

**PLANNING & ZONING COMMISSION**

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



**Sussex County**

DELAWARE  
sussexcountyde.gov  
302-855-7878 T  
302-854-5079 F  
JAMIE WHITEHOUSE, MRTPI, AICP  
DIRECTOR OF PLANNING & ZONING

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**

Planning Commission Public Hearing Date: August 26<sup>th</sup>, 2021

Application: CU 2292 Gulfstream Development, LLC

Applicant: Gulfstream Development, LLC (Robert Harris)  
27 Atlantic Ave Suite 101  
Ocean View, DE 19970

Owner: Gulfstream Development, LLC (Robert Harris)  
27 Atlantic Ave Suite 101  
Ocean View, DE 19970

Site Location: The property is lying on the southwest side of Sand Cove Road (S.C.R 394) approximately 750 feet southeast of Lighthouse Road (Route 54).

Current Zoning: Medium Density Residential (MR) Zoning District

Proposed Use: Multi-Family (32 Units)

Comprehensive Land Use Plan Reference: Coastal Area

Councilmanic District: Mr. Rieley

School District: Indian River School District

Fire District: Roxana Fire Department

Sewer: Sussex County

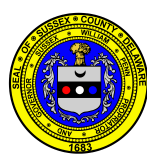
Water: Artesian

Site Area: 8.33 acres +/-

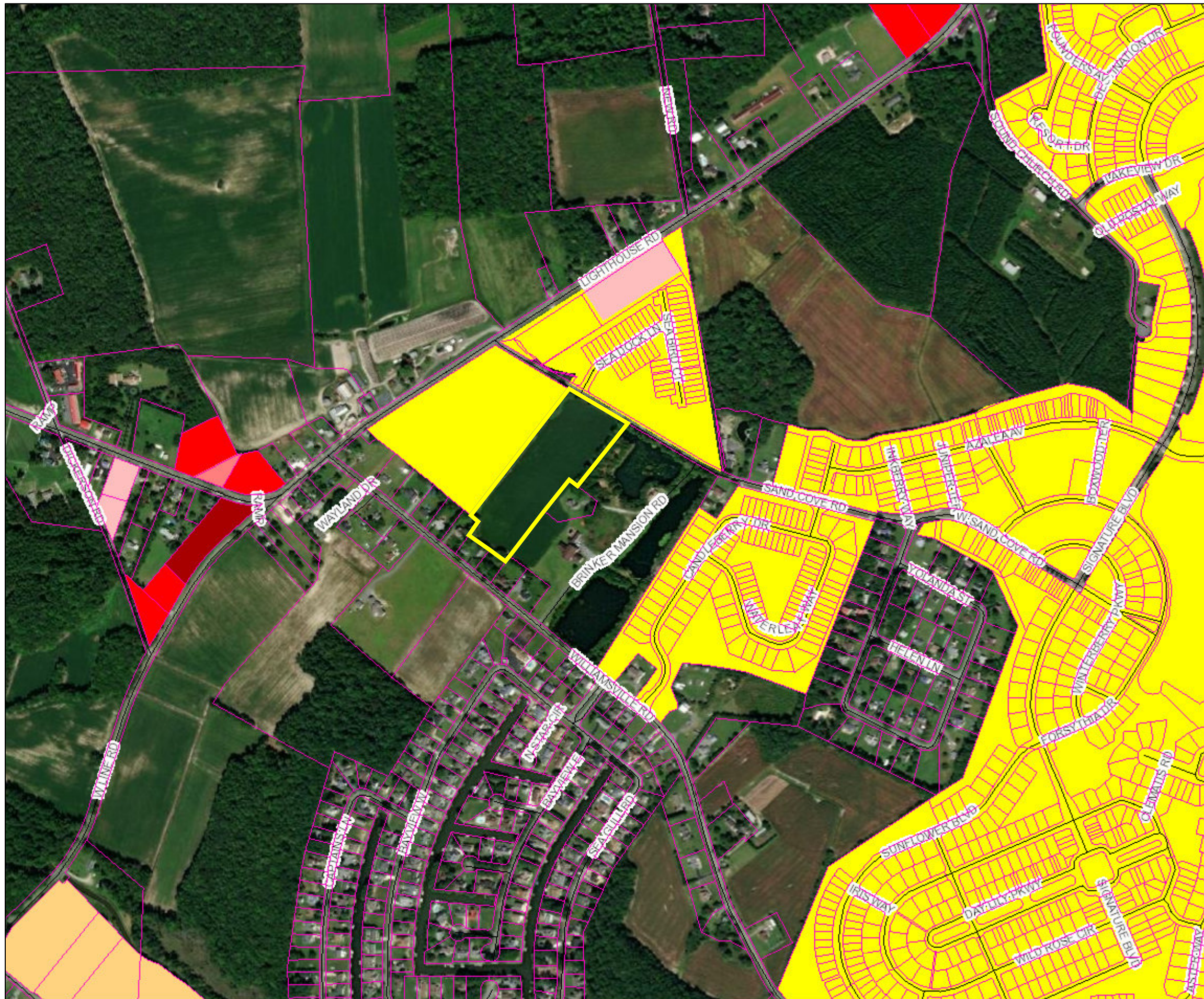
Tax Map ID.: 533-19.00-56.05







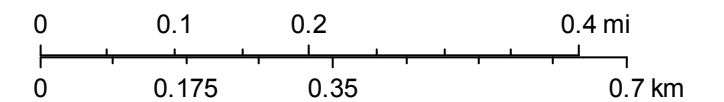
# Sussex County

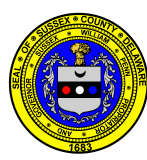


<b>PIN:</b>	533-19.00-56.05
<b>Owner Name</b>	D L T F LLC
<b>Book</b>	3575
<b>Mailing Address</b>	39001 CHICKEN FARM RD
<b>City</b>	SELBYVILLE
<b>State</b>	DE
<b>Description</b>	W/RD 394
<b>Description 2</b>	510'SE/RT 54
<b>Description 3</b>	PARCEL A
<b>Land Code</b>	

- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- Streets

1:9,028



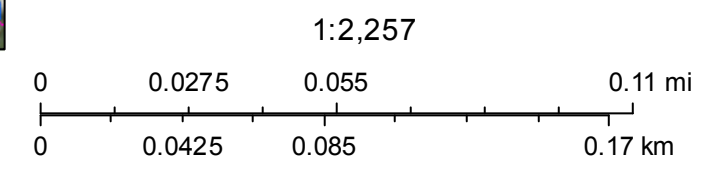


# Sussex County



<b>PIN:</b>	533-19.00-56.05
<b>Owner Name</b>	D L T F LLC
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- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- ⋯ Tax Parcels
- 911 Address
- Streets
- County Boundaries
- Municipal Boundaries



JAMIE WHITEHOUSE, AICP, MRTPI  
DIRECTOR OF PLANNING & ZONING  
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jamie.whitehouse@sussexcountyde.gov



Sussex County

DELAWARE  
sussexcountyde.gov

## Memorandum

To: Sussex County Planning Commission Members  
From: Nicholas Torrance, Planner I  
CC: Vince Robertson, Assistant County Attorney and applicant  
Date: August 19<sup>th</sup>, 2021  
RE: Staff Analysis for CU 2292 Gulfstream Development, LLC

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This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2292 Gulfstream Development, LLC to be reviewed during the August 26, 2021 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel 533-19.00-56.05 to allow for a Conditional Use of land in a Medium Density Residential (MR) Zoning District for 32 single-family condominiums. The property is lying on the southwest side of Sand Cove Road (S.C.R 394) approximately 750 feet southeast of Lighthouse Road (Route 54) in Selbyville. The area of the site is approximately 8.33 acres +/-.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework for how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the property has the land use designation of the "Coastal Area." All neighboring properties in Sussex County's jurisdiction are also designated as "Coastal Area."

The Coastal Area land use designation recognizes that a range of housing types should be permitted in Coastal Area, including single-family homes, townhouses, and multifamily units. Retail and office uses are appropriate but larger shopping centers and office parks should be confined to selected locations with access along arterial roads. Appropriate mixed-use development should also be allowed. It also recognizes a careful mixture of homes with light commercial, office and institutional uses can be appropriate to provide convenient services and to allow people to work close to home.

The property is currently within an Agricultural Residential (AR-1) Zoning District. Change of Zone No. 1945 seeks to change the zoning of the parcel from an Agricultural Residential (AR-1) Zoning District to a Medium Density Residential (MR) Zoning District. The parcels to the south and east are also zoned Agricultural Residential (AR-1). The parcel located to the northwest is zoned Medium Density Residential (MR) and is the current site the proposed Bay Knolls Community which this application seeks to tie into. The properties across Sand Cove Road are also zoned MR.

During a pre-application meeting, the applicant stated the Conditional Use was to alleviate concerns from the Delaware Department of Transportation in regard to the entrance location. The new plan



proposes to locate the entrance of the proposed Bay Knolls Community in line with Sea Dock Lane, located directed across Sand Cove Road.

Since 1971, there have been 17 Conditional Use applications within a one-mile radius of the application site. Of the 17 Conditional Use applications within a one-mile radius, 12 have been approved, 2 have been denied, 2 are pending and 1 was withdrawn.

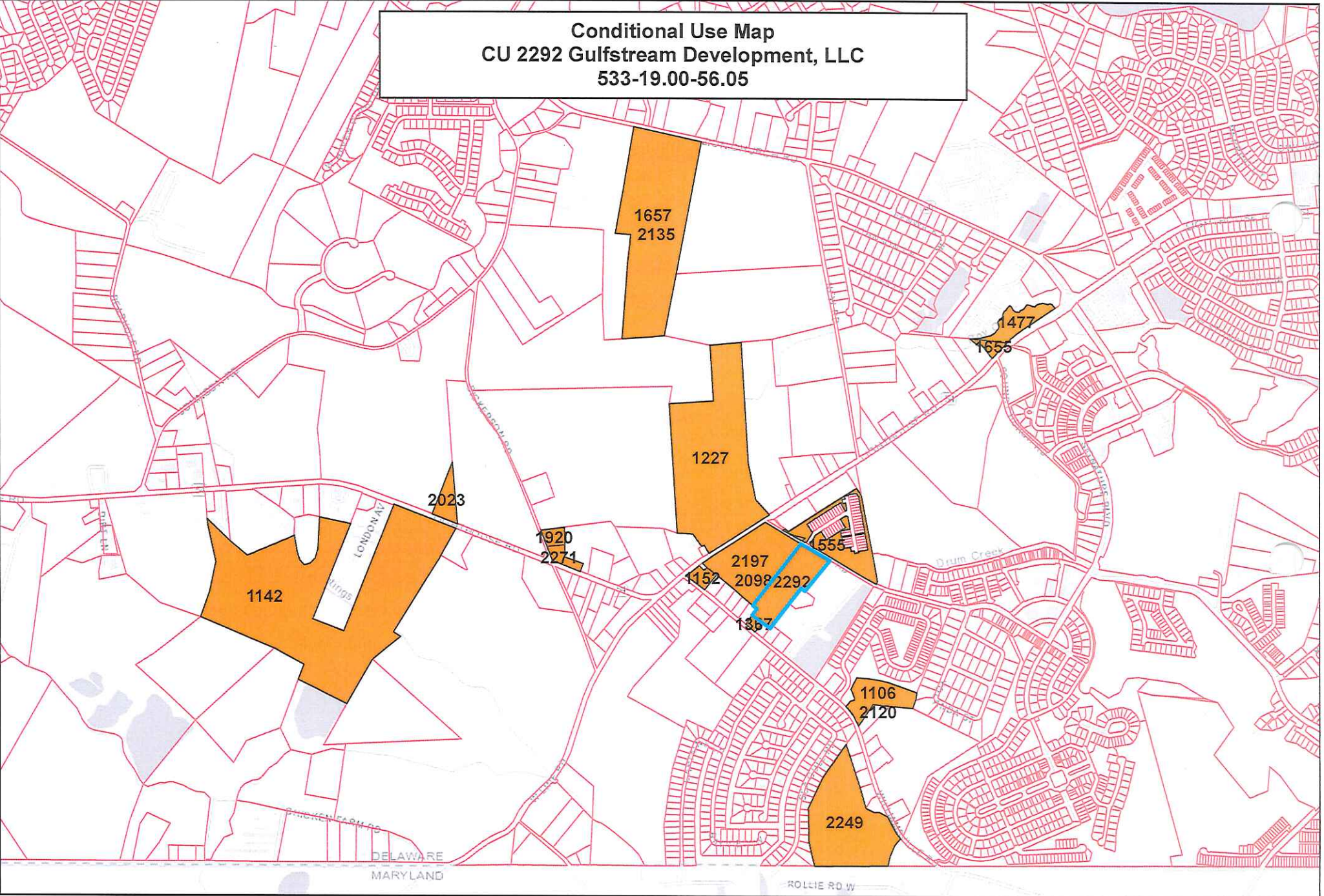
Since 1971, there has been no Conditional Use applications located on this same parcel. Conditional Use No. 2197 for multi-family (62 units) was approved by the County Council and adopted through Ordinance No. 2701 is located on the adjacent parcel 533-19.00-52.00. This application seeks to connect to the previously approved Conditional Use.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional Use to allow for 32 multi-family units, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.



# Sussex County

Conditional Use Map  
CU 2292 Gulfstream Development, LLC  
533-19.00-56.05



CU #	Tax Parcel ID	APPLICANT	Current_Zo	Proposed_U	P&Z Recommendation	P&Z Decision Date	CC Decision	CC Decision Date
2292	533-19.00-56.05	Gulfstream Development, LLC	AR-1	32 Multi-Family Units (Duplexes)		<Null>		<Null>
2271	533-18.00-25.00	Chris Brasure	AR-1	Office for pest control business - amendment to Ordinance 2240 CU 1920		<Null>		<Null>
2249	533-19.00-289.05	Mayapple Farm, LLC	AR-1	Multi Family (41 Units)	Recommended Approval	7/22/2021		<Null>
2197	533-19.00-52.00	Fenwick Commons, LLC	MR	Multi-family (62 Duplex units)	Recommended Approval	12/12/2019	Approved	12/17/2019
2135	533-11.00-104.00	Void - Henry Clay Johnson V	AR-1	amendment to CU 1657 to allow retail and cooking facilities		<Null>		<Null>
2120	533-19.00-287.02	PJM Properties, LLC	AR-1	amend conditions of approval of CU 1106	Recommended Approval	4/26/2018	Approved	5/15/2018
2098	533-19.00-52.00	Fenwick Commons. LLC	MR	Multi-family (62 Duplex Units)	Recommended Approval	11/16/2017	Denied	1/23/2018
2023	533-18.00-12.00	Frank Miranda	AR-1	veterinarian office	Recommended Approval	7/30/2015	Approved	9/15/2015
1920	533-18.00-24.00	Collins 54, LLC	AR-1	Storage Garage for Trucks and Equipment and a Parking Area	Recommended Approval	1/26/2012	Approved	2/7/2012
1657	533-11.00-104.00	Johnson's Country Market	AR-1	Country Market	Recommended Approval	5/25/2006	Approved	6/13/2006
1655	533-19.00-15.00	Edward J. Chiasson	AR-1	gifts	Recommended Approval	1/4/2006	Approved	1/10/2006
1555	533-19.00-50.00	Paul Robino (Robino-Sanibel Village, LLC)	AR-1	multi-family	Recommended Approval	10/28/2004	Denied	12/14/2004
1477	533-19.00-16.01	Carl M. Freeman Communities	MR	public utility water	Recommended Approval	2/13/2003	Approved	3/25/2003
1367	533-19.00-54.00	Jeffrey M. Irving	AR-1	sign shop	Recommended Approval	11/2/2000	Approved	11/28/2000
1227	533-18.00-33.00	Daniel W. Magee T/A Magee Farms	AR-1	Corn Maze Recreation Activity	Recommended Approval	3/26/1998	Approved	4/7/1998
1152	533-18.00-74.00	Connie Kay Cooper	AR-1	retail sales & consignment shop	Recommended Approval	4/11/1996	Approved	4/30/1996
1142	533-18.00-61.00	Richard E. Tucker	AR-1	commerical/business/storage-rental warehouse	Recommended Approval	1/11/1996	Approved	1/30/1996
1106	533-19.00-287.02	Eric H. Ritter	AR-1	outside boat storage/sales/repairs	Recommended Approval	2/23/1995	Approved	5/23/1995



File #: CU 2292  
202109160

## 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

+/- 500' southeast of Intersection of Lighthouse Road (DE RT 54, SCR 58) and Sand Cove Road (SCR 394)

Type of Conditional Use Requested:

32 Duplex (semi-detached) housing units

Tax Map #: 533-19.00-56.05

Size of Parcel(s): 8.33 Ac

Current Zoning: AR-1

Proposed Zoning: MR/CU

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

Land Use Classification: Coastal Area

Water Provider: Artesian

Sewer Provider: Sussex County

### Applicant Information

Applicant Name: Gulfstream Development LLC/ Robert Harris

Applicant Address: 27 Atlantic Ave. Suite 101

City: Ocean View

State: DE

Zip Code: 19970

Phone #: (302) 539-6178

E-mail: RJH@gulfstreamde.net

### Owner Information

Owner Name: Gulfstream Development LLC/ Robert Harris

Owner Address: 27 Atlantic Ave. Suite 101

City: Ocean View

State: DE

Zip Code: 19970

Phone #: (302) 539-6178

E-mail: RJH@gulfstreamde.net

### Agent/Attorney/Engineer Information

Agent/Attorney/Engineer Name: Vista Design, Inc. / Steve Engel

Agent/Attorney/Engineer Address: 11634 Worcester Hwy

City: Showell

State: MD

Zip Code: 21862

Phone #: (410) 352-3874

E-mail: sengel@vistadesigninc.com



202109160  
CU2292

### 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
  - o Survey shall show the location of existing or proposed building(s), building setbacks, parking area, proposed entrance location, etc.
  - o Provide a PDF of Plans (may be e-mailed to a staff member)
  - o 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.
- De/ DOT 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: 6/15/21

Signature of Owner

  
\_\_\_\_\_

Date: 6/7/21

For office use only:

Date Submitted: 6/15/21  
Staff accepting application: NT  
Location of property: \_\_\_\_\_

Fee: \$500.00 Check #: \_\_\_\_\_  
Application & Case #: 202109160 CU2292

Subdivision: \_\_\_\_\_  
Date of PC Hearing: \_\_\_\_\_ Recommendation of PC Commission: \_\_\_\_\_  
Date of CC Hearing: \_\_\_\_\_ Decision of CC: \_\_\_\_\_



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

NICOLE MAJESKI  
SECRETARY

August 3, 2021

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 **Gulfstream Development LLC/ Robert Harris** proposed land use application, which we received on August 2, 2021. This application is for an approximately 8.38-acre parcel (Tax Parcel: 533-19.00-56.05). The subject land is located 500 feet southeast of intersection of Lighthouse Road also known as Fenwick Road (Sussex Road 58) and Sand Cove Road also known as Signature Boulevard (Sussex Road 394). The subject land is currently zoned AR-1 (Agriculture Residential) with a proposed zoning of MR (Mixed Residential) to build 32 duplex semi-detached units.

Per the 2019 Delaware Vehicle Volume Summary, the annual average and summer average daily traffic volumes along Fenwick Road from Zion Church Road (Sussex Road 382) to Williamsville Road (Sussex Road 395) are 7,411 and 9,529 vehicles per day, respectively. The annual average daily traffic volume along Sand Cove Road (Sussex Road 394) from Lighthouse Road to Williamsville Road is 986 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

August 4, 2021

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

Please contact Ms. Annamaria Furmato, at (302) 760-2710, if you have questions concerning this correspondence.

Sincerely,



T. William Brockenbrough, Jr.  
County Coordinator  
Development Coordination

TWB:afm

cc: Gulfstream Development LLC/ Robert Harris, Applicant  
Elliott Young, Sussex County Planning & Zoning  
Nicholas Torrance, Sussex County Planning & Zoning  
David Edgell, Coordinator, Cabinet Committee on State Planning Issues  
Todd Sammons, Assistant Director, 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  
Troy Brestel, Project Engineer, Development Coordination  
Claudy Joinville, Project Engineer, Development Coordination  
Annamaria Furmato, Project Engineer, Development Coordination

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

TO: **Jamie Whitehouse**

REVIEWER: **Chris Calio**

DATE: **8/9/2021**

APPLICATION: **CU 2292 Gulfstream Development**

APPLICANT: **Gulfstream Development, LLC (Robert Harris)**

FILE NO: **OM-4.05**

TAX MAP &  
PARCEL(S): **533-19.00-56.05**

LOCATION: **Southwest side of Sand Cove Road (SCR 394), approximately  
750 feet southeast of Lighthouse Road (Rt. 54).**

NO. OF UNITS: **32**

GROSS  
ACREAGE: **8.33**

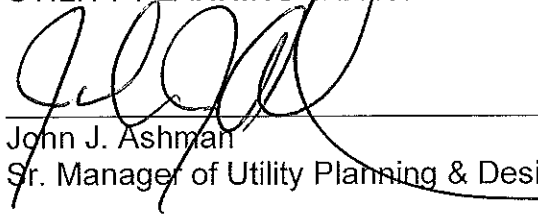
SYSTEM DESIGN ASSUMPTION, MAXIMUM NO. OF UNITS/ACRE: **4**

**SEWER:**

- (1). Is the project in a County operated and maintained sanitary sewer and/or water district?  
Yes  No
- a. If yes, see question (2).  
b. If no, see question (7).
- (2). Which County Tier Area is project in? **Tier 1**
- (3). Is wastewater capacity available for the project? **Yes** If not, what capacity is available? **N/A.**
- (4). Is a Construction Agreement required? **Yes** If yes, contact Utility Engineering at (302) 855-7717.
- (5). Are there any System Connection Charge (SCC) credits for the project? **No** If yes, how many? **N/A.** Is it likely that additional SCCs will be required? **Yes** If yes, the current System Connection Charge Rate is **Unified \$6,600.00** per EDU. Please contact **Noell Warren** at **302-855-7719** for additional information on charges.

- (6). Is the project capable of being annexed into a Sussex County sanitary sewer district? **N/A**
- Attached is a copy of the Policy for Extending District Boundaries in a Sussex County Water and/or Sanitary Sewer District.
- (7). Is project adjacent to the Unified Sewer District? **No**
- (8). Comments: **This parcel is currently with in the boundaries of the sanitary sewer district, but currently does not have a connection. Significant infrastructure will need to be installed at the property owners expense.**
- (9). Is a Sewer System Concept Evaluation required? **Yes, Contact Utility Planning at 302-855-1299 to apply**
- (10). Is a Use of Existing Infrastructure Agreement Required? **Yes**
- (11). **All residential roads must meet or exceed Sussex County minimum design standards.**

UTILITY PLANNING & DESIGN REVIEW APPROVAL:



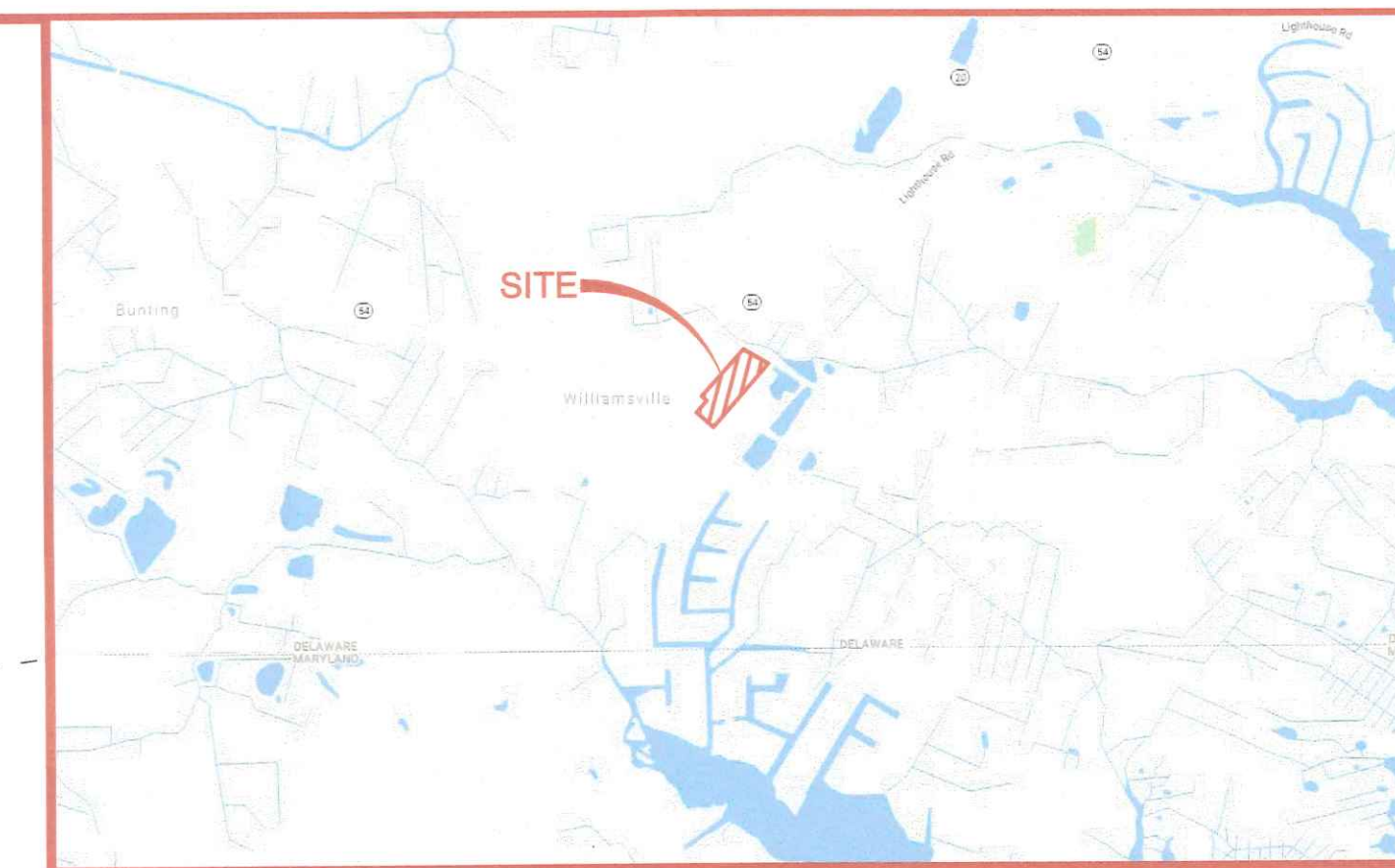
John J. Ashman  
Sr. Manager of Utility Planning & Design Review

Xc: Hans M. Medlarz, P.E.  
Lisa Walls  
Noell Warren

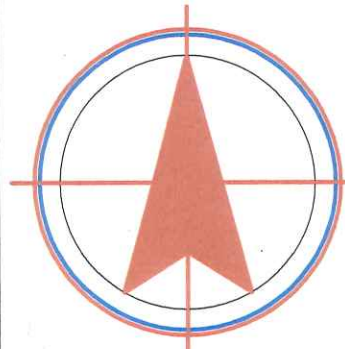
# BAY KNOLLS

RE-ZONING & CONDITIONAL USE APPLICATION  
SUSSEX COUNTY, DELAWARE

PREVIOUSLY APPROVED  
FENWICK KNOLLS  
CZ #1896 & CU #2197  
APPROVED JANUARY 14, 2020



VICINITY MAP  
NOT TO SCALE



NORTH

REVISIONS

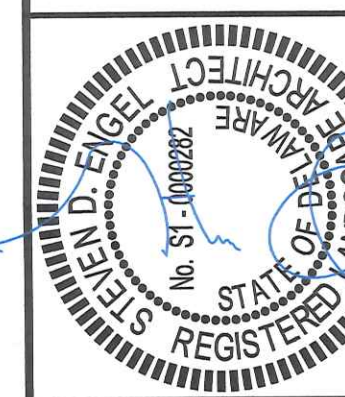
PROJECT DATA

Project No: 21-015  
File Name: CZ\_CU\_060421.dwg  
MULTICRE PERMITTED  
SUSSEX COUNTY, DELAWARE  
Date: 06/15/21  
Scale: 1" = 60'

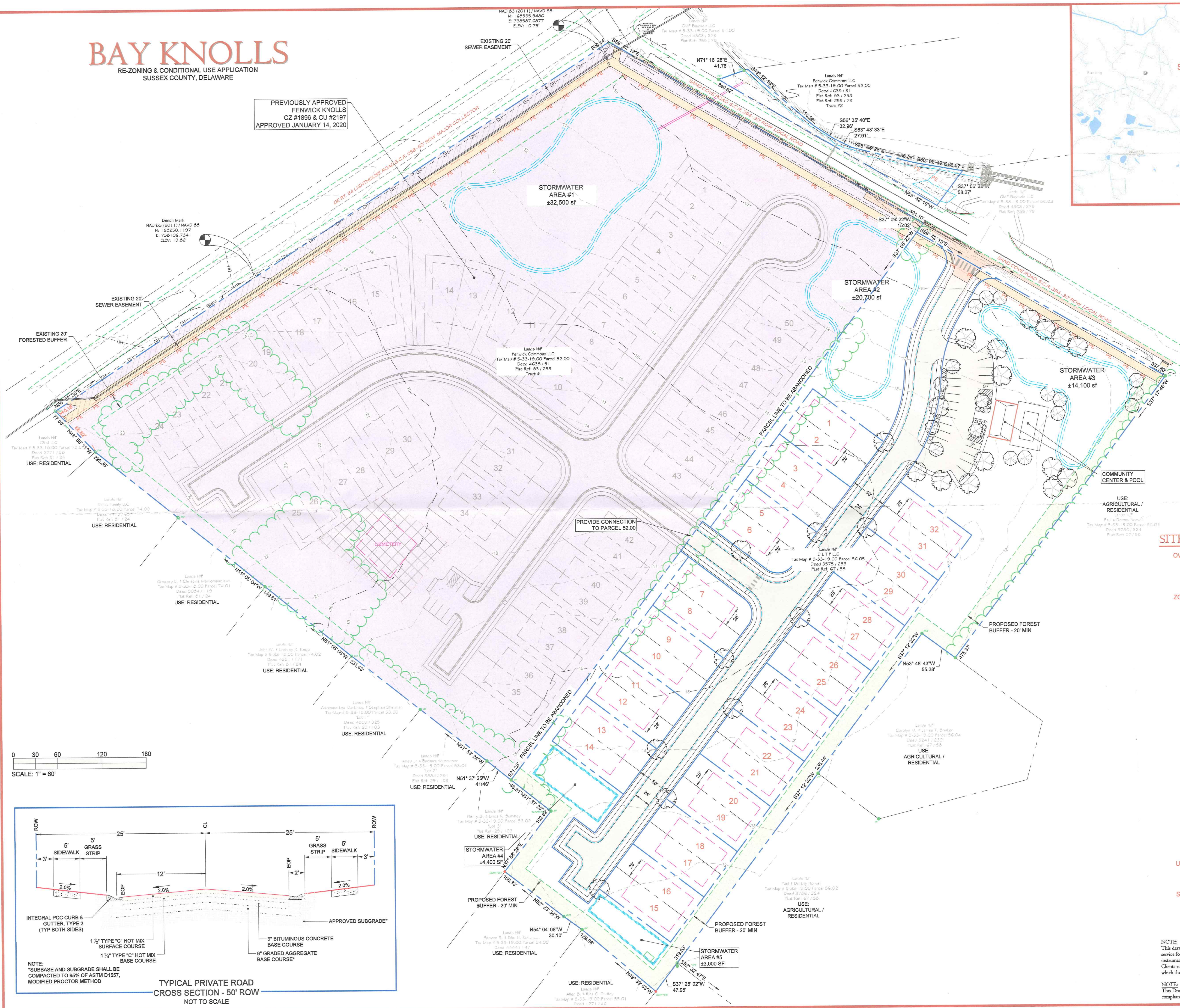
RE-ZONING &  
CONDITIONAL USE  
SITE PLAN

BAY KNOLLS  
SUBDIVISION

VISTA  
DESIGN, INC.  
Engineers • Architects • Surveyors • Landscape Architects  
Land Planning Consultants • GIS Services  
11534 Worcester Hwy, Showell, MD 21862  
PH: 410-352-3874 • Fax: 410-352-3875 • www.vistadesign.com



Sheet No: I of I



**LEGEND**

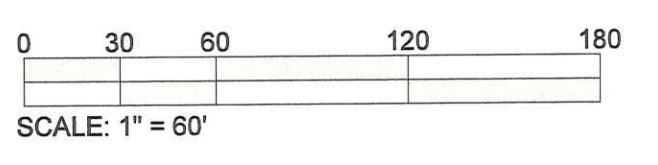
Property Line	---
Adjacent Property Line	---
Building Setback Line	---
Existing Edge of Pavement	---
Existing 1x Contour	---
Existing 5x Contour	---
Existing Storm Drain	---
Existing Sewer	---
Existing Water	---
Existing Overhead Wires	---
Existing Verizon Line (Approx)	---
Previously Approved Subdivision	---
Existing Sewer Easement	---
Non-Tidal Wetlands	---
Proposed Lot Lines	---
Proposed Community Center	---
Proposed Storm Pond	---
Proposed EOP / Curb	---
Proposed Subdivision Pavement	---
Proposed DelDOT Pavement	---
Proposed Shared Use Path	---
Proposed Forest Buffer	---

**SITE DATA**

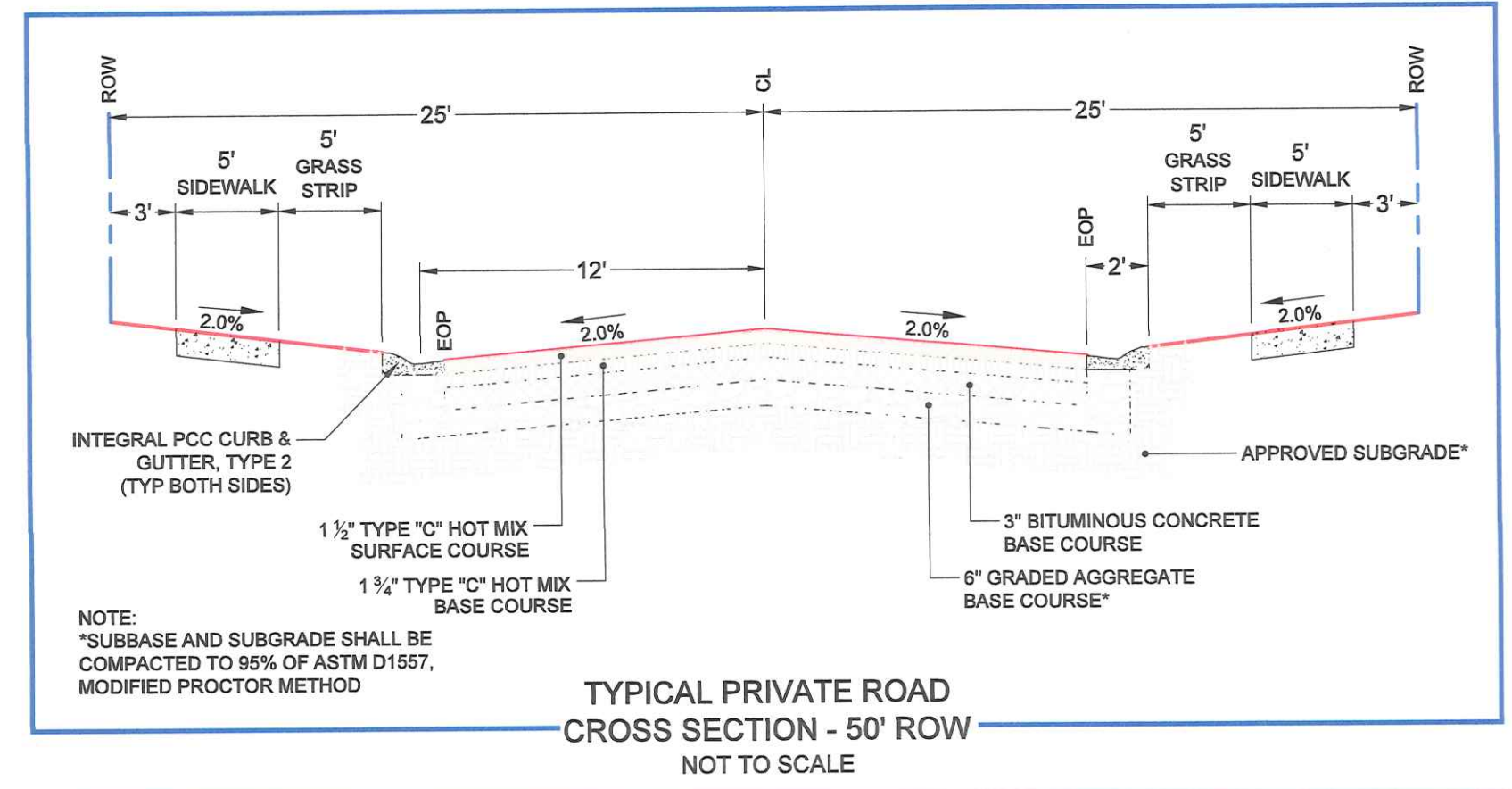
<b>OWNER / DEVELOPER</b>	GULFSTREAM DEVELOPMENT 27 ATLANTIC AVE. SUITE 101 OCEAN VIEW, DELAWARE 19070 PH: 302-539-6178	<b>CONSULTANT</b>	VISTA DESIGN, INC. 11534 WORCESTER HIGHWAY SHOWELL, MARYLAND 21862 PHONE: (410) 352-3874 FAX: (410) 352-3875
<b>ZONING INFORMATION</b>	TAX MAP 533-19.00-52.00** TRACT 1* TRACT 2* 533-19.00-56.05** TOTAL 221.66 AC		AGRICULTURAL RESIDENTIAL - SINGLE FAMILY ATTACHED (DUPLIC) DWELLINGS 50 DWELLING UNITS ON PARCEL 52.00** 32 DWELLING UNITS ON PARCEL 56.05**
<b>EXISTING LAND USE</b>	AGRICULTURAL RESIDENTIAL - SINGLE FAMILY ATTACHED (DUPLIC) DWELLINGS 50 DWELLING UNITS ON PARCEL 52.00** 32 DWELLING UNITS ON PARCEL 56.05**		
<b>PROPOSED LAND USE</b>	AGRICULTURAL RESIDENTIAL - SINGLE FAMILY ATTACHED (DUPLIC) DWELLINGS 50 DWELLING UNITS ON PARCEL 52.00** 32 DWELLING UNITS ON PARCEL 56.05**		
<b>PROPOSED UNITS</b>	50 DWELLING UNITS ON PARCEL 52.00** 32 DWELLING UNITS ON PARCEL 56.05**		
<b>DENSITY</b>	PARCEL 52.00** 3.75 UNITS/ACRE PARCEL 56.05** 3.84 UNITS/ACRE TOTAL (BOTH) 3.78 UNITS/ACRE		
<b>ZONING:</b>	PARCEL 52.00** MR / CONDITIONAL USE - COASTAL PARCEL 56.05** AR-1 - AGRICULTURAL RESIDENTIAL COASTAL AREA		
<b>*PARCEL 52.00 CZ #1896 &amp; CU #2197 ON JANUARY 14, 2020</b>			
<b>**PARCEL 56.05 WILL NEED TO BE REZONED TO MR / CONDITIONAL USE</b>			
<b>REQUIRED LOT SIZE:</b>	MIN. WIDTH N/A MIN. DEPTH N/A MIN. AREA 4,590 SF AVERAGE 4,598 SF		
<b>BUILDING SETBACKS</b>	FRONT 30' (INTERIOR LOTS) 40' (FROM DE ROUTE 54) CORNER 15' REAR 10' SIDES 10'		
<b>MAX BUILDING HEIGHT</b>	42'		
<b>MIN BUILDABLE FRONTAGE</b>	28' WIDE		
<b>MIN BUILDABLE DEPTH</b>	80' DEEP		
<b>UTILITY PROVIDER</b>	WATER ARTESIAN SEWER SUSSEX COUNTY - FENWICK ISLAND DISTRICT		
<b>SITE AREA CALCULATIONS - PARCEL 56.05</b>	PRIVATE R.O.W. \$1.37 AC LOTS \$3.37 AC OPEN SPACE \$3.59 AC (43%) TOTAL \$8.33 AC		

**NOTE:**  
This drawing, specifications, and work produced by Vista Design, Inc. (VDI) for this project are instruments of service for this project only, and remain the copyrighted property of VDI. reuse or reproduction of any of the instruments of service of VDI by the Client or assignees without the written permission of VDI will be at the Client's risk and be a violation of the copyright laws of the United States of America and the respective state within which the work was completed.

