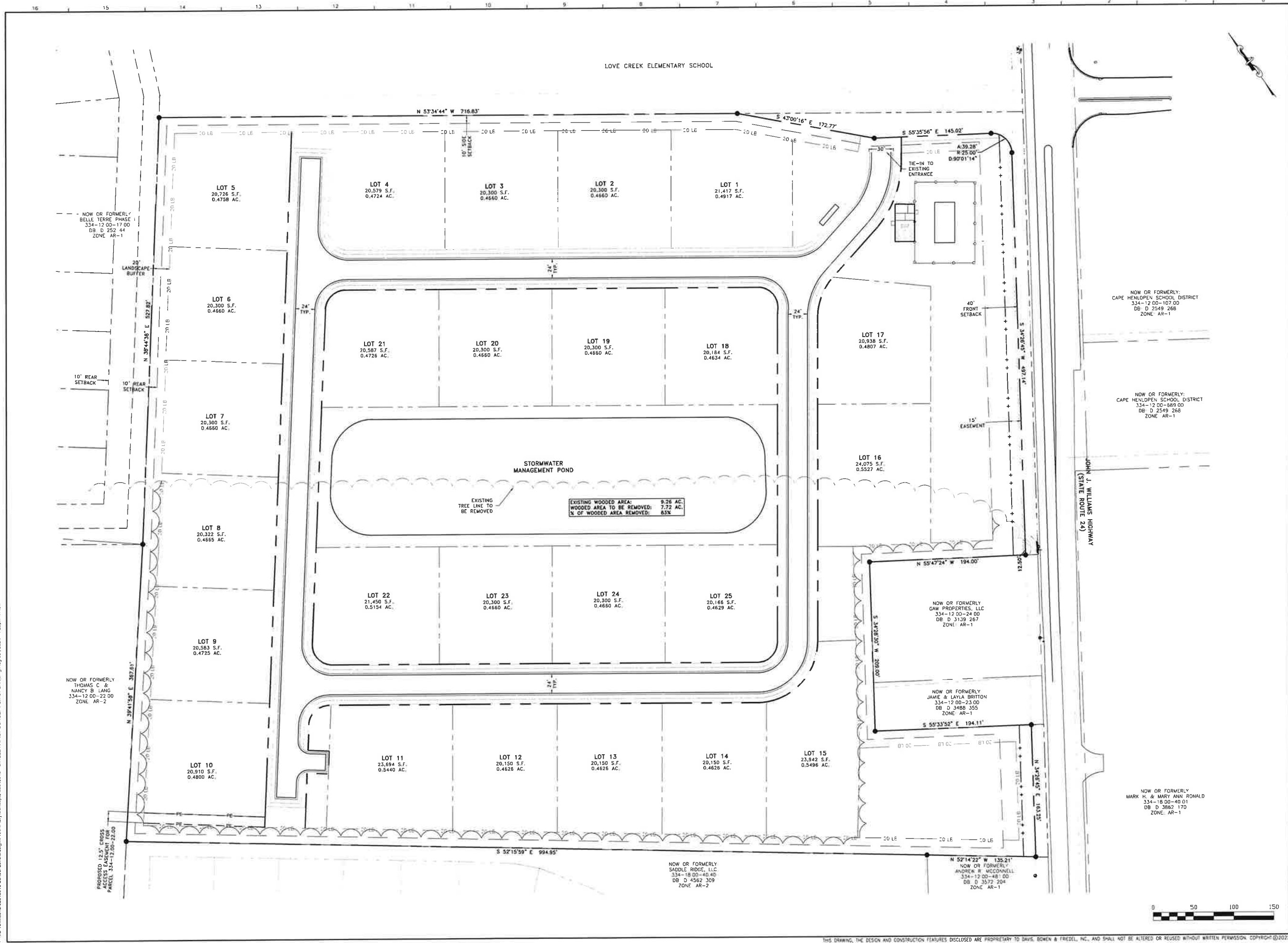

David C. Hutt, Esquire

Enclosures: Exhibit A, Standard (By-Right) Subdivision Plan
Exhibit B, Environmental Resources, Inc. Letter
Exhibit C, Revised Site Plan

Cc: Todd F. Lawson (Email to tlawson@sussexcountyde.gov)
Tracy Torbert (Email to tracy.torbert@sussexcountyde.gov)
Jamie Whitehouse (Email to jamie.whitehouse@sussexcountyde.gov)
J. Everett Moore, Jr., Esquire (Email to jemoore@mooreandrutt.com)

