

COUNTY COUNCIL

MICHAEL H. VINCENT, PRESIDENT
JOHN L. RIELEY, VICE PRESIDENT
CYNTHIA C. GREEN
DOUGLAS B. HUDSON
MARK G. SCHAEFFER



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7743

SUSSEX COUNTY COUNCIL

AGENDA

February 20, 2024

12:00 P.M.

Call to Order

Approval of Agenda

Approval of Minutes - February 6, 2024

[Draft Minutes 020624](#)

Reading of Correspondence

Public Comments

Consent Agenda

1. **Proclamation Request – Girl Scout Week**
2. **Use of Existing Wastewater Infrastructure Agreement – IUA-1208
Long Neck Community Bank, Long Neck Area**
[Consent Agenda Long Neck Community Bank](#)
3. **Use of Existing Wastewater Infrastructure Agreement – IUA-1176
East Gate, Johnson’s Corner Area**
[Consent Agenda East Gate](#)

Todd Lawson, County Administrator

1. **Discussion related to Perimeter Buffer Update**
[Perimeter Buffer Update](#)
2. **Administrator’s Report**



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

Bill Pfaff, Director of Economic Development

1. **Delaware Coastal Business Park Leases**
 - A. **Delaware Technical Community College**
 - B. **JDJS, LLC**
[Delaware Coastal Business Park Leases](#)

Hans Medlarz, County Engineer, Ret.

1. **Chesapeake Utilities Natural Gas Service Expansion**
 - A. **Advance Customer Agreement – Rudder Lane**
[Chesapeake Utilities - Rudder Lane](#)
2. **Inland Bays Loop Project, Project S24-01**
 - A. **DelDOT Utility Agreement**
[Mt Joy Loop DelDOT Agreement CP](#)
3. **Long Neck Communities, project S21-10**
 - A. **Change Order No. 1**
[Long Neck Communities CO1 CP](#)
4. **South Coastal WRF Treatment Process Upgrade No.3 & Rehoboth Beach WTP Capital Improvement Program, Phase 2**
 - A. **General Construction, Project C19-11, Change Order No. 33**
[SCRWF Ronca CO 33](#)

John Ashman, Director of Utility Planning & Design Review

1. **Permission to Prepare & Post Notices for Bosh Berries Annexation into the Sussex County Unified Sanitary Sewer District (Western Sussex Area)**
[Bosh Berries Permission to Post](#)
2. **South Greenwood Area of the Sussex County Unified Sanitary Sewer District – Resolution to Adopt the Boundary**
[South Greenwood Resolution](#)

Old Business

1. [Conditional Use No. 2397 filed on behalf of Mispillion Solar Farm, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 121.33 ACRES, MORE OR LESS” (property lying on the northwest side of Shawnee Road [Rt. 36] approximately 0.20 mile southwest of Old Shawnee Road [S.C.R. 42]) (911 Address: 7152 Shawnee Rd. Milford) (Tax Map Parcel: 130-3.00-63.00 [p/o])

[CU 2397](#)

2. [Conditional Use No. 2398 filed on behalf of Chaberton Energy \(Blue Hen Solar\)](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 61.15 ACRES, MORE OR LESS” (property lying on the southeast side of Hudson Road [S.C.R. 387], approximately 0.61 mile south of the intersection of Lighthouse Road [Route 54] and Hudson Road [S.C.R. 387]) (911 Address: N/A) (Tax Map Parcels: 533-17.00-187.00 [p/o])

[CU 2398](#)

3. [Conditional Use No. 2433 filed on behalf of Chaberton Solar](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 50.50 ACRES, MORE OR LESS” (property lying on Marlyn Lane, on the south side of Lighthouse Road [Rt. 54], approximately 1.05 miles east of Hudson Road [S.C.R. 387]) (911 Address: 38510 Marlyn Lane, Selbyville) (Tax Map Parcel: 533-18.00-39.00)

[CU 2433](#)

4. [Conditional Use No. 2404 filed on behalf of Elk Development, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 20.57 ACRES, MORE OR LESS” (property lying on the northwest side of Thorogoods Road [S.C.R. 333], approximately 0.5 mile southwest of Iron Branch Road [S.C.R. 331]) (911 Address: N/A) (Tax Map Parcel: 233-5.00-69.00)

[CU 2404](#)

5. [Conditional Use No. 2405 filed on behalf of Elk Development, LLC](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 22.97 ACRES, MORE OR LESS” (property lying on the southeast side of Thorogoods Road [S.C.R. 333], approximately 0.5 mile southwest of Iron Branch Road [S.C.R. 331]) (911 Address: N/A) (Tax Map Parcel: 233-5.00-187.01)

[CU 2405](#)

Introduction of Proposed Zoning Ordinances

[Ord Intros CZ2010 CU2441 CU2442 Ord.23-07](#)

Council Members' Comments

1:30 p.m. Public Hearings

1. [Conditional Use No. 2411 filed on behalf of Joshua Zuppo](#)

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TREE SERVICE BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 1.94 ACRES MORE OR LESS” (property lying on the east side of Gravel Hill Road [Rt. 30], approximately 0.35 mile north of the intersection of Gravel Hill Road [Rt. 30] and John J. Williams Highway [Rt. 24]) (911 Address: 28121 Gravel Hill Road, Millsboro) (Tax Map Parcel: 234-32.00-30.00)

2. [Change of Zone No. 1998 filed on behalf of Louis, Janet & William Melton](#)

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A B-2 NEIGHBORHOOD COMMUNITY DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.11 ACRES, MORE OR LESS” (properties lying on the southwest side of Old Mill Road [S.C.R. 349] and the northwest corner of Railway Road [S.C.R. 350], at the intersection of Railway Road [S.C.R. 350] and Old Mill Road [S.C.R. 349]) (911 Addresses: 36294, 36306, & 36328 Old Mill Road, Ocean View & N/A) (Tax Map Parcels: 134-12.00-73.00, 73.01, 73.02, & 73.03)

[CZ 1998](#)

3. [Change of Zone No. 1992 filed on behalf of Reed Properties, LLC](#)

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.99 ACRES, MORE OR LESS” (property lying on the west side of Gravel Hill Road [Rt. 30], approximately 300 feet south of Milton Ellendale Highway [Rt.16], and the south side of Milton Ellendale Highway [Rt. 16], approximately 300 ft. west of Gravel Hill Road [Rt. 30]) (911 Address: 14742 Gravel Hill Road, Milton) (Tax Map Parcel: 235-13.00-29.01)

[CZ 1992](#)

4. [Change of Zone No. 1993 filed on behalf of Ocean One Holdings, LLC](#)

“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 64.85 ACRES, MORE OR LESS” (property lying on the west side of Coastal Highway [Rt. 1], and the southeast side of Broadkill Road [Rt. 16], at the intersection of Coastal Highway [Rt. 1] and Broadkill Road [Rt. 16]) (911 Address: N/A) (Tax Map Parcel: 235-8.00-39.00 [p/o])

[CZ 1993](#)

Adjourn

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on February 13, 2024 at 4:15 p.m. and at least seven (7) days in advance of the meeting.

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

Agenda items may be considered out of sequence.

The meeting will be streamed live at <https://sussexcountyde.gov/council-chamber-broadcast>.

The County provides a dial-in number for the public to comment during the appropriate time of the meeting. **Note, the on-line stream experiences a 30-second delay.**

Any person who dials in should listen to the teleconference audio to avoid the on-line stream delay.

To join the meeting via telephone, please dial:

Conference Number: 1-302-394-5036

Conference Code: 570176

Members of the public joining the meeting on the telephone will be provided an opportunity to make comments under the Public Comment section of the meeting and during the respective Public Hearing.

The Council meeting materials, including the “packet”, are electronically accessible on the County’s website at: <https://sussexcountyde.gov/agendas-minutes/county-council>.

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, FEBRUARY 6, 2024

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, February 6, 2024, at 10:00 a.m., in Council Chambers, with the following present:

Michael H. Vincent	President
John L. Rieley	Vice President
Cynthia C. Green	Councilwoman
Douglas B. Hudson	Councilman
Mark G. Schaeffer	Councilman
Todd F. Lawson	County Administrator
Gina A. Jennings	Finance Director
J. Everett Moore, Jr.	County Attorney

Call to Order

The Invocation and Pledge of Allegiance were led by Mr. Vincent.

Mr. Vincent called the meeting to order.

**M 056 24
Approve
Agenda**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to approve the Agenda, as presented.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Minutes

The minutes from January 30, 2024, were approved by consensus.

**Corre-
spondence**

There was no correspondence.

Public comments were heard:

**Public
Comments**

Ms. Tish Galu spoke about affordable and workforce housing in Sussex County.

Mr. John Collier spoke about the TID in Milton.

Mr. Mike Helwich spoke about Chapel Branch apartments.

Mr. Paul Riger spoke about the districts for Planning & Zoning Commission members.

Food Drive Recognition Mr. Lawson recognized those that participated in the Caroling on the Circle Food Drive effort and thanked everyone that volunteered and contributed.

Public Hearing/CDBG A Public Hearing was held for the 2024 Community Development Block Grant application, to be submitted to the Delaware State Housing Authority. The Community Development Block Grant (CDBG) is a federal grant from the Department of HUD to the Delaware State Housing Authority (DSHA). Kent and Sussex Counties compete for funding by making application to DSHA.

Brandy Nauman, Director of Sussex County Community Development & Housing, reported that the guidelines dictate the use of the funding. The funding is used mostly for owner-occupied housing rehabilitation. Rehabilitation includes roofing, doors, windows, electrical, plumbing and energy upgrades. In order to qualify, a home must be owner-occupied, primary residence of the owners, low to moderate income household (80% of AMI or below), the home must be insured or insurable, County taxes and utilities must be current. Mrs. Nauman explained that a lien is placed on every property that receives assistance regardless of the age of the beneficiary. A ten-year zero interest pro-rated lien is placed on the property dependent on how much funding is provided.

Mrs. Nauman reviewed the current income guidelines for program eligibility. Mrs. Nauman reviewed the funding that has been spent and noted that County Council provided additional funding to assist with emergency repairs.

Mr. Mike Jones, Rehabilitation Program Coordinator reported that project and labor costs have increased. In addition, there is another type of licensing that every contractor has to have in order to deal with the County. This is something that is new that is located online and needs to be completed every year. Mr. Jones stated that it has been a real struggle with the contractors to keep and retain this license. Mrs. Nauman added that this license is for federal funding; anyone that is dealing with federal funds is required to be registered. Mr. Jones shared pictures of some projects that have recently been completed through the program.

Mrs. Nauman reviewed what was being completed with the federal dollars that are being received including ARPA funds. She noted that individuals with disabilities, those over 65 and low-income households are prioritized.

Mr. Jones stated that Sussex County's application will consist of projects in the County within Rural communities and municipalities. He reported that staff has met with all the municipalities who have asked for the County's assistance to make application to the DSHA, and that the Department has held Public Hearings in all of the municipalities listed which consisted of 11 towns that accepted. He added that many towns are now getting a waiting list for those that are in need for the program.

There were no public comments.

The Public Hearing and public record were closed.

**M 057 24
Adopt
Resolution
No. 001 24**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to Adopt Resolution No. R 001 24 entitled “AFFIRMATIVELY FURTHERING FAIR HOUSING”.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 058 24
Adopt
Resolution
No. 002 24**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to Adopt Resolution No. R 002 24 entitled “AUTHORIZATION TO SUBMIT APPLICATIONS”.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Delaware
Department
of
Transport-
ation**

Mr. Whitehouse reminded Council that in 2020, the Council adopted and created its first Transportation Improvement District which was the Henlopen TID.

Ms. Sarah Coakley from Delaware Department of Transportation provided Council an update on Transportation Improvement Districts.

Ms. Coakley explained that a transportation improvement district is a geographic area that local government and DelDOT have agreed to do more comprehensive and detailed planning. She then reviewed the benefits of creating a TID which are area comprehensive infrastructure planning, TID projects advance in DelDOT’s CTP quicker, TID fees stay local, equitable treatment of competing developers, known costs for developers and expedited development reviews.

Ms. Coakley reviewed the basics of the Henlopen TID that was established in 2020, after more than 3 years of planning and coordination with Sussex County. It is approximately 24 square miles which is the largest in operation. There is approximately \$311 million in projects, with developers contributing about 24%. There are about 1/3 of the projects in current and proposed CTPs. Currently, there are twenty-two agreements signed and recorded with property owner/developers which is up 8 from last year. In addition, there are 9 developer agreements in process. There is approximately \$1,060,000 in developer contributions collected. There is another \$341,000 in developer right-of-way dedication or construction

**Delaware
Department
of
Transportation
(continued)**

commitments.

Ms. Coakley reported that the update has been completed to evaluate the by-right land use/density changes since 2018 and it was agreed to do an update in 2023. The 2045 traffic projections from the original TID study were used with the addition of land use information and trip generation. In addition, the 2045 traffic analysis with additional development using Synchro TIA was ran.

Ms. Coakley provided status updates on Henlopen TID Improvements:

- **Airport Road Extension, Old Landing Road to SR24: PE underway.**
- **US9 widening, Old Vine Road to US 1: PE underway.**
- **Old Landing Road and Warrington Road intersection: PE underway, project on hold temporarily.**
- **Plantations Road: Phase 1 under construction, Phase 2 in design.**
- **Shady Road and Postal Lane improvements: added to out years of FY23-FY28 CTP (Preliminary Engineering to begin in FY2028).**
- **Mulberry Knoll Road Extension from Cedar Grove Road to US9: added to out years of FY23-FY28 CTP (Preliminary Engineering to begin in FY2028).**
- **US9 widening, Old Vine Road to Dairy Farm Road: proposed FY25-FY30 CTP, PD in FY27 and FY28.**
- **SR24 between Love Creek Bridge and Indian Mission Road: proposed FY25-FY30 CTP, PD in FY28 and FY29.**

Ms. Coakley noted that there is a TID dashboard that is located on the DelDOT website. With the feature, you can zoom in on each TID and click on the improvements to show the status.

Mr. Whitehouse shared information related to the Roxana TID boundaries and land use forecast were then shown.

Mr. Rieley questioned how this impacts areas that are designated as Investment Level 4. Mr. Whitehouse replied that the study has factored in parcels that are known to have wetlands on the parcel and those parcels have been discounted or reduced the number. Mr. Whitehouse added that this is a preliminary analysis.

Mr. Schaeffer asked if municipalities were near the TID area and if they were consulted on their vision. Mr. Whitehouse stated that they have tried their best to draw the boundaries around municipalities.

The next steps for the Roxana TID are for DelDOT to collect updated traffic counts, model traffic impacts of land use forecast, DelDOT and the County to agree on the list of needed TID improvements, conduct public outreach and finalize the Infrastructure Fee Program and Monitoring program.

**Delaware
Department
of
Transport-
ation
(continued)**

The Milton TID boundaries and land use forecast were shown. Currently, the existing TID agreement is between the Town and DelDOT, as such only parcels in Town limits will be able to participate. All parcels in the Town's growth area may not seek or be approved for annexation.

Mr. Rieley stated that there is large development coming down Route 9 with the development of Cool Spring. He noted that the plans calls for the widening of Route 9 out to Dairy Farm Road in the 2025–2030-time frame. Ms. Coakley stated that it would be a planning study for the improvement; not construction. Mr. Rieley added that there is another development in the works across from the Social Security office. So, there are two major developments that are proposed and working their way through the process currently that are within a few miles of each other. In addition, Hudson Road will border this development that is substandard for the amount of traffic that is being proposed. Cave Neck Road is also probably going to be substandard because there are additional developments that are being proposed along that area. Mr. Rieley stated that this area is blowing up and he does not want to create a nightmare. Mr. Whitehouse replied that staff is preparing public hearings for the two applications that Mr. Rieley mentioned. Beyond that process, there is a Coastal Corridor study that staff is working on in conjunction with DelDOT that may have some recommendations that may affect future decision making.

Ms. Coakley noted that the land use forecast is presently based on higher potential zoning categories of Town zoning. If the County joins efforts, the TID requirements would be clearer for property owners/developers; the County would get more of a say in prioritization of TID improvements.

**Adminis-
trator's
Report**

Mr. Lawson read the following information in his Administrator's Report:

1. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: Millville By the Sea – Model Court 5A effective January 11th; Heritage Shores Circle Pump Station & Force Main and Heritage Shores – Phase 4F (PQ) (Construction Record) effective January 24th ; Sloan Family Property effective January 25th; Walden (formerly Burton's Pond) – Phase 7 (Construction Record) and The Estuary – Phase 4B (Construction Record) effective January 29th; and Scenic Harbor (formerly Estates at Mulberry Knoll & Scenic Manor) – Phase 1 (Construction Record) effective January 30th.

2. Council Meeting Schedule

A reminder that Council will not meet on Tuesday, February 13th. The next monthly regularly scheduled Council meeting will be held on Tuesday, February 20th, at 10:00 a.m.

[Attachments to the Administrator's Report are not attached to the minutes.]

**Ordinance
Related to
Marijuana
Establish-
ments**

Vince Robertson, Assistant County Attorney presented an Ordinance Related to Marijuana Establishments. Mr. Robertson reported that a meeting was held with himself and Mr. Lawson with Commissioner Coupe, newly appointed Marijuana Commissioner for the State of Delaware.

Mr. Robertson discussed House Bill No. 2 which had an effective date of July 5, 2023. It created the OMC, authorized 125 business licenses, established rules & regulations regarding the regulations, established a 15% sales tax and created an implementation timeline. It also established that the municipalities in Sussex County can prohibit marijuana establishments within their municipal borders. On the other hand, it said that the Counties cannot prohibit marijuana within their borders.

Mr. Robertson reviewed the state agency positions that were created for this department. He then reviewed the timeline for implementation, July 5, 2024, the regulations should be adopted. In September of 2024, licenses should start to be accepted and in October of 2024, licenses will start to be issued. Mr. Robertson noted that part of the process to apply for a license is that you need zoning from Sussex County.

Mr. Rieley questioned if it would be more appropriate to make them a conditional use and give future Council's more discretion in approving where these facilities go rather than them being by-right.

Mr. Robertson stated that effectively, the marijuana would be grown indoors or in a greenhouse. Photos were shown of a prior industrial building that was turned into a manufacturing facility. The retail distance requirements were discussed. These include:

- No retail marijuana store shall be located within three miles of any municipal boundary.**
- No retail marijuana store shall be located within three miles of any other Retail Marijuana Store.**
- No retail marijuana store shall be located within three miles of any church, school, college, or substance abuse treatment facility as defined under §2203 of Title 16 of the Delaware Code.**
- Retail Marijuana Stores may only operate between the hours of 7:00 a.m. and 9:00 p.m.**

Mr. Robertson reported that the appropriate zoning districts where cultivation, manufacturing and test would be a permitted use were AR-1. C-

Ordinance Related to Marijuana Establishments (continued) 1, CR-1, C-3, LI-1, CI-2, and HI-1. He added that for C-3, Heavy Commercial District, it would be permitted with a Conditional Use. It would also depend on if they were going into somewhere that is already zoned C-3, if not, they would have to request a rezoning along with a Conditional Use which would include hearing before P&Z Commission and County Council.

Introduction of Proposed Ordinance Mr. Rieley introduced a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY, CHAPTER 115, ARTICLES I, IV, XI, XIA, XIC, XIII, XIV, AND XV, AND XXV, SECTIONS 115-4, 115-20, 115-77, 115-83.2, 115-83.18, 115-83.19A, 115-94, 115-102 AND 115-194.6 TO REGULATE MARIJUANA ESTABLISHMENTS IN SUSSEX COUNTY.

SC WRF & RB WTP Capital Hans Medlarz, County Engineer presented GHD Amendment 24, change order no. 26 for project C19-17 and change order no. 32 for project C19-11 for Council’s consideration.

M 059 24 Approve GHD Amendment 24 A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved, based upon the recommendation of the Sussex County Engineering Department and Finance Department, that Amendment No. 24 in the base engineering contract with GHD, Inc., be approved in the amount not to exceed \$900,000.00, for construction engineering and programing services for the SCRWF treatment upgrade no. 3 and RBWTP CIP upgrade phase 2 projects.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

M 060 24 Approve CO No. 26/ Project C19-17 A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved based upon the recommendation of the Sussex County Engineering Department, that change order no. 26 for contract C19-17, SCRWF treatment process upgrade no. 3 & RBWTP capital improvement program, phase 2 – electrical construction, be approved, for an increase of \$9,636.87.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

M 061 24 Approve CO No. 32/ Project C19-11 A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved based upon the recommendation of the Sussex County Engineering Department, that change order no. 32 for contract C19-11, South Coastal WRF treatment process upgrade no. 3 & Rehoboth Beach WTP capital improvement program, phase 2 – general construction, be approved

increasing the contract by \$16,608.23.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Award
Recommend
/Project
C19-11**

Mark Parker, Assistant County Engineer presented a recommendation to award for Paramedic Station 103 for Council’s consideration.

**M 062 24
Approve
Award
Recommen-
dation**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, that be it moved based upon the recommendation of the Sussex County Engineering Department, that the low bid for Paramedic Station 103 in the amount of \$1,812,700.00 be awarded to The Whayland Company.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Old
Business/
CZ1996**

Under Old Business, Jamie Whitehouse, Planning & Zoning Director presented a Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 51.23 ACRES, MORE OR LESS” filed on behalf of McKee Builders, LLC.

The County Council held a Public Hearing on the application at the meeting of December 12, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

**M 063 24
Adopt
Ordinance
No. 2978/
CZ1996**

A Motion was made by Mr. Hudson, seconded by Mrs. Green to Adopt Ordinance No. 2978 entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 51.23 ACRES, MORE OR LESS” for the reasons given by the Planning & Zoning Commission as follows:

- 1. This Application seeks a change in zone from AR-1 to MR. The purpose of the MR zone is to provide medium-density housing in an area that is expected to become urban in character and where central water and sewer are available.**
- 2. The stated purpose of the MR District is satisfied for this site. Both**

**M 063 24
Adopt
Ordinance
No. 2978/
CZ1996
(continued)**

- central water and central sewer will be available.
3. The proposed MR Zoning meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.
 4. This location is appropriate for MR Zoning. The properties to the west and across from this one are zoned GR with approved multi-family developments. There is also a 5.6-acre parcel across Lizzard Hill Road from this site that permits a wide variety of commercial uses and multi-family residential development with a density of up to 12 units per acre. This property is also in close proximity to the Town of Ocean View. This rezoning is consistent with other zoning and land uses in the area.
 5. The site is located within the Coastal Area according to the Sussex County Comprehensive Plan. The Coastal Area is a “Growth Area”, and MR Zoning is appropriate in this Area according to the Plan.
 6. The Comprehensive Plan suggests that higher densities such as those permitted in the MR District can be appropriate where there is water and sewer available, there are appropriate roadways to handle the density, and there are nearby commercial or employment centers. All of those factors are satisfied with regard to this application.
 7. For all of these reasons, MR zoning is appropriate for this site.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Old
Business/
CU2402**

Under Old Business, Jamie Whitehouse, Planning & Zoning Director presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (174 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 51.23 ACRES, MORE OR LESS” filed on behalf of McKee Builders, LLC.

The County Council held a Public Hearing on the application at the meeting of December 12, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

**M 064 24
Adopt
Ordinance
No. 2979/
CU2402**

A Motion was made by Mr. Hudson, seconded by Mrs. Green to Adopt Ordinance No. 2979 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY (174 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 51.23 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows:

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(continued)**

- 1. The purpose of the MR zone is to provide housing in an area that is expected to become urban in character and where central water and sewer are available. This conditional use application for multi-family units is in compliance with the purposes of the MR zone.**
- 2. This site is located along Central Avenue, where other residential and commercial properties were developed, including other GR, MR, and C-1 zoning and development. The site is also in close proximity to the Town of Ocean View.**
- 3. A satisfactory Environmental Assessment and Public Facilities Evaluation Report was submitted by the Applicant and is part of the record for this Application.**
- 4. The proposed multi-family conditional use meets the purpose of the Zoning Ordinance in that it promotes the orderly growth of the County in an appropriate location.**
- 5. The proposed use is consistent with the County's Comprehensive Land Use Plan. It is in the Coastal Area according to the Plan, which is a Growth Area. The Plan states that medium and higher densities can be appropriate where, like here, there are features such as central water and sewer and nearby commercial uses and employment centers. The Plan also states that a range of housing types should be permitted in the Coastal Area, including single-family homes, townhouses, and multifamily units.**
- 6. No parties appeared in opposition to this Application and there is no evidence that this project will adversely affect the neighboring properties, area roadways, or community facilities.**
- 7. Non-tidal wetland buffers will be provided and approximately 97% of the woods on the site will be permanently preserved. Also, approximately 29.78 acres or 58.1% of the site will remain as open space.**
- 8. All entrance and road improvements will be constructed as directed by DelDOT.**
- 9. The project will be served by central water and central sewer.**
- 10. This recommendation is subject to the following conditions:**
 - a. There shall be no more than 174 Units within the development.**
 - b. Approximately 29.78 acres or 58.1% of the site shall remain as open space.**
 - c. All entrances, intersections, roadways, and multimodal improvements required by DelDOT shall be completed by the applicant in accordance with DelDOT's determination.**
 - d. All recreational amenities including the pool, deck, clubhouse, and dog park shall be completed in accordance with the Sussex County Zoning Code.**
 - e. Central sewer shall be provided to the development. The developer shall comply with all requirements and specifications of the Sussex County Engineering Department.**
 - f. The development shall be served by a central water system providing adequate drinking water and fire protection as required by applicable regulations.**
 - g. Approximately 97% of the existing woodlands on the site shall be**

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(continued)**

- preserved. These areas shall be marked on the Final Site Plan clearly as “Non-Disturbance Areas” on the site itself.
- h. Stormwater management and erosion and sediment control shall be constructed in accordance with applicable State and County requirements, and the project shall utilize Best Management Practices to construct and maintain these fixtures. The Final Site Plan shall contain the approval of the Sussex Conservation District.**
 - i. Interior street design shall comply with or exceed Sussex County standards.**
 - j. Road naming and addressing shall be subject to the review and approval of the Sussex County Geographic Information Department.**
 - k. The developer shall consult with the local school district’s transportation manager to determine if a school bus stop is necessary. If it is, the location of the bus stop shall be shown on the Final Site Plan.**
 - l. Construction, site work, and deliveries shall only occur on the site between the hours of 7:30 a.m. through 7:00 p.m., Monday through Friday, and between 8:00 a.m. and 2:00 p.m. on Saturdays. No Sunday hours are permitted. A 24-inch by 36-inch “NOTICE” sign confirming these hours in English and Spanish shall be prominently displayed at the site entrance during construction.**
 - m. The Final Site Plan shall include a landscape plan for the development showing the proposed tree and shrub landscape design, including the buffer areas. The landscape plan shall identify all “Limits of Disturbance” within the site and these “Limits of Disturbance” shall be clearly marked on the site itself. The landscape plan shall also include a planting schedule for all buffer areas.**
 - n. The Applicant shall form a Homeowners or Condominium Association that shall be responsible for the maintenance of all interior roadways and parking areas, buildings, buffers, stormwater management areas, recreational amenities, and open space.**
 - o. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.**
 - p. The recorded Final Site Plan and recorded condominium documents (including the Declaration Plan) shall state that hunting activities exist on nearby properties.**
 - q. There is a Tax Ditch with Tax Ditch Easements that runs through this site. The developer shall verify that it is in compliance with all existing or modified Tax Ditch easements and other requirements.**
 - r. The Final Site Plan shall depict or note these conditions of approval and it shall be subject to the review and approval of the Sussex Planning & Zoning Commission.**

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Old
Business/
CU2381**

Under Old Business, Jamie Whitehouse, Planning & Zoning Director presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A PORTION OF CERTAIN PARCELS OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 43.27 ACRES, MORE OR LESS” filed on behalf of Consolidated Edison Development, Inc.

The County Council held a Public Hearing on the Application at its meeting on December 5, 2023. At the conclusion of the Public Hearing action on the application was deferred for further consideration.

**M 065 24
Add
Condition L**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to Condition L to read: Notwithstanding the submitted conceptual site plan, the final site plan shall contain the following conditions:

- **The solar panels, solar farm, or solar array area shall be surrounded by a landscaped buffer strip of open space a minimum of 100 feet from any street lines and a minimum distance of 50 feet from all property lines;**
- **The solar panels, solar farm, or solar array area shall be 200 feet from any dwelling; and**
- **Any transformers or similar equipment and structures shall be centrally located on the site and shall be at least 200 feet from any dwelling.**

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 066 24
Adopt
Ordinance
No. 2980/
CU2381**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Ordinance No. 2980 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A PORTION OF CERTAIN PARCELS OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 43.27 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows and amended by this Council:

1. **The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.**
2. **This is an adaptive use of farmland that will preserve it from more**

**M 066 24
Adopt
Ordinance
No. 2980/
CU2381
(continued)**

- intensive development. The solar array will be located on approximately 25.8 acres of a larger 43.27-acre tract.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. This solar array will benefit residential, business, and municipal subscribers with lower power costs.
 4. This Application was submitted prior to the adoption of Ordinance No. 2920 regarding solar arrays. However, with the conditions imposed as part of these recommendations, it complies with many parts of that Ordinance.
 5. The property is located along Route 9 and backs up to a railroad. The solar array is set back several hundred feet from the boundary with Route 9. It is in an area where other farmland and businesses exist. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on area properties.
 6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
 7. The Applicant has included a Decommissioning Plan in the record for when their solar array is no longer in use.
 8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
 9. There will be a buffer of planted vegetation along the boundary of the solar array area facing Route 9 and at the rear of the adjacent properties that front along Route 9 as well as the eastern boundary of the array area to screen it from view.
 10. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
 11. There was no opposition to this Application.
 12. This recommendation is subject to the following conditions:
 - a. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
 - b. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.
 - c. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - d. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
 - e. The site shall be secured by gated fencing with interwoven screening and a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line and type of screening shall be shown on the Final Site Plan.
 - f. The location of all transformers or similar equipment or structures

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CU2381
(continued)**

- shall be along the railroad right of way as shown on the Final Site Plan.
- g. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.**
 - h. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.**
 - i. There shall be a 30-foot-wide buffer of planted vegetation along the boundary of the solar array facing Route 9 and at the rear of the adjacent properties facing Route 9 as well as the eastern boundary of this site. These areas shall be clearly shown on the Final Site Plan. The Final Site Plan shall include a landscape plan showing the proposed tree and shrub landscape design in the buffer area.**
 - j. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.**
 - k. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.**
 - l. Notwithstanding the submitted conceptual site plan, the final site plan shall contain the following conditions:**
 - The solar panels, solar farm, or solar array area shall be surrounded by a landscaped buffer strip of open space a minimum of 100 feet from any street lines and a minimum distance of 50 feet from all property lines;**
 - The solar panels, solar farm, or solar array area shall be 200 feet from any dwelling; and**
 - Any transformers or similar equipment and structures shall be centrally located on the site and shall be at least 200 feet from any dwelling.**

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Old
Business/
CU2382**

Under Old Business, Jamie Whitehouse, Planning & Zoning Director presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 37.04 ACRES, MORE OR LESS” filed on behalf of Consolidated Edison Development, Inc.

The County Council held a Public Hearing on the application at its meeting on December 5, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

**M 067 24
Add
Condition
K/CU2382**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to add Condition K to read: Notwithstanding the submitted conceptual site plan, the final site plan shall contain the following conditions:

- The solar panel, solar farm or solar array shall be surrounded by a landscape buffer strip of open space a minimum of 100 feet from any street lines and a minimum distance of 50 feet from all property lines;
- The solar panel, solar farm or solar array shall be 200 feet from any dwelling; and
- Any transformers or similar equipment, and structures shall be centrally located on the site and shall be at least 200 feet from any dwelling.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 068 24
Adopt
Ordinance
No. 2981/
CU2382**

A Motion was made by Mr. Schaeffer, seconded by Mr. Rieley to Adopt Ordinance No. 2981 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 37.04 ACRES, MORE OR LESS" for the reasons and conditions given by the Planning & Zoning Commission as follows and as amended by this Council:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 21.6 acres of a larger 37.04-acre tract.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. This solar array will benefit residential, business, and municipal subscribers with lower power costs.
4. This Application was submitted prior to the adoption of Ordinance No. 2920 regarding solar arrays. However, with the recommended conditions it complies with many parts of that Ordinance.
5. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighborhood.

**M 068 24
Adopt
Ordinance
No. 2981/
CU2382
(continued)**

6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
7. The array area is set back from Kendale Road by more than 200 feet. Also, the solar array is largely in the open areas of this property, and it is largely surrounded by existing forest.
8. The Applicant has included a Decommissioning Plan in the record for when their solar array is no longer in use.
9. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
10. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
11. There was no opposition to this Application.
12. This recommendation is subject to the following conditions:
 - a. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
 - b. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use and the undisturbed forested areas.
 - c. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - d. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
 - e. The site shall be secured by gated fencing with interwoven screening and a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line and type of screening shall be shown on the Final Site Plan.
 - f. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
 - g. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
 - h. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - i. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - j. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.
 - k. Notwithstanding the submitted conceptual site plan, the final site plan shall contain the following conditions:
 - The solar panel, solar farm or solar array shall be

M 068 24
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CU2382
(continued)

surrounded by a landscape buffer strip of open space a minimum of 100 feet from any street lines and a minimum distance of 50 feet from all property lines;

- The solar panel, solar farm or solar array shall be 200 feet from any dwelling and;
- Any transformers or similar equipment, and structures shall be centrally located on the site and shall be at least 200 feet from any dwelling.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Old
Business/
CU2383

Under Old Business, Jamie Whitehouse, Director of Planning & Zoning presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A 30.1 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 143.09 ACRES, MORE OR LESS” filed on behalf of Consolidated Edison Development, Inc.

The County Council held a Public Hearing on the application at its meeting on December 5, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

M 069 24
Adopt
Ordinance
No. 2982/
CU2383

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Ordinance No. 2982 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A 30.1 ACRE PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 143.09 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows:

- 1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.**
- 2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 30.1 acres of a larger 143.09-acre tract.**
- 3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. This solar array will benefit residential, business, and municipal subscribers with lower power costs.**

**M 069 24
Adopt
Ordinance
No. 2982/
CU2383
(continued)**

4. **This Application was submitted prior to the adoption of Ordinance No. 2920 regarding solar arrays. However, with the recommended conditions it complies with many parts of that Ordinance.**
5. **The proposed solar array is located on an underperforming part of the property owners' farm. The soils in this location are very sandy and nearly impossible to irrigate. This use will keep the property in the farming and preserve it from more intensive development.**
6. **With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighborhood. The solar array is also approximately 1,500 feet from the nearest roadway.**
7. **The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.**
8. **The Applicant has included a Decommissioning Plan in the record for when their solar array is no longer in use.**
9. **Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.**
10. **Because this solar array is within the property owners' larger agricultural landholdings and farming operations, no buffer is necessary.**
11. **The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.**
12. **There was no opposition to this Application.**
13. **This recommendation is subject to the following conditions:**
 - a. **The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.**
 - b. **The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.**
 - c. **Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.**
 - d. **One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.**
 - e. **The site shall be secured by gated fencing and a "Knox Box" or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.**
 - f. **The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.**
 - g. **The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.**
 - h. **Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.**

**M 069 24
Adopt
Ordinance
No. 2982/
CU2383
(continued)**

- i. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.**
- j. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.**

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Old
Business/
CU2384**

Under Old Business, Jamie Whitehouse, Planning & Zoning Director presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURALRESIDENTIAL DISTRICT FOR A SOLAR FARM ON A 19.61 ACRE, PORTION, MORE OR LESS, OF A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 74.96 ACRES, MORE OR LESS” filed on behalf of Consolidated Edison Development, Inc.

The County Council held a Public Hearing on the application at its meeting on December 5, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

**M 070 24
Amend
Condition I/
CU2384**

A Motion was made by Mrs. Green, seconded by Mr. Schaeffer, to amend Condition I to read Notwithstanding the submitted conceptual site plan, the final site plan shall contain the following conditions:

- The solar panel, solar farm or solar array shall be surrounded by a landscape buffer strip of open space a minimum of 100 feet from any street lines and a minimum distance of 50 feet from all property lines;**
- The solar panel, solar farm or solar array shall be 200 feet from any dwelling; and**
- Any transformers or similar equipment and structures shall be centrally located on the site and shall be at least 200 feet from any dwelling.**

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**M 071 24
Adopt
Ordinance
No. 2983/**

A Motion was made by Mrs. Green, seconded by Mr. Hudson to Adopt Ordinance No. 2983 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURALRESIDENTIAL DISTRICT FOR A SOLAR FARM ON

CU2384

A 19.61 ACRE, PORTION, MORE OR LESS, OF A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 74.96 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows and as amended by this Council:

- 1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.**
- 2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 18.74 acres of a larger 74.96-acre tract.**
- 3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.**
- 4. This Application was submitted prior to the adoption of Ordinance No. 2920 regarding solar arrays. However, with the recommended conditions it will comply with many parts of this Ordinance.**
- 5. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighborhood.**
- 6. The property owners have stated that they owned this property for more than 70 years, farming it since 1973 and training racehorses. They are no longer training the horses, and this use will keep the land in the family and prevent it from being developed with a more intensive use.**
- 7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.**
- 8. The Applicant has included a Decommissioning Plan in the record for when their solar array is no longer in use.**
- 9. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.**
- 10. There will be a buffer of planted vegetation along the northern boundary of this site to screen it from the view of the houses under construction on the adjacent property.**
- 11. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.**
- 12. This recommendation is subject to the following conditions:**
 - a. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.**
 - b. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.**
 - c. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward**

**M 071 24
Adopt
Ordinance
No. 2983/
CU2384
(continued)**

- screened so that it does not shine on neighboring properties or roadways.
- d. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
 - e. The site shall be secured by gated fencing with interwoven screening and a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line and type of screening shall be shown on the Final Site Plan.
 - f. All transformers or similar equipment or structures shall be centrally located within the solar array, and they shall be shown on the Final Site Plan.
 - g. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
 - h. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - i. Notwithstanding the submitted conceptual site plan, the final site plan shall contain the following conditions: The solar panel, solar farm or solar array shall be surrounded by a landscape buffer strip of open space a minimum of 100 feet from any street lines and a minimum distance of 50 feet from all property lines. The solar panel, solar farm or solar array shall be 200 feet from any dwelling and any transformers or similar equipment, and structures shall be centrally located on the site and shall be at least 200 feet from any dwelling.
 - j. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - k. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Old
Business/
CU2385**

Under Old Business, Jamie Whitehouse, Director of Planning & Zoning presented a Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A 17.45 ACRE PORTION, MORE OR LESS, OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 29.45 ACRES, MORE OR LESS” filed on behalf of Consolidated Edison Development, Inc.

The County Council held a Public Hearing on the application at its meeting on December 5, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration.

**M 072 24
Adopt
Ordinance
No. 2984/
CU2385**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer to Adopt Ordinance No. 2984 entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM ON A 17.45 ACRE PORTION, MORE OR LESS, OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 29.45 ACRES, MORE OR LESS” for the reasons and conditions given by the Planning & Zoning Commission as follows:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 17.45 acres of a larger 29.45-acre tract.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. This Application was submitted prior to the adoption of Ordinance No. 2920 regarding solar arrays. However, with the recommendations it will comply with many parts of that Ordinance.
5. The solar array area is set back from the nearest road, and with the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighborhood.
6. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
7. The Applicant has included a Decommissioning Plan in the record for when their solar array is no longer in use.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. There will be a buffer of planted vegetation along the southern boundary of this site along with the boundary between the array area and the adjacent Tax Map Parcel No. 532-19.00-58.00 where no vegetation currently exists to screen it from view.
10. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
11. There was no opposition to this Application.
12. This recommendation is subject to the following conditions:
 - a. The use shall be for ground-mounted solar arrays. No other types of

M 072 24
Adopt
Ordinance
No. 2984/
CU2385
(continued)

- electric generation shall be permitted at the site.
- b. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array as well as the remaining acreage that is not part of this Conditional Use.
 - c. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - d. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of emergency.
 - e. The site shall be secured by gated fencing with interwoven screening and a “Knox Box” or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line and type of screening shall be shown on the Final Site Plan.
 - f. The location of all transformers or similar equipment or structures shall be centrally located within the array area and shall be shown on the Final Site Plan.
 - g. The entire site, including the area outside the fence, shall be maintained so that it does not become overgrown.
 - h. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - i. There shall be a 30-foot-wide buffer of planted vegetation along the southern boundary of this array area along with the boundary between the array and the adjacent parcel #532-19.00-58.00 where no vegetation currently exists. These areas shall be clearly shown on the Final Site Plan. The Final Site Plan shall include a landscape plan showing the proposed tree and shrub landscape design in the buffer area.
 - j. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - k. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion Adopted: 5 Yeas

Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea

Grant
Requests

Mrs. Jennings presented a grant request for Council’s consideration.

M 073 24
Laurel

A Motion was made by Mr. Rieley, seconded by Mr. Hudson to give \$4,000 (\$3,000 from Mr. Vincent’s Councilmanic Grant Account and \$1,000 from

Historical Society **Mr. Rieley's Councilmanic Grant Account) to the Laurel Historical Society for Restoration of Hitchens Homestead.**

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Ord. Intros **There were no Ordinances for introduction.**

CC Member Comments **There were no Council Member comments.**

M 074 24 **At 12:03 p.m., A Motion was made by Mr. Hudson, seconded by Mr. Rieley to go into Executive Session for the purpose of discussing matters related to land acquisition.**

Go Into Executive Session

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Executive Session **At 12:04 p.m., an Executive Session of the Sussex County Council was held in the Council Chambers to discuss matters related to land acquisition. The Executive Session concluded at 12:17 p.m.**

M 075 24 **At 12:20 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to come out of Executive Session back into Regular Session.**

Reconvene

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

E/S Action **There was no action related to Executive Session matters.**

M 076 24 **A Motion was made by Mr. Hudson, seconded by Mr. Rieley to adjourn at 12:20 p.m.**

Adjourn

Motion Adopted: 5 Yeas

**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

Respectfully submitted,

**Tracy N. Torbert
Clerk of the Council**

{An audio recording of this meeting is available on the County's website.}

ENGINEERING DEPARTMENT

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




Sussex County

DELAWARE
sussexcountyde.gov
HANS M. MEDLARZ, P.E.
COUNTY ENGINEER
JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable John L. Rieley, Vice President
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable Mark G. Schaeffer

FROM: John J. Ashman 
Director of Utility Planning & Design Review

RE: *Existing Wastewater Infrastructure Use Agreement*
Long Neck Community Bank IUA 1208
File: OM 9.01

DATE: February 14, 2024

The Existing Wastewater Infrastructure Use Agreement is an arrangement that collects financial contributions based on development built out flows for available capacity in the existing wastewater transmission infrastructure previously funded by the County while at the same time eliminating the granting of "oversizing" credits.