**NOTE:**  
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 appurtenant.



SCALE: 1" = 60'



TYPICAL PRIVATE ROAD  
CROSS SECTION - 50' ROW  
NOT TO SCALE



# VISTA

## DESIGN, INC.

**BAY KNOLLS**  
**C/Z #1945**  
**CU #2292**

*Prepared for:*

Sussex County Planning & Zoning Commission  
2 The Circle  
Georgetown, Delaware 19947

*Submitted by:*

Vista Design, Inc.  
11634 Worcester Highway  
Showell, Maryland 21862  
Phone: (410) 352-3874 • Fax: (410) 352-3875  
[www.vistadesigninc.com](http://www.vistadesigninc.com)



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(Final March 2019)

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**SECTION A**  
**PROJECT SUMMARY**

**Section A**  
**Project Summary**  
**Change of Zone #1945 & Conditional Use #2292**

Bay Knolls is located on Sand Cove Road (S.C.R. 394), ±500' Southeast of the intersection DE Route 54 (Lighthouse Road) in Sussex County, Delaware. The 8.33-acre site (TM 533-19.00-56.05) is currently zoned Agricultural Residential district (AR-1) and is currently used for agricultural purposes. This parcel is within the Coastal Area per the 2019 Sussex County Comprehensive Plan and under the current zoning regulations, 2 Units per acre are allowed.

The neighborhood plan for Bay Knolls is situated on the 8.33 Acres of uplands providing 32 single family, semi-detached (duplex) units with a density of 3.84 Units per Acre. The current site plan will require a change of zone from Agricultural Residential (AR-1) to Medium Residential (MR) with a Conditional Use for type of units proposed. A team of design professionals have work diligently inventorying and analyzing the site and surroundings areas to create a neighborhood plan that respects the existing environment while “fitting” appropriately within the surrounding community. Opportunities and limitations affecting the natural environment were cataloged and a community concept respecting the setting was conceived. The concept for Bay Knolls focuses on preserving and protecting the important natural features of the site while providing a unique sense of place and neighborhood.

The 32 homes will be constructed over a 2–3-year period and will include an entrance oriented with the current alignment of Heron’s Ridge at bayside. The neighborhood will provide a recreation facility that will include a swimming pool and community building.

The neighborhood plan for Bay Knolls has been situated to be integrated with the former lands of Fenwick Commons. The stormwater management system for the site will include Best Management Practice (BMP) facilities that will enhance surface water quality which together with carefully crafted conservation design and nutrient management techniques monitored by the homeowner’s association will yield a reduction of nutrient loading and enhance the inland bays.

Bay Knolls will be served by public water and sewer. A high quality, reliable source of potable drinking water and fire protection service will be provided by Artesian Water Company. Public sewer will be provided by and constructed in accordance with Sussex County Standards.

The street system will be designed and constructed to Sussex County Standards and will remain private with maintenance provided by the homeowner’s association. A unified street & site signage, lighting and landscaping system has been incorporated into the plan.

In summary, Change of Zone #1945 and Conditional Use #2292 propose 32 single family, semi-detached (duplex) units on 8.33 acres and is along Sand Cove Road, ±500'

Southeast of the intersection Route 54 at a density of less than 4 units per acre. It is consistent with the character and trend of development in the area and in particular with two adjacent neighbors as listed below:

- Bayside Phase VII – Heron’s Ridge at Bayside
  - CZ #1803 – an adjacent residential project with a density of 4.8 Units per acre, and
- The Former Lands of Fenwick Commons
  - CZ #1896 & CU #2197 – The neighboring residential property with a density of less than 4 Units per acre.

The community of Bay Knolls has been planned in a manner that will “fit” sensitively within the surrounding community providing a recognizable sense of place and neighborhood for its residents while, at the same time, providing economic and environmental benefits to the community at large.



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**SECTION B**  
**CHAPTER §99-9(C) COMPLIANCE**

**Section B**  
**Chapter §99-9(C) Compliance**

In the design and layout of Bay Knolls Conditional Use, the follow items have been considered from the Subdivision Ordinance, § 99-9(C):

- **§ 99-9C (1) – Integration of the proposed subdivision into existing terrain and surrounding landscape:**

The preliminary design of Bay Knolls incorporates natural grade change throughout the property that will aid in directing surface runoff to designated stormwater management areas. The site also consists of a proposed 20' wide landscape setback that will serve as a buffer from adjacent residential homes. The proposed density yield for Bay Knolls is in character with existing subdivisions and other residential communities in the vicinity.

- **§ 99-9C (2) – Minimal use of wetlands and floodplains:**

- a. An on-site wetland investigation performed by Environmental Resources, Inc. and there are no wetlands present on this site.
- b. The site contains no regulatory floodplains.

- **§ 99-9C (3) – Preservation of natural and historical features:**

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

- **§ 99-9C (4) – Preservation of open space and scenic views:**

There is a total of 3.59 acres of open space provided for the project which is 43% of the total site area. The open space areas consist of stormwater management, a community pool and designated community open space, existing & proposed vegetated buffers and passive/active open space.

- **§ 99-9C (5) – Minimization of tree, vegetation and soil removal and grade changes:**

- a. The proposed design of Bay Knolls allows for the conservation of 77% of the existing natural wooded areas.
- b. Soil removal and grade changes will be minimized during the final design to be limited only to that which is necessary to provide positive drainage and proper pipe cover over proposed utilities.

- **§ 99-9C (6) – Screening of objectional features from neighboring properties and roadways:**

As detailed above, the screening of objectional features will be accomplished through the conservation of 77% of the existing natural wooded areas in combination with the 0.67 acres of the proposed 20' wide forested buffer area around the perimeter of the development.

- **§ 99-9C (7) – Provisions for water supply:**

All single-family, semi-detached (duplex) lots and community space features will be served with central water provided by Artesian Water Company.



- **§ 99-9C (8) – Provisions for Sewer Disposal:**

The Bay Knolls site lies within Tier 1 of the Fenwick Island Sanitary Sewer District, and All single-family, semi-detached (duplex) lots and community space features will be served with central sewer provided by Sussex County.



- **§ 99-9C (9) – Prevention of pollution of surface and groundwater:**

Best Management Practices (BMPs) will be used during the design and construction of the property. Detailed sediment & stormwater management practices will be provided to the Sussex Conservation District (SCD) for review.

- **§ 99-9C (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:**

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



- **§ 99-9C (11) – Provisions for safe vehicular and pedestrian movement within the site and to adjacent ways:**
  - a. The road design will conform to Sussex County Standards and specifications. After completion & acceptance by Sussex County, the homeowner’s association will be responsible for maintenance.
  - b. The Bay Knolls subdivision contains 5’ wide sidewalks along both sides of all streets that provide pedestrian connections throughout the site and to adjacent roadways.
  
- **§ 99-9C (12) – Effect on Property Values:**

Based on historical trends in Sussex County, the property values around the proposed subdivision will increase with this development due to the improvement to existing infrastructure and creation of new community amenities.
  
- **§ 99-9C (13) – Preservation and conservation of farmland:**

This pre-developed parcel is currently used for agricultural purposes but as stated in the 2019 Sussex County Comprehensive plan, the Coastal Area is a Growth Area. A proposed 20’ wide forested buffer has been established to screen between adjacent parcels.
  
- **§ 99-9C (14) – Effect on schools, public buildings and community facilities:**
  - a. The increase in tax revenue to the school district will assist in the maintenance and operations of the public school system.
  - b. The trend towards seniors moving to Sussex County and second home buyers will provide tax revenue without adding large amounts of potential new students into the public school system.
  
- **§ 99-9C (15) – Effect on area roadways and public transportation:**

The subdivision streets within Bay Knolls will be designed to Sussex County Standards. Improvements will be required by DelDOT along Sand Cove Road and will be designed to DelDOTs latest standards.
  
- **§ 99-9C (16) – Compatibility with other land uses:**

The proposed 32 lots within this portion of the Bay Knolls development has a density of 3.84 units per acre and is consistent with other existing land uses in the vicinity, as described below:

  - Bayside Phase VII – Heron’s Ridge at Bayside
    - CZ #1803 – an adjacent residential planned community and has a density of 4.8 Units per acre
  - The Former Lands of Fenwick Commons
    - CZ #1896 & CU #2197 – The adjoining residential property with a density of less than 4 Units per acre

- **§ 99-9C (17) – Effect on area land uses:**

The proposed Bay Knolls subdivision will not have an adverse impact on area waterways. Buffers have been proposed between adjacent residential homes to assure that contamination of adjacent waterways would not be experienced in a post-developed condition. Sediment and stormwater management plans will be designed and constructed to comply with all sediment and stormwater regulations.



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**SECTION C**

**CHAPTER §115-194.3 COMPLIANCE**

**ENVIRONMENTAL ASSESSMENT AND**

**PUBLIC FACILITY EVALUATION**

**Section C**  
**Chapter §115-194.3 Compliance**  
**Environmental Assessment and Public Facility Evaluation Report**

In accordance with Article XXV-Supplementary Regulations, Coastal Area, this Environmental Assessment and Public Facility Evaluation Report has been prepared to define the design parameters and potential impacts to the proposed Bay Knolls subdivision.

**General Overview:**

Bay Knolls is a proposed subdivision located within the Coastal Area per the Sussex County 2019 Future Land Use Map. It is located on Sand Cove Road, 500' Southeast of the intersection DE Route 54 (Lighthouse Road) in Sussex County, Delaware. The current zoning for this parcel is AR-1 and applications have been submitted for C/Z #1945 for a Change of Zone to Medium Residential (MR) and CU #2292 in order to incorporate multi-family dwelling structures into the overall design.

**a) Drainage and Stormwater Runoff:**

The Bay Knolls development currently has approximately 8 acres of row crops. Agricultural practices used to support these operations typically include application of poultry manure to the agricultural fields. The removal of this source of contaminated runoff will enhance both surface water and groundwater supplies. In addition to the reduction in surface runoff contamination, the Bay Knolls development shall include Best Management Practices (BMPs) that will further enhance surface water quality. At this time, it is anticipated that the site will include wet extended detention basins and possibly other Sussex Conservation District (SCD) and DNREC accepted facilities. In addition, the development of the site with the central sanitary sewer provided by Sussex County minimizes the negative environmental impacts.

**b) Potable Water:**

The Bay Knolls site lies within the service area of Artesian Water Company. Potable water, including both domestic and fire flows, will be provided through an extension of existing Artesian Water Company service lines in the vicinity of the site. Based upon an average water consumption of a single family, semi-detached units of 250 gallons per day (GPD), the proposed 32-unit Bay Knolls development may be anticipated to consume approximately 8,000 GPD. As this site is to be served by extensions of existing Artesian Water Company facilities, no impact to the surrounding private wells are anticipated.

**c) Wastewater Treatment and Disposal**

The Bay Knolls site lies within Tier 1 of the Fenwick Island Sanitary Sewer District, and the site is anticipated to be served through an extension of existing Sussex County sewer infrastructure. All wastewater is anticipated to be ultimately treated and disposed of at the Fenwick Island Regional Wastewater Facility. As this site is anticipated to be served by extensions of existing Sussex County facilities, and no wastewater will be

treated or disposed of onsite, no impacts to the surrounding surface or ground waters are expected.

**d) Impacts to Surrounding Roadways:**

This portion of the Bay Knolls development is proposed to contain 32 duplex units. Based upon the latest Institute of Transportation Engineers Traffic Generation Manual, a single-family, semi-detached (duplex) home is anticipated to generate approximately 7.56 vehicle trips per day (½ entering and ½ exiting the site), or approximately 201 vehicle trips per day. As stated in the Service Level Evaluation provided by Delaware Department of Transportation (DelDOT), the development will generate fewer than 50 vehicle trips in any hour and fewer than 500 vehicle trips per day. Because the proposed land use does not meet these warrants, the development's traffic impact is negligible. Road improvements related to the entrance designed will be installed as required by DelDOT. Right-of-way dedication and a permanent easement along the Sand Cove Road have been indicated as required by DelDOT

**e) Endangered or Threatened Species:**

The Bay Knolls development site is currently comprised of an agricultural field and there are currently no know Endangered or Threatened species on this site.

**f) Preservation and Protection of Tidal and Non-Tidal Wetlands:**

Per an on-site wetland investigation performed by Environmental Resources, Inc. there are no wetlands present on this site.

**g) Open Space and Buffers:**

In utilizing the density allowed with duplex housing, 3.59 Acres or 43% of the site will remain in open space and will both provide active & passive recreation. The Bay Knolls development will include a swimming pool & community center, preservation of 77% of the existing vegetation. In addition, a proposed 20' forested buffer (0.67 acres) around the perimeter of the property.

**h) Proposed Public and Private infrastructure:**

- a. The proposed Bay Knolls community is within the Fenwick Island Sanitary Sewer District and will be served by an extension of the County's wastewater facilities to the subject parcel.
- b. An extension of the existing Artesian Water Company service lines along Sand Cove Road will provide potable water, including both domestic and fire service.

**i) Economic Benefit:**

The proposed Bay Knolls community is anticipated to benefit the local and state economies in many ways, including:

- a. The installation of public sewer facilities will assist in reducing the nutrient loadings of the inland bays, which will result in the improved quality and therefore increased enjoyment by both locals and vacationers.
- b. The development is anticipated in increase the tax base of Sussex County.

**j) Recreational Benefits:**

Bay Knolls design includes an onsite community center & pool and large open green areas providing opportunities for landscaping throughout the community. These facilities are intended to serve the residents of the community and will reduce the dependence on other local recreation facilities.

**k) Affirmation and Conformance with the Current Sussex County Comprehensive Plan:**

Please refer to Section D for an in-depth analysis of the 2019 Sussex County Comprehensive Plan.

**l) Actions Taken to Mitigate Proposed Impacts of the Development:**

The proposed Bay Knolls neighborhood is not anticipated to produce any negative impacts to the environment or to its surrounding community. However, the following items are important to note: An onsite community center, community pool, preservation of existing wooded lands and creation of landscape buffers have been proposed for the use and enjoyment of residents.



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**SECTION D**  
**AFFIRMATION OF CONFORMANCE**  
**WITH SUSSEX COUNTY**  
**COMPREHENSIVE PLAN**

## Section D

### Affirmation and Conformance with the 2019 Comprehensive Plan – Coastal Areas

In accordance with Sussex County's 2019 Comprehensive Plan, the Future Land Use Map designates this project as a "growth zone" within the Coastal Area. Items specifically in the Comprehensive Plan regarding Coastal Area have been identified below.

- **This region is among the most desirable locations in Sussex County for new housing, as is reflected in new construction data and real estate prices:**  
Bay knolls provides housing options in an area recognized by the County to be desirable for housing.
- **This region contains ecologically important and sensitive characteristics as well as other coastal lands which help absorb floodwaters and provide extensive habitat for native flora and fauna. This are also has significant impact upon water quality within the adjacent bays and inlets as well as upon natural the region's various habitats:**  
3.59 Acres or 43% of the total site will remain in open space while 0.24 acres or 77% of the existing wooded areas are to remain.
- **Careful control of stormwater runoff is also an important concern in keeping sediment and other pollutants out of the Inland Bays:**  
The stormwater management design will incorporate Best Management Practices in accordance with the Sussex Conservation District (SCD) and DNREC.
- **Permitted Uses – A range of housing types should be permitted in Coastal Areas, including single-family homes, townhouses, and multi-family units:**  
Bay knolls provides housing options that are permitted in the Costal Areas and ones that are in harmony with the other neighboring residential developments.
- **Densities – Sussex County's base density of 2 units per acre is appropriate throughout this classification; however, medium and higher density (4-12 units per acre) can be appropriate in certain locations. Medium and higher density could be supported in areas:**
  - **Where there is central water and sewer:**  
Sussex County has extended sewer to the property to the north (Parcel 52.00) and the Sanitary Service would be extended to the subject parcel. Artesian Water Company has extended central water to the property.
  - **Near sufficient commercial uses and employment centers:**  
C-1 General Commercial lands are located  $\pm 1,100'$  west of the project  
B-1 Neighborhood Business Lands are located  $\pm 1,250'$  east of the project.



- **Where it is in keeping with the character of the area:**  
 The proposed density for this portion of Bay Knolls is 3.84 units per acre and is consistent with its neighboring residential developments as described below:
  - Bayside Phase VII – Heron’s Ridge at Bayside
    - CZ #1803 – an adjacent residential project with a density of 4.8 Units per acre
  - The Former Lands of Fenwick Commons
    - CZ #1896 & CU #2197 – The neighboring residential property with a density of less than 4 Units per acre.
  
- **Where it is along a main road or at/or near a major intersection:**  
 DE Route 54 (Lighthouse Road) is classified by the Delaware Department of Transportation (DelDOT) as a Major Collector and Bay Knolls is located on Sand Cove Road (S.C.R. 394), ±500’ Southeast of the intersection DE Route 54 (Lighthouse Road).
  
- **The preservation of natural resources or open space is strongly encouraged in this land use classification.**  
 3.59 Acres or 43% of the site will remain in open space and will include a swimming pool & community center, preservation 77% of the existing vegetation and a 20’ wide forested buffer of 0.67 acres is proposed around the perimeter of the property
  
- **Infrastructure – Central water and sewer facilities are strongly encouraged. If central utilities are not possible, permitted densities should be limited to two units per acre provided a septic permit can be approved.**  
 Sussex County has extended sewer to the property to the north (Parcel 52.00) and the Sanitary Service would be extended to the subject parcel with an EDU allocation of 4 EDUs per acre. Artesian Water Company has extended central water to the property sufficient for potable water and fire protection flow requirements.

A large, stylized letter 'V' graphic that serves as a background for the text. The 'V' is filled with a dark gray color and has a jagged, torn-paper-like border. It is centered on a solid black background.

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**EXHIBITS**

File #: \_\_\_\_\_

## 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**

+/- 500' southeast of Intersection of Lighthouse Road (DE RT 54, SCR 58) and Sand Cove Road (SCR 394)

**Type of Conditional Use Requested:**Tax Map #: 533-19.00-56.05 Size of Parcel(s): 8.33 AcCurrent Zoning: AR-1 Proposed Zoning: MR/CU Size of Building: \_\_\_\_\_Land Use Classification: Coastal AreaWater Provider: Artesian Sewer Provider: Sussex County**Applicant Information**Applicant Name: Gulfstream Development LLC/ Robert HarrisApplicant Address: 27 Atlantic Ave. Suite 101City: Ocean View State: DE Zip Code: 19970Phone #: (302) 539-6178 E-mail: RJH@gulfstreamde.net**Owner Information**Owner Name: Gulfstream Development LLC/ Robert HarrisOwner Address: 27 Atlantic Ave. Suite 101City: Ocean View State: DE Zip Code: 19970Phone #: (302) 539-6178 E-mail: RJH@gulfstreamde.net**Agent/Attorney/Engineer Information**Agent/Attorney/Engineer Name: Vista Design, Inc. / Steve EngelAgent/Attorney/Engineer Address: 11634 Worcester HwyCity: Showell State: MD Zip Code: 21862Phone #: (410) 352-3874 E-mail: sengel@vistadesig.ninc.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.

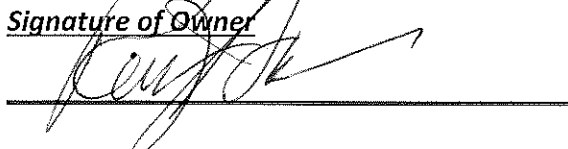
I also certify that I or an agent on my behalf shall attend all public hearing before the Planning and Zoning Commission and the Sussex County Council and any other hearing necessary for this application and that I will answer any questions to the best of my ability to respond to the present and future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

Signature of Applicant/Agent/Attorney



Date: 6/15/21

Signature of Owner



Date: 6/7/21

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: \_\_\_\_\_

File #: \_\_\_\_\_

## 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**

+/- 500' southeast of Intersection of Lighthouse Road (DE RT 54, SCR 58) and Sand Cove Road (SCR 394)

**Type of Conditional Use Requested:**

32 Duplex (semi-detached) housing units

Tax Map #: 533-19.00-56.05Size of Parcel(s): 8.33 AcCurrent Zoning: AR-1Proposed Zoning: MR/CU

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

Land Use Classification: Coastal AreaWater Provider: ArtesianSewer Provider: Sussex County**Applicant Information**Applicant Name: Gulfstream Development LLC/ Robert HarrisApplicant Address: 27 Atlantic Ave. Suite 101City: Ocean ViewState: DEZip Code: 19970Phone #: (302) 539-6178E-mail: RJH@gulfstreamde.net**Owner Information**Owner Name: Gulfstream Development LLC/ Robert HarrisOwner Address: 27 Atlantic Ave. Suite 101City: Ocean ViewState: DEZip Code: 19970Phone #: (302) 539-6178E-mail: RJH@gulfstreamde.net**Agent/Attorney/Engineer Information**Agent/Attorney/Engineer Name: Vista Design, Inc. / Steve EngelAgent/Attorney/Engineer Address: 11634 Worcester HwyCity: ShowellState: MDZip Code: 21862Phone #: (410) 352-3874E-mail: sengel@vistadesigninc.com

### Check List for Sussex County Planning & Zoning Applications

The following shall be submitted with the application

- Completed Application
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  - o Survey shall show the location of existing or proposed building(s), building setbacks, parking area, proposed entrance location, etc.
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  - o Deed or Legal description
- Provide Fee \$500.00
- Optional - Additional information for the Commission/Council to consider (ex. architectural elevations, photos, exhibit books, etc.) If provided submit 8 copies and they shall be submitted a minimum of ten (10) days prior to the Planning Commission meeting.
- Please be aware that Public Notice will be sent to property owners within 200 feet of the subject site and County staff will come out to the subject site, take photos and place a sign on the site stating the date and time of the Public Hearings for the application.
- DeIDOT Service Level Evaluation Request Response
- PLUS Response Letter (if required)

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

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

Signature of Applicant/Agent/Attorney



Date: 6/15/21

Signature of Owner



Date: 6/7/21

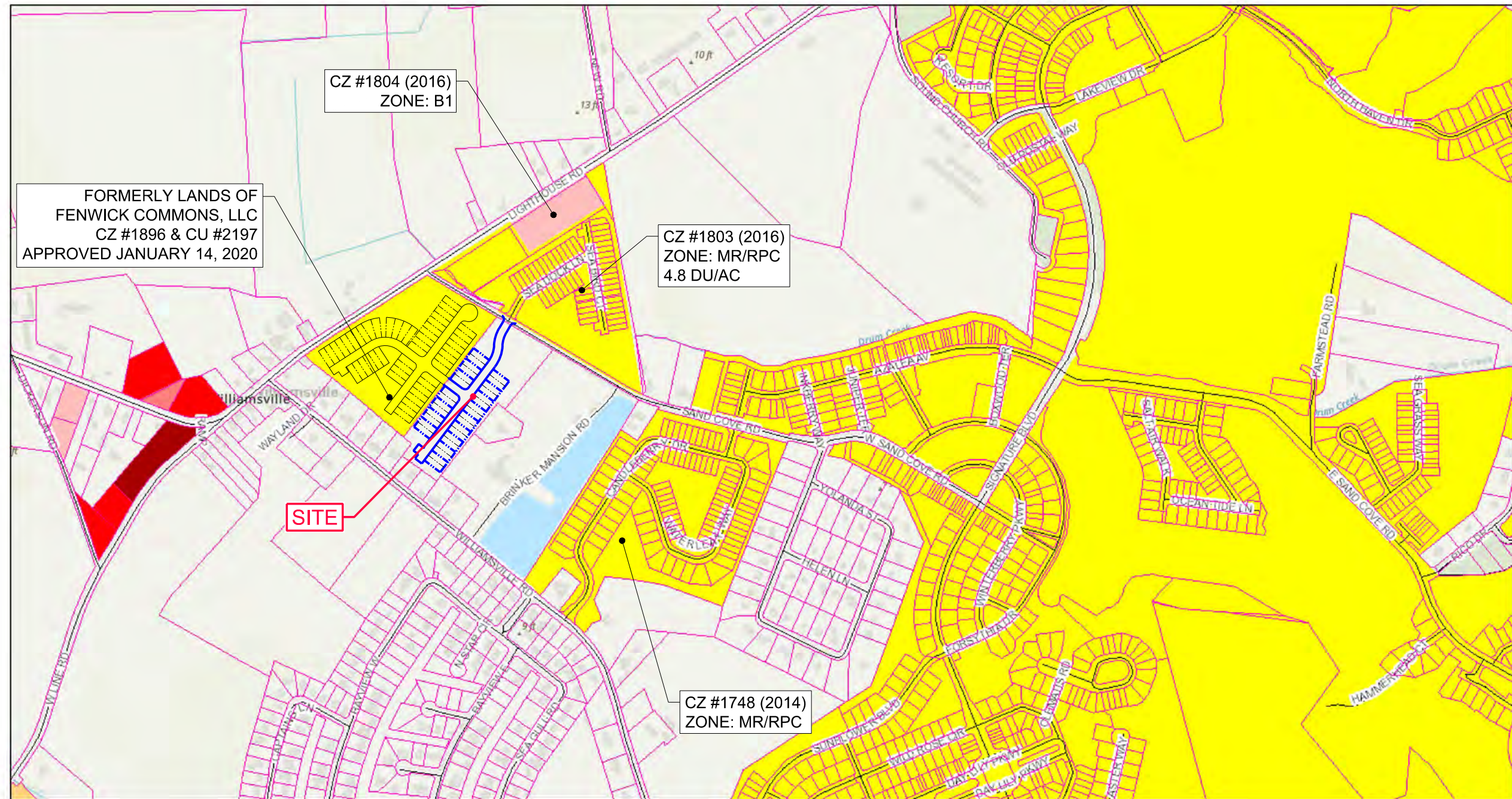
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Date Submitted: \_\_\_\_\_ Fee: \$500.00 Check #: \_\_\_\_\_  
 Staff accepting application: \_\_\_\_\_ Application & Case #: \_\_\_\_\_  
 Location of property: \_\_\_\_\_

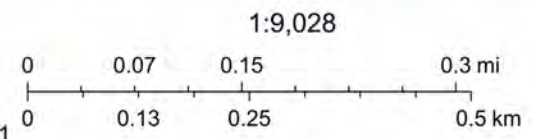
Subdivision: \_\_\_\_\_  
 Date of PC Hearing: \_\_\_\_\_ Recommendation of PC Commission: \_\_\_\_\_  
 Date of CC Hearing: \_\_\_\_\_ Decision of CC: \_\_\_\_\_



# Sussex County



July 28, 2021

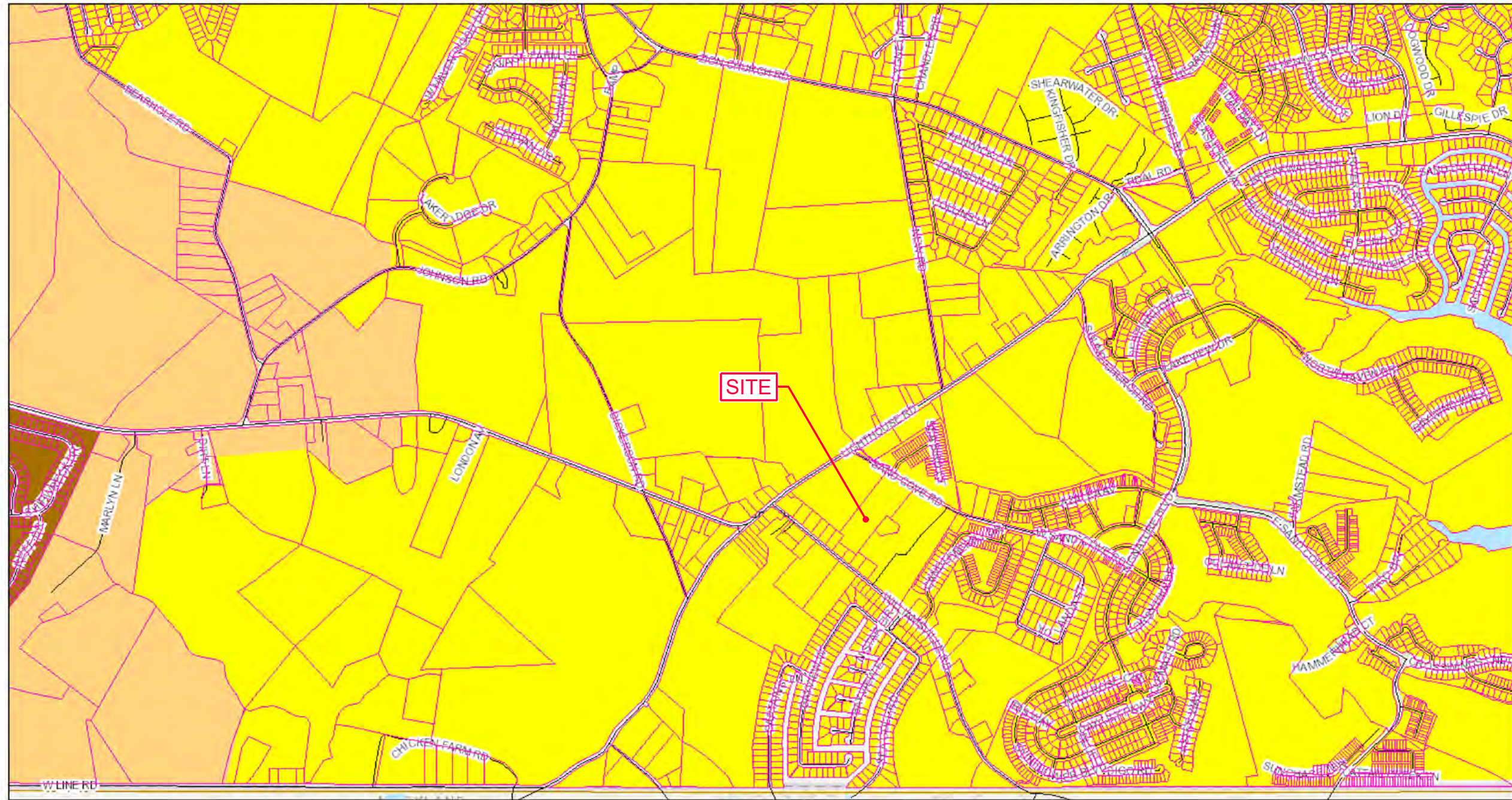


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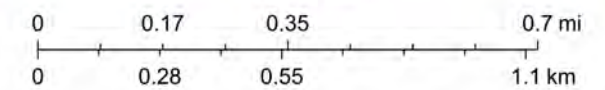
# Sussex County



July 28, 2021

- |                   |                                   |                 |                |
|-------------------|-----------------------------------|-----------------|----------------|
| Tax Parcels       | 2019 Future Land Use Coastal Area | Commercial      | Industrial     |
| Streets           | Existing Development Area         | Developing Area | Municipalities |
| County Boundaries | Low Density                       | Town Center     |                |

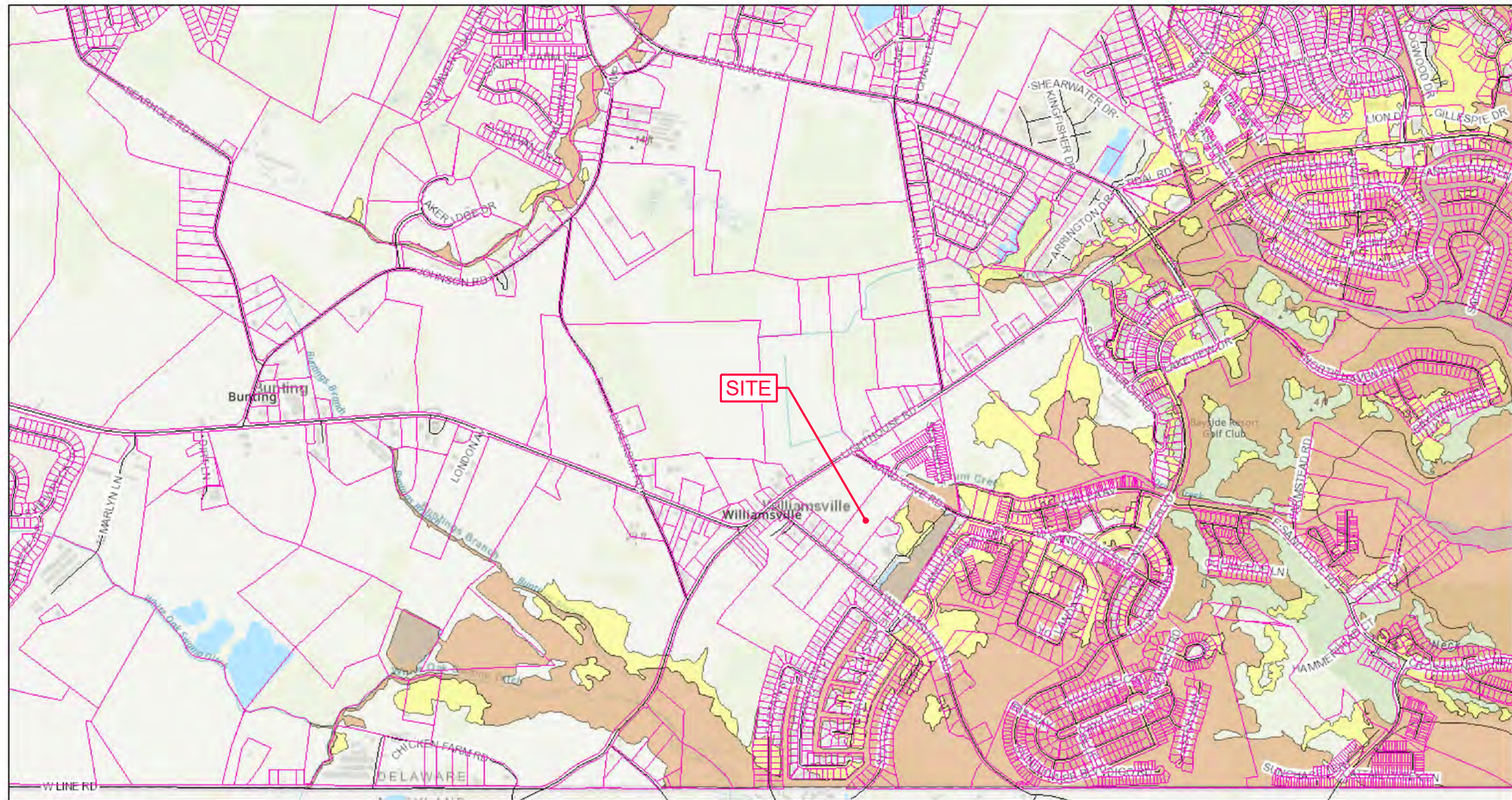
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Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community, Sussex County Government



# Sussex County



July 28, 2021

— Tax Parcels

— Streets

Flood Zones 2018

0.2 PCT ANNUAL CHANCE FLOOD HAZARD

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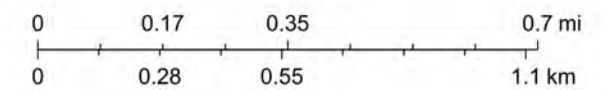
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OPEN WATER

VE

1:18,056



FEMA, Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community, Sussex County Government



# National Flood Hazard Layer FIRMMette



EXHIBIT E.6

75°7'59"W 38°27'52"N



## Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

- |                                    |  |  |
|------------------------------------|--|--|
| <b>SPECIAL FLOOD HAZARD AREAS</b>  |  | Without Base Flood Elevation (BFE)<br><i>Zone A, V, A99</i>  |
|                                    |  | With BFE or Depth <i>Zone AE, AO, AH, VE, AR</i>   |
|                                    |  | Regulatory Floodway  |
| <b>OTHER AREAS OF FLOOD HAZARD</b> |  | 0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile <i>Zone X</i> |
|                                    |  | Future Conditions 1% Annual Chance Flood Hazard <i>Zone X</i>  |
|                                    |  | Area with Reduced Flood Risk due to Levee. See Notes. <i>Zone X</i>  |
|                                    |  | Area with Flood Risk due to Levee <i>Zone D</i>  |
| <b>OTHER AREAS</b>                 |  | NO SCREEN Area of Minimal Flood Hazard <i>Zone X</i>   |
|                                    |  | Effective LOMRs  |
| <b>GENERAL STRUCTURES</b>          |  | Area of Undetermined Flood Hazard <i>Zone D</i>  |
|                                    |  | Channel, Culvert, or Storm Sewer   |
| <b>OTHER FEATURES</b>              |  | Levee, Dike, or Floodwall  |
|                                    |  | 20.2 Cross Sections with 1% Annual Chance Water Surface Elevation  |
|                                    |  | 17.5 Coastal Transect  |
|                                    |  | Base Flood Elevation Line (BFE)  |
|                                    |  | Limit of Study   |
|                                    |  | Jurisdiction Boundary  |
|                                    |  | Coastal Transect Baseline  |
|                                    |  | Profile Baseline   |
|                                    |  | Hydrographic Feature   |
| <b>MAP PANELS</b>                  |  | Digital Data Available   |
|                                    |  | No Digital Data Available  |
|                                    |  | Unmapped   |



The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on **7/28/2021 at 9:55 AM** and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

**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, N/NGS12  
National Geodetic Survey  
SSMC-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.