EXHIBIT “A”

P:\UG Tomer\2261J013 School Lane\Design\Proposals\any\Concept\2261J013 - SINGLE FAMILY CONCEPT SITE PLAN.dwg Aug 08 2022 - 4:25pm NASSB



**SCHOOL LANE
LEWES AND REHOBOTH HUNDRED
SUSSEX COUNTY, DELAWARE**

ARCHITECTS ENGINEERS SURVEYORS
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SINGLE FAMILY CONCEPT

Revisions:

Date	AUGUST, 2022
Scale	1" = 50'
Dwn By	TCB
Proj No	2261J013
Dwg No:	C-2

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EXHIBIT “B”

August 9, 2022

ERI Project No. 0004-0459

Mr. Jamie Whitehouse, Director
Planning and Zoning Department
Sussex County Administrative Department
2 The Circle
Georgetown, DE 19947

Mr. Cliff Mumford, PE.
Davis Bowen & Friedel, Inc.
601 East Main Street, Suite 100
Salisbury, MD 21804

**RE: Howeth Property (School Lane) Site Plan Revision
Environmental Review for Wildlife Habitat and Landscape Buffer Considerations
Tax Map No.: 334-12.00-16.04
Lewes – Rehoboth Hundred, Sussex County, Delaware**

Dear Mr. Whitehouse and Mr. Mumford,

Environmental Resources, Inc. (ERI) attended and provided expert testimony at the Sussex County Council land use hearing for this project held on July 26, 2022. I listened carefully to all the public testimony given about the project. As you know, the Council asked the applicant to consider ways in which the site development plan being reviewed could be amended to further minimize possible environmental impacts.

An extensive amount of testimony expressed concerns about possible impacts to the existing wooded landscape buffer along and within the northwest corner of the existing Saddle Ridge residential community. In regard to the proposed limits of forest clearing within the School Lane project, discussion about maintaining wildlife corridors and the continuity of the remaining forest block on the Howeth (School Lane) and adjacent properties was also provided to the Council.

I have been provided with a revised site plan for the project by Davis, Bowen & Friedel, Inc. entitled "*School Lane, Drawing Number C-3*", dated August 2022 which will be submitted to Council as part of the applicant's response. I have carefully reviewed that revised plan and comments on it will follow.

As I mentioned at the hearing, I served as the environmental consultant for both Saddle Ridge and the Four Seasons at Belle Terre project. I made site investigation of resources on these sites prior to their development, and I attended and provided testimony at their Planning Commission and County Council land use hearings. Those project sites and a long standing residential community known as Briarwood Estate directly abut a feature known as Hetty Fisher Pond. Hetty Fisher Pond is an isolated and water filled wetland feature which has a historic DNREC record of supporting three species of tree frogs which are regionally secure but rare within the state of Delaware.

Development of both the Saddle Ridge and Four Seasons of Belle Terre residential communities resulted in habitat impacts around the immediate vicinity of Hetty Fisher Pond since they directly abut it. There were provisions in each site plan to maintain a forest buffer around Hetty Fisher Pond. On the Four Seasons at Belle Terre project, a forest buffer area of between 60 to 140 feet was maintained around Hetty Fisher Pond, but significant forest clearing outside of that area was approved as part of that project. On the Saddle Ridge project, an existing forested area directly bordering Hetty Fisher Pond of approximately 30 to 100 feet in width was maintained as part of that project. Of note in regard to Saddle Ridge is that part of another isolated forested wetland located on Saddle Ridge which extends on to the Howeth (School Lane) property was filled for development. This wetland is not regulated by the Corps of Engineers since it is isolated, however the proposed School Lane project will preserve all of the remaining wetland area. The site plan for School Lane also illustrates a 50 foot wide wetland buffer around that wetland and beyond that additional forest is being preserved.

I would also like to recap a few things mentioned in the letter I submitted to you on June 10th, 2022, about the environmental conditions of the Howeth property. The School Lane site is approximately 740 feet northeast of Hetty Fisher Pond. Unlike a number of previously approved projects, Hetty Fisher Pond will not be impacted by any aspect of the proposed project.

The forest area located along the southerly portion of the Howeth property does connect with forest on the abutting Thomas & Nancy Lane property (Tax Map Parcel 334-12.00-22.00) and areas of forest on the Saddle Ridge and Four Seasons at Belle Terre projects which was preserved adjacent to Hetty Fisher Pond.