The Engineering Department requests approval of an agreement for the existing wastewater infrastructure use with **Community Bank Delaware** for **Long Neck Community Bank** project in the **Long Neck Area**. Such an arrangement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission system previously constructed by the County.

Under the proposed arrangement, **Long Neck Community Bank** project will connect to the existing County owned wastewater infrastructure. In return for utilization of said **Community Bank Delaware** will contribute **\$11,456.00** for the financial catch-up contribution of the existing infrastructure to serve **8.53** Equivalent Dwelling Units. Payments of the contribution will be submitted prior to substantial completion of the on-site collection system.



EXISTING WASTEWATER INFRASTRUCTURE USE AGREEMENT

Long Neck Community Bank – IUA 1208

THIS AGREEMENT (“Agreement”), made this 20TH day of FEBRUARY ~~2020~~₄, by and between:

SUSSEX COUNTY, a political subdivision of the State of Delaware, hereinafter called the “County,” and;

COMMUNITY BANK DELAWARE, developer of a project known as **Long Neck Community Bank**, hereinafter called the “Developer.”

WITNESSETH:

WHEREAS, Developer is developing several tracts of land identified as Tax Map parcels 234-23.00-261.00 & 262.00 to be known as **Long Neck Community Bank** (“Project”) and;

WHEREAS, the Project is within the boundary of the Sussex County Unified Sanitary Sewer District (Long Neck Area) and;

WHEREAS, the Project will utilize available capacity in existing wastewater infrastructure previously funded by Sussex County.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, which is hereby acknowledged by both parties as sufficient consideration, the parties hereby agree as follows:

- (1) Developer is proposing to utilize County’s existing collection and transmission capacity by connecting to existing regional infrastructure used by multiple pump stations.
- (2) In exchange for permission to connect up to **8,53** additional equivalent dwelling units to County’s existing system and to utilize the existing capacity in said system, Developer agrees to financial catch-up contribution in the amount of **\$11,456.00** for said existing facilities.
- (3) The contribution amount in the case of multiple pump stations using an existing collection and transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) **Payment of the contribution is required prior to receiving beneficial acceptance of the projects on-site collection system.**

- (5) If the Project (as currently submitted) is amended and County determines in its sole discretion that such amendments materially affect this Agreement, this Agreement may be declared by County to be null and void, and any unused payments made pursuant to this Agreement shall be returned to Developer, unless the parties otherwise agree. Nothing herein shall prevent the parties from the negotiation of a new agreement with respect to the amended Project, as the parties may deem appropriate.
- (6) The contribution is to be placed in County's sewer capital fund and expended towards overall debt reduction or at such time when any transmission infrastructure in County's Unified Sanitary Sewer District requires capital improvements (See Chapter 110-96 of the Sussex County Code).
- (7) Developer shall be responsible for payment of any and all undiscounted system connection charges in accordance with and pursuant to the requirements of the *Sussex County Code* for all lots, due at such time the Developer receives each sewer connection permit.
- (8) Developer shall comply in all aspects with the *Sussex County Code* and any other local, state, county, or federal laws, regulations, or policies that may be applicable and as such may be hereinafter amended.
- (9) Prior to the commencement of construction of any sanitary sewer facilities for the Project, Developer shall obtain a project construction permit from the County in accordance with and pursuant to the requirements of the *Sussex County Code*.
- (10) In order to allow the opportunity for a County representative to be present as the County so chooses, Developer shall send written notice to County of the date upon which connection to the County regional transmission system will be made. Developer shall follow County's written or verbal instructions in making said connection to the County sanitary sewer system.
- (11) Developer may assign this Agreement in whole or in part to any entity controlled directly or indirectly by Developer or to any third party who purchases, leases or otherwise controls any portion of Developer's property without the consent of County. Developer, and any subsequent assignees or successors shall provide County at least ten (10) days' written notice of any such assignment. Any other assignments, transfers, or conveyances with respect to this Agreement are prohibited without prior written consent of County.
- (12) To the extent permitted by law, Developer shall indemnify and hold harmless County, and its appointed and elected officials, employees, licensees, and agents for any claims, losses, liabilities, suits, or damages, including but not limited to reasonable attorneys' fees, professional engineering fees, and any other costs of litigation, arising out of Developer's negligence in connection with its performance

under this Agreement, including but not limited to damage to the County's infrastructure in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.

- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.

Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is 16982 Kings Highway, Lewes Delaware 19958.

IN WITNESS, WHEREOF, the respective parties hereto have affixed their hands and seals the day and year aforesaid.

FOR THE COUNTY:

{Seal}

By: _____
(President - Sussex County Council)

(DATE)

ATTEST:

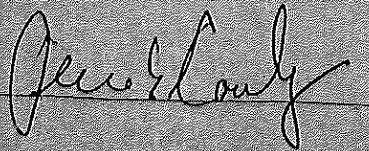
Tracy Torbert
Clerk of the County Council

FOR COMMUNITY BANK DELAWARE

By:  _____ (Seal)
Alexander J. Pires, Jr. CEO

1/23/24
(DATE)

WITNESS:



ENGINEERING DEPARTMENT

ADMINISTRATION (302) 855-7718
AIRPORT & INDUSTRIAL PARK (302) 855-7774
ENVIRONMENTAL SERVICES (302) 855-7730
PUBLIC WORKS (302) 855-7703
RECORDS MANAGEMENT (302) 854-5033
UTILITY ENGINEERING (302) 855-7717
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Sussex County


DELAWARE
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HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable John L. Rieley, Vice President
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable Mark G. Schaeffer

FROM: John J. Ashman 
Director of Utility Planning & Design Review

RE: *Existing Wastewater Infrastructure Use Agreement*
East Gate IUA 1176
File: OM 9.01

DATE: February 14, 2024

The Existing Wastewater Infrastructure Use Agreement is an arrangement that collects financial contributions based on development built out flows for available capacity in the existing wastewater transmission infrastructure previously funded by the County while at the same time eliminating the granting of "oversizing" credits.

The Engineering Department requests approval of an agreement for the existing wastewater infrastructure use with **McKee Builders, LLC** for **East Gate** project in the **Johnson's Corner Area**. Such an arrangement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission system previously constructed by the County.

Under the proposed arrangement, **East Gate** project will connect to the existing County owned wastewater infrastructure. In return for utilization of said **McKee Builders, LLC** will contribute **\$11,109.00** for the financial catch-up contribution of the existing infrastructure to serve **93.00** Equivalent Dwelling Units. **This contribution amount was adjusted based on the cost of infrastructure minus the original MOU for the Johnson's Corner project.** Payments of the contribution will be submitted prior to substantial completion of the on-site collection system.



EXISTING WASTEWATER INFRASTRUCTURE USE AGREEMENT

East Gate – IUA 1176

THIS AGREEMENT (“Agreement”), made this 24th day of January 2024, by and between:

SUSSEX COUNTY, a political subdivision of the State of Delaware, hereinafter called the “County,” and;

MCKEE BUILDERS, LLC a limited liability corporation and developers of a project known as **East Gate**, hereinafter called the “Developer.”

WITNESSETH:

WHEREAS, Developer is developing several tracts of land identified as Tax Map parcels 533-11.00-45.05, 45.06, 45.07 & 45.08 to be known as **East Gate** (“Project”) and;

WHEREAS, the Project is within the boundary of the Sussex County Unified Sanitary Sewer District (Johnson’s Corner Area) and;

WHEREAS, the Project will utilize available capacity in existing wastewater infrastructure previously funded by Sussex County.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, which is hereby acknowledged by both parties as sufficient consideration, the parties hereby agree as follows:

- (1) Developer is proposing to utilize County’s existing collection and transmission capacity by connecting to existing regional infrastructure used by multiple pump stations.
- (2) In exchange for permission to connect **93.00** additional equivalent dwelling units to County’s existing sanitary sewer system and to utilize the existing transmission capacity in said system, Developer agrees to financial catch-up contribution in the net amount of **\$11,109.00** for said existing facilities.
- (3) The contribution amount in the case of multiple pump stations using an existing collection and transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) **This contribution amount is adjusted based on the cost of the infrastructure minus the MOU from the original Johnson’s Corner project.**
- (5) Payment of the contribution will be required prior to beneficial acceptance of the on-site sewer collection system.

- (6) All the conditions of this agreement must be disclosed to any and all third-party purchasers of the project and/or part of the project prior to the time of settlement.
- (7) If the Project (as currently submitted) is amended and County determines in its sole discretion that such amendments materially affect this Agreement, this Agreement may be declared by County to be null and void, and any unused payments made pursuant to this Agreement shall be returned to Developer, unless the parties otherwise agree. Nothing herein shall prevent the parties from the negotiation of a new agreement with respect to the amended Project, as the parties may deem appropriate.
- (8) The contribution is to be placed in County's sewer capital fund and expended towards overall debt reduction or at such time when any transmission infrastructure in County's Unified Sanitary Sewer District requires capital improvements (See Chapter 110-96 of the Sussex County Code).
- (9) Developer shall be responsible for payment of any and all undiscounted system connection charges in accordance with and pursuant to the requirements of the *Sussex County Code* for all lots, due at such time the Developer receives the sewer connection permit.
- (10) Developer shall comply in all aspects with the *Sussex County Code* and any other local, state, county, or federal laws, regulations, or policies that may be applicable and as such may be hereinafter amended.
- (11) Prior to the commencement of construction of any sanitary sewer facilities for the Project, Developer shall obtain a project construction permit from the County in accordance with and pursuant to the requirements of the *Sussex County Code*.
- (12) In order to allow the opportunity for a County representative to be present as the County so chooses, Developer shall send written notice to County of the date upon which connection to the County regional transmission system will be made. Developer shall follow County's written or verbal instructions in making said connection to the County sanitary sewer system.
- (13) Developer may assign this Agreement in whole or in part to any entity controlled directly or indirectly by Developer or to any third party who purchases, leases or otherwise controls any portion of Developer's property without the consent of County. Developer, and any subsequent assignees or successors shall provide County at least ten (10) days' written notice of any such assignment. Any other assignments, transfers, or conveyances with respect to this Agreement are prohibited without prior written consent of County.
- (14) To the extent permitted by law, Developer shall indemnify and hold harmless County, and its appointed and elected officials, employees, licensees, and agents for

any claims, losses, liabilities, suits, or damages, including but not limited to reasonable attorneys' fees, professional engineering fees, and any other costs of litigation, arising out of Developer's negligence in connection with its performance of this Agreement, including but not limited to damage to the County's infrastructure in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.

- (15) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (16) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (17) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (18) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (19) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (20) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.

Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is 940 West Sproul Road, Suite 301, Springfield PA 19064.

IN WITNESS, WHEREOF, the respective parties hereto have affixed their hands and seals the day and year aforesaid.

FOR THE COUNTY:

{Seal}

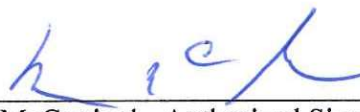
By: _____
(President - Sussex County Council)

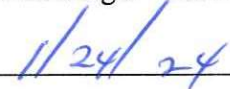
_____ (DATE)

ATTEST:

Tracy N. Torbert
Clerk of the County Council

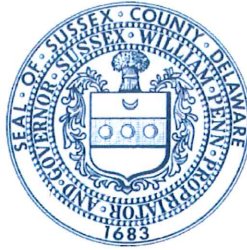
FOR MCKEE BUILDERS, LLC

By:  (Seal)
Mark McGonigal - Authorized Signatory

 (DATE)

WITNESS:  _____


TODD F. LAWSON
COUNTY ADMINISTRATOR
(302) 855-7742 T
(302) 855-7749 F
tlawson@sussexcountycle.gov



Sussex County
DELAWARE
sussexcountycle.gov

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable John L. Rieley, Vice President
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable Mark G. Schaeffer

FROM: Todd F. Lawson 
County Administrator

RE: **PERIMETER BUFFER UPDATE DISCUSSION**

DATE: February 16, 2024

During Tuesday's meeting, Council is scheduled to discuss the perimeter buffer ordinance update.

Staff has prepared the recommended changes to the perimeter buffer ordinance in outline form. The outline is attached for your review. Staff will review the suggested recommendations during the meeting and seek your approval to begin drafting the ordinance.

In the meantime, please let me know if you have any questions.



Perimeter Buffers Update Outline

I. Definitions

- Clearing or Cleared: any type of clearing or cutting of woodland areas that is regulated under the Sediment and Stormwater Management rules of the Delaware Department of Natural Resources and Environmental Control.
- Forest Assessment: a method or process, to include a tree survey, for determining the area or areas within a parcel that contain high habitat value and individual trees to be preserved.
- Perimeter Buffer: a managed area of planted or existing trees and shrubs and associated landscaping, not less than 30 feet in width measured from the property boundary located along the entire outer perimeter of any portion of a major subdivision. No lots or stormwater management facilities (with the exception of outfalls) shall exist within the Perimeter Buffer. *See illustration below.*
- Perimeter Buffer Landscape Plan: a Plan prepared by a developer depicting compliance with the Perimeter Buffer and Perimeter Buffer Protection Area, including, but not limited to, planting schedules, types of vegetation (existing and to be planted); fencing, signage and other marking. The Perimeter Buffer Landscape Plan shall be prepared and certified by a licensed landscape architect, certified arborist, certified nursery professional, or licensed forester or forester designated by the Society of American Foresters as a “certified forester.”
- Perimeter Buffer Protection Area: an area adjacent to a Perimeter Buffer that contains Woodlands that is not less than 20 feet in width measured from the edge of the Perimeter Buffer to be retained and protected to ensure that existing Woodlands in a Perimeter Buffer are not disturbed. No lots or stormwater management facilities (with the exception of outfalls) shall be permitted in the Perimeter Buffer Protection Area. *See illustration below.*

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- Woodlands: an area of contiguous wooded vegetation of at least 10,000 square feet in an area where trees exist at a density of at least one tree with diameter at breast height of six inches or greater per 400 square feet of land and where the tree branches form a contiguous canopy. Active tree nurseries and orchards shall not be considered Woodlands.

45 **II. Perimeter Buffer General Standards**

46 There shall be a Perimeter Buffer established along the boundary of every major
47 subdivision or residential planned community. A Perimeter Buffer shall not be
48 required along internal boundaries within a subdivision or residential planned
49 community, such as internal phasing lines.

50 The Perimeter Buffer shall be planted with a variety of trees and shrubs so as to create
51 a visual landscaped screening. All trees and shrubs shall be local and native species.
52 All planting activities shall adhere to ANSI A300, Planting Standards.

53
54 The Perimeter Buffer shall include a mix of 70% deciduous shade trees and 30%
55 evergreen trees. The Perimeter Buffer shall include at least fifteen trees within every
56 one-hundred linear feet of the Buffer. All deciduous and evergreen trees that are
57 planted shall have a minimum height of six feet above ground when planted, obtain a
58 minimum height of ten feet, and arranged in a staggered natural manner to effectively
59 achieve a visual landscaped screening which will filter views from and into the
60 subdivision. The Perimeter Buffer may include existing Woodlands and planted trees
61 to achieve these planting standards.

62
63 In the event that a Resource Buffer (Section 115-193) is required in the location of a
64 Perimeter Buffer or Perimeter Buffer Protection Area, the Resource Buffer standards
65 shall take precedence over, and shall not be in addition to, the Perimeter Buffer and/or
66 Perimeter Buffer Protection Area requirements for that same location.

67
68 The Perimeter Buffer shall be marked with permanent, in-ground signage located at
69 100-foot intervals along the edge of the Perimeter Buffer to confirm the existence and
70 non-disturbance of the Perimeter Buffer. This signage shall be at least five inches by
71 seven inches in size and shall identify the existence of the Buffer, the fact that it is a
72 non-disturbance Area and a reference to penalties and/or remediation required if
73 unauthorized disturbance occurs.

74

75 **Perimeter Buffer Standards – Woodlands Requirements**

76 **Where a Perimeter Buffer contains existing Woodlands at the time of application,**
77 **the following requirements shall apply:**

78 Any major subdivision or residential planned community where Woodlands exist at the
79 time of application shall require a Forest Assessment prepared and certified by a
80 licensed landscape architect, certified arborist, certified nursery professional, or
81 licensed forester or forester designated by the Society of American Foresters as a
82 “certified forester.” The Forest Assessment must be submitted as part of the
83 application.

84 The Woodlands retained within the Perimeter Buffer shall be depicted generally on the
85 Preliminary Site Plan and with detail on the Perimeter Buffer Landscape Plan.

86 Unless otherwise provided for herein, the Woodlands within the Perimeter Buffer shall
87 remain in its natural state.

88 The Area of the Perimeter Buffer containing Woodlands shall be bordered by a
89 Perimeter Buffer Protection Area.

90 There shall be protective tree fencing, staking, or continuous ribbon installed along the
91 entire edge of the Perimeter Buffer Protection Area adjacent to the interior of the
92 development to protect the integrity of existing trees within the Perimeter Buffer.

93 Selective clearing of the Woodlands retained for the use of the Perimeter Buffer may
94 be permitted but at no time shall trees of six-inch diameter at breast height be damaged,
95 removed, or otherwise adversely affected. Dead, dying or unstable live trees that
96 present an imminent danger to persons or property may be removed. Removal of any
97 invasive species from the Woodlands is permitted.

98 Walking trails within the Woodlands for the purpose of providing access to the
99 Perimeter Buffer may be permitted and shall be depicted on the Perimeter Buffer
100 Landscape Plan.

101 Access points to the Woodlands for the purpose of Perimeter Buffer maintenance may
102 be permitted and shall be depicted on the Perimeter Buffer Landscape Plan.

103 Any removal or damage of trees within the Woodlands, the Perimeter Buffer or the
104 Perimeter Buffer Protection Area shall be subject to the mitigation requirements as well
105 as the violations and penalties located in this Chapter.

106 At no time shall the ground within Woodlands area of a Perimeter Buffer be cleared,
107 graded, regraded, or grubbed.

108 If Woodlands on the land where the Perimeter Buffer is to be located has been cleared
109 for a timber harvest within five years prior to the date of application, the following
110 additional planting requirements shall apply:

- 111 • The area harvested making up the Perimeter Buffer shall be measured and known
112 as the “Cleared Area”.
- 113 • The Perimeter Buffer shall be planted back with at least fifteen trees every fifty
114 linear feet of the Buffer.
- 115 • In addition to the Perimeter Buffer, a new Woodlands shall be planted that is 2.0
116 times the size of the Cleared Area and a rate of at least 50 trees per acre.
- 117 • The new Woodlands may border the area of the Perimeter Buffer or be in a
118 separate area, but at no time shall the Perimeter Buffer be less than 30’ in width
119 measured from the property boundary.
- 120 • The planted Perimeter Buffer and new Woodlands shall meet the tree and shrub
121 requirements of Section II of this Chapter.
- 122 • If the applicant chooses to provide replacement plantings on any property other
123 than the one on which the timber harvest occurred or protect an off-site
124 Woodlands area, the mitigation plan must be reviewed and approved by the
125 Planning and Zoning Commission.
 - 126 ○ The replacement plantings or off-site Woodlands area must be located
127 within the same twelve-digit hydrologic unit code as defined by the United
128 States Geological Survey as the proposed development.
 - 129 ○ The replacement plantings or Woodlands area located off-site must be
130 protected under a perpetual conservation easement for the benefit of a
131 conservation organization approved by Sussex County.
 - 132 ○ At no time shall the area of the replacement plantings be less than 2.0
133 times the area of Woodlands to be the Perimeter Buffer that was cleared
134 and a rate of at least 50 trees per acre and shall meet the tree and shrub
135 requirements of Section II of this Chapter.

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144 **Perimeter Buffer Standards – Non-Woodlands Requirements**

145 **Where a Perimeter Buffer does not contain existing Woodlands at the time of**
146 **application, the following requirements shall apply:**

147
148 Any major subdivision or residential planned community where Woodlands do not
149 exist within the Perimeter Buffer shall comply with the planting requirements of the
150 Perimeter Buffer Standards and Perimeter Buffer Landscape Plan.

151
152 There shall be protective fencing, staking, or continuous ribbon installed along the
153 entire edge of the Perimeter Buffer adjacent to the interior of the development to
154 protect the integrity of the Perimeter Buffer.

155
156 There shall be a final grade that contains a minimum of four inches of topsoil and a
157 suitable grass mix planted as sacrificial cover between the buffer trees for soil
158 stabilization until the newly planted trees become larger. Woodchips may substitute
159 for planted grass between the buffer trees in respect to both newly planted and
160 existing trees.

161
162 Walking trails within Perimeter Buffer may be permitted and shall be depicted on the
163 Perimeter Buffer Landscape Plan.

164
165 Access points to the Woodlands for the purpose of Perimeter Buffer maintenance may
166 be permitted and shall be depicted on the Perimeter Buffer Landscape Plan.

167
168 The Perimeter Buffer shall have a two-year guarantee secured by bonding from the
169 date that substantial completion is issued for the phase where the Perimeter Buffer is
170 located.

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179 **III. Perimeter Buffer Landscape Plan**

180 The Perimeter Buffer shall be depicted generally on the Preliminary Site Plan and in
181 detail on a Perimeter Buffer Landscape Plan that is included within a Final Site Plan.

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183 The Perimeter Buffer Landscape Plan shall provide sufficient information and detail to
184 clearly demonstrate that all applicable requirements and standards for Perimeter
185 Buffers and Perimeter Buffer Protection Areas are satisfied. The Perimeter Buffer
186 Landscape Plan shall contain, at a minimum, the following:

- 187 • Approximate location and description of the protective tree fencing, staking, or
188 continuous ribbon.
- 189 • The location, spacing, height, and species of existing and new trees and shrubs
190 proposed to meet tree planting requirements.
- 191 • The design and location of the required Perimeter Buffer signage.
- 192 • Measures to be taken to avoid sedimentation intrusions and erosion in the
193 Perimeter Buffer.
- 194 • A summary table of the number of new trees to be planted and minimum number
195 of existing trees to be retained (if any) to meet the tree specification and density
196 requirements with calculations confirming that these requirements have been
197 achieved. The summary table may include example groupings of trees to be
198 planted instead of each new tree labeled on the Perimeter Buffer Landscape Plan.
- 199 • A note confirming that the developer guarantees the full cost of replacement for
200 any trees, shrubs or existing Woodlands per Section V. of this Summary.
- 201 • A planting schedule for the Perimeter Buffer. The planting schedule shall
202 demonstrate the installation of the Perimeter Buffer prior to the issuance of the
203 first residential building permits in the phase where it is located. The Perimeter
204 Buffer shall be planted and inspected prior to the issuance of the first residential
205 building permit within the phase where the Buffer is located. Each phase of the
206 development must include the Perimeter Buffer and Perimeter Buffer Protection
207 Area (as applicable) that is adjacent to that Phase.

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- Notwithstanding any other provisions of this chapter, the Planning and Zoning Commission shall be authorized, as part of the site plan review process, to grant final approval of a Plan for the roadway frontage of a major subdivision which may include Landscape and design features, such as fences, walls, berms, Landscape Plantings of shrubs, ornamental grasses and/or trees, multimodal paths required by DelDOT, or a combination of such features which is designed and certified to by a licensed Landscape architect, licensed Forester or Forester designated by the Society of American Foresters as a "certified Forester", for the purpose of making the subdivision more attractive, more in keeping with the surrounding Area and less visible from the roadway, provided said Plan will not cause the Landscape features contained in the Plan to be placed in an Area adjacent to the entrance in such a manner as to restrict the view of motorists entering or exiting from the subdivision or restricting the sight lines of motorists in such a manner as to create a potential safety or traffic hazard.

253 **IV. Timing; Bonds and Guarantees.**

254

255 The Perimeter Buffer Landscape Plan shall include the planting schedule for the entire
256 Perimeter Buffer. The planting schedule shall demonstrate the installation of the
257 Perimeter Buffer prior to the issuance of any residential building permits within the
258 phase. The Perimeter Buffer shall be planted and inspected prior to the issuance of the
259 first residential building permit within the phase where the Perimeter Buffer is located.
260 Each phase of the development must include the Perimeter Buffer and Perimeter Buffer
261 Protection Area (as applicable) that is adjacent to that phase. The Perimeter Buffer for
262 each phase must be planted and inspected before County approvals or permits will be
263 granted to construct the next phase.

264

265 Where Woodlands exist in the Perimeter Buffer, the Perimeter Buffer and Perimeter
266 Buffer Protection Area shall be protected and marked as provided herein for the entire
267 development (subject to inspection and approval by Sussex County) prior to the
268 issuance of any notice to proceed for site work. For subdivisions that are to be
269 constructed in phases, the Protection and marking of existing Woodlands shall be
270 maintained and inspected prior to the issuance of any notice to proceed for site work
271 or construction within a subsequent phase.

272 The developer shall be responsible for the removal from the site of all stakes, guy wires,
273 protective tree fencing, staking, or continuous ribbon.

274 The developer shall post a performance bond or other guaranty for the Perimeter Buffer
275 in an amount sufficient to install the Perimeter Buffer and the Perimeter Buffer
276 Protection Area (as applicable) in a form acceptable to the County Attorney. The
277 amount of such bond shall be 125% of the cost of the installation the Perimeter Buffer
278 (including all plantings) and the Perimeter Buffer Protection Area (as applicable) or
279 \$50,000, whichever is greater. The Perimeter Buffer shown on the Perimeter Buffer
280 Landscape Plan may be bonded as a separate phase or phases of the subdivision,
281 provided that all Perimeter Buffers containing Woodlands must be bonded before a
282 Notice to Proceed is issued for any phase of the development.

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284 Bonds posted to ensure the completion and non-disturbance of the Perimeter Buffers
285 shall be posted with the Director of Planning and Zoning.

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289 The trees and shrubs located within the Perimeter Buffer shall be in good health prior
290 to the issuance of substantial completion in accordance with Section 99-31 of the Code.
291 The Bonds for the Perimeter Buffer shall thereafter remain in place until the latter of
292 two years after the determination of substantial completion in accordance with Section
293 99-31 or two years after such date as the maintenance responsibilities are transferred
294 to a homeowners' association.

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296 A party may not alter the Perimeter Buffer Area of the development (or any phase
297 thereof) unless an amended Perimeter Buffer Landscaping Plan is approved by Sussex
298 County and a new bond or other guaranty is provided for the alteration.
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318 **V. Perimeter Buffer Maintenance**

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320 The developer shall be responsible for the health and survival of the Perimeter Buffer,
321 including regular necessary watering until the determination of substantial completion
322 in accordance with Section 99-31. This shall include the obligation to replace any trees
323 and shrubs within the Perimeter Buffer that do not survive during this time period.

324

325 The Perimeter Buffer shall be maintained in perpetuity. The perpetual maintenance of
326 the Perimeter Buffer by a homeowners' association shall be confirmed in the recorded
327 declaration or restrictive covenants for the development with the requirement that any
328 trees or shrubs that do not survive must be replanted with trees or shrubs of the same
329 type and species in accordance with the original Landscape Plan approved by Sussex
330 County. The Perimeter Buffer shall be maintained (and any replacement trees or shrubs
331 planted) according to best management practices in the Forestry industry (ANSI A300).
332 The applicant and/or developer must provide the Commission with satisfactory proof
333 that the declaration or restrictive covenants include a perpetual maintenance plan which
334 shall be binding upon the applicant and/or developer and thereafter by the homeowners'
335 association. The Commission and its attorney shall review and approve the perpetual
336 maintenance plan prior to the restrictive covenants being recorded and prior to granting
337 final site plan approval.

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349 **VI. Perimeter Buffer Tree Mitigation**

350 In the event that trees, shrubs, Woodlands, or the Perimeter Buffer Protection Area are
351 removed or damaged without authorization, tree mitigation shall be required. In
352 addition, violations and penalties may be assessed.

353 If trees within a Perimeter Buffer (whether Woodlands or planted) have been damaged
354 or removed (unless such damage or removal is the result of Act of God or natural causes
355 and are therefore subject to the Perimeter Buffer Maintenance Requirements), tree
356 mitigation must occur in the form of newly created Woodlands as follows:

- 357 • A mitigation plan shall be prepared by a licensed Landscape architect, certified
358 arborist, certified nursery professional, or licensed Forester or Forester
359 designated by the Society of American Foresters as a “certified Forester.”
- 360 • New Woodlands shall be created for the Area of Woodlands in the Perimeter
361 Buffer that was illegally accessed or damaged with at least three replacement
362 trees planted for every tree removed or damaged.
- 363 • The replacement plantings shall meet the tree and shrub requirements of Section
364 II of this Summary.
- 365 • The developer, property owner and/or party who violates this section shall be
366 responsible for the health and survival of the replacement trees per Section V. of
367 this Summary.
- 368 • All tree mitigation plantings must be on the same lot, parcel, or tract on which
369 the illegal activity occurred, except as noted herein.

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382 **VII. Violations and Penalties**

383 [Copied from Resource Buffer Ordinance]

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385 The developer, owner of the land and any person or corporation who shall violate any
386 provisions of this Section shall be subject to the following penalties in addition to other
387 requirements set forth in this Section. Separate violations or a series of violations may
388 be combined to determine the total Area where the violation occurred.

389

- 390 • A fine of \$10,000 per quarter acre, pro rata, of disturbance within the Perimeter
391 Buffer and Perimeter Buffer Protection Area, as applicable, shall be imposed;
392 and
- 393 • A tree mitigation plan in accordance with Section VI. of this Summary shall be
394 approved by the Planning and Zoning Commission.

395

396 Where the developer is the party who has violated the provisions of this Section, no
397 building or zoning permits shall be issued nor shall any inspections occur within the
398 phase where the violation occurred (including, but not limited to building code and
399 utility inspections) until the tree mitigation plan is complete and approved by the
400 Commission.

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423 [Placeholder for Illustrations]

WILLIAM PFAFF
ECONOMIC DEVELOPMENT DIRECTOR
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Sussex County
DELAWARE
sussexcountyde.gov

Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable John L. Rieley, Vice President
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable Mark G. Schaeffer

FROM: William Pfaff
Economic Development

RE: **Delaware Coastal Business Park Leases**

DATE: February 13, 2024

On the agenda Tuesday ~ the following leases will be presented for approval in the Delaware Coastal Business Park:

- **DTCC- located 21765 Nanticoke Ave., Georgetown, DE 19947**
- **JDJS, LLC (dba) JennyGems – located at 21345 Cedar Creek Ave., Georgetown, DE 19947**

Delaware Technical Community College: CDL Training

Training Overview:

If you enjoy the freedom of the open road and want a career that doesn't involve sitting behind a desk? This curriculum combines classroom study with practical



experience behind the wheel of diesel-powered tractor trailers on a private training range as well as public streets and highways. You'll also learn the intricacies of handling a variety of truck types and cargo, conducting required inspections, proper reporting and documentation requirements, and trip planning techniques – all in a small class-size environment.

Delaware Technical Community College is a member of **National Association of Publicly Funded Truck Driving Schools (NAPFTDS)**

JDJS, LLC (dba) JennyGems

The business began from Jenny and Dave's home. Jenny was laid off from her full-time banking job at MBNA America and with Dave's encouragement, she pursued selling items online as a full-time career. She made it a success. Dave followed a few years later and left his job as an Animal Control Officer. At the end of 2015, Jenny and Dave officially launched JennyGems®.

The couple began their brand by having their designs manufactured overseas in China. After being affected by the trade wars in 2019 and the inability to find a US supplier to keep up with the brands demand, the couple decided to take a big risk and use all their resources to purchase expensive manufacturing and wood shop equipment.

This location will be used as a wood shop and newly expanding sign business.

COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT ("Lease") is made and entered into this day of _____, 2024 (the "Effective Date"), by and between **SUSSEX COUNTY**, a political subdivision of the State of Delaware, with an address of 2 The Circle, P.O. Box 589, Georgetown, DE 19947 ("Lessor"), and **DELAWARE TECHNICAL AND COMMUNITY COLLEGE**, an institution of higher education and state agency existing under the laws of the State of Delaware, with an address of 21179 College Drive, Georgetown, Delaware 19947 ("Lessee"), and it recites and provides as follows.

RECITALS

WHEREAS, Lessor is the owner of certain commercial real property which is improved by three (3) commercial buildings ("the Buildings") as hereafter described; and

WHEREAS, Lessee desires to lease said commercial real property known as 21765 Nanticoke Avenue, Georgetown, Delaware, which is identified as part of Lot 8, part of Lease Area 2, and part of Former Runway 16-34 in the Delaware Coastal Business Park, for the operation of a commercial transportation education program; and

WHEREAS, Lessee has occupied the Premises, as hereinafter defined, since January 1, 2023, and agrees to pay rent pursuant to this Agreement effective January 1, 2023.

WITNESSETH:

That the parties of this Lease, intending to be legally bound, hereby covenant and agree as follows:

1. **PREMISES:** Lessor leases to Lessee and Lessee accepts, as Lessee, the premises to a suitable Lessee for business purposes, described as follows:

A portion of the tract of land as improved by the Buildings identified as real property known as 21765 Nanticoke Avenue, Georgetown, Delaware, which is identified as part of Lot 8, part of Lease Area 2, and part of Former Runway 1634 in the Delaware Coastal Business Park and as Sussex County Tax Parcel No. 135-20.00-75.00 being approximately 3.859 acres of land, more or less, and more particularly described as "New Lease Area 1" and "New Lease Area 2" on Exhibit

A attached hereto and incorporated herein by reference (the "Leased Premises" or "premises"). Lessee acknowledges that Lessor reserves the right to change the parcel numbers and street names located in Delaware Coastal Business Park during the term of this Lease.

2. **TERM:** The term of this Lease shall be ten (10) years which shall commence at 10:00 o'clock A.M. on January 1, 2023 ("the Commencement Date") and shall terminate at 11:59 o'clock P.M. on December 31, 2032, unless sooner terminated as provided in this Lease.

3. **RENT:**

- a. For the 10-year lease term referred to in paragraph 2, Lessee shall pay rent annually in one (1) lump sum payment, the first of said payments which shall be due and payable upon the commencement of the Lease term. Notwithstanding the foregoing, if the Lease term commences after January 1, the annual rent shall be prorated on a per diem basis for the remainder of the initial year and payment for the remainder of the initial year shall be due on the Commencement Date ("Initial Rent Payment"). All payments thereafter shall be due and payable annually on the 1st day of January each year for the remainder of the Lease term without demand and without setoff or deduction. The initial annual rent shall be calculated at the rate of Five Thousand Dollars (\$5,000.00) per acre based on acreage of 3.859 acres which is Nineteen Thousand Two Hundred Ninety-Five Dollars (\$19,295.00) ("Base Rent"). The Base Rent shall be adjusted every five (5) years during the Term in accordance with Paragraph 4 hereof (collectively "Rent"). All other costs due hereunder shall be considered additional rent ("Additional Rent") which shall be due and payable as hereinafter set forth. The Parties agree that Lessee shall pay to Lessor the Base Rent and Additional Rent for the 2023 and 2024 calendar years upon execution of this Lease Agreement.
- b. Any payment by Lessee or acceptance by Lessor of a lesser amount than shall be due from Lessee to Lessor shall be treated as a payment on account. The acceptance by Lessor of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Lessor may accept such check without prejudice to any other rights or remedies which Lessor may have against Lessee.

- c. **PAYMENT PROVISIONS:** All payments should be made to Sussex County Council, Sussex County Treasury Office, P.O. Box 601, Georgetown, Delaware 19947, or such other place or places as may from time to time be designated in writing by Lessor.

- 4. **CPI RENT ADJUSTMENT:** The Base Rent in Paragraph 3 will be adjusted according to this paragraph on January 1, 2028.
 - a. In this Paragraph 4, the following terms shall have the meaning set forth herein:
 - (1) "Price Index" means the Consumer Price Index for All Items, All Urban Consumers, U.S. City Average (CPI-U Table 1, unadjusted as published monthly by the United States Department of Labor, Bureau of Labor Statistics) compared to the same index sixty (60) months earlier. If publication of the above index shall be discontinued, then another index generally recognized as authoritative shall be substituted, as selected by Lessor in its reasonable discretion.
 - (2) "Base Price Index" means the Price Index for the month (the "Base Month") nearest before the Commencement Date for which the Price Index is published and/or the most recently available.

 - b. The Base Rent payable pursuant to Paragraph 3 (as it may have been adjusted according to this paragraph) will be increased every five (5) years beginning on January 1, 2028, by a fraction whose numerator is the Price Index published for the then most recent anniversary month of the Base Month and whose denominator is the Base Price Index. The Base Rent as adjusted will not be reduced pursuant to this paragraph.

 - c. If a substantial change is made in the Price Index, or its publication is discontinued or changed in such a way as to prevent calculations pursuant to this Paragraph 4, then the Price Index will be adjusted to the figure that would have been used had the manner of computing the Price Index in effect at the date of this Lease not been altered. If the Price Index (or a successor or substitute index) is not available, a reliable governmental or other nonpartisan publication evaluating the information used in determining the Price Index will be used.

- d. No adjustments will be made due to any revision that may be made in the Price Index for any month.
- e. The statements of the adjustment to be furnished by Lessor will consist of data prepared for the Lessor by a firm of certified public accountants (which may be the firm now or then currently employed by Lessor for the audit of its accounts). The statements thus furnished to Lessee will constitute a final determination as between Lessor and Lessee of the relevant adjustment.
- f. Seasonal adjustments will not be used.
- g. Lessor's delay or failure in computing or billing for these adjustments will not impair the continuing obligation of Lessee to pay Base Rent adjustments.
- h. Lessee's obligation to pay Base Rent as adjusted by this Paragraph 4 will continue up to the expiration of this Lease and will survive any earlier termination of this Lease.
- i. Within thirty (30) days after Lessor gives Lessee notice of the adjusted Rent, Lessee will pay the adjusted Rent retroactive to the first month of the then-current five (5) year lease period. The adjusted Rent will be the yearly Base Rent for the balance of the then-current five (5) year lease period. Lessor will give Lessee written notice indicating how the adjusted Rent amount was computed.

5. **Intentionally Omitted.**

6. **EASEMENTS, RESTRICTIONS AND CONDITIONS; RULES AND**

REGULATIONS: This Lease is subject to easements, restrictions and conditions which are of record, or generally applicable to the immediate neighborhood, or may be observed by inspection of the premises. The Lessee shall be responsible for obtaining a title search should the Lessee so desire to verify all such easements, conditions and regulations. Lessee further acknowledges that its use of the Leased Premises is subject to Lessor's Rules and Regulations, which may be reasonably amended from time to time at Lessor's discretion, a copy of which is attached hereto as Exhibit B and are incorporated herein by reference. Failure to comply with any easements, restrictions, conditions or Rules and Regulations shall constitute a material breach of the terms of this Lease.

7. **USE:**

- a. Lessee shall have the right to utilize the Leased Premises and any improvements to be located thereon for activities such as one or more of the following: commercial transportation education program or any other use which may be consented to by Lessor, which consent may be granted or withheld in Lessor's reasonable discretion.
- b. The use of the Leased Premises shall at all times comply with all laws, ordinances, orders, regulations and requirements of any governmental authority having jurisdiction.
- c. It is specifically agreed that this Lease Agreement is non-exclusive. Lessor reserves the right to lease other real property at the Delaware Coastal Business Park or the Delaware Coastal Airport for identical or similar uses.
- d. Lessee agrees not to make any unlawful, improper or offensive use of the Leased Premises or to make any use thereof contrary to any law or ordinance now or hereafter enacted or to make any use thereof which endangers any person or property, threatens the insurability of the Leased Premises, or otherwise constitutes a nuisance (in Lessor sole judgment). Further, Lessee agrees to operate its business within the guidelines, requirements and regulations of all government and regulatory agencies as these apply to Lessee's business and use. Any notices of the Lessee's failure to fully comply, or notices that the Lessee's business violates any regulations or standards contained in the regulations of any agency, shall constitute a material breach of this Lease if not cured within permitted time frames set forth in this Lease.
- e. Lessee agrees to promptly open, use, and occupy the Leased Premises continuously and uninterrupted in a commercially reasonable manner throughout the term of this Lease and to be open during reasonable business hours.
- f. Lessee agrees to operate the Leased Premises for the purposes set forth above during the entire term of this Lease in a prudent, efficient manner and reflecting the standards of a commercially appropriate business based on the permitted uses.

- g. Lessee may not (i) abandon or vacate the Leased Premises without giving notice to the Lessor; (ii) disfigure or deface the Leased Premises or permit any waste, nuisance or unlawful use on or about the Leased Premises; (iii) use the Leased Premises without a Certificate of Occupancy; or (iv) violate any municipal, county, state or federal law, rule, regulation or order.

8. **PAYMENTS, COMMON AREA MAINTENANCE, TAXES AND INSURANCE.**

- a. **Payments.** In the event any installment of Rent, Additional Rent, or any sum due Lessor under this Lease, is not received in full within thirty (30) days from the due date, then Lessee shall pay to Lessor a late administration fee equal to five percent (5%) of such overdue amount. Further, any Rent, Additional Rent, or other sum past due and owed to the Lessor by the Lessee under this Lease shall be subject to interest at the rate of twelve percent (12%) per annum per state law. Any check returned to the Lessor for any sum due to Lessor under this Lease, shall be subject to an additional late fee of ten percent (10%) and an administrative fee of the greater of One Hundred Dollars (\$100.00) or the Lessor's standard administrative fees for similar leases in the Delaware Coastal Business Park. Acceptance of late Rent shall in no way prejudice, waive, modify, or alter any of the rights or remedies which the Lessor may have under this Lease.
- b. **Taxes.** Lessor will pay all general real estate taxes, if any, which may be levied or assessed by any lawful authority against the real property only on the Leased Premises. Lessee agrees to pay any and all taxes and assessments levied or assessed against the improvements constructed on the Leased Premises and all equipment installed therein. Lessee shall make payments directly to the taxing authority when due.
- c. **Maintenance.** Lessee shall be responsible for operating, repairing, and maintaining the Buildings, facilities and all grounds of the Leased Premises (hereinafter "Maintenance"). Maintenance of Leased Premises shall be an all-inclusive term which encompasses, among other things, snow and ice removal of all parking areas and drive aisles, lawn mowing, landscaping, debris and refuse removal from the grounds, etc. If Lessee fails to meet its obligations under this Paragraph, Lessor may perform the necessary work and charge Lessee for the same, which charge shall be deemed as Additional Rent due within thirty (30) days of Lessee's receipt of written notice from Lessor. Lessor shall be responsible for ground maintenance,

including lawn mowing and snow and ice removal, along Nanticoke Avenue up to the edge of the Leased Premises. Lessee shall neither encumber nor obstruct the sidewalks, driveways, yards or entrances, but shall keep and maintain the same in a clean condition, free from debris, trash, refuse, snow and ice. Lessee shall be responsible for all grass cutting and snow removal on the Leased Premises. Grass shall be mowed regularly so as to prevent grass from growing beyond six (6) inches in height. Snow removal from access road to the Buildings shall be the sole responsibility of Lessee.

d. **Intentionally Omitted.**

9. **TRANSFER TAX:** This transaction is exempt from realty transfer tax.