Contact the **FEMA Map Information eXchange** at 1-877-336-2627 for information on available products associated with this FIRM. Available products may include previously issued Letters of Map Change, a Flood Insurance Study report, and/or digital versions of this map. The FEMA Map Information eXchange may also be reached by Fax at 1-800-358-9620 and their website at <http://www.msc.fema.gov/>.

If you have **questions about this map** or questions concerning the National Flood Insurance Program in general, please call 1-877-FEMA MAP (1-877-336-2627) or visit the FEMA website at <http://www.fema.gov/business/nfp>.



**EXHIBIT E.6**

**LEGEND**

**SPECIAL FLOOD HAZARD AREAS SUBJECT TO INUNDATION BY THE 1% ANNUAL CHANCE FLOOD**

The 1% annual flood (100-year flood), also known as the base flood, is the flood that has a 1% chance of being equaled or exceeded in any given year. The Special Flood Hazard Area is the area subject to flooding by the 1% annual chance flood. Areas of Special Flood Hazard include Zones A, AE, AH, AO, AR, A99, V, and VE. The Base Flood Elevation is the water-surface elevation of the 1% annual chance flood.

- ZONE A** No Base Flood Elevations determined.
- ZONE AE** Base Flood Elevations determined.
- ZONE AH** Flood depths of 1 to 3 feet (usually areas of ponding); Base Flood Elevations determined.
- ZONE AO** Flood depths of 1 to 3 feet (usually sheet flow on sloping terrain); average depths determined. For areas of alluvial fan flooding, velocities also determined.
- ZONE AR** Special Flood Hazard Area formerly protected from the 1% annual chance flood by a flood control system that was subsequently decertified. Zone AR indicates that the former flood control system is being restored to provide protection from the 1% annual chance or greater flood.
- ZONE A99** Area to be protected from 1% annual chance flood by a Federal flood protection system under construction; no Base Flood Elevations determined.
- ZONE V** Coastal flood zone with velocity hazard (wave action); no Base Flood Elevations determined.
- ZONE VE** Coastal flood zone with velocity hazard (wave action); Base Flood Elevations determined.

**FLOODWAY AREAS IN ZONE AE**  
The floodway is the channel of a stream plus any adjacent floodplain areas that must be kept free of encroachment so that the 1% annual chance flood can be carried without substantial increases in flood heights.

**OTHER FLOOD AREAS**  
**ZONE X** Areas of 0.2% annual chance flood; areas of 1% annual chance flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1% annual chance flood.

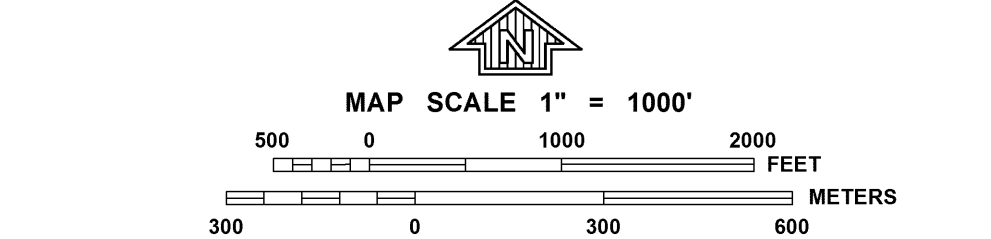
**OTHER AREAS**  
**ZONE X** Areas determined to be outside the 0.2% annual chance floodplain.  
**ZONE D** Areas in which flood hazards are undetermined, but possible.

**COASTAL BARRIER RESOURCES SYSTEM (CBRS) AREAS**  
**OTHERWISE PROTECTED AREAS (OPAs)**  
CBRS areas and OPAs are normally located within or adjacent to Special Flood Hazard Areas.

- Floodplain boundary
- 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
- Transsect line
- 87°07'45", 32°22'30" Geographic coordinates referenced to the North American Datum of 1983 (NAD 83), Western Hemisphere
- 1000-meter Universal Transverse Mercator grid values, zone 18N
- 600000 FT 5000-foot grid values; Delaware State Plane coordinate system (FIPSZONE 0700), Transverse Mercator projection
- DXS510 x Bench mark (see explanation in Notes to Users section of this FIRM panel)
- M1.5 River Mile
- MAP REPOSITORY Refer to listing of Map Repositories on Map Index
- EFFECTIVE DATE OF COUNTYWIDE FLOOD INSURANCE RATE MAP June 16, 1995
- EFFECTIVE DATE(S) OF REVISION(S) TO THIS PANEL See Notice 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.



**NATIONAL FLOOD INSURANCE PROGRAM**

**PANEL 0635K**

**FIRM**  
**FLOOD INSURANCE RATE MAP**

**SUSSEX COUNTY, DELAWARE AND INCORPORATED AREAS**

**PANEL 635 OF 660**  
(SEE MAP INDEX FOR FIRM PANEL LAYOUT)

COMMUNITY	NUMBER	PANEL	SUFFIX
SELBYVILLE TOWN OF	100038	0635	K
SUSSEX COUNTY	100029	0635	K

**Notice:** This map was reissued on May 29, 2018 to make a correction. This version replaces any previous versions. See the Notice-to-User Letter that accompanied this correction for details.

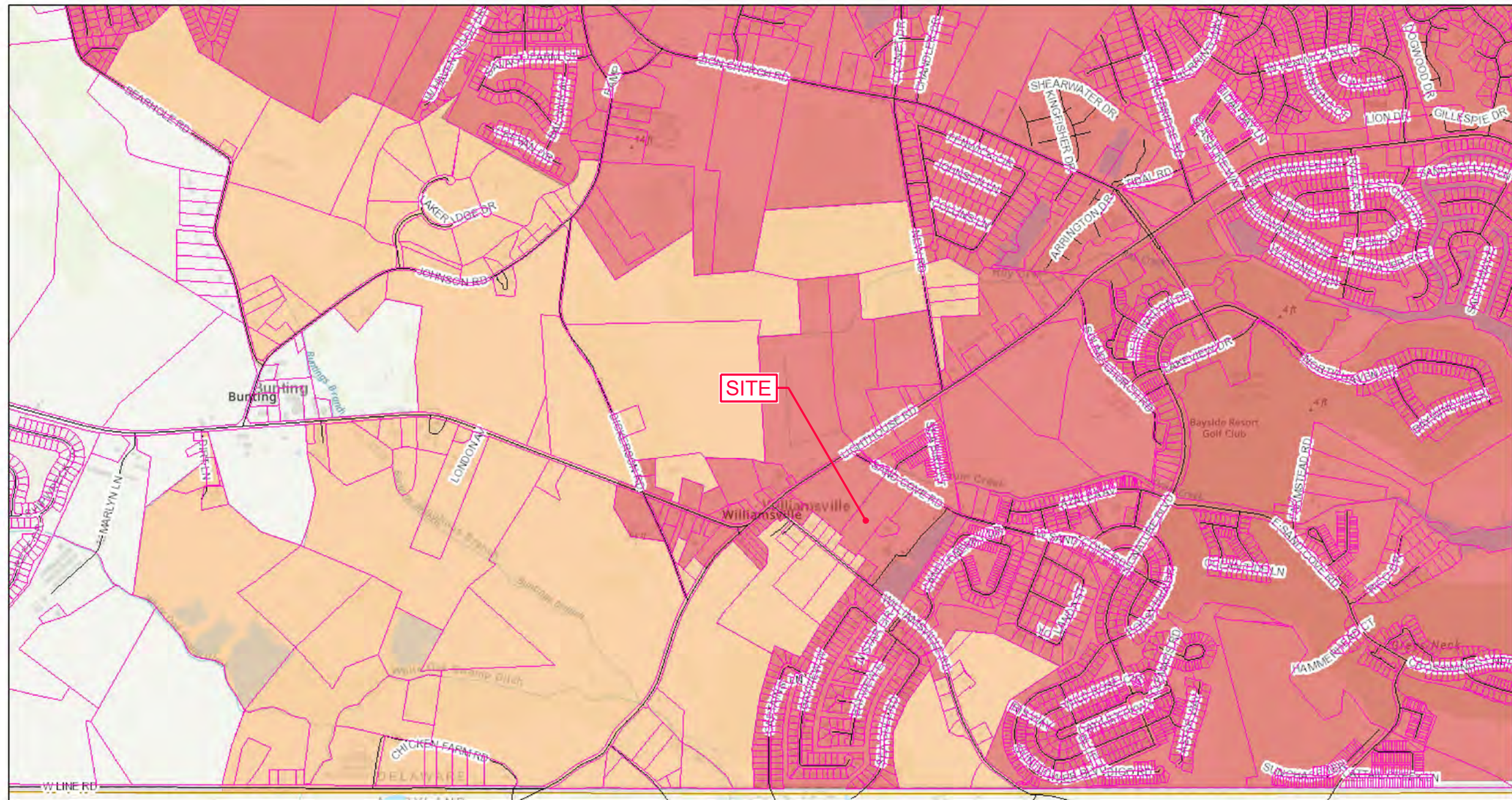
**Notice to User:** The **Map Number** shown below should be used when placing map orders; the **Community Number** shown above should be used on insurance applications for the subject community.

**MAP NUMBER**  
**10005C0635K**

**MAP REVISED**  
**MARCH 16, 2015**

Federal Emergency Management Agency

# Sussex County



July 28, 2021

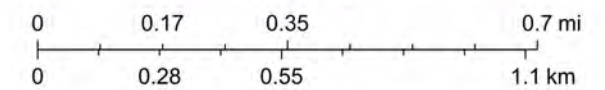
- Tax Parcels
- Streets
- County Boundaries

Sewer Tiers

- Tier 1 - Sussex County Unified Sanitary Sewer District

- Tier 2 - Sussex County Planning Area
- Tier 3 - Coordinated CPCN Areas
- Tier 4 - System Optional Areas
- Tier 5 - Regulated On-site Area

1:18,056



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community, Sussex County Government



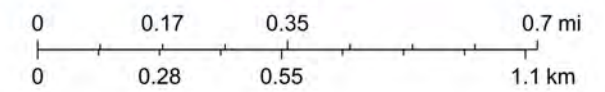
# Sussex County



July 28, 2021

- Tax Parcels
- Streets
- County Boundaries
- Water CPCN

1:18,056



Delaware Public Service Commission, Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community, Sussex County Government





OVER 100 YEARS OF SUPERIOR SERVICE

Artesian Water Company ▲ Artesian Wastewater Management ▲ Artesian Utility Development ▲ Artesian Water Pennsylvania  
▲ Artesian Water Maryland ▲ Artesian Wastewater Maryland

July 30, 2021

Brian Zollinger  
Vista Design, Inc.  
11634 Worcester Highway  
Showell, MD 21862

RE: Bay Knolls Ability to Serve Letter

With reference to your request concerning Water Service (“Service”) for the proposed 82-unit Bay Knolls Development near Lighthouse Road and Sand Cove Road in Baltimore Hundred, Sussex County, DE, known as Tax Parcel Numbers 533-19.00-52.00 and 533-19.00-56.05 (the “Property”), please be advised as follows:

Subject to the following conditions, Artesian Water Company, Inc. (“Artesian”) is willing and able to provide Service to the Property that meets all applicable State of Delaware, Delaware Department of Natural Resources and Environmental Control standards. Artesian currently has the water Certificate of Public Convenience and Necessity (“CPCN”) from the Delaware Public Service Commission (the “Commission”). Artesian will provide Service in accordance with Artesian’s Commission approved tariffs, as amended from time to time.

Based on current conditions and subject to the development entity and Artesian entering Water Service Agreements (“Agreements”) that addresses the financial terms of the provision of Service for the Property, in accordance with Artesian’s tariff, Artesian is willing and able to provide the required Service for this Property.

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

Yours very truly,

**ARTESIAN WATER COMPANY, INC.**

A handwritten signature in black ink, appearing to read "Adam Gould".

Adam Gould  
Manager of Systems Planning and Design



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

NICOLE MAJESKI  
SECRETARY

August 3, 2021

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 **Gulfstream Development LLC/ Robert Harris** proposed land use application, which we received on August 2, 2021. This application is for an approximately 8.38-acre parcel (Tax Parcel: 533-19.00-56.05). The subject land is located 500 feet southeast of intersection of Lighthouse Road also known as Fenwick Road (Sussex Road 58) and Sand Cove Road also known as Signature Boulevard (Sussex Road 394). The subject land is currently zoned AR-1 (Agriculture Residential) with a proposed zoning of MR (Mixed Residential) to build 32 duplex semi-detached units.

Per the 2019 Delaware Vehicle Volume Summary, the annual average and summer average daily traffic volumes along Fenwick Road from Zion Church Road (Sussex Road 382) to Williamsville Road (Sussex Road 395) are 7,411 and 9,529 vehicles per day, respectively. The annual average daily traffic volume along Sand Cove Road (Sussex Road 394) from Lighthouse Road to Williamsville Road is 986 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

August 4, 2021

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

Please contact Ms. Annamaria Furmato, at (302) 760-2710, if you have questions concerning this correspondence.

Sincerely,



T. William Brockenbrough, Jr.  
County Coordinator  
Development Coordination

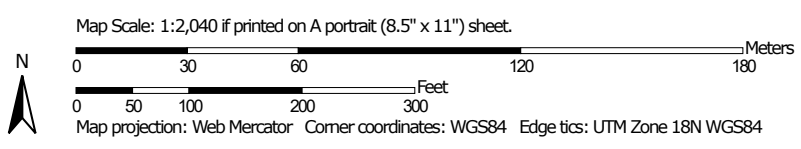
TWB:afm

cc: Gulfstream Development LLC/ Robert Harris, Applicant  
Elliott Young, Sussex County Planning & Zoning  
Nicholas Torrance, Sussex County Planning & Zoning  
David Edgell, Coordinator, Cabinet Committee on State Planning Issues  
Todd Sammons, Assistant Director, 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  
Troy Brestel, Project Engineer, Development Coordination  
Claudy Joinville, Project Engineer, Development Coordination  
Annamaria Furmato, Project Engineer, Development Coordination

Hydrologic Soil Group—Sussex County, Delaware  
(BayKnolls)




Soil Map may not be valid at this scale.



**MAP LEGEND**

**Area of Interest (AOI)**









 Area of Interest (AOI)

**Soils**

**Soil Rating Polygons**





-  A
-  A/D
-  B
-  B/D
-  C
-  C/D
-  D
-  Not rated or not available

**Soil Rating Lines**


-  A
-  A/D
-  B
-  B/D
-  C
-  C/D
-  D
-  Not rated or not available

**Soil Rating Points**






-  A
-  A/D
-  B
-  B/D

-  C
-  C/D
-  D
-  Not rated or not available

**Water Features**

 Streams and Canals

**Transportation**

-  Rails
-  Interstate Highways
-  US Routes
-  Major Roads
-  Local Roads

**Background**

 Aerial Photography

**MAP INFORMATION**

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

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

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

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

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

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

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

Soil Survey Area: Sussex County, Delaware  
Survey Area Data: Version 21, Jun 11, 2020

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

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

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

**EXHIBIT E.11****Hydrologic Soil Group**

Map unit symbol	Map unit name	Rating	Acres in AOI	Percent of AOI
HmA	Hammonton loamy sand, 0 to 2 percent slopes	B	6.0	77.3%
HuA	Hurlock loamy sand, 0 to 2 percent slopes	A/D	0.2	2.2%
KsA	Klej loamy sand, 0 to 2 percent slopes	A/D	0.5	6.0%
RuA	Runclint loamy sand, 0 to 2 percent slopes	A	0.4	5.6%
UbB	Udorthents, borrow area, 0 to 5 percent slopes	C	0.7	8.9%
<b>Totals for Area of Interest</b>			<b>7.8</b>	<b>100.0%</b>

**EXHIBIT E.11**

## 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

August 10, 2021

ERI Job No: 0344#1164

Mr. Steve Engle  
Vista Design, Inc.  
11634 Worcester Highway  
Showell, Maryland 21862

**Re: Delineation of State and Federally Regulated Waters and Wetlands  
Presence/Absence of Federally Listed Threatened & Endangered Species  
Proposed Bay Knolls Community  
Tax Map Parcel 533-19.00-52.00 & 56.05  
Baltimore Hundred, Sussex County, Delaware**

Dear Mr. Engle,

Environmental Resources, Inc. (ERI) evaluated the 21.66 acre property, Tax Map Parcel 533-19.00-52.00 and 533-19.00-56.05, owned by Gulf Stream Development. for the presence of state and federally regulated wetlands and waters. The property is illustrated on a plan prepared by Vista Design, Inc. entitled "Bay Knolls Subdivision – Rezoning Conditional Use Site Plan" dated June 15, 2021 (Vista Plans).

The balance of this property lies to the west of Sand Cove Road (SCR 394) and to the south of Lighthouse Road (SR 54). A small area of land noted as Tract 2 on the Vista plan lies to the east of Sand Cove Road. The easterly boundary of this land is formed by Drum Creek. Drum Creek is a channelized stream and tax ditch subject to regulation by the Department of Natural Resources and Environmental Control (DNREC) Drainage Section. It is also a subaqueous land regulated by DNREC and a Waters of the US regulated by the US Army Corps of Engineers (ACOE). In fact, ERI previously delineated the boundary of the waters of Drum Creek for the adjoining property, Tax Map Parcel 533-19.00-50.00 owned by Douglas A. Melson. That delineation included Tract 2 of this property. The ACOE approved the boundary delineated by ERI in Jurisdiction Determination Letter CENAP-OP-R-2016-996-23. No state or federally regulated wetlands were identified in this area, just the regulated waters of Drum Creek.

ERI evaluated the balance of the Bay Knolls subdivision located west of Sand Cove Road utilizing the 1987 Corps of Engineers Wetlands Delineation Manual, Atlantic and Gulf Coast Regional Supplement and associated guidance. This land is largely agricultural field containing upland soil types in the Hammonton and Klej series. ERI determined that no state or federally regulated wetlands or waters exist on or adjacent to this portion of the property.

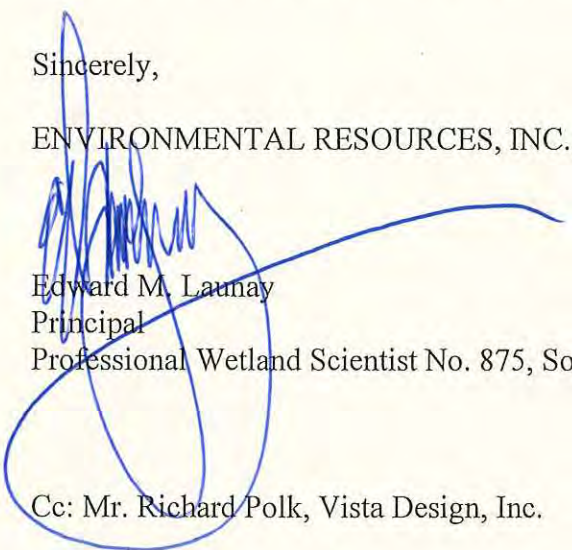
As discussed herein Drum Creek, a state regulated subaqueous land and federally regulated water, does exist along the borders of Tract 2 located east of Sand Cove Road. ERI delineated the boundary of this stream which was approved by both the ACOE and DNREC as part of reviewing the Melson property. That boundary has been utilized by Vista Design, Inc. in preparation of the Bay Knolls Subdivision and Rezoning and Conditional Use Plan.

ERI also investigated these parcels for the presence or absence of any federally listed threatened or endangered species or their critical habitat as listed under the Endangered Species Act of 1970. As part of that effort, I conducted a consultation with the U.S. Fish and Wildlife Service (USFWS). The USFWS concluded that no species or habitats are present on these properties. ERI concurs with the USFWS findings.

Upon your review of this letter, I am available at your convenience if you have any questions.

Sincerely,

ENVIRONMENTAL RESOURCES, INC.



Edward M. Launay  
Principal  
Professional Wetland Scientist No. 875, Society of Wetland Scientists

Cc: Mr. Richard Polk, Vista Design, Inc.



## 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:

August 10, 2021

Consultation Code: 05E2CB00-2021-SLI-1962

Event Code: 05E2CB00-2021-E-04680

Project Name: Bay Knolls Subdivision

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. This 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>

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan ([http://www.fws.gov/windenergy/eagle\\_guidance.html](http://www.fws.gov/windenergy/eagle_guidance.html)). Additionally, wind energy projects should follow the wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at:

<http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm>;

<http://www.towerkill.com>; and

<http://>

[www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html](http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html).

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 Tracking Number 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

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## Project Summary

Consultation Code: 05E2CB00-2021-SLI-1962

Event Code: 05E2CB00-2021-E-04680

Project Name: Bay Knolls Subdivision

Project Type: DEVELOPMENT

Project Description: Construct a residential complex on upland farm fields

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@38.46086855,-75.12866662448431,14z>



Counties: Sussex County, Delaware

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## Endangered Species Act Species

There is a total of 0 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.

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.

## 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

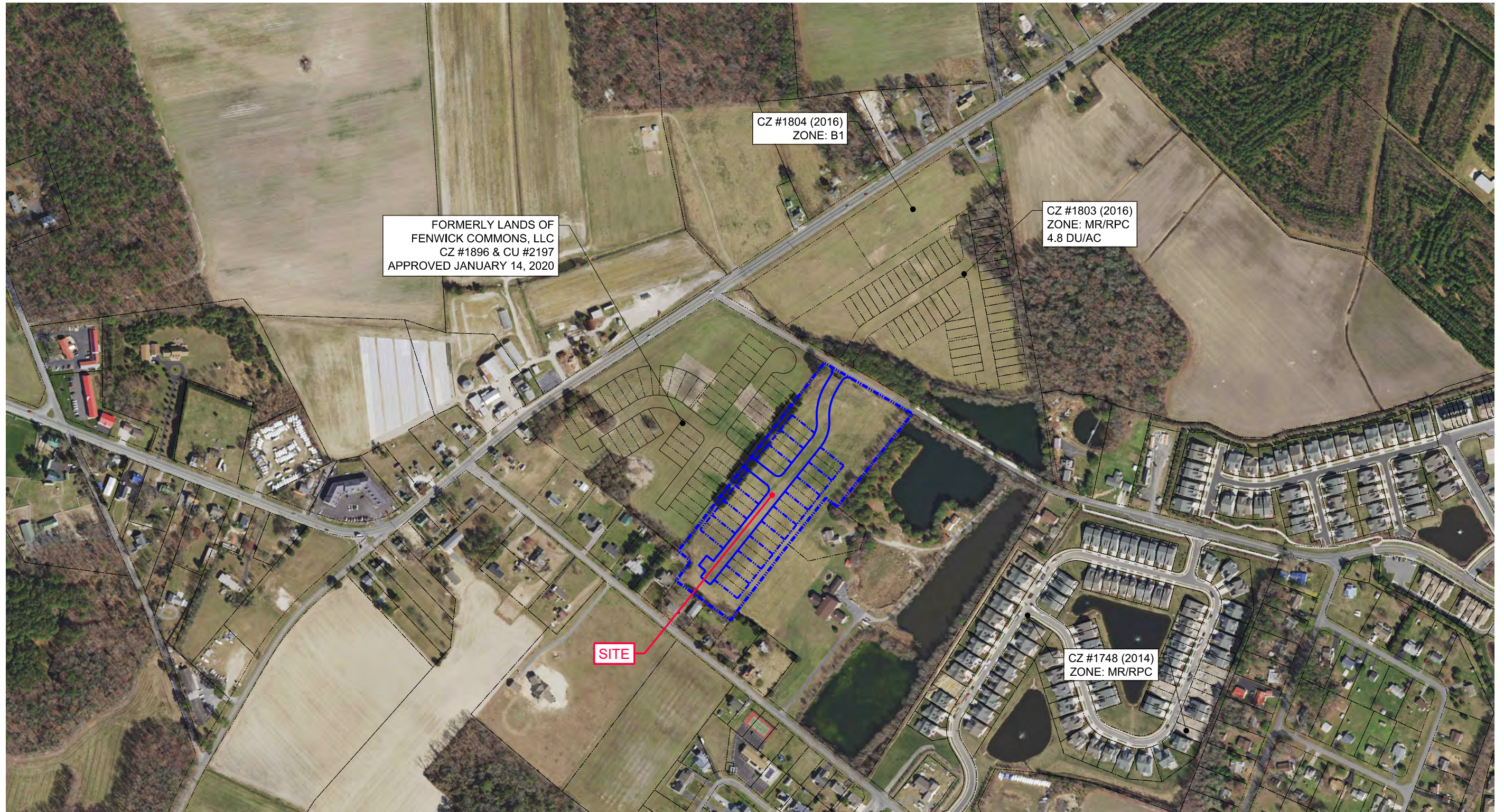
Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

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.

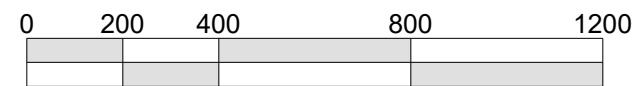
RIVERINE

- [R4SBAx](#)
-



**2017 AERIAL PHOTO**

NOTE: PROVIDED BY STATE OF DELAWARE, SURDEX CORP.



SCALE: 1" = 400'

**VISTA**  
DESIGN, INC.

Engineers, Architects, Surveyors, Landscape Architects, Land Planning Consultants  
11634 Worcester Hwy, Showell, MD 21862  
ph. 410-352-3874



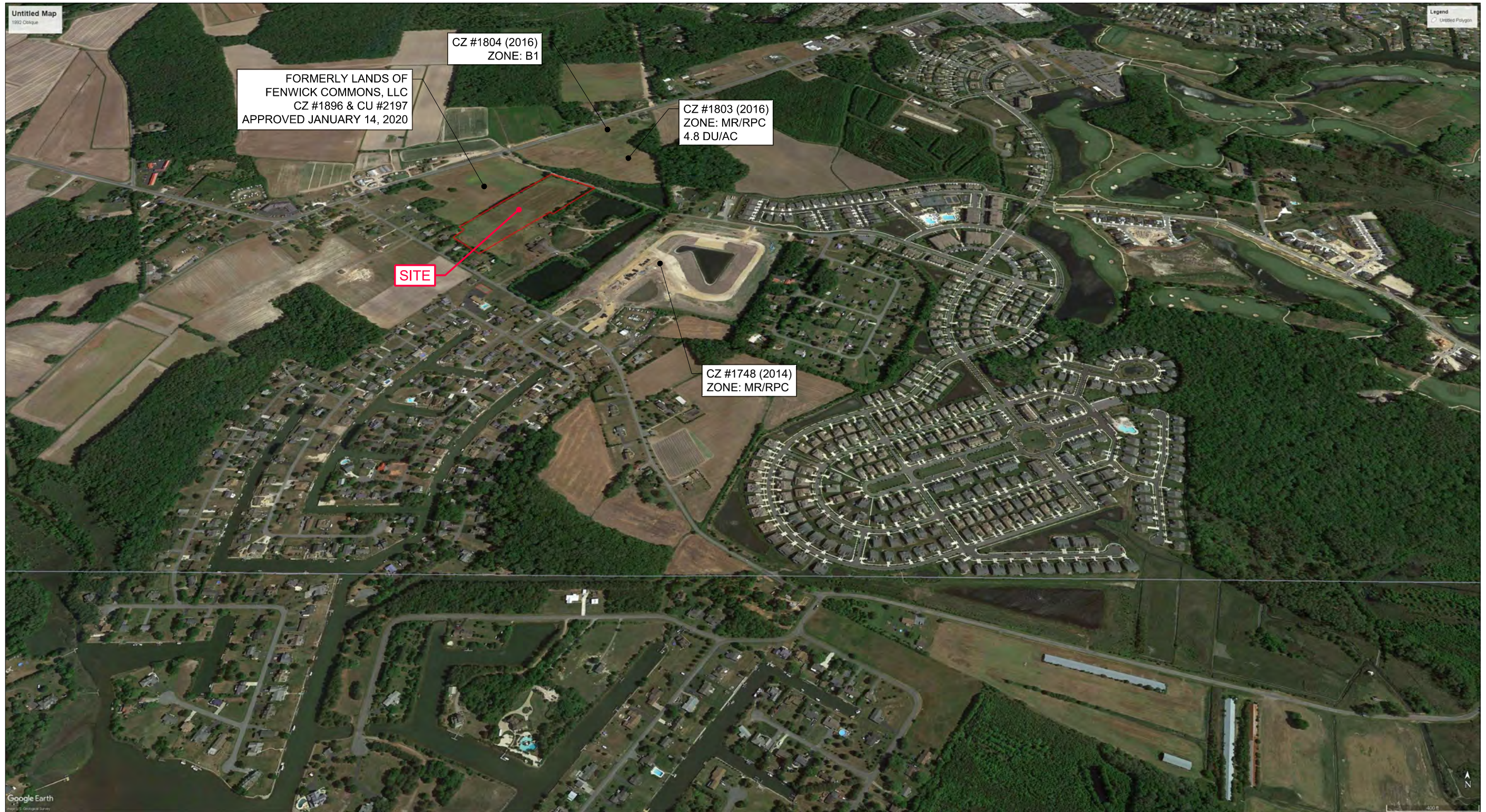


2017 GOOGLE EARTH OBLIQUE AERIAL IMAGE

NOTE: SATELLITE IMAGE OBTAINED BY GOOGLE EARTH PRO

**VISTA**  
 DESIGN, INC.  
 Engineers, Architects, Surveyors, Landscape Architects, Land Planning Consultants  
 11634 Worcester Hwy, Showell, MD 21862  
 ph. 410-352-3874





2015 GOOGLE EARTH OBLIQUE AERIAL IMAGE

NOTE: SATELLITE IMAGE OBTAINED BY GOOGLE EARTH PRO

VISTA  
DESIGN, INC.

Engineers, Architects, Surveyors, Landscape Architects, Land Planning Consultants  
11634 Worcester Hwy, Showell, MD 21862  
ph. 410-352-3874



NORTH



2005 GOOGLE EARTH OBLIQUE AERIAL IMAGE

NOTE: SATELLITE IMAGE OBTAINED BY GOOGLE EARTH PRO

VISTA  
DESIGN, INC.

Engineers, Architects, Surveyors, Landscape Architects, Land Planning Consultants  
11634 Worcester Hwy, Showell, MD 21862  
ph. 410-352-3874





**1992 GOOGLE EARTH AERIAL IMAGE**  
 NOTE: SATELLITE IMAGE OBTAINED BY GOOGLE EARTH PRO

**VISTA**  
 DESIGN, INC.  
 Engineers, Architects, Surveyors, Landscape Architects, Land Planning Consultants  
 11634 Worcester Hwy, Showell, MD 21862  
 ph. 410-352-3874

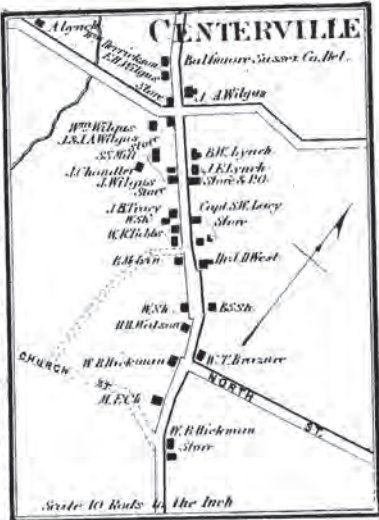


**NORTH**

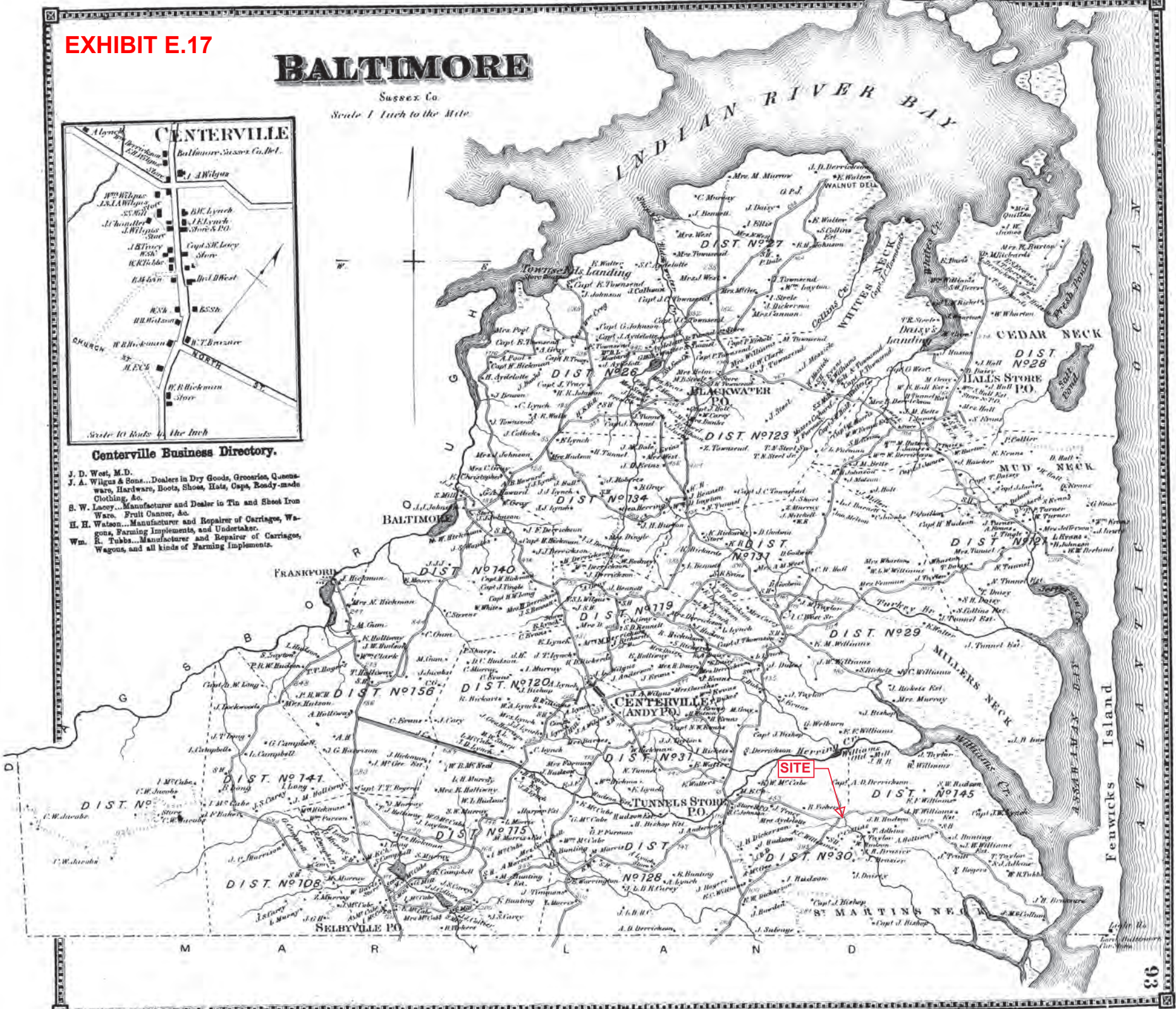
# BALTIMORE

Sussex Co.

Scale 1 Inch to the Mile



- J. D. West, M.D.
- J. A. Wilgus & Sons...Dealers in Dry Goods, Groceries, Queens-ware, Hardware, Boots, Shoes, Hats, Caps, Ready-made Clothing, &c.
- S. W. Lacey...Manufacturer and Dealer in Tin and Sheet Iron Ware, Fruit Canner, &c.
- H. H. Watson...Manufacturer and Repairer of Carriages, Wagons, Farming Implements, and Undertaker.
- Wm. R. Tubbs...Manufacturer and Repairer of Carriages, Wagons, and all kinds of Farming Implements.