A total of 9.26 acres of forest exists on the Howeth property. Of that amount 2.09 acres is unregulated forested wetland to be preserved. As previously proposed, over half the wooded area on site is being preserved (4.91 acres). The revised August 2022 site plan will retain an additional 0.35 acre or 5.26 acres in total outside of the 20 foot wide forest landscape buffer previously proposed along the project property lines. More important is where the additional forest retention will occur. The revised site plan will eliminate the two townhouse unit from the buildings nearest the Saddle Ridge property line at the northwest corner of that site. Along the portion of the School Lane project where townhouse construction will occur next to Saddle Ridge, a 72 foot wide existing forest buffer will now be retained in it's natural state.

As stated earlier in this letter, Saddle Ridge residents expressed concern that a more substantial property line buffer was needed in order to ensure that the wooded landscape buffer on the Saddle Ridge side would not be adversely impacted. Any concern that the School Lane project

will impact any buffer or land on Saddle Ridge is eliminated by the revision to the School Lane site plan.

Another concern stated at the County Council hearing was maintenance of forest continuity and corridors for wildlife travel. The reality of the situation is that the development of the Howeth property is an infill situation. It is in a developing coastal area. Saddle Ridge, Four Seasons at Belle Terre, Briarwood Estates, the Love Creek Elementary School and the Delaware State Police Troop 7 facility surround it. Even before all the surrounding development occurred, the original forest block that the current forest is part of what was only about 30 acres including Hetty Fisher Pond. Due to its limited size, well under 100 acres, this amount of forest area is not of special significance. Large contiguous forest block did occur on other parts of the Four Seasons at Belle Terre and lands to the west, but they do not include the forest on the Howeth property.

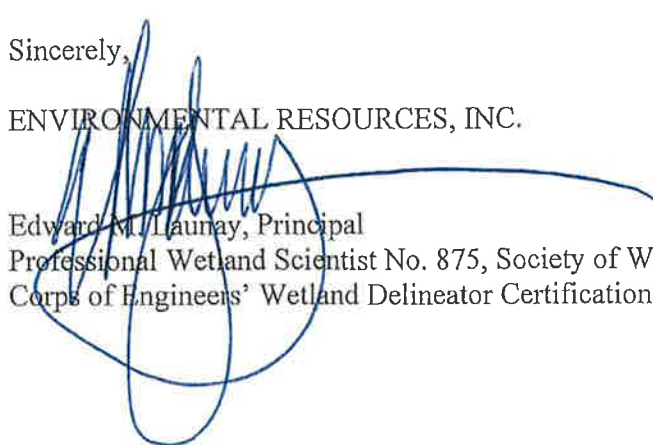
As stated earlier, J.G. Townsend Jr. & Company has incorporated a significant forest conservation effort into their original plan. The forest conserved includes unregulated wetland habitat and the uplands preserved around it does result in over five acres of contiguous forest retention. Fragmentation of forest areas does not occur since no breaks in the forest are proposed. The expanded 72 foot wide existing landscape buffer with Saddle Ridge when added to their landscape buffer will provide a 92 foot wide corridor connecting with forest on the Howeth property. That in turn connects with other wooded buffers on Saddle Ridge and the wooded areas currently preserved around Hetty Fisher Pond. Forest continuity is maintained and a corridor for wildlife movement is provided. The minimum width for maintaining forest continuity and travel corridor is generally accepted as between 35 and 50 feet. This can be seen when reviewing regulations such as Maryland's Forest Conservation Act and underlying consideration for maintaining blocks of forest interior dwelling bird habitat. The revised plan will provide a minimum 92 foot wide corridor.

As a final topic related to public testimony provided at the County Council hearing, there was a claim that the Monarch Butterfly (*Danars plexippus*) is a federally listed species protected under the Endangered Species Act. That is incorrect. Please refer to my June 10th letter and the correspondence from the U.S. Fish and Wildlife Service provided. The Monarch Butterfly is being evaluated as a candidate species throughout the entire mid-Atlantic region and elsewhere. There are no conservation measures currently required or in place. It is not a listed species.

Upon review of this updated report, I am available at your convenience should you have any comments or concerns.