10. **UTILITIES:** Lessor shall be responsible for extending electric, potable water, sewer and fire suppression facilities to the edge of the Leased Premises. Lessee shall be solely responsible for all permanent utility installation on and from edge of the Leased Premises. Lessee shall pay all one-time charges, for on and/or offsite improvements levied by utility providers including but not limited to: connection fees, tap-in fees, impact fees, hookup fees and deposits, for electricity, potable water, fire suppression, sewer, internet access, telephone and fire alarm land lines, etc. Lessee shall also pay for any and all recurring charges for utility services used or consumed at the Leased Premises during Lessee's use or occupancy thereof.

11. **IMPROVEMENTS:**

a. **Condition of Leased Premises.** Subject to Lessor's responsibilities referred to herein, Lessee accepts the Leased Premises, including the Buildings, in "as is" condition and acknowledges that the Leased Premises and the Buildings are suitable for Lessee's intended use.

b. **Intentionally Omitted.**

c. **Lessee's Work.** Lessee intends to renovate the Buildings at Lessee's sole cost and expense. Lessee agrees not to commence any renovations, repairs, or construction until Lessor has approved the Lessee's plans and layout. Lessee shall keep the Leased Premises and the Buildings free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Lessee. Any work performed by Lessee shall be completed in a good and workman like manner using new

construction materials, and Lessee shall obtain all permits required for any such work.

- d. **Stormwater Management.** Lessee shall meet all stormwater and water quality requirements, rules, laws, regulations, statutes, and ordinances, as may be amended from time-to-time by an authority having jurisdiction over the same, pertaining to the Leased Premises either by use of on-site facilities constructed at Lessee's sole expense or through use of existing facilities within the Delaware Coastal Business Park subject to Lessor's prior written approval which may be withheld in Lessor's sole discretion.

- e. **Construction, Repair, Maintenance and Alteration of Improvements.** The Leased Premises are being leased with the Buildings located thereon. Lessee acknowledges that the Buildings shall be repaired and maintained at Lessee's sole cost and expense, and that Lessee shall maintain any and all improvements on the Leased Premises in good condition and repair during the Lease term. Any improvements or structure of any kind Lessee constructs on the Leased Premises, and any repairs, maintenance and alterations thereto or to the buildings, shall be in compliance with all restrictions, conditions, ordinances, laws, regulations, Rules and Regulations, including Lessee's application for and receipt of all required permits and approvals prior to commencement of any work. All fixtures and equipment shall remain Lessee's property except as otherwise stated herein. The Buildings shall at all times remain property of Lessor. Lessee shall provide Lessor with a copy of all Certificates of Occupancy and Releases of Liens.

12. **LIENS:**

- a. **No Authority to Encumber.** Lessee has no authority whatsoever to encumber the Leased Premises, the Buildings, or any improvements located thereon.

- b. **Mechanic's Liens.** Lessee shall not permit and shall immediately remove any mechanic's liens placed against the Leased Premises which may have resulted from any work performed on Lessee's behalf. Permitting a Mechanic's Lien to be placed against the Leased Premises or the Delaware Coastal Business Park shall be a material default if not removed within thirty (30) days after notice of its entry. Any improvements by Lessee on said

Leased Premises shall be constructed at the sole expense of Lessee, and Lessor and its appointed and elected officials, employees, agents, and volunteers shall not be liable in any way for any amount of money arising out of said construction. At the beginning of the lease, Lessee shall have recorded on the public records of Sussex County, Delaware, a one-time legal notice in substantially the form attached hereto as Exhibit C, wherein the public is advised that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials on said job, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said demised property. If any mechanic's or materialmen's lien is filed or any claim made on account of labor or other material furnished, alleged to have been furnished or to be furnished to Lessee at the Leased Premises or against Lessor as the owner thereof, in addition to all remedies at law, Lessee shall, within ninety (90) days after written notice from Lessor thereof, either pay or bond the same or procure the discharge thereof in such manner as may be provided by law. To the extent allowed by law, Lessee will indemnify Lessor and its appointed and elected officials, employees, agents, and volunteers for its costs, legal fees and expenses in defending any action, suit or proceedings which may be brought thereon or for the enforcement of such lien, or liens and Lessee shall pay any damages and any judgment entered thereon and save harmless and indemnify Lessor and its appointed and elected officials, employees, agents, and volunteers from any claims of damages resulting there from. Failure to do so shall entitle Lessor to resort to remedies as are provided herein in the case of any default of this Lease, in addition to such as are permitted by law.

- c. **Liens.** Any liens placed on property owned by Lessee which are located on the Leased Premises must first be approved by Lessor and Lessor shall have the right, in Lessor's sole discretion, to grant or withhold consent. Lessee shall hold Lessor harmless and without risk with respect to any lien placed on Lessee's equipment or personal property within or about the Leased Premises. Prior to the expiration or earlier termination of this Lease, Lessee shall promptly remove any and all liens including any against any of Lessee's property or equipment, or with advanced written notice to Lessor, remove any such property or equipment from the Leased Premises. Lessor shall assume no risk or responsibility for any lien remaining on the Leased Premises or Lessee's equipment or property and Lessee, to the extent allowed by law, shall indemnify Lessor from any liability whatsoever. This

paragraph shall apply to any work performed by Lessee on or in the Leased Premises during the entire Term of this Lease.

- d. **Statutory Lien.** Lessor hereby claims any and all statutory or other liens which it may have upon the equipment, furniture, fixtures, real and personal property of any Lessee or Sub-Lessee placed upon the improvements, and Lessee agrees that Lessor has such a lien to the extent provided by statute or otherwise. Lessor may, at Lessor's reasonable discretion, subordinate its lien right to the lien of any mortgage, deed of trust, or security instrument given by Lessee for the renovation of the improvements and purchase of the equipment, furniture, fixtures and personal property placed upon the Leased Premises. Lessee shall furnish the Lessor with copies of all such security instruments.

13. **INSURANCE:**

- a. **Property and Business Income Insurance** - Lessee shall secure and maintain, at its own expense, all risk (special form) property insurance that insures against direct physical loss of or damage to the Buildings and Lessee's personal property including Lessee's improvements, fixtures, equipment and materials located on the Leased Premises, on a replacement cost valuation basis, with limits not less than 100% of the insurable replacement cost of all such property. Lessee shall also secure, at its own expense, all risk (special form) business income and extra expense insurance in amounts satisfactory to protect its interests as a result of direct physical loss of or damage to the Buildings and Lessee's covered property located on the Leased Premises. Lessor shall be insured on Lessee's property and business income insurance as its interests may appear, in amounts sufficient to protect Lessor's interests.
- b. **Waiver of Subrogation** - To the fullest extent permitted by law, Lessee waives any right of recovery from Lessor, and its appointed and elected officials, employees, agents, and volunteers, for any loss, damage or injury to the Buildings and Lessee's property located on the Leased Premises (or resulting loss of income or extra expense), by reason of any peril required to be insured against under this Lease. To the fullest extent permitted by law, Lessee's property insurer shall not hold any right of subrogation against Lessor, and its appointed and elected officials, employees, agents, and volunteers. Lessee shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any property and/or business income and extra

expense insurance policies maintained by Lessee. Any deductible amount(s) selected by Lessee shall be the sole responsibility of Lessee.

- c. **Commercial General Liability Insurance** - Lessee shall secure and maintain, at its own expense, commercial general liability insurance that insures against bodily injury, property damage, personal and advertising injury claims arising from Lessee's occupancy of the Leased Premises or operations incidental thereto, with the combined single limit of \$1,000,000.00 per occurrence and a general aggregate limit of \$2,000,000.00. This insurance shall name Lessor and its appointed and elected officials, employees, agents and volunteers as insureds on a primary and non-contributory basis, with respect to liability arising out of or in connection with Lessee's occupancy of the Leased Premises or operations incidental thereto under this Lease Agreement. A copy of the additional insured endorsement(s) that evidence the required additional insured status must accompany any certificate of insurance provided to Lessor. To the fullest extent permitted by law, Lessee's commercial general liability insurer shall not hold any right of subrogation against Lessor, and its appointed and elected officials, employees, agents, and volunteers. Lessee shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any commercial general liability insurance policies maintained by Lessee. Lessor shall maintain, at its sole expense, commercial general liability insurance covering the Delaware Coastal Business Park, including all common areas, together with such other types of insurance coverage as are customarily maintained by owners of comparable use properties in the area in which the Leased Premises is located and such other insurance coverage as Lessor may elect in its reasonable discretion to carry.
- d. **Workers' Compensation & Employers' Liability** - Lessee shall secure and maintain, at its own expense, workers' compensation insurance. The workers' compensation insurance must satisfy Lessee's workers' compensation obligation to its employees in Delaware under State or Federal law. To the fullest extent permitted by law, Lessee's workers' compensation insurer shall not hold any right of subrogation against Lessor, and its appointed and elected officials, employees, agents, and volunteers. Lessee shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any workers' compensation insurance policies maintained by Lessee.
- e. **Business Auto – Covered Autos Liability Insurance** - Lessee shall secure and maintain, at its own expense business auto – covered autos liability

insurance at limits as covered by the State of Delaware self-insurance program for state and fleet vehicles..

- f. **Umbrella Excess Liability or Excess Liability Insurance** – Lessee shall secure and maintain, at its own expense, umbrella excess liability or excess liability insurance with minimum limits of \$4,000,000 combined single limit - each occurrence and \$4,000,000 combined single limit – aggregates. This insurance shall include the insurance specified in Paragraphs 13. c. as underlying insurance. This insurance shall follow form with the coverage provisions, including who is an insured, required for underlying insurance.

- g. **Pollution Liability Insurance** – Lessee shall secure and maintain, at its own expense, pollution liability insurance that insures claims for pollution and remediation legal liability arising out of or in connection with the Lessee's occupancy of the Leased Premises. The minimum limits of liability for this insurance are \$1,000,000 each pollution condition and \$1,000,000 annual aggregate. This insurance shall name Lessor, and its appointed and elected officials, employees, agents, and volunteers as additional insureds on a primary and non-contributory basis. The endorsement(s) evidencing the required additional insured status must be submitted in conjunction with certificates of insurance furnished to Lessor. Lessee must continue to maintain such insurance, covering incidents occurring or claims made, for a period of three (3) years after termination of this Agreement.

- h. **Evidence of Insurance / Insurers** - Lessee shall furnish certificates of insurance, acceptable to Lessor, to the Manager, Airport and Business Park Operations, Sussex County, Delaware evidencing all policies required above at execution of this Agreement and prior to each renewal thereafter. Such insurance shall be written with insurers allowed to do business in Delaware, with a Best's Financial Strength Rating of "A-" or equivalent, and a Financial Size Category of "Class VII" or better in the latest evaluation of the A.M. Best Company, unless otherwise approved by the Lessor. All insurance policies required hereunder shall be endorsed to provide that the policy is not subject to cancellation or non-renewal in coverage until sixty (60) days prior written notice has been given to Lessor. Therefore, a copy of the endorsements to the required policies that confirm additional insured status and the insurer is obligated to send notice to Lessor as required herein, must accompany all certificates of insurance. Liability policies required herein (other than pollution liability) may not be written on a "claims made" basis without the prior written approval of Lessor. If Lessee shall fail, refuse or neglect to secure and

maintain any insurance required of Lessee or to furnish satisfactory evidence of insurance, premiums paid by Lessor shall be recoverable by Lessor from Lessee, together with interest thereon, as additional rent promptly upon being billed therefore.

- i. All policy limits as stated herein shall be adjusted every five (5) years in accordance with increases in the consumer price index to levels satisfactory to Lessor.
- j. Lessee shall be entitled to self-insure through its self-insurance plan for any of the insurance coverages required to be obtained by this Section 13. Should Lessee self-insure, it will provide Lessor with either a letter of credit or certified copies of its financial reports evidencing sufficient cash reserves to satisfy any claims resulting from its use of the Lease Premises.

14. **ENTRY BY LESSOR AND AGENTS.** At any and all reasonable times during the term of this Lease, Lessor and Lessor's duly authorized agent or agents shall have the right to enter the Leased Premises for the following purposes:

- a. To inspect the Leased Premises in the event of an emergency; and
- b. To effect Lessee's compliance with any rule or regulation adopted by Lessor, or to effect Lessee's compliance with any restriction, covenant, law, ordinance, order or regulation of Lessor, including, but not limited to, the existence and validity of permits or other approvals for any work or activity being performed on the Leased Premises.

Lessor shall provide Lessee with at least twenty-four (24) hours advance written notice prior to entering the premises unless such notice has been waived by Lessee. Lessor will use its best efforts to inspect the premises at a time and in a manner that minimizes any interference with Lessee's business operations being conducted on the premises.

15. **LESSEE TO INDEMNIFY LESSOR.** To the extent allowed by law, Lessee hereby releases Lessor from any and all liability and shall hold Lessor harmless, defend and indemnify Lessor for any and all liability, claims, causes of action, damage and loss or any kind whatsoever, including but not limited to attorneys' fees and costs, for injuries sustained by any person or persons in or upon the Leased Premises (including death) or injuries to property (real or personal), unless the basis for the cause of action solely relates to the willful or negligent actions of the

Lessor, its employees and agents. For purposes of this provision, "Lessor" shall include its appointed and elected officials, employees, agents, and volunteers. Nothing in this Lease shall be deemed as a waiver of the doctrine of sovereign immunity on behalf of the Lessee or the State of Delaware.

The provisions of this Section 15 shall apply to, and supersede, any provision in this Lease requiring an indemnity or hold harmless from Lessee.

16. **EXPIRATION OF LEASE TERM.**

- a. Lessee shall peaceably surrender and yield to Lessor, its successors or assigns, the Leased Premises; provided, however, that Lessee shall be responsible for any damage to the Leased Premises not covered by Lessor's insurance if such damage is caused by fire or other casualty resulting from the negligence, accidental conduct or tortuous conduct of Lessee or Lessee's employees, licensees or invitees, ordinary wear and tear excepted.
- b. Lessee may not allow any liens to be placed against any of Lessee's equipment or the improvements remaining in, about or upon the Leased Premises. Lessee agrees to defend and hold Lessor harmless against any claim, liability or loss that may result for any reason from any lien attributed to the Lessee. Lessor shall have the absolute right to dispose, remove or to retain any equipment not removed from the Leased Premises at the termination or expiration of this Lease, surrender or abandonment of the Leased Premises and shall not be bound or subject to any risk, cost or liability from liens Lessee has permitted to be attached thereto. At the termination of this Lease, the improvements erected on the Leased Premises and any fixtures which are a part thereof which cannot be removed without substantial damage to said improvements, shall remain a part to the Leased Premises and shall be the property of the Lessor. Any trade fixtures which were installed on the Leased Premises by Lessee and which are removable without substantial damage to the improvements shall remain the property of the Lessee, provided that Lessee shall promptly repair any damage to the improvements on the Leased Premises caused by their removal and that Lessee is not in default of any covenant or agreement contained in this Lease Agreement; otherwise such trade fixtures shall not be removed and Lessor shall have a lien thereon to secure itself on account of its claims.

- c. If the Lessee shall default in surrendering the Leased Premises upon the expiration or earlier termination of this Lease, the Lessee shall be deemed to be "Holding Over" without Lessor's consent and Lessee shall be liable to Lessor for all costs, losses, claims or liabilities (including attorneys' fees) that Lessor may incur as a result of Lessee's failure to surrender the Leased Premises.
17. **QUIET ENJOYMENT.** Lessor covenants and agrees that, so long as Lessee shall not be in default under any of the terms and conditions of this Lease, Lessee shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term of this Lease without hindrance or molestation from Lessor, or any person or persons claiming under Lessor wherein Lessor shall have previous knowledge of any actions.
18. **SIGNS.** Prior to installation, Lessee shall submit sign proposals to Lessor for Lessor's approval and consent as to the size, height, type, and location of any on premise sign Lessee seeks to install, such approval not to be unreasonably withheld. Electronic Messaging Centers shall be prohibited. Any sign, device, fixture or other attachment permitted to be installed by Lessee hereunder, shall be installed by Lessee at its own expense and in accordance with the Rules and Regulations attached hereto, all applicable governmental rules, regulations, ordinances, laws and requirements and Lessee shall obtain any and all required permits. Lessee shall be responsible for any damage resulting from the installation or removal of any such sign, device, fixture or other attachment. Lessee shall keep its sign lighted at such reasonable times as Lessor may require under its Rules and Regulations, or as may be required by ordinance, law or regulation of any governing authority. Lessee shall maintain its sign and keep it in good repair during the term of this Lease. Upon the expiration or earlier termination of this Lease or Lessor's right to possession of the Leased Premises in accordance with this Lease, Lessee shall, at Lessee's sole cost and expense, remove any signage and restore and repair that portion of the Leased Premises affected by the installation or removal of the signage to the condition satisfactory to Lessor.
19. **DEFAULT.**
- a. **Events of Default.** The occurrence of one or more of the following events shall constitute an event of default (each being referred to as an "Event of Default") pursuant to the terms of this Lease:

- i. Lessee fails to pay when due any and all monies due hereunder, including, but not limited to Rent, Additional Rent, and/or any other sums due Lessor by Lessee, and such failure continues more than thirty (30) days after receipt by Lessee of Lessor's written notice of such failure; or
- ii. Failure by Lessee to secure required insurance pursuant to Paragraph 13 of this Lease, or to cause renewals to be written and policies or copies thereof to be delivered to Lessor at least ten (10) days before the respective expiration thereof; or
- iii. The failure of Lessee to comply with or to observe any other terms, provisions or conditions of this Lease performable by Lessee to Lessor's satisfaction, including, but not limited to, compliance with the Rules and Regulations, maintenance, removal, repairs and replacements, and such failure continues after Lessor gives Lessee written notice that Lessee has thirty (30) days to cure the default. If such default cannot reasonably be cured within the thirty (30) day period, Lessee shall be permitted such additional time as is needed to cure the same so long as Lessee has notified Lessor and Lessee has commenced its actions to cure within such thirty (30) day period and such cure thereafter is continuously and diligently undertaken and pursued by Lessee (or its mortgagee) and prosecuted to completion, but in no event longer than ninety (90) days, unless the cure involves repairing or correcting any structural issues where the cure time frame shall be a commercially reasonable time frame;
- iv. The dissolution or liquidation of Lessee or the filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift or bond (if legally permissible) any execution, garnishment or attachment of such consequences as will impair its ability to carry on its operation, or the commission by Lessee of any act of bankruptcy, or adjudication of Lessee as bankrupt or assignment by Lessee for the benefit of its creditors, or the entry by Lessee into an agreement of composition with its creditors, or the approval by a Court of competent jurisdiction of a petition applicable to Lessee in any proceedings for its reorganization instituted under the provisions of the Federal Bankruptcy Statutes, as amended, or under any similar act which may hereafter be enacted. The term "dissolution or liquidation of the Lessee", as used in this subsection, shall not be construed to include the cessation of the corporate existence

of Lessee resulting from a merger or consolidation of Lessee into or with another corporation or of a dissolution or liquidation of Lessee following a transfer of all or substantially all its assets as an entirety; or

- v. Failure by Lessee to abide by any laws, statutes, rules, or regulations relating to the Leased Premises or the Delaware Coastal Airport and Delaware Coastal Business Park, which failure continues for a period of thirty (30) days after Lessee's receipt of notice by mail that the violation referred to in such notice has not been corrected;
- vi. Lessee shall abandon the Leased Premises or suffer the Leased Premises to become vacant or deserted;
- vii. Lessee shall remove or caused to be removed from the Leased Premises Lessee's fixtures, machines, or equipment without Lessor's prior written consent; or
- viii. Failure by Lessee to cure immediately after receipt of notice from Lessor, any hazardous condition which Lessee has created in violation of law or this Lease.

b. **Lessor's Remedies**. In the event Lessee has an Event of Default that has not been cured within the permitted time periods, the Lessor shall have all of the rights and remedies permitted by law, in equity, by statute and otherwise, including, without limitation, the following:

- i. **Terminate Lease**. Lessor may terminate this Lease, in which event, Lessee shall remove all personal property from the Leased Premises within sixty (60) days after termination. If Lessee fails to timely remove said personal property, Lessee will be deemed to have abandoned the property, and title for which shall revert to Lessor, and at Lessor's option, Lessor may remove the property. Lessee agrees to pay Lessor the cost of removing the personal property.
- ii. **Enter and Cure Default**. If Lessee defaults in the performance of any of its obligations under the provisions of this Lease and if such default shall continue beyond the time periods set forth herein for curing such default, then Lessor may, at its option, enter upon the Leased Premises without terminating this Lease and without being liable to prosecution or for any claim of damages, and do whatever Lessee is obligated to do under the

terms of this Lease or otherwise cure any default by removal (including removal of the Improvements), repair or replacement, and cure any such default on behalf of Lessee, and any sums expended by Lessor in the performance of any such obligation of Lessee shall be repaid as Additional Rent, by Lessee to Lessor immediately upon demand, together with interest thereon, at the interest rate of twelve percent (12%) per annum beginning from the date any such expense was incurred by Lessor. In the event that Lessor determines, in Lessor's reasonable judgment, that it is in best interest of the Lessor for Lessor to complete or perform any of Lessee's obligations under this Lease, Lessor reserves the right to complete or perform any such obligation at Lessee's cost and liability, no written notice being required. This shall not be permitted until the expiration of the time frames in Paragraph 19(a) above.

- iii. **Surrender of Premises.** Upon termination of this Lease for any reason or upon termination of Lessee's right of possession, as provided above, Lessee shall promptly surrender possession to Lessor and vacate the Leased Premises, and Lessor may re-enter the Leased Premises without further notice to Lessee and repossess the Leased Premises by force, summary of proceedings, ejectment or otherwise. Lessor may also dispossess or remove Lessee and all other persons and property from the Leased Premises, and Lessor shall have, hold and enjoy the Leased Premises and the right to receive all rental income therefrom.
- iv. **Re-letting.** At any time after the expiration of Lessee's possessory right to the Leased Premises, Lessor may re-let the Leased Premises, or any part thereof, in the name of Lessor or otherwise for such term (which may be greater or less than the period which would otherwise have constituted the balance of the term of the Lease) and on such conditions (which may include concession or free rent) as Lessor, in its sole and absolute discretion, may determine, and Lessor may collect and receive the rental therefrom which will serve to mitigate the damages due from Lessee. Lessor shall in no way be responsible or liable to Lessee for any failure to re-let the Leased Premises or any part thereof or for any failure to collect any rent due upon such re-letting, and Lessee's liability shall not be affected or diminished in any respect by such failure. In the event Lessor re-lets the Leased Premises at a rental higher than that due from Lessee under the provisions hereof, Lessee shall not be entitled to share in any excess. Lessor, at its option, may make such alterations, repairs and changes to the Leased Premises as Lessor, in its sole judgment, considers advisable or necessary for the purpose of re-letting the Leased

Premises, and the making of such alterations, repairs and changes shall not operate or be construed to release Lessee from liability.

- c. **Lessee's Obligation.** The expiration of Lessee's right to possession of the Leased Premises shall not relieve Lessee of its liabilities hereunder, and the obligations created under this Lease shall survive any such expiration. In the event of such expiration, whether or not the Leased Premises or any part thereof shall have been re-let, Lessee shall pay to Lessor all Rent and Additional Rent required to be paid by Lessee up to the time of such expiration; and thereafter, Lessee, until the end of the term of this Lease, shall be liable to Lessor and shall pay to Lessor, as and for liquidated and agreed current damages for Lessee's default(s), the equivalent of the amount of the Rent and Additional Rent which would be payable under this Lease by Lessee if Lessee were still in possession less the net proceeds of any re-letting effected pursuant to the provisions of Section (d) of this paragraph after deducting all of Lessor's expenses in connection with such re-letting including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorney's fees actually incurred, alteration and repair costs and expenses of preparation for such re-letting.
- d. **Current Damages.** Lessee shall pay such current damages ("Deficiency") to Lessor in a timely manner when due under the terms of this Lease, and Lessor shall be entitled to recover from Lessee each Deficiency as such Deficiency shall arise. At any time after the expiration of Lessee's possessory right to the Leased Premises, Lessor, at its option, may demand as and for liquidated and agreed final damages for Lessee's default(s), and Lessee shall pay to Lessor an amount equal to the difference between the Rent and Additional Rent payable hereunder for the unexpired portion of the Lease Term and then fair and reasonable rental value of the Leased Premises for the same period. Lessee shall also pay to Lessor all of Lessor's expenses incurred in connection with any re-letting including, without limitation, all repossession costs, brokerage commissions, legal expenses actually incurred of preparation for re-letting. If the Leased Premises or any part thereof is re-let by Lessor for the unexpired term of this Lease Agreement or any part thereof, the amount of rent payable upon such re-letting shall be deemed to be the fair and reasonable rental value for the part or the whole of the Leased Premises relet. Nothing herein contained shall limit or prejudice the right of Lessor to prove and obtain as damages, by reason of any default by Lessee, an amount equal to the maximum

allowed by any statute or rule of law in effect at the time when such damages are to be proved.

- e. **Deficiency**. Any suit brought to collect the amount of the deficiency for any month shall not prejudice the right of Lessor to collect the deficiency for any subsequent month by a similar action.
 - f. **Lessor's Right**. Any action taken by Lessor under this Paragraph shall not operate as a waiver of any right Lessor would otherwise have against Lessee for breach of this Lease, and Lessee shall remain liable to Lessor for any damages suffered by reason of Lessee's default or breach of this Lease. Lessor shall also be entitled to enjoin any breach or threatened breach by Lessee of any of the covenants and conditions of this Lease; and in the event of such breach, Lessor shall have all rights and remedies allowed at law and equity by statute or otherwise. Any and all remedies provided for herein are considered cumulative and not exclusive.
 - g. **Waiver of Jury Trial**. TO THE EXTENT PERMITTED BY LAW, IT IS MUTUALLY AGREED BY AND BETWEEN LESSOR AND LESSEE THAT THE RESPECTIVE PARTIES HERETO SHALL, AND THEY DO HEREBY, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BETWEEN THE PARTIES HERETO OR THEIR SUCCESSORS OR ASSIGNS ON ANY MATTERS ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS LEASE AGREEMENT, THE RELATIONSHIP OF LESSOR AND LESSEE, AND/OR LESSEE'S USE OF, OR OCCUPANCY OF, THE LEASED PREMISES AND ANY CLAIM OR INJURY OR DAMAGES RELATING THERETO. IN ANY EVICTION PROCEEDING ARISING OUT OF A DEFAULT BY LESSEE, LESSOR AND LESSEE CONSENT TO AN EXPEDITED OR SUMMARY PROCEEDING TO THE EXTENT AVAILABLE UNDER APPLICABLE LAW.
20. **EMINENT DOMAIN**. The Lessor agrees not to take the Leased Premises by Eminent Domain or similar vehicle to remove the Lessee from the Leased Premises.
21. **CONDEMNATION**: If at any time during the term hereof the whole of the Leased Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain, then and in such event, when possession shall have been taken of the Leased Premises by the condemning authority, this Lease and all rights of Lessee hereunder shall immediately cease and terminate and the rent

shall be apportioned and paid to the time of such termination. If pursuant to the provisions of this article, this Lease Agreement shall have been terminated and if prior to such termination, Lessee shall have made any improvements upon the Leased Premises, Lessor shall be entitled to all of the condemnation proceeds which may be granted with respect to the land and improvements existing on the Leased Premises at the commencement of this Lease; and Lessee shall be entitled to the proceeds of any condemnation awarded on account of the value of any improvements made by Lessee.

22. **PARTIAL CONDEMNATION**: If after commencement of this Lease Agreement only a part of the Leased Premises shall be taken or condemned, Lessor shall be entitled to any award made with respect to the land and any improvements existing on the Leased Premises at the commencement of this Lease and Lessee shall be entitled to any award made for any improvements made by Lessee which are condemned. In the event such condemnation shall leave a portion of the Leased Premises which in Lessee's sole judgment is usable by Lessee, this Lease shall remain in full force and effect, but the Rent herein reserved to Lessor shall be adjusted so that Lessee shall be entitled to a reduction in Rent in the proportion that the value of land taken bears to the value of the entire Leased Premises. If a portion of the Leased Premises is taken or condemned prior to commencement of construction hereunder, the proceeds shall belong solely to Lessor and the rental hereunder shall not be abated. Notwithstanding the foregoing, Lessee shall have the right to terminate this Lease if, in its sole judgment, the Leased Premises have been rendered unsuitable for its purpose.

23. **SUBORDINATION**.

- a. This Lease shall be subject and subordinate to, and may be assigned as security for, any present and future mortgage or deed of trust on or of the Leased Premises and all renewals, modifications, extensions, consolidations or replacements thereof. If requested, Lessee agrees to execute written documents evidencing the subordination of this Lease to, and its assignment as additional security for any mortgage or deed of trust. If Lessor requires Lessee to execute a Subordination Agreement, preparation of the Subordination Agreement shall be Lessor's sole cost and expense.
- b. In addition, upon request of any mortgagee of the Leased Premises, Lessee will execute and enter into an attornment and non-disturbance agreement with such mortgagee wherein Lessee will agree that, in the event that such

mortgage is foreclosed, Lessee will attorn to the mortgagee or other owner of the Property as Lessee's Lessor and the mortgagee or other owner of the Property will, provided Lessee is not in default under the terms of this Lease, recognize the rights of Lessee under the provisions of this Lease and will not disturb the possession of Lessee hereunder.

24. **PROPERTY RIGHTS RESERVED:** This Lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which Lessor acquired the Leased Premises from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in this Lease of said lands from Lessor, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by Lessor pertaining to the Delaware Coastal Airport and the Delaware Coastal Business Park. This Lease is expressly subordinate to the terms and conditions of any grant agreement between Sussex County and the Federal Aviation Administration.
25. **ASSIGNMENT AND SUBLETTING.** Lessee shall not have the right to assign this Lease Agreement or sublet the Leased Premises unless the written consent of Lessor is acquired, which consent may be granted or withheld in Lessor's sole discretion. Lessee shall not assign or sublet the Leased Premises for a use other than as specified in Paragraph 7 above and shall provide Lessor with at least thirty (30) days' prior written notice of any desired assignment or subletting. All assignments and subletting shall require Lessor's prior review and written approval, which Lessor may withhold or grant in its sole discretion. Unless otherwise agreed, such assignment or subletting shall in no way relieve Lessee of any responsibility for the payment of rent or for the performance of any of the other covenants or conditions hereof. Such assignee or Sub-Lessee shall in writing assume all of the obligations to be performed by Lessee hereunder. Lessee agrees to pay for any attorney's fees incurred by Lessor resulting from any sublease or assignment. Lessor reserves the right to require the renegotiation of the terms of the Lease in return for consenting to a sublease or assignment.
26. **WAIVER.** Waiver by Lessor of any right or remedy available to it in the event of any default hereunder or any breach by Lessee of the terms and conditions of this Lease shall not constitute a waiver of any succeeding default of the same or other terms and conditions of this Lease.

27. **TRANSFER OF LESSOR'S INTEREST.** Lessor shall be entitled to sell, transfer or otherwise convey its interest in the Leased Premises, and any such sale, transfer or conveyance shall operate to relieve Lessor of any of its obligations and responsibilities hereunder, provided that the purchaser or other transferee of such interest shall expressly assume and agree to perform Lessor's obligations and responsibilities to Lessee hereunder.
28. **RISK OF LOSS FOR IMPROVEMENTS AND PERSONAL PROPERTY.** Lessee agrees that all improvements and personal property located in the Leased Premises shall be and remain at Lessee's sole risk, and Lessor shall not be liable for any damage to or loss of such improvements and personal property unless such damage or loss arises from any acts of negligence or willful misconduct by Lessor nor shall Lessor be liable for any damage to or loss of Lessee's personal property resulting from fire or other casualty, from the leaking of the roof or from the bursting, leaking or overflowing of water and sewer pipes or from malfunctions of the heating, plumbing or electrical systems, or from any other cause whatsoever, except if said damage or loss is caused by the acts or negligence or willful misconduct of Lessor or its agents, servants, employees, etc.
29. **APPLICATION OF PAYMENTS.** Lessor shall have the right in its sole discretion to apply any payments made by Lessee to the satisfaction of any debt or obligation of Lessee to Lessor regardless of the instructions of Lessee as to the application of any such payment. The acceptance by Lessor of any rental payment by anyone other than Lessee shall not be deemed to constitute an approval of any assignment of this Lease by Lessee.
30. **MEMORANDUM OF LEASE.** This Lease shall be recorded in the Office of the Recorder of Deeds, in and for Sussex County, DE.
31. **NOTICES.** All notices required to be given hereunder shall be sent by registered or certified mail, return receipt requested or by a nationally recognized overnight delivery service with all charges pre-paid and sent to the address as follows:

If intended for Lessor:

Sussex County Administrator
Sussex County Administration Building
2 The Circle
P.O. Box 589
Georgetown, DE 19947

With a copy to:

J. Everett Moore, Jr., Esquire
Moore & Rutt, P.A.
122 W. Market Street
P.O. Box 554
Georgetown, DE 19947

If intended for Lessee:

Delaware Technical Community College – Owens Campus
Campus Director
21179 College Drive
Georgetown, DE 19947

With a copy to:

Legal Affairs Office
Delaware Technical Community College – Office of the President
P.O. Box 897
Dover, Delaware 19903

Either party shall be entitled to change the person or address to which notices shall be given hereunder by giving notice to the other party in accordance with the provisions set forth herein.

32. **NO PARTNERSHIP**. The relationship created by this Lease is that of Lessor and Lessee, and nothing in this Lease shall be construed to make Lessor and Lessee partners. Lessee shall have no authority to make any contract or do any act so as to bind Lessor or as to render Lessor or the Leased Premises liable therefore.
33. **PRONOUNS**. All pronouns and any variations thereof used in this Lease shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require. If the Lessor or Lessee be more than one person, these provisions shall be taken to bind and apply to them jointly and severally, or if a corporation, then to its successors and assigns.
34. **COUNTERPARTS; ELECTRONIC SIGNATURES**. This Lease may be executed in two counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic signatures and

photocopies or facsimile copies of signatures shall be deemed to have the same force and effect as originals.

35. **BINDING EFFECT.** This Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, successors and assigns.
36. **PARAGRAPH HEADINGS.** Paragraph headings relating to the contents of particular paragraphs have been inserted for the convenience of reference only and shall not be construed as parts of the particular paragraphs to which they refer.
37. **GOVERNING LAW.** This Lease shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of laws principles, and with venue lying in Sussex County. The parties acknowledge and agree that this is a Commercial Lease. Accordingly, this Lease shall NOT be governed by the Delaware Lessor-Lessee Code 25 Del. C., § 5101 et seq.
38. **ENTIRE AGREEMENT.** This Lease constitutes the entire agreement between the parties, and it supersedes any and all prior understandings or commitments concerning the subject matter of this Lease. This Lease shall not be modified or amended except by a written instrument executed by both Lessor and Lessee.
39. **PARTIAL INVALIDITY.** If any provision of this Lease or the application thereof shall to any extent be held invalid, then the remainder of this Lease or the application of such provision other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.
40. **ATTORNEYS' FEES.** Lessee shall pay upon demand all of Lessor's costs, charges, reasonable attorney's fees and expenses, incurred in enforcing Lessee's obligations hereunder or incurred by Lessor in any litigation in which Lessor, except in litigation caused in whole or part by the acts or omissions of Lessor, becomes involved or concerned by reason of the existence of this Lease or the relationship hereunder of Lessor and Lessee.
41. **EXHAUST AND ODORS.** Lessee shall, at its sole cost and expense, install and maintain adequate equipment for the Leased Premises so as to keep any and all unreasonable odors from entering the Common Areas or other lands of Lessor. Lessee shall not cause or permit any unreasonable odors to emanate from the Leased Premises. In the event Lessor notifies Lessee in writing that unreasonable

odors are emanating from the Leased Premises, Lessee shall within five (5) days after such notice from Lessor, commence to install, at its sole cost and expense, any necessary control devices or procedures to eliminate such odors and shall complete such installation as expeditiously as possible proceeding in a good faith manner. In the event that Lessee fails to stop unreasonable odors from emanating from the Leased Premises, Lessor may proceed to cure the odor problem at Lessor's discretion and recover all costs and expenses from Lessee.

42. **CONSTRUCTION; FREELY NEGOTIATED.** Lessee and Lessor acknowledge that they have had their respective counsel review this Lease and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Lease. Lessor and Lessee agree that this Lease has been freely negotiated by both parties.
43. **LESSEE WARRANTY.** Lessee represents and warrants that Lessee is duly registered to do business in Delaware, in good standing and has full power and authority to enter into this Lease. Lessee has taken all legal action necessary to carry out the transaction contemplated herein, so that when executed, this Lease constitutes a valid and binding obligation enforceable in accordance with its terms.
44. **LESSOR'S RIGHT OF OFFSET.** Notwithstanding anything contained in this Lease to the contrary, Lessor shall have the absolute right to retain and use any of Lessee's funds or monies in Lessor's possession, no matter what the source of the funds or monies may be, and use any such funds or monies to off-set any payments or outstanding sums owed to Lessor.
45. **HAZARDOUS MATERIALS.** Lessee shall not permit any hazardous materials to be used or stored in the Leased Premises, unless used or stored in full compliance with any State or Federal regulations and shall hold Lessor harmless from any liability and expense from same in accordance with paragraph 15 hereof. Lessee shall comply with all Federal and State regulations related to the handling or disposal of any materials or byproducts regulated by State or Federal rules, laws or regulations.
46. **TIME OF THE ESSENCE:** Time shall be of the essence for the performance of all terms of this Lease
47. **JOINT AND SEVERAL LIABILITY:** If the Lessee is more than one person or entity, the obligation created by this Lease is intended to be a joint and several obligation of the undersigned.

48. **COMPLIANCE WITH LAWS:** Lessee shall promptly comply with all laws, ordinances, rules, regulations, requirements and directives of the Federal, State and County Government and Public Authorities and of all their departments, bureaus and subdivisions, applicable to and affecting the said premises, their use and occupancy, for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the said premises, during the term hereof; and shall promptly comply will all orders, regulations and directives of the State Fire Marshal or similar authority and of any insurance companies which have issued or are about to issue policies of insurance covering the said premises and its contents, for the prevention of fire or other casualty, damage or injury, at the Lessee's own cost and expense.
49. **NON-PERFORMANCE BY LESSOR.** This Lease and the obligation of Lessee to pay the Rent hereunder and to comply with the covenants and conditions hereof, shall not be affected, curtailed, impaired or excused because of Lessor's inability to supply any service or material called for herein, by reason of any rule, order, regulation or preemption by any governmental entity, authority, department, agency or subdivision or for any delay which may arise by reason of negotiations for the adjustment of any fire or other casualty loss or because of strikes or other labor trouble or for any cause beyond the control of Lessor.
50. **AIRPORT PROTECTION:**
- a. It shall be a condition of this lease, that Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport.
 - b. Lessee expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to such a height so as to comply with Title 14, Code of Federal Regulations, Part 77.
 - c. Lessee expressly agrees for itself, its successors and assigns, to prevent any use of the hereinafter described real property which would interfere with

or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard.

51. **NON-DISCRIMINATION:**

- a. Lessee for its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, creed, sexual orientation, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- b. That in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the Lease and to re- enter and as if the Lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

52. **ECONOMIC NONDISCRIMINATION.** To the extent Lessee engages in any aeronautical activity for furnishing services to the public at the Delaware Coastal Airport, Lessee shall:

- a. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
- b. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

53. **ADDITIONAL AGREEMENTS BETWEEN THE PARTIES.**

- a. This Lease is contingent on the continuation, and availability of the funding appropriated by the General Assembly of State of Delaware to Lessee. Accordingly, if the funding or appropriations cease or are exhausted based upon previously available funds or appropriations, including any applicable Federal grants, the Lease will terminate due to lack of funding. In such circumstances, Lessee shall terminate this Lease by giving Lessor written notice of such unavailability of funds. All payment obligations of Lessee will cease upon the date of termination specified in such notice; provided, however, that Lessor shall be paid all amounts due and owing under this Lease through the date of termination.
- b. Lessee shall not be deemed in default hereunder, nor shall it be held responsible for, any cessation, interruption or delay in the performance of its obligations hereunder (excluding payment obligations) due to earthquake, flood, fire, storm, natural disaster, act of God, pandemic or epidemic, quarantine, war, terrorism, armed conflict, labor strike, lockout, boycott or other similar events beyond the reasonable control of Lessee, provided that the Lessee: (i) gives prompt written notice thereof, and (ii) takes all steps reasonably necessary to mitigate the effects of the force majeure event; provided further, that in the event a force majeure event extends for a period in excess of thirty (30) days in the aggregate, the Lessee may immediately terminate this Lease upon written notice.

[Signature Pages to Follow]

LESSEE:
Delaware Technical and Community College

Witness

By: _____ (SEAL)
Dr. Mark T. Brainard, President

DATED: _____

STATE _____ OF _____ :
: ss.
COUNTY _____ OF _____ :

BE IT REMEMBERED, that on this ____ day of _____, A.D. 2024, personally came before me, a Notary Public for the State and County aforesaid, Mark T. Brainard, President of Delaware Technical and Community College, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be its act and deed and the act and deed of said Delaware Technical Community College, that the signature of the duly authorized representative thereto is in his own proper handwriting, and that his act of sealing, executing, acknowledging and delivering said indenture was duly authorized by said Delaware Technical and Community College.