BK03575 000018375  
FG00253

Tax Map #5-33 19.00 56.05  
Prepared by:  
Raymond E. Tomasetti, Jr. Esq.  
1209 Coastal Highway  
Fenwick Island, DE 19944  
Return to:  
D.L.T.F. LLC  
39001 Chicken Farm Road  
Selbyville, DE 19975  
File No. 508-95

**NO TITLE SEARCH PERFORMED OR REQUESTED**

**THIS DEED**, made this 2<sup>nd</sup> day of May, in the year of our LORD two thousand and eight,

*BETWEEN* **James T. Brinker and Carolyn M. Brinker, Husband and Wife, Evelyn T. Brinker**, his mother, of 34428 Brinker Mansion Road, Selbyville, DE 19975, parties of the first part,

-AND-

**D.L.T.F. LLC**, a Delaware Limited Liability Company, of 39001 Chicken Farm Road, Selbyville, DE 19975, party of the second part,

**WITNESSETH:** That the said parties of the first part, for and in consideration of the sum of Ten Dollars 00/100 (\$10.00), 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,

ALL that certain lot, piece or parcel of land, with all the improvements located thereon, lying and being situate in Baltimore Hundred, Sussex County and State of Delaware and being more particularly described according to a Subdivision Plat known as **Lands of James T. and Carolyn M. Brinker, as PARCEL "A"** and recorded in the Office of the Recorder of Deeds in and for Sussex County, Delaware in **Plot Book 67, Page 58**.

BEING part of the same lands and premises which James T. Brinker and Carolyn M. Brinker, husband and wife and Evelyn T. Brinker, his mother by a Deed dated December 19, 1999 and recorded in Deed Book 2459, Page 7 and recorded in Georgetown, Delaware granted and conveyed to themselves, as joint tenants with right of survivorship.

*Jew*  
*K5*



Tax Map Parcel Numbers:  
5-33 19.00 52.00 and 56.05  
Prepared by and Return to:  
Tunnell & Raysor, P.A.  
30 East Pine Street  
Georgetown, DE 19947

**DECLARATION FOR**  
**BAY KNOLLS**  
**SUSSEX COUNTY, DELAWARE**

**DECLARATION FOR BAY KNOLLS**

THIS DECLARATION (this "Declaration") is made effective the \_\_\_ day of \_\_\_\_\_, 2021 (the "Effective Date"), by GULFSTREAM DEVELOPMENT LLC, a Delaware limited liability company ("Declarant").

**RECITALS**

WHEREAS, pursuant to that certain Deed recorded in the Office of the Recorder of Deeds in and for Sussex County, Delaware (the "Recorder's Office") at Deed Book \_\_\_\_, Page \_\_\_\_, Declarant is the owner of those certain lots, pieces or parcels of land, comprising approximately \_\_\_\_\_ acres of land, more or less, being more particularly bounded and described on **Exhibit A** attached hereto (the "Property"), and being more particularly depicted on that certain Bay Knolls Subdivision Record Plan, recorded in the Recorder's Office at Plot Book \_\_\_\_, Page \_\_\_\_, as such plan may be amended from time to time (the "Master Plan").

WHEREAS, the Property is situated in Sussex County, Delaware and currently designated for the development of a residential common interest community project to be known as "Bay Knolls" (the "Project"), which Project will be developed by Declarant in one or more phases (each, a "Phase").

WHEREAS, the Project will consist of townhome subdivided dwelling lots (the "Townhome Lots"); and the Common Areas (as hereinafter defined).

WHEREAS, the maximum number of dwelling units that Declarant reserves the right to create in the Project is eighty two (82).

WHEREAS, Declarant desires to control and restrict (1) the construction of original dwellings, structures and other improvements on the Property, (2) any modification to such dwellings, structures and other improvements, which modifications shall be made in accordance with and subject to the terms and conditions of this Declaration, including the Design Guidelines attached hereto as **Schedule A**, as the same may be amended from time to time (the "Design Guidelines"), and (3) the use to which such dwellings, structures and other improvements are put, to promote and facilitate the development of a safe, harmonious, attractive, and valuable residential community and to preserve the value of the Project. Towards this end, Declarant desires to subject the Property and Project to, and burden the Property and Project with, certain covenants, conditions, restrictions, easements, and agreements as more particularly set forth in this Declaration, all of which Declarant deems to be for the benefit of Declarant, the Property, the Project, and each Owner (all as herein defined).

**W I T N E S S E T H**

NOW, THEREFORE, Declarant hereby declares that the Property and Project shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied, and improved subject to the covenants, conditions, restrictions, easements, and agreements set forth in this Declaration, which covenants, conditions, restrictions, easements, and agreements shall run with



and burden the Property and Project and be binding on all parties having any right, title or interest in or to all or any portion of the Property or Project, their heirs, personal representatives, executors, successors, transferees, and assigns, and which covenants, conditions, restrictions, easements, and agreements shall inure to the benefit of Declarant, the Property, the Project, and each Owner.

## **ARTICLE 1** **DEFINITIONS**

Section 1.1 "Act" shall mean and refer to the Delaware Uniform Common Interest Ownership Act of the State of Delaware (25 Del. C. §81-101, et seq.), as amended from time to time.

Section 1.2 "Annexable Property" shall mean and refer to, individually and collectively, any of the real property contiguous to or in the vicinity of the Property.

Section 1.3 "Association" shall mean and refer to the Bay Knolls Homeowners Association, a nonstock Delaware corporation, its successors and assigns.

Section 1.4 "Attached hereto" shall mean "attached hereto and made a part hereof by reference as if fully rewritten herein."

Section 1.5 "Board" shall mean and refer to the Board of Directors of the Association.

Section 1.6 "Bylaws" shall mean and refer to the Bylaws of the Association, which Bylaws are of record in the Recorder's Office at Book \_\_\_\_\_, Page \_\_\_\_\_, as such Bylaws may be amended from time to time.

Section 1.7 "Certificate of Incorporation" shall mean and refer to the Certificate of Incorporation of the Association, which Certificate of Incorporation was filed with the Secretary of State of the State of Delaware on \_\_\_\_\_, 20\_\_\_\_, as such Certificate of Incorporation may be amended from time to time.

Section 1.8 "Common Areas" shall mean and refer to (a) all real property owned, leased or maintained by the Association for the common use and enjoyment of the Owners, which real property consists of all areas of the Property and Project (expressly excluding the Lots) and (b) the Common Facilities.

Section 1.9 "Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Association, including a reasonable reserve and expenses for the maintenance of the Common Areas in accordance with this Declaration, all as may be found to be necessary or appropriate by the Board in accordance with the terms of this Declaration, the Bylaws, and the Certificate of Incorporation.

Section 1.10 "Common Facilities" shall mean and refer to (a) all improvements, structures, facilities, and other betterments situated on the Common Areas, including any streets, right-of-ways, alleys, roads, parking areas, sidewalks, walkways, trails, active and passive recreational facilities, entrance features or improvements, street lighting, storm water

management facilities, drainage pipes, infiltration trenches, ponds, basins, swales, berms, out-flow control devices, drainage areas, filters, inlets, oil/grit separators, underground facilities, culvert pipes, entry strips, signage, landscaping and (b) any other real and personal property except for any Lots that the Association is obligated or elects to maintain pursuant to this Declaration, or any lease, easement or other agreement, or the direction of any governmental authority or agency.

Section 1.11 "Community-Wide Standard" shall mean and refer to the standard of conduct, maintenance or other activity generally prevailing in the Project. Such standard may be more specifically determined and set forth by the Board.

Section 1.12 "Declarant" shall mean and refer to Gulfstream Development, LLC, a Delaware limited liability company, its successors and assigns, but only to the extent that any of the rights, reservations, easements, interests, exemptions, privileges, or powers of Declarant are specifically assigned or transferred to any such successors or assigns by an instrument in writing. In no event shall a conveyance of all or any portion of the Property, including any one or more Lots, by Declarant be deemed to include any such assignment or transfer, but such assignment or transfer must be by a separate instrument to be effective.

Section 1.13 "Declarant Control Period" shall mean and refer to the period beginning on the date of recordation of this Declaration and ending on the date which is the earlier of (a) sixty (60) days after the date on which seventy-five percent (75%) or more of the proposed Lots have been conveyed to Owners other than Declarant or a Participating Builder; (b) two (2) years after Declarant and all Participating Builders have ceased to offer Lots for residential purposes for sale in the ordinary course of business; (c) two (2) years after any right to add new Lots for residential purposes was last exercised; (d) at such time as may be required by applicable Laws; or (e) the day Declarant, after giving written notice to the Owners, records an instrument voluntarily surrendering all rights to control activities of the Association.

Section 1.14 "Development Plans" shall mean and refer to the approved site plan and plats for the Property and Project, including the Master Plan; and further including all amendments, modifications and extensions of all of the foregoing made from time to time.

Section 1.15 "Easement Agreements" means, individually and collectively, this Declaration and those certain easements and licenses listed on **Schedule C** attached hereto, and any and all amendments to any of the foregoing Easement Agreements.

Section 1.16 "Eligible Mortgage Holder" shall mean and refer to a holder, insurer or guarantor of a First Mortgage on a Lot who has submitted a written request for notice from the Association of amendments to this Declaration or the Bylaws and Certificate of Incorporation, or other significant matters which would affect the interests of the Mortgagee.

Section 1.17 "Emergency" and its various derivations shall mean and refer to any event, circumstance or condition created or arising out of the use, operation, or occupancy of any portion of the Property or the Project which may, in the absence of immediate action by Declarant, an Owner or the Association, as applicable, and as otherwise provided under this Declaration (a) pose an immediate threat or irreparable harm to Declarant, any Owner, any Member or the Association or their respective tenants, subtenants, agents, officers, directors,

employees, agents, contractors, customers, visitors, licensees, invitees, guests, members or concessionaires or any other third party; (b) pose an immediate threat or irreparable harm or significant property damage to any portion of the Property or the Project, , or to any property adjacent to the Property or the Project; (c) violate or result in the revocation of any authorizations, approvals, certificates or permits or other instruments or documents that are issued by and from any local, county, state or federal agency or body which govern the occupancy, use and operation of the Property or the Project; (d) invoke, create or impose civil or criminal liability upon Declarant, any Owner, any Member, or the Association; or (e) any event, circumstance, or condition reasonably determined by Declarant to be an emergency.

Section 1.18 "including" shall mean "including, without limitation," and shall be construed as a word or phrase of illustration and not a term of limitation.

Section 1.19 "Lawn Area" shall mean and refer to any portion of the front, side or rear (if applicable) yard areas of any Lot.

Section 1.20 "Laws" shall mean and refer to all statutes, laws, rules, regulations, ordinances and similar enactments or promulgations, by and from any local, county, state or federal agency or body, including environmental laws and regulations and applicable zoning, subdivision, health and building codes and any and all authorizations, approvals, certificates or permits or other instruments or documents that are issued by and from any local, county, state or federal agency or body which govern the ownership, occupancy, use, or operation (including any maintenance, repair and or replacement) of the Property or the Project.

Section 1.21 "Lots" shall mean and refer to the lots established from time to time in the Project and shall expressly exclude the Common Areas.

Section 1.22 "Maintain" or "Maintenance" or any variation thereof shall mean and refer to the maintenance, management, installation, repair, restoration, addition, demolition, removal, replacement, enlargement, reduction, connection to, or any other change, alteration or modification of all or any portion of any real or personal property.

Section 1.23 "Member" shall mean and refer to every Person who is a member of the Association.

Section 1.24 "Mortgagee" shall mean and refer to the holder of any recorded mortgage encumbering one or more of the Lots and shall not be limited to institutional mortgagees. "First Mortgage" shall mean and refer to a mortgage with priority over all other mortgages. As used in this Declaration, the term "institutional mortgagee" or "institutional holder" shall mean and refer to banks, trust companies, insurance companies, mortgage insurance companies, savings and loan associations, trusts, mutual savings banks, credit unions, pension funds, mortgage companies, Federal National Mortgage Association ("FNMA"), Government National Mortgage Association ("GNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), any agency or department of the United States Government or of any state or municipal government, or any other organization or entity which has a security interest in one or more of the Lots. In the event any mortgage is insured by the Federal Housing Administration ("FHA") or guaranteed by the Department of Veterans Affairs ("VA"), then as to such mortgage the terms "mortgagee" and "institutional mortgagee" include the FHA or the VA as the

circumstances may require, acting, respectively, through the Federal Housing Commission and the Secretary of Veterans Affairs or through other duly authorized agents.

Section 1.25 "Owner" shall mean and refer to the record owner, whether one or more Persons, of fee simple title to any of the Lots, including without limitation Declarant or a Participating Builder, but expressly excluding those having such interest merely as security for the performance of an obligation.

Section 1.26 "Participating Builder" shall mean and refer to any Person that, in the ordinary course of such Person's business, constructs residential structures on any portion of the Property or Project for sale or lease to others, and by way of illustration and not limitation, K. Hovnanian Delaware Operations, LLC, a Delaware limited liability company, and any other such builder designated by the Declarant.

Section 1.27 "Person" shall mean and refer to any individual, partnership, corporation, limited liability company, association, joint stock company, trust, joint venture, unincorporated organization, governmental entity, any department, agency or political subdivision thereof, or any other legal entity or combination thereof.

Section 1.28 "Project" shall having the meaning given in the Recitals to this Declaration.

Section 1.29 "Property" shall having the meaning given in the Recitals to this Declaration. Notwithstanding anything contained in this Declaration to the contrary, the Property shall expressly include the Lots and Common Areas.

Section 1.30 "Recorder's Office" shall having the meaning given in the Recitals to this Declaration.

Section 1.31 "Utilities" or any variation thereof shall mean and refer to electric power, natural, propane or any other type of gas, telephone, communications services, internet services, solar, cable television, sanitary and storm sewer, potable water, storm sewer lines, and other related utility services now or hereinafter located on, or provided to, all or any portion of the Property or Project, together with all pipes, lines, wires, cables and conduits, accessory or appurtenant facilities, structures or improvements, meters, utility vaults, substations and pumping or treatment stations now or in the future associated with any one or more such Utilities.

## **ARTICLE 2**

### **DECLARANT'S RIGHTS**

Section 2.1 Property Subject to this Declaration. The Property shall be held, conveyed, hypothecated, encumbered, sold, leased, rented, used, occupied and improved subject to all of the covenants, conditions, restrictions, easements, and agreements set forth in this Declaration.

Section 2.2 Annexations of Annexable Property.

(a) The covenants, conditions, restrictions, easements, and agreements set forth in this Declaration may be extended to any Annexable Property. Any portion of the

Annexable Property may be annexed within the Property and Project by Declarant without the consent of any Owner, any Member, the Association, or any other Person for a period of fifty (50) years from the date of recordation of this Declaration; provided, however, that if Declarant is delayed in the improvement and development of the Property or Project on account of a sewer, water, or building permit moratorium, or any other similar moratorium, or any other causes or events beyond Declarant's control, then the aforesaid fifty (50)-year period shall be extended by a period of time equal to the length of the delays or an additional three (3) years, whichever is greater. The scheme of this Declaration shall not, however, be extended to include any Annexable Property unless and until the same is annexed within the Property and Project by Declarant by the recordation of a Supplementary Declaration. Except as otherwise provided above with respect to annexations of real property by Declarant, any other annexations of real property within the Property and Project and the jurisdiction of the Association shall require the consent of two-thirds (2/3) of the Owners and, for so long as Declarant owns all or any portion of the Property or Project, the Declarant.

Section 2.3 Any annexations made pursuant to this Article, or otherwise, shall be made by recording a Supplementary Declaration with the Recorder's Office, which Supplementary Declaration shall extend the scheme of this Declaration to such annexed property. Any Supplementary Declaration made pursuant to the provisions of this Article, or otherwise, may contain such complementary or supplemental additions and modifications to the covenants, conditions, restrictions, easements, and agreements set forth in this Declaration as may be considered necessary by the maker of such Supplementary Declaration to reflect the different character or use, if any, of the annexed property, including a partial or complete waiver of all or any portion of the covenants, conditions, restrictions, easements, or agreements set forth in this Declaration with respect to the annexed property.

Section 2.4 Deannexations. Declarant may deannex and withdraw all or any portion of any property annexed within the Property or Project and the jurisdiction of the Association as provided in Section 2.2 any above or all or any other portion of the Property or Project without the consent of any Owner, any Member, the Association, or any other Person for a period of fifty (50) years from the date of recordation of this Declaration; provided, however, that (a) Declarant is the owner of such property at the time of such deannexation and withdrawal, or (b) if Declarant is not the owner of such property, Declarant deannexes and withdraws such property with the written consent of the owner of such property. If Declarant is delayed in the improvement and development of the annexed property or any portion of the Property or Project on account of a sewer, water, or building permit moratorium, or any other similar moratorium, or any other cause or event beyond Declarant's control, then the aforesaid fifty (50)-year period to exercise the deannexation and withdrawal right shall be extended by a period of time equal to the length of the delays or an additional three (3) years, whichever is greater. Any deannexed and withdrawn property shall no longer be subject to the covenants, conditions, restrictions, easements, or agreements set forth in this Declaration except for (a) any easements, rights, reservations, exemptions, powers or privileges reserved to Declarant pursuant to this Declaration which affect the deannexed and withdrawn property and (b) any other easements, rights, reservations, exemptions, powers or privileges which are expressly reserved to Declarant in the instrument effectuating such deannexation and withdrawal. Such deannexation and withdrawal shall be made by recording a Supplementary Declaration with the Recorder's Office, withdrawing the effect of the covenants, conditions, restrictions, and easements of this

Declaration from the deannexed and withdrawn property. Such deannexed and withdrawn property may be utilized by Declarant and any successor, assign or transferee thereof, for any lawful purpose or use.

Section 2.5 Annexation Into City. All or any portion of the Property and Project may be annexed within and into any one or more towns, any municipalities, villages, cities and the like by Declarant without the consent of any Owner, any Member, the Association, or any other Person for a period of fifty (50) years from the date of recordation of this Declaration; provided, however, that if Declarant is delayed in the improvement and development of the Property or Project on account of a sewer, water, or building permit moratorium, or any other similar moratorium, or any other cause or event beyond Declarant's control, then the aforesaid fifty (50)-year period shall be extended by a period of time equal to the length of the delays or an additional three (3) years, whichever is greater.

Section 2.6 Special Declarant Rights.

(a) The Declarant reserves the following rights for the period from the date of this Declaration through the date thirty (30) years thereafter, which rights Declarant hereby assigns to each Participating Builder (individually and collectively, the "Special Declarant Rights"):

- (1) The right to complete or make improvements indicated on the Master Plan;
- (2) the right to maintain sales offices, management offices, storage sheds/trailers, and models on Lots or on the Common Areas, to the extent described in the following table:

	<b>NUMBER</b>	<b>SIZE</b>	<b>LOCATION</b>
<b>Model Homes</b>	One per each Participating Builder	Per home plan prepared by applicable Participating Builder	On Lot designated by Declarant and Participating Builder
<b>Construction Management Offices</b>	One per each Participating Builder	Trailer of a size determined by Participating Builder	On Lot or on the portions of the Common Areas designated by Declarant and Participating Builder
<b>Storage Sheds/ Trailers</b>	Two per each Participating Builder	Trailer/shed of a size determined by Participating Builder	On Lot or on the portions of the Common Areas designated by Declarant and Participating Builder
<b>Sales Offices</b>	One per each Participating Builder	Determined by Participating Builder	Within Model Home, or if no Model Home has been constructed

			by a Participating Builder, then in a trailer of a size determined by Participating Builder
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provided that Declarant may relocate any such facility located on a Lot to any other Lot on the Property acceptable to the applicable Participating Builder from time-to-time;

(3) the right to maintain signs on the Property to advertise the sales of homes as follows: (i) four (4) marketing signs per Participating Builder with a size of up to 5 feet by 10 feet in the portion of the Common Areas and/or lands reserved for future phases (as shown on the Master Plan), (ii) a sign in front of each Participating Builder's model home with a size of up to 24 inches by 18 inches, a brochure box and sign on each Lot available for sale with a size of up to 24 inches by 18 inches, and (iii) other signs on Lots deemed necessary by a Participating Builder; and

(4) the right to conduct sales business and construction activities on the Property; and

(5) the right to use and permit others to use, easements through the Common Areas as may reasonably necessary for the purpose of discharging the Declarant's and Participating Builders' obligations under the Act and this Declaration.

Section 2.7 Limitations on Special Declarant Rights. Unless sooner terminated by a recorded instrument signed by Declarant, any Special Declarant Rights may be exercised by the Declarant or any Participating Builder as assignee thereof for the period of time specified in the Act.

Section 2.8 Development Rights. Declarant reserves the right to further create additional and/or modify Lots and Common Areas after the date of this Declaration through the date thirty (30) years thereafter, in the portions of the Property and the Annexable Property, so that up to a maximum number of eighty two (82) Lots may be created on such portions of the Property and Annexable Property.

**ARTICLE 3**  
**PROPERTY RIGHTS**

Section 3.1 Owners' Easements of Enjoyment. Every Owner shall have a non-exclusive right and easement (in common with others entitled thereto) of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable and uniform admission and other fees for the use of the Common Areas;

(b) the right of the Association to suspend an Owner's right to use the Common Areas (i) for any period during which any assessment against such Owner's Lot remains unpaid and (ii), after notice and an opportunity for a hearing, for a period not to exceed

sixty (60) days for any infraction of the Association's published rules and regulations; provided, however, that the obligation of such Owner to pay assessments shall continue unabated during such period of suspension of the right to utilize the Common Areas;

(c) the right of the Association to dedicate, sell or transfer all or any part of the Common Areas to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. Notwithstanding anything contained in this Declaration to the contrary, no such dedication, sale or transfer shall be effective without the consent of Declarant (for so long as Declarant shall own any portion of the Property or Project) and two-thirds (2/3) of the total votes of the Members;

(d) the right of the Association to limit the number of guests, visitors, licensees, invitees, or lessees of Owners utilizing the Common Areas;

(e) the right of the Association to establish uniform rules and regulations pertaining to the use of the Common Areas;

(f) the right of the Association to provide for the exclusive use by specified Owners of certain designated parking spaces within the Common Areas;

(g) the right of the Association, Participating Builder, Declarant, utility companies and other Owners with respect to the easements established by this Declaration;

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

(i) the right of the Association to take such steps as are reasonably 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;

(j) the right of Declarant, as more fully set forth in this Declaration, to grant easements, to utilize reserved rights and easements, and to otherwise utilize the Common Areas as Declarant deems appropriate in connection with the use, ownership, and development of the Property and Project;

(k) the right of the Association to grant easements, licenses or other rights of use of the Common Areas to Persons 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 Project;

(l) the right of the Association to be the lessee of all or any portion of the Common Areas and the right of the Association to enforce the terms of any such lease against such property and the Owners and their guests, visitors, licensees, invitees, or lessees;



and

(m) the right of the Association to transfer or convey portions of the Common Areas for purposes of adjusting the boundary lines of one or more Lots or the Common Areas; provided, however, that such transfer or conveyance has been approved, as necessary, by applicable local governmental authorities or agencies, or is otherwise in conformance with applicable Laws.

Section 3.2 Limitations. Notwithstanding anything contained in this Declaration to the contrary, the Association shall have no right to suspend the right of any Owner to use the Common Areas for necessary, ordinary and reasonable vehicular and pedestrian ingress and egress to and from such Owner's Lot, or to suspend any easement, license or other property interest over the Common Areas for Utilities to all or any portion of the Property or Project. The Common Areas will be available for the type of active and passive recreational and open space uses contemplated under the Development Plans and the Laws. All Owners shall have the non-exclusive right (in common with others entitled thereto) to access and make reasonable use of the Common Areas as described in the approved Development Plans and the Laws both before and after they are conveyed to the Association, with the exception of those areas as may be reasonably and necessarily restricted for access because of temporary safety reasons in connection with the development of the Property or Project.

Section 3.3 Delegation of Use. Any Owner may delegate, in accordance with the Bylaws and rules and regulations of the Association, such Owner's right of enjoyment to the Common Areas to such Owner's family members, guests, visitors, licensees, invitees, or lessees.

#### **ARTICLE 4** **MEMBERSHIP**

Section 4.1 Membership. Every Person or any combination thereof who is an Owner of any Lot which is part of the Property shall be a Member of the Association; provided, however, that any such Person or any combination thereof, who holds such interest solely as security for the performance of an obligation shall not be a member solely on account of such interest.

Section 4.2 Appurtenant Right. Membership shall be appurtenant to, and may not be separated from, ownership of a Lot. Conveyance of a Lot shall, without the need specifically to 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 4.3 Association Voting Rights. Each Member shall have voting rights as provided in the Bylaws.

#### **ARTICLE 5** **COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 5.1 Creation of the Lien and Personal Obligation for Assessments. There are hereby created assessments for Common Expenses as may be from time to time

specifically authorized by the Board to be commenced at the time and in the manner set forth in this Article 5. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association annual assessments and special assessments. The annual and special assessments, together with interest, costs of collection, late fees and reasonable attorneys' fees, shall be a charge on the Lot (including all improvements thereon), and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest, costs of collection, late fees and reasonable attorneys' fees, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to a prior Owner's successors in title unless expressly assumed by such successors.

Section 5.2 Purpose of Assessments.

(a) The assessments levied by the Association shall be used exclusively (i) to promote the recreation, health, safety, and welfare of the residents in the Property and Project; (ii) for the improvement, maintenance, repair, and replacement of the Common Areas; (iii) for the payment of real estate taxes, assessments and utility services for the Common Areas; (iv) for management fees, administration expenses, insurance and all other costs and expenses incurred by the Association in the proper conduct of its activities, including reserves for replacements or contingencies and charges accruing under any cross-easement or other agreement; and (v) costs and expenses associated with the operation, maintenance, repair, and replacement of irrigation systems located in the Common Areas, if any. The assessments may also be used for the maintenance, repair and replacement of any property or facilities serving or appurtenant to the Property or Project which 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 Property or Project.

(b) The assessments levied by the Association with respect to the Common Areas shall also be used for maintenance, repair and replacement (including reserves) of any and all Utilities, whether such Utilities are located within the Property or Project or not, as long as such Utilities are designed to benefit or serve any portion of the Property or Project, or are required or intended to be maintained by the Association pursuant to this Declaration or any easement, agreement or the direction of any governmental authority or agency. The Association shall not refuse to accept the conveyance of any such Utilities from Declarant. Such Utilities may also benefit property not within the jurisdiction of the Association and the maintenance of such Utilities may be set forth in a cross-easement or other agreement, in which event the Association shall maintain such Utilities pursuant to such agreement.

Section 5.3 Annual Assessments; Budgets.

(a) Until January 1 of the year immediately following the first conveyance of a Lot to an Owner, the applicable annual assessment shall be the amount established by Declarant in Declarant's sole discretion. Thereafter, the Board shall from time to time set the annual assessment at an amount sufficient to meet the Common Expenses of the Association. Without limiting the generality of the foregoing, the Association shall, at all times, levy and collect annual assessments in sufficient amounts to (i) maintain the Common Areas in accordance with sound property and facility management standards and (ii) establish necessary

reserves for the future repair and replacement of any capital improvements compromising the Common Areas. The Board shall determine the amount of the annual assessment before the beginning of each fiscal year in connection with preparation of the Association's annual budget, and may do so at more frequent intervals should circumstances so require. Upon resolution of the Board, installments of annual assessments may be levied and collected on a monthly, quarterly, semi-annual or annual basis. Any Member may prepay one or more installments of any annual assessment levied by the Association without premium or penalty.

(b) The Board shall prepare a proposed budget of the Association at least sixty (60) days before the beginning of each fiscal year and set a date for a meeting of the Association. After the termination of the Declarant Control Period, the Board shall cause a summary of the proposed budget, and the amount of the assessments to be levied against each Lot for the following year, along with notice of the meeting of the Association Members to consider ratification of the budget not less than fourteen (14) or more than sixty (60) days after providing such summary, to be delivered to each Owner within thirty (30) days after adoption of the proposed budget. Unless at such meeting a majority of all Owners reject the proposed budget, such proposal budget is ratified as the budget for such fiscal year, whether or not a quorum is present at such meeting of the Association. Notwithstanding the foregoing, however, in the event that the membership disapproves the budget or the Board fails for any reason to determine the budget for any fiscal year of the Association, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding fiscal year shall continue for the succeeding fiscal year.

Section 5.4 Initial Working Capital Contribution. Declarant shall establish a working capital fund for the initial and ongoing operation of the Association. Such working capital fund shall be funded by a one-time assessment of \$500.00 and shall be payable by the initial purchaser of each Lot from the Participating Builder at the earlier of settlement and transfer or initial occupancy of such Lot. A working capital contribution equal to \$500.00 shall also be payable by each transferee owner upon subsequent resale of any Lot (including any building or other improvements thereon) at the time of settlement and transfer of title of such Lot. All such initial working capital funds arising from the foregoing assessments upon such settlements and transfers or initial occupancy may be used by the Association towards the Common Expenses and to make up any budget deficits. If any annual budget deficit (defined as actual annual Association expenses exceeding Association income adjusted upwards by the amount of any annual assessments that are due and payable from Owners but remain delinquent and unpaid at the end of the applicable fiscal year) remains at the end of the Association's fiscal year for which a budget was approved by the Board during the Declarant Control Period only, after the application of all such working capital funds towards such deficit as provided above, then the Declarant shall make a nonrefundable capital contribution to the working capital fund of the Association in the amount of such remaining budget deficit.

Section 5.5 Special Assessments, Budget Amendments.

(a) In addition to the annual assessments authorized by this Article, the Association may levy, in any assessment year, a special assessment or special assessments applicable to that year only for such purposes as the Board may deem appropriate, including for purposes of funding, in whole or in part, the cost of any construction, reconstruction, repair or replacement of any capital improvement located upon the Common Areas, including the

Common Facilities and all fixtures and personal property related thereto, and to meet unforeseen or special expenditures as well as any budget deficit; provided, however, that any such assessment shall be approved by Members entitled to cast not less than sixty-seven percent (67%) of the votes of Members present, in person or by proxy, and voting at any meeting of the Association duly called for this purpose; provided, further, that any special assessment required because of conditions which, if not corrected, could constitute an Emergency or reasonably result in a threat to the health or safety of the Members or a significant risk of damage to the Common Areas may be approved by the Board without the foregoing vote of the Members.

(b) 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, the Certificate of Incorporation, the Bylaws, any rules and regulations adopted by the Association in accordance with this Declaration, or any applicable Laws; provided, that such special assessment may only be levied upon the affirmative vote of a majority of the Board, after notice and an opportunity for a hearing has been provided to the Owner.

(c) Any amendment to a previously approved budget shall be approved by majority vote of the Board; provided, however, that any amendment to a budget for the then current fiscal year previously approved in accordance with Section 5.3 hereof that (i) would result in an increase in the Common Expenses of the Association in excess of fifteen percent (15%) of the budgeted amount for Common Expenses set forth in the budget for the immediately preceding fiscal year (including any increase in Common Expenses adopted in the budget for the then current fiscal year previously approved in accordance with Section 5.3 hereof), or (ii) would result in an increase in the annual assessments payable by the Members in excess of thirty percent (30%) of the budgeted amount for annual assessments set forth in the budget for the immediately preceding fiscal year (including any increase in assessments adopted in the budget for the then current fiscal year previously approved in accordance with Section 5.3 hereof), shall be approved by the affirmative vote of Members entitled to cast not less than sixty-seven percent (67%) of the votes of Members present, in person or by proxy, and voting at any meeting of the Association duly called for this purpose.

Section 5.6 Lot Only Assessment. Despite any provision of this Declaration to the contrary, any Owner of an empty Lot (excluding the Declarant and any Participating Builder) that does not have a home constructed on said Lot, upon the commencement of annual assessments pursuant to Section 5.9 hereof, shall be subject to a "Lot-Only Assessment" in the amount of \$ \_\_\_\_\_ per year until sixty (60) days after the date a Certificate of Occupancy has been issued for a home on the Lot, or for a period of forty-eight (48) months after the commencement of annual assessments pursuant to Section 5.9 hereof, whichever shall first occur; thereafter such Lot shall be subject to assessments pursuant to Section 5.9 hereof. The Lot-Only Assessment hereby imposed shall be in lieu of the regular, annual assessment imposed by this Declaration. All other assessment amounts or charges imposed in accordance with this Declaration or other governing document of the Association shall continue to be the obligation of all Owners, including purchasers of an empty Lot who are subject to a Lot-Only Assessment in accordance with this Section 5.6.

Section 5.7 Notice and Quorum. Notice and quorum of any annual or special meeting of the members shall be in accordance with, and as provided for, in the Bylaws, and as

otherwise permitted under Delaware law, including but not limited to the general corporate laws of the State of Delaware.

Section 5.8 Uniform Rate of Assessment.

(a) Except as otherwise provided in this Declaration, both annual and special assessments must be fixed at a uniform rate for all Lots, and may be collected in advance on a monthly, quarterly, semi-annual, or annual basis, or upon such other basis as may be determined by the Board.

(b) In the event that the actions or activities of any Owner causes or results in increased expenses for the Association, the Board may assess such increase in expenses against the Owner and such Owner's Lot, after notice to such Owner and an opportunity for a hearing. For example, and for purposes of illustration only, the Board may assess the amount of any insurance deductible paid by the Association against any Owner and such Owner's Lot if the Association is required to pay such deductible as a result of the misuse or neglect of the Owner. Such assessment shall be a lien against the Owner's Lot and shall be payable and collectible in the same manner as any other assessments required to be paid to the Association; provided, however, that Declarant shall not be subject to any assessment based on this Section 5.8 (b).

Section 5.9 Date of Commencement of Annual Assessments; Due Dates; Lien Docket. Subject to Section 5.6 hereof, the annual assessments provided for herein shall commence and be payable as to each Lot upon the first to occur of (a) sixty (60) days after the date a Certificate of Occupancy has been issued for a home on the Lot, or (b) the date forty-eight (48) months after the commencement of such annual assessments. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall make reasonable efforts to fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board. The Association shall keep an assessment lien docket (the "Docket") at the registered office of the Association, or such other location as the Association may determine from time to time. Immediately upon an assessment becoming delinquent as herein above provided, the Treasurer of the Association or the Treasurer's designee shall cause an entry thereof to be made in the Docket, which entry shall disclose the date the entry is made, the names of the Owners of the Lot as shown in the Association's records, the number of the Lot, the amount of the delinquent assessment, and the due date and the assessment period of the delinquent assessment. Upon written inquiry of any Owner or any attorney-at-law who certifies to the Association that such attorney-at-law represents either an Owner of a Lot or a prospective purchaser or mortgagee thereof, the Treasurer or such Treasurer's designee, upon receipt of a reasonable service charge (as established by the Association from time to time), shall certify to the inquiring Owner, attorney-at-law, prospective purchaser or mortgagee as to the assessment status of the Lot that is the subject of the inquiry, stating:

(a) Whether the current assessment(s) is paid; or

(b) If there are any delinquent assessments or late fees, interest or costs, all of the information entered in the Docket with respect to the Lot which is the subject of the inquiry, together with the per diem interest thereon, to be computed on each delinquent

assessment from its respective due date to the date of receipt by the Association of payment thereof in full. Upon receipt by the Association of payment of any delinquent assessment, with late fees, interest and costs, if applicable, as herein above provided, the Treasurer or such Treasurer's designee shall enter in the Docket the date and amount of the payment received, together with the notation "Paid in Full." A properly executed certificate of the Association setting forth the status of assessments on a Lot shall be binding on the Association as of the date of its issuance.

Section 5.10 Effect of Non-Payment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date until paid at a rate determined by the Board, up to the maximum rate of interest permitted under the laws of the State of Delaware. The Association may also charge a reasonable late fee, not to exceed any limit established under applicable Laws, against any Owner (or such Owner's Lot) who is more than fifteen (15) days delinquent in the payment of any assessment. Additionally, the entire balance of the unpaid annual assessments for the remainder of the fiscal year may be accelerated at the option of the Board and be declared due, payable and collectible in the same manner as the delinquent portion of such annual assessment. By an Owner's acceptance of title to any Lot, such Owner shall be held to vest in the Association the right and power in such Owner's own name, to take and prosecute all actions or suits, legal, equitable, or otherwise, which may be, in the opinion of the Association, necessary or advisable for the collection of such assessments. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot (and all improvements thereon). No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Areas or abandonment of such Owner's Lot. The Owner shall also be obligated to pay all attorneys' fees, court costs and administrative costs incurred in connection with the collection of assessments if not paid when due. This Section shall not be deemed to limit or waive, and shall be without prejudice to, any and all rights, remedies, or recourses as may be available to the Association for non-payment of assessments.

Section 5.11 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer, except for liens or claims for a pro-rata share of such assessments resulting from a pro-rata reallocation of such assessments to all Lots, including the mortgaged Lot. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No amendment to this Section shall affect the rights of the holder of any First Mortgage on any Lot (or the indebtedness secured thereby) recorded prior to recordation of such amendment unless the holder thereof (or the indebtedness secured thereby) shall join in the execution of such amendment. Except where an Emergency requires an expenditure to prevent or minimize loss from further damage to, or deterioration of, the Common Areas, reserves accumulated for one purpose may not be expended for any other purpose unless approved by the Board and by the affirmative vote of Members entitled to cast not less than sixty-seven percent (67%) of the votes of all Members present, in person or by proxy, and voting at a meeting of the Association duly called for this purpose.

Section 5.12 Reserve Fund Budget and Contribution. The Board shall annually prepare a reserve fund budget which shall take into account the number and nature of the replaceable assets of the Association, the expected life of each asset, and the expected repair or replacement cost of each asset. The Board shall set the required reserve fund contribution in an amount sufficient to meet the projected reserve needs of the Association, as shown on the reserve fund budget, with respect both to amount and timing by the imposition of annual assessments over the period of the budget. The reserve fund contribution shall be fixed by the Board and included within the budget and assessment, as provided in Section 5.3. Such reserve fund contribution shall be payable as part of the annual assessment, applicable to all Lots (except as otherwise provided in Section 5.6), to the extent such reserve fund will be utilized to replace assets which are determined by the Board to benefit substantially all Owners. Reserves may also be maintained for operating contingencies and insurance deductibles. A separate, interest-bearing reserve fund account shall be established and maintained by the Association. A copy of the reserve fund budget shall be distributed to each Owner in the same manner as the operating budget.