Sincerely,

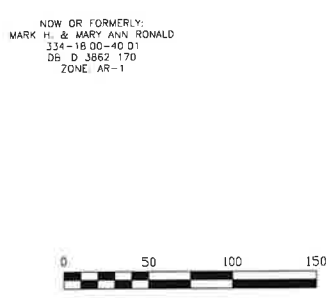
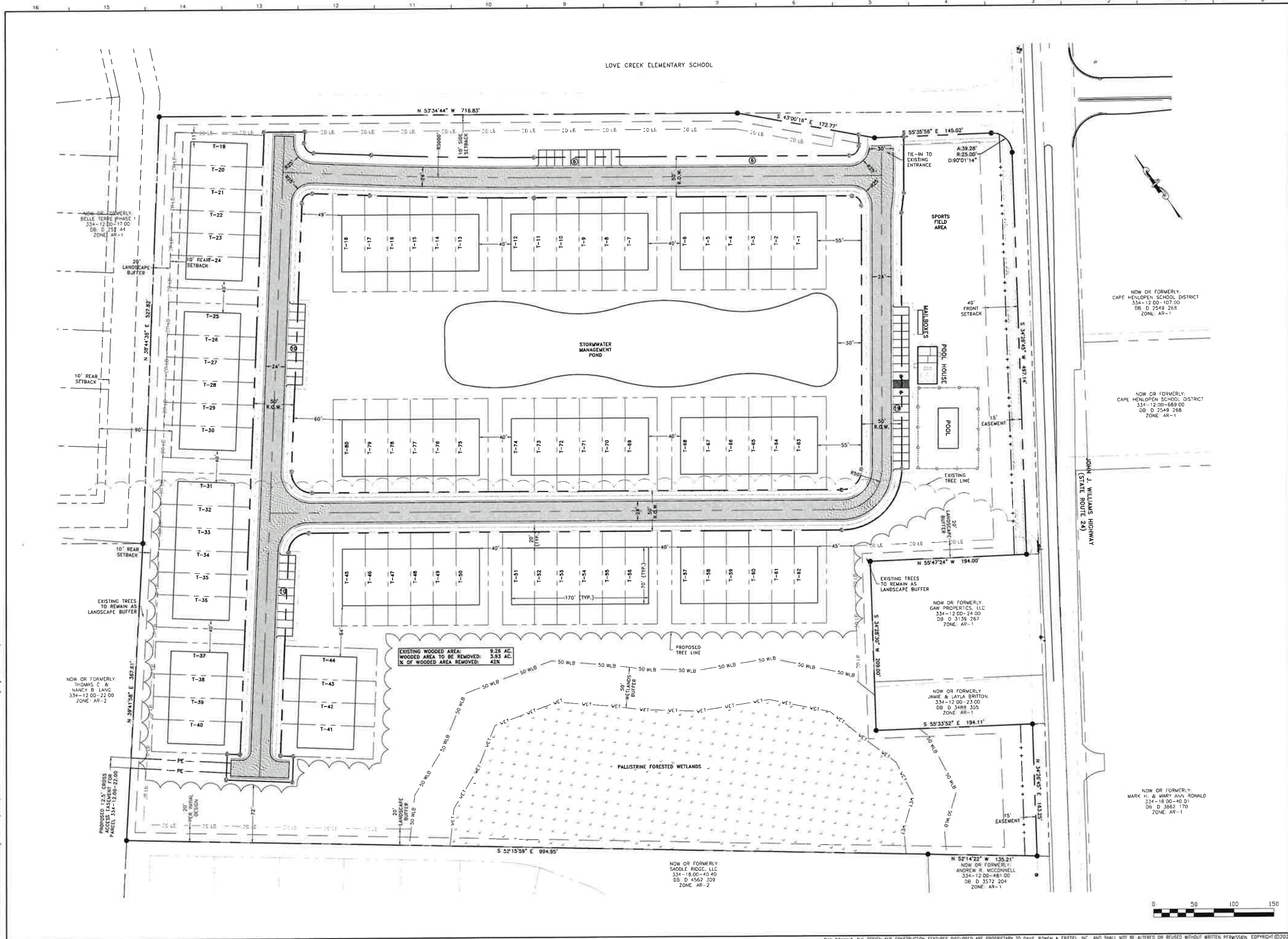
ENVIRONMENTAL RESOURCES, INC.



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

EXHIBIT “C”

P:\UG Tommasini\2261-1013 School Lane\2261-1013 - TOWN CONCEPT SITE PLAN.dwg Aug 03, 2022 - 1:58pm MASS



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SCHOOL LANE LEWES AND REHOBOTH HUNDRED SUSSEX COUNTY, DELAWARE

Revisions:

Date **AUGUST, 2022**
Scale: **1" = 50'**
Dwn By: **TCB**
Proj No.: **2261J013**
Dwg No.: **C-3**

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