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

Notary Public

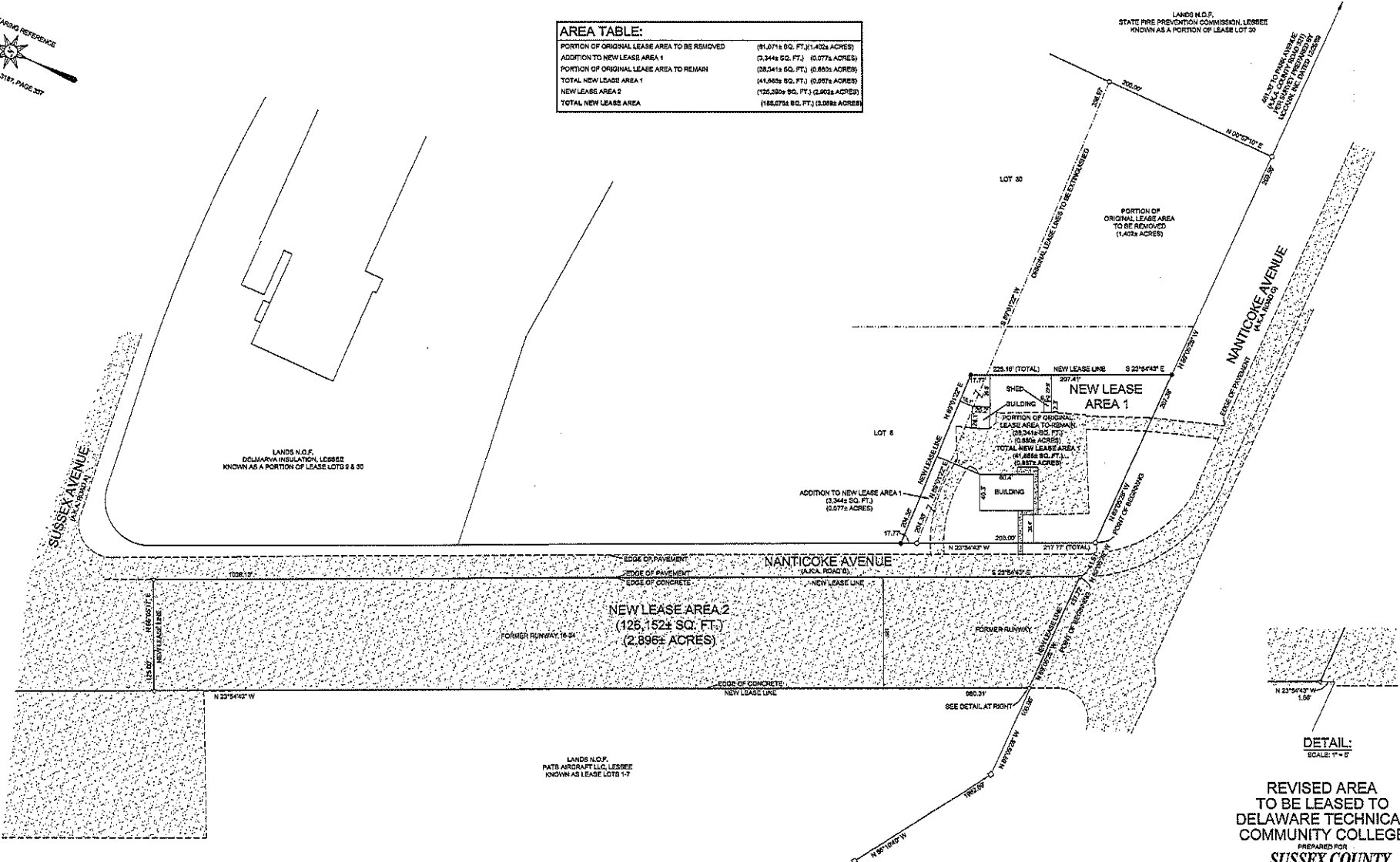
Print Name of Notary Public

My commission expires: _____

EXHIBIT A
SURVEY



AREA TABLE:	
PORTION OF ORIGINAL LEASE AREA TO BE REMOVED	(91,071± SQ. FT.) (1.402± ACRES)
ADDITION TO NEW LEASE AREA 1	(3,344± SQ. FT.) (0.077± ACRES)
PORTION OF ORIGINAL LEASE AREA TO REMAIN	(38,241± SQ. FT.) (0.880± ACRES)
TOTAL NEW LEASE AREA 1	(41,585± SQ. FT.) (0.957± ACRES)
NEW LEASE AREA 2	(126,152± SQ. FT.) (2.896± ACRES)
TOTAL NEW LEASE AREA	(167,737± SQ. FT.) (3.853± ACRES)



NOTES:

- 1) SOURCE OF TITLE: DEED BOOK 3019, PAGE 108
- 2) SURVEY BY: MCKAY, INC. DATED 3/28/19
- 3) THIS BOUNDARY SURVEY WAS PREPARED WITHOUT THE BENEFIT OF A COMPLETE TITLE REPORT AND IS SUBJECT TO ANY ENCUMBRANCES, RESTRICTIONS, EASEMENTS AND/OR RIGHTS OF WAY THAT MIGHT BE REVEALED BY A THOROUGH TITLE SEARCH
- 4) ALL SETBACKS MUST BE VERIFIED BY THE HOMEOWNER AND/OR CONTRACTOR WITH THE APPROPRIATE REGULATORY AUTHORITY
- 5) REVISED AREAS TO BE LEASED TO DELAWARE TECHNICAL COMMUNITY COLLEGE
- 6) NEW LEASE AREA 1 IS REPUTED TO BE PART OF ORIGINAL LOT 8 OF THE INDUSTRIAL PARK
- 7) NEW LEASE AREA 2 IS A NEWLY CREATED LEASE AREA COMPRISED OF FORMER RUNWAY 16-34 AND NOT PART OF THE ORIGINAL INDUSTRIAL PARK LEASE AREAS

SURVEYOR'S STATEMENT:

I, R.S. KEMP, III, REGISTERED AS A PROFESSIONAL LAND SURVEYOR IN THE STATE OF DELAWARE, HEREBY STATE THAT THE INFORMATION SHOWN ON THIS PLAN HAS BEEN PREPARED UNDER MY SUPERVISION AND MEETS THE STANDARDS OF PRACTICE AS ESTABLISHED BY THE STATE OF DELAWARE BOARD OF PROFESSIONAL LAND SURVEYORS. ANY CHANGES TO THIS PROPERTY CONDITIONS, IMPROVEMENTS, BOUNDARY OR PROPERTY CORNERS AFTER THE DATE SHOWN HEREON SHALL NECESSITATE A NEW REVIEW AND CERTIFICATION FOR ANY OFFICIAL OR LEGAL USE.

R.S. Kemp, III
R.S. KEMP, III, P.L.S. 941

LEGEND:

	FOUND IRON PIPE
	FOUND CONCRETE MONUMENT
	SET IRON BAR
	SET MAG NAIL
	ORIGINAL LEASE LINE (TO BE EXTINGUISHED)
	ORIGINAL INDUSTRIAL PARK LEASE LOT LINE
	CURRENT LEASE LOT-RIGHT-OF-WAY LINE
	PAVED/CONCRETE AREAS

REVISED AREA TO BE LEASED TO DELAWARE TECHNICAL COMMUNITY COLLEGE

PREPARED FOR
SUSSEX COUNTY
SITUATE IN: GEORGETOWN HUNDRED, SUSSEX COUNTY, STATE OF DELAWARE

Karins and Associates
Delaware - Maryland - Virginia
Surveyors & Engineers
1000 University Blvd.
Georgetown, Delaware 19840
Phone: (302) 856-0001 Fax: (302) 856-0070

SURVEY BY: CJA
DESIGNED BY: AMK
DRAWN BY: AMK
DATE: 07-18-2022
SCALE: 1" = 20'

0' 50' 100'
SHEET 1 OF 1
DRAWING NO. 0 1904-0

EXHIBIT B

RULES AND REGULATIONS

The Rules and Regulations entitled, "Delaware Coastal Business Park Rules, Regulations and Restrictions," shall remain in effect for the duration of this Lease unless amended in a writing executed by both parties.

The Lessee agrees as follows:



DELAWARE COASTAL BUSINESS PARK RULES, REGULATIONS AND RESTRICTIONS

I. PURPOSE

The purpose of the Delaware Coastal Business Park shall be to provide locations for the development of light to moderate industrial manufacturing, warehousing, wholesale and limited research establishments which, because of their type and nature, would be compatible with or adjacent to residential areas while still providing attractive landscaping, and a better working environment. The emphasis will be on employment rather than warehouse space. Also, the purpose is to provide guidelines and performance standards, which will control and confine any offensive features (i.e., noise, vibration, heat, smoke, glare, dust, objectionable odors, toxic wastes or unsightly storage) to the confines of the premises and within enclosed buildings or within a visually enclosed space.

II. LAND USE CRITERIA

1. Permitted uses. Permitted uses shall be as follows:

- a. Manufacturing, assembling, converting, altering, finishing, cleaning, cooking, baking or any other type of manufacturing or industrial processing of any goods, materials, products, instruments, appliances and devices, provided that the fuel or power supply shall be of an approved type. Also included shall be all incidental clinics, offices and cafeterias for the exclusive use of in-house staff and employees.
- b. Research, design, testing and development laboratories.
- c. Printing, publishing, binding, packaging, storage and warehousing.
- d. Business, medical, professional or administrative offices.
- e. Municipal and public services and facilities, such as utility supply areas (i.e., water, sewer and electric), distribution facilities and substations.
- f. Heating, ventilating, cooling and refrigeration manufacturing.
- g. General light industrial, manufacturing, warehousing and storage uses, including enclosed storage of products, materials and vehicles, and including the following uses and any similar uses which are not likely to

create any more offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences than the minimum amount normally resulting from other uses listed, such listed uses being generally wholesale establishments, service industries and light industries that manufacture, process, assemble, store and distribute goods and materials and are, in general, dependent on raw materials refined elsewhere, and manufacture, compounding, processing, packaging or treatment, as specified, of the following products or similar products:

Agricultural, business, commercial or office uses permitted in any business or commercial district; and

Medical and dental equipment, drafting, optical and musical instruments, watches, clocks, toys, games and electrical or electronic apparatus.

- h. Wholesale merchandising or storage warehouses, provided that such uses are not objectionable by reason of odor, dust, noise or similar factors.
- i. Telephone central offices, provided that all storage of materials, all repair facilities and all housing of repair crews are within a completely enclosed area.
- j. Data centers.

All uses must be conducted within a completely enclosed building. There shall be no open storage of raw, in process or finished products, supplies or waste material, except that these items shall be shielded from public view by a landscaped screen that may include a fence or wall.

2. Prohibited Land Use:

- a. No operation or uses shall be permitted or maintained which causes or produces any of the following effects discernible outside the site or affecting any adjacent property:
 - (1) Noise or sound that is objectionable because of its volume, duration, intermittent beat, frequency or shrillness;
 - (2) Smoke;
 - (3) Noxious, toxic or corrosive fumes or gases;
 - (4) Obnoxious odors;
 - (5) Dust, dirt, or fly ash; and

- (6) Unusual fire or explosive hazards.
- b. The operation and use of drilling for and removal of oil, gas, or other hydrocarbon substances on any property subject to these Covenants shall not be permitted without the prior written consent of Sussex County.
- c. The following operations and uses are expressly prohibited on all property subject to these Covenants:
- (1) Residences, including trailer courts.
 - (2) Manufacturing uses involving production of the following products from raw materials: asphalt, cement, charcoal and fuel briquettes; chemicals; aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, carbon black and bone black, creosote, hydrogen and oxygen, industrial alcohol, nitrates (both natural and manufactured) of an explosive nature, potash, petrochemical, pyroxylin, rayon yarn and hydrochloric, nitric, picric, phosphoric and sulfuric acids; coal, coke and tar products, including gas manufacturing, explosives, fertilizers, glue and size (animal); linoleum and oil cloth, matches, paint, varnishes and turpentine; rubber (natural and synthetic); and soaps, including fat rendering.
 - (3) Dumps, junkyards, automobile salvage and dismantling plants/yards, storage areas or operations for the storage or resale of used automobile or other machine parts.
 - (4) Operations involving slaughterhouses, stockyards or slag piles.
 - (5) Storage of explosives and bulk or wholesale storage of gasoline above ground.
 - (6) Quarries, stone crushers, screening plants and all associated uses.
 - (7) The following processes: refining, smelting and alloying of iron, tin, zinc and other metal or metal ores; refining petroleum products such as gasoline, kerosene, naphtha and lubricating oil; and reduction and processing of wood pulp and fiber, including paper mill operations.
 - (8) Drilling for the removal of any hydrocarbon substances.

- (9) Fertilizer or Compost Facilities.
- (10) Commercial Excavation of Building or Construction Materials.
- (11) Distillation of Bones.
- (12) Dumping, Disposal, Incineration, or Reduction of Garbage, Sewage, Offal, Dead Animals or Refuse.
- (13) Animals of any kind including the Raising of Pets or Livestock or other animals.

3. No Immoral or Unlawful Use.

No immoral, improper, offensive or unlawful use shall be made of the Property nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed and followed at all times.

III. SPACE ALLOCATIONS AND DIMENSIONAL STANDARDS

1. Building-to-Land Ratio:

The ratio of building coverage (building structure only) to the Site area will be subject to the review and approval of Sussex County.

2. Setbacks:

The placement of any structure or improvement and the distance to a property line on any Site will be subject to the review and approval of Sussex County.

3. Exceptions to Setback Limitations:

Any exception to a setback limitation, including Roof overhang, steps, walks, and access drives from the street, paving and associated curbing, and landscaping will be subject to the review and approval of Sussex County.

4. Off-Street Parking Areas:

Off-street parking will be subject to the review and approval of Sussex County and shall be in compliance with Sussex County Zoning Code, Article XXII. Off-Street Parking, §115-162, *et. seq.*

5. Off-Street Loading Areas:

Off-street loading will be subject to the review and approval of Sussex County and shall be in compliance with Sussex County Zoning Code, Article XXIII. Off-Street Loading, §115-167, *et. seq.*

IV. ARCHITECTURAL AND AESTHETIC STANDARDS

1. Landscaping and Limitations on Cutting Natural Growth:

- a. Every site on which a building shall have been placed shall be landscaped according to plans approved by Sussex County as specified herein and maintained thereafter in a slightly and well-kept condition.
- b. Any part or portion of the Site which is not used for buildings, other structures, loading or parking spaces and aisles, sidewalks are designated storage areas shall be planted with an all-season ground cover and shall be landscaped with trees and shrubs in accordance with an overall landscape plan and shall be in keeping with natural surroundings. A replacement program for non-surviving plants should be included.
- c. The Site Lessee, lessee or occupant shall landscape and maintain unpaved areas between the property lines and the building. The area between paved streets and the setback lines shall be used exclusively for landscaping except for walks and driveways crossing the required landscape area.
- d. The Site Lessee, lessee or occupant shall provide hose bibs in the vicinity of the landscaped areas on improved properties.
- e. Landscaping as approved by Sussex County shall be installed within ninety (90) days of occupancy or completion of the building, whichever occurs first, or as soon as weather will allow if such period falls within winter months.
- f. The Lessee or occupant of any Site shall at all times keep the landscaping in good order and condition. Should the Lessee or occupant of any Site fail to remedy and deficiency in the maintenance of the landscaping within twenty (20) days after written notification, Sussex County hereby expressly reserves the right, privilege and license to make any and all corrections or improvements in landscape maintenance at the expense of the Site Lessee.
- g. The Site Lessee shall preserve as much of the natural growth on a Site as practically possible. Special care should be exercised during any construction so that existing trees are not damaged.
- h. The plot plan must show a satisfactory method of irrigating all planted areas. This may be either by a permanent water system or by hose.

- i. Building interior ceiling height must be a minimum of 20 ft., floor to outside walls.

2. Exterior Construction, Permitted Materials, Prohibited Materials, Approved Construction Methods, Design:

- a. Any building erected on a Site will be subject to the review and approval of Sussex County and shall conform to the following construction practices and meet the Sussex County Building Code in effect at the time.

- (1) Exterior front and side walls must be finished on the exterior with the following:

- (a) architectural masonry units, (excluding concrete block and cinder block);
- (b) natural stone;
- (c) precast concrete with prior approval by Sussex County;
- (d) steel;
- (e) aluminum;
- (f) glass materials; or
- (g) their equivalent as approved by Sussex County. Rear exterior walls may be block masonry as defined below.

Minimum standards shall require that thirty (30) percent of the front building exterior and any front lots abutting Park Avenue be approved masonry finish as defined above. Side building walls facing interior park roadways must also have a minimum of thirty (30) percent of approved masonry finish. A masonry block wall (i.e., concrete or cinder block) may be used for a rear building wall only, if the masonry block wall is appropriately painted and meets the approval of Sussex County. These requirements also apply to any accessory building other than temporary structures as defined in paragraph 2 below.

Finish building material shall be applied to all sides of a building, which are visible to the general public as well as from neighboring property and streets. Colors shall be harmonious and compatible with colors of the natural surroundings and other adjacent buildings. Any exception to the exterior construction standards, methods, or design shall be subject to the review and approval of Sussex County.

- (2) Temporary Improvements – No temporary improvements of a temporary nature, including trailers, incomplete buildings, tents or shacks shall be permitted on the Property. Temporary improvements used solely in connection with the construction or sales of permanent approved improvements may be permitted provided they are located as

inconspicuously as possible and are removed immediately after completion of such construction.

3. Signs:

Plans and specifications for the construction, installation, or alterations of all outdoor signs including traffic or directional signs shall be first submitted to and have the written approval of Sussex County.

The following signs shall be permitted:

- a. Those identifying the name of the person or firm occupying the Site subject to the following criteria:
 - (1) Signs shall be limited to one (1) per Site. Each sign may be lighted but shall not exceed thirty-two (32) square feet in size.
 - (2) Electronic Messaging Centers shall be prohibited.
 - (3) All signs mounted on a building must identify the primary company name only and shall not be an advertising vehicle. Generally, an identifying sign may be mounted on one wall except that, at the discretion of Sussex County, a smaller sign or logo may be permitted on another exposure.
 - (4) Logos: A logo for a single or multi-line sign, or a logo to be mounted separately, must be sized with the total sign area allowed.
 - (5) No logos or other signs may be mounted so as to project above the roofline of any facility nor can same be ground mounted under any circumstances.
 - (6) Prior to installation of a sign on any Site, Lessee shall submit sign proposals to Sussex County for its approval and consent as to the size, height, type, and location of any on premise sign Lessee seeks to install. Final approval will be based on reasonable architectural standards and overall balance as same applies to identification displays. It should also be understood that Sussex County must approve the manner in which the sign is constructed, lighted and mounted.
 - (7) All Lessees shall maintain its sign and keep it in good repair during the term of its Lease. Lessee shall be responsible for any damage resulting from the installation or removal of any such sign, device, fixture or other attachment.
 - (8) Lessee shall keep its sign lighted at such reasonable times as Lessor may require under these Rules and Regulations, and as may be amended from time to time.

- (9) Upon the expiration or termination of any Site Lease or the Site Lessee's right to possession of the Site, or the Site Lessee's vacation of the Site, Lessee shall, at Lessee's sole cost and expense, remove any signage and restore and repair that portion of the Site affected by the installation or removal of the signage to the condition satisfactory to Sussex County.

4. Outdoor Storage:

- a. Unless specifically approved by Sussex County in writing, no materials, supplies or equipment (including company owned or operated vehicles) including but not limited to trash and garbage receptacles, shall be stored in any area on a Site except inside a closed building, or behind a visual barrier screening such areas from the view of adjoining properties and/or public street.
- b. Screening of Service Containers: Garbage and refuse containers shall be concealed by means of a screening wall of material similar to and compatible with that of the building. These elements shall be integral with the concept of the building plan, be designed so as not to attract attention, and shall be located in the most inconspicuous manner possible. Unless specifically approved by Sussex County in writing, no materials, supplies or equipment shall be stored on the Property except inside a close building, or behind a visual barrier screening such areas so that they are not visible from neighboring streets and property.

5. Maintenance Requirement, Refuse Collection, and Prohibition of Junk Storage:

- a. Each Site Lessee, or occupant shall at all times keep his premises, buildings, improvements and appurtenance in a safe, clean, neat, and sanitary condition and shall comply with all laws, ordinances and regulations pertaining to health and safety. Each Site Lessee shall provide for the removal of trash and rubbish from his premises. The Sites shall not be used for storage of any scrap materials without the prior written approval of Sussex County.
- b. During construction, it shall be the responsibility of each Site Lessee to insure that the construction sites are kept free of unsightly accumulations of rubbish and scrap materials and that construction materials, trailers, shacks, and the like are kept in a neat and orderly manner.

6. Utilities Placement and Design:

Without limiting the generality of any of the foregoing, the following use restrictions shall be maintained and enforced with respect to the property:

- a. Antennas: No antenna for transmission or reception of television signals or any other form of electro-magnetic radiation shall be erected, used or maintained on the Property outside any building whether attached to an improvement or otherwise, without the prior approval of Sussex County.
- b. Utility Service: No lines, wires, or other devices for the communication of transmission of electric current or power, including telephone, television and radio signals, shall be constructed, placed or maintained anywhere in or upon the Property unless the same shall be contained in conduits or cable, constructed, placed and maintained underground or concealed in, under, or on buildings, or other improvements as approved by Sussex County, Site Lessee, provided electrical transformers may be permitted if properly screened and approved by the Sussex County. Nothing herein shall be deemed to forbid the erection and use of temporary electric or telephone services incident to the construction of approve improvements.
- c. Mail Boxes: No mail or other delivery boxes shall be permitted on the Property unless approved by Sussex County.
- d. Mechanical Equipment: All mechanical equipment, including roof mounted shall be enclosed or screened so as to be an integral part of the architectural design.

7. Repair of Buildings:

No building or other improvement shall be permitted to fall into disrepair and each improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

8. Compliance with Governmental Authorities:

Construction and alteration of all improvements shall be performed in accordance and comply with the requirements of all applicable governmental authorities.

V. IMPLEMENTATION

1. Architectural Review and Approval of Building Plans – Procedures:

Before applying for a building permit and commencing the construction or alteration of all buildings, enclosures, fences, loading areas, parking facilities, or any other structures or permanent improvements ("improvements") on or to any Site, the Lessee of any Site shall first submit plans and specifications and landscape plans to Sussex County for its written approval, as hereinafter provided.

No improvement, as that term is hereinabove defined, shall be erected, placed, altered, maintained, or permitted to remain on any land subject to these Covenants until plans and specifications showing plot layout an all-exterior elevations, with materials and colors therefore and structural design, signs, and

landscaping, shall have been submitted to and approved in writing by Sussex County, and a copy of such plans and specifications prepared by the signature of the Lessee of the Site or his authorized Agent specifying for which part of such plans and specifications approval is sought.

Approval shall be based, among other things, on adequacy of Site dimensions, storm drain considerations, conformity and harmony of external design with neighboring sites, relation of topography, grade and finished ground elevation of the Site being improved to neighboring sites; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications to the purpose and general plan and intent of these covenants.

Sussex County shall have the right to refuse to approve any such plans or specifications or proposed use of the premises for any reason which Sussex County, in its sole discretion, may deem in the best interests of the Industrial Park and the Lessees or prospective lessees of other sites therein.

If Sussex County fails either to approve or disapprove such building and site plans and specification within sixty (60) days after the same have been submitted to it, it shall be conclusively presumed that Sussex County has disapproved said plans and specifications.

Neither Sussex County nor its successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any Lessee of land affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person who submits plans to Sussex County for approval agrees, by submission of such plans, and every Lessee of any said Property agrees, by acquiring a leasehold interest therein, that the Lessee will not bring any action or suit against Sussex County to recover such damages. In case of conflict between plan review and the Covenants herein contained, these Covenants shall govern the rights and obligations of the parties.

Building must be constructed in accordance with the plans as approved by Sussex County. Any modification to the approved plans, during construction, which affects the intent of these Covenants, must be approved by Sussex County before the modification to the building is constructed. Lesser shall give written notice of completion of improvements to Sussex County upon completion of said improvements.

2. Enforcement:

Said Covenants shall be jointly and severally enforceable by Sussex County and its successors and assigns and by any Site Lessee and its successors and assigns, provided, however, that only Sussex County or its assignees, shall have the right to exercise the discretionary powers herein reserved to Sussex County.

Violation of any of said Covenants, or breach of any Covenant or agreement herein contained shall give Sussex County or its assignees in addition to all other remedies, the rights (but not the obligation) to enter upon the land which such violation or breach exists and summarily to abate and remove any structure or correct any condition that may constitute such violation or breach at the expense of the then Lessee of such land, which expense shall be a lien on such land enforceable in Equity; provided, however, that no such entry shall be made unless the violation or breach has not been remedied and corrected within thirty (30) days after delivery of written notice of such violation or breach from Sussex County or its said assignees to the Lessee of the premises on which the violation or breach has occurred or in the alternative within thirty (30) days after mailing such notice, by certified or registered mail, postage prepaid, to the Lessee of such premises at his or its last known address.

Sussex County hereby claims any and all statutory or other liens which it may have upon the equipment, furniture, fixtures, real and personal property of any Lessee or Sub-Lessee placed upon the improvements, and Lessee agrees that Sussex County has such a lien to the extent provided by statute or otherwise. Sussex County agrees to subordinate its lien right to the lien of any mortgage, deed of trust, or security instrument given by Lessee for the construction of the improvements and purchase of the equipment, furniture, fixtures and personal property placed upon the property. Lessee shall furnish Sussex County copies of all such security instruments.

If Sussex County prevails in any legal or equitable proceeding seeking to restrain the violation of or enforce any provision herein, of challenging the enforceability of any provision herein, Sussex County shall be entitled to attorneys' fees in the trial and appellate court proceedings; and costs and expenses of investigation and litigation, including expert witness fees, deposition costs (appearance fees and transcript charges), injunction bond premiums, travel and lodging expenses, all fees and charges, and all other reasonable costs and expenses. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

3. Repurchase Rights:

In the event any Lessee or its assigns shall not have substantially completed the construction of a permanent building upon a Site within two (2) years of the date of the execution of the Lease by Sussex County conveying a leasehold interest in that Site said Lessee, Sussex County shall have an option to repurchase said Site for the original purchase price and enter into possession of said Site. This option to repurchase must be exercised in writing within ninety (90) days after the expiration of the two (2) year period following the execution of the Lease referred to above. Settlement of the repurchase shall take place within sixty (60) days of the exercise of the option to repurchase and shall be at location to be designated by Sussex County. All costs of recording, transfer taxes, documentary stamps and all other excise taxes arising from said Settlement, will be paid for by said Lessee or assigns.

Anything in this paragraph V.3. to the contrary notwithstanding, Sussex County, its successors and assigns may extend, in its sole discretion and in writing, the time in which such construction must be completed by Lessee upon Sussex County's receipt of a request for extension by Lessee upon Lessee's demonstration of its diligence in pursuing completion of said construction.

VI. MISCELLANEOUS

1. Failure to Enforce Not a Waiver of Rights:

Any waiver or failure to enforce any provision of these Covenants in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or similar situation at any other location in the Industrial Park or of any other provision of these Covenants. The failure of Sussex County or any Site Lessee to enforce any Covenant herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other Covenant.

2. Mutuality, Reciprocity:

Runs with Land. All covenants, conditions, and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part and parcel in favor of every other parcel; shall create reciprocal rights and obligations between the respective lessees of all parcels and privities of contract and estate between all grantees of said parcels, their heirs, successors, and assigns, operate as Covenants running with the land for the benefit of all other Sites. Sussex County reserves the right, however, from time to time hereinafter to delineate, plot, grant or reserve within the remainder of the Industrial Park not hereby conveyed such public streets, road, sidewalks, ways and appurtenances thereto, and such easements for drainage and public utilities, as it may deem necessary or desirable for the development of the Industrial Park (and from time to time to change the location of the same) free and clear of these restrictions and Covenants and to dedicate the same to public use or to grant the same to the County of Sussex and/or to appropriate public utility corporations.

3. Fee:

Each year, as part of the fiscal year and budget of the Sussex County Government, the Council shall include an estimate of the total amount which it considers necessary to pay the cost of the maintenance, management, operation, repair and replacement of and in the common area and provide for an assessment for fees against each lessee in a proportion to their respective site to the total number of sites available in the Delaware Coastal Business Park. Said assessment shall be invoiced at the same time as the annual taxes and to be paid within 30 days of invoice.

Revised May 2019

EXHIBIT C

Tax Map Number:
135-20.00-75.00

Return to:
Sussex County
P.O. Box 589
Georgetown, DE
19947

NOTICE OF AGREEMENT TO
RESTRICT LESSEE FROM
ENCUMBERING PROPERTY

THIS NOTICE OF AGREEMENT TO RESTRICT LESSEE FROM ENCUMBERING PROPERTY (this "Notice") dated as of this _____ day of _____, 2024, by and between **SUSSEX COUNTY**, a political subdivision of the State of Delaware, with an address of 2 The Circle, P.O. Box 589, Georgetown, DE 19947 ("Lessor"), and **DELAWARE TECHNICAL AND COMMUNITY COLLEGE**, an institution of higher education and state agency existing under the laws of the State of Delaware with an address of 21179 College Drive, Georgetown, Delaware 19947 ("Lessee"). RECITALS:

WHEREAS, Lessor is the owner of certain real property and improvements known as known as 21765 Nanticoke Avenue, Georgetown, Delaware, which is identified as part of Lot 8, part of Lease Area 2, and part of Former Runway 16-34 in the Delaware Coastal Business Park and as Sussex County Tax Parcel No. 135-20.0075.00 being approximately 3.859 acres of land, more or less, and more particularly described as "New Lease Area 1" and "New Lease Area 2" on Exhibit A attached hereto and incorporated herein by reference (the "Leased Premises" or "premises").

WHEREAS, Lessee is a Lessee of the Leased Premises pursuant to a lease agreement dated _____, 202____ ("the Lease"); and

WHEREAS, pursuant to this Lease, Lessor and Lessee agreed that Lessor shall not be liable for debts, acts, or omissions of Lessee and that Lessee has no authority to encumber the Leased Premises; and

WHEREAS, this Notice is to provide legal notice to the public that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials for any work performed on the Leased Premises, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said Leased Premises.

WITNESSETH

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, the parties hereby certify, consent, and agree as follows:

1. The parties acknowledge that Lessee shall not be the agent or partner of Lessor and Lessee shall have no authority to make any contract or do any act so as to bind Lessor or as to render Lessor or Lessor's interest in the Leased Premises liable therefore. Lessee will save Lessor and the Leased Premises harmless from any penalty, damages, neglect, or negligence of Lessee, property damage, illegal act or otherwise. Any improvements by Lessee on said Leased Premises shall be constructed at the sole expense of Lessee, and Lessor and its appointed and elected officials, employees, agents, and volunteers shall not be liable in any way for any amount of money arising out of said construction. No liens may be placed on the Leased Premises without Lessor's prior written approval. Lessee has no authority whatsoever to encumber the Leased Premises or any improvements located thereon.

2. The parties hereby notify the public that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials for any work performed on the Leased Premises, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said Leased Premises.

3. This Notice shall be governed by the laws of the State of Delaware.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.
SIGNATURE PAGES TO FOLLOW.]

IN WITNESS WHEREOF, the undersigned has caused this Notice to be signed as a sealed document under Delaware law as of the date set forth above.

LESSOR:

SUSSEX

COUNTY

DATED:

By: _____

Michael H. Vincent, President
Sussex County Council

Attest: _____

STATE OF DELAWARE :

: ss.

COUNTY OF SUSSEX :

BE IT REMEMBERED, That on this _____ day of __, A. D. 202____, personally appeared before me, the Subscriber, a Notary Public for the State and County aforesaid, Michael H. Vincent, President of Sussex County Council, a political subdivision of the State of Delaware, party to this Indenture, known to me personally to be such, and acknowledged this indenture to be his act and deed and the act and deed of the said political subdivision; that the signature of the President is in his own proper handwriting; that the seal affixed is the common and corporate seal of the said political subdivision, duly affixed by its authority; and that the act of signing, sealing, acknowledging and delivering the said indenture was first duly authorized by resolution of the members of Sussex County Council.

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

NOTARY PUBLIC

Print Name of Notary Public

My Commission Expires: _____

LESSEE:

Delaware Technical and Community College

Witness

By: _____ (SEAL)
Dr. Mark T. Brainard, President

DATED: _____

STATE _____ OF _____ :
: ss.
COUNTY _____ OF _____ :

BE IT REMEMBERED, that on this ____ day of _____, A.D. 2024, personally came before me, a Notary Public for the State and County aforesaid, Mark T. Brainard, President of Delaware Technical and Community College, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be its act and deed and the act and deed of said Delaware Technical Community College, that the signature of the duly authorized representative thereto is in his own proper handwriting, and that his act of sealing, executing, acknowledging and delivering said indenture was duly authorized by said Delaware Technical and Community College.

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

Notary Public

Print Name of Notary Public

My commission expires: _____

COMMERCIAL LEASE AGREEMENT

THIS COMMERCIAL LEASE AGREEMENT ("Lease") is made and entered into this ___ day of _____, 2024 (the "Effective Date"), by and between **SUSSEX COUNTY**, a political subdivision of the State of Delaware, with an address of 2 The Circle, P.O. Box 589, Georgetown, DE 19947 ("Lessor"), and **JDJS, LLC**, a Delaware limited liability company, t/a JennyGems, with an address of 34752 Ringbolt Avenue, Millsboro, DE 19966 ("Lessee"), and it recites and provides as follows.

RECITALS

WHEREAS, Lessor is the owner of certain commercial real property which is improved by one commercial building ("the Building") as hereafter described; and

WHEREAS, Lessee desires to lease said commercial real property known as 21345 Cedar Creek Avenue, Georgetown, Delaware, which is identified as Lot 14 in the Delaware Coastal Business Park, for the operation of a gift sign manufacturing business.

WITNESSETH:

That the parties of this Lease, intending to be legally bound, hereby covenant and agree as follows:

1. **PREMISES:** Lessor leases to Lessee and Lessee accepts, as Lessee, the premises to a suitable Lessee for business purposes, described as follows:

A portion of the tract of land as improved by the Building identified as 21345 Cedar Creek Avenue, Georgetown, Delaware, which is identified as Lot 14 in the Delaware Coastal Business Park and as Sussex County Tax Parcel No. 135-20.00-75.00-14 being approximately 3.92 acres of land, more or less, and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Leased Premises" or "premises"). Lessee acknowledges that Lessor reserves the right to change the parcel numbers and street names located in Delaware Coastal Business Park during the term of this Lease.

2. **TERM:** The initial term of this Lease shall be two (2) years and ten (10) months which shall commence at 10:00 o'clock A.M. on March 1, 2024 ("the Commencement Date") and shall terminate at 11:59 o'clock P.M. on December 31, 2026, unless sooner terminated as provided in this Lease.

3. **RENT:**

- a. For the lease term referred to in paragraph 2, Lessee shall pay rent ("Rent") annually in one (1) lump sum payment, payments of which shall be due and payable upon the commencement of the Lease term as set forth herein. All payments thereafter shall be due and payable annually on the 1st day of January each year for the remainder of the Lease term and any renewal thereof without demand and without setoff or deduction. All other costs due hereunder shall be considered additional rent ("Additional Rent") which shall be due and payable as hereinafter set forth.
- b. Rent shall be paid as follows:
 - (1) Upon execution of this Lease, Lessee shall pay Lessor Twenty Thousand Dollars (\$20,000.00) for rent for the balance of the 2024 calendar year.
 - (2) On or before January 1, 2025, Lessee shall pay Lessor Twenty Five Thousand Dollars (\$25,000.00) for rent for the 2025 calendar year.
 - (3) On or before January 1, 2026, Lessee shall pay Lessor Twenty Five Thousand Dollars (\$25,000.00) for rent for the 2026 calendar year.
- c. Any payment by Lessee or acceptance by Lessor of a lesser amount than shall be due from Lessee to Lessor shall be treated as a payment on account. The acceptance by Lessor of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Lessor may accept such check without prejudice to any other rights or remedies which Lessor may have against Lessee.
- d. **PAYMENT PROVISIONS:** All payments should be made to Sussex County Council, Sussex County Treasury Office, P.O. Box 601, Georgetown, Delaware 19947, or such other place or places as may from time to time be designated in writing by Lessor.

4. **Intentionally Omitted.**

5. **Intentionally Omitted.**

6. **EASEMENTS, RESTRICTIONS AND CONDITIONS; RULES AND REGULATIONS:** This Lease is subject to easements, restrictions and conditions which are of record, or generally applicable to the immediate neighborhood, or may be observed by inspection of the premises. The Lessee shall be responsible for obtaining a title search should the Lessee so desire to verify all such easements, conditions and regulations. Lessee further acknowledges that its use of the Leased Premises is subject to Lessor's Rules and Regulations, which may be reasonably amended from time to time at Lessor's discretion, a copy of which is attached hereto as Exhibit B and are incorporated herein by reference. Failure to comply with any easements, restrictions, conditions or Rules and Regulations shall constitute a material breach of the terms of this Lease.

7. **USE:**

- a. Lessee shall have the right to utilize the Leased Premises and any improvements to be located thereon for activities such as one or more of the following: manufacturing of gift signs or any other use which may be consented to by Lessor, which consent may be granted or withheld in Lessor's reasonable discretion.
- b. The use of the Leased Premises shall at all times comply with all laws, ordinances, orders, regulations and requirements of any governmental authority having jurisdiction.
- c. It is specifically agreed that this Lease Agreement is non-exclusive. Lessor reserves the right to lease other real property at the Delaware Coastal Business Park or the Delaware Coastal Airport for identical or similar uses.
- d. Lessee agrees not to make any unlawful, improper or offensive use of the Leased Premises or to make any use thereof contrary to any law or ordinance now or hereafter enacted or to make any use thereof which endangers any person or property, threatens the insurability of the Leased Premises, or otherwise constitutes a nuisance (in Lessor sole judgment). Further, Lessee agrees to operate its business within the guidelines, requirements and regulations of all government and regulatory agencies as these apply to Lessee's business and use. Any notices of the Lessee's failure to fully comply, or notices that the Lessee's business violates any regulations or standards contained in the regulations of any agency, shall constitute a material breach of this Lease if not cured within permitted time frames set forth in this Lease.

- e. Lessee agrees to promptly open its business and use and occupy the Leased Premises continuously and uninterrupted in a commercially reasonable manner throughout the term of this Lease and to be open for business during reasonable business hours.
- f. Lessee agrees to operate the Leased Premises for the purposes set forth above during the entire term of this Lease in a prudent, efficient manner and reflecting the standards of a commercially appropriate business based on the permitted uses.
- g. Lessee may not (i) abandon or vacate the Leased Premises without giving notice to the Lessor; (ii) disfigure or deface the Leased Premises or permit any waste, nuisance or unlawful use on or about the Leased Premises; (iii) use the Leased Premises without a Certificate of Occupancy; or (iv) violate any municipal, county, state or federal law, rule, regulation or order.

8. **ADDITIONAL RENT - PAYMENTS, COMMON AREA MAINTENANCE, TAXES AND INSURANCE.**

- a. **Payments.** In the event any installment of Rent, Additional Rent, or any sum due Lessor under this Lease, is not received in full within thirty (30) days from the due date, then Lessee shall pay to Lessor a late administration fee equal to five percent (5%) of such overdue amount. Further, any Rent, Additional Rent, or other sum past due and owed to the Lessor by the Lessee under this Lease shall be subject to interest at the rate of eighteen percent (18%) per annum. Any check returned to the Lessor for any sum due to Lessor under this Lease, shall be subject to an additional late fee of ten percent (10%) and an administrative fee of the greater of One Hundred Dollars (\$100.00) or the Lessor's standard administrative fees for similar leases in the Delaware Coastal Business Park. Acceptance of late Rent shall in no way prejudice, waive, modify, or alter any of the rights or remedies which the Lessor may have under this Lease.
- b. **Taxes.** Lessor will pay all general real estate taxes, if any, which may be levied or assessed by any lawful authority against the real property only on the Leased Premises. Lessee agrees to pay any and all taxes and assessments levied or assessed against the improvements constructed on the Leased Premises and all equipment installed therein. Lessee shall make payments directly to the taxing authority when due.

c. **Maintenance** Lessee shall be responsible for operating, repairing, and maintaining the Building, facilities and all grounds of the Leased Premises (hereinafter "Maintenance"). Maintenance of Leased Premises shall be an all-inclusive term which encompasses, among other things, snow and ice removal of all parking areas and drive aisles, lawn mowing, landscaping, debris and refuse removal from the grounds, etc. If Lessee fails to meet its obligations under this Paragraph, Lessor may perform the necessary work and charge Lessee for the same, which charge shall be deemed as Additional Rent due within thirty (30) days of Lessee's receipt of written notice from Lessor. Lessor shall be responsible for ground maintenance, including lawn mowing and snow and ice removal, along Cedar Creek Avenue up to the edge of the Leased Premises. Lessee shall neither encumber nor obstruct the sidewalks, driveways, yards or entrances, but shall keep and maintain the same in a clean condition, free from debris, trash, refuse, snow and ice. Lessee shall be responsible for all grass cutting and snow removal on the Leased Premises. Grass shall be mowed regularly so as to prevent grass from growing beyond six (6) inches in height. Snow removal from access road to the Building shall be the sole responsibility of Lessee.

d. **Common Area Maintenance Charges**. Each year, as part of the Sussex County Government's fiscal year and budget process, Lessor shall prepare an estimate of the total cost required to pay for the maintenance, management, operation, repair and replacement of the common area in the Delaware Coastal Business Park, and shall assess fees against Lessee for its proportionate share of the total cost which shall be calculated based on the acreage of Lessee's Leased Premises in proportion to the total combined acreage of all sites available in the Delaware Coastal Business Park ("Common Area Fees"). The Common Area Fees shall be invoiced to Lessee in August based on costs from the previous July to June and shall be due and payable to Lessor by Lessee within thirty (30) days of Lessee's receipt of Lessor's written invoice. The Common Area Fees shall be deemed Additional Rent hereunder.

9. **TRANSFER TAX**: This transaction is exempt from realty transfer tax.

10. **UTILITIES**: Lessor shall be responsible for extending potable water, sewer, and fire suppression facilities to the edge of the Leased Premises. Lessee shall be solely responsible for all permanent utility installation on and from edge of the Leased Premises. Lessee shall pay all one-time charges, for on and/or off-site improvements levied by utility providers including but not limited to: connection fees, tap-in fees, impact fees, hookup fees and deposits, for electricity, potable water, fire suppression, sewer, internet access, telephone and fire alarm land lines,

etc. Lessee shall also pay for any and all recurring charges for utility services used or consumed at the Leased Premises during Lessee's use or occupancy thereof.