Section 5.13 Special Actions. Notwithstanding anything contained in this Declaration, the Certificate of Incorporation, or the Bylaws to the contrary, after termination of the Declarant Control Period, the Board shall not be authorized to take any "Special Actions" (as defined below) without the affirmative vote of Members entitled to cast not less than sixty-seven percent (67%) of the votes of all the Members present, in person or by proxy, and voting at a meeting of the Association duly called for this purpose. As used herein, the term "Special Actions" shall mean any and all actions taken by or on behalf of the Association, including commencing or maintaining any litigation, arbitration or similar proceeding, which would reasonably require the expenditure of funds in excess of \_\_\_\_\_ (\$ \_\_\_\_\_) in the aggregate during any fiscal year of the Association; provided, however, that the term "Special Actions" shall not be deemed to include (i) routine assessment collection actions under Article 5 of this Declaration, (ii) routine actions required to enforce the architectural controls set forth in Article 6 of this Declaration, use restrictions set forth in Article 7 of this Declaration, or any rules and regulations of the Association adopted by the Board, or (iii) any expenditure made by the Association in accordance with any budget or budget amendment duly adopted in accordance with Article 5 of this Declaration, or (iv) any special assessment duly adopted in accordance with Article 5 of this Declaration. Each planned expenditure of more than \_\_\_\_\_ (\$ \_\_\_\_\_) shall require the prior approval of the Members in accordance with this Section. Any meeting of the Association held to approve any Special Actions under this Section shall be subject to the notice and quorum requirements set forth in Article 5, Section 5.6 of this Declaration. The Association shall not borrow against or encumber any portion of the Common Areas nor use any funds from reserves of the Association to pay for such Special Actions, but the same shall be paid from and limited to the amounts provided in the annual budget for such expenditures for the fiscal year and shall be raised by special assessment levied against the Members for such purpose. If such Special Actions are not concluded within one (1) year of the date of such resolution, the continued prosecution of such Special Actions 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 Special Actions are not reaffirmed, the Special Actions shall be discontinued and the Association shall have no further authority to act as the attorney-in-fact for the Association in the further prosecution or

defense of such Special Actions but may, with the affirmative vote of Members entitled to cast not less than sixty-seven percent (67%) of the votes of all Members present, in person by proxy, and voting at a meeting of the Association duly called for this purpose, act as its attorney-in-fact with respect to any settlement or compromise of such Special Actions; provided the same is completed within six (6) months thereafter. If the Members, by resolution approved in accordance with this Section, authorizes the Association to initiate any Special Actions, then the decisions relating to the conduct of the Special Actions shall be made by the Association and its legal counsel, consultants and others engaged or retained by the Association for such purposes.

*Section 5.14 Actions Without a Meeting.* Any action which may be taken by the vote of the Members at a regular or special meeting may be taken without a meeting as to and to the extent permitted by Delaware law, including but not limited to the general corporation laws of the State of Delaware.

## **ARTICLE 6**

### **ARCHITECTURAL CONTROL**

*Section 6.1 General Provisions.* In order to encourage harmonious architectural design and to protect the visual integrity, architectural spirit and long-term property values of the Property and Project, Declarant has established the Design Guidelines. No dwelling, structure, improvement, landscaping or other man-made object, including buildings, tennis courts, basketball courts, children's recreation equipment or other recreational or sporting facilities, decks, patios, porches, pool houses, below ground swimming pools, greenhouses, tool sheds, ponds, gardens, driveways, paved areas, satellite dishes, radio antennas, communications equipment or facilities, fences, walls, together with all forms or types of landscaping (collectively, the "Improvements") located on any portion of the Property or Project shall be designed, constructed, maintained, altered, extended, added to, removed or otherwise modified without the express written consent and approval of the Architectural Review and Design Committee (the "ARC"). In addition, no Improvements, once approved by the ARC shall be altered, extended, added to, removed or otherwise modified, nor shall any additional structures of any nature be erected, used or maintained nor shall any exterior change or alteration be made (including exterior facade color changes or change in grade or drainage) to the Improvements except in accordance with the Design Guidelines and this Declaration, as applicable. Notwithstanding anything contained in this Declaration to the contrary, any Improvements marketed or sold by Declarant or any Participating Builder shall be deemed to have complied with the Design Guidelines and are presumed to have been pre-approved by Declarant and the ARC, without the need or obligation to obtain any approvals or authorizations from either Declarant or the ARC (the "Pre-Approval").

*Section 6.2 Design Committee.* Declarant has established the ARC which shall consist of three (3) members. Declarant shall appoint the members of the ARC for so long as Declarant owns all or any portion of the Property or Project. Thereafter, the Board shall appoint the members of the ARC. ARC members may be any Person, provided all such members shall be either an Owner, a designee of Declarant, or an architect licensed in the State of Delaware (individually an "ARC Member" and collectively the "ARC Members"). The regular term of office for each ARC Member shall be one (1) year, measured from the date of such ARC Member's appointment or election. Declarant may remove with or without cause any ARC Member appointed by Declarant at any time by written notice to such appointee. A successor or



successors appointed by Declarant to fill such a vacancy shall serve the remainder of the term of the former ARC Member. Any ARC Member appointed by the Board may be removed by a majority vote of the Board. The ARC shall select its own Chairman and she, or in her absence the Vice Chairman, shall be presiding officer at its meetings. The ARC shall meet at least once in each calendar month if there are matters to be reviewed or upon call of the Chairman whenever she deems necessary in order to discharge its obligations and responsibilities hereunder, including rendering any decisions specified in this Article 6 or the Design Guidelines. All meetings shall be held at the offices of the Association or at such other reasonable place as may be designated by the Chairman. A majority of the ARC Members shall constitute a quorum for the transaction of business. The affirmative vote of a majority of the ARC Members shall constitute the action of the ARC on any matter before it. The ARC shall operate in accordance with its own rules of procedure, and these rules shall be filed with the Association. The ARC shall be authorized (but not obligated) to retain the services of consulting architects, landscape architects, community planners or attorneys to advise and assist the ARC in performing the design review functions herein prescribed. Any such professional must be licensed to practice its profession in the State of Delaware. The ARC shall keep accurate records of its membership and actions and shall from time to time, as warranted, notify all Owners of any change in the membership of the ARC as a result of resignations and replacements of ARC Members. The ARC may establish its own rules for the conduct of its meetings and its decision making process which shall be adopted, promulgated, applied and enforced in a uniform and non-discriminatory manner among the Owners.

Section 6.3 Criteria For Submission, Review and Decisions or Plans.

(a) Any request from an Owner for any Improvements shall be in writing and shall be submitted to the ARC (or a designated property management company if notified to do so by the ARC) in accordance with and pursuant to the Design Guidelines.

(b) In passing upon any plans and specifications submitted by an Owner, the ARC, in accordance with the provisions of this Declaration and the Design Guidelines, shall consider the aesthetic suitability and harmony of the Improvements to be constructed, to and with that portion of the Property and Project on which it is proposed to be located; the comparability of the height, profile and color scheme with neighboring residences whether existent, under construction, or approved for construction; the impact of the item to be constructed on the environment, including the preservation of trees and open spaces, and surface water drainage; the effect of the proposed Improvement and its planned usage and purpose, on the outlook of any neighboring Lots, Common Areas, or other adjacent property, and the quality of the materials to be used in construction and the proposed method of construction including the effect of lighting and signage upon any neighboring Lots, Common Areas, or other adjacent property. The terms "aesthetic suitability and harmony" shall be interpreted to encourage the use of traditional architecture and materials set forth in the Design Guidelines. No exterior colors or materials installed or approved by the ARC shall be changed through replacement, repair, redecoration, repainting or otherwise, except upon prior submission to and approval by the ARC, which approval may be withheld in the ARC's reasonable discretion. With respect to Improvements, including driveways and turnarounds, fences, walls, recreational facilities, barbeques and patios, the ARC shall have the right in its absolute and sole but good faith discretion to prohibit such Improvements altogether if in the opinion of the ARC the construction

and use of such Improvements will necessitate the removal of valuable trees, cause drainage problems, or have a detrimental effect on the outlook from or use of any neighboring Lots, Common Areas, or other adjacent property.

(c) In the event that repair, replacement or other work on Improvements becomes necessary, or the erection of any additional structures is necessary, then any such work shall, to the extent practicable, be performed so that the condition and appearance is equal to and identical to the condition and appearance of the dwelling, building, structure or improvement as originally constructed, or with respect to additional structures, the construction and appearance is in architectural harmony with the Improvements as originally built and developed under this Declaration.

(d) The ARC reserves the right to approve in advance proposed architects, builders and landscape designers.

(e) Review Fee. Except for Improvements to be constructed by Declarant or any Participating Builder, any application to the ARC for review shall be accompanied by a reasonable application deposit (as determined and published by the ARC and provided to the Owners from time to time) to defray the cost of reasonable professional services (the "Professional Services") that the ARC may reasonably incur to properly evaluate the plans and specifications (the "Plans and Specifications") provided by an Owner with respect to the Improvements which such Owner requests approval pursuant to this Declaration and the Design Guidelines (the "Review Deposit"). The cost of the Review Deposit as of the Effective Date shall be \_\_\_\_\_ (\$\_\_\_\_\_). The ARC may waive the Review Deposit on a case by case basis if the application for any such Improvements does not require the ARC to incur any professional fees or services in connection with its review and evaluation of the Plans and Specifications. The Review Deposit shall be non-refundable unless the applicant withdraws its application prior to the ARC incurring any Professional Services in connection with its review and evaluation of the application; otherwise, the Review Deposit shall be used to pay the Professional Services and any unused portion shall be returned to the Owner at the completion of the review and decision process set forth below, or alternatively, if the Professional Services exceed the Review Deposit, the Owner covenants and agrees to remit to the ARC within fifteen (15) days after the completion of the review and decision process set forth below and receipt of a statement from the ARC for any balance due. The failure of any Owner to timely pay any such balance shall entitle the ARC, in addition to any other rights and remedies it may have to exercise those rights and remedies as provided under Section 12.5 captioned "Enforcement". All Plans and Specifications submitted to the ARC shall be retained by the ARC and shall not be returned to the applicant, unless the ARC elects to do so.

(f) Review and Decision Process. Within sixty (60) days after the Owner has submitted all the required Plans and Specifications to the ARC, the ARC shall notify the Owner in writing whether such Plans and Specifications are either approved or disapproved. Any disapproval or objections shall be in writing and shall be detailed and shall include an explanation for the basis or reason for such disapproval or objections, together with such reasonable changes, modification or other alterations and recommendations as appropriate or practicable that would render the Plans and Specifications acceptable to the ARC and in compliance with the review and approval criteria established under this Declaration. In the event Declarant fails to approve or disapprove an Owner's submission of the Plans and Specifications

in writing within the aforementioned sixty (60) day period, then the ARC's approval shall be conclusively presumed to have been granted, provided, however that the aforesaid presumption shall not be deemed a waiver of the applicable provisions of this Declaration or be deemed to be the prior written approval of the ARC under any specific provision herein. No construction of the Improvements provided for in the submitted Plans and Specifications shall be commenced until the expiration of the aforementioned sixty (60) day period or the receipt of the ARC's written approval of the Plans and Specifications, whichever occurs first.

(g) Time for Review of Revised Plans and Specifications. In the event the ARC shall disapprove any part of the Plans and Specifications as submitted in accordance with this Article, then the Owner shall have the opportunity to revise its Plans and Specifications to incorporate such changes, modifications, additions or deletions, as applicable, and shall resubmit the revised Plans and Specifications to the ARC, if the Owner so chooses, together with an additional Review Fee and the ARC shall have twenty (20) days within which to review such revised Plans and Specifications and to determine the Owner's compliance with the ARC's designated changes. In the event the ARC fails or neglects to advise the Owner in writing of whether or not such revised Plans and Specifications are in compliance (or non-compliance) within the aforementioned twenty (20) day period, then ARC's approval shall be conclusively presumed to have been granted subject to the conditions provided for in paragraph (f) above applicable to such presumption. Any disapproval by the ARC of such revised and resubmitted Plans and Specification shall be communicated to the Owner in a written response in accordance with the details required for the ARC's disapproval as provided in paragraph (f) above.

(h) Changes in Approved Plans and Specifications. Once the ARC has approved an Owner's Plans and Specifications and the Improvements, then the Owner shall not change, revise or otherwise modify the approved Plans and Specifications or the Improvements without first securing the ARC's written approval in the manner prescribed under this Article. The ARC shall endeavor to review such changes, revisions or other modifications within a shorter period of time than the aforementioned sixty (60) day period but shall not be required to do so.

(i) Approval for Landscaping Plans. Landscaping shall be approved by the ARC in the same manner as set forth above. In addition to all applicable foregoing guidelines no excavation shall be made, or fill, sand, gravel, crushed stone, brick, asphalt, concrete or the like be placed, set or poured on any portion of the Property or Project so as to cause any blatant and material change in the appearance of such portion of the Property or Project from the street or from any neighboring portion of the Property or Project, unless the ARC shall first have consented in writing. No fences, walls, hedges or other barriers shall be erected on any portion of the Property or Project without the approval of the ARC, and no existing fences, hedges or barriers shall be removed without the approval of the ARC.

(j) Dispute Resolution Process. If any Owner believes that either the disapproval of any Plans and Specifications submitted by the Owner to the ARC or the ARC's proposed changes to such Plans and Specifications that may be required for the ARC's approval, or any of the Pre-Approvals are arbitrary and capricious, then any such Owner may, as its sole and exclusive remedy, submit such dispute to final and binding arbitration in accordance with the provisions of the Delaware Uniform Arbitration Act (the "Arbitration Act") and the rules of the American Arbitration Association applicable to such disputes, to the extent such rules are not

inconsistent with the Arbitration Act. The fees of such arbitrator and all reasonable costs and expenses incurred by the ARC in defending its decision(s) shall be paid by the Owner, unless the arbitrator specifically finds and rules that the ARC acted in an arbitrary, capricious and meritless manner, in which event the Owner shall not be required to reimburse the ARC for its reasonable costs and expenses. In determining any question, matter, or dispute before such arbitrator, the arbitrator shall apply the provisions of this Declaration without varying therefrom in any respect, and shall not have the power or authority to add, modify, or otherwise change any of the provisions of this Declaration. The parties to any such arbitration agree to reasonably cooperate; to obtain the cooperation of their employees, agents and contractors, as applicable; to use reasonable efforts to supply as witnesses such employees, agents and contractors, as applicable; and to produce any relevant documents that may be required.

(k) *Approvals/Disapprovals.* Neither the ARC, nor the ARC Members, its agents, employees, representatives, and its successors and assigns shall be liable or responsible for any damages to any Owner or to any other person submitting Plans and Specifications to the ARC for approval or to any third party by reason of a mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval, or failure to approve any Plans and Specifications. Every person who submits Plans and Specifications to the ARC for approval, as provided herein, agrees, by submission of such Plans and Specifications, and every Owner or person claiming by or through the Owner agrees, by acquiring title to any Lot any interest in any Lot, that it shall not initiate, commence or prosecute any action, claim or suit against the ARC, the ARC Members, its agents, employees or representatives to recover any such damages, including special, consequential or punitive damages with respect to any approval, denial or failure to approve any Plans and Specifications and such Owner shall indemnify and hold the ARC and the ARC Members harmless from and against any and all such damages.

## **ARTICLE 7**

### **USE RESTRICTIONS**

In addition to all other covenants contained herein, the use of the Property and Project, including any Lots and Common Areas, is subject to the following:

*Section 7.1 Permitted Uses.* All buildings located or erected on any portion of the Property or Project shall be used for residential purposes exclusively, and no building shall be erected, altered, placed or permitted to remain on any portion of the Property or Project other than one used for residential purposes, except that a home-based business may be maintained within such a building, provided that (a) such maintenance and use is limited to the person actually residing in such building; (b) no employees or staff other than a person actually residing in such building are utilized; (c) no clients, customers, employees, or vendors of such business visit such building; (d) the number of persons, other than clients, customers, employees, or vendors, that shall visit such business and the frequency of such visits shall be kept to a reasonable minimum, as determined in the sole discretion of the Board; (e) such maintenance and use is in strict conformity with the provisions of any applicable Laws; (f) the person utilizing such business maintains a principal place of business at a location other than such building; (g) such business uses no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable by neighbors and does not cause an increase of

Common Expenses that can be solely and directly attributable to the business; and (h) such business does not involve the use, storage or disposal of any materials that the United States Secretary of Transportation or the State of Delaware, Sussex County or any local governing body designates as hazardous material. Nothing contained in this Article, or elsewhere in this Declaration, shall be construed to prohibit Declarant or any Participating Builder from using any portion of the Property or the Project, or any improvements thereon, for promotional or display purposes, as "model homes," as sales or construction offices, or the like.

Section 7.2 Prohibited Uses and Nuisances. Except for the activities of Declarant and any Participating Builder during the construction and development of the Property and Project, or except with the prior written approval of the Board and Declarant, or as may be necessary in connection with reasonable and necessary repairs or maintenance to the Common Areas:

(a) No noxious or offensive trade or activity shall be carried out upon any portion of the Property or Project, nor shall anything be done therein or thereon which may be or become an annoyance or nuisance to the Declarant or the other Owners. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, as well as outdoor speakers and associated equipment (as approved by the Declarant) installed by any Participating Builders as part of the building and improvements constructed on a Lot, shall be located, installed or maintained upon the exterior of any building or other improvements constructed upon any portion of the Property or Project.

(b) The maintenance, keeping, boarding or raising of animals, livestock, or poultry of any kind, regardless of number, shall be and is hereby prohibited on any portion of the Property or Project or within any building or other improvement located thereon, except that this shall not prohibit the keeping of a reasonable number of dogs, cats, caged birds or other small domestic animals as pets not to exceed four (4) provided (i) they are not kept, bred or maintained for commercial purposes; (ii) such domestic pets are not a source of annoyance or nuisance to the neighborhood or other Owners; and (iii) such pets are maintained in strict conformance with all Laws. The Board shall have the authority, after a hearing, to determine whether a particular pet is a nuisance or a source of annoyance to other Owners, and such determination shall be conclusive. Pets shall be attended at all times and shall be registered, licensed and inoculated as may from time to time be required by all Laws. Pets shall not be permitted upon the Common Areas unless accompanied by a responsible person and unless they are carried or leashed. The Board shall have the right to adopt such additional rules and regulations regarding pets as it may from time to time consider necessary or appropriate.

(c) No burning of any trash and no accumulation or storage of litter, lumber, scrap metals, refuse, bulk materials, waste, new or used building materials, or trash of any other kind shall be permitted on any portion of the Property or Project. Firewood shall be neatly stacked in the rear yard areas of the Lots.

(d) Except for parking within garages, and except as herein elsewhere provided, no junk vehicle, commercial vehicle (including vans used for commercial use and vehicles displaying commercial signage), truck (except pickup trucks, sport utility vehicles and jeeps), unlicensed or inoperable motor vehicle (which shall include, without limitation, any

vehicle that would not pass applicable state inspection criteria), trailer, mobile home, camp truck, house trailer, recreational vehicle, boat or other similar vehicles, machinery or equipment of any kind or character (except for such equipment and machinery as may be reasonable, customary and usual in connection with the use and maintenance of any dwelling or Lawn Area and except for such equipment and machinery as the Association may require in connection with the maintenance and operation of the Common Areas or Lawn Area) shall be kept upon the Property or upon the public or private streets within or adjacent to the Property, nor (except for bona fide Emergencies) shall the repair or extraordinary maintenance of automobiles or other vehicles be carried out thereon; provided, however, any trailer, mobile home, camp truck, house trailer, recreational vehicle, boat or other similar vehicles that are either owned, rented or leased by an Owner may be temporarily kept upon the Owner's Lot (but not any adjacent portions of the public or private streets) solely with respect to either cleaning, loading or unloading any of the foregoing described vehicles, or picking up or discharge passengers therefrom for a reasonable period of time not to exceed forty eight (48) hours. This subsection (d) shall not be applicable to the Declarant or any Participating Builder during the construction and development of the Property or Project.

(e) Trash and garbage containers shall not be permitted to remain in public view except on days of trash collection and the evening prior to such days of trash collection. No incinerator shall be kept or maintained upon any portion of the Property or Project. No garbage or trash containers shall be kept on the front or side yard of any Lot other than within an enclosed structure constructed by any Participating Builder, as part of the building and improvements constructed on a Lot (as approved by the Declarant). Garbage and trash containers kept or maintained in the rear yard of any Lot shall be screened from public view at all times. This subsection (e) shall not be applicable to the Declarant or any Participating Builder during the construction and development of the Property or Project.

(f) No Lot shall be further divided or subdivided and no portion of any Lot (other than the entire Lot) shall be transferred or conveyed for any purpose. The provisions of this subsection shall not apply to Declarant and, further, the provisions hereof shall not be construed to (i) prohibit the granting of any easement or right-of-way to any municipality, political subdivision, public utility or other public body or authority, or to the Association, Declarant, or any other individual or entity for any purpose, or (ii) prohibit minor boundary line adjustments between adjoining Owners if done in accordance with applicable Laws. Further, the provisions of this subsection shall not be deemed to preclude any Owner from granting an easement or right-of-way to any municipality, political subdivision, public utility or other public body or authority, or to the Association, to serve necessary public purposes, or from dedicating or conveying a portion of such Owner's Lot for such purposes.

(g) No tree, hedge or other landscape feature shall be planted or maintained in a location which obstructs sight-lines for vehicular traffic on public streets or on private streets and roadways. Without limiting the generality of the foregoing, no wire or other lawn edging, fencing or other treatment shall be placed or maintained on any portion of the Property or Project which would impede the Association's ability to perform its obligations as set forth in this Declaration, or which would be inharmonious with the aesthetics of the Property and Project.

(h) No decorative lawn ornament, no structure of a temporary

character, and no trailer, tent, shack, barn, pen, kennel, run, stable, or other similar building shall be erected, used or maintained on any portion of the Property or Project at any time. This subsection (h) shall not be applicable to the Declarant or any Participating Builder during the construction and development of their respective Lots.

(i) Except for entrance signs, directional signs, signs for traffic control or safety, community "theme areas" and such sales and promotional sign or signs as may be maintained by or with the written consent of Declarant or the Association, or except as may be expressly permitted pursuant to applicable Law, no signs or advertising devices of any character shall be erected, posted or displayed upon, in or about any portion of the Property or Project; provided, however, that one temporary real estate sign not exceeding twelve inches by eighteen inches (12" x 18") in area may be placed and maintained in the window or otherwise inside of the dwelling erected upon any Lot in the case of any dwelling placed upon the market for sale or rent. Notwithstanding the foregoing, no such temporary real estate sign may be erected on any Lot for two (2) years after the sale of the first Lot or until seventy-five percent (75%) of the Lots are sold, whichever comes first. Any such temporary real estate sign shall be removed within five (5) days of the settlement of the sale or rental of such dwelling.

The provisions and limitations of this subsection shall not apply to any institutional first Mortgagee of any Lot who comes into possession of the Lot by reason of any remedies provided by Law or in such mortgage or as a result of a foreclosure sale or other judicial sale or as a result of any proceeding, arrangement, assignment or deed in lieu of foreclosure.

(j) No water pipe, sewer pipe, gas pipe, drainage pipe, cable or other similar transmission line shall be installed or maintained upon any portion of the Property or Project above the surface of the ground and no wire, cable or other similar transmission line may be attached to the exterior of any structure on any portion of the Property or Project; provided, however, that such transmission lines, wires or cables providing utility services to any portion of the Property or Project (including electricity, telephone, gas, water and cable television) shall be permitted. Except during periods of actual use, no hose shall be stored or placed in the front or side yard of any dwelling unless screened from public view.

(k) No play equipment, including basketball backboards, basketball hoops and other equipment associated with either adult or juvenile recreation, shall be attached in any manner to the exterior of any dwelling without obtaining prior written approval pursuant to Article 6 hereof. If approved in accordance with this Declaration, such play equipment must be properly maintained at all times.

(l) No structure, fence, planting or other material or improvements of any kind shall be placed or permitted to remain upon any portion of the Property or Project which may damage or interfere with any easement for the installation or maintenance of utilities, or which may unreasonably change, obstruct or retard the direction or flow of any drainage channels.

(m) Vegetable gardens shall be maintained only within the rear yard of any Lot and shall be maintained in a neat and attractive manner. No composting activities of any kind or nature shall be permitted on any portion of the Property or Project, including natural

composting activities. In addition, no Owner shall erect or maintain any composting piles or receptacles or containers on any portion of the Property or Project.

(n) Lawn furniture shall be used and maintained in rear yards or decks or front porches only, unless otherwise determined by the Board, and shall be maintained in a neat and attractive manner.

(o) No equipment or machinery (including equipment or machinery for use in connection with the maintenance of any dwelling) shall be stored in the front, rear or side yard of any Lot.

(p) No Owner shall make any private, exclusive or proprietary use of any of the Common Areas and no Owner shall engage or direct any employee of the Association on any private business of the Owner during the hours such employee is employed by the Association, nor shall any Owner direct, supervise or in any manner attempt to assert control over any employee of the Association.

(q) Any fence constructed upon the Property or Project shall not extend forward of the rear building line of the dwelling on any Lot upon which any such fence is erected and shall be located at minimum of at least three (3) feet from the applicable side and rear yard property lines and shall not otherwise impede or interfere with the proper drainage of any drainage swales or other drainage or storm water related facilities. No fence shall be constructed or maintained upon a Lot until the plans for the same have been approved in writing in accordance with the provisions of Article 6 herein. No fence shall be more than four feet (4') in height or such other height as permitted under the applicable codes or ordinances of Sussex County. Such fences shall be constructed of either anodized aluminum or vinyl and shall be either white or tan in color for vinyl or white or black for aluminum and shall be in one of three (3) available styles of fencing that are available to choose from and have otherwise been approved in writing pursuant to Article 6 herein. All other types, materials and colors of fencing are specifically prohibited, including but not limited to chain link and split rail. Notwithstanding the foregoing, this subsection shall not apply to fences installed by or on behalf of Declarant or any Participating Builder during the construction and development of the Property or Project, which in the sole opinion of Declarant or such Participating Builder, as applicable, shall be required, convenient or incidental to Declarant's or such Participating Builder's, as applicable, construction, development, marketing, leasing and sales activities within the Property or Project.

(r) Bed sheets, plastic sheets, newspapers, plastic storm windows or other similar window treatments shall not be hung or placed in or on any window on any dwelling located on any Lot.

(s) Children's play and similar equipment, including portable basketball hoops, shall not be allowed to remain overnight within any front yard of any Lot or within the Common Areas.

(t) Children's outdoor permanent playhouses and swinging or climbing apparatus or equipment shall be permitted within the rear yard of a Lot; provided, however, that prior written approval is obtained pursuant to Article 6 and that such equipment, playhouse(s) or apparatus is properly maintained at all times.



(u) All on-Lot lighting shall be designed and mounted in accordance with the terms of the Design Guidelines and as otherwise provided under this Declaration. Any such lighting shall be generally directed in such a manner to enhance the immediate area around any dwelling on a Lot and shall not be directed toward other dwellings on adjacent Lots or properties surrounding the Property or Project, so as to be a nuisance to adjacent Owners or landowners outside of the Property or Project.

(v) No drying or airing of any clothing or bedding shall be permitted outdoors or within any Lot other than within rear yards, and clothes hanging devices such as lines, reels, poles, and frames shall be stored out of sight when not in use.

(w) Pools of any kind, including above and below ground pools, shall not be permitted.

(x) No garage or outbuilding properly erected on a Lot shall at any time be used for human habitation, temporarily or permanently, nor shall any structure of a temporary character be used for human habitation. No garage may be altered, modified or changed in any manner which would inhibit or in any way limit its function as a parking area for vehicles without obtaining prior written approval pursuant to Article 6 of this Declaration. Notwithstanding the foregoing, any Lot owned by Declarant or a Participating Builder upon which is situated a dwelling in which the garage has been modified to serve as living area or marketing/sales area shall be exempt from this paragraph and any grantee of Declarant, and such grantee's successors and assigns, shall also be exempt until such time as the garage is restored or a garage is constructed on such Lot. Except when being used as an entrance or exit, garage doors shall be maintained in a closed position at all times.

(y) No flags and associated poles or other related supports shall be erected, displayed or maintained on any Lot or the Property except for flags permitted by Federal and State laws and flags suspended on poles or supports no longer than five (5) feet in length which are attached to the front porch or garage of a dwelling unit on such Lot and as otherwise provided pursuant to Section 7.6.

(z) Only full view storm doors, defined as doors where the glass covers at least 80% of the door surface are permitted. Storm doors must be painted the same color as the door that it services, or its adjacent trim. Storm doors with decorative treatment such as grills, are not permitted. If a storm door meets the foregoing requirements, an application to the ARC under Section 6.3 is not required.

(aa) No air conditioners or other equipment or apparatus shall be permitted to be installed, maintained, or otherwise protrude from any windows.

Section 7.3 Satellite Dishes. Installation of antennas, including satellite dishes, 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 and 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 dwelling without prior written approval as required by Article 6. Antennas situated entirely within a dwelling, and not visible from the exterior are permitted. 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 or which causes an unreasonable delay or cost increase in such installation.

Section 7.4 Leasing and Transfers.

(a) No portion of a dwelling unit located on any Lot, other than an entire dwelling unit located on such Lot, may be leased or rented unless the prior written approval of the Board is obtained. All leases shall be on forms approved by the Association and shall (i) contain provisions advising the tenant of his obligation to comply with all provisions of this Declaration, the Certificate of Incorporation, Bylaws and rules and regulations of the Association, and (ii) provide that the Association shall have the right, in addition to all other rights provided by the Act and any other applicable Laws, to terminate the lease upon default by the tenant in observing any of the provisions of this Declaration, the Certificate of Incorporation, Bylaws or rules and regulations of the Association, or of any other document, agreement or instrument governing such Lot or the Property or Project. The Owners of a leased dwelling unit shall notify the Association in writing of the Owners' current address. The Owners of such a leased dwelling unit shall be jointly and severally liable with his tenants to the Association to pay any claim for injury or damage to persons or property caused by any action or omission, including the negligence of the tenants. Every lease shall be subordinate to any lien filed by the Association, whether before or after such lease was entered into. The minimum term any dwelling unit may be rented or leased shall be one (1) year, and in no event may a transient or seasonal tenant be accommodated in any dwelling unit.

(b) Prior to the sale, conveyance, or transfer of any Lot to any Person, the Owner shall notify the Board in writing of the name and address of the person to whom the proposed sale, conveyance, or transfer is to be made (the "Transferee") and provide to it such other information as the Board may reasonably require in order to obtain the required initial capital contribution from the Transferee. Failure to comply with the provisions of this Section 7.4(b) shall not void, prohibit or otherwise invalidate the sale, conveyance, or transfer of any Lot nor will it have any affect upon any mortgage or deed of trust thereon.

Section 7.5 Parking. Parking within the Property and Project shall be subject to the following restrictions:

(a) The Board shall be entitled to establish supplemental rules concerning parking and traffic control on any portion of the Property or Project, including providing for reserved parking which allows the exclusive use of one or more Common Areas

parking spaces by one or more Owners or the involuntary removal of any vehicle violating the provisions of this Declaration or such rules.

(b) Each Owner shall comply in all respects with such supplemental rules which are not inconsistent with the provisions of this Declaration which the Board may from time to time adopt and promulgate with respect to parking and traffic control within the Property and Project, and the Board is hereby authorized to adopt such rules.

(c) Parking shall be prohibited in the turn-arounds, fire lanes and cul-de-sacs as provided on the Development Plans.

Section 7.6 Rules and Regulations. The Association shall have the right to adopt rules and regulations in accordance with § 81-320 of the Act governing the use by the Owners of the Association Property and/or Lots, which rules and regulations shall not apply to any Participating Builder and which shall not be inconsistent with the provisions of this Declaration. Such rules and regulations may include the regulation of rentals in the Project and govern specific leasing standards, including, but not limited to, permitted signage or advertising, minimum lease terms and maximum number of occupants permitted to occupy a main dwelling, the display of American flags or other flags (consistent with federal law, § 81-320 of the Act and Section 7.2 above, as applicable) and/or the display and placement of political signs (consistent with § 81-320 of the Act). Any rules and regulations adopted by the Association shall be a governing document of the Association.

Section 7.7 Exemptions and Limitations. Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions and provisions set forth in this Article 7 nor any other restrictions and provisions contained in this Declaration shall be applicable (a) to any portion of the Property or Project owned by Declarant or any Participating Builder, (b) to the activities of Declarant or any Participating Builder, and their respective officers, employees, agents, successors and assigns, in their development, marketing, leasing and sales activities within the Property and Project, or (c) to the Association, its officers, employees and agents, in connection with the proper maintenance, repair, replacement and improvement of the Common Areas. Nothing contained in this Article 7, or elsewhere in this Declaration, shall be construed to prohibit Declarant or any Participating Builder from using any portion of the Property or the Project, or any improvements thereon, except for any Lots not owned by Declarant or any such Participating Builder, for promotional or display purposes, as "model homes," as sales or construction offices, or the like.

Section 7.8 Notice of Special Provisions Regarding the Property and Project.

(a) Notice of Agricultural Use. The Property and Project are 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 in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of the Property and Project is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities.

(b) Notice of Private Streets. The streets designated on the

Development Plans shall be private streets and shall be maintained by the Association and not by the State of Delaware and do not qualify for assumption of maintenance by the Delaware Department of Transportation, State Highway Division. The streets must be improved to State Highway standards and accepted by the State of Delaware if they are to be maintained by the State of Delaware (at the discretion of the State Highway Division) and Declarant and the Association each reserve and is granted the right to dedicate any and all such private streets to public use and convey any and all such private streets to the State of Delaware or other applicable governmental authority. A disclosure regarding such private streets shall also appear in each deed to any Lot in accordance with 9 Del. C. § 9623 relating to private streets.

## **ARTICLE 8**

### **DECLARATION OF EASEMENTS AND RIGHTS**

*Section 8.1 Declaration of Easements and Rights.* The following easements and rights are hereby declared or reserved:

(a) For so long as Declarant or a Participating Builder owns all or any portion of the Property or Project, Declarant reserves the right to grant easements, both temporary and permanent, to all public authorities and utility companies over any part of the Property or Project.

(b) Each Lot and the Common Areas are hereby declared to have an easement, not exceeding one foot (1') in width, over all adjoining Lots and Common Areas for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the building, roof overhangs, gutters, architectural or other appendages, draining of rainwater from roofs, or any other similar cause, there shall be valid easements for the maintenance of said encroachments so long as they shall exist, and the rights and obligations of the Owners shall not be altered in any way by said encroachment, settlement or shifting; provided, however, that in no event shall a valid easement for encroachment be created in favor of any Owner if said encroachment occurred due to the willful misconduct of said Owner. In the event a structure on any Lot or any Common Areas, is partially or totally destroyed and then repaired or rebuilt, the Owners of each Lot and the Association agree that minor encroachments over adjoining Lots or Common Areas shall be permitted and that there shall be easements for the maintenance of said encroachments so long as they shall exist.

(c) There is hereby reserved unto Declarant and each Participating Builder, for the benefit of the real property shown on the Development Plans, and for the benefit of Declarant and each Participating Builder, a non-exclusive, perpetual blanket easement upon, across and under the Property and Project for vehicular and pedestrian ingress and egress, curb cuts, slope, and grading easements, as well as for the installation, replacement, repair and maintenance of all Utilities, and further including the right to connect to and use any such Utilities which may exist or be located upon the Property or Project from time to time. By virtue of this easement, it shall be expressly permissible to erect and maintain the necessary poles, pipes, lines, service boxes, and other equipment on the Property or Project, to affix and maintain electrical or telephone wires and conduits, sewer and water drainage lines, on, above, or below any portion of the Property or Project, including any improvements constructed thereon, and to have construction vehicles, equipment and the like exercise the aforesaid right of ingress and egress over the Property or Project. There is further reserved unto Declarant and each

Participating Builder the right to erect entry features, promotional and other similar items within the Property or Project provided they do not unreasonably interfere with the use, operation and enjoyment of the Property or Project. There is further reserved unto Declarant the right to grant specific easements, both temporary and permanent, to any Person, including all public authorities and utility companies, over any part of the Property or Project in furtherance of the blanket easement created by this subsection. Further, without limiting the generality of the foregoing, Declarant reserves the right to unilaterally execute and record such additional easements and agreements as may be necessary in order to give effect to the foregoing easements and other rights, which additional easements and other agreements need not be consented to or joined in by any party having an interest in the Property or Project; provided, however, that if requested by Declarant, any party having an interest in the Property or Project shall promptly join in and execute such confirmatory easements and other agreements.

(d) The Property and Project are hereby subject to a non-exclusive, perpetual easement and right of passage, for the benefit of the Owners, for ordinary and reasonable pedestrian ingress and egress over, across and upon any and all Common Areas, together with all streets, roads, and rights-of-way.

(e) An easement is hereby reserved to Declarant and each Participating Builder to enter the Lots and any Common Areas during the period of construction and sale on the Property and Project, and to maintain the Common Areas and perform such operations as in the sole opinion of Declarant or Participating Builder, as applicable, may be reasonably required, convenient or incidental to the construction of the Common Areas and for the construction and sale of residences, including a business office, sales/leasing office, storage area, construction yards, signs, displays and model units.

(f) An easement is hereby reserved to Declarant and each Participating Builder to enter the Lots and any Common Areas for the purpose of carrying out any obligations it may have, or assume, with respect to the curing of any defects in workmanship or materials in the Property or Project, or the improvements thereon. There is further reserved unto Declarant and each Participating Builder a non-exclusive easement over, across and through all of the Property and Project for the purpose of access, the storage of building supplies and materials and equipment and, without any limitation, for any and all purposes reasonably related to the completion of the development, construction, rehabilitation and repair of the Property or Project.

(g) Declarant reserves a perpetual blanket easement and right on, over and under the Property and Project to establish, maintain, change and correct drainage of surface water in order to maintain reasonable standards of health, safety and appearance. Notwithstanding anything contained in this Declaration to the contrary, Declarant shall have no obligation whatsoever to perform any work or to take any action regarding drainage of surface water within the Property or Project. Such right expressly includes the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action as may be reasonably necessary, following which Declarant shall restore the affected property to its original condition as near as practicable. Declarant shall give reasonable notice of intent to take such action to all affected Owners, unless in the opinion of Declarant an Emergency exists which precludes such notice. There is further reserved unto Declarant the right to grant specific easements, both temporary and permanent, to any Person, including all public authorities and

utility companies, over any part of the Property or Project in furtherance of the blanket easement created by this subsection.

(h) The rights and duties of the Association and the Owners with respect to all public or private Utilities serving or benefiting all or any portion of the Property or Project shall be governed by the following:

(1) Each Lot is hereby subject to a non-exclusive perpetual easement and right of passage upon, across and under such Lot for the benefit of the Association, the Owners, for the installation, maintenance, repair, replacement, inspection, operation and use of all Utilities. The Association and Owners, shall have the right, and they are hereby granted an easement and right of passage to the extent necessary therefor, to enter upon or have a utility company enter upon any portion of the Property or Project in which the Utilities lie, to inspect, repair, replace and generally maintain such Utilities.

(2) The right granted in subsection (i) above shall be only to the extent necessary to entitle the Owner of the property serviced by the Utilities (including the Association as the owner of the Common Areas) to their full and reasonable use and enjoyment of such property, and provided further that anyone exercising such right shall be responsible for restoring the surface of the easement area so used to its condition prior to such use.

(i) Each Lot is hereby subject to an easement and right of passage upon, across and under such Lot for the drainage and discharge of water from any storm drain, down spout or yard drain situated on another Lot, the Common Areas, and the Owner of such Lot may not alter or obstruct such drainage or flow of water to the detriment of any Lot or the Common Areas.

(j) The Association shall have an easement to enter any portion of the Property or Project for the performance of its duties hereunder, including fenced, or other similar areas of the Property or Project.

(k) With respect to any step, patio, deck, downspout or yard drain or other similar structure that may benefit any Lot and is constructed by Declarant or any Participating Builder and that may encroach upon any portion of the Common Areas, there is hereby reserved for the benefit of the Lot that such step, patio, deck, downspout, drain or other structure serves, a perpetual easement for the location, maintenance, repair and use of such structure or items within the Common Areas, but only to the extent that Declarant's or Participating Builder's original construction thereof encroaches within the Common Areas. The Owner of the Lot benefiting from such easement agrees to maintain such structure or item and to indemnify and hold the Association harmless from any loss, liability or damage arising out of or resulting from the use, enjoyment and benefit of the easement granted hereby.

(l) There is hereby created for the benefit of each Lot that is enclosed, in whole or in part, by any wooden, brick, stone or other similar fence or wall constructed by Declarant or any Participating Builder, a perpetual easement to use any portion of the Common Areas that may be located between such fence or wall and the record platted lot line for such benefited Lot. The obligation to maintain such portion of the Common Areas shall be that of the Owner of the benefited Lot, and the obligation to maintain such portion of the wooden, brick,

stone, or other similar fencing as is located within the Common Areas, and that encloses the benefited Lot, in whole or in part, shall be that of the Association. The Owner of any Lot benefiting from the foregoing easement agrees to indemnify and hold the Association harmless from any loss, liability or damage arising out of or resulting from the use, enjoyment and benefit of the easement rights provided for herein.

(m) A mutual right and easement for utility services is hereby established for the benefit of all Owners, such that no Owner shall take any action which would in any way interfere with utility services being provided to other Owners. If a Lot contains any utility pipes, ducts, conduits, wires or the like which are for the benefit, in whole or in part, of other Owners, then the Owner of such Lot shall promptly, at such Owner's expense, repair any damage to such utilities caused by such Owner, or such Owner's tenants, lessees, agents, guests, invitees, licensees or family members.

(n) The Association shall have an irrevocable right and an easement to enter all or any portion of the Property or Project for purposes of exercising the rights and fulfilling the obligations established by this Declaration and any supplementary declarations recorded hereafter.

(o) Declarant or a Participating Builder, to the extent permitted by applicable law and only with respect to any Lots or portions of the Property owned by such Participating Builder, reserve the right to amend, modify, alter, or other change the size, number, type, character, and location of the Lots or Common Areas, and any improvements thereon, as Declarant, or Participating Builder, as applicable, deems necessary or desirable in conjunction with the development of the Property or the Project (the "Permitted Activities"); provided that any such Permitted Activities shall not amend, modify or otherwise alter or change the existing property lines of any Lot owned by an Owner other than the Declarant or Participating Builder, as applicable. Without limiting the generality of the foregoing, Declarant and Participating Builder, to the extent permitted by applicable law and only with respect to any Lots or portions of the Property owned by such Participating Builder, reserves the right to resubdivide all or a portion of the Property or Project, to convey all or any portion of the Property or Project, including any Lots owned by Declarant or Participating Builder, as applicable, as well as the Common Areas (until such time as the control of the Association is transferred to the Owners), to modify the Development Plans. Declarant and Participating Builder also reserve the right to construct the Common Facilities on the Common Areas. Declarant reserved the right to take whatever other action with respect to the Lots or Common Areas as Declarant may deem necessary or desirable.

(p) The Association is hereby granted a non-exclusive easement and right of passage on, through, over, under and across the Lots and Common Areas to maintain, repair and replace any Common Facilities situated within the Lots or Common Areas.

(q) There is hereby reserved unto Declarant and Participating Builder, for the benefit of the real property shown on the Development Plans, and for the benefit of Declarant, a non-exclusive perpetual blanket easement upon, across and under the Property and Project for the following purposes: (i) ingress and egress to and from any and all portions of the Property and Project by trucks, construction equipment, construction personnel and the like; (ii) to construct, install, reconstruct, alter, modify, remove and replace the Common Facilities or any

other improvements within the Property and Project; (iii) to excavate, fill and coordinate the height, grade, slope and contour of the Property and Project, and to add and remove soil from the Property; and (iv) for the conduct of all other development, construction, marketing, sales, leasing and related activities as may be deemed necessary or desirable by Declarant or Participating Builder, as applicable, to implement the Development Plans, to comply with requirements imposed by Sussex County, Delaware, or any governmental or quasi-governmental agency or authority having regulatory jurisdiction over the Property or Project, or to comply with applicable Laws.

Section 8.2 Association Easements. The Board shall have the right to grant easements, rights-of-way, licenses and similar interests over any part of the Common Areas for any lawful purpose which the Board determines, in its sole discretion, to be in the best interests of the Association.

Section 8.3 Party Wall Easements and Rights. To the extent not inconsistent with the provision of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful act or omissions shall apply to each party wall, party fence, deck, or other structure or improvement which is built as part of the original construction of the dwellings upon the applicable Lots and any replacement thereof.

(a) Encroachments. The event that any portion of any dwelling, structure or improvement, as originally constructed by Declarant or a Participating Builder on a Lot or the Common Areas, including any party wall, fence, or deck shall protrude over an adjoining Lot or the Common Areas, then such dwelling, structure or improvement (including any party wall, fence or other projection) (collectively, the "Projections") shall not be deemed to be an encroachment upon the adjoining Lots or Common Areas, and no Owner shall maintain any action for removal of any such Projections nor any action for damages. In the event there is a Projection as described aforesaid, it shall be deemed that the Owners and, where applicable, the Association have granted perpetual easements to the adjoining Owners for continuing maintenance and use of the Projections. The foregoing shall also apply to replacements of any such Projections if same are constructed in conformance with the original Projection constructed by Declarant or a Participating Builder. The foregoing conditions shall be perpetual in duration and shall not be subject to amendment of these covenants and, restrictions.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall in proportion to such use.

(c) Destruction by Fire or Other Casualty. If a party wall or party fence is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall or fence, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Article, an Owner, who by his negligent or willful act causes the party wall to be exposed to the elements, shall bear the whole cost of furnishing the necessary protection against such elements.



(e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors and assigns in title.

(f) Arbitration. In the event of any dispute arises concerning a party wall or party fence, or under the provisions of this Article, such dispute shall be adjudicated by the ARC pursuant to Article 6.

Section 8.4 Exemptions and Limitations. Notwithstanding anything contained in this Declaration to the contrary, none of the restrictions and provisions set forth in this Article 8 nor any other restrictions and provisions contained in this Declaration shall be applicable (a) to any portion of the Property or Project owned by Declarant or any Participating Builder, (b) to the activities of Declarant or any Participating Builder, and their respective officers, employees, agents, successors and assigns, in their development, marketing, leasing and sales activities within the Property and Project, or (c) to the Association, its officers, employees and agents, in connection with the proper maintenance, repair, replacement and improvement of the Common Areas. Nothing contained in this Article 8, or elsewhere in this Declaration, shall be construed to prohibit Declarant or any Participating Builder from using any portion of the Property or the Project, or any improvements thereon, except for any Lots not owned by Declarant or any such Participating Builder, for promotional or display purposes, as "model homes," as sales or construction offices, or the like in accordance with Section 2.5 of this Declaration.

## **ARTICLE 9** **MAINTENANCE**

Section 9.1 Owners' Maintenance. Except as otherwise specifically provided in this Declaration, the Owner of each Lot shall keep the Lot, and all improvements therein or thereon, in good order and repair and free of debris in a manner and with such frequency as is consistent with good property management including, without limitation, responsibility for fertilizing, trimming, pruning and/or otherwise maintaining all or any portion of the shrubs, bushes, trees and other planted materials, and any replacements thereof, as may be located within the Lawn Area. Maintenance of the Lawn Area by the Owner shall be with such frequency and in conformity with such standards as may be established by the Board from time to time. In the event an Owner of any Lot shall fail to maintain the Lawn Area within such Owner's Lot and such improvements, the Association or its agent shall have the right to enter upon said Lot to repair, maintain and restore the Lawn Area and such improvements. The Association shall also have the right to enter the Lots to correct drainage. Whenever entry is not required in an Emergency situation, the Association shall afford the Owner reasonable notice and opportunity to cure the problem prior to entry. All costs related to such correction, repair or restoration, including reasonable attorneys' fees, shall be collectible from the Owner of such Lot, in the same manner as assessments as provided in Article 5 herein.

Section 9.2 Association Maintenance. The Association shall maintain, repair and replace the Common Areas and shall keep the Common Areas in good order at all times and shall arrange for grass cutting and other maintenance approved by the Board from time to time. This obligation shall include, without limitation (a) the maintenance, repair and, as necessary, replacement of any private streets and parking areas within the Common Areas, (b) the maintenance, repair and, as necessary, replacement of any landscaping, pathways, sidewalks,

trails and walkways that are constructed or installed by, or on behalf of, Declarant within the Common Areas, provided that the Association shall not be obligated to maintain, repair or replace any landscaping, pathway, sidewalk, trail or walkway leader, or portion thereof, within any Lot (the maintenance, repair and replacement of any such landscaping, pathway, sidewalk, trail or walkway leader shall be the obligation of the Owner of such Lot), and (c) the removal of accumulated snow and ice from within all private streets and parking areas within the Common Areas and from all Common Areas pathways, sidewalks, trails, walkways, or portions thereof. Further, the Association shall maintain, repair and replace (a) any rights-of-way, swales, culvert pipes, entry strips, signage, and entrance features or improvements that are situated within or that are appurtenant to and serve the Property and Project, including any landscaping and other flora and improvements situated thereon, and (b) any other real and personal property, facilities and equipment as the Association is obligated or elects to maintain pursuant to this Declaration, or any lease, easement or agreement, or the direction of any governmental authority or agency. The expenses of all such maintenance, repair and replacement of the Common Areas shall be a Common Expense of the Association, including reserves for the maintenance, repair and replacement of any such property or improvements. The Association shall also maintain any portion of any Lot that it is obligated or elects to maintain pursuant to this Declaration, any easement or any other agreement.

The Association shall also have the right to enter any Lot without the consent of the Owner or occupant or other governing body thereof, to conduct any Emergency repairs as are necessary and for the maintenance and protection of the Common Areas or any Lot that the Association is responsible for under this Declaration. The costs of such repairs shall be collectible from the Owner of such Lot in the same manner as assessments as provided in Article 5 herein.

The Association shall be responsible for the maintenance, repair and replacement of any of the Common Areas, which consist of storm water management area or facilities situated within the Common Areas to the extent that Sussex County, Delaware does not assume the responsibility for the maintenance, repair and replacement of any storm water management area or facilities, including drainage pipes, culvert pipes, infiltration trenches, ponds, basins, swales, berms, out-flow control devices, drainage areas, filters, inlets, oil/grit separators and underground facilities, if any, which serve or benefit the Property or Project whether or not located within the Common Areas if the Association is responsible therefor pursuant to any easement, agreement or the direction of any governmental authority or agency. Such responsibility may be in the form of contributing the Association's share of the maintenance costs of any such storm water management area, facility or equipment pursuant to an easement or agreement which shall be a Common Expense of the Association. The Board may enter into any such easements or other agreements as the Board may deem necessary or desirable for purposes of allocating or sharing the costs associated with the maintenance of any storm water management areas, facilities or equipment which serve or benefit the Property or Project. The Association shall not refuse to accept the conveyance of any such storm water management area, facilities or equipment from Declarant.

Section 9.3 Additional Maintenance Responsibilities. The Association may, in the discretion of the Board, provide additional services or assume additional maintenance responsibilities with respect to all or any portion of the Property or Project. In such event, all

costs of such services or maintenance shall be assessed only against those Owners residing within the portion of the Property or Project receiving the additional services. This assumption of responsibility may take place either by contract or because, in the opinion of the Board, the level and quality of service or maintenance then being provided is not consistent with the Community-Wide Standard.

## **ARTICLE 10** **INSURANCE**

*Section 10.1 Required Coverage.* The Board, or its duly authorized agent, shall be required to obtain, maintain and pay the premiums, as a Common Expense, upon a policy of hazard insurance covering the Common Areas and any property required to be insured by the Association pursuant to any easement or lease agreement (except land, foundation, excavation and other items normally excluded from coverage) including fixtures and building service equipment, to the extent that they are a part of the Common Areas or such other property which the Association may insure, as well as common personal property and supplies.

(a) The hazard insurance policy shall afford, as a minimum, protection against loss or damage by fire and all other perils normally covered by the standard extended coverage endorsement, as well as all 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, shall meet the requirements of §81-313 of the Act, and shall name the Association as a named insured. The insurance should cover one hundred percent (100%) of the current replacement cost (less a reasonable deductible) of the insured property. Coverage need not include land, foundations, excavations or other items that are usually excluded from insurance coverage. Unless a higher maximum amount is required pursuant to the law of the State of Delaware, the maximum deductible amount for coverage of the Common Areas is the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount. The funds to cover this deductible amount should be included in the Association's operating reserve account.

(b) Each hazard insurance policy must be written by a hazard insurance carrier which has a current rating by the Best's Key Rating Guide of B/III or better (or its equivalent). Each insurer must be specifically licensed or authorized by law to transact business within the State of Delaware. The policy contract shall provide that no assessment may be made against the Mortgagee, and that any assessment made against others may not become a lien on the mortgaged Lot superior to the First Mortgage.

(c) The hazard insurance policy must provide that the insurance carrier shall notify the Association and each Mortgagee named in the mortgagee clause in writing at least ten (10) days before it cancels or substantially changes the Association's coverage. In addition, each Eligible Mortgage Holder shall receive timely written notice of any lapse, material modification or cancellation of any insurance policy covering the Common Areas.

(d) All policies of hazard insurance must contain or have attached the standard mortgagee clause commonly accepted by private institutions as mortgage investors in the area in which the mortgaged premises are located. The following endorsements are also required: (i) an Inflation Guard Endorsement (if reasonably available); (ii) a Construction Code

Endorsement if the Common Areas are subject to a construction code provision which would become operative and require changes to undamaged portions of any structures, even when only part of a structure is destroyed by an insured hazard or peril; and (iii) a Steam Boiler and Machinery Coverage Endorsement if any structure within the Common Areas has central heating or cooling, which should provide for the insurer's minimum liability per accident per location to be at least equal to the lesser of Two Million Dollars (\$2,000,000.00) or the insurable value of the structure(s) housing the boiler or machinery.

(e) If the Common Areas is located in a Special Flood Hazard Area designated as A, AE, AH, AO, A1-30, A-99, V, VE, or V1-30 on a Flood Insurance Rate Map, the Association must maintain a "master" or "blanket" policy of flood insurance on the Common Areas. The amount of flood insurance shall be at least equal to the lesser of one hundred percent (100%) of the insurable value of all structures and improvements situated in such Special Flood Hazard Area or the maximum coverage available under the applicable National Flood Insurance Administration program. Unless a higher deductible amount is required under the laws of the State of Delaware, the maximum deductible amount for flood insurance policies shall be the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy's face amount. The funds to cover this deductible amount should be included in the Association's operating reserve account.

(f) The Association shall obtain and maintain a comprehensive general liability policy of insurance covering all of the Common Areas, public ways and any other areas that are under the Association's supervision that meets the requirements of §81-313 of the Act. The policy shall also cover any commercial space owned by the Association, even if such space is leased to others. The policy should provide coverage for bodily injury (including death) and property damage that results from the operation, maintenance or use of the Common Areas, and any legal liability that results from law suits related to employment contracts in which the Association is a party. Supplemental coverage to protect against additional risks should also be obtained, if required by a Mortgagee. Such insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners. Liability coverage shall be at least One Million Dollars (\$1,000,000.00) per occurrence, for bodily injury and property damage, unless higher amounts of coverage are required by a Mortgagee. The liability policy must provide that the insurance carrier shall notify the Association in writing at least ten (10) days before it cancels or substantially modifies the Association's coverage.

Section 10.2 Fidelity Coverage. To the extent reasonably available, blanket fidelity insurance may be maintained by the Board for all officers, directors, managers, trustees, employees and volunteers of the Association and all other persons handling or responsible for funds held or administered by the Association, whether or not they receive compensation for their services. Where the Board has delegated some or all of the responsibility for the handling of funds to a management agent, such management agent shall be covered by its own fidelity insurance policy which must provide the same coverage as fidelity insurance maintained by the Board. Except for fidelity insurance that a management agent obtains for its personnel, all other fidelity insurance policies should name the Association as the insured and should have their premiums paid as a Common Expense by the Association. Fidelity insurance obtained by a management agent shall name the Association as an additional insured. The total amount of

fidelity coverage required should be sufficient to cover the maximum funds (including reserve funds) that will be in the custody of the Association or management agent at any time while the fidelity insurance policy is in force, and should at least equal the sum of three (3) months aggregate assessments on all Lots, plus any reserves. Fidelity insurance policies should contain waivers by the insurers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions. The fidelity insurance policies should provide that they cannot be canceled or materially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association.

Section 10.3 Repair and Reconstruction of Common Areas After Fire or Other Casualty. In the event of damage to or destruction of any portion of the Common Areas covered by insurance payable to the Association as a result of fire or other casualty, the Board shall arrange for the prompt repair and restoration thereof, and shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration, as appropriate; and shall otherwise comply with the requirements of §81-313(h) of the Act. Promptly after a casualty causing damage or destruction of any portion of the Common Areas for which the Association has the responsibility of maintenance, repair, or replacement, the Board shall obtain reliable and detailed estimates of the cost to place the damaged portions of the Common Areas in as good a condition as existed prior to the casualty. Such costs may include, without limitation, professional fees and premiums for such bonds as the Board may desire.

## **ARTICLE 11** **MANAGEMENT**

Section 11.1 Management Agent. The Board may employ for the Association a management agent or manager (the "Management Agent") at a rate of compensation established by the Board to perform such duties and services as the Board shall from time to time authorize in writing, including the following:

- (a) to establish (with the approval of the Board) and provide for the collection of the annual maintenance assessments and any other assessments provided for in this Declaration and to provide for the enforcement of liens therefor in a manner consistent with the law and the provisions of this Declaration;
- (b) to provide for the care, upkeep, maintenance and surveillance of the Common Areas;
- (c) to designate, hire and dismiss such personnel as may be required for the good working order, maintenance and efficient operation of the Common Areas;
- (d) to promulgate (with the approval of the Board) and enforce such rules and regulations and such restrictions or requirements, "house rules" or the like as may be deemed proper respecting the use of the Common Areas and the Lots; and
- (e) to provide such other services (including legal and accounting services) for the Association as may be consistent with law and the provisions of this Declaration.

Section 11.2 Duration of Management Agreement. Any management agreement entered into by the Association shall provide, among other things, that such agreement may be terminated for cause by either party upon thirty (30) days written notice thereof to the other party. The term of any such management agreement shall not exceed three (3) years; provided, however, that the term of any such management agreement may be renewable by mutual agreement of the parties for successive one (1) year periods.

Any management agreement entered into prior to expiration of the Declarant Control Period must be terminable, without cause, any time after transfer of control from Declarant, on not less than thirty (30) nor more than ninety (90) days' notice, and no charge or penalty may be associated with such termination.

## **ARTICLE 12**

### **GENERAL PROVISIONS**

Section 12.1 Common Areas Responsibility. The Association, subject to the rights of the Owners as set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and any property, real or personal, which the Association is delegated the responsibility for pursuant to any easement or lease agreement, and all improvements thereon (including furnishings and equipment related thereto, private drainage facilities and common landscaped areas), and shall keep the Common Areas and such other property in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions hereof. The Association shall accept title to any real estate or personal property offered to the Association by Declarant. The Association shall be obligated to accept title to any real estate or personal property offered or conveyed to the Association by the Declarant. Any such conveyance shall be made in compliance with all applicable Laws and Declarant shall have the right, title and authority to consummate any such conveyance pursuant to the authority granted and reserved in the irrevocable power of attorney coupled with an interest under this Article XII.

Section 12.2 Personal Property and Real Property for Common Use. The Association may acquire, lease, hold, and dispose of tangible and intangible personal property and real property, subject to the requirements of this Declaration. The Board, acting on behalf of the Association, will accept title to any real or personal property, leasehold, or other property interests within the Property or Project offered or conveyed to Association by the Declarant.

Section 12.3 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, the Certificate of Incorporation, the Bylaws or any lease, easement or other agreement or document affecting the Association, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

Section 12.4 Limitation of Liability. The Association shall not be liable for any failure of any services to be obtained by the Association or paid for out of the Common Expense funds, or for injury or damage to persons or property caused by the elements or resulting from water which may leak or flow from any portion of the Common Areas or other property within the control or supervision of the Association, or from any wire, pipe, drain, conduit or the like.

The Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of articles which may be stored upon the Common Areas or other property within the control or supervision of the Association. No diminution or abatement of assessments, as herein elsewhere provided for, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or other property within the control or supervision of the Association, or from any action taken by the Association to comply with any of the provisions of this Declaration or with any Laws or with the order or directive of any municipal or other governmental authority.

*Section 12.5 Enforcement.* Declarant, the Association, the ARC, any Owner, or any Mortgagee of any Lot shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, easements, liens, assessments, charges or other obligations or terms now or hereafter imposed by the provisions of this Declaration, the Certificate of Incorporation, the Bylaws, or any rule or regulation promulgated by the Association pursuant to its authority as provided in this Declaration, the Certificate or the Bylaws. Failure by Declarant, the Association, the ARC, or any Owner or Mortgagee of any Lot to enforce any covenants, restrictions or obligations herein contained or any provision of the Bylaws, Certificate of Incorporation or rules and regulations of the Association shall in no event be deemed a waiver of the right to do so thereafter. There shall be and there is hereby created and declared to be a conclusive presumption that any violation or breach or attempted violation or breach of any of the within covenants or restrictions or any provision of the Bylaws or Certificate of Incorporation cannot be adequately remedied by action at law or exclusively by recovery of damages. If Declarant, the Association, the ARC, or any Owner or Mortgagee of any Lot, successfully brings an action to extinguish a violation or otherwise enforce the provisions of this Declaration, the Certificate of Incorporation, or the Bylaws, the costs of such action, including legal fees, shall become a binding, personal obligation of the Owner committing or responsible for such violation, and such costs shall also be a lien upon the Lot of such Owner.

Without limiting the generality of the foregoing, and in addition to any other remedies available, the Association after reasonable written notice, in writing, provided to the Owner, may enter any Lot to remedy any violation of the provisions of this Declaration, the Bylaws, the Certificate of Incorporation, or rules and regulations of the Association provided, however, that the Association may not enter the interior of any dwelling unit on a Lot except in an Emergency. The costs of such action, including reasonable attorneys' fees, shall become a binding, personal obligation of the Owner otherwise responsible for such violation and shall also be a lien upon the Lot of such Owner.

*Section 12.6 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 of such Owner as provided in this Declaration, the Bylaws, and the Certificate of Incorporation and such fine(s) shall also become the binding personal obligation of such Owner.

(a) Except with respect to matters pertaining to the Design Guidelines which shall be within the exclusive jurisdiction of the ARC, the Board shall be charged with

determining whether there is probable cause that any of the provisions of this Declaration, the Bylaws, the Certificate of Incorporation, or the rules and regulations of the Association, regarding the use of the Lots or Common Areas, other Association property, are being or have been violated. In the event that the Board or the ARC, with respect to the Design Guidelines, determines an instance of such probable cause, the ARC shall provide written notice to the person alleged to be in violation, and the Owner of the Lot which that person occupies or is visiting if such person is not the Owner, of the specific nature of the alleged violation and of the opportunity for a hearing before the ARC or Board, as applicable, upon a request made within five (5) days of the sending of the notice. The notice shall also specify, and it is hereby provided, that each recurrence of the alleged violation or each day during which it continues shall be deemed a separate offense, subject to a separate fine not to exceed a reasonable amount established by the Board or the ARC, as applicable, for each offense. The amount of the fine shall be based upon the costs and inconvenience caused to the Board or the ARC and shall not be a penalty. The notice shall also specify, and it is hereby provided, that in lieu of requesting a hearing, the alleged violator or Owner may respond to the notice within five (5) days of its sending, acknowledging in writing that the violation occurred as alleged and promising that the violation will thereafter cease and will not recur, and that such acknowledgment and promise, and performance in accordance therewith, shall terminate the enforcement activity of the Board or ARC, as applicable, with regard to such violation.

(b) If a hearing is timely requested, the Board or the ARC, as applicable, shall hold the same, and shall hear any and all defenses to the charges, including any witnesses that the alleged violator, Owner, the Board or the ARC may produce. Any party at the hearing may be represented by counsel.

(c) Subsequent to any hearing, or if no hearing is timely requested and if no acknowledgment and promise is timely made, the Board or the ARC, as applicable, shall determine whether there is sufficient evidence of a violation or violations as provided herein. If the Board or the ARC, as applicable, determines that there is sufficient evidence, it may levy a fine for each violation in the amount provided herein.

(d) A fine pursuant to this Section shall be assessed against the Lot which the violator occupied or was visiting at the time of the violation, whether or not the violator is an Owner of that Lot, and shall be collectible in the same manner as any other assessment, including by the Association's lien rights as provided in this Declaration and the Bylaws. Nothing herein shall be construed to interfere with any right that an Owner may have to obtain from a violator occupying or visiting such Owner's Lot payment of the amount of any fine(s) assessed against that Lot.

(e) Nothing herein shall be construed as a prohibition of or limitation on the right of the Association to pursue any other means of enforcement of the provisions of this Declaration, the Bylaws, the Certificate of Incorporation, or the rules and regulations of the Association, including legal action for damages or any equitable action, including injunctive relief.

Section 12.7 Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.



Section 12.8 Duration and Amendment. All covenants, conditions and restrictions set forth in this Declaration shall run with and bind the land and shall be perpetual unless expressly stated otherwise in this Declaration. In addition to the provisions of Section 12.9, this Declaration may be amended by an instrument signed by, or the affirmative vote of, Members entitled to cast not less than sixty-seven (67%) of the total votes of all Members and shall require the prior written consent of the Declarant (for so long as the Declarant shall own any portion of the Property or Project). To be effective, any such amendment must be recorded in the Recorder's Office.

Section 12.9 Changes and Modifications by Declarant. Declarant shall have the right, for a period of fifty (50) years following the date of recordation of this Declaration, without the consent or joinder of the Members, any Mortgagee or any other party, to (a) modify, amend, or otherwise change any of the provisions of this Declaration, as Declarant may deem necessary or desirable, or (b) if such amendments are:

- (a) required by federal, state, county or local laws;
- (b) required by any Mortgagee of improved Lots and dwelling houses in the Property or Project;
- (c) required by any title insurance company issuing title insurance to Owners or Mortgagees of same;
- (d) required by the Federal Housing Administration, Department of Housing and Urban Development, Veterans Administration, Farmers Home Administration, Delaware State Housing Authority, Federal National Mortgage Association, Federal Home Loan Mortgage Service Corporation, GNMA or by any like public or private institution acquiring, guaranteeing or insuring mortgages or providing any type of financial assistance with respect to dwelling units in the Property or Project; or
- (e) required to correct errors or technical deficiencies or imperfections or to clarify ambiguities.

Notwithstanding the foregoing, neither Declarant nor the Owners shall modify or change the requirement that all Lots be used for residential purposes, unless such decision is made by all of the Owners. Declarant also reserves the right to waive or modify any requirement as to any individual Lot or the Common Areas in general necessary to avoid any hardship resulting from unintentional noncompliance with this Declaration. Declarant also reserves the right to waive or modify any requirement as to any individual Lot in general necessary to avoid hardship resulting from unintentional noncompliance with this Declaration.

Section 12.10 Casualty Losses. In the event of substantial damage or destruction to any of the Common Areas, the Board shall give prompt written notice of such damage or destruction to the Eligible Mortgage Holders who hold First Mortgages of record on the Lots. No provision of this Declaration, the Certificate of Incorporation, or the Bylaws shall entitle any Member to any priority over the holder of any First Mortgage of record on his Lot with respect to the distribution to such Member of any insurance proceeds paid or payable on account of any damage or destruction of any of the Common Areas.

Section 12.11 Condemnation or Eminent Domain. In the event any part of the Common Areas are made the subject matter of any condemnation or eminent domain proceeding, or are otherwise sought to be acquired by any condemning authority, then the Board shall give prompt written notice of any such proceeding or proposed acquisition to the Eligible Mortgage Holders who hold First Mortgages of record on the Lots. No provision of this Declaration, the Certificate of Incorporation, or the Bylaws shall entitle any Member to any priority over the holder of any First Mortgage of record on his Lot with respect to the distribution to such Member of the proceeds of any condemnation or settlement relating to a taking of any portion of the Common Areas.

Section 12.12 Notice to Eligible Mortgage Holders; Deemed Consent.

(a) The Association shall give prompt written notice to each Eligible Mortgage Holder of (and each Owner hereby consents to, and authorizes such notice):

(1) Any condemnation loss or any casualty loss which affects a material portion of the Common Areas or any Lot subject to a First Mortgage or security interest held, insured, or guaranteed by such Eligible Mortgage Holder.

(2) Any delinquency in the payment of Common Expense assessments or charges owed by an Owner whose Lot is subject to a First Mortgage or security interest held, insured, or guaranteed, by such Eligible Mortgage Holder which remains uncured for a period of sixty (60) days.

(3) Any lapse, cancellation, or material modification of any insurance policy or fidelity coverage maintained by the Association.

(4) Any other matter with respect to which Eligible Mortgage Holders are entitled to notice or to give their consent as provided in this Declaration.

(b) To be entitled to receive notice of the matters set forth in this Section, the Eligible Mortgage Holder must send a written request to the Association, stating both its name and address and the Lot or address of the Lot on which it has (or insures or guarantees) the mortgage. Any Eligible Mortgage Holder or Mortgagee who is notified of any matter for which it is entitled to notice as provided herein (such notice to be delivered by certified or registered mail, return receipt requested), and which fails to respond within sixty (60) days of receipt of such notice shall be deemed to have consented, if applicable, to the matter of which the Eligible Mortgage Holder or Mortgagee was provided notice.

Section 12.13 Declarant's Power of Attorney. Notwithstanding any provision to the contrary contained in this Declaration or the Association Documents, the Declarant hereby reserves for itself, its successors, transferees and assigns, for a period of fifty (50) years from the date the first Lot is conveyed to an Owner, or until it conveys title to all of the Lots whichever occurs first, the right to execute on behalf of the Association and all contract purchasers, Owners, Members, Eligible Mortgage Holders, Mortgagees, and other lien holders or parties claiming a legal or equitable interest in any portion of the Property or Project, including without limitations, any Lot or the Common Areas, any agreements, documents, amendments or supplements to this Declaration and the Association Documents which may be required by FNMA, FHA, VA,

FHLMC, GNMA, Sussex County, Delaware, any governmental or quasi-governmental agency or authority having regulatory jurisdiction over the Association, Common Areas, Property, Project, any Lot, any public or private utility company designated by the Declarant, any institutional lender or title insurance company designated by the Declarant, or as may be required to comply with the federal Fair Housing Act, or to comply with other applicable Laws or to correct any typographical or clerical errors or correct any ambiguity in the text of this Declaration; together with any and all other documents, instruments or agreements, including by way of illustration and not limitation; deeds, transfer tax affidavits, agreements, closing statements, with respect to any of the rights, title and authorizations, and acts reserved by or provided to the Declarant under this Declaration; or as otherwise expressly reserved by or granted to Declarant hereunder.

(a) By acceptance of a deed to any Lot or by the acceptance of any other legal or equitable interest in any portion of the Property or Project, including without limitations, the Lots, or Common Areas, each and every such contract purchaser, Owner, Member, Eligible Mortgage Holder, Mortgagee or other lien holder or party having a legal or equitable interest in any portion of the Property or Project, including without limitations, any Lot or the Common Areas does automatically and irrevocably name, constitute, appoint and confirm the Declarant, its successors, transferees and assigns, as attorney-in-fact for the purpose of executing any and all such agreement, document, amendment, supplement and other instrument(s) necessary to effect the foregoing rights, duties and obligations subject to the limitations set forth herein.

(b) No such agreement, document, amendment, supplement or other instrument which adversely affects the value of a Lot, or substantially increases the financial obligations of an Owner, or reserves any additional or special privileges for the Declarant not previously reserved, shall be made without the prior written consent of the affected Owner(s) and all Mortgagees of any Mortgage encumbering the Lots owned by the affected Owner(s). Any such agreement, document, amendment, supplement or instrument which adversely affects the priority or validity of any mortgage which encumbers any Lot or the Common Areas shall not be made without the prior written consent of all such Mortgagees.

(c) The power of attorney aforesaid is expressly declared and acknowledged to be coupled with an interest in the subject matter hereof and the same shall run with the title to the Property and Project, including, without limitations, each Lot and the Common Areas, shall be binding upon the heirs, personal representatives, successors, transferees and assigns of any of the foregoing parties. Further, said power of attorney shall not be affected by the death or disability of any principal and is intended to deliver all right, title and interest of the principal in and to said power of attorney. Said power of attorney shall be vested in the Declarant, its successors, transferees and assigns for a period of fifty (50) years from the date the first Lot is conveyed to an Owner, or until Declarant conveys title to the last Lot, whichever occurs first. Each Owner covenants and agrees to execute and deliver to Declarant an irrevocable power of attorney coupled with an interest in form and content consistent with this Section to be recorded in the Recorder's Office at the Owner's sole cost which shall run with and bind the Lot for a period of fifty (50) years as specified above.

(d) To accomplish the foregoing, each Owner covenants and agrees, by acceptance of a deed to its Lot from the Declarant, to execute, acknowledge and deliver an Irrevocable Power of Attorney Coupled with an Interest substantially in the form and content of

Schedule "B" attached hereto and made a part hereof.

Section 12.14 Successors of Declarant.

(a) Any and all rights, reservations, easements, interests, exemptions, privileges and powers of Declarant hereunder, or any part of them, may be assigned and transferred (exclusively or non-exclusively) by Declarant by an instrument, in writing, without notice to the Association, any Owner, any Member, or any other Person to one or more successors or assigns (hereinafter referred to as an "Assignee").

(b) Each Owner of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed is deemed to covenant and agree to the following:

(1) Neither Participating Builder nor Declarant shall assume or be responsible for any liabilities, warranties or obligations which have or may accrue to the other, including, but not limited to, any liabilities, warranties or obligations concerning any Lots or Common Areas, any buildings or other improvements constructed, or to be constructed, by or on behalf of the other, nor shall such Lots or Common Areas or any buildings or other improvements be deemed to be part of any contract, or to constitute the basis of the bargain, between Declarant and any Lot purchaser;

(2) No Participating Builder makes any representation or warranty whatsoever, whether express or implied, with respect to any Lots, Common Areas, 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 Lot Owner expressly waives any and all claims against each Participating Builder for, any liabilities, warranties or obligations which have or may accrue to Declarant or any Assignee under the Declaration or pursuant to law in connection with Declarant's or any Assignee's status as Declarant under this Declaration, or in connection with Declarant's or any Assignee's development of all or any real property subjected, or to be subjected, to this Declaration, including, but not limited to, any liabilities, warranties or obligations concerning any Lots or the Common Areas, or dwelling units or other improvements constructed, or to be constructed, by or on behalf of Declarant or any Assignee;

(3) Declarant makes no representation or warranty whatsoever, whether express or implied, with respect to any Lots or Common Areas, or Facilities, buildings or other improvements constructed or sold by parties other than Declarant, nor has Declarant 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. Declarant shall not assume or be responsible for, and each Lot Owner expressly waives any and all claims against Declarant for, any liabilities, warranties or obligations which have or may accrue to any Participating Builder or any Assignee under this Declaration or pursuant to law in connection with such Participating Builder's or any Assignee's status as Declarant under this Declaration, or in connection with such Participating Builder's or any Assignee's development of all or any real property subjected, or to be subjected, to this Declaration, including, but not limited to, any

liabilities, warranties or obligations concerning any Lots, or the Common Areas, or dwelling units or other improvements constructed, or to be constructed, by or on behalf of such Participating Builder or any Assignee.

Section 12.15 Arbitration.

(a) Notwithstanding anything contained in this Declaration, the Bylaws, or the Certificate of Incorporation to the contrary, if, after good faith efforts to negotiate a satisfactory solution have failed, any dispute that cannot be resolved between (i) Declarant (including any of Declarant's employees, agents, or contractors) and (ii) the Association or any Owner, will be submitted to arbitration in accordance with this Section, unless an alternative dispute resolution procedure is agreed to by the parties to the dispute. As used in this Section 12.15(a), the term "dispute" includes any controversy or claim, including any claim based on contract, tort, or statute, arising out of or relating to (1) the rights or obligations of such parties under this Declaration, the Bylaws, or Certificate of Incorporation of the Association, or any rules promulgated by the Board or the ARC or (2) the design, construction, or warranty of the Common Areas including the Common Facilities. Upon the request of a party to a dispute, the issue shall be adjudicated in accordance with the provisions of the Arbitration Act and the rules of the American Arbitration Association applicable to such disputes, to the extent such rules are not inconsistent with such Arbitration Act.