11. **IMPROVEMENTS:**

- a. **Condition of Leased Premises.** Subject to Lessor's responsibilities referred to herein, Lessee accepts the Leased Premises, including the Building, in "as is" condition and acknowledges that the Leased Premises and the Building is suitable for Lessee's intended use.
- b. **Intentionally Omitted.**
- c. **Lessee's Work.** Lessee intends to renovate the Building at Lessee's sole cost and expense. Lessee agrees not to commence any renovations, repairs, or construction until Lessor has approved the Lessee's plans and layout. Lessee shall keep the Leased Premises and the Building free from any liens arising out of any work performed, materials furnished or obligations incurred by or on behalf of Lessee. Any work performed by Lessee shall be completed in a good and workman like manner using new construction materials, and Lessee shall obtain all permits required for any such work.
- d. **Stormwater Management.** Lessee shall meet all stormwater and water quality requirements, rules, laws, regulations, statutes, and ordinances, as may be amended from time-to-time by an authority having jurisdiction over the same, pertaining to the Leased Premises either by use of on-site facilities constructed at Lessee's sole expense or through use of existing facilities within the Delaware Coastal Business Park subject to Lessor's prior written approval which may be withheld in Lessor's sole discretion.
- e. **Construction, Repair, Maintenance and Alteration of Improvements.** The Leased Premises are being leased with the Building located thereon. Lessee acknowledges that the Building shall be repaired and maintained at Lessee's sole cost and expense, and that Lessee shall maintain any and all improvements on the Leased Premises in good condition and repair during the Lease term. Any improvements or structure of any kind Lessee constructs on the Leased Premises, and any repairs, maintenance and alterations thereto or to the Building, shall be in compliance with all restrictions, conditions, ordinances, laws, regulations, Rules and Regulations, including Lessee's application for and receipt of all required permits and approvals prior to commencement of any work. All fixtures and equipment shall remain Lessee's property except as otherwise stated herein. The Building shall at all times remain property of Lessor. Lessee

shall provide Lessor with a copy of all Certificates of Occupancy and Releases of Liens.

12. **LIENS:**

- a. **No Authority to Encumber.** Lessee has no authority whatsoever to encumber the Leased Premises, the Building, or any improvements located thereon.
- b. **Mechanic's Liens.** Lessee shall not permit and shall immediately remove any mechanic's liens placed against the Leased Premises which may have resulted from any work performed on Lessee's behalf. Permitting a Mechanic's Lien to be placed against the Leased Premises or the Delaware Coastal Business Park shall be a material default if not removed within thirty (30) days after notice of its entry. Any improvements by Lessee on said Leased Premises shall be constructed at the sole expense of Lessee, and Lessor and its appointed and elected officials, employees, agents, and volunteers shall not be liable in any way for any amount of money arising out of said construction. Before starting construction, Lessee shall have recorded on the public records of Sussex County, Delaware, such legal notice as may be necessary, and in the form attached hereto as Exhibit C, wherein the public is advised that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials on said job, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said demised property. If any mechanic's or materialmen's lien is filed or any claim made on account of labor or other material furnished, alleged to have been furnished or to be furnished to Lessee at the Leased Premises or against Lessor as the owner thereof, in addition to all remedies at law, Lessee shall: (a) pay to Lessor the greater of a fine of \$50.00 per day or the Lessor's standard fine for similar violations in similar leases in the Delaware Coastal Business Park for every day that any such Mechanic's Lien remains shall be due, and (b) within ninety (90) days after written notice from Lessor thereof, either pay or bond the same or procure the discharge thereof in such manner as may be provided by law. Lessee will indemnify Lessor and its appointed and elected officials, employees, agents, and volunteers for its costs, legal fees and expenses in defending any action, suit or proceedings which may be brought thereon or for the enforcement of such lien, or liens and Lessee shall pay any damages and any judgment entered thereon and save harmless and indemnify Lessor and its appointed and elected officials, employees, agents, and volunteers from any claims of

damages resulting there from. Failure to do so shall entitle Lessor to resort to remedies as are provided herein in the case of any default of this Lease, in addition to such as are permitted by law.

- c. **Liens.** Any liens placed on property owned by Lessee which are located on the Leased Premises must first be approved by Lessor and Lessor shall have the right, in Lessor's sole discretion, to grant or withhold consent. Lessee shall hold Lessor harmless and without risk with respect to any lien placed on Lessee's equipment or personal property within or about the Leased Premises. Prior to the expiration or earlier termination of this Lease, Lessee shall promptly remove any and all liens including any against any of Lessee's property or equipment, or with advanced written notice to Lessor, remove any such property or equipment from the Leased Premises. Lessor shall assume no risk or responsibility for any lien remaining on the Leased Premises or Lessee's equipment or property and Lessee shall indemnify Lessor from any liability whatsoever. This paragraph shall apply to any work performed by Lessee on or in the Leased Premises during the entire Term of this Lease and any renewal hereof.
- d. **Statutory Lien.** Lessor hereby claims any and all statutory or other liens which it may have upon the equipment, furniture, fixtures, real and personal property of any Lessee or Sub-Lessee placed upon the improvements, and Lessee agrees that Lessor has such a lien to the extent provided by statute or otherwise. Lessor may, at Lessor's reasonable discretion, subordinate its lien right to the lien of any mortgage, deed of trust, or security instrument given by Lessee for the renovation of the improvements and purchase of the equipment, furniture, fixtures and personal property placed upon the Leased Premises. Lessee shall furnish the Lessor with copies of all such security instruments.

13. **INSURANCE:**

- a. **Property and Business Income Insurance** - Lessee shall secure and maintain, at its own expense, all risk (special form) property insurance that insures against direct physical loss of or damage to the Building and Lessee's personal property including Lessee's improvements, fixtures, equipment and materials located on the Leased Premises, on a replacement cost valuation basis, with limits not less than 100% of the insurable replacement cost of all such property. Lessee shall also secure, at its own expense, all risk (special form) business income and extra expense insurance in amounts satisfactory to protect its interests as a result of direct physical loss of or damage to Lessee's covered property located on the Leased Premises. Lessor shall be

an insured on Lessee's property and business income insurance as its interests may appear, in amounts sufficient to protect Lessor's interests.

- b. **Waiver of Subrogation** - To the fullest extent permitted by law, Lessee waives any right of recovery from Lessor, and its appointed and elected officials, employees, agents, and volunteers, for any loss, damage or injury to Lessee's property located on the Leased Premises (or resulting loss of income or extra expense), by reason of any peril required to be insured against under this Lease. To the fullest extent permitted by law, Lessee's property insurer shall not hold any right of subrogation against Lessor, and its appointed and elected officials, employees, agents, and volunteers. Lessee shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any property and/or business income and extra expense insurance policies maintained by Lessee. Any deductible amount(s) selected by Lessee shall be the sole responsibility of Lessee.

- c. **Commercial General Liability Insurance** - Lessee shall secure and maintain, at its own expense, commercial general liability insurance that insures against bodily injury, property damage, personal and advertising injury claims arising from Lessee's occupancy of the Leased Premises or operations incidental thereto, with the combined single limit of \$1,000,000.00 per occurrence and a general aggregate limit of \$2,000,000.00. This insurance shall name Lessor and its appointed and elected officials, employees, agents and volunteers as insureds on a primary and non-contributory basis, with respect to liability arising out of or in connection with Lessee's occupancy of the Leased Premises or operations incidental thereto under this Lease Agreement. A copy of the additional insured endorsement(s) that evidence the required additional insured status must accompany any certificate of insurance provided to Lessor. To the fullest extent permitted by law, Lessee's commercial general liability insurer shall not hold any right of subrogation against Lessor, and its appointed and elected officials, employees, agents, and volunteers. Lessee shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any commercial general liability insurance policies maintained by Lessee. Lessor shall maintain, at its sole expense, commercial general liability insurance covering the Delaware Coastal Business Park, including all common areas, together with such other types of insurance coverage as are customarily maintained by owners of comparable use properties in the area in which the Leased Premises is located and such other insurance coverage as Lessor may elect in its reasonable discretion to carry.

- d. **Workers' Compensation & Employers' Liability** - Lessee shall secure and maintain, at its own expense, workers' compensation insurance and

employers' liability insurance. The workers' compensation insurance must satisfy Lessee's workers' compensation obligation to its employees in Delaware under State or Federal law. Employers' liability insurance must be secured with minimum limits of \$100,000.00 for bodily injury by accident, \$100,000.00 each employee for bodily injury by disease, and a \$500,000.00 policy limit for bodily injury disease. To the fullest extent permitted by law, Lessee's workers' compensation and employers' liability insurer shall not hold any right of subrogation against Lessor, and its appointed and elected officials, employees, agents, and volunteers. Lessee shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any workers' compensation and employers' liability insurance policies maintained by Lessee.

- e. **Business Auto Liability Insurance** - Lessee shall secure and maintain, at its own expense business auto liability insurance with a minimum combined single limit of \$1,000,000 per accident and including coverage for bodily injury and property damage claims arising out of the maintenance, use or operation of any auto and contractual liability protection for bodily injury and property damage claims assumed under this Lease Agreement.
- f. **Umbrella Excess Liability or Excess Liability Insurance** – Lessee shall secure and maintain, at its own expense, umbrella excess liability or excess liability insurance with minimum limits of \$4,000,000 combined single limit - each occurrence and \$4,000,000 combined single limit – aggregates. This insurance shall include the insurance specified in Paragraphs 13(c), 13(d) (Employers' Liability Insurance only) and 13(e) as underlying insurance. This insurance shall follow form with the coverage provisions, including who is an insured, required for underlying insurance.
- g. **Pollution Liability Insurance** – Lessee shall secure and maintain, at its own expense, pollution liability insurance that insures claims for pollution and remediation legal liability arising out of or in connection with the Lessee's occupancy of the Leased Premises. The minimum limits of liability for this insurance are \$1,000,000 each pollution condition and \$1,000,000 annual aggregate. This insurance shall name Lessor, and its appointed and elected officials, employees, agents, and volunteers as additional insureds on a primary and non-contributory basis. The endorsement(s) evidencing the required additional insured status must be submitted in conjunction with certificates of insurance furnished to Lessor. Lessee must continue to maintain such insurance, covering incidents occurring or claims made, for a period of three (3) years after termination of this Agreement.

- h. **Evidence of Insurance / Insurers** - Lessee shall furnish certificates of insurance, acceptable to Lessor, to the Manager, Airport and Business Park Operations, Sussex County, Delaware evidencing all policies required above at execution of this Agreement and prior to each renewal thereafter. Such insurance shall be written with insurers allowed to do business in Delaware, with a Best's Financial Strength Rating of "A-" or better, and a Financial Size Category of "Class VII" or better in the latest evaluation of the A.M. Best Company, unless otherwise approved by the Lessor. All insurance policies required hereunder shall be endorsed to provide that the policy is not subject to cancellation or non-renewal in coverage until sixty (60) days prior written notice has been given to Lessor. Therefore, a copy of the endorsements to the required policies that confirm additional insured status and the insurer is obligated to send notice to Lessor as required herein, must accompany all certificates of insurance. Liability policies required herein (other than pollution liability) may not be written on a "claims made" basis without the prior written approval of Lessor. If Lessee shall fail, refuse or neglect to secure and maintain any insurance required of Lessee or to furnish satisfactory evidence of insurance, premiums paid by Lessor shall be recoverable by Lessor from Lessee, together with interest thereon, as additional rent promptly upon being billed therefore.
- i. All policy limits as stated herein shall be adjusted every five (5) years in accordance with increases in the consumer price index to levels satisfactory to Lessor.
14. **ENTRY BY LESSOR AND AGENTS**. At any and all reasonable times during the term of this Lease, Lessor and Lessor's duly authorized agent or agents shall have the right to enter the Leased Premises for the following purposes:
- a. To inspect the Leased Premises in the event of an emergency; and
 - b. To effect Lessee's compliance with any rule or regulation adopted by Lessor, or to effect Lessee's compliance with any restriction, covenant, law, ordinance, order or regulation of Lessor, including, but not limited to, the existence and validity of permits or other approvals for any work or activity being performed on the Leased Premises.

Lessor shall provide Lessee with at least twenty-four (24) hours advance written notice prior to entering the premises unless such notice has been waived by Lessee. Lessor will use its best efforts to inspect the premises at a time and in a manner that minimizes any interference with Lessee's business operations being conducted on the premises.

15. **LESSEE TO INDEMNIFY LESSOR.** Lessee hereby releases Lessor from any and all liability and shall hold Lessor harmless, defend and indemnify Lessor for any and all liability, claims, causes of action, damage and loss or any kind whatsoever, including but not limited to attorneys' fees and costs, for injuries sustained by any person or persons in or upon the Leased Premises (including death) or injuries to property (real or personal), unless the basis for the cause of action solely relates to the willful or negligent actions of the Lessor, its employees and agents. For purposes of this provision, "Lessor" shall include its appointed and elected officials, employees, agents, and volunteers.
16. **EXPIRATION OF LEASE TERM.**
- a. At the expiration of the Lease term, Lessee shall peaceably surrender and yield to Lessor, its successors or assigns, the Leased Premises; provided, however, that Lessee shall be responsible for any damage to the Leased Premises not covered by Lessor's insurance if such damage is caused by fire or other casualty resulting from the negligence, accidental conduct or tortuous conduct of Lessee or Lessee's employees, licensees or invitees, ordinary wear and tear excepted.
 - b. Lessee may not allow any liens to be placed against any of Lessee's equipment or the improvements remaining in, about or upon the Leased Premises. Lessee agrees to defend and hold Lessor harmless against any claim, liability or loss that may result for any reason from any lien. Lessor shall have the absolute right to dispose, remove or to retain any equipment not removed from the Leased Premises at the termination or expiration of this Lease, surrender or abandonment of the Leased Premises and shall not be bound or subject to any risk, cost or liability from liens Lessee has permitted to be attached thereto. At the termination of this Lease, the improvements erected on the Leased Premises and any fixtures which are a part thereof which cannot be removed without substantial damage to said improvements, shall remain a part to the Leased Premises and shall be the property of the Lessor. Any trade fixtures which were installed on the Leased Premises by Lessee and which are removable without substantial damage to the improvements shall remain the property of the Lessee, provided that Lessee shall promptly repair any damage to the improvements on the Leased Premises caused by their removal and that Lessee is not in default of any covenant or agreement contained in this Lease Agreement; otherwise such trade fixtures shall not be removed and Lessor shall have a lien thereon to secure itself on account of its claims.
 - c. If the Lessee shall default in surrendering the Leased Premises upon the expiration or earlier termination of this Lease, the Lessee shall be deemed

to be "Holding Over" without Lessor's consent and Lessee shall be liable to Lessor for all costs, losses, claims or liabilities (including attorneys' fees) that Lessor may incur as a result of Lessee's failure to surrender the Leased Premises.

17. **QUIET ENJOYMENT.** Lessor covenants and agrees that, so long as Lessee shall not be in default under any of the terms and conditions of this Lease, Lessee shall lawfully and quietly hold, occupy and enjoy the Leased Premises during the term of this Lease without hindrance or molestation from Lessor, or any person or persons claiming under Lessor wherein Lessor shall have previous knowledge of any actions.

18. **SIGNS.** Prior to installation, Lessee shall submit sign proposals to Lessor for Lessor's approval and consent as to the size, height, type, and location of any on premise sign Lessee seeks to install, such approval not to be unreasonably withheld. Electronic Messaging Centers shall be prohibited. Any sign, device, fixture or other attachment permitted to be installed by Lessee hereunder, shall be installed by Lessee at its own expense and in accordance with the Rules and Regulations attached hereto, all governmental rules, regulations, ordinances, laws and requirements and Lessee shall obtain any and all required permits. Lessee shall be responsible for any damage resulting from the installation or removal of any such sign, device, fixture, or other attachment. Lessee shall keep its sign lighted at such reasonable times as Lessor may require under its Rules and Regulations, or as may be required by ordinance, law, or regulation of any governing authority. Lessee shall maintain its sign and keep it in good repair during the term of this Lease. Upon the expiration or earlier termination of this Lease or Lessor's right to possession of the Leased Premises in accordance with this Lease, Lessee shall, at Lessee's sole cost and expense, remove any signage and restore and repair that portion of the Leased Premises affected by the installation or removal of the signage to the condition satisfactory to Lessor.

19. **DEFAULT.**
 - a. **Events of Default.** The occurrence of one or more of the following events shall constitute an event of default (each being referred to as an "Event of Default") pursuant to the terms of this Lease:
 - i. Lessee fails to pay when due any and all monies due hereunder, including, but not limited to Rent, Additional Rent, and/or any other sums due Lessor by Lessee, and such failure continues more than thirty (30) days after receipt by Lessee of Lessor's written notice of such failure; or

- ii. Failure by Lessee to secure required insurance pursuant to Paragraph 13 of this Lease, or to cause renewals to be written and policies or copies thereof to be delivered to Lessor at least ten (10) days before the respective expiration thereof; or
- iii. The failure of Lessee to comply with or to observe any other terms, provisions, or conditions of this Lease performable by Lessee to Lessor's satisfaction, including, but not limited to, compliance with the Rules and Regulations, maintenance, removal, repairs and replacements, and such failure continues after Lessor gives Lessee written notice that Lessee has thirty (30) days to cure the default. If such default cannot reasonably be cured within the thirty (30) day period, Lessee shall be permitted such additional time as is needed to cure the same so long as Lessee has notified Lessor and Lessee has commenced its actions to cure within such thirty (30) day period and such cure thereafter is continuously and diligently undertaken and pursued by Lessee (or its mortgagee) and prosecuted to completion, but in no event longer than ninety (90) days, unless the cure involves repairing or correcting any structural issues where the cure time frame shall be a commercially reasonable time frame;
- iv. The dissolution or liquidation of Lessee or the filing by Lessee of a voluntary petition in bankruptcy, or failure by Lessee promptly to lift or bond (if legally permissible) any execution, garnishment or attachment of such consequences as will impair its ability to carry on its operation, or the commission by Lessee of any act of bankruptcy, or adjudication of Lessee as bankrupt or assignment by Lessee for the benefit of its creditors, or the entry by Lessee into an agreement of composition with its creditors, or the approval by a Court of competent jurisdiction of a petition applicable to Lessee in any proceedings for its reorganization instituted under the provisions of the Federal Bankruptcy Statutes, as amended, or under any similar act which may hereafter be enacted. The term "dissolution or liquidation of the Lessee", as used in this subsection, shall not be construed to include the cessation of the corporate existence of Lessee resulting from a merger or consolidation of Lessee into or with another corporation or of a dissolution or liquidation of Lessee following a transfer of all or substantially all its assets as an entirety; or
- v. Failure by Lessee to abide by any laws, statutes, rules, or regulations relating to the Leased Premises or the Delaware Coastal Airport and Delaware Coastal Business Park, which failure continues for a period of thirty (30) days after Lessee's receipt of notice by mail that the violation referred to in such notice has not been corrected;

- vi. Lessee shall abandon the Leased Premises or suffer the Leased Premises to become vacant or deserted;
 - vii. Lessee shall remove or caused to be removed from the Leased Premises Lessee's fixtures, machines, or equipment without Lessor's prior written consent; or
 - viii. Failure by Lessee to cure immediately after receipt of notice from Lessor, any hazardous condition which Lessee has created in violation of law or this Lease.
- b. **Lessor's Remedies.** In the event Lessee has an Event of Default that has not been cured within the permitted time periods, the Lessor shall have all of the rights and remedies permitted by law, in equity, by statute and otherwise, including, without limitation, the following:
- i. **Terminate Lease.** Lessor may terminate this Lease, in which event, Lessee shall remove all personal property from the Leased Premises within sixty (60) days after termination. If Lessee fails to timely remove said personal property, Lessee will be deemed to have abandoned the property, and title for which shall revert to Lessor, and at Lessor's option, Lessor may remove the property. Lessee agrees to pay Lessor the cost of removing the personal property.
 - ii. **Enter and Cure Default.** If Lessee defaults in the performance of any of its obligations under the provisions of this Lease and if such default shall continue beyond the time periods set forth herein for curing such default, then Lessor may, at its option, enter upon the Leased Premises without terminating this Lease and without being liable to prosecution or for any claim of damages, and do whatever Lessee is obligated to do under the terms of this Lease or otherwise cure any default by removal (including removal of the Improvements), repair or replacement, and cure any such default on behalf of Lessee, and any sums expended by Lessor in the performance of any such obligation of Lessee shall be repaid as Additional Rent, by Lessee to Lessor immediately upon demand, together with interest thereon, at the interest rate of eighteen percent (18%) per annum beginning from the date any such expense was incurred by Lessor. In the event that Lessor determines, in Lessor's reasonable judgment, that it is in best interest of the Lessor for Lessor to complete or perform any of Lessee's obligations under this Lease, Lessor reserves the right to complete or perform any such obligation at Lessee's cost and liability, no

written notice being required. This shall not be permitted until the expiration of the time frames in Paragraph 19(a) above.

- iii. **Surrender of Premises**. Upon termination of this Lease for any reason or upon termination of Lessee's right of possession, as provided above, Lessee shall promptly surrender possession to Lessor and vacate the Leased Premises, and Lessor may re-enter the Leased Premises without further notice to Lessee and repossess the Leased Premises by force, summary of proceedings, ejectment or otherwise. Lessor may also dispossess or remove Lessee and all other persons and property from the Leased Premises, and Lessor shall have, hold and enjoy the Leased Premises and the right to receive all rental income therefrom.
- iv. **Re-letting**. At any time after the expiration of Lessee's possessory right to the Leased Premises, Lessor may re-let the Leased Premises, or any part thereof, in the name of Lessor or otherwise for such term (which may be greater or less than the period which would otherwise have constituted the balance of the term of the Lease) and on such conditions (which may include concession or free rent) as Lessor, in its sole and absolute discretion, may determine, and Lessor may collect and receive the rental therefrom which will serve to mitigate the damages due from Lessee. Lessor shall in no way be responsible or liable to Lessee for any failure to re-let the Leased Premises or any part thereof or for any failure to collect any rent due upon such re-letting, and Lessee's liability shall not be affected or diminished in any respect by such failure. In the event Lessor re-lets the Leased Premises at a rental higher than that due from Lessee under the provisions hereof, Lessee shall not be entitled to share in any excess. Lessor, at its option, may make such alterations, repairs and changes to the Leased Premises as Lessor, in its sole judgment, considers advisable or necessary for the purpose of re-letting the Leased Premises, and the making of such alterations, repairs and changes shall not operate or be construed to release Lessee from liability.
- c. **Lessee's Obligation**. The expiration of Lessee's right to possession of the Leased Premises shall not relieve Lessee of its liabilities hereunder, and the obligations created under this Lease shall survive any such expiration. In the event of such expiration, whether or not the Leased Premises or any part thereof shall have been re-let, Lessee shall pay to Lessor all Rent and Additional Rent required to be paid by Lessee up to the time of such expiration; and thereafter, Lessee, until the end of the term of this Lease, shall be liable to Lessor and shall pay to Lessor, as and for liquidated and agreed current damages for Lessee's default(s), the equivalent of the

amount of the Rent and Additional Rent which would be payable under this Lease by Lessee if Lessee were still in possession less the net proceeds of any re-letting effected pursuant to the provisions of Section (d) of this paragraph after deducting all of Lessor's expenses in connection with such re-letting including, without limitation, all repossession costs, brokerage commissions, legal expenses, reasonable attorney's fees actually incurred, alteration and repair costs and expenses of preparation for such re-letting.

- d. **Current Damages.** Lessee shall pay such current damages ("Deficiency") to Lessor in a timely manner when due under the terms of this Lease, and Lessor shall be entitled to recover from Lessee each Deficiency as such Deficiency shall arise. At any time after the expiration of Lessee's possessory right to the Leased Premises, Lessor, at its option, may demand as and for liquidated and agreed final damages for Lessee's default(s), and Lessee shall pay to Lessor an amount equal to the difference between the Rent and Additional Rent payable hereunder for the unexpired portion of the Lease Term and then fair and reasonable rental value of the Leased Premises for the same period. Lessee shall also pay to Lessor all of Lessor's expenses incurred in connection with any re-letting including, without limitation, all repossession costs, brokerage commissions, legal expenses actually incurred of preparation for re-letting. If the Leased Premises or any part thereof is re-let by Lessor for the unexpired term of this Lease Agreement or any part thereof, the amount of rent payable upon such re-letting shall be deemed to be the fair and reasonable rental value for the part or the whole of the Leased Premises re-let. Nothing herein contained shall limit or prejudice the right of Lessor to prove and obtain as damages, by reason of any default by Lessee, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when such damages are to be proved.
- e. **Deficiency.** Any suit brought to collect the amount of the deficiency for any month shall not prejudice the right of Lessor to collect the deficiency for any subsequent month by a similar action.
- f. **Lessor's Right.** Any action taken by Lessor under this Paragraph shall not operate as a waiver of any right Lessor would otherwise have against Lessee for breach of this Lease, and Lessee shall remain liable to Lessor for any damages suffered by reason of Lessee's default or breach of this Lease. Lessor shall also be entitled to enjoin any breach or threatened breach by Lessee of any of the covenants and conditions of this Lease; and in the event of such breach, Lessor shall have all rights and remedies allowed at law and equity by statute or otherwise. Any and all remedies provided for herein are considered cumulative and not exclusive.

- g. **Waiver of Jury Trial.** TO THE EXTENT PERMITTED BY LAW, IT IS MUTUALLY AGREED BY AND BETWEEN LESSOR AND LESSEE THAT THE RESPECTIVE PARTIES HERETO SHALL, AND THEY DO HEREBY, WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BETWEEN THE PARTIES HERETO OR THEIR SUCCESSORS OR ASSIGNS ON ANY MATTERS ARISING OUT OF, OR IN ANY WAY CONNECTED WITH, THIS LEASE AGREEMENT, THE RELATIONSHIP OF LESSOR AND LESSEE, AND/OR LESSEE'S USE OF, OR OCCUPANCY OF, THE LEASED PREMISES AND ANY CLAIM OR INJURY OR DAMAGES RELATING THERETO. IN ANY EVICTION PROCEEDING ARISING OUT OF A DEFAULT BY LESSEE, LESSOR AND LESSEE CONSENT TO AN EXPEDITED OR SUMMARY PROCEEDING TO THE EXTENT AVAILABLE UNDER APPLICABLE LAW.
20. **EMINENT DOMAIN.** The Lessor agrees not to take the Leased Premises by Eminent Domain or similar vehicle to remove the Lessee from the Leased Premises.
21. **CONDEMNATION:** If at any time during the term hereof the whole of the Leased Premises shall be taken for any public or quasi-public use under any statute or by right of eminent domain, then and in such event, when possession shall have been taken of the Leased Premises by the condemning authority, this Lease and all rights of Lessee hereunder shall immediately cease and terminate and the rent shall be apportioned and paid to the time of such termination. If pursuant to the provisions of this article, this Lease Agreement shall have been terminated and if prior to such termination, Lessee shall have made any improvements upon the Leased Premises, Lessor shall be entitled to all of the condemnation proceeds which may be granted with respect to the land and improvements existing on the Leased Premises at the commencement of this Lease; and Lessee shall be entitled to the proceeds of any condemnation awarded on account of the value of any improvements made by Lessee.
22. **PARTIAL CONDEMNATION:** If after commencement of this Lease Agreement only a part of the Leased Premises shall be taken or condemned, Lessor shall be entitled to any award made with respect to the land and any improvements existing on the Leased Premises at the commencement of this Lease and Lessee shall be entitled to any award made for any improvements made by Lessee which are condemned. In the event such condemnation shall leave a portion of the Leased Premises which in Lessee's sole judgment is usable by Lessee, this Lease shall remain in full force and effect, but the Rent herein reserved to Lessor shall be adjusted so that Lessee shall be entitled to a reduction in Rent in the proportion that the value of land taken bears to the value of the entire Leased Premises. If a portion of the Leased

Premises is taken or condemned prior to commencement of construction hereunder, the proceeds shall belong solely to Lessor and the rental hereunder shall not be abated. Notwithstanding the foregoing, Lessee shall have the right to terminate this Lease if, in its sole judgment, the Leased Premises have been rendered unsuitable for its purpose.

23. **SUBORDINATION.**

- a. This Lease shall be subject and subordinate to, and may be assigned as security for, any present and future mortgage or deed of trust on or of the Leased Premises and all renewals, modifications, extensions, consolidations, or replacements thereof. If requested, Lessee agrees to execute written documents evidencing the subordination of this Lease to, and its assignment as additional security for any mortgage or deed of trust. If Lessor requires Lessee to execute a Subordination Agreement, preparation of the Subordination Agreement shall be Lessor's sole cost and expense.
- b. In addition, upon request of any mortgagee of the Leased Premises, Lessee will execute and enter into an attornment and non-disturbance agreement with such mortgagee wherein Lessee will agree that, in the event that such mortgage is foreclosed, Lessee will attorn to the mortgagee or other owner of the Property as Lessee's Lessor and the mortgagee or other owner of the Property will, provided Lessee is not in default under the terms of this Lease, recognize the rights of Lessee under the provisions of this Lease and will not disturb the possession of Lessee hereunder.

24. **PROPERTY RIGHTS RESERVED:** This Lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which Lessor acquired the Leased Premises from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in this Lease of said lands from Lessor, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by Lessor pertaining to the Delaware Coastal Airport and the Delaware Coastal Business Park. This Lease is expressly subordinate to the terms and conditions of any grant agreement between Sussex County and the Federal Aviation Administration.

25. **ASSIGNMENT AND SUBLETTING.** Lessee shall not have the right to assign this Lease Agreement or sublet the Leased Premises unless the written consent of Lessor is acquired, which consent may be granted or withheld in Lessor's sole

discretion. Lessee shall not assign or sublet the Leased Premises for a use other than as specified in Paragraph 7 above and shall provide Lessor with at least thirty (30) days' prior written notice of any desired assignment or subletting. All assignments and subletting shall require Lessor's prior review and written approval, which Lessor may withhold or grant in its sole discretion. Unless otherwise agreed, such assignment or subletting shall in no way relieve Lessee of any responsibility for the payment of rent or for the performance of any of the other covenants or conditions hereof. Such assignee or Sub-Lessee shall in writing assume all of the obligations to be performed by Lessee hereunder. Lessee agrees to pay for any attorney's fees incurred by Lessor resulting from any sublease or assignment. Lessor reserves the right to require the renegotiation of the terms of the Lease in return for consenting to a sublease or assignment.

26. **WAIVER.** Waiver by Lessor of any right or remedy available to it in the event of any default hereunder or any breach by Lessee of the terms and conditions of this Lease shall not constitute a waiver of any succeeding default of the same or other terms and conditions of this Lease.
27. **TRANSFER OF LESSOR'S INTEREST.** Lessor shall be entitled to sell, transfer or otherwise convey its interest in the Leased Premises, and any such sale, transfer or conveyance shall operate to relieve Lessor of any of its obligations and responsibilities hereunder, provided that the purchaser or other transferee of such interest shall expressly assume and agree to perform Lessor's obligations and responsibilities to Lessee hereunder.
28. **RISK OF LOSS FOR IMPROVEMENTS AND PERSONAL PROPERTY.** Lessee agrees that all improvements and personal property located in the Leased Premises shall be and remain at Lessee's sole risk, and Lessor shall not be liable for any damage to or loss of such improvements and personal property unless such damage or loss arises from any acts of negligence or willful misconduct by Lessor nor shall Lessor be liable for any damage to or loss of Lessee's personal property resulting from fire or other casualty, from the leaking of the roof or from the bursting, leaking or overflowing of water and sewer pipes or from malfunctions of the heating, plumbing or electrical systems, or from any other cause whatsoever, except if said damage or loss is caused by the acts or negligence or willful misconduct of Lessor or its agents, servants, employees, etc.
29. **APPLICATION OF PAYMENTS.** Lessor shall have the right in its sole discretion to apply any payments made by Lessee to the satisfaction of any debt or obligation of Lessee to Lessor regardless of the instructions of Lessee as to the application of any such payment. The acceptance by Lessor of any rental payment by anyone

other than Lessee shall not be deemed to constitute an approval of any assignment of this Lease by Lessee.

30. **MEMORANDUM OF LEASE.** This Lease shall be recorded in the Office of the Recorder of Deeds, in and for Sussex County, DE.
31. **NOTICES.** All notices required to be given hereunder shall be sent by registered or certified mail, return receipt requested or by a nationally recognized overnight delivery service with all charges pre-paid and sent to the address as follows:

If intended for Lessor:

Sussex County Administrator
Sussex County Administration
Building 2 The Circle
P.O. Box 589
Georgetown, DE
19947

With a copy to:

J. Everett Moore, Jr., Esquire
Moore & Rutt, P.A.
122 W. Market Street
P.O. Box 554
Georgetown, DE 19947

If intended for Lessee:

JDJS, LLC
Attn.: Jennifer & David McMillan

Either party shall be entitled to change the person or address to which notices shall be given hereunder by giving notice to the other party in accordance with the provisions set forth herein.

32. **NO PARTNERSHIP.** The relationship created by this Lease is that of Lessor and Lessee, and nothing in this Lease shall be construed to make Lessor and Lessee partners. Lessee shall have no authority to make any contract or do any act so as to bind Lessor or as to render Lessor or the Leased Premises liable therefore.

33. **PRONOUNS**. All pronouns and any variations thereof used in this Lease shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require. If the Lessor or Lessee be more than one person, these provisions shall be taken to bind and apply to them jointly and severally, or if a corporation, then to its successors and assigns.
34. **COUNTERPARTS; ELECTRONIC SIGNATURES**. This Lease may be executed in two counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Electronic signatures and photocopies or facsimile copies of signatures shall be deemed to have the same force and effect as originals.
35. **BINDING EFFECT**. This Lease shall be binding upon and inure to the benefit of the parties, their respective heirs, successors and assigns.
36. **PARAGRAPH HEADINGS**. Paragraph headings relating to the contents of particular paragraphs have been inserted for the convenience of reference only and shall not be construed as parts of the particular paragraphs to which they refer.
37. **GOVERNING LAW**. This Lease shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to conflict of laws principles, and with venue lying in Sussex County. The parties acknowledge and agree that this is a Commercial Lease. Accordingly, this Lease shall NOT be governed by the Delaware Lessor-Lessee Code 25 Del. C., § 5101 et seq.
38. **ENTIRE AGREEMENT**. This Lease constitutes the entire agreement between the parties, and it supersedes any and all prior understandings or commitments concerning the subject matter of this Lease. This Lease shall not be modified or amended except by a written instrument executed by both Lessor and Lessee.
39. **PARTIAL INVALIDITY**. If any provision of this Lease or the application thereof shall to any extent be held invalid, then the remainder of this Lease or the application of such provision other than those as to which it is held invalid shall not be affected thereby, and each provision of this Lease shall be valid and enforced to the fullest extent permitted by law.
40. **ATTORNEYS' FEES**. Lessee shall pay upon demand all of Lessor's costs, charges, reasonable attorney's fees and expenses, incurred in enforcing Lessee's obligations hereunder or incurred by Lessor in any litigation in which Lessor, without Lessor's fault, becomes involved or concerned by reason of the existence of this Lease or the relationship hereunder of Lessor and Lessee.

41. **EXHAUST AND ODORS.** Lessee shall, at its sole cost and expense, install and maintain adequate equipment for the Leased Premises so as to keep any and all unreasonable odors from entering the Common Areas or other lands of Lessor. Lessee shall not cause or permit any unreasonable odors to emanate from the Leased Premises. In the event Lessor notifies Lessee in writing that unreasonable odors are emanating from the Leased Premises, Lessee shall within five (5) days after such notice from Lessor, commence to install, at its sole cost and expense, any necessary control devices or procedures to eliminate such odors and shall complete such installation as expeditiously as possible proceeding in a good faith manner. In the event that Lessee fails to stop unreasonable odors from emanating from the Leased Premises, Lessor may proceed to cure the odor problem at Lessor's discretion and recover all costs and expenses from Lessee.
42. **CONSTRUCTION; FREELY NEGOTIATED.** Lessee and Lessor acknowledge that they have had their respective counsel review this Lease and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Lease. Lessor and Lessee agree that this Lease has been freely negotiated by both parties.
43. **LESSEE WARRANTY.** Lessee represents and warrants that Lessee is a duly formed Delaware limited liability company registered to do business in Delaware, in good standing and has full power and authority under its operating agreement to enter into this Lease. The Certificate of Good Standing from the State of Delaware and all necessary resolutions shall be provided upon Lessor's requests. Lessee has taken all legal action necessary to carry out the transaction contemplated herein, so that when executed, this Lease constitutes a valid and binding obligation enforceable in accordance with its terms.
44. **LESSOR'S RIGHT OF OFFSET.** Notwithstanding anything contained in this Lease to the contrary, Lessor shall have the absolute right to retain and use any of Lessee's funds or monies in Lessor's possession, no matter what the source of the funds or monies may be, and use any such funds or monies to off-set any payments or outstanding sums owed to Lessor.
45. **HAZARDOUS MATERIALS.** Lessee shall not permit any hazardous materials to be used or stored in the Leased Premises, unless used or stored in full compliance with any State or Federal regulations and shall hold Lessor harmless from any liability and expense from same in accordance with paragraph 15 hereof. Lessee shall comply with all Federal and State regulations related to the handling or disposal of any materials or byproducts regulated by State or Federal rules, laws or regulations.

46. **TIME OF THE ESSENCE:** Time shall be of the essence for the performance of all terms of this Lease
47. **JOINT AND SEVERAL LIABILITY:** If the Lessee is more than one person or entity, the obligation created by this Lease is intended to be a joint and several obligation of the undersigned.
48. **COMPLIANCE WITH LAWS:** Lessee shall promptly comply with all laws, ordinances, rules, regulations, requirements and directives of the Federal, State and County Government and Public Authorities and of all their departments, bureaus and subdivisions, applicable to and affecting the said premises, their use and occupancy, for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the said premises, during the term hereof; and shall promptly comply will all orders, regulations and directives of the State Fire Marshal or similar authority and of any insurance companies which have issued or are about to issue policies of insurance covering the said premises and its contents, for the prevention of fire or other casualty, damage or injury, at the Lessee's own cost and expense.
49. **NON-PERFORMANCE BY LESSOR.** This Lease and the obligation of Lessee to pay the Rent hereunder and to comply with the covenants and conditions hereof, shall not be affected, curtailed, impaired or excused because of Lessor's inability to supply any service or material called for herein, by reason of any rule, order, regulation or preemption by any governmental entity, authority, department, agency or subdivision or for any delay which may arise by reason of negotiations for the adjustment of any fire or other casualty loss or because of strikes or other labor trouble or for any cause beyond the control of Lessor.
50. **AIRPORT PROTECTION:**
- a. It shall be a condition of this lease, that Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport.
 - b. Lessee expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to such a height so as to comply with Title 14, Code of Federal Regulations, Part 77.

- c. Lessee expressly agrees for itself, its successors and assigns, to prevent any use of the hereinafter described real property which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard.

51. **NON-DISCRIMINATION:**

- a. Lessee for its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, creed, sexual orientation, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.
- b. That in the event of breach of any of the above nondiscrimination covenants, Lessor shall have the right to terminate the Lease and to re-enter and as if the Lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal rights.

52. **ECONOMIC NONDISCRIMINATION.** To the extent Lessee engages in any aeronautical activity for furnishing services to the public at the Delaware Coastal Airport, Lessee shall:

- a. Furnish said services on a reasonable, and not unjustly discriminatory, basis to all users thereof, and
- b. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that Lessee may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

EXHIBIT A
SURVEY OF LEASED PREMISES

SUSSEX AVENUE (ROAD A)
60' R.O.W.

OTHER LANDS OF SUSSEX COUNTY
SHOFFER INDUSTRIES, INC. (LESSEE)

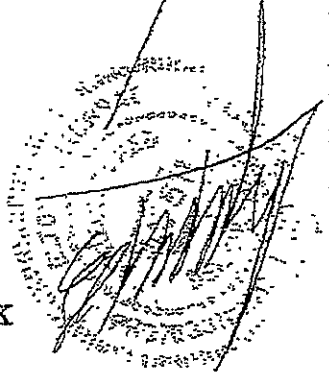
"THIS PLATTED AREA
IS NOT WITHIN THE
JURISDICTION OF THE
COUNTY PLANNING
AND ZONING COMMISSION
8/13/04 CA"

OTHER LANDS OF SUSSEX COUNTY

OTHER LANDS OF SUSSEX COUNTY

OTHER LANDS OF SUSSEX COUNTY
DELAWARE STATE FIRE SERVICE CO. (LESSEE)

SUSSEX COUNTY INDUSTRIAL AIRPARK
LANDS OF
SUSSEX COUNTY
GEORGETOWN HANDED - SUSSEX COUNTY - DELAWARE
LOT SURVEY



"THIS PLAT AND SURVEY DOES NOT
IMPLY THE EXISTENCE OR NECESSITY
OF SURVEY OF EASES OR
MANAGEMENTS PERTAINING TO THIS
PROPERTY."

DEED REF: D.E. 127 P. 68
6" = 1/4" IRON PIPE FOUND
6" = 1/4" IRON PIPE SET
"WOODEN MARKER"
FLOOD ZONE X
AREA: 3.33 AC +/-



LAND
TECHNICAL
SURVEYING, ENGINEERING, LANDSCAPE ARCHITECTURE
1000 N. DEWITT ST. 100 DELAWARE AVENUE
GEORGETOWN, DELAWARE 19609
PHONE (302) 856-2200 FAX (302) 856-2488

OWNER: ELM
OWNER: JTD
FILE NAME: 03102
FILE: 03102-01
FILE: 03102-02
DATE: 8-13-04
SCALE: 1"=40'

PROJECT NO.	03102
SHEET NO.	1 of 1
DATE	8-13-04
SCALE	G-17

Appendix A
BK 03014 P 339

EXHIBIT B

RULES AND REGULATIONS

The Rules and Regulations entitled, "Delaware Coastal Business Park Rules, Regulations and Restrictions," shall remain in effect for the duration of this Lease unless amended in a writing executed by both parties.

The Lessee agrees as follows:



DELAWARE COASTAL BUSINESS PARK RULES, REGULATIONS AND RESTRICTIONS

I. PURPOSE

The purpose of the Delaware Coastal Business Park shall be to provide locations for the development of light to moderate industrial manufacturing, warehousing, wholesale and limited research establishments which, because of their type and nature, would be compatible with or adjacent to residential areas while still providing attractive landscaping, and a better working environment. The emphasis will be on employment rather than warehouse space. Also, the purpose is to provide guidelines and performance standards, which will control and confine any offensive features (i.e., noise, vibration, heat, smoke, glare, dust, objectionable odors, toxic wastes or unsightly storage) to the confines of the premises and within enclosed buildings or within a visually enclosed space.

II. LAND USE CRITERIA

1. Permitted uses. Permitted uses shall be as follows:

- a. Manufacturing, assembling, converting, altering, finishing, cleaning, cooking, baking or any other type of manufacturing or industrial processing of any goods, materials, products, instruments, appliances and devices, provided that the fuel or power supply shall be of an approved type. Also included shall be all incidental clinics, offices and cafeterias for the exclusive use of in-house staff and employees.
- b. Research, design, testing and development laboratories.
- c. Printing, publishing, binding, packaging, storage and warehousing.
- d. Business, medical, professional or administrative offices.
- e. Municipal and public services and facilities, such as utility supply areas (i.e., water, sewer and electric), distribution facilities and substations.
- f. Heating, ventilating, cooling and refrigeration manufacturing.
- g. General light industrial, manufacturing, warehousing and storage uses, including enclosed storage of products, materials and vehicles, and including the following uses and any similar uses which are not likely to

create any more offensive noise, vibration, dust, heat, smoke, odor, glare or other objectionable influences than the minimum amount normally resulting from other uses listed, such listed uses being generally wholesale establishments, service industries and light industries that manufacture, process, assemble, store and distribute goods and materials and are, in general, dependent on raw materials refined elsewhere, and manufacture, compounding, processing, packaging or treatment, as specified, of the following products or similar products:

Agricultural, business, commercial or office uses permitted in any business or commercial district; and

Medical and dental equipment, drafting, optical and musical instruments, watches, clocks, toys, games and electrical or electronic apparatus.

- h. Wholesale merchandising or storage warehouses, provided that such uses are not objectionable by reason of odor, dust, noise or similar factors.
- i. Telephone central offices, provided that all storage of materials, all repair facilities and all housing of repair crews are within a completely enclosed area.
- j. Data centers.

All uses must be conducted within a completely enclosed building. There shall be no open storage of raw, in process or finished products, supplies or waste material, except that these items shall be shielded from public view by a landscaped screen that may include a fence or wall.

2. Prohibited Land Use:

- a. No operation or uses shall be permitted or maintained which causes or produces any of the following effects discernible outside the site or affecting any adjacent property:
 - (1) Noise or sound that is objectionable because of its volume, duration, intermittent beat, frequency or shrillness;
 - (2) Smoke;
 - (3) Noxious, toxic or corrosive fumes or gases;
 - (4) Obnoxious odors;
 - (5) Dust, dirt, or fly ash; and

- (6) Unusual fire or explosive hazards.
- b. The operation and use of drilling for and removal of oil, gas, or other hydrocarbon substances on any property subject to these Covenants shall not be permitted without the prior written consent of Sussex County.
- c. The following operations and uses are expressly prohibited on all property subject to these Covenants:
 - (1) Residences, including trailer courts.
 - (2) Manufacturing uses involving production of the following products from raw materials: asphalt, cement, charcoal and fuel briquettes; chemicals; aniline dyes, ammonia, carbide, caustic soda, cellulose, chlorine, carbon black and bone black, creosote, hydrogen and oxygen, industrial alcohol, nitrates (both natural and manufactured) of an explosive nature, potash, petrochemical, pyroxylin, rayon yarn and hydrochloric, nitric, picric, phosphoric and sulfuric acids; coal, coke and tar products, including gas manufacturing, explosives, fertilizers, glue and size (animal); linoleum and oil cloth, matches, paint, varnishes and turpentine; rubber (natural and synthetic); and soaps, including fat rendering.
 - (3) Dumps, junkyards, automobile salvage and dismantling plants/yards, storage areas or operations for the storage or resale of used automobile or other machine parts.
 - (4) Operations involving slaughterhouses, stockyards or slag piles.
 - (5) Storage of explosives and bulk or wholesale storage of gasoline above ground.
 - (6) Quarries, stone crushers, screening plants and all associated uses.
 - (7) The following processes: refining, smelting and alloying of iron, tin, zinc and other metal or metal ores; refining petroleum products such as gasoline, kerosene, naphtha and lubricating oil; and reduction and processing of wood pulp and fiber, including paper mill operations.
 - (8) Drilling for the removal of any hydrocarbon substances.

- (9) Fertilizer or Compost Facilities.
- (10) Commercial Excavation of Building or Construction Materials.
- (11) Distillation of Bones.
- (12) Dumping, Disposal, Incineration, or Reduction of Garbage, Sewage, Offal, Dead Animals or Refuse.
- (13) Animals of any kind including the Raising of Pets or Livestock or other animals.

3. No Immoral or Unlawful Use.

No immoral, improper, offensive or unlawful use shall be made of the Property nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction shall be observed and followed at all times.

III. SPACE ALLOCATIONS AND DIMENSIONAL STANDARDS

1. Building-to-Land Ratio:

The ratio of building coverage (building structure only) to the Site area will be subject to the review and approval of Sussex County.

2. Setbacks:

The placement of any structure or improvement and the distance to a property line on any Site will be subject to the review and approval of Sussex County.

3. Exceptions to Setback Limitations:

Any exception to a setback limitation, including Roof overhang, steps, walks, and access drives from the street, paving and associated curbing, and landscaping will be subject to the review and approval of Sussex County.

4. Off-Street Parking Areas:

Off-street parking will be subject to the review and approval of Sussex County and shall be in compliance with Sussex County Zoning Code, Article XXII. Off-Street Parking, §115-162, *et. seq.*

5. Off-Street Loading Areas:

Off-street loading will be subject to the review and approval of Sussex County and shall be in compliance with Sussex County Zoning Code, Article XXIII. Off-Street Loading, §115-167, *et. seq.*

IV. ARCHITECTURAL AND AESTHETIC STANDARDS

1. Landscaping and Limitations on Cutting Natural Growth:

- a. Every site on which a building shall have been placed shall be landscaped according to plans approved by Sussex County as specified herein and maintained thereafter in a slightly and well-kept condition.
- b. Any part or portion of the Site which is not used for buildings, other structures, loading or parking spaces and aisles, sidewalks are designated storage areas shall be planted with an all-season ground cover and shall be landscaped with trees and shrubs in accordance with an overall landscape plan and shall be in keeping with natural surroundings. A replacement program for non-surviving plants should be included.
- c. The Site Lessee, lessee or occupant shall landscape and maintain unpaved areas between the property lines and the building. The area between paved streets and the setback lines shall be used exclusively for landscaping except for walks and driveways crossing the required landscape area.
- d. The Site Lessee, lessee or occupant shall provide hose bibs in the vicinity of the landscaped areas on improved properties.
- e. Landscaping as approved by Sussex County shall be installed within ninety (90) days of occupancy or completion of the building, whichever occurs first, or as soon as weather will allow if such period falls within winter months.
- f. The Lessee or occupant of any Site shall at all times keep the landscaping in good order and condition. Should the Lessee or occupant of any Site fail to remedy and deficiency in the maintenance of the landscaping within twenty (20) days after written notification, Sussex County hereby expressly reserves the right, privilege and license and license to make any and all corrections or improvements in landscape maintenance at the expense of the Site Lessee.
- g. The Site Lessee shall preserve as much of the natural growth on a Site as practically possible. Special care should be exercised during any construction so that existing trees are not damaged.
- h. The plot plan must show a satisfactory method of irrigating all planted areas. This may be either by a permanent water system or by hose.

- i. Building interior ceiling height must be a minimum of 20 ft., floor to outside walls.

2. Exterior Construction, Permitted Materials, Prohibited Materials, Approved Construction Methods, Design:

- a. Any building erected on a Site will be subject to the review and approval of Sussex County and shall conform to the following construction practices and meet the Sussex County Building Code in effect at the time.

- (1) Exterior front and side walls must be finished on the exterior with the following:

- (a) architectural masonry units, (excluding concrete block and cinder block);
- (b) natural stone;
- (c) precast concrete with prior approval by Sussex County;
- (d) steel;
- (e) aluminum;
- (f) glass materials; or
- (g) their equivalent as approved by Sussex County. Rear exterior walls may be block masonry as defined below.

Minimum standards shall require that thirty (30) percent of the front building exterior and any front lots abutting Park Avenue be approved masonry finish as defined above. Side building walls facing interior park roadways must also have a minimum of thirty (30) percent of approved masonry finish. A masonry block wall (i.e., concrete or cinder block) may be used for a rear building wall only, if the masonry block wall is appropriately painted and meets the approval of Sussex County. These requirements also apply to any accessory building other than temporary structures as defined in paragraph 2 below.

Finish building material shall be applied to all sides of a building, which are visible to the general public as well as from neighboring property and streets. Colors shall be harmonious and compatible with colors of the natural surroundings and other adjacent buildings. Any exception to the exterior construction standards, methods, or design shall be subject to the review and approval of Sussex County.

- (2) Temporary Improvements – No temporary improvements of a temporary nature, including trailers, incomplete buildings, tents or shacks shall be permitted on the Property. Temporary improvements used solely in connection with the construction or sales of permanent approved improvements may be permitted provided they are located as

inconspicuously as possible and are removed immediately after completion of such construction.

3. Signs:

Plans and specifications for the construction, installation, or alterations of all outdoor signs including traffic or directional signs shall be first submitted to and have the written approval of Sussex County.

The following signs shall be permitted:

- a. Those identifying the name of the person or firm occupying the Site subject to the following criteria:
 - (1) Signs shall be limited to one (1) per Site. Each sign may be lighted but shall not exceed thirty-two (32) square feet in size.
 - (2) Electronic Messaging Centers shall be prohibited.
 - (3) All signs mounted on a building must identify the primary company name only and shall not be an advertising vehicle. Generally, an identifying sign may be mounted on one wall except that, at the discretion of Sussex County, a smaller sign or logo may be permitted on another exposure.
 - (4) Logos: A logo for a single or multi-line sign, or a logo to be mounted separately, must be sized with the total sign area allowed.
 - (5) No logos or other signs may be mounted so as to project above the roofline of any facility nor can same be ground mounted under any circumstances.
 - (6) Prior to installation of a sign on any Site, Lessee shall submit sign proposals to Sussex County for its approval and consent as to the size, height, type, and location of any on premise sign Lessee seeks to install. Final approval will be based on reasonable architectural standards and overall balance as same applies to identification displays. It should also be understood that Sussex County must approve the manner in which the sign is constructed, lighted and mounted.
 - (7) All Lessees shall maintain its sign and keep it in good repair during the term of its Lease. Lessee shall be responsible for any damage resulting from the installation or removal of any such sign, device, fixture or other attachment.
 - (8) Lessee shall keep its sign lighted at such reasonable times as Lessor may require under these Rules and Regulations, and as may be amended from time to time.

- (9) Upon the expiration or termination of any Site Lease or the Site Lessee's right to possession of the Site, or the Site Lessee's vacation of the Site, Lessee shall, at Lessee's sole cost and expense, remove any signage and restore and repair that portion of the Site affected by the installation or removal of the signage to the condition satisfactory to Sussex County.

4. Outdoor Storage:

- a. Unless specifically approved by Sussex County in writing, no materials, supplies or equipment (including company owned or operated vehicles) including but not limited to trash and garbage receptacles, shall be stored in any area on a Site except inside a closed building, or behind a visual barrier screening such areas from the view of adjoining properties and/or public street.
- b. Screening of Service Containers: Garbage and refuse containers shall be concealed by means of a screening wall of material similar to and compatible with that of the building. These elements shall be integral with the concept of the building plan, be designed so as not to attract attention, and shall be located in the most inconspicuous manner possible. Unless specifically approved by Sussex County in writing, no materials, supplies or equipment shall be stored on the Property except inside a close building, or behind a visual barrier screening such areas so that they are not visible from neighboring streets and property.

5. Maintenance Requirement, Refuse Collection, and Prohibition of Junk Storage:

- a. Each Site Lessee, or occupant shall at all times keep his premises, buildings, improvements and appurtenance in a safe, clean, neat, and sanitary condition and shall comply with all laws, ordinances and regulations pertaining to health and safety. Each Site Lessee shall provide for the removal of trash and rubbish from his premises. The Sites shall not be used for storage of any scrap materials without the prior written approval of Sussex County.
- b. During construction, it shall be the responsibility of each Site Lessee to insure that the construction sites are kept free of unsightly accumulations of rubbish and scrap materials and that construction materials, trailers, shacks, and the like are kept in a neat and orderly manner.

6. Utilities Placement and Design:

Without limiting the generality of any of the foregoing, the following use restrictions shall be maintained and enforced with respect to the property:

- a. Antennas: No antenna for transmission or reception of television signals or any other form of electro-magnetic radiation shall be erected, used or maintained on the Property outside any building whether attached to an improvement or otherwise, without the prior approval of Sussex County.
- b. Utility Service: No lines, wires, or other devices for the communication of transmission of electric current or power, including telephone, television and radio signals, shall be constructed, placed or maintained anywhere in or upon the Property unless the same shall be contained in conduits or cable, constructed, placed and maintained underground or concealed in, under, or on buildings, or other improvements as approved by Sussex County, Site Lessee, provided electrical transformers may be permitted if properly screened and approved by the Sussex County. Nothing herein shall be deemed to forbid the erection and use of temporary electric or telephone services incident to the construction of approve improvements.
- c. Mail Boxes: No mail or other delivery boxes shall be permitted on the Property unless approved by Sussex County.
- d. Mechanical Equipment: All mechanical equipment, including roof mounted shall be enclosed or screened so as to be an integral part of the architectural design.

7. Repair of Buildings:

No building or other improvement shall be permitted to fall into disrepair and each improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

8. Compliance with Governmental Authorities:

Construction and alteration of all improvements shall be performed in accordance and comply with the requirements of all applicable governmental authorities.

V. IMPLEMENTATION

1. Architectural Review and Approval of Building Plans – Procedures:

Before applying for a building permit and commencing the construction or alteration of all buildings, enclosures, fences, loading areas, parking facilities, or any other structures or permanent improvements (“improvements”) on or to any Site, the Lessee of any Site shall first submit plans and specifications and landscape plans to Sussex County for its written approval, as hereinafter provided.

No improvement, as that term is hereinabove defined, shall be erected, placed, altered, maintained, or permitted to remain on any land subject to these Covenants until plans and specifications showing plot layout an all-exterior elevations, with materials and colors therefore and structural design, signs, and

landscaping, shall have been submitted to and approved in writing by Sussex County, and a copy of such plans and specifications prepared by the signature of the Lessee of the Site or his authorized Agent specifying for which part of such plans and specifications approval is sought.

Approval shall be based, among other things, on adequacy of Site dimensions, storm drain considerations, conformity and harmony of external design with neighboring sites, relation of topography, grade and finished ground elevation of the Site being improved to neighboring sites; proper facing of main elevation with respect to nearby streets; and conformity of the plans and specifications to the purpose and general plan and intent of these covenants.

Sussex County shall have the right to refuse to approve any such plans or specifications or proposed use of the premises for any reason which Sussex County, in its sole discretion, may deem in the best interests of the Industrial Park and the Lessees or prospective lessees of other sites therein.

If Sussex County fails either to approve or disapprove such building and site plans and specification within sixty (60) days after the same have been submitted to it, it shall be conclusively presumed that Sussex County has disapproved said plans and specifications.

Neither Sussex County nor its successors or assigns shall be liable in damages to anyone submitting plans to them for approval, or to any Lessee of land affected by this Declaration, by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any such plans. Every person who submits plans to Sussex County for approval agrees, by submission of such plans, and every Lessee of any said Property agrees, by acquiring a leasehold interest therein, that the Lessee will not bring any action or suit against Sussex County to recover such damages. In case of conflict between plan review and the Covenants herein contained, these Covenants shall govern the rights and obligations of the parties.

Building must be constructed in accordance with the plans as approved by Sussex County. Any modification to the approved plans, during construction, which affects the intent of these Covenants, must be approved by Sussex County before the modification to the building is constructed. Lesser shall give written notice of completion of improvements to Sussex County upon completion of said improvements.

2. Enforcement:

Said Covenants shall be jointly and severally enforceable by Sussex County and its successors and assigns and by any Site Lessee and its successors and assigns, provided, however, that only Sussex County or its assignees, shall have the right to exercise the discretionary powers herein reserved to Sussex County.

Violation of any of said Covenants, or breach of any Covenant or agreement herein contained shall give Sussex County or its assignees in addition to all other remedies, the rights (but not the obligation) to enter upon the land which such violation or breach exists and summarily to abate and remove any structure or correct any condition that may constitute such violation or breach at the expense of the then Lessee of such land, which expense shall be a lien on such land enforceable in Equity; provided, however, that no such entry shall be made unless the violation or breach has not been remedied and corrected within thirty (30) days after delivery of written notice of such violation or breach from Sussex County or its said assignees to the Lessee of the premises on which the violation or breach has occurred or in the alternative within thirty (30) days after mailing such notice, by certified or registered mail, postage prepaid, to the Lessee of such premises at his or its last known address.

Sussex County hereby claims any and all statutory or other liens which it may have upon the equipment, furniture, fixtures, real and personal property of any Lessee or Sub-Lessee placed upon the improvements, and Lessee agrees that Sussex County has such a lien to the extent provided by statute or otherwise. Sussex County agrees to subordinate its lien right to the lien of any mortgage, deed of trust, or security instrument given by Lessee for the construction of the improvements and purchase of the equipment, furniture, fixtures and personal property placed upon the property. Lessee shall furnish Sussex County copies of all such security instruments.

If Sussex County prevails in any legal or equitable proceeding seeking to restrain the violation of or enforce any provision herein, of challenging the enforceability of any provision herein, Sussex County shall be entitled to attorneys' fees in the trial and appellate court proceedings; and costs and expenses of investigation and litigation, including expert witness fees, deposition costs (appearance fees and transcript charges), injunction bond premiums, travel and lodging expenses, all fees and charges, and all other reasonable costs and expenses. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

3. Repurchase Rights:

In the event any Lessee or its assigns shall not have substantially completed the construction of a permanent building upon a Site within two (2) years of the date of the execution of the Lease by Sussex County conveying a leasehold interest in that Site said Lessee, Sussex County shall have an option to repurchase said Site for the original purchase price and enter into possession of said Site. This option to repurchase must be exercised in writing within ninety (90) days after the expiration of the two (2) year period following the execution of the Lease referred to above. Settlement of the repurchase shall take place within sixty (60) days of the exercise of the option to repurchase and shall be at location to be designated by Sussex County. All costs of recording, transfer taxes, documentary stamps and all other excise taxes arising from said Settlement, will be paid for by said Lessee or assigns.

Anything in this paragraph V.3. to the contrary notwithstanding. Sussex County, its successors and assigns may extend, in its sole discretion and in writing, the time in which such construction must be completed by Lessee upon Sussex County's receipt of a request for extension by Lessee upon Lessee's demonstration of its diligence in pursuing completion of said construction.

VI. MISCELLANEOUS

1. Failure to Enforce Not a Waiver of Rights:

Any waiver or failure to enforce any provision of these Covenants in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or similar situation at any other location in the Industrial Park or of any other provision of these Covenants. The failure of Sussex County or any Site Lessee to enforce any Covenant herein contained shall in no event be deemed to be a waiver of the right to do so thereafter nor of the right to enforce any other Covenant.

2. Mutuality, Reciprocity:

Runs with Land. All covenants, conditions, and agreements contained herein are made for the direct, mutual and reciprocal benefit of each and every part and parcel in favor of every other parcel; shall create reciprocal rights and obligations between the respective lessees of all parcels and privities of contract and estate between all grantees of said parcels, their heirs, successors, and assigns, operate as Covenants running with the land for the benefit of all other Sites. Sussex County reserves the right, however, from time to time hereinafter to delineate, plot, grant or reserve within the remainder of the Industrial Park not hereby conveyed such public streets, road, sidewalks, ways and appurtenances thereto, and such easements for drainage and public utilities, as it may deem necessary or desirable for the development of the Industrial Park (and from time to time to change the location of the same) free and clear of these restrictions and Covenants and to dedicate the same to public use or to grant the same to the County of Sussex and/or to appropriate public utility corporations.

3. Fee:

Each year, as part of the fiscal year and budget of the Sussex County Government, the Council shall include an estimate of the total amount which it considers necessary to pay the cost of the maintenance, management, operation, repair and replacement of and in the common area and provide for an assessment for fees against each lessee in a proportion to their respective site to the total number of sites available in the Delaware Coastal Business Park. Said assessment shall be invoiced at the same time as the annual taxes and to be paid within 30 days of invoice.

Revised May 2019

EXHIBIT C

Tax Map Number:
135-20.00-75.00-14

Return to:
Sussex County
P.O. Box 589
Georgetown, DE
19947

NOTICE OF AGREEMENT TO
RESTRICT LESSEE FROM
ENCUMBERING PROPERTY

THIS NOTICE OF AGREEMENT TO RESTRICT LESSEE FROM ENCUMBERING PROPERTY (this "Notice") dated as of this _____ day of _____, 2024, by and between SUSSEX COUNTY, a political subdivision of the State of Delaware, P.O. Box 589, 2 The Circle, Georgetown, Delaware 19947, hereinafter referred to as "Lessor", and JDJS, LLC, a Delaware limited liability company, _____, Delaware, as "Lessee".

RECITALS:

WHEREAS, Lessor is the owner of certain real property and improvements known as 21345 Cedar Creek Avenue, Georgetown, Delaware, which is identified as Lot 14 in the Delaware Coastal Business Park and as Sussex County Tax Parcel No. 135-20.00-75.00-14 comprised of 3.92 acres, more or less, and as further described on Exhibit A which is attached hereto and incorporated herein by reference ("the Leased Premises");

WHEREAS, Lessee is a Lessee of the Leased Premises pursuant to a lease agreement dated _____, 2024 ("the Lease"); and

WHEREAS, pursuant to this Lease, Lessor and Lessee agreed that Lessor shall not be liable for debts, acts, or omissions of Lessee and that Lessee has no authority to encumber the Leased Premises; and

WHEREAS, this Notice is to provide legal notice to the public that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials for any work performed on the Leased Premises, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said Leased Premises.

WITNESSETH

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, the parties hereby certify, consent, and agree as follows:

1. The parties acknowledge that Lessee shall not be the agent or partner of Lessor and Lessee shall have no authority to make any contract or do any act so as to bind Lessor or as to render Lessor or Lessor's interest in the Leased Premises liable therefore. Lessee will save Lessor and the Leased Premises harmless from any penalty, damages, neglect, or negligence of Lessee, property damage, illegal act or otherwise. Any improvements by Lessee on said Leased Premises shall be constructed at the sole expense of Lessee, and Lessor and its appointed and elected officials, employees, agents, and volunteers shall not be liable in any way for any amount of money arising out of said construction. No liens may be placed on the Leased Premises without Lessor's prior written approval. Lessee has no authority whatsoever to encumber the Leased Premises or any improvements located thereon.

2. The parties hereby notify the public that Lessor and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials for any work performed on the Leased Premises, and that the laborers, material men and subcontractors shall look solely to Lessee for payment and shall not be entitled to place a lien against said Leased Premises.

3. This Notice shall be governed by the laws of the State of Delaware.

[THE REMAINDER OF THIS PAGE HAS BEEN LEFT BLANK INTENTIONALLY.
SIGNATURE PAGES TO FOLLOW.]

LESSEE:

JDJS, LLC
A Delaware limited liability company

Witness

By: _____ (SEAL)

Jennifer McMillan
Authorized Member

DATED: _____

STATE OF _____ :
: ss.
COUNTY OF _____:

BE IT REMEMBERED, that on this ____ day of _____, A.D. 2024, personally came before me, a Notary Public for the State and County aforesaid, Jennifer McMillan, duly authorized Member of JDJS, LLC, a limited liability company existing under the laws of the State of Delaware, party to this Indenture, known to me personally to be such and acknowledged this Indenture to be her act and deed and the act and deed of said company, that the signature of the duly authorized Member thereto is in her own proper handwriting and the seal affixed is the common and corporate seal of said company, and that Her act of sealing, executing, acknowledging and delivering said indenture was duly authorized by the Operating Agreement of said company.

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

Notary Public

Print Name of Notary Public

My commission expires: _____

EXHIBIT A
TO NOTICE OF AGREEMENT TO
RESTRICT LESSEE FROM
ENCUMBERING PROPERTY

SURVEY OF PROPERTY

SUSSEX AVENUE (ROAD A)
60' R.O.W.

OTHER LANDS OF SUSSEX COUNTY
SHOPPER INDUSTRIES, INC. (LESSEE)

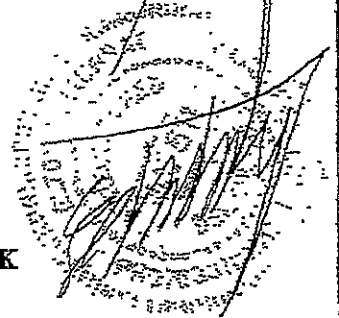
"THIS PLATTED AREA
IS NOT WITHIN THE
JURISDICTION OF THE
COUNTY PLANNING
AND ZONING COMMISSION."
S/S/10/2/CA

OTHER LANDS OF SUSSEX COUNTY

OTHER LANDS OF SUSSEX COUNTY

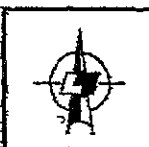
OTHER LANDS OF SUSSEX COUNTY
DELAWARE STATE FIRE SERVICE CO. (LESSEE)

SUSSEX COUNTY INDUSTRIAL AIRPARK
LANDS OF
SUSSEX COUNTY
GEORGETOWN INCORPORATED - SUSSEX COUNTY - DELAWARE
LOT SURVEY



"THIS PLAN AND SURVEY DOES NOT
VERIFY THE EXISTENCE OR NON-
EXISTENCE OF SURVEY-OR-RECORD OR
EVIDENCE PERTAINING TO THIS
PROJECT."

DEED REF. D.B. 717 E. 48
@ - 3/4" IRON PIPE FOUND
@ - 3/4" IRON PIPE SET
"BROOKMAN SURVEY"
FLOOD ZONE N
AREA: 3.33 AC +/-



LAND
TECHNICAL
SURVEYING ENGINEERS, LANDSCAPE ARCHITECTS
SUITE 1, BOX 17-A, 118 ATLANTIC AVENUE
GEORGETOWN, DELAWARE 19630
PHONE: (302) 338-2200 FAX: (302) 338-2488

PROJECT NO.	03102
DATE	2-15-02
SCALE	

PROJECT NO.	03102
SHEET NO.	1 of 1
DATE	2-15-02
SCALE	G-17

Appendix A
BK 03014 PG 3339

ENGINEERING DEPARTMENT

J. MARK PARKER, P.E.
ASSISTANT COUNTY ENGINEER

(302) 855-7370 T
(302) 854-5391 F
mark.parker@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

TO: Sussex County Council:
The Honorable Michael H. Vincent, President
The Honorable John L. Rieley, Vice President
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable Mark G. Schaeffer

FROM: J. Mark Parker, P.E., Assistant County Engineer
Hans Medlarz, P.E., County Engineer, Ret.

RE: *Chesapeake Utilities Natural Gas Service Extension*
A. Approval of Customer Advance Agreement

DATE: February 20, 2024

Chesapeake Utilities (CU) approached the County last year with possible plans to extend natural gas lines to the Airpark portion of our Delaware Coastal Airport to service various buildings and hangars along Rudder Lane. The installation of natural gas lines in this area would be an extension of CU's existing gas utility network that was installed in our Delaware Coastal Business Park in 2019 to serve our various park tenants. Having natural gas available in this area would be a benefit to the County and a number of our aeronautical tenants as older propane utility systems could be retired and converted for propane use. The derived long-term benefit is a cleaner gas source at a cheaper cost.

The installation of the natural gas lines would be done as part of a "Customer Advance Agreement" between CU and the County, the structure of which is very similar to the agreement put in place back in 2019 to facilitate the initial gas utility installation in our business park. Based on a facility survey conducted by CU in coordination with our airport personnel, a total of twelve (12) buildings were identified for initial connection to the new gas lines, including our recently completed Joint Emergency Operations Center.

Based on Capital Investment and Net Revenue forecasting by CU, the County would provide an up-front Capital Contribution that would be used for the construction of the gas utility lines. The County would then receive "Refund Payments" based on annual revenue received from actual gas delivery service to the 12 buildings over a maximum 5-year reimbursement period. The County retains the option of connecting additional buildings beyond the twelve identified which would increase gas delivery and associated Refund Payments.

The total Capital Contribution has been computed as \$313,808.00 and would be split into two payments with the initial payment representing half of the total contribution due within thirty



(30) days of the date of the Agreement, and the other half due on or before July 15, 2024. Thus, the payments are effectively spread over two fiscal years and can be programmed accordingly in County budget. **The Engineering Department, with input from the Assistant County Attorney and our Finance Team, has reviewed the Customer Advance Agreement and recommends approval.**

CUSTOMER ADVANCE AGREEMENT

This Customer Advance Agreement (“Agreement”) is made and entered into as of the ____ day of February, 2024, by and between Chesapeake Utilities Corporation (hereinafter called “Company”), party of the First part, and Sussex County, a political subdivision of the State of Delaware (hereinafter called “Applicant”), party of the Second Part, witnessed:

WHEREAS, the Applicant is desirous of securing an extension of the Utility’s natural gas service, hereinafter called the “Extension”; and

WHEREAS, the Company proposes the Extension as depicted in the construction drawings dated January 29, 2024, including service laterals to the twelve buildings listed in Appendix A attached hereto (hereinafter called “Twelve Buildings”), pursuant to the terms of this Agreement, at an estimated total cost of \$313,808.00; and

WHEREAS, the Applicant may request the construction of service laterals from the Extension to certain buildings in addition to the Twelve Buildings (hereinafter called “Additional Buildings”).

NOW, THEREFORE, in consideration of these premises, and of the respective and mutual covenants and agreements contained herein and hereinafter set forth and intending to be legally bound, the parties hereto with each other agree as follows:

1. For the purpose of furnishing gas service to the Applicant and potential existing and new tenants located on Rudder Lane and Aviation Avenue at Delaware Coastal Airport, the Company will extend its service facilities as depicted in the aforementioned construction drawings.

2. Applicant shall provide a cash contribution to the Company in the amount of \$313,808.00 (hereinafter called the “Advance”) for the cost of the Extension, half of which is payable within thirty (30) days of the effective date of the Agreement and the other half of which is payable on or before July 15, 2024.

3. The parties agree that within sixty (60) days following each delivery year (with each delivery year constituting the twelve months ending on the anniversary of the completion of the Extension), the Company will return to the Applicant a portion of the Advance (hereinafter called “Refund Payment”) on an annual basis under the following terms:

- a) The amount of the annual Refund Payment will be calculated using the following formula:

Refund Payment = Annual Revenue from the Twelve Buildings + Excess Annual Revenue from the Additional Buildings,

where Annual Revenue means gross revenue received for delivery service during the delivery year (*i.e.*, revenue from fixed customer charges and volumetric distribution rates but not gas sales service rates) and Excess Annual Revenue means the amount of Annual Revenue received from the Additional Buildings that

exceeds one sixth (1/6) of the Company's actual cost to install the service laterals and gas meters to the completed Additional Buildings;

- b) The Refund Payments shall be based on the actual gas consumption of customer(s) that connect to the Extension;
- c) The aggregate of the Refund Payments will not exceed the amount of the Advance;
- d) No Refund Payments shall be due or payable hereunder after the fifth (5th) anniversary of the date of completion of the Extension;
- e) The Refund Payments will be reduced by the Company's tax liability on any portion of the Advance that will not be returned to the Applicant; and
- f) If the Delaware Public Service Commission (hereinafter called "Commission") finds that the amount of the Refund Payments causes the Extensions and Gas Distribution System to be uneconomic to the Company, then the Company and the Applicant shall negotiate in good faith to potentially: (i) extend the five (5) year reimbursement term under section 4(c) hereof, and (ii) recalculate the Refund Payments consistent with the Commission's findings.

4. Within ninety (90) days after the receipt of the Advance, the Company shall commence work on the Extension. The Company shall not be responsible for delays in construction of the Extension occasioned by events or conditions reasonably beyond the Company's control. In the event the Agreement is mutually cancelled for any reason before award of any construction contracts, the Company shall return the Advance in full within thirty (30) days of cancellation.

5. If the Advance exceeds the actual cost of construction for the Extension, then the Company shall refund to Applicant the excess amount within ninety (90) days of the completion of the construction. If the actual cost of construction for the Extension exceeds the amount of the Advance, then the amount of the under-payment will be subtracted from the Refund Payment(s).

6. Subject to the Easement(s) granted by the Applicant in its real property for the benefit of the Company for the Extension, the title, possession and full dominion as well as legal and operational control over the Extension shall at all times be and remain vested exclusively and unconditionally in the Company its successors and assigns.

7. Company agrees to abide by all applicable laws, rules and regulations pertaining to the use and operation of the Extension.

8. The parties agree to indemnify and hold each other harmless as permitted by Delaware law.

IN WITNESS WHEREOF, the parties hereto have caused this Customer Advance Agreement for the Extension to be signed by their respective duly authorized personnel as of the date first above written.

CHESAPEAKE UTILITIES CORPORATION

SUSSEX COUNTY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Appendix A

County #	Services & Meters	Address
2	Sussex AeroMX Hangar (Lot A1)	21791 Aviation Ave
10	DTCC Aviation MX (Lot A3-3)	21499 Rudder Ln
11	LifeNet Hangar (Lot A2)	21479 Rudder Ln
DTCC Power	DTCC Power Plant	21480 Rudder Ln
EOC	Emergency Operations Center	21911 Rudder Ln
Joint Svc	Joint Services Building	21448 Rudder Ln
Maint	Maintenance	21454 Rudder Ln
Term Bldg	Terminal Building - Main	21553 Rudder Ln
Term Rest	Terminal Building - Restaurant	21553 Rudder Ln
Old Maint	Old Maintenance Shop	21430 Rudder Ln
5	Schell Aviation Hangar (Lot C1)	21769 Aviation Ave
9	Schell Aviation Hangar	21513 Rudder Ln



Delaware Division
Main Extensions
Commercial and Industrial Customers
Six Times Net Revenue Test
DE Coastal Airport
Rudder Lane / Georgetown, DE

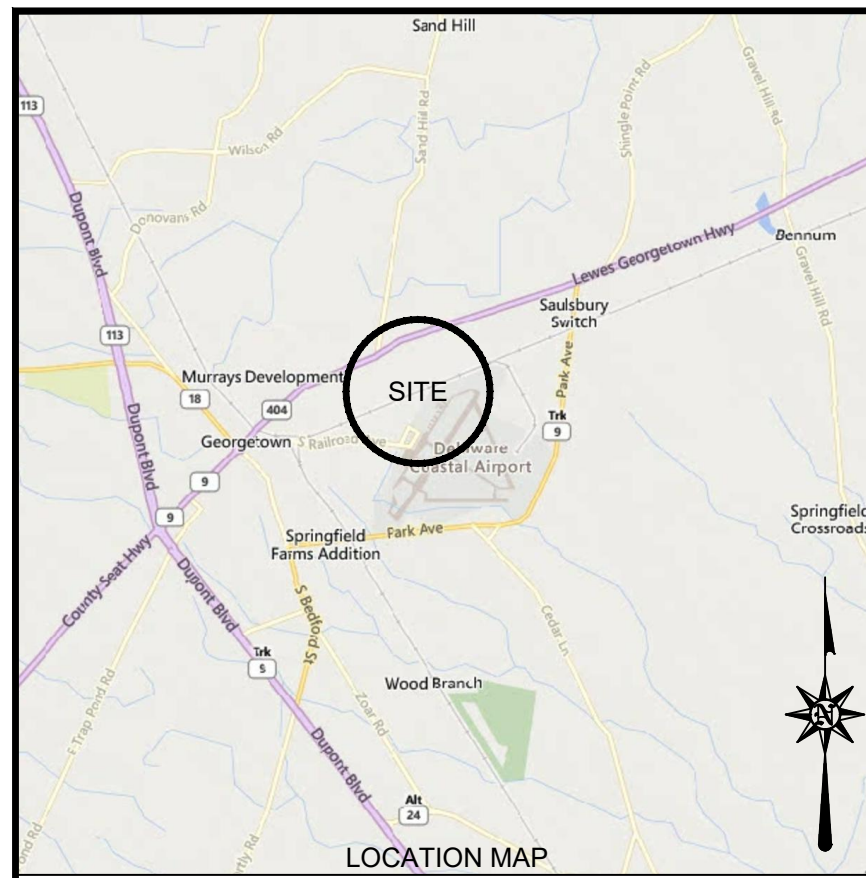
<i>Capital Investment</i>	
Estimated Land Cost	\$0
Estimated M & R Station City Gate Cost	\$0
Estimated Main Cost	\$257,808
Estimated Service Cost	\$50,000
Estimated Meter Cost	\$6,000
Estimated Regulator Cost	\$0
Estimated Residential / Commercial Installation Cost	\$0
Estimated M & R Station Industrial Set Cost	\$0
Total Estimated Capital Investment Cost	\$313,808

Estimated Net Revenue	\$11,770
-----------------------	----------

Six Times Net Revenue Test Results	26.7
------------------------------------	------

<i>Calculation of Required Financial Guarantee</i>	
Total Financial Guarantee Required (pre-tax)	\$243,188
Tax Rate	9.143%
Total CIAC Including Tax Gross Up	\$267,661

County #	Services & Meters	Address	Service & Meter Costs	Connected BTUh Load Est.	Service Length:	Service Size	PSI	Service Cost:	Meter Cost:	Rate Sch	Annual MCF Est.
2	Sussex AeroMX Hangar (Lot A1)	21791 Aviation Ave	\$ 4,250.00	225,000	150	1-1/4"	2psi	\$ 3,750	\$ 500	GS	147.75
10	DTCC Aviation MX (Lot A3-3)	21499 Rudder Ln	\$ 3,625.00	300,000	125	1-1/4"	2psi	\$ 3,125	\$ 500	MVS	412
11	LifeNet Hangar (Lot A2)	21479 Rudder Ln	\$ 3,625.00	90,000	125	1-1/4"	2psi	\$ 3,125	\$ 500	GS	59.1
DTCC Power	DTCC Power Plant	21480 Rudder Ln	\$ 6,750.00	300,000	250	1-1/4"	2psi	\$ 6,250	\$ 500	GS	172
EOC	Emergency Operations Center	21911 Rudder Ln	\$ 3,625.00	1,290,000	125	1-1/4"	2psi	\$ 3,125	\$ 500	MVS	1,178
Joint Svc	Joint Services Building	21448 Rudder Ln	\$ 9,250.00	249,000	350	1-1/4"	2psi	\$ 8,750	\$ 500	GS	164
Maint	Maintenance	21454 Rudder Ln	\$ 4,250.00	210,000	150	1-1/4"	2psi	\$ 3,750	\$ 500	GS	138
Term Bldg	Terminal Building - Main	21553 Rudder Ln	\$ 3,625.00	120,000	125	1-1/4"	2psi	\$ 3,125	\$ 500	GS	98
Term Rest	Terminal Building - Restaurant	21553 Rudder Ln	\$ 3,625.00	400,000	125	1-1/4"	2psi	\$ 3,125	\$ 500	GS	393
Old Maint	Old Maintenance Shop	21430 Rudder Ln	\$ 6,750.00	75,000	250	1-1/4"	2psi	\$ 6,250	\$ 500	GS	88
5	Schell Aviation Hangar (Lot C1)	21769 Aviation Ave	\$ 3,000.00	300,000	100	1-1/4"	2psi	\$ 2,500	\$ 500	GS	197
9	Schell Aviation Hangar	21513 Rudder Ln	\$ 3,625.00	900,000	125	1-1/4"	2psi	\$ 3,125	\$ 500	MVS	591
Total			\$ 56,000.00	4,459,000						Total	3636.61 MCF



PROJECT DATA:

- PROJECT LOCATION:**
HUNDRED: GEORGETOWN
COUNTY: SUSSEX
STATE OF DELAWARE
- NATURAL GAS**
TEST PRESSURE: 150 PSI MIN.
OPERATING PRESSURE: 55 PSI
MAOP: 100 PSI MAX.
- PROJECT INVOLVES THE FOLLOWING:**
NEW MAIN: 6,555 L.F. 4" (HDPE)
VALVE INFO: 4" (HDPE) QTY: 1
- DESIGN IS IN ACCORDANCE WITH ANSI B31.8b AND NATURAL GAS PIPELINE SAFETY ACT OF 1968**
- DRAWING REFERENCES:**
CHESAPEAKE GIS, CHESAPEAKE AS-BUILTS, R-O-W,
EXISTING UTILITIES, GOOGLE MAPS, DELAWARE LAND RECORDS,
ENGINEER CAD FILES, DEMAC TILES, DELDOT ARCHIVES

GENERAL NOTES:

- ALL CONSTRUCTION SHALL BE IN ACCORDANCE WITH THE LATEST REVISION OF THE CHESAPEAKE UTILITIES AND SANDPIPER ENERGY (DNG) OPERATIONS, MAINTENANCE, AND CONSTRUCTION (OMC) MANUAL.
- CONTRACTOR TO PROVIDE DNG WITH AS-BUILT INFORMATION WITHIN 2 WEEKS OF PROJECT COMPLETION.
- AS-BUILTS NEED TO INCLUDE, AT A MINIMUM, THE FOLLOWING INFORMATION:
 - INSTALLATION METHODS FOR ALL MAIN*
 - DEPTHS OF MAIN*
 - ALL FIELD CHANGES
 - ANY UNLOCATABLE SEWER LATERALS

(note please make sure as-built is clearly marked where depths or installation methods change along the project)*
- CONTRACTOR SHALL PROVIDE ALL FIELD INFORMATION ON THE PLANS; USE 8 1/2" x 11" SHEETS IF ADDITIONAL SPACE IS REQUIRED. ALL INFORMATION (PLANS AND ADDITIONAL SHEETS) SHALL BE PROVIDED TO DNG.
- CONTRACTOR SHALL NOTIFY DNG ENGINEERING DEPARTMENT BEFORE CHANGING LOCATION OF GAS MAIN CLOSER TO THE RIGHT OF WAY (R-O-W).
- DURING THE BID PROCESS, CONTRACTOR IS RESPONSIBLE FOR GATHERING ANY ADDITIONAL INFORMATION NEEDED TO COMPLETE THE PROJECT.

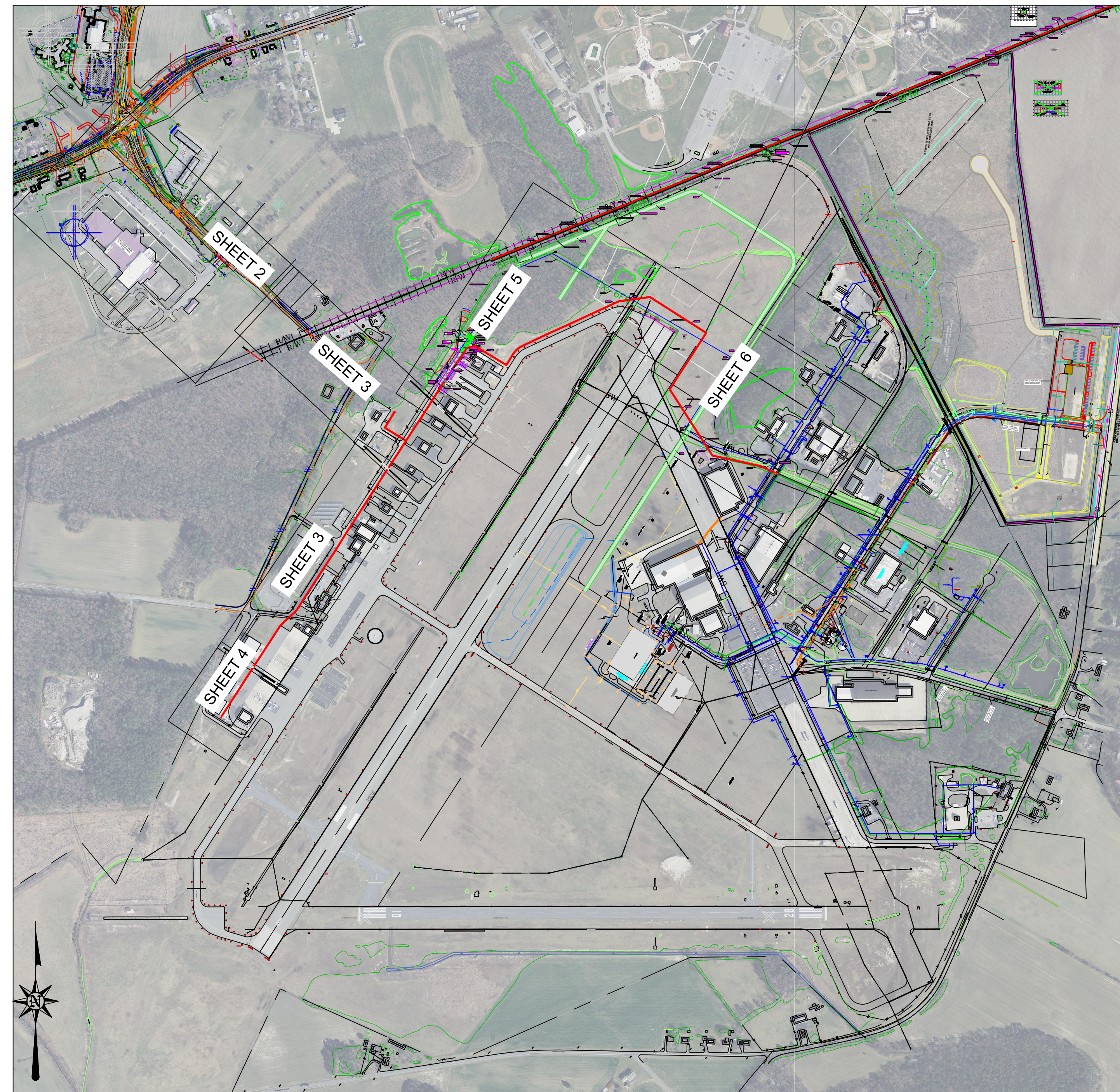
CONSTRUCTION NOTES:

- NEW GAS MAIN SHALL HAVE 36" MINIMUM COVER. DEPTHS LESS THAN 36" OR GREATER THAN 60", IF NOT SPECIFICALLY CALLED OUT ON PLANS, REQUIRES APPROVAL BY A DNG QUALIFIED PERSON.
- BORE, MOLE, OR DIRECTIONAL DRILL PAVED AREAS UNLESS OTHERWISE SPECIFIED.
- WHEN UTILIZING A TRENCHLESS TECHNOLOGY, CONTRACTOR SHALL ADHERE TO THE FOLLOWING:
 - EXPONE ALL UTILITY FACILITIES TO BE CROSSED TO CONFIRM NO CONFLICT.
 - IF A FACILITY CANNOT BE FOUND, CONTRACTOR IS RESPONSIBLE TO CALL THE RESPECTIVE UTILITY TO TRY AND CONFIRM FACILITY LOCATION.
 - NOTIFY DNG PROJECT COORDINATOR OF ANY UTILITY THAT CANNOT BE LOCATED.
 - CONTRACTOR SHALL NOT EXCEED 100% OF THE MAXIMUM ALLOWABLE TENSILE LOAD (PULLBACK PRESSURE) OF THE PIPE PER THE MANUFACTURER'S RECOMMENDATION. CONTRACTOR TO REFER TO THE OMC SECTION 900 FOR MAXIMUM ALLOWABLE TENSILE LOAD AND WEAK LINK REQUIREMENTS. CONTRACTOR SHALL CONTACT DNG PROFESSIONAL ENGINEER IF THE MAXIMUM PULLBACK PRESSURE IS EXCEEDED.
- ALL DISTURBED AREAS, INCLUDING DRIVEWAYS, SHALL BE RESTORED TO PRE-CONSTRUCTION CONDITIONS.
- CALL MISS UTILITY TWO (2) FULL WORKING DAYS BEFORE YOU DIG.
 - CONSTRUCTION ACTIVITIES SHALL NOT COMMENCE UNTIL ALL UTILITIES HAVE RESPONDED TO THE MISS UTILITY TICKET.
- CONTRACTOR SHALL NOTIFY DNG PROJECT COORDINATOR A MINIMUM OF 48 HOURS IN ADVANCE OF INTENT TO WORK EVENINGS OR WEEKENDS.
- LOCATE STATIONS CAN BE MOVED BASED ON DRILL LOCATIONS.
 - IF MOVED, REVISED LOCATIONS SHALL BE CLEARLY SHOWN ON THE AS-BUILT.
- ALL WORK IN DELDOT R-O-W SHALL BE COMPLETED TO DELDOT STANDARDS.
- DISTURBED AREAS SHALL BE RESTORED AT THE END OF EACH WEEK OR AS DIRECTED BY DNG OR OTHER AUTHORITY.
- DISTURBED AREAS SHALL BE TOP SOILED (6"), SEEDED, AND STABILIZED.
- MAINTENANCE OF TRAFFIC (MOT) SHALL ADHERE TO THE LATEST REVISION OF THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES (MUTCD) STANDARDS
- A CLEARANCE OF 12" SHOULD BE MAINTAINED FROM UNDERGROUND FACILITIES TO ALLOW SUFFICIENT SPACE FOR FUTURE REPAIRS. CLEARANCES LESS THAN 12" WILL REQUIRE APPROVAL FROM A DNG RELEVANT QUALIFIED PERSON, AND MAY REQUIRE SPECIAL LINE PROTECTION.
- FIELD CHANGES/MODIFICATIONS FROM THE APPROVED DESIGN SHALL BE DOCUMENTED ON THE CONSTRUCTION CHANGE ORDER LOG, AND PROVIDED AS PART OF THE PROJECT AS-BUILT DOCUMENTATION.
- THE FOLLOWING CHANGES/MODIFICATIONS TO THE APPROVED DESIGN MUST BE APPROVED BY THE DNG PROFESSIONAL ENGINEER PRIOR TO PROCEEDING WITH THE WORK:
 - OPERATING PRESSURE AND/OR MAXIMUM ALLOWABLE OPERATING PRESSURE (MAOP) OF A DISTRIBUTION MAIN;
 - OPERATING PRESSURE OF A DISTRICT REGULATOR STATION;
 - DISTRIBUTION MAIN ATTACHED TO A BRIDGE OR OTHER ENGINEERED STRUCTURES;
 - DISTRIBUTION MAIN WITHIN A DISTRICT REGULATOR STATION AWARENESS ZONE; AND
 - ANY OTHER WORK THAT PRESENTS A MATERIAL RISK OF HIGH CONSEQUENCE TO PUBLIC SAFETY.

LEGEND	
PROPOSED 4" HDPE GAS	4" HDPE G
EXISTING 2" HDPE GAS	EXISTING 2" HDPE G
EXISTING 4" HDPE GAS	EXISTING 4" HDPE G
PROPOSED GAS VALVE	⊙
PROPOSED REDUCER	▷
PROPOSED END CAP	→
PROPOSED GAS CASING	— — — —
PROPOSED EASEMENT	— + + — + + —
EXISTING CABLE TV	TV TV
EXISTING CENTERLINE	— — — —
EXISTING PROPERTY LINE	— — — —
EXISTING RIGHT OF WAY	R/W
EXISTING GAS VALVE	⊙
EXISTING ELECTRIC	UG-E
EXISTING ELECTRIC BOX	⊠
EXISTING SANITARY SEWER	SS SS
EXISTING FORCE MAIN	FM FM FM FM FM FM
EXISTING STORM DRAIN	SD SD
EXISTING WATER	W W
EXISTING WATER VALVE / STRUCTURE	⊕
EXISTING FIRE HYDRANT	⊕
EXISTING SEWER MANHOLE	⊕
EXISTING STORM MANHOLE	⊕
EXISTING STORM WATER	— — — —
EXISTING CATCH BASIN	⊠
EXISTING UTILITY POLE	⊕

NOTE:

- PROPOSED LAYOUT, GRADING, EXISTING UTILITIES, PROPOSED UTILITIES, BUILDING LOCATIONS AND TREES ALL PROVIDED BY ENGINEER.
- THIS PLAN SHALL ONLY BE USED TO DETERMINE EXISTING AND PROPOSED GAS LINE INFORMATION. ALL OTHER INFORMATION SHOWN IS FOR REFERENCE ONLY AND TO BE VERIFIED IN THE FIELD.



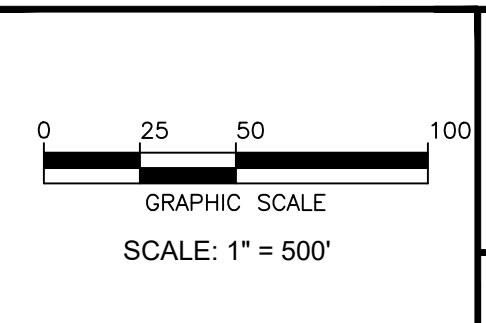
INFORMATION FOR DELDOT

STREET NUMBER: N/A
 STREET NAME: AIRPORT RD
 ROAD SURFACE: HOT MIX
 SHOULDER SURFACE: HOT MIX
 CURB: YES
 ROAD OPENING: NO
 ROAD BORE: YES
 FUNCTIONAL CLASSIFICATION:
 SPEED LIMIT:
 CASING SIZE: N/A
 WIDTH OF RIGHT OF WAY: VARIES
 WIDTH OF ROAD: VARIES
 WIDTH OF SHOULDER: VARIES
 TRAFFIC MAINTENANCE CASE: TA-3, TA-10, TA-28
 NEAREST INTERSECTING STREET: RUDDER LANE
 DISTANCE FROM THE CROSSROAD / SIDE ROAD TO THE INSTALLATION:
 DRAINAGE SYSTEM IN THE UTILITY AREA: CATCH BASIN

SANITARY SEWER LATERAL LOCATIONS ARE APPROXIMATE AND ARE TO BE VERIFIED IN THE FIELD.

NOT FOR CONSTRUCTION
 THIS PLAN IS FOR ESTIMATING PURPOSES ONLY.

DATE	REVISION	BY



NEW GAS MAIN
 DE COASTAL AIRPORT APPROACH
 (GEORGETOWN, DE)

DRAWN BY	EPB	01/29/24
APPROVED		
PROJECT NO.	2021.045.00	
SHEET 1 OF 4		

ENGINEERING DEPARTMENT

MIKE HARMER, P.E.
SUSSEX COUNTY ENGINEER

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Sussex County

DELAWARE
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Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable John L. Rieley, Vice President
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable Mark G. Schaeffer

FROM: Hans Medlarz, P.E., County Engineer, ret.

RE: *Inland Bays Loop Project, S24-01*
A. DelDOT Utility Agreement

DATE: February 20, 2024

The Inland Bays Loop, Project S24-01 will ultimately provide the treated effluent distribution from the Inland Bays Regional Wastewater Facility to the County's ag partners, the forested spray sites under DNREC permitting and the rapid infiltration basin to be constructed & maintained by Artesian Wastewater Resources on leased County property. The project will be constructed mostly on County owned property. However, some piping will be installed within portions of the State maintained road right-of-way outside of existing paved areas of both Mount Joy Road and Lawson Road.

Since the County owns contiguous properties alongside said State maintained road right-of-way of both Mount Joy Road and Lawson Road (Tax Parcel 234-22.22-8.00 & 234-21.00-151.03) the DelDOT Utility manual requires infrastructure to be installed on the private property.

The Mount Joy Road segment of the project is also impacted by a medium voltage distribution upgrades undertaken by the Delaware Electric Cooperative (DEC). Early in the planning stage the Engineering Department and DEC coordinated the designs moving the directionally drilled electrical infrastructure in a fully wooded County easement hereby avoiding the clearing of approximately 10 acres. This allowed the County's pipeline to be installed in the location of the former DEC pole line alignment 12-feet off the paved areas.

However, since DelDOT was not part of this arrangement, they denied the County's permit application in November 2023 unless the County agreed that in exchange for being granted permission to install the piping within State maintained right of way, the County waived the



statutory provisions contained within 17 Del. C. §132, 17 Del. C. §143. This provision relates to DelDOT obligation to compensate a public utility for pipeline relocation costs if the infrastructure is in direct conflict with future DelDOT road improvements.

The proposed County infrastructure is far enough off the paved areas that it will not be impacted by the addition of 10-foot wide shoulders along Mount Joy Road. Therefore, the Department recommends to Council the approval of the Utility Agreement with DelDOT, as presented.

UTILITY AGREEMENT

This UTILITY AGREEMENT (“Agreement”), made this _____ day of _____ 2024, by and between:

DELAWARE DEPARTMENT OF TRANSPORTATION. An agency of the State of Delaware, hereinafter called “DeIDOT”, and **SUSSEX COUNTY**, a political subdivision of the State of Delaware, hereinafter called “County”. DeIDOT and the County are collectively referred to herein as the “Parties”.

WITNESSETH:

WHEREAS, the County is proposing to construct treated wastewater piping (“Piping”) to allow the flow of treated wastewater from the County sewage treatment facility(ies) to waste water spray fields (“Spray Fields”) that are proposed for construction within the boundaries of certain real estate parcels owned by the County (the “Project”) located in part along Mount Joy Road (County Road 297) and Lawson Road (County Road 296) (the “Affected Roads”) situated in the Millsboro area of Sussex County, with pertinent plans from the Project attached hereto for reference as Attachment ‘A’, and;

WHEREAS, a part of the Project, Piping will be installed within portions of the road right-of-way outside of existing paved areas of both Mount Joy Road and Lawson Road, and;**WHEREAS**, the County owns properties that are contiguous with the road right-of-way of both Mount Joy Road and Lawson Road in the area of proposed water distribution piping installation, said properties being identified as Tax Parcel 234-22.22-8.00 and Tax Parcel 234-21.00-151.03 (the “Parcels”), and;

WHEREAS, the County has requested that DeIDOT permit the installation of the Piping within DeIDOT right of way even though the County owns the adjoining Parcels and could, if it so desired, install the Piping solely within the boundaries of the Parcels, and;

WHEREAS, DeIDOT has concerns about being obligated to relocate the Piping or any other materials installed as part of the Project from the right of way pursuant to the provisions of 17 *Del. C.* §132 and/or §143 in the event that improvements to the Affected Roads are required in the future, and;

WHEREAS, DeIDOT is not willing to allow the installation of the Piping within right of way absent certain protections and agreements from the County which are essential and critical to this Agreement, including the minimizing of future costs and impacts associated with relocation of any and all utilities within the road bed or right of way along the Affected Roads in the future if it is ever determined by DeIDOT that improvements to

the roads of any nature, including but not limited to, including widening or realignment, are needed and would result in the need for utility line relocation.

NOW THEREFORE, in consideration of the mutual covenants, terms, conditions, and stipulations contained herein, which is hereby acknowledged by both Parties as good and valuable consideration, the Parties hereby agree as follows:

- (1) The County agrees that in exchange for being granted permission to install the Piping and any other associated equipment and/or facilities within DelDOT right of way, the County, for itself, its heirs, assigns, and any person or party standing in the County's stead, waives the statutory provisions contained within 17 *Del. C.* §132 and 17 *Del. C.* §143 as it related to DelDOT being obligated to compensate the County or any other utility company for any costs, or expense whatsoever associated with any realignment or relocation of any utilities as part of the Project.
- (2) The County agrees that in exchange for being granted permission to install the Piping and any other associated equipment and/or facilities within DelDOT right of way, the County, for itself, its heirs, assigns, and any person or party standing in the County's stead, waives the statutory provisions contained within 17 *Del. C.* §132, 17 *Del. C.* §143 or any other existing or to be enacted statutory provision, as it relates to DelDOT being obligated to compensate the County or any other utility company for any costs, or expense whatsoever associated with any realignment or relocation of the Piping, or any associated equipment or facilities of any kind along the Affected Roads should it be determined by DelDOT in the future that the Piping and any associated equipment and facilities is in direct conflict with future road improvements.
- (3) The County agrees to be solely responsible for any and all costs or expenses of any utility relocation necessary for the Project to move forward.
- (4) The County agrees to be solely responsible for any and all costs and expenses of relocating the Piping and any associated equipment or facilities if directed by DelDOT to remove or relocate same as part of any DelDOT project along the Affected Roads, and complete the relocation with it's own Contracting Forces in a timeframe that is acceptable to both Parties.
- (5) The Parties agree that relocation of the Piping and any associated equipment or facilities, if deemed necessary by DelDOT, would occur in conjunction with the planning, design and construction phases of said future road improvement project, including potentially as part of an advance relocation.
- (6) The County agrees to remove all sections of Piping and any associated equipment or facilities installed withing the right-of-way of the Affected Roads as part of the Project if the Piping is abandoned by the County in the future prior to any road improvement project. If the County fails to remove the Piping, after receiving a

- request for removal from DelDOT, within sufficient time to allow any other DelDOT project to proceed uninhibited, the County agrees that DelDOT may, using its own forces or a third party contractor, remove the Piping and any associated equipment or facilities and charge the County the costs actually incurred with that removal operation.
- (7) The Parties agree if all or a portion of is the Affected Roads are abandoned and/or vacated in the future in areas of the Piping installed as part of the Project, this Utility Agreement becomes null and void as it pertains to that section of the Piping as the right of way will no longer be controlled by DelDOT. The abandonment of any section of the Affected Roads shall in no way impact, negate or relieve the County of its obligations as set forth herein for any other sections of the Affected Roads.
 - (8) In the event the County shall ever, at any time, sell or otherwise transfer the Parcels or the Piping and any associated equipment or facilities installed as part of the Project, the County shall notify DelDOT of such sale or transfer no less than thirty (30) days prior to the completion of such sale or transfer and provide contact information for such other entity at that time. In such event, the County shall notify such other entity of the existence of this Utility Agreement and provide a copy of this Utility Agreement to such other entity. County shall include in any to be executed contract documents that any entity acquiring the Parcels or the Piping and any associated equipment or facilities agrees to be bound by the terms of this Agreement and the acquiring entity is aware that it has no statutory right under 17 *Del. C.* §132, 17 *Del. C.* §143 or any other existing or to be enacted statutory provision to seek to recover from DelDOT the costs and expenses of any utility relocation. Should the County fail to include the aforementioned language and any acquiring entity seeks to recover from DelDOT the costs and expenses associated with any relocation of any utilities or the Piping and any associated equipment or facilities within the Affected Roads, DelDOT shall have the right to seek to recover any and all amounts incurred by DelDOT, including reasonable attorney's fees, which are incurred in whole or in part as a result of the County's failure to include the required language.
 - (9) All covenants, conditions, terms and stipulations of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. Jurisdiction over any disputes arising out of this Agreement shall solely be in the Superior Court of the State of Delaware. This Agreement may only be amended, supplemented or modified by a subsequent written agreement signed by the Parties hereto.
 - (10) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.

- (11) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (12) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.

DRAFT

IN WITNESS, WHEREOF, the respective parties hereto have affixed their hands and seals the day and year aforesaid.

FOR THE COUNTY:

{Seal}

By: _____
(President - Sussex County Council)
_____ (DATE)

ATTEST:

Clerk of the County Council

FOR DELAWARE DEPARTMENT OF TRANSPORTATION:

By: _____ (Seal)
_____ (DATE)

WITNESS: _____

ATTACHMENT 'A'

DRAFT

ENGINEERING DEPARTMENT

MIKE HARMER, P.E.
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Sussex County

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Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable John L. Rieley, Vice President
The Honorable Cynthia Green
The Honorable Douglas B. Hudson
The Honorable Mark Schaeffer

FROM: Hans Medlarz, P.E., County Engineer, ret.

RE: **Long Neck Communities, Project S21-10**
A. Change Order No. 1

DATE: February 20, 2024

The Long Neck Communities Sewer Expansion combines several remediation areas in proximity. County Council originally brought the Autumn Road and Branch Road areas (58EDUs) into the uniform sewer district after a public hearing via a private expansion known as Seabrooke. The Tucks Road area (19 EDUs) was added later based on owner requests and another public hearing. The associated Resolutions R 017 17 and R 027 17 were authorized by Council for these area at their July 25, 2017, and October 3, 2017 meetings, respectively. The County elected to combine the expansion areas into a single project for economy of scale.

Subsequently the owners from the adjacent Sherwood Forest North area expressed interest and the the Engineering Department polled the area via two mailings in the Spring of 2018. Based on positive responses a public hearing was held on April 25, 2019. Hearing results were presented to Council with a recommendation for expanding the sewer district. On June 11, 2019, County Council authorized Resolution R 014 19 to extend the district boundary to include nearly 170 EDUs. Since the areas are close to each other, flanking the north and south sides of SR 24, John J Williams Highway, it was determined best to group the work into a single project of nearly 250 EDUs.

In April of 2020 the Engineering Department finalized the Preliminary Engineering Report and the Environmental Information Documents required for submittal of the funding application to Delaware State Revolving Fund (SRF). On April 9, 2020, these Documents were combined with the overall funding application prepared by the Finance Department and filed for an overall project cost of \$7,788,761.00. On August 24, 2020, the County received the Binding Commitment Letter from DNREC Environmental Finance. August 25, 2020, the County accepted the Binding Commitment Offer and the obligating documents associated in the loan amount of \$7,788,761.00 with the expectation of up to \$3,860,000.00 of principal forgiveness, reducing the principal amount of the bonds outstanding to \$3,928,761.00 upon project completion.



With the SRF binding commitment in hand County Council awarded a professional services agreement to George, Milles & Buhr, Inc. for design and bidding services associated with the Long Neck Communities Sewer Expansion, Project S21-10, at a not to exceed cost of \$310,868.00 on March 23, 2021. On March 1, 2022, County Council introduced and ultimately approved the associated debt ordinance authorizing after the required public hearing the issuance of up to \$7,788,761.00.

All permits were in place by late 2022 and Invitations to Bid were advertised on January 10th and 17th, in the local newspaper, as well as available to view on the County website. In addition, the information was directly forwarded to several contractors. Eight (8) contractors attended the pre-bid meeting on January 18, 2023, and on February 1, 2023, four (4) bids were received. The bids were competitive but are reflecting a significantly increased price environment. The successful bidder was A-Del Construction Co., Inc. at \$7,658,870.00. The project scope has built in unit cost contingency items which should limit the overall construction cost to the total amount bid.

The existing SRF Funding commitment was \$7,788,762.00 and to date \$516,731.00 has been spent. The project includes the System Connection Charges reducing the available balance further by \$1,650,000.00. In order to make the project viable, the Engineering & Finance Departments are committed to provide administration and inspection services at no cost to the project and request Council's concurrence to file for the reduced supplemental Clean Water State Revolving Fund (CWSRF) funding in the amount of \$2,036,840.00.

On February 28, 2023, Council awarded A-Del Construction, Inc. for the total bid amount of \$7,658,870.00, contingent upon CWSRF concurrence and receipt of supplemental funding. CWSRF concurrence and receipt of supplemental funding was received. Construction efforts commenced with the Notice to Proceed effective May 30, 2023.

Installation of deep mainline sewer and lateral and the pump station in Sherwood Forest on the east side of John J. Williams Highway required dewatering to enable a safe installation. Initial attempts discharging and storing the water in roadway swales and the development's on-site stormwater management pond were unsuccessful due to the volume of discharged water and on-site facilities capacity to handle this volume. Ultimately, it was necessary to meter the discharge at the on-site stormwater pond and convey water via piping approximately 1700 linear feet to a large, wooded parcel adjacent to Long Neck Elementary School.

The dewatering operations commenced on July 31, 2023, and were completed in November 2023. A-Del Construction, Inc. took several days in December and early January to remove piping and restore the area. A-Del Construction, Inc. submitted the attached Change Order No. 1 in the amount of \$93,066.11. The Department has reviewed the time and materials summaries and considers the amount acceptable.

Therefore, the Engineering Department recommends County Council approve Change Order No. 1 at the referenced amount, to increase the contract total of Project S21-10 to \$7,751,936.11.

PROJECT #	43R009 - FORCE ACCOUNT #1						
WORK DESCRIPTION	SUPPLY AND OPERATE DEWATERING LIFT PUMP SYSTEM						
	WEEKLY						
ITEM	WEEKLY RATE	FUEL (GPD)	FUEL RATE	DIRECT COST	MU 10%	TOTAL	EXTENDED
4" BYPASS PUMP PUMP #1	\$1,244.00	50	\$4.10	\$2,679.00	\$267.90	\$ 2,946.90	
WEEKLY TOTAL						\$ 2,946.90	
	DATE OF START 7-31-2023						
WEEK ENDING	WEEK #						
8/6/2023	1					\$ 2,946.90	
8/13/2023	2					\$ 2,946.90	
8/20/2023	3					\$ 2,946.90	
8/27/2023	4					\$ 2,946.90	
9/3/2023	5					\$ 2,946.90	
9/10/2023	6					\$ 2,946.90	
9/17/2023	7					\$ 2,946.90	
9/24/2023	8					\$ 2,946.90	
10/1/2023	9					\$ 2,946.90	
10/8/2023	10					\$ 2,946.90	
10/15/2023	11					\$ 2,946.90	
10/22/2023	12					\$ 2,946.90	
10/29/2023	13					\$ 2,946.90	
11/5/2023	14					\$ 2,946.90	
11/12/2023	15					\$ 2,946.90	
11/19/2023	16					\$ 2,946.90	
PUMPING SYSTEM TOTAL						\$ 47,150.40	\$47,150.40
ITEM - OTHER DIRECT RENTAL COSTS	DIRECT RATE			DIRECT COST	MU 10%	TOTAL	
PUMP SYSTEM TRASPORTATION DELIVERY 1	\$500.00			\$500.00	\$50.00	\$ 550.00	
PUMP SYSTEM TRASPORTATION PICKUP 1	\$500.00			\$500.00	\$50.00	\$ 550.00	
PUMP SYSTEM TRASPORTATION DELIVERY 2	\$500.00			\$500.00	\$50.00	\$ 550.00	
PUMP SYSTEM TRASPORTATION PICKUP 2	\$0.00	see below					
STAND BY PUMP #2(1 MONTH ONLY USED)	\$2,518.20			\$2,518.20	\$251.82	\$ 2,770.02	
SUB TOTAL						\$ 4,420.02	\$4,420.02
ITEM - MATERIAL COSTS - NO PIPE				DIRECT COST	MU 10%	TOTAL	
BRS INV -528162				\$347.85	\$34.79	\$ 382.64	
BRS INV -527692				\$1,270.00	\$127.00	\$ 1,397.00	
BRS INV -527344				\$3,466.55	\$346.66	\$ 3,813.21	
BRS - CREDIT NOTE -37699				(\$1,129.18)	(\$112.92)	\$ (1,242.10)	
CC RECEIPT - HARRY NUTZ AND BOLTZ 8-1-2023				\$53.68	\$5.37	\$ 59.05	
						\$ 4,409.79	\$4,409.79
8" SDR 35 PIPING (NO MARK UP)	1735 LNFT		\$ 10.87	\$ 18,859.45		\$ 18,859.45	
VALUE PIPING DISCOUNT @ 25%						0.75	
PIPING TOTAL						\$ 14,144.59	\$ 14,144.59
A-DEL DAILY TOTALS - LABOR & EQUIPMENT							
DATE	DAY					TOTAL	
7/31/2023	MONDAY					\$ 10,432.70	
8/1/2023	TUESDAY					\$ 5,310.22	
12/20/2023	WED	BROOK CREW				\$ 3,097.14	
12/20/2023	WED	CHRIS CREW				\$ 1,267.95	
12/21/2023	THURSDAY					\$ 1,953.62	
1/3/2024	WEDNESDAY					\$ 879.68	
						\$ 22,941.31	\$ 22,941.31
PERIOD TOTAL						\$93,066.11	

ENGINEERING DEPARTMENT

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Memorandum

TO: Sussex County Council
The Honorable Michael H. Vincent, President
The Honorable John L. Rieley, Vice President
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable Mark G. Schaeffer

FROM: Hans Medlarz, P.E., County Engineer, ret.

RE: ***South Coastal WRF Treatment Process Upgrade No.3 & Rehoboth Beach WTP Capital Improvement Program, Phase 2***
A. M.F. Ronca – Change Order 33, General Construction Project C19-11

DATE: February 20, 2024

The South Coastal WRF Treatment Process Upgrade No.3 was designed and bid in conjunction with the Rehoboth Beach WTP Capital Improvement Program, Phase 2. The latter has been completed and only the South Coastal component is still ongoing. It encompasses the following components and statuses:

- a. Effluent Forcemain Relocation/Replacement; Completed in fall of 2019.
- b. Influent Forcemain Consolidation; Completed in May of 2020.
- c. Drainage Network Rerouting;

This scope was not included in the base bid. After cost comparison between the General Labor & Equipment Contract versus a change order under Ronca's general construction contract; Council awarded the stand alone Change Order Request 554-001 to Ronca & Sons, Inc. in the amount of \$104,592.96 on March 10, 2020. The construction was completed in July 2020.

- d. General Construction Project C19-11; awarded on December 17, 2019, to M.F. Ronca & Sons, Inc.



On March 10, 2020, Council authorized Change Order No.1 in the net amount of \$97,294.31 for deletion of the record drawing requirement and the modification of the RBWTF influent forcemains.

On May 12, 2020, Council authorized credit Change Order No. 2 in the amount of (\$12,705.00) eliminating an explosion proof motor requirement.

On July 28, 2020, Council approved credit Change Order No. 3 in the combined amount (\$9,764.30) for use of County surplus materials.

Change Order No.4 in the amount of \$871,000.00 for the repairs of partial failures at the two City of Rehoboth's wastewater treatment plant oxidation ditch systems was also approved on July 28, 2020. M.F. Ronca & Sons, Inc. completed the scope in May of 2021 and the County increased the flow contribution to the City's plant.

On December 15, 2020, County Council approved Change Order No. 6 for steel framing repairs in the first oxidation ditch on a time & material basis up to \$10,500.00 in addition to the concrete repairs conducted per the awarded contingent unit price schedules.

The County initiated RFP-019 for interior headworks piping modifications and RFP-023 covering the addition of a cross connection between the existing 14-inch process drain header for Aeration Tank Nos. 1-4 and the new header for the Aeration Tank Nos. 5-8. On September 22, 2020, Council approved Change Order No.5 in the combined amount of \$32,991.66.

GHD issued RFP-031 for the installation of plug valves on each of the 12-inch recycle influent pipes to be connected to the existing Aeration Tank Nos. 1-4 and to the new Aeration Tank Nos. 7-8. On December 15, 2020, Change Order No. 7 was approved for said shut off valves in the amount of \$31,974.51.

The new South Coastal aeration basin had to be connected to the existing large diameter sludge return piping requiring a forward flow stoppage. Minimizing the joint risk M. F. Ronca proposed a line stop approach under Change Order No. 8. Since it also gained construction efficiency, they offered to only charge for the subcontractor work.

In the spring of 2021, the Rehoboth Beach WTP oxidation ditch rehabilitation was receiving expansive attention including:

- Contingent Unit Price Concrete Repairs, Bid Items F-19 & F-20
- Steel Repairs authorized under Change Order No. 6
- Steel Coatings authorized as part of Change Order No. 4

In addition, all of the leaking expansion joints have been repaired under a time & material approach. On March 9, 2021, County Council approved Change Order Nos. 8 and 9 in the respective amounts of \$34,765.50 and \$45,600.00.

Only one of the two headworks vertical influent pipes has a shut off valve and Environmental Services requested a second valve. In addition, two of the existing headworks slide gates were

compromised in need of replacement. On May 25, 2021, Council approved Change Order No. 10 in the aggregate amount of \$34,160.64.

The County initiated RFP-039 addressing modifications to two slide gates avoiding conflict with the new air piping. In addition, it was discovered during the rehabilitation work in the grit tanks, that the existing influent chutes to the stacked tray grit removal systems were significantly compromised. On June 22, 2021, Council approved Change Order No. 11 in the aggregate amount of \$59,557.16.

The design team-initiated RFP-038 for exhaust duct modifications associated with the new turbo blowers and RFP-041 correcting the elevation difference in the headworks cross channel. On July 13, 2021, Council approved Change Order No. 12 to M.F. Ronca & Sons in the aggregate amount of \$14,700.07.

The contract as bid included concrete repairs to the City's headworks and influent splitter box. With the structures by-passed and accessible, the full extent of the damage required an alternative approach detailed in RFP-037 including full demolition of the upper level as well as the channel between it and the splitter box. GHD, the City Engineer and the County Engineer supported the approach, and the change order was within budget of the City's financing arrangements previously approved by the City and County elected officials. Therefore, Council approved Change Order No. 13 to M.F. Ronca & Sons in the amount of \$1,043,243.92 on August 10, 2021.

The City requested M.F. Ronca & Sons' assistance in the wetwell cleaning of the State Rd. pump station to allow a full evaluation in preparation of the upgrade design. In addition, the City requested to modify the air intake for B-10 Building ventilation from a roof mount to an existing window opening. On November 30, 2022, County Council approved Change Order No. 14 in the aggregate amount of \$7,380.37.

Upon exposure of the normally submerged piping at the oxidation ditches, GHD formulated an initial repair scope for the influent, return sludge & air piping including replacement of valves and fittings. It was subsequently reduced and Michael F. Ronca & Sons, Inc. proposed to perform the modified repair scope for \$324,996.81. GHD, the City Engineer and the County Engineer supported the modified approach. However, this amount is not within budget of the City's financing arrangements previously approved. The City will pay for this change order directly out of City funds. County Council approved Change Order No. 15 on January 11, 2022, subject to direct payment by the City. Since then, it was determined that the pipe support configuration for the replacement of oxidation ditch influent piping at the City's WTP required additional supports and RFP-056 was issued. Michael F. Ronca & Sons, Inc. proposed to perform the expanded repair scope for \$8,992.49. County Council approved Change Order No. 17 to M.F. Ronca & Sons in the amount of \$8,992.49 on January 25, 2022.

GHD's design scope included a separate task for the hydraulic transient analysis of the South Coastal effluent force under various pumping scenarios.

After County approval of the findings, GHD issued RFP-052 for replacing air valves on the effluent force main and installing additional air valves at new locations. This work scope was not known at time of base bid and hence not included. On January 11, 2022, County Council issued Change Order No. 16 to M.F. Ronca & Sons in the amount of \$88,132.23.

The South Coastal RWF's return sludge pumping station has three (3) pumps, two of which have been upgraded. The third unit recently experienced a failure, and the Environmental Services requested replacement of the pump and piping to be integrated in the project as per RFP-053. Michael F. Ronca & Sons, Inc. proposed Change Order No. 18 in the amount of \$31,101.61, which Council approved on January 25, 2022.

Under RFP-053 the Environmental Services staff requested replacement of two (2) compromised pumps and rail systems in the existing filtrate return pump station in the filter building. Under RFP-057 the City staff requested new fiberglass baffles and a guide bracket assembly to replace the original wooden baffle assembly located in the flow splitter box. M.F. Ronca & Sons proposed to complete the work for \$90,081.84 and \$8,132.66 respectively which Council approved on February 8, 2022, via Change Order 19.

The City requested M.F. Ronca & Sons' assistance in the installation of a lintel above the screen chute complete with control joints limiting vertical cracking. Ronca proposed to complete this work for \$7,426.59.

Starting in 2021, Environmental Services started experiencing more frequent malfunctions and alarm call outs with the influent screens at the Inland Bays RWF. In addition, a reduction in screen bar opening from ¼-inch to 3/16-inch opening will help the facilities sludge accumulation. The units were commissioned in the fall of 2010 and normally have a 15-year service life. The Engineering Department requested the assistance of Michael F. Ronca & Sons, Inc. and their investigation revealed that a full replacement could be accomplished for \$253,417.58, which was only 10% more expensive than a full rebuilt. Therefore, County Council approved Change Order No. 20 in the aggregate amount of \$260,844.17 on March 8, 2022 for the replacement in kind of two screens at Inland Bays and the masonry work at the City's plant.

The South Coastal facility requires alkalinity adjustments. In the past caustic soda was used however with the upgrade project the approach was switched to magnesium hydroxide. The as bid design included an innovative low energy consumption type Enviromix gas mixing system with a performance guarantee which was not met at start up. Therefore, the design approach was switched to a traditional impeller type mixing system. Michael F. Ronca & Sons, priced the modification including the full contract credits relating to the original Enviromix system and on March 29, County Council approved Change Order No. 21 in the aggregate amount of \$45,989.72.

The FY2022 Environmental Services budget included roof repairs of the South Coastal administration building and conversion of an existing pole building to an electrical panel shop. M. F. Ronca & Sons already has subcontractors in their scope of work who perform this

type of work. They priced the building modification and selectively investigated the roof conditions. The roof dating to the original construction needs full replacement and has areas of compromised decking. Due to market volatility, long lead times and anticipated incremental increases in roofing material (membrane & tapered insulation) costs, pricing includes a material escalation allowance.

Upon delivery of roofing materials final costs will be incorporated in a corrective change order reflecting actual material increases. Roof decking replacement will be performed at a unit cost of \$25.00 per SF incorporated into the corrective change order. On May 10, 2022, Council approved Change Order No. 22 in the aggregate amount of \$306,692.52 for pole building enclosure and admin building roof replacement followed by a later corrective change order adjusting unit costs and material pricing.

Environmental Services initiated RFP-067 for painting of the original 1970s mechanical building pump room and M. F. Ronca & Sons proposed to perform the work for \$7,893.90. On June 7, 2022, Council approved Change Order No. 23 in the amount of \$7,893.90.

Environmental Services initiated RFPs-072 & 073. The first deals with a new isolation valve on the existing 8-inch equalization return line in the Mechanical Building Pump Room. The second one modifies the PLC control logic in motor circuit protection of the new turbo blowers and the human machine interfaces graphic displays. On August 23, 2022, Council approved Change Order No. 24 to M.F. Ronca & Sons in the aggregate amount of \$12,829.83.

The headworks at the SCRWF are covered and the ventilated air treated for odors. The contract included unit pricing repair items for the headworks. The damage discovered during the rehabilitation work in the headworks and grit tanks indicated corrosion way above the anticipated levels. Therefore, the Engineering Department initiated RFP-071 for improvements to the headworks ventilation. After value engineering by M. F. Ronca & Sons they proposed to perform the work for \$126,590.76. On October 11, 2022, Council approved Change Order No. 25, significantly extending the asset life of the headworks in the amount of \$126,590.76.

Upon condition exploration of the City's main system pump station on State Street, GHD formulated an initial repair scope and subsequently issued RFP-075 for the repairs. This station also carries the County's Henlopen Acres Sewer District Area flows, and the County participates in the repair effort. With the urgency of the repair evident, the City requested inclusion in the project. M. F. Ronca & Sons, Inc. proposed to perform the modified repair scope for \$2,270,000.00. GHD, the City Engineer and the County Engineer supported the modified approach. On December 6, 2022, Council approved Change Order No. 26 to Michael F. Ronca & Sons, Inc. to perform the expanded State Street Pump Station repair scope for \$2,270,000.00. The City will pay for this change order directly out of City funds with separate invoice by contractor. In addition, with concurrence of the City, County Council granted Substantial Project Completion for the Rehoboth Beach WTP Capital Improvement Program, Phase 2 as of November 14, 2022.

In January of 2023, GHD conducted a factory acceptance test of the new turbo blower system controls. The test revealed that modifications to the PLC and HMI programs were necessary. All parties agreed that the quantity of the desired modifications would trigger RFP-079. M. F. Ronca & Sons, Inc. proposed to perform the additional scope for \$4,412.55.

The original bid contained a unit cost for grit removal from the sludge holding lagoons. For Lagoon B a hydraulic removal was considered but due to the quantity of grit a mechanical removal was analyzed. It would result in the destruction of the 20-years+ old liner. However, despite the replacement cost of the liner in the amount of \$84,375.17 the overall approach proved to be more cost effective and resulted in a new liner. On March 21, 2023 Council concurred and approved M. F. Ronca & Sons, Inc.'s Change Order No. 27 in the aggregate amount of \$88,787.72.

The project includes a new aeration basin and the associated above ground air supply piping. The air supplied by the turbo blowers is compressed and heats up in the process. Therefore, the piping has to balance the expansion and contraction via a specialized support system. GHD conducts routine construction phase QC inspections. During the last one in April, GHD identified opportunities to further reduce pipe stress and increase service life summarized in the attached RFP-081. The additional made to order components were administratively authorized after review of preliminary pricing to maintain the project schedule. On June 6, 2023, Council approved M. F. Ronca & Sons, Inc.'s Change Order No. 28 in the amount of \$108,583.52.

During the start-up of the upgraded mechanical plant pump station a one-time pressure transient was experienced. In an abundance of caution GHD recommended under RFP-088 to replace the gauge with a pressure transmitter in the same location. M. F. Ronca & Sons, Inc. proposes to install the modified tap and piping for \$1,656.00.

The original project bid included a complex winch system moving biosolids containers back and forth under the belt press shoots to allow for uniform loading. Staff has been operating the regional biosolids system for two years and found the occasional moving of the containers to be unproblematic. This allows for the elimination of the winch system under RFP-088. M. F. Ronca & Sons, Inc. proposes a credit of (-\$282,145.60).

On July 18, 2023, Council approved Change Order No. 29 for M. F. Ronca & Sons, Inc. in the aggregate credit amount of (-\$280,489.60).

Environmental Services initiated RFPs-096 & 098. The first creates a hydraulic bypass for each of the two effluent filter banks allowing part of the filtration system to stay in operation during maintenance. The second one deals with the replacement of the compromised 40-year-old LTS Digester Building roof. M. F. Ronca & Sons proposes to accomplish the tasks for \$68,284.99 and \$24,675.00 respectively.

The original bid contains a walkway from the mechanical building to the equalization tanks. It was in part supported by the original parapet wall. When the wall cap was removed it was

determined that the wall was completely compromised and had to be rebuilt. M. F. Ronca & Sons is proposing to complete this task for \$71,547.30.

The original bid only contained trench hot mix restoration resulting in a patchwork of pavement conditions as depicted on the attachment. The Engineering Department requested the contractor to provide an alternate road reclamation based base course proposal combined with a site wide 2-inch hot mix overlay. M. F. Ronca & Sons agreed to limit the mark up on the cost delta only and is proposing to complete this task for \$149,674.16.

On September 12, 2023, Council approved Change Order No. 30 in the aggregate amount of \$314,181.45.

The original bid contained a \$315.00 per ton unit cost for grit removal & disposal from the existing aeration basins. The bid quantity was based on pictures provided by Environmental Services, but the actual quantity is close to three times the estimate. Therefore, the Engineering Department and M. F. Ronca developed an alternate on-site grit storage approach which as a side benefit provides for new aeration diffusers in the existing tanks at a \$219.61 per ton unit price. On September 12, 2023 Council's concurred with the modified unit cost pricing of item C-6 Grit Removal.

The FY24 environmental services budget contains \$75k funding for the repair of the existing influent screen. The quotation for the parts alone amounted to >\$30K, once the labor and crane services were added the repair far exceeded 50% of the new screen offered by M. F. Ronca & Sons at \$89,762.10. A replacement screen will match the new one provided under the project and will represent the better asset value over the service life.

The project includes a full rebuild of the existing four-cell Effluent Filter No. 2. The project included removing the sand from cell one and stockpiling it while using sand from cell two to refill cell one and so on. Once the filter cells were drained it became apparent that approximately 40% of the sand had been lost in the backwash process over the last twelve years. M.F. Ronca & Sons proposed to utilize the County's bagged sand on site in combination with additional manufacturer supplied sand and complete the process in one step rather than four. The contractor can streamline the labor, speed up the process and agreed not to mark up the supplemental sand. M.F. Ronca & Sons offer of \$142,745.34 includes hauling costs but landfill fees will be paid directly by the County at the discounted rate.

The County requested HVAC equipment and control replacements under RFPs 093 & 095 for three of the original 1970s smaller buildings. All of the units have been repaired before and are not fully functional. M.F. Ronca & Sons proposes to perform the replacements and mechanical tie-ins for \$56,155.84.

On October 17, 2023, Council approved Change Order No. 31 in the aggregate amount of \$288,663.28.

Upon the request of Environmental Services Ronca priced out additional switches (i) two (2) Hydraulic Oil Pressure Switches for the belt filter press per RFP-110 (ii) four (4) Blower Inlet Isolation Valve Limit Switches per RFP-111 and (iii) two (2) Conveyor Pull Cord emergency shut off switches. On February 6, 2024, Council approved Change Order No. 32 to M.F. Ronca & Sons in the aggregate amount of \$16,608.23.

The South Coastal project essentially duplicates the almost twenty year old gravity filter arrangement. All the actuated control valves in the process are pneumatic due to the high moisture environment which is not conducive to electrical actuation. The Environmental Services team brought to the Department's attention that the pneumatic controlsystem is nearing the end of its service life which was confirmed by GHD the County's consultants. . Therefore they solicited a proposal from M.F. Ronca & Sons under RFP-112 for the in kind replacement. The Department recommends Council's acceptance of M.F. Ronca & Sons' Change order No. 33 in the amount of \$62,212.29

- e. **Electrical Construction Project C19-17**; awarded on December 17, 2019, to BW Electric, Inc.

On February 4, 2020, Council awarded Change Order No.1 in the credit amount of (\$759,374.80) mostly for changes to the conduit materials. A second credit change order was approved on March 10, 2020, in the amount of (\$6,800.00) for ductbank modifications.

On April 7, 2020, Council approved Change Order No.3 in the not to exceed amount of \$235,637.33 for DP&L requested changes to the utility power service entrance location at the RBWTP.

On May 12, 2020, Council authorized Change Order No.4 in the amount of \$11,350.00 for reconstruction of the original electrical equipment in South Coastal's sludge handling building electrical room.

On July 28, 2020, Council approved Change Order No.5 in the combined amount of \$37,830.00 for the removal of an existing electrical handhole and duct bank and the modification of the duct bank between the DP&L utility switching pedestal and the transformer.

On September 22, 2020, Council approved Change Order No.6 in the amount of \$16,550.00 for the change of the sewer service for the return sludge building No. 2 from a gravity drain to a pumped approach.

On September 22, 2020, Council approved Change Order No. 7 in the not to exceed amount of \$307,300.00 for the City's oxidation ditch complete electrical equipment replacement. This change order had an allowance for sensor replacements which proved too low and required an increase of \$6,582.80. Council approved the modification to Change Order No. 7 on November 10, 2020.

On November 10, 2020, Council approved Change Order No. 8 in the aggregate amount of \$2,249.00 covering RFP-027, RFP-028, RFP-029 & RFP-030. GHD has concluded that RFP-029 can be rescinded in its entirety. Therefore, the scope of work in the Sludge Building reverts to the Drawings, as modified by Change Order No. 4 associated with RFP-016. However, on December 15, 2020, Council approved the modification reducing Change Order No. 8 by \$9,040.00 for a modified net total credit of (\$6,791.00).

On February 9, 2021, Council approved Change Order No. 9 in the aggregate amount of \$30,554.00 covering RFPs-032 & 033. The first RFP provided upsized control panels, conduit and conductors associated with the two (2) Jet Mixing Pump VFDs while the second dealt with a modified temporary electrical feeder arrangement and a redirection of the medium voltage loop.

On August 10, 2021, Council approved Change Order No. 10 in the aggregate amount of \$7,320.00 covering RFP- 035 for waterproofed convenience receptacles at the return sludge building's pump room and RPP-040 for additional site lighting in the area of the generator and blower buildings.

On October 12, 2021, Council approved Change Order No. 11 in the aggregate amount of \$47,328.70 covering the City's initiated RFPs-042 & 44. The first one replaces the deteriorated pull box at building B-10 with a stainless steel one and the second one addresses modifications to the garage feeder.

Also on October 12, 2021, Council approved Change Order No. 12 in the amount of \$4,779.38 covering RFP-045 for modification to the aeration basin lighting out of operational safety concerns.

On January 11, 2022, County Council issued Change Order No. 13 in the aggregate amount of \$20,018.56 for City initiated RFPs -043 & 049. The first one relates to the electrical control requirements for a booster pump in Building T-1. The second one addresses rewiring of the two (2) level sensors and dissolved oxygen probes at the oxidation ditches.

Also On January 11, 2022, County Council issued Change Order No. 14 in the credit amount of (\$6,485.87) for the elimination of four valve actuators.

The City's lighting in the headworks building and the panelboard in the chemical building are compromised by corrosion and City staff requested replacement as per RFP-050. The County Environmental Services and IT staff reanalyzed the facility's fiber optic cabling needs and requested inner duct modifications under RFP-059. BW Electric proposed to make the changes for \$12,018.72 and \$16,100.70 respectively and on February 8, 2022, Council issued Change Order No. 15 in the aggregate amount of \$28,119.42.

On March 29, 2022, County Council issued Change Order No. 16 in the aggregate amount of \$52,003.13 for the DP&L metering modifications at the City's plant and dedicated VFD cabinet ventilation.

The following RFPs were requested by Environmental Services:

1. RFP-064 for float-controlled effluent pump backup control panel in the event of a failure in the digital pump control system or level transmitter in the amount of \$29,895.13.
2. RFP-065 for the demolition and replacement of the original 1970s lighting in the Headworks Pump Room, Headworks Grit Dewatering Room, Mechanical Building Pump Room, and outdoor wallpacks around perimeter of Mechanical Building in the amount of \$80,099.11.
3. RFP-066 for additional circuits and conduits associated with a conveyor warning alarm in the Cake Storage Building, and for separation of 120 VAC circuits from 24 VDC circuits originating in Cake Storage Building in the amount of \$3,090.30.
4. RFP-068 for the electrical work associated with replacing the compressed gas mixing system with a mechanical mixing system in the amount of \$83,738.84. This is the companion change order to Michael F. Ronca & Sons' Change Order No. 21 for the mechanical work.
5. RFP-069 for a change in the existing 6-way DB-5A allowing for the MH-47 to be eliminated at a credit of (\$7,500.00).

On May 10, 2022, Council approved BW Electric, Inc.'s Change Order No. 17 in the aggregate amount of \$189,323.38.

The pumps and rail systems in the existing filtrate return pump station were upgraded under Change Order No. 18 by M. F. Ronca & Sons. RFP-060 covers the electrical and control upgrades associated with that station. This work was not part of the original plant upgrade scope. BW Electric, Inc. proposed to complete the work for \$92,713.82. In order to address operator safety and access cameras, as well as network access points, proposals were requested at aeration tanks 5-8 requiring a series of additional conduits and pull boxes. BW Electric, Inc. proposed to complete the work for \$50,362.91. On June 7, 2022, Council approved Change Order No. 18 to BW Electric, Inc in the aggregate amount of \$143,076.73.

Provide a credit proposal to remove the Off-Site Manufacturer Course Training specified in the construction documents. This will be conducted as part of the startup process resulting in a credit of \$17,758.13. On October 11, 2022, Council approved Change Order No. 19 in the amount of \$17,758.13.

On October 11, 2022, Council approved M. F. Ronca & Sons' Change Order No. 25 for the SCRWF for improvements to the headworks ventilation. GHD issued the companion RFP-077 for the odor control electrical modifications. In response BW Electric, Inc. proposed to complete the work for \$19,401.62.

GHD also issued companion RFP-076 for the electrical components associated with City's State Street pump station repair scope. In response BW Electric, Inc. proposed to complete the

work for \$462,938.82. The City has concurred in the issuance and again will pay for this change order directly out of city funds with separate invoice by the electrical contractor.

On December 6, 2022, Council approved Change Orders No. 20 in the amount of \$19,401.62 & 21 in the amount of \$462,938.82 to BW Electric, Inc. for the headworks ventilation and the expanded State Street Pump Station electrical repair scope. The latter paid for by the City via direct reimbursements to the contractor.

BW Electric, Inc. submitted RFI-102 questioning the absence of a neutral bonding conductor in the electrical feeder 5A. GHD investigated the information request and concluded that the least costly solution to achieve the NEC required bonding was to add a conductor. Since this was an omission in the original documents, all of GHD's work associated with this item was not billed. On March 21, 2023 Council concurred and approved BW Electric's Change Order No. 22 in the amount of \$33,342.10.

The following RFPs were requested by Environmental Services:

1. RFP-082 deals with now required generator building feeder replacement since the "spare" shown on record drawings turned out to be already occupied. BW Electric proposes to complete the task for \$4,736.24.
2. RFP-083 for the shop feeder conductor replacements required due County's equipment changes. BW Electric proposes to complete the task at no cost.
3. RFP-084 covers the complete replacement of original 1970s lagoon sludge lighting system. It is largely inoperative, and the poles and fixtures are heavily corroded. BW Electric proposes to complete the task for \$86,480.73.
4. RFP-085 for the welder receptacles upgrades. BW Electric proposes to complete the task at no cost.
5. RFP-087 for the electrical components and signal wiring associated with the pressure sensor in the mechanical pump station. This is the electrical companion scope to Michael F. Ronca & Sons' RFP-088 for the mechanical work. BW Electric proposes to complete the task for \$10,340.23.

On July 18, 2023, Council approved Change Order No. 23 for BW Electric, Inc. in the aggregate amount of \$101,557.20.

BW Electric priced RFP-089 for the electrical credit associated with the winch system elimination at (\$10,134.30). In addition, an electrical safety issue at the SC administration building was identified under RFP-091. It required removing the existing PLC cabinet located in the Administration Building's electrical room, and replacing it with a new PCS cabinet, PCS-AB in its place. BW Electric has now priced RFP-091 at \$68,103.21. The last RFP-092 was associated with HVAC related issues in the Sodium Hypochlorite Building electrical room replacing it with a new power circuit and DS for a heat pump as well as providing new outdoor receptacle and associated power circuit. BW Electric has priced RFP-092 at \$8,554.77. The General Contractor is still pricing the mechanical components under RFP-093.

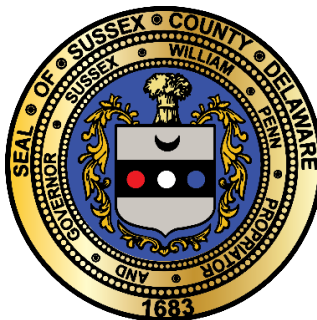
On August 1, 2023, Council approved BW Electric, Inc.'s Change Order No. 24 in the aggregate amount of \$66,523.68.

The County requested HVAC equipment and control replacements under RFPs 093 & 095 for three of the original 1970s smaller buildings. All of the units have been repaired before and are not fully functional. On October 10, 2023 Council approved M.F. Ronca & Sons' proposal to perform the replacements and mechanical as part of Change Order No. 31. RFP-094 addresses the electrical side of these HVAC improvements. On December 5, 2023, Council approved BW Electric, Inc.'s Change Order No. 25 in the aggregate amount of \$17,939.03.

The Environmental Services staff requested a new exterior a freestanding EMR for the sludge building between the overhead doors. Council approved BW Electric, Inc.'s Change Order No. 26 in the amount of \$9,636.87 on February 6, 2024.

- f. Mobile Belt Filter Press; awarded on January 7, 2020, Council to Kershner Environmental Technologies. The unit is currently stationed at South Coastal in anticipation of the aeration basin transfer.
- g. DP&L direct expenses; on February 4, 2020, Council approved the electric utility service relocation contract with the utility.
- h. The Rehoboth Beach WTP was built on a municipal landfill and Council approved a stand-alone competitive purchase order to Melvin L. Joseph Construction Company, Inc. for material hauling & screening on July 14, 2020.

The updated expenses associated with the South Coastal WRF Treatment Process Upgrade No.3 & Rehoboth Beach WTP Capital Improvement Program; Phase 2 are summarized in the attached spreadsheet.



***SUSSEX COUNTY
CHANGE ORDER REQUEST***

A. ADMINISTRATIVE:

1. Project Name: **SCRWF Treatment Process Upgrade No. 3 & RBWTP Capital Improvement Program, Phase 2 – General Construction**
2. Sussex County Project No. C19-11
3. Change Order No. 33
4. Date Change Order Initiated - 2/20/24
5.
 - a. Original Contract Sum \$39,526,400.00
 - b. Net Change by Previous Change Orders \$6,490,070.54
 - c. Contract Sum Prior to Change Order \$46,016,470.54
 - d. Requested Change \$ 62,212.29
 - e. Net Change (No. of days) 0
 - f. New Contract Amount \$46,078,682.83
6. Contact Person: Hans Medlarz, P.E.
Telephone No. (302) 855-7718

B. REASON FOR CHANGE ORDER (CHECK ONE)

1. Differing Site Conditions
2. Errors and Omissions in Construction Drawings and Specifications
3. Changes Instituted by Regulatory Requirements
4. Design Change
5. Overrun/Underrun in Quantity

— 6. Factors Affecting Time of Completion

___ 7. Other (explain below):

C. BRIEF DESCRIPTION OF CHANGE ORDER:

Replacement of Filter No. 2 Control Panels

D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?

Yes X No

E. APPROVALS

1. M.F. Ronca & Sons, Inc., Contractor



2/14/2024

Signature

Date

David A. Ronca, CEO & General Manager

Representative's Name in Block Letters

2. Sussex County Engineer

Signature

Date

3. Sussex County Council President

Signature

Date



1401 West Cypress Creek Road
Fort Lauderdale FL 33309-1969

Phone 954.974.6610
Fax 954.974.6182

CHANGE ORDER REQUEST

February 8, 2024

TO: Scott Wachinski-Project Manager-Ronca

FROM: Jorge Fernandez

PROJECT: P01501671-SUSSEX COUNTY RB CONTROLS

CHANGE ORDER NO.: CONTROLS

Scope of Work:

(5) of these CACPs -same panels as provided for P01501808

One CACP includes:

- 1 Enclosure, NEMA 4X, 304SS, wall mount type
 - 1 120VAC Surge Protector
 - 1 UL 508A Label for assembled control panel.
 - 1 Inner door to mount pressure gage and air flow meter
 - 1 Viewing window on enclosure outer door
 - 1 Enclosure breather/vent, NEMA 4X
 - 1 Circuit breaker, 10- amp, 1-pole, 120 VAC
 - 1 Enclosure heater
 - 1 Air filter, coalescing type, 0.01 micron element (filter ships loose)
 - 1 Pressure regulator, 0-60 PSI, for filter air
 - 1 Air burst solenoid valve, 2-way, brass
 - 1 Backwash solenoid valve, 2-way, brass
 - 4 Pressure gage, 0-60 PSI
 - 4 Air flow meter with valve, 20-200 SCFH
 - 2 Manifold, aluminum, four 1/4" ports
 - 1 Level relay
 - 1 Air burst timer
 - 1 Filter in operation relay
 - 1 LOT of terminal blocks
 - 1 LOT of fittings, brass used inside control panel.
 - 1 Control panel assembly and pressure testing
- Build from attached drawings; AA0169 submittal documents reused.

Price \$10,447.00 EACH PANEL



Fort Lauderdale ♦ Chicago ♦ Montreal ♦ Dubai

www.parkson.com
technology@parkson.com



TOTAL PRICE FOR ABOVE CHANGES **\$ 52,237.00**

plus taxes and freight
lead time to ship is between 10 to 12 weeks ARO

PARKSON CORPORATION

Company Name

JORGE FERNANDEZ

Signature

February 8, 2024

Date

Company Name

Signature

Date

Michael F.
RONCA
& Sons, Inc.



CONTRACTORS

TELEPHONE 610/759-5100
FACSIMILE 610/746-0974

179 Mikron Road, Bethlehem, PA 18020

February 8, 2024

Mr. Steven Clark, P.E.
GHD
16701 Melford Boulevard, Suite 330
Bowie, MD 20715

Re: Sussex County
SCRWF-RBWWTP CIP Phase 2 Upgrades
Proposed Change Order Request No. 554-057
Replacement of Filter No. 2 Control Panels

Dear Mr. Clark:

Please consider this writing to be Michael F. Ronca & Sons, Inc.'s formal change order request for performance of the above referenced work, in the amount of Sixty Two Thousand Two Hundred Twelve Dollars and 29 Cents.....(\$62,212.29).

Enclosed for your review is a corresponding breakdown of costs.

Should this change order request be acceptable as provided, please prepare the appropriate change order documentation, and forward the same to our office for further processing. Until then, should you have any questions, or require additional information, please do not hesitate to contact me.

Regards,

Scott Wachinski

Project Manger

cc: HO file 554
Hans M. Medlarz, P.E. – Sussex Co.
David A. Ronca – M.F. Ronca

Sussex County - SCRWF-RBWWTP CIP Phase 2 Upgrades

PCOR 554-057 Replacement of Filter No. 2 Control Panels

2/8/2024

CHANGE ORDER SUMMARY

Item 1 Replace 5 EA Ex. Control Panels at Filter No. 2 per GHD/Sussex Co.'s Request.

Labor	\$1,548.00
Materials	\$52,487.00
Equipment	\$62.64
Subcontract	\$0.00
Subtotal	\$54,097.64
Contractor Overhead & Profit @ 15%	\$8,114.65
Contr. Overhead & Profit on Subcontr. @ 5%	\$0.00
Item Total	\$62,212.29
Change Order Total	\$62,212.29

Sussex County - SCRWF-RBWWTP CIP Phase 2 Upgrades

PCOR 554-057 Replacement of Filter No. 2 Control Panels

2/8/2024

<u>Item</u>	<u>Description</u>					
Item 1	Replace 5 EA Ex. Control Panels at Filter No. 2 per GHD/Sussex Co.'s Request.					
	Labor:	Qty	Unit	Unit Cost	Total	
	Mechanic/Fitter	8.00	MH	\$122.18	\$977.44	
	Laborer	8.00	MH	\$71.32	\$570.56	
						Labor Total: \$1,548.00
	Materials:	Qty	Unit	Unit Cost	Total	
	5 EA Replacement Control Panels	1.00	LS	\$52,237.00	\$52,237.00	
	Est. Freight	1.00	LS	\$250.00	\$250.00	
						Material Total: \$52,487.00
	Equipment:	Qty	Unit	Unit Cost	Total	
	STS	4.00	HR	\$15.66	\$62.64	
						Equipment Total: \$62.64
	Subcontract:	Qty	Unit	Unit Cost	Total	
				\$0.00	\$0.00	
						Subcontract Total: \$0.00
						Item Total: \$54,097.64

Notes:

N1 Proposal Does Not Include Any Disconnection/Reconnection of Power and Control Wiring.

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE

sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Proposed Bosch Berries Expansion of the Sussex County Unified Sanitary Sewer District

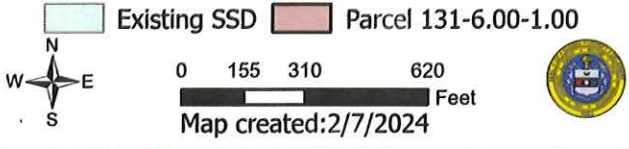
PERMISSION TO POST FACT SHEET

- Expansion of the Sussex County Unified Sanitary Sewer District (Western Sussex Area)
- The Engineering Department has received a request from Davis, Bowen & Friedel, Inc. (DBF) on behalf of their client Tijmen & Wouter Van Den Bosch the owners/developers of a project known as Bosch Berries for parcel 131-6.00-1.00.
- The parcel is zoned AR-1, Agricultural Residential and adjacent to the existing town boundary and the Sussex County Unified Sanitary Sewer District. **The property will be required to annex into the Town of Greenwood.**
- The project will be responsible for System Connection Charges of \$7,700.00 per EDU based on current rates.
- The Engineering Department would like to request permission to prepare and post notices for a Public Hearing on the annexation of the area.
- A tentative Public Hearing is currently scheduled for April 1, 2024, at the regular County Council meeting.

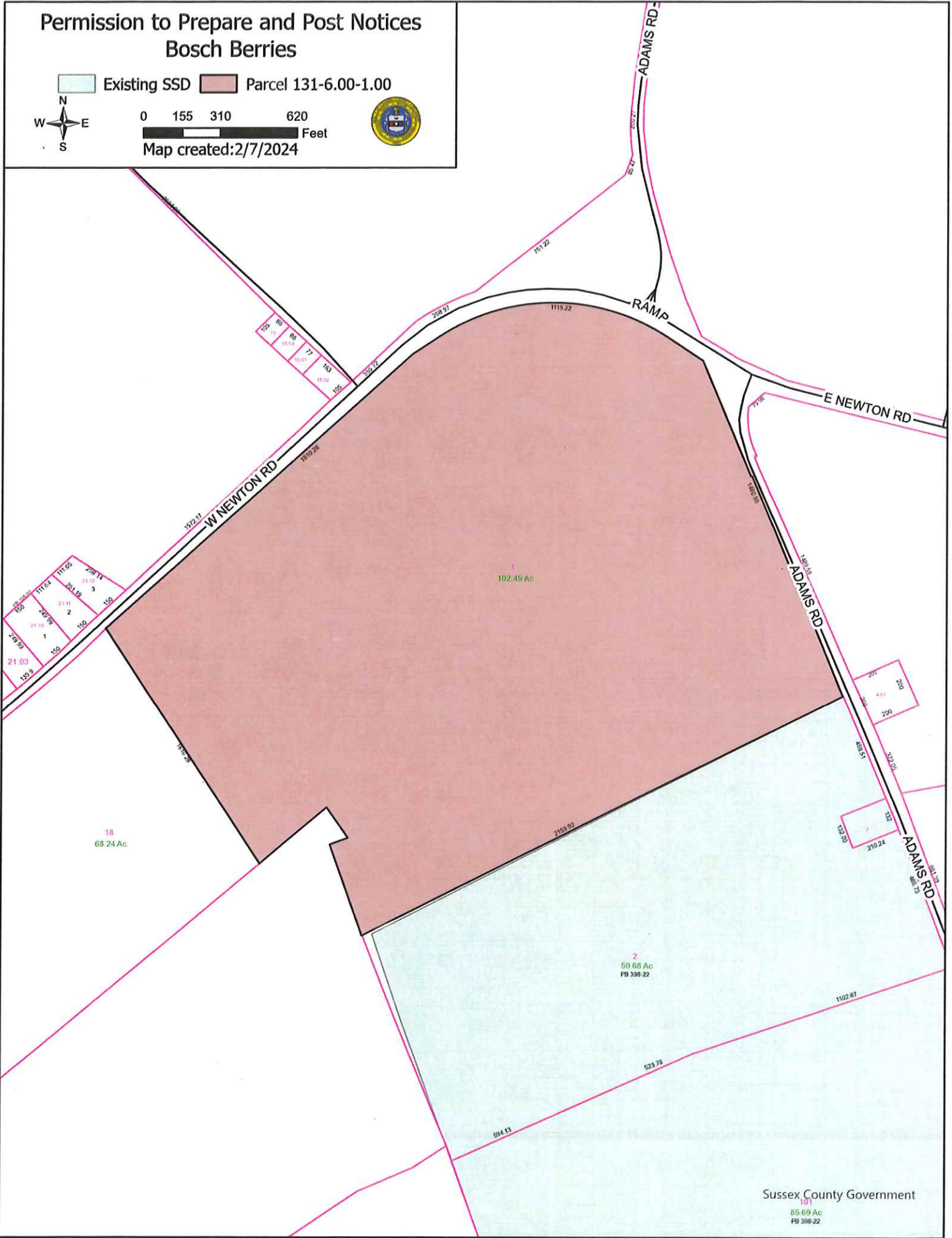


Permission to Prepare and Post Notices Bosch Berries

Existing SSD Parcel 131-6.00-1.00



0 155 310 620 Feet
Map created: 2/7/2024



December 13, 2023

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

Attn: Mr. John Ashman

Re: **Bosch Berries**
Sewer Service Concept Evaluation
Tax Map # 1-31-6.00-1.00
DBF # 4450A001

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

Dear Mr. Ashman,

On behalf of our client, Tijmen and Wouter Van Den Bosch, we would like to request a Sewer Service Concept Evaluation on the above-referenced project. In this project, which is not located in the Unified Sanitary Sewer District, but an annexation form has been submitted along with this letter.

I have provided below the project information, and a check for \$1,000.00 was previously submitted to cover the cost of the evaluation.

- **Engineer info:**
 - **Name:** Davis, Bowen & Friedel, Inc.
 - **Address:** 1 Park Avenue, Milford, DE 19963
 - **Contact Person:** Jamie Sechler, P.E.
 - **Phone #** (302) 424-1441
- **Developer info:**
 - **Name:** Tijmen and Wouter Van Den Bosch
 - **Address:** Hoekeindseweg 176 2665 KH Bleiswijk Netherlands
 - **Contact Person:** Tijmen Van Den Bosch
 - **Email:** tijmen@boschgrowers.com
- **Project Name:** Bosch Berries
- **Tax Map & Parcel(s):** 1-31-6.00-1.00
- **Proposed EDUs:** 11 EDU's
- **Current Zoning:** AR-1 (Agricultural Residential)
- **Proposed Zoning:** AR-1 (Agricultural Residential)
- **Acreage:** 102.487

Letter: Bosch Berries
December 13, 2023
Page 2

Should you have any questions regarding this submission, please contact me at (302) 424-1441 or via e-mail at jls@dbfinc.com.

Sincerely,
Davis, Bowen & Friedel, Inc.

A handwritten signature in black ink, appearing to read 'J. Sechler', written in a cursive style.

Jamie Sechler, P.E.
Principal

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

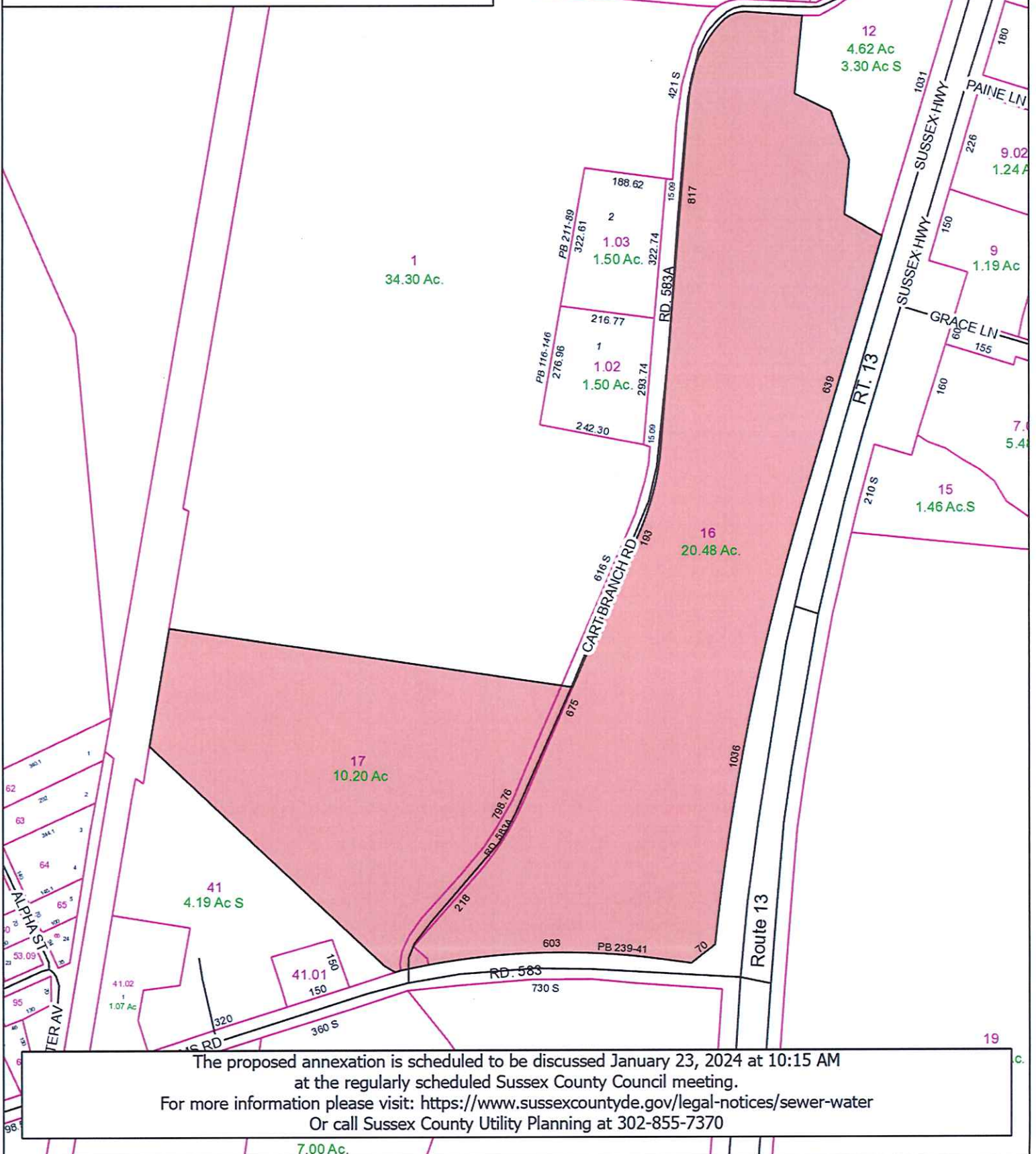
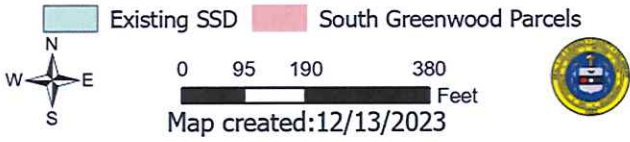
Resolution Establishing the Boundary for South Greenwood Area

- On December 5, 2023, County Council granted permission to prepare and post notices for the creation of the South Greenwood Area (DE Electric Co-op) of the Sussex County Unified Sanitary Sewer District to include parcels 530-14.00-16.00 & 17.00.
- The Engineering Department added to the County website, posted the notices on January 8, 2024, and advertised the weeks of January 8th and January 15th.
- January 23, 2024, we held the Public Hearing on the boundary in council chambers allowing residents and neighboring parcels until February 2nd to request to be included in the boundary.
- The department received no such requests and would like to establish the area as previously presented to include the (2) proposed parcels.



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

Permission to Prepare and Post Notices South Greenwood Area



The proposed annexation is scheduled to be discussed January 23, 2024 at 10:15 AM at the regularly scheduled Sussex County Council meeting. For more information please visit: <https://www.sussexcountyde.gov/legal-notices/sewer-water> Or call Sussex County Utility Planning at 302-855-7370

RESOLUTION NO. _____

A RESOLUTION ESTABLISHING THE PROPOSED BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) SOUTH GREENWOOD AREA.

WHEREAS, requests were received from a property owner requesting the Sussex County Council to submit the question of organizing a sanitary sewer district to a vote of electors residing or owning property in that area; the description is below, and a map of the proposed boundary is attached as **Exhibit "A"**; and

WHEREAS, a public hearing was held on **January 23, 2024**, on the question of organizing a sanitary sewer district dealing with the location of the boundaries of the proposed South Greenwood Area of the Sussex County Unified Sanitary Sewer District as shown in Exhibit "A"; and

NOW, THEREFORE, BE IT RESOLVED by the Sussex County Council that the establishment of a sanitary sewer district is deemed to be in the public interest and will be conducive to the preservation of the public health; and

BE IT FURTHER RESOLVED that the area shown as **Exhibit "A"** is hereby established as the "Proposed South Greenwood Area of the Sussex County Unified Sanitary Sewer District " and is more fully described as follows:

BEGINNING at a point, said point being the south easterly property corner of lands Now or Formerly (N/F) of Delaware Electric Cooperative Inc., said point also being on the westerly Right-of-Way (ROW) of Sussex Highway (Rt. 13) and the northerly ROW of Adams Road (SCR 583); thence proceeding by and with said Adams Road and Cooperative lands in a westerly direction a distance of 680'± to a point, said point being on the easterly ROW of Cart Branch Road (SCR 583A); thence crossing Cart Branch Road in a westerly direction a distance of 50' to a point, said point being on the westerly ROW of Cart Branch Road (SCR 583A), said point also being on the southeastern most property corner of other lands of Delaware Electric Cooperative; thence leaving said ROW of Cart Branch Road and continuing with said Cooperative lands in a westerly, northwesterly, northeasterly and southeasterly direction respectively a total distance of 1881'± to a point, said point being on the westerly ROW of Cart Branch Road; thence crossing Cart Branch Road in an easterly direction a distance of 50'± to a point, said point being on the easterly ROW of Cart Branch Road, said point also being on the westerly property line of the original Cooperative lands; thence proceeding by and with said Cooperative lands a northerly and easterly direction respectively a total distance of 1,746'± to a point, said point being the centerline of Cart Branch Creek; thence following Cart Branch Creek in a generally southerly direction a total distance of 576'± to a point, said point being on the westerly ROW of Sussex Highway; thence continuing with said ROW in a southwesterly direction a distance of 1,733'± to a point, said point being that of the **BEGINNING**.

NOTE: The above description has been prepared using Sussex County Tax Map No. **530-14.00**.

The proposed South Greenwood Area of the Sussex County Unified Sanitary Sewer District is within these approximate boundaries containing 30.68 acres more or less.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.



Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: February 16, 2024

RE: County Council Report for C/U 2397 filed on behalf of Mispillion Solar Farm, LLC

The Planning and Zoning Department received an application (C/U 2397 filed on behalf of Mispillion Solar Farm, LLC.) for a solar array to be located at Tax Parcel 130-3.00-63.00. The property is located at 7152 Shawnee Rd. Milford. The parcel size is 121.33 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on October 26, 2023. At the meeting of October 26, 2023, the Planning & Zoning Commission recommended approval of the application for the 10 reasons and subject to the 9 recommended conditions as outlined within the motion (copied below).

The County Council held a Public Hearing on the application at its meeting on December 12, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration. Below is a link to the minutes of the December 12, 2023, County Council meeting.

[Link to the Minutes of the December 12, 2023 County Council Meeting](#)

Below are the minutes from the Planning & Zoning Commission meeting of October 26, 2023.

[Minutes of the October 26, 2023, Planning & Zoning Commission Meeting](#)

In relation to the following six Conditional Use applications regarding solar array uses, Chairman Wheatley stated, *“Sussex County is fully aware of the benefits and operation of these community solar facilities at this point having seen and acted on so many of them. For that reason, the Commission will take that into account and presenters do not need to establish that. Instead, please focus on your specific property, the surrounding area, and how*



your proposed solar facility may impact the surrounding area. The Commission will also take into account all of the written information that is already in the record on each of these applications.”

C/U 2397 Mispillion Solar Farm, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 121.33 ACRES, MORE OR LESS. The property is lying on the northwest side of Shawnee Road (Rt. 36) approximately 0.20 mile southwest of Old Shawnee Road (S.C.R. 42). 911 Address: 7152 Shawnee Rd. Milford. Tax Map Parcel: 130-3.00-63.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant’s Conceptual Site Plan, the Staff Analysis, a letter from the Sussex County Engineering Department Utility Planning Division, and the DelDOT Service Level Evaluation Response. Mr. Whitehouse stated that no comments had been received for the Application.

The Commission found that Mr. Jeffrey Machiran, with EDF Renewables, Inc., spoke on behalf of the Applicant. Mr. Machiran stated the subject project is specifically being developed in conjunction with Delaware Electric Cooperative; that Delaware Electric is a nonprofit, owned by its members; that Delaware Electric serves about 108,000 meters in Kent and Sussex County; that the project is a four-megawatt project; that the project would be located about 1,700 ft. off Shawnee Rd. in Milford; that they will be tapping into the existing Kirby Substation, located a 1.5 mile north of the project site; that the site was selected specifically because there are existing trees surrounding the property; that the existing trees will enable them to keep the cost down by not having to plant additional trees; that on October 5th and 6th, 2023, they held a community outreach event for surrounding neighbors; that he believed they met with every adjoining neighbor, none of which seemed to have any issues with the proposed project, and with their coordination with Delaware Electric, all the power produced will go directly to the members of Delaware Electric.

Mr. Butler questioned if the plan had been reviewed by the Office of State Fire Marshal.

Mr. Machiran stated the plans had not yet been reviewed or approved by the State Fire Marshal’s Office, but it would be required through the Site Plan Review process.

The Commission found there was no one who wished to speak in support of or in opposition to the Application.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

Mr. Robertson stated he had a prepared motion, which he read into the record per Mr. Butler’s request.

Mr. Butler moved that the Commission recommend approval of C/U 2397 Mispillion Solar Farm, LLC for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience of and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 30 acres of a larger 121.37-acre parcel.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is set back a significant distance from Shawnee Road and is surrounded by forest on two sides, as well as other agricultural lands. The land is designated as being within the “Low-Density Area” according to Sussex County’s Future Land Use Map. This is an appropriate location for this solar array.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. There was no opposition to this Application.
11. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
 - D. Any lighting at the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
 - F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - H. The Final Site Plan shall include a Decommissioning Plan that includes a financial

security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.

- I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2397 Mispillion Solar Farm, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

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: October 26th, 2023

Application: CU 2397 Mispillion Solar Farm, LLC

Applicant: Mispillion Solar Farm, LLC
Suite 400 6940 Columbia Drive
Columbia, MD 21046

Owner: Raymond Robbins
16900 Robbins Nest Road
Ellendale, DE 19941

Site Location: 7152 Shawnee Road, Milford.

Current Zoning: Agricultural Residential (AR-1) Zoning District

Proposed Use: 25.68-Acre Solar Farm

Comprehensive Land Use Plan Reference: Low Density

Councilmanic District: Mrs. Green

School District: Milford School District

Fire District: Carlisle Fire Department

Sewer: On-site Septic

Water: On-site Well

Site Area: 121.33 acres +/- (25.68-acre portion being proposed for use)

Tax Map ID.: 130-3.00-63.00



JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR
(302) 855-7878 T
jamie.whitehouse@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Christin Scott, Planner II
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 19, 2023
RE: Staff Analysis for CU 2397 Mispillion Solar Farm, LLC

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application CU 2397 (Mispillion Solar Farm, LLC) to be reviewed during the October 26th, 2023, Planning and Zoning 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: 130-3.00-63.00 to allow for a solar array. The property is lying on the northwest side of Shawnee Road (Rt. 36), approximately 0.20-mile(s) southeast of Old Shawnee Road (Rt. 42). The applicant is applying 25.68-acres +/- out of 121.33-acres +/- to be included in the Conditional Use area.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcel has a designation of “Low Density.” All adjoining parcels to the north, south, and west also have a Future Land Use Map designation of “Low Density.” Adjoining properties to the east have a Future Land Use Map designation of “Developing Area.”

As outlined in the 2018 Sussex County Comprehensive Plan, Low Density Areas are areas that the County envisions as “a predominantly rural landscape where farming co-exists with appropriate residential uses and permanently preserved property” (Sussex County Comprehensive Plan, 4-18). The Plan also notes that commercial uses “should be limited in their location, size and hours of operation” and “more intense commercial uses should be avoided” and commercial uses “may be appropriate depending on surrounding uses” (Sussex County Comprehensive Plan, 4-19).

Zoning Information

The subject property is zoned Agricultural Residential (AR-1) District. All adjacent properties to the north, south, east, and west of the subject parcels are also zoned Agricultural Residential (AR-1) District. With properties further east being zone Medium Density Residential (MR) District.



Existing Conditional Uses within the Vicinity of the Subject Property