(b) Any party may commence the arbitration process called for in this Section by filing a written demand for arbitration in accordance with the Arbitration Act, with a copy to the other party. The arbitration shall be conducted at a location determined by the arbitrator in Delaware and will be administered in accordance with the provisions of the Arbitration Act in effect at the time of filing of the demand for arbitration, or such other rules and procedures that are agreed to by all parties. The parties covenant that they will participate in the arbitration in good faith and that they will share equally in the fees and expenses of the arbitrator.

(c) The arbitrator shall determine which is the prevailing party and shall include in the award payment by the non-prevailing party of the prevailing party's reasonable attorneys' fees and expenses. The provisions of this Section and any judgment rendered by the arbitrator may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the party against whom enforcement is ordered.

(d) **EVERY OWNER, MEMBER, MORTGAGEE, AND ALL OTHER PARTIES WITH AN INTEREST IN ANY PORTION OF THE PROPERTY OR PROJECT COVENANT AND AGREE TO HAVE ALL DISPUTES DECIDED BY NEUTRAL ARBITRATION IN ACCORDANCE WITH THIS SECTION AND RELINQUISH ANY RIGHTS THAT MAY BE AVAILABLE TO HAVE SUCH MATTERS LITIGATED IN A COURT OR BY JURY TRIAL, INCLUDING JUDICIAL RIGHTS TO DISCOVERY AND APPEAL. THE REFUSAL BY A PARTY TO SUBMIT TO ARBITRATION IN ACCORDANCE WITH THIS SECTION MAY RESULT IN THE PARTY BEING COMPELLED TO ARBITRATE UNDER FEDERAL OR STATE LAW.**

Section 12.16 No Dedication to Public Use. Nothing herein contained shall be

construed as a dedication to public use or as an acceptance for maintenance of any portion of the Common Areas by any public or municipal agency, authority, or utility and no public or municipal agency, authority or utility shall have any responsibility or liability for the maintenance or operation of any portion of the Common Areas.

Section 12.17 Declarant Reserved Rights. No amendment to this Declaration, the Bylaws, or the Certificate of Incorporation may remove, revoke, or modify any right, reservation or privilege of Declarant without the prior written consent of Declarant or any successors or assignees of Declarant and no amendment to this Declaration, the Bylaws or the Certificate of Incorporation may remove, revoke, or modify any right, reservation or privilege of a Participating Builder without the prior written consent of such Participating Builder.

Section 12.18 Perpetuities. If any of the covenants, conditions, easements, restrictions, or other provisions of this Declaration shall be unlawfully void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of John F. Kennedy, the thirty-fifth President of the United States of America.

Section 12.19 Captions and Gender. The captions contained in this Declaration are for convenience only and are not a part of this Declaration and are not intended in any way to limit or enlarge the terms and provisions of this Declaration or to aid in the construction or interpretation of this Declaration. Whenever in this Declaration the context so requires, the singular number shall include the plural and the converse, and the use of any gender shall be deemed to include all genders.

Section 12.20 Limitations on Owners', Association's, and Other Persons' Easements, Rights, Powers, and Privileges. Notwithstanding anything contained in this Declaration, the Certificate of Incorporation, or the Bylaws to the contrary, the use, enjoyment, or exercise by any Owner, the Association, or any other Person of any easement, right, power, or privilege granted or reserved to such Owner, the Association, or such other Person under this Declaration shall not interfere with, alter, modify, amend, or change in any manner or nature whatsoever any easement, right, power, or privilege granted or reserved to Declarant under this Declaration without the prior written consent of Declarant.

Section 12.21 Declarant's Exercise of Discretion and Judgment. Notwithstanding anything contained in this Declaration, the Certificate of Incorporation, or the Bylaws to the contrary, the exercise by Declarant of any discretion or judgment under this Declaration or the granting or withholding of any consents or approvals by Declarant under this Declaration, shall be exercised, granted or withheld by Declarant, in Declarant's sole subjective and absolute discretion and judgment.

Section 12.22 Appurtenant Easement and Licenses §81-205(a)(13) of the Act. In accordance with §81-205(a)(13) of the Act, the recording data for recorded easements and licenses appurtenant to or included in the Property or Project or to which any portion of the Property or Project is or may become subject by virtue of a reservation in this Declaration is contained in **Schedule C** attached hereto.

Section 12.23 Exemptions and Limitations. Notwithstanding anything contained

in this Declaration to the contrary, none of the restrictions and provisions set forth in this Declaration, including Articles 7 and 8 shall be applicable (a) to any portion of the Property or Project owned by Declarant or any Participating Builder, (b) to the activities of Declarant or any Participating Builder, and their respective officers, employees, agents, successors and assigns, in their development, marketing, leasing and sales activities within the Property and Project, or (c) to the Association, its officers, employees and agents, in connection with the proper maintenance, repair, replacement and improvement of the Common Areas. Nothing contained in this Declaration shall be construed to prohibit Declarant or any Participating Builder from using any portion of the Property or the Project, or any improvements thereon, except for any Lots not owned by Declarant or any such Participating Builder, for promotional or display purposes, as "model homes," as sales or construction offices, or the like.

Section 12.24 Expiration of Developer Rights. In accordance with §81-307(c) of the Act, if all development rights reserved or granted to Declarant have expired with respect to any real estate, such real estate shall become part of the Common Areas and Declarant shall no longer be liable for any fees, costs or expenses associated with, or incurred in connection with, such real estate.

Section 12.25 Specific Provisions of the Act.

(a) In accordance with §81-205(a)(9) of the Act, if any development rights contained herein may be exercised with respect to different parcels of real estate at different times: (i) no assurances are made in those regards, and (ii), if any development right contained herein is exercised in any portion of the Property subject to that development right, that development right may not be exercised in all or in any other portion of the remainder of that portion of the Property.

(b) In accordance with §81-205(a)(8) of the Act, Declarant shall have fifty (50) years from the date of recordation of this Declaration to exercise any development rights or other special declarant rights reserved by Declarant, including any such rights reserved by Declarant under this Declaration, the Bylaws, or the Certificate of Incorporation.

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IN WITNESS WHEREOF, Declarant has caused its seal to be affixed hereto and these presents to be signed by its Manager effective as of the Effective Date.

**SEALED AND DELIVERED  
IN THE PRESENCE OF**

**GULFSTREAM DEVELOPMENT, LLC,**  
a Delaware limited liability company

\_\_\_\_\_

By: \_\_\_\_\_ (SEAL)  
Name: Robert J. Harris, Jr.  
Title: Manager

STATE OF DELAWARE )  
 ) SS.  
COUNTY OF SUSSEX )

BE IT REMEMBERED, that on the \_\_\_\_ day of \_\_\_\_\_, 2021, personally came before me, the Subscriber, a Notary Public for the State of Delaware, Robert J. Harris, Jr., as Manager of Gulfstream Development, LLC, a Delaware limited liability company, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be their act and deed and the act and deed of such company.

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

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

My Commission Expires: \_\_\_\_\_



**EXHIBIT A**

LEGAL DESCRIPTION 5-33 19.00 52.00

**ALL** that piece or parcel of land, hereinafter described, situate, lying and being

LEGAL DESCRIPTION 5-33 19.00 56.05

DRAFT

**SCHEDULE A**

DESIGN GUIDELINES AND PROCEDURES

**BAY KNOLLS DESIGN GUIDELINES**

**As of**

**\_\_\_\_\_, 2021**

DRAFT

BAY KNOLLS  
DESIGN  
GUIDELINES

ARTICLE I - INTRODUCTION

The Design Guidelines and project philosophy as set forth in this document are meant to establish a level of aesthetics which will benefit the value of the Lots, and therefore the entire community. These requirements will be the basis of the review process.

ARTICLE II - PHILOSOPHY OF DEVELOPMENT

Bay Knolls is a community surrounded by residential communities and privately owned lands devoted to residential and agricultural uses, including farmland, woodlands, and natural wetlands.

It is a stated goal of this community to maintain this natural condition wherever possible, to prevent trespassing on the surrounding lands and to build units in a way that results in a cohesive character with a strong sense of identity. Each exterior improvement to a home constructed on a Lot should recognize its important role of reinforcing the established character of the community. The intent of these requirements is to establish design standards that enhance and compliment the natural setting and create a community that will increase in value over time and that promotes an unmatched style of living. It is recommended that persons interested in making exterior improvements should obtain the services of an architect, landscape architect, engineer, or other recognized professional design consultant.

### ARTICLE III – EXTERIOR IMPROVEMENTS

Owners will have the ability to install exterior improvements on the rear of a home constructed on a Lot, subject to the requirements of the Declaration, and the guidelines outlined below for each specific exterior improvement type.

#### Section 1.1. PATIOS AND DECKS:

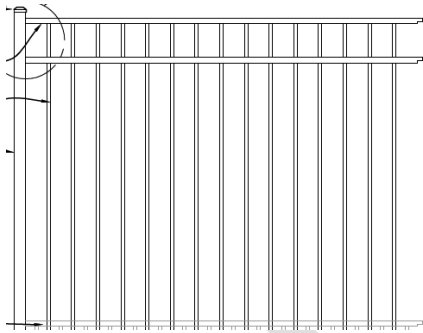
All patios and decks must be approved by the ARC, subject to the procedures outlined in the Declaration for exterior improvements. Owners must consider the following:

1. Patios and decks are an extension of the home which can impact its exterior appearance and may affect the privacy of adjacent homes – this should be considered when designing your paver patio.
2. Any drainage, landscaping, or irrigation issues (inclusive of relocation) which might result from the construction of a patio or deck must be remedied at the Owner's cost, in accordance with the Association rules as outlined in the Declaration and Bylaws.
3. Patios and decks must be located only in the rear yard of the Lot.
4. Patios and decks should be of a scale which is compatible with the home on the Lot and the adjacent homes and environmental surroundings.
5. Patios shall be of the same materials and colors as offered at the time of the initial purchase of the home on the Lot. Those materials and colors are outlined below, and submissions should not deviate from the same. Patios may be constructed of the following materials and colors:
  - a. Styles: Colonial Cobble, Stone Ridge, Natural Cleft Flagstone
  - b. Colors: Adobe Blend, Charcoal, Golden Brown Blend, Granite City Blend, Westchester Blend, Chesapeake, Bluetone and Mocha

- c. Decks may be constructed of the following materials and colors: Material:  
FiberOn Engineered Decking
- d. Colors: Gray Birch or Chestnut

Section 1.2. FENCES:

Fencing is only permitted in the rear yard of a Lot, subject to the restrictions outlined in the Declaration for the same. Any fence MUST be black aluminum, four feet in height, with three rails, as shown in the picture below. All fences must have a gate, minimum five feet (5') in width, for landscaper access.



Section 1.3. EXTERIOR COLORS:

Exterior colors shall not deviate from the colors offered by the builder on initial sales. Additionally, all board and batten siding must either be white, or match the color of the siding. Painted front doors must be white, black, or match the shutter color selection (stained wood doors are also allowed).

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**SCHEDULE C**

EASEMENT AGREEMENTS [WILL NEED COPY OF THE SEARCH]

1. Subject to the restrictions, easements, right of ways, notes and other matters as shown on the Record Plan, prepared by \_\_\_\_\_, dated \_\_\_\_\_, filed for record in the Office of the Recorder of Deeds, in and for Sussex County, at Georgetown, Delaware in Plot Book \_\_\_\_, page \_\_\_\_, but omitting any covenant or restriction based on race, color, religion, sex, handicap, familial status or national origin unless and only to the extent that said covenant (a) is exempt under Chapter 42, Sections 3604 and 3607 of the United States Code or (b) relates to handicap but does not discriminate against handicapped persons.
2. Easement Agreement by and between \_\_\_\_\_
3. Right of way granted unto \_\_\_\_\_.
4. Deed of Easement by and between \_\_\_\_\_.

DRAFT

<b>Preliminary Land Use Service (PLUS)</b> Delaware State Planning Coordination 122 William Penn Street • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-5661		
Purpose of PLUS - -The PLUS process is intended to provide consolidated State comments regarding the proposed project. The Applicant is encouraged to submit the application during the concept stages of planning as this process often offers recommendations for changes to the plan. The application should be submitted after the pre-application meeting with the local jurisdiction but before formal application is made.		
Please complete this PLUS application in its entirety. All questions <u>must</u> be answered. If a question is unknown at this time or not applicable, please explain. Unanswered questions on this form could lead to delays in scheduling your review. This form will enable the state staff to review the project <u>before</u> the scheduled meeting and to have beneficial information available for the applicant and/or developer at the time of review. If you need assistance or clarification, please call the State Planning Office at (302) 739-3090.		
PLUS Number (to be completed by OSPC): _____ Investment Level Per Strategies for State Policies and Spending (to be determined by OSPC): _____		
1. Project Title/Name:		
2. Location ( please be specific):		
3. Parcel Identification #:	4. County or Local Jurisdiction Name: where project is located:	
5. If contiguous to a municipality, are you seeking annexation:		
6. Owner's Name:		
Address:		
City:	State:	Zip:
Phone:	Fax:	Email:
7. Equitable Owner/Developer (This Person is required to attend the PLUS meeting):		
Address:		
City:	State:	Zip:
Phone:	Fax:	Email:
8. Project Designer/Engineer:		
Address:		
City:	State:	Zip:
Phone:	Fax:	Email:
9. Please Designate a Contact Person, including phone number, for this Project:		





25. Please estimate How many vehicle trips will this project generate on an average weekday? A trip is a vehicle entering or exiting. If traffic is seasonal, assume peak season: 424  
What percentage of those trips will be trucks, excluding vans and pick-up trucks?

26. Will the project connect to state maintained roads?  Yes  No

27. Please list any locations where this project physically could be connected to existing or future development on adjacent lands and indicate your willingness to discuss making these connections.

28. Are there existing sidewalks?  Yes  No; bike paths  Yes  No  
Are there proposed sidewalks?  Yes  No; bike paths  Yes   
Is there an opportunity to connect to a larger bike, pedestrian, or transit network?  Yes  No

29. To your knowledge, is this site in the vicinity of any known historic/cultural resources or sites?  Yes  No

Has this site been evaluated for historic and/or cultural resources?  Yes  No

Archaeologist has been hired for review

Would you be open to a site evaluation by the State Historic Preservation Office?  Yes  No

30. To promote an accurate review of your parcel's features, would you permit a State agency site visit?  Yes  No  
Person to contact to arrange visit: \_\_\_\_\_ phone number: \_\_\_\_\_

31. Are any federal permits, licensing, or funding anticipated?  Yes  No

I hereby certify that the information on this application is complete, true and correct, to the best of my knowledge.

\_\_\_\_\_  
Signature of property owner

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Person completing form  
(If different than property owner)

\_\_\_\_\_  
Date

**Signed application must be received before application is scheduled for PLUS review.**

This form should be returned to the Office of State Planning electronically at PLUS@state.de.us along with an electronic copy of any site plans and development plans for this site. Site Plans, drawings, and location maps should be submitted as image files (JPEG, GIF, TIF, etc.) or as PDF files. GIS data sets and CAD drawings may also be submitted. If electronic copy of the plan is not available, contact the Office of State Planning at (302) 739-3090 for further instructions. A signed copy should be forwarded to the Office of State Planning, 122 William Penn Street, Dover, DE 19901. Thank you for this input. Your request will be researched thoroughly. Please be sure to note the contact person so we may schedule your request in a timely manner.





# Preliminary Land Use Service (PLUS)

Lands of Fennwick Commons  
2017-01-02

## Legend

- PLUS Project Areas
- 2015 State Strategies
  - Level 1
  - Level 2
  - Level 3
  - Level 4
- Out of Play

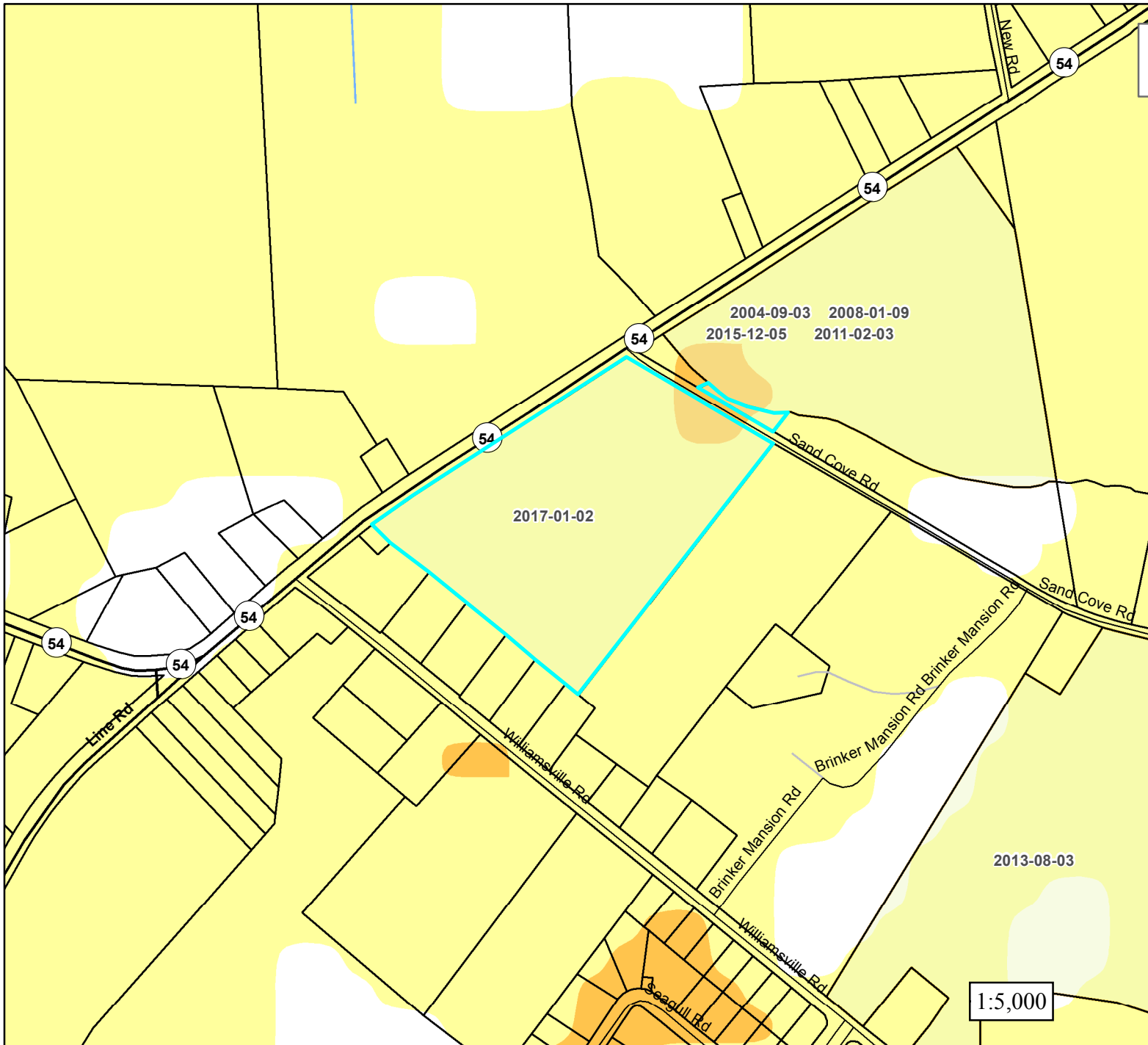
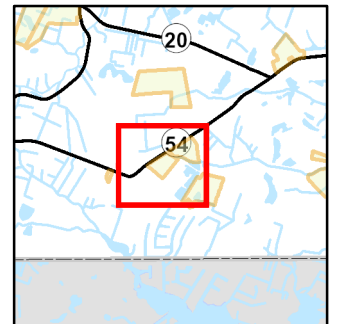
2004-09-03 2008-01-09  
2015-12-05 2011-02-03

2017-01-02

2013-08-03

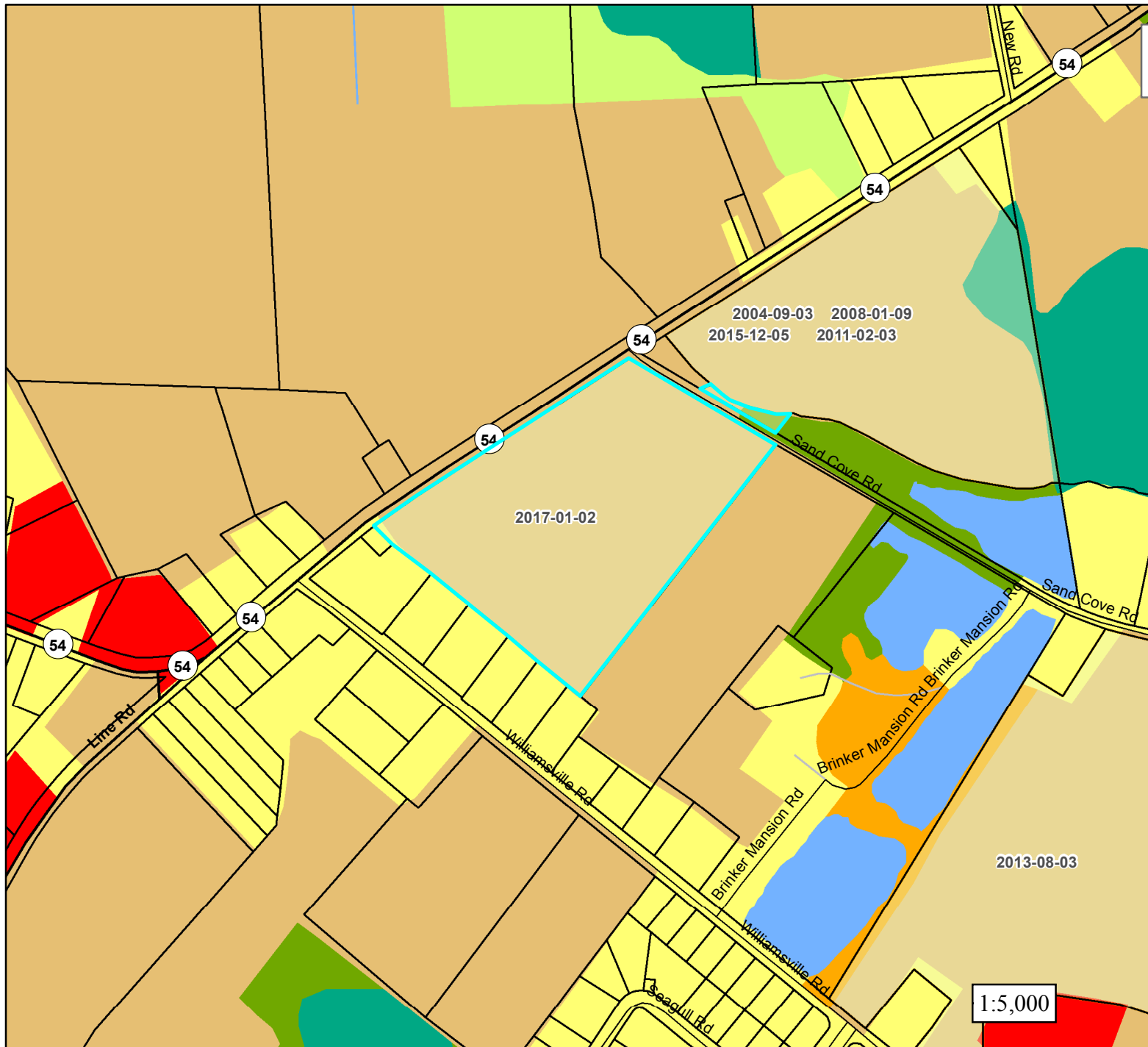
1:5,000

## Location Map



# Preliminary Land Use Service (PLUS)

**Lands of Fennwick Commons**  
2017-01-02

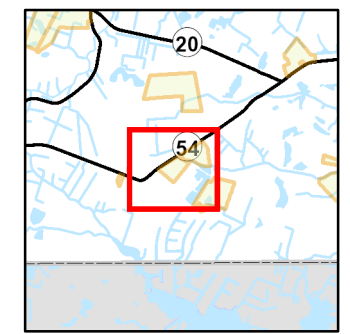


**Legend**

- PLUS Project Areas
- 2012 Land Use LULC Category**
  - 110
  - Single Family Dwellings
  - Multi-Family Dwellings
  - Mobile Home Parks/Courts
  - Commercial
  - Industrial
  - Transportation/Communication/Utilities
  - Mixed Urban/Built-up
  - Institutional/Governmental
  - Recreational
  - Farms, Pasture, Cropland
  - Confined Animal Feeding Operations/Feedlots/Holding
  - Rangeland
  - Orchards/Nurseries/Horticulture
  - Deciduous Forest
  - Evergreen Forest
  - Mixed Forest
  - Shrub/Brush Rangeland
  - Clear-cut
  - Man-made Reservoirs and Impoundments
  - Marinas/Port Facilities/Docks
  - Open Water
  - Emergent Wetlands - Tidal and Non-tidal
  - Forested Wetlands - Tidal and Non-tidal
  - Scrub/Shrub Wetlands - Tidal and Non-tidal
  - Sandy Areas and Shoreline
  - Extraction and Transitional

1:5,000

## Location Map



# Preliminary Land Use Service (PLUS)

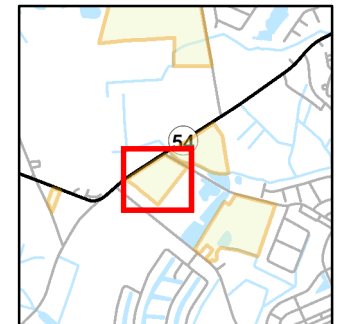


Lands of Fennwick Commons  
2017-01-02

## Legend

PLUS Project Areas

## Location Map





**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF STATE PLANNING COORDINATION**

January 22, 2017

Mr. Kenneth R. Christienbury, P.E.  
Axiom Engineering, LLC  
18 Chestnut Street  
Georgetown, DE 19947

RE: PLUS review 2017-01-02; Lands of Fenwick Commons, LLC

Dear Kenneth:

Thank you for meeting with State agency planners on January 25, 2017 to discuss the proposed plans for the Lands of Fenwick Commons, LLC project. According to the information received you are seeking review of a 62 unit subdivision on 13.35 acres along Sand Cove road at the intersection of Sand Cove Road and Route 54 in Sussex County.

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

**Strategies for State Policies and Spending**

This project is located in Investment Level 2 and 3 according to the *Strategies for State Policies and Spending*. Investment Level 2 reflects areas where growth is anticipated by local, county, and State plans in the near term future. Investment Level 3 reflects areas where growth is anticipated by local, county, and state plans in the longer term future, or areas that may have environmental or other constraints to development. State investments may support future growth in these areas, but please be advised that the State has other priorities for the near future. We encourage you to design the site with respect for the environmental features which are present.

## **Code Requirements/Agency Permitting Requirements**

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

- The site access on Sand Cove Road (Sussex Road 394) will need to 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>.
- 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).
- Section P.5 of the Manual addresses fees that are assessed for the review of development proposals. DelDOT anticipates collecting the Initial Stage Fee when the record plan is submitted for review and the Construction Stage Fee when construction plans are submitted for review.
- 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. We calculate that the 62 semi-detached houses proposed would generate 424 vehicle trip ends per day, consistent with the PLUS application, and 41 vehicle trip ends per hour during the weekday evening peak hour. Therefore a TIS is not required.
- While the proposed development would not warrant a TIS, it would generate more than 200 vehicle trip ends per day and therefore, per Section 2.3.2 of the Manual, DelDOT could require a Traffic Operational Analysis (TOA) if we determine in the plan review process that a TOA is needed to address a concern about the proposed site entrance. Because all access will be by way of Sand Cove Road, the proposed development may create a need for turning lanes at the intersection of Route 54 and Sand Cove Road. As necessary, DelDOT will require a TOA to more rigorously examine the need for those lanes. Per Section 2.5.2 of the Development Coordination Manual, DelDOT will require off-site improvements along the development frontage on Sand Cove Road. Specifically, The Lands of Fenwick Commons shall provide a right-of-way dedication to allow for future improvements by others.
- Section 3.2.4.1 of the Manual addresses the placement of right-of-way monuments (markers) along subdivision street rights-of-way. Monuments along the proposed



privately maintained subdivision streets are recommended to be shown on the plan and provided in the field in accordance with this section.

- Section 3.2.4.2 of the Manual addresses the placement of right-of-way monuments (markers) along the roads on which a property fronts, in this case Sand Cove Road and Lighthouse Road. Monuments sufficient to re-establish the permanent rights-of-way after the dedication discussed below should be shown on the plan and provided in the field in accordance with this section.
- 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 Sand Cove Road and Lighthouse Road. By this regulation, this dedication is to provide a minimum of 40 feet of right-of-way from the physical centerline on Lighthouse Road and 30 feet of right-of-way from the physical centerline on Sand Cove 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."**
- In accordance with Section 3.2.5.1.1 of the Manual, if this development is proposing a neighborhood sign/structure, then a permanent easement shall be established at the entrance. The easement shall be located outside of any existing and/or proposed right-of-way. It will also need to be verified that the sign/structure does not pose a sight distance and/or safety hazard.
- 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 both Sand Cove Road and Lighthouse 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."**
- In accordance with Section 3.4 of the Manual, a record plan shall be prepared prior to issuing "Letter of No Objection". The following information will be required for the "Letter of No Objection" review:
  - Initial Stage Fee Calculation Form
  - Initial Stage Review Fee
  - Gate-Keeping Checklist – Site Plan
  - Design Checklist - Record Plan
  - Sight Distance Spreadsheet
  - Owners and Engineers' name and e-mail address
  - Record Plan
  - Conceptual Entrance Plan
  - Submission of the Area-Wide Study Fee (If applicable)

- Referring to Section 3.4.2.1 of the Manual, the following items, among other things, are required on the Record Plan:
  - A Traffic Generation Diagram. See Figure 3.4.2-a for the required format and content.
  - All adjacent existing features are required to be shown in accordance with Figure 3.4.2-b.
  - Notes identifying the type of off-site improvements, agreements (signal, letter) contributions and when the off-site improvements are warranted.
- Section 3.5 of the Manual provides DelDOT's requirements with regard to connectivity. The requirements in Sections 3.5.1 through 3.5.3 shall be followed for all development projects having access to state roads or proposing DelDOT maintained public road for subdivisions. Private or municipal streets should follow the local land use agency's requirements for connectivity.
- As per the Delaware Strategies for State Policies and Spending, this development is 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 an existing facility. If the project does not abut 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. The Lands of Fenwick Commons shall include a 10' Shared-Use Path (SUP along the Lighthouse Road (SCR 058) and Sand Cove Road (SCR 394) frontages. The path shall include a Type 1 curb ramp at the intersection of Lighthouse Road and Sand Cove Road that will align with the path/ramp being installed on the opposite side by the Melson project. The path shall also provide a crossing south of the proposed entrance on Sand Cove Road and connect to the proposed SUP being installed by the Melson project.
- Consistent with Section 3.5.5 of the Manual, any existing or proposed transit stops required by DelDOT or the Delaware Transit Corporation shall be shown on the Record Plan with applicable bicycle and pedestrian connectivity. There are no existing or proposed DART services in this area. Thus, the Lands of Fenwick Commons will not need to include any transit stops.
- 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 rights-of-way along Sand Cove Road and Lighthouse Road.
- Referring to Section 4.3 of the Manual, an entrance plan shall be prepared prior to issuing entrance approval. The following information will be required for Entrance Plan review:

- Construction Stage Fee Calculation Form
  - Construction Review Fee
  - Gate-Keeping Checklist – Entrance Plan
  - Design Checklist - Entrance Plan
  - Auxiliary Lane Spreadsheet
  - Entrance Plan
  - Pipe/Angle Spreadsheet (If applicable)
  - SWM Report and Calculations (If applicable)
- 
- In accordance with Section 5.2.5.6 of the Manual, a separate turning template plan shall be provided to verify vehicles can safely enter and exit the site entrances. As per Section 5.2.3 of the Manual, the entrances shall be designed for the largest vehicle using the entrance.
  
  - In accordance with Section 5.2.9 of the Manual, the Auxiliary Lane Worksheet should be used to determine whether auxiliary lanes are warranted at the site entrances and how long those lanes should be. The Auxiliary Lane Worksheet has been used for the proposed 62 duplex units. It has been determined that a southbound right turn lane on Sand Cove Road into the site will be required. The construction of the right turn lane shall include a 5' wide bike lane between it and the travel lane.
  
  - In accordance with Section 5.4 of the Manual, sight distance triangles are required and shall be established in accordance with American Association of State Highway and Transportation Officials (AASHTO) standards. A spreadsheet has been developed to assist with this task. It can be found at <http://www.deldot.gov/information/business/subdivisions/Intersection-Sight-Distance.xls>.
  
  - In accordance with Section 5.14 of the Manual, all existing utilities must be shown on the plan and a utility relocation plan will be required for any utilities that need to be relocated.
  
  - Because the proposed development would not have State-maintained streets, Section 6.4.3 of the Manual, which pertains to the inspection and acceptance of commercial entrances, applies. Construction inspection responsibilities shall be in accordance with Figure 6.4.3-a. Our preliminary reading of this figure is that Level I inspection will be adequate and DelDOT's South District Public Works Section will be able to provide all necessary inspection services for the entrance construction.
  
  - Section 7.7.2 of the Manual addresses the need to provide 20-foot wide drainage easements for all storm drainage systems, open or closed, that fall outside the existing right-of-way or the drainage/utility easement. In accordance with this section, metes and bounds and total areas need to be shown for any drainage easements. The easements should be shown and noted on the record plan.

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

**Executive Summary**

Upon reviewing the Lands of Fenwick Commons project, DNREC has identified that the proposed project is located on a site with some environmental concerns. Opportunities exist to improve site and building performance while reducing environmental impacts and operation/maintenance costs.

This site is partially within an excellent groundwater recharge potential area for Sussex County. Land uses in excellent groundwater recharge areas can negatively influence the quality and/or quantity of public drinking water. There are also poorly-drained (hydric) soils located within this parcel, which DNREC recommends for the developer to avoid and remove any structures planned there. In addition, the site is within the Assawoman watershed, in which nitrogen, phosphorus and bacteria reductions are managed by the State of Maryland. To maintain surface water quality and drinking water quality, the developer is encouraged to minimize impervious surfaces and use green infrastructure technologies where possible. These efforts will help to meet stormwater management requirements, protect the water supply and minimize impacts to nearby habitat. Additional abundant use of native vegetation and shade trees throughout the landscape will help to absorb carbon dioxide, protect water quality and provide relief to residents on hot days.

This project is adjacent to and partially within the Perch Creek Tax Ditch watershed. This was discussed at the January 25<sup>th</sup> PLUS meeting and DNREC recommends further coordination with the Sussex Conservation District, in addressing the Tax Ditch right-of-way.

The proposed development will result in increased impervious surface and new sources of greenhouse gas emissions. 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, and that employs energy efficient building standards are among key strategies to meet these goals. DNREC encourages the developer to integrate high-performance building attributes, including energy efficiency, durability, along with consideration of alternative energy sources to promote clean sustainable energy and reduce greenhouse gas emissions. This could mean siting buildings to take advantage of solar and geothermal systems, and/or incorporating infrastructure for alternative fuels, including electric vehicle charging stations.

The following pages provide information about code requirements and detailed recommendations associated with this project, from various DNREC Divisions. DNREC strives to be a partner in creating sustainable development that protects environmental features and adds value to the community. The Department has resources and expertise that are available to help make this a reality, often at no expense to the landowner. Contact information for specific offices are listed below or you can contact Michael Tholstrup at (302) 735-3352.

### **Water Quality- TMDLs and Nutrient Management**

- Total Maximum Daily Load (TMDL) reduction requirements for the discharge nutrients, nitrogen and phosphorus, and bacterial pollutants have not been assigned to the State of Delaware's portion of the Assawoman watershed. Since most of this watershed lies within the State of Maryland's jurisdiction, DNREC strongly recommends that the applicant contact the Maryland Department of the Environment, at (410) 537-3939, to ensure compliance with that State's TMDL regulatory requirements.
- 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 requirement, or view additional information here: <http://dda.delaware.gov/nutrients/index.shtml>

### **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.

### **Source Water Protection**

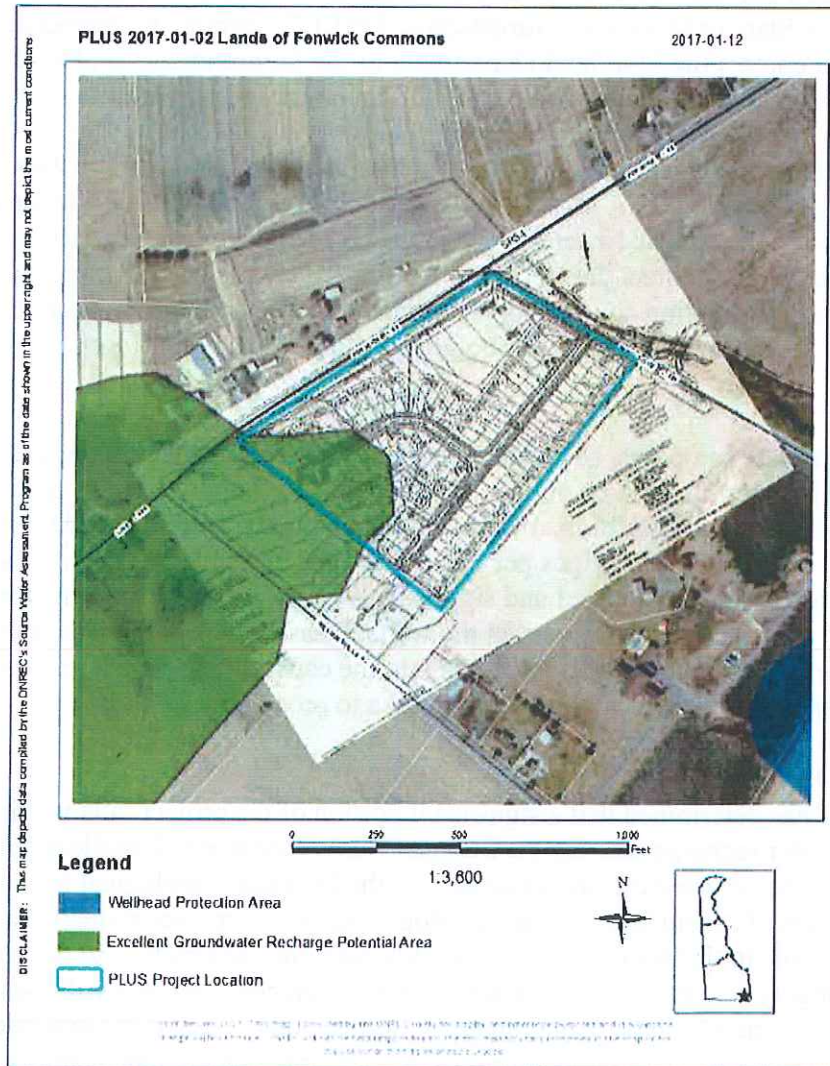
- DNREC has determined that a significant portion of the project falls within an excellent groundwater recharge area for the Sussex County (see map). Excellent Groundwater Recharge Areas are those areas mapped by the Delaware Geological Survey where the first 20 feet of subsurface soils and geologic materials are exceptionally sandy. These soils are able to transmit water very quickly from the land surface to the water table. This map category (excellent) is an indicator of how fast contaminants will move and how much water may become contaminated (Andres, 2004)<sup>1</sup>. Land use activities or impervious cover on excellent groundwater recharge potential areas may adversely affect ground water in these areas.  
In addition, because the excellent groundwater recharge area can readily affect the underlying aquifer if contaminants are spilled or discharged across the area, the storage of

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<sup>1</sup> Andres, A. Scott, 2004, Ground-Water Recharge Potential Mapping in Kent and Sussex Counties, Delaware: Delaware Geological Survey Report of Investigations No. 66, p. 14.

<http://www.udel.edu/dgs/Publications/pubform.html#investigations>

hazardous substances or wastes should not be allowed within the area unless specific approval is obtained from the relevant state, federal, or local program.



### Sediment and Stormwater Program.

- 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 project application meeting to discuss the sediment and erosion control and stormwater management components of the plan as soon as practicable. 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

Sussex Conservation District. Contact Jessica Watson at the Sussex Conservation District at (302) 856-2105 for details regarding submittal requirements and fees.

**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 1141</b> – Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products	<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>
<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>

**Hazardous Waste**

- If it is determined by the Department that there was a release of a hazardous substance on the property in question and the Department requires remediation pursuant to the

Hazardous Substance Cleanup Act, the provisions of 7 Del.C., Chapter 91, Delaware Hazardous Substance Cleanup Act and the Delaware Regulations Governing Hazardous Substance Cleanup shall be followed.

- Should a release or imminent threat of a release of hazardous substances be discovered during the course of development (e.g., contaminated water or soil), construction activities should be discontinued immediately and DNREC should be notified at the 24-hour emergency number (800) 662-8802. SIRS should also be contacted as soon as possible at (302) 395-2600 for further instructions.

#### **Tax Ditch/ROW**

- This parcel is partially within the Perch Creek Tax Ditch watershed. The design appears to bring the whole parcel into the watershed and will therefore require a Court Order Change to the Tax Ditch watershed boundary. Please include Matt Grabowski, of the Drainage Program (302) 855-1930, in the project application meeting with the Sussex Conservation District.

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

- There is a known archaeological site and cemetery (S-2072, 7S-K-220) on this parcel. There is another farm complex (S-2073) right next to the parcel, near Lighthouse Road, and some dwelling and archaeological sites (S-8117, 7S-K-221; S-8118; S-2071, 7S-K-219) across Lighthouse Road, adjacent to the parcel. With this in mind 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 (7 Del. C. 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 know more information pertaining to unmarked human remains or cemeteries, please go to the following websites for additional information:



[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).

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. There should also be sufficient landscaping between the development and the cemetery (S-2072, 7S-K-220), to block adverse noise and visual effects.

- If there is any federal involvement with the project, 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).

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

- **Fire Protection Water Requirements:**
  - Water distribution system capable of delivering at least 500 gpm for 1-hour duration, at 20-psi residual pressure is required. Fire hydrants with 1000 feet spacing on centers.
  - Where a water distribution system is proposed for single family and duplex type dwelling sites, the infrastructure for fire protection water shall be provided, including the size of water mains.
- **Fire Protection Features:**
  - For duplex dwelling buildings, provide a section / detail and the UL design number of the 2-hour fire rated separation wall on the Site plan
- **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 Sand Cove 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.

- Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.
- Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn around.
- The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.
- The local Fire Chief, prior to any submission to our Agency, shall approve in writing the use of gates that limit fire department access into and out of the development or property.

- **Gas Piping and System Information:**

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

- **Residential Sprinklers:**

- 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>

- **Required Notes:**

- Provide a note on the final plans submitted for review to read " All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations"
- Proposed Use
- Square footage of each structure (Total of all Floors)
- National Fire Protection Association (NFPA) Construction Type
- Maximum Height of Buildings (including number of stories)
- Name of Water Provider
- Letter from Water Provider approving the system layout
- Townhouse 2-hr separation wall details shall be shown on site plans
- Provide Road Names, even for County Roads.

### **Recommendations/Additional Information**

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

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

- The applicant should expect a requirement that any substation and/or wastewater facilities will be required to have access from an internal street with no direct access to Sand Cove Road or Lighthouse Road.
- The applicant should expect a requirement that all PLUS and Technical Advisory Committee (TAC) comments be addressed prior to submitting plans for review.
- Please be advised that 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/>
- 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).
- Based on the preliminary site plan provided to DelDOT, our Bicycle and Pedestrian Coordinators have provided the following comments:
  - An internal sidewalk/path connection from Route 54 should be provided. The sidewalk shown on the plan accompanying the PLUS application appears to be acceptable in this regard.
  - Bicycle racks should be provided near the pool house.

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

##### **Soils Assessment**

- Based on soils survey mapping update, Hammonton (HmA), Runclint (RuA), Hurlock (HuA) and Klej (KsA) soil mapping units were mapped in the immediate vicinity of the proposed construction.

- Hammonton and Runclint are moderately and excessively well-drained upland soil mapping units that have moderate limitations for development.
  - Hurlock is a poorly-drained wetland associated (hydric) soil that has severe limitations for development (considered unsuitable) and should be avoided.
  - Klej is a somewhat poorly-drained soil mapping unit that may contain both upland and hydric soil components; therefore, this soil mapping unit is likely to exhibit mixed-levels of suitability (Figure 1).
- DNREC strongly discourages building on hydric soils because they are functionally important source of water storage (functions as a “natural sponge”). The loss of water storage through excavation, filling, or grading of intact native hydric soils increases the probability for more frequent and destructive flooding events. The probability for flooding is further compounded by increases in surface imperviousness as building density in the area increases over time. Moreover, destruction of hydric soils increases the amount pollutant runoff which contributes to lower observed water quality in regional waterbodies and wetlands, since hydric soils sequester and detoxify pollutants. We strongly recommend the applicant contact a licensed (Delaware Class D) soil scientist to make a site specific assessment (i.e., soil survey mapping) of the soils on this site. A list of licensed soil scientists can be obtained from the Ground Water Discharges Branch, at (302) 739-9947.
- A United States Army Corps of Engineers (USACE) approved wetlands delineation is also recommended, before commencing any construction activities. Please note: According to information presented in the PLUS application, a wetlands delineation was conducted but not submitted to DNREC for review. It is not clear if the wetlands delineation was conducted by a qualified soil scientist.

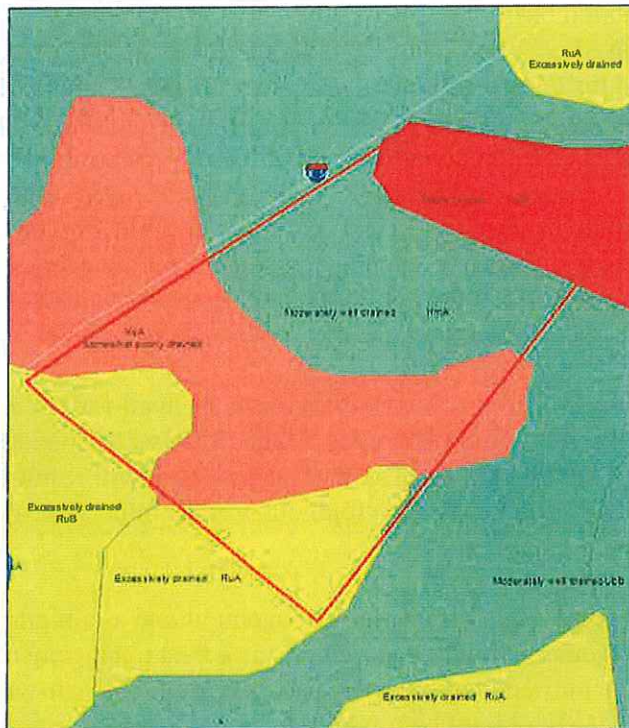


Figure 1: NRCS soil survey mapping update in the immediate vicinity of the proposed construction



#### Additional information on water quality.

- Compliance with TMDLs through the Pollution Control Strategy (PCS): A Pollution Control Strategy to achieve the required TMDL nutrient and bacterial load reduction requirements has not been established for the Assawoman watershed. However, it is strongly encouraged the applicant to take responsibility for reducing nutrient and bacterial pollutants through voluntary implementation of the following recommended BMPs:
  - Preserve and/or maintain as much of the existing forested area as possible. DNREC further suggest additional native tree, shrub and/or native herbaceous vegetation plantings, wherever possible.

- Maintain a vegetated buffer of at least 100 feet from the adjoining wetlands and waterbodies. Based on a review of existing buffer research (Castelle et al.)<sup>2</sup>, an adequately-sized buffer that effectively protects wetlands and streams, in most circumstances, is about 100 feet in width. The Watershed Assessment Section recommends that the applicant maintain/establish a 100-foot buffer, planted in native vegetation, from all waterbodies (including ponds and ditches) and all non-tidal and tidal wetlands (i.e., via a USACE approved field wetlands delineation for non-tidal wetlands and State approved wetlands delineation for tidal wetlands). It is apparent that the applicant intends to maintain/establish a buffer width considerably narrower than the 100-foot buffer width that we recommend.
- Calculate post-construction surface imperviousness in all forms (e.g., rooftops, driveways, parking lots, sidewalks, open-water storm water management structures, ponds, and roads). Omission of any of these will result in an underestimate of the actual post-development surface imperviousness and their associated environmental impacts.
- Employ green-technology storm water management and a rain gardens, in lieu of open-water management ponds or structures, as a best management practice to mitigate or reduce nutrient and bacterial pollutant runoff. Open-water stormwater management ponds should not be used as a means for creating additional water-front acreage to increase the property value of land parcels (based on apparent observation of the conceptual lot layout submitted for this project). As stated previously, green-technology stormwater management is the preferred methodology for dealing with stormwater runoff and should be the methodology used for this project.
- Use pervious paving materials, when compatible or consistent with water quality concerns in designated areas of excellent recharge and/or well-head protection areas via determination by a DNREC hydrogeologist, instead of conventional paving materials (e.g., asphalt or concrete) to help reduce the amount of water and pollutant runoff draining to adjoining streams and wetlands. Pervious pavers are especially recommended where a significant portion of the proposed project area will be designated for parking.
- 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 (e.g., nitrogen and phosphorus) resulting from the conversion of individual or combined land parcels to a new land use; thus providing applicants and governmental entities with quantitative

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<sup>2</sup> Castelle, A. J., A. W. Johnson and C. Conolly. 1994. *Wetland and Stream Buffer Requirements – A Review*. J. Environ. Qual. 23: 878-882.

information about the project’s impact(s) on baseline water quality. We strongly encourage the applicant/developer use this protocol to design and implement the most effective BMPs. Please contact John Martin in the Division of Watershed Stewardship, at (302) 739-9939 for more information on the protocol.

**Additional information on hazardous waste sites.**

- DNREC strongly recommends that the land owner perform environmental due diligence of the property by performing a Phase I Environmental Site Assessment (including a title search to identify environmental covenants) in accordance to Section 9105(c) (2) of the Delaware Hazardous Substance Cleanup Act (HSCA). Failure to do so will prevent a person from being able to qualify for a potential affirmative defense under Section 9105(c) (2) of HSCA.

Additional remediation may be required if the project property or site is re-zoned by the county.

**Additional information on air quality.**

- DNREC encourages developers and builders to consider all sustainable growth practices in their design, and we believe that the air quality impacts associated with the project should be completely considered. New homes and businesses may emit, or cause to be emitted, additional air contaminants into Delaware’s air, which will negatively impact public health, safety and welfare through:
  - Emissions that form ozone and fine particulate matter; Sussex County is currently nonattainment for the 2008 ozone standard.
  - The emission of greenhouse gases which are associated with climate change, and
  - The emission of air toxics.
- Emissions Impact of The Lands of Fenwick Subdivision: 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 that the Lands of Fenwick subdivision may have on air quality.

<b>Table 2: Projected Air Quality Emissions for the Lands of Fenwick Subdivision</b>					
Emissions Attributable to Land of Fenwick (Tons per Year)	Volatile Organic Compounds (VOC)	Nitrogen Oxides (NOx)	Sulfur Dioxide (SO <sub>2</sub> )	Fine Particulate Matter (PM <sub>2.5</sub> )	Carbon Dioxide (CO <sub>2</sub> )

Area source emissions	1.9	0.2	0.2	0.2	7.8
Power emissions	*	0.8	2.6	*	390.2
Mobile emissions	2.8	3.0	0.1	0.0	1,832.4
Total emissions	4.7	4.0	2.9	0.2	2,230.4

(\*) Indicates data is not available.

\*\*Note that emissions associated with the actual construction of the development, 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.\*\*

- Urban Tree Canopy: Green streetscape elements that the developer could incorporate are street trees or urban trees. Native trees can help reduce emissions by trapping dust particles while replenishing oxygen. Trees also reduce energy demands by cooling during the summer and by providing wind breaks in the winter, whereby reducing heating and air conditioning needs by up to 30 percent and saving 20 to 50 percent on fuel costs. As a general reminder, trees that have a large leaf surface area at maturity are amenable to particulate matter (PM) collection, such as those that have hairy or sticky leaves and have high transpiration rates which result in relatively high temperature reduction.
- Energy Efficient Options: Constructing with energy efficient products can help your facility immensely, not only in terms of environmental sustainability but financially. Energy Star qualified products are up to 30 percent more energy efficient. Savings can 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 project. 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 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>.



- Multi-modal travel: A strategy to improve existing air quality levels is to maximize multi-modal travel through bike lanes, sidewalks and convenient access to transit opportunities. DNREC encourages the developer to incorporate 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 options). DNREC is pleased to see that there are proposed sidewalks, as well as a multi-use path, which help to promote healthy lifestyles and choices. Multi-modal travel can significantly reduce mobile source emissions. 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. For more information on multimodal opportunities in your area, please refer to the Delaware Transit Corporation and DelDOT websites at [www.dartfirststate.com](http://www.dartfirststate.com) and [http://deldot.gov/information/community\\_programs\\_and\\_services/gate/](http://deldot.gov/information/community_programs_and_services/gate/). Also, for more information on the impacts of multimodal access on air quality please see the EPA's website at: <https://www3.epa.gov/otaq/>.
- Should the developer have any more questions or concerns, the DNREC Division of Air Quality 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 DNREC to discuss emission mitigation best management practices that can be incorporated into the Lands of Fenwick Commons project. DNREC looks forward to working together with you on this project to achieve our shared air quality, healthy community and quality of life goals.

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

- Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: [www.statefiremarshal.delaware.gov](http://www.statefiremarshal.delaware.gov), technical services link, plan review, applications or brochures.

In addition to the comments above our office has received a letter from Brandy Nauman, Sussex County Housing Coordinator & Fair Housing Compliance Officer. A copy of that letter is enclosed with this letter.

**Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.**

PLUS review 2017-01-02  
Page 20 of 20

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

Sincerely,

A handwritten signature in cursive script, appearing to read "Constance C. Holland".

Constance C. Holland, AICP  
Director, Office of State Planning Coordination

CC: Sussex County  
Enclosure

BRANDY BENNETT NAUMAN  
HOUSING COORDINATOR &  
FAIR HOUSING COMPLIANCE OFFICER

(302) 855-7777 T  
(302) 854-5397 F  
bnauman@sussexcountyde.gov



**Sussex County**  
DELAWARE  
sussexcountyde.gov

January 24, 2017

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

RE: PLUS Review (PLUS 2017-01-02)

Dear Mr. Christenbury,

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

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

The Community Development & Housing Department can also explain and assist with any financial support or incentives that may be available to a project from federal, state and county sources, as well as private funding sources that also promote affordable housing in Sussex County.

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

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

Thank you,

Brandy B. Nauman  
*Housing Coordinator &  
Fair Housing Compliance Officer*



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





2017 GOOGLE EARTH OBLIQUE AERIAL IMAGE  
NOTE: SATELLITE IMAGE OBTAINED BY GOOGLE EARTH PRO



NORTH

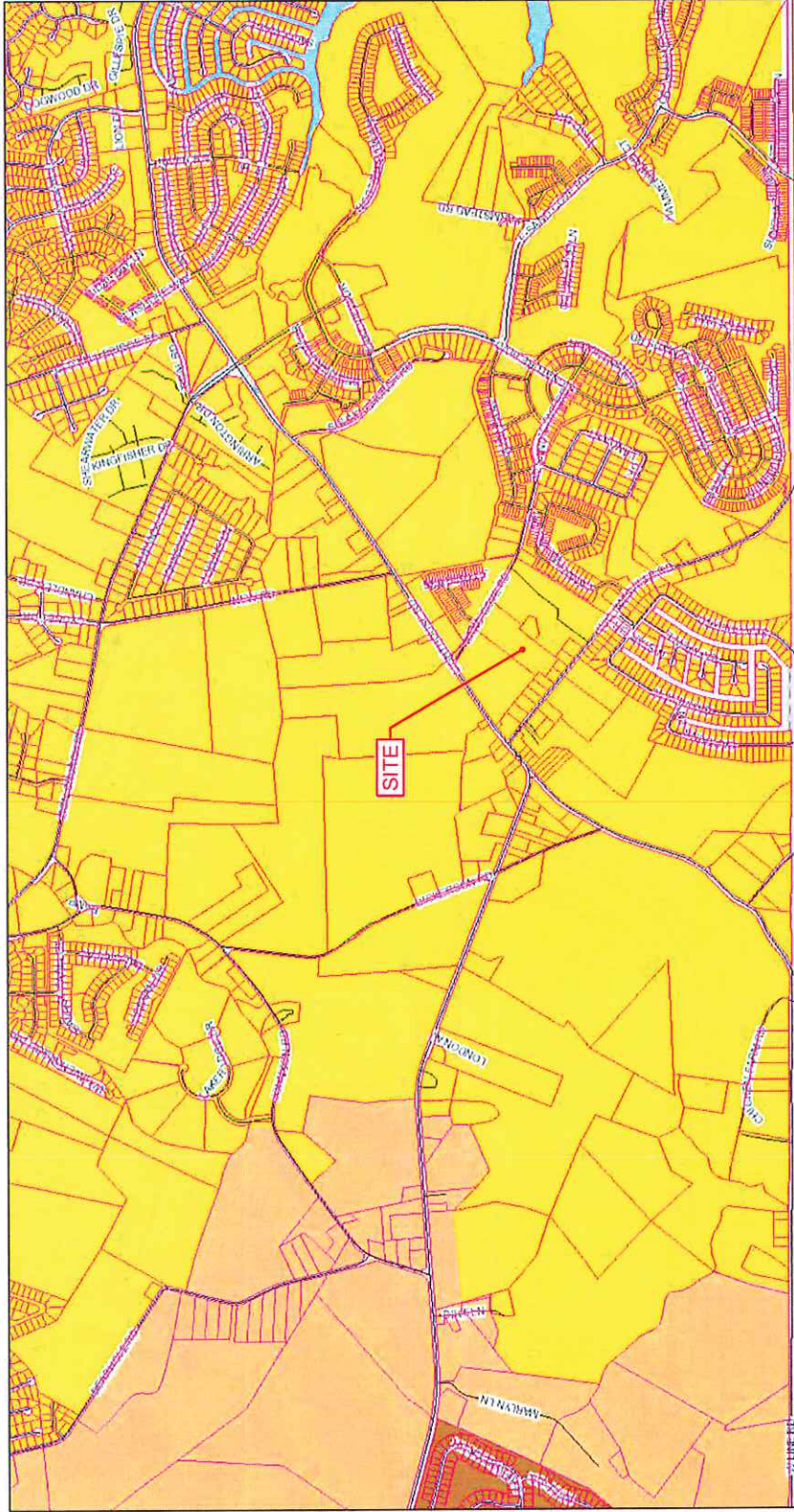
**VISTA**  
DESIGN, INC.

Engineers, Architects, Surveyors, Landscape Architects, Land Planning Consultants  
11654 Worrester Hwy., Shovolt, MD 21862  
ph: 410.352.3874





# Sussex County



July 28, 2021

Tax Parcels

Streets

County Boundaries

2019 Future Land Use

Commercial

Low Density

Coastal Area

Developing Area

Existing Development Area

Industrial

Municipalities

Town Center

1:18,056

0 0.17 0.35 0.7 mi

0 0.28 0.55 1.1 km



NORTH

Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GEBCO, CN, KaiserNl, Airphoto, GeoEye, IGN, AerGRID, NOAA, IGN, Swisstopo, The Map Data Contributors, Esri, Microsoft, OpenStreetMap contributors, and the GIS User Community, Sussex County Government







**FILE COPY**

**Applicant  
Exhibit**

*Received on 08.26.2021  
at Public Hearing.*

RECEIVED

AUG 26 2021

SUSSEX COUNTY  
PLANNING & ZONING

**GULFSTREAM DEVELOPMENT, LLC**

**Bay Knolls**

**Change of Zone Application CZ 1945**

**Conditional Use Application CU 2292**

PROPOSED FINDINGS OF FACT & CONDITIONS OF APPROVAL

1. This is an application for (1) a change of zone from AR-1 (Agricultural Residential District) to MR (Medium-Density Residential District) for 8.33 +/- acres located in Baltimore Hundred, Sussex County, being on the southwest side of Sand Cove Road (S.C.R. 394) approximately 750 southeast of Lighthouse Road (a/k/a Fenwick Road) (DE Route 54, S.C.R. 58), also being known as Tax Parcel No. 533-19.00-56.05 (the "Property"); and (2) a conditional use to develop the site with thirty-two (32) duplex (multi-family) dwellings.
2. The Property is owned by DLTF LLC.
3. The applicant is Gulfstream Development, LLC, the contract purchaser of the Property.
4. The Property is presently unimproved and is used for agricultural purposes.
5. The Property is intended to be joined with the adjacent property consisting of 13.33 +/- acres, known as Tax Parcel No. 533-19.00-52.00, which property was the subject of Sussex County Application Nos. CZ #1896 and CU #2197, applications for a change of zone from AR-1 (Agricultural Residential District) to MR (Medium-Density Residential District) and a conditional use for fifty-two (52) multi-family duplex units. The applications were approved by Sussex County Council on January 14, 2020. Council's approval authorized the change of zone to MR (Medium-Density Residential District) and approved the property for fifty-two (52) multi-family units.
6. The Property contains no known archeological sites or National Register listed or eligible properties.
7. The Property contains no wetlands nor does it contain any threatened or endangered species.
8. The 2020 Delaware Strategies for State Policies and Spending identify the area as located in Investment Level 3.
9. DelDOT reviewed the applicant's planned project and has issued a letter stating that the proposed project will generate fewer than 50 vehicle trips in any hour and fewer than 500 vehicle trips per day therefore no Traffic Impact Study is required. In addition, DelDOT's review indicated that it considered the proposed development's traffic impact to be "negligible" in the context of DelDOT's agreement with Sussex County regarding land development coordination.

10. A single entrance for the combined project (former Bay Knolls (Fenwick Commons LLC project) and the present application) is planned on Sand Cove Road (S.C.R. 394) to be aligned with the entrance to the Heron's Ridge at Bayside community to create a four-way intersection.
11. Sussex County's Engineering Department has identified the proposed site as a Tier 1 location in the Sussex County Unified Sanitary Sewer District and will collect, treat and dispose of sanitary sewerage from the site. The County's Engineering Department has indicated that adequate wastewater capacity is available for the project as a 32-unit duplex project.
12. Artesian Water Company, Inc. has the CPCN (Certificate of Public Convenience and Necessity) for the Property and will provide potable water to the site.
13. Through Sussex County and Artesian Water Company, Inc. adequate water and sewage treatment is available to support the proposed project.
14. In the 2018 Sussex County Comprehensive Plan update, the area for the proposed rezoning is identified for purposes of future land use as being part of the Coastal Area, a "growth area." The proposed project is consistent with the guidelines for projects within the Coastal Community Areas where medium and higher density can be appropriate in areas where there are central water and sewer and the density is in keeping with the character of the area. In addition, the Comprehensive Plan states that a range of housing types should be permitted in Coastal Areas, including single-family homes, townhouses, and multi-family units.
15. The property is adjacent to land that is currently zoned MR (Medium-Density Residential District) and there are other properties in the area that are zoned MR (Medium-Density Residential District) along with C-1 (General Commercial District) and B-1 (Neighborhood Business District). In addition the expansive Bayside project is in this area including the Heron's Ridge at Bayside community immediately across Sand Cove Road (S.C.R. 394) from this Property.
16. The application proposes 32 residential units, a gross density of 3.84 units/acre which is consistent with the gross density of the previously approved Fenwick Commons (3.90 units/acre) and consistent with the density of other projects in the area. The proposed density is consistent with the MR (Medium Density Zoning District) zoning classification which permits four (4) residential units per acre.
17. As a part of final site plan approval, stormwater management design and permitting will be required; thus assuring neighboring lands will be buffered and protected from the development and use of the Property.
18. The proposed project is consistent with the character and trend of development in the area and will not adversely affect the neighboring and adjacent properties.

19. The proposed project, when combined with the approvals for Bay Knolls (CU #2197), will create a superior project as compared to two separate projects. For example, the present application will add on-site amenities, a pool and community center, to the existing approval for Bay Knolls and will provide for a safer entrance with a singular entrance for both projects to become part of a four-way intersection with the Herons' Ridge at Bayside community.
20. As a result of all the above and the record presented, this application, as Council found with respect to the previously approved Bay Knolls application, is consistent with the character and trend of development in the area and thereby consistent with the land use plan and will have no adverse impact on property values.
21. The proposed project meets the purpose of the Zoning Ordinance and the Comprehensive Plan in that it promotes the orderly growth, convenience, order, prosperity and welfare of the County.

The recommendation of approval is subject to the following proposed conditions:

- A. The maximum number of residential units shall be 32.
- B. All entrances, intersection, roadway and multi-modal improvements shall be completed by the Developer in accordance with all DelDOT requirements.
- C. The project shall be served by Sussex County sewer. The Developer shall comply with all Sussex County Engineering Department requirements including any offsite upgrades necessary to provide service to the project.
- D. The project shall be served by central water to provide drinking water and fire protection.
- E. Interior street design shall meet or exceed the Sussex County street design requirements.
- F. As proffered by the Applicant, there shall be sidewalks on both sides of all streets and roadways.
- G. The Applicant shall submit as part of the Final Site Plan a landscape plan showing the proposed tree and shrub landscape design, including any buffer areas. The landscape plan shall clearly designate all existing forested areas that will be preserved (77% of the existing forested area, according to the Applicant).
- H. All construction and site work on the property, including deliveries of materials to or from the property, shall only occur between 7:00 a.m. and 6:00 p.m., Monday through Saturday.
- I. Street naming and addressing shall be subject to the review and approval of the County Mapping and Addressing Departments.

- J. The amenities shall include a community center and pool area, with at least 20 off-street parking spaces set aside for these areas. These amenities shall be completed and open to use by the residents of this project (CU #2292) and the existing project known as Bay Knolls (CU #2197) upon the issuance of the 50<sup>th</sup> building permit within the combined projects.
- K. The Applicant shall form a Homeowners or Condominium Association responsible for the perpetual maintenance, repair and replacement of the roads, any buffers and landscaping, stormwater management facilities, erosion and sediment control facilities and other common elements for both this project (CU #2292) and the existing project known as Bay Knolls (CU #2197).
- L. The stormwater management system shall meet or exceed the requirements of the State and County. It shall be constructed and maintained using Best Management Practices.
- M. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- N. The Applicant shall coordinate with the Indian River School District to establish a school bus stop area, which shall be shown on the Final Site Plan if required by the District.
- O. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

25th August, 2021

**PLANNING & ZONING COMMISSION**

2 The Circle  
Georgetown, DE 19947

**FILE COPY**

**SUPPORT EXHIBIT**

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AUG 26 2021

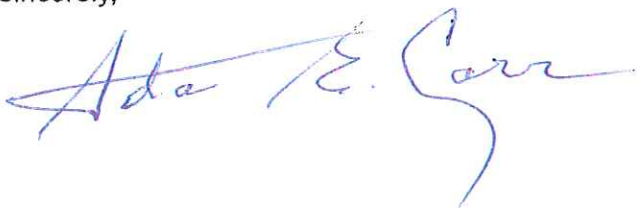
SUSSEX COUNTY  
PLANNING & ZONING

Re: CZ 1945 Gulfstream Development, LLC

To Whom It May Concern,

I am writing to express my support of the application: CZ 1945 Gulfstream Development, LLC. The MR zoning is consistent with other MR zoned parcels in the area and the proposed subdivision is in character with the neighborhood.

Sincerely,

A handwritten signature in blue ink, appearing to read "Ada R. Carr". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

25th August, 2021

**PLANNING & ZONING COMMISSION**  
2 The Circle  
Georgetown, DE 19947

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Sincerely,

A handwritten signature in black ink, appearing to be "Tom" followed by a stylized name, possibly "Wright".



25th August, 2021

**PLANNING & ZONING COMMISSION**

2 The Circle  
Georgetown, DE 19947

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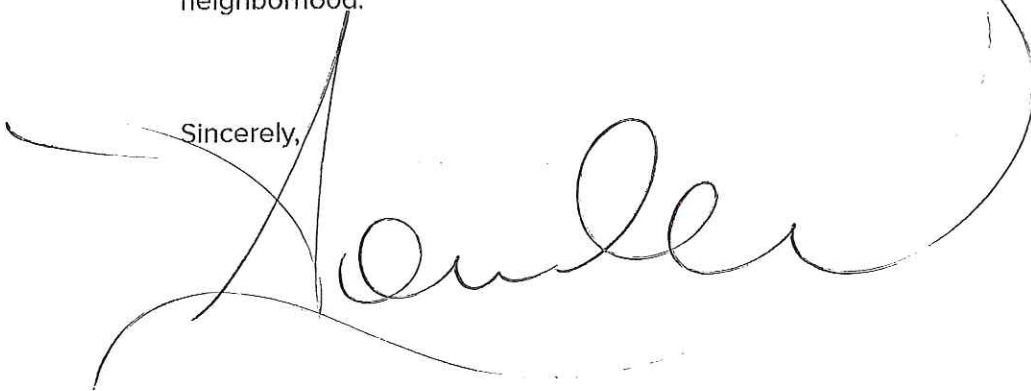
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Sincerely,

A large, handwritten signature in black ink, appearing to read "A. Miller", written over a large, faint circular stamp or watermark.

25th August, 2021

**PLANNING & ZONING COMMISSION**

2 The Circle  
Georgetown, DE 19947

**FILE COPY**

**SUPPORT EXHIBIT**

RECEIVED

AUG 26 2021

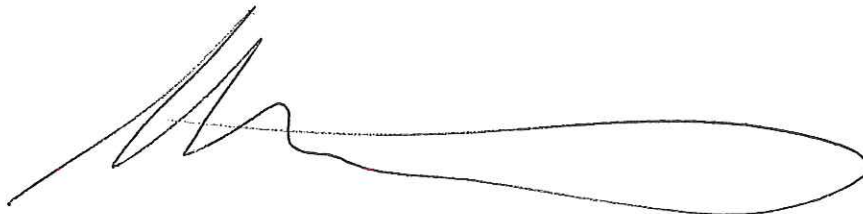
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Sincerely,

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

25th August, 2021

**PLANNING & ZONING COMMISSION**  
2 The Circle  
Georgetown, DE 19947

FILE COPY

SUPPORT EXHIBIT

Re: CZ 1945 Gulfstream Development, LLC

RECEIVED

AUG 26 2021

SUSSEX COUNTY  
PLANNING & ZONING

To Whom It May Concern,

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Sincerely,

A handwritten signature in black ink, appearing to be the initials 'CJ' followed by a large, stylized flourish.

25th August, 2021

**PLANNING & ZONING COMMISSION**

2 The Circle  
Georgetown, DE 19947

**FILE COPY**

**SUPPORT EXHIBIT**

Re: CZ 1945 Gulfstream Development, LLC

RECEIVED

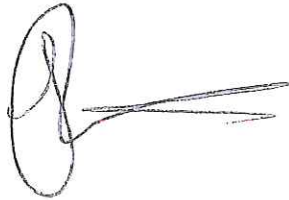
AUG 26 2021

SUSSEX COUNTY  
PLANNING & ZONING

To Whom It May Concern,

I am writing to express my support of the application: CZ 1945 Gulfstream Development, LLC. The MR zoning is consistent with other MR zoned parcels in the area and the proposed subdivision is in character with the neighborhood.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized initial 'P' followed by a horizontal line extending to the right.

---

25th August, 2021

**PLANNING & ZONING COMMISSION**

2 The Circle  
Georgetown, DE 19947

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**SUPPORT EXHIBIT**

Re: CZ 1945 Gulfstream Development, LLC

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SUSSEX COUNTY  
PLANNING & ZONING

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I am writing to express my support of the application: CZ 1945 Gulfstream Development, LLC. The MR zoning is consistent with other MR zoned parcels in the area and the proposed subdivision is in character with the neighborhood.

Sincerely,

A handwritten signature in black ink, appearing to be a stylized name, possibly "John", written over a horizontal line.

25th August, 2021

**PLANNING & ZONING COMMISSION**

2 The Circle  
Georgetown, DE 19947

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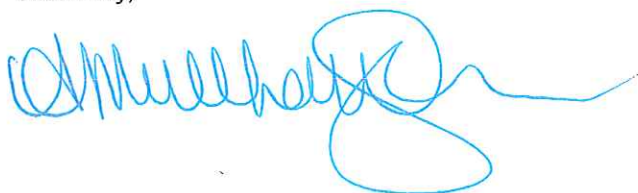
AUG 26 2021

SUSSEX COUNTY  
PLANNING & ZONING

To Whom It May Concern,

I am writing to express my support of the application: CZ 1945 Gulfstream Development, LLC. The MR zoning is consistent with other MR zoned parcels in the area and the proposed subdivision is in character with the neighborhood.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mullholland", with a long horizontal flourish extending to the right.

25th August, 2021

**PLANNING & ZONING COMMISSION**

2 The Circle  
Georgetown, DE 19947

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AUG 26 2021

SUSSEX COUNTY  
PLANNING & ZONING

Re: CZ 1945 Gulfstream Development, LLC

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Sincerely,

*T. Brink*

25th August, 2021

**PLANNING & ZONING COMMISSION**

2 The Circle  
Georgetown, DE 19947

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SUSSEX COUNTY  
PLANNING & ZONING

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I am writing to express my support of the application: CZ 1945 Gulfstream Development, LLC. The MR zoning is consistent with other MR zoned parcels in the area and the proposed subdivision is in character with the neighborhood.

Sincerely,

*Brooks Wright*



25th August, 2021

**PLANNING & ZONING COMMISSION**

2 The Circle  
Georgetown, DE 19947

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SUSSEX COUNTY  
PLANNING & ZONING

To Whom It May Concern,

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Sincerely,

A handwritten signature in blue ink, appearing to be the initials 'JMS' or similar, written in a cursive style.

---

25th August, 2021

**PLANNING & ZONING COMMISSION**

2 The Circle  
Georgetown, DE 19947

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SUSSEX COUNTY  
PLANNING & ZONING

Re: CZ 1945 Gulfstream Development, LLC

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I am writing to express my support of the application: CZ 1945 Gulfstream Development, LLC. The MR zoning is consistent with other MR zoned parcels in the area and the proposed subdivision is in character with the neighborhood.

Sincerely,

*Mandy Brinker*

---

25th August, 2021

**PLANNING & ZONING COMMISSION**  
2 The Circle  
Georgetown, DE 19947

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SUSSEX COUNTY  
PLANNING & ZONING

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Sincerely,

*Aria Brakes*

25th August, 2021

**PLANNING & ZONING COMMISSION**

2 The Circle  
Georgetown, DE 19947

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SUSSEX COUNTY  
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Re: CZ 1945 Gulfstream Development, LLC

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I am writing to express my support of the application: CZ 1945 Gulfstream Development, LLC. The MR zoning is consistent with other MR zoned parcels in the area and the proposed subdivision is in character with the neighborhood.

Sincerely,

*Candice Briskin*

25th August, 2021

**PLANNING & ZONING COMMISSION**  
2 The Circle  
Georgetown, DE 19947

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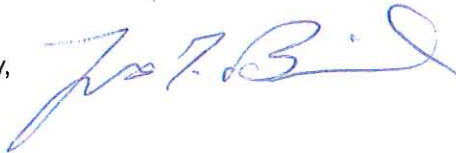
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SUSSEX COUNTY  
PLANNING & ZONING

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25th August, 2021

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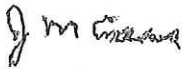
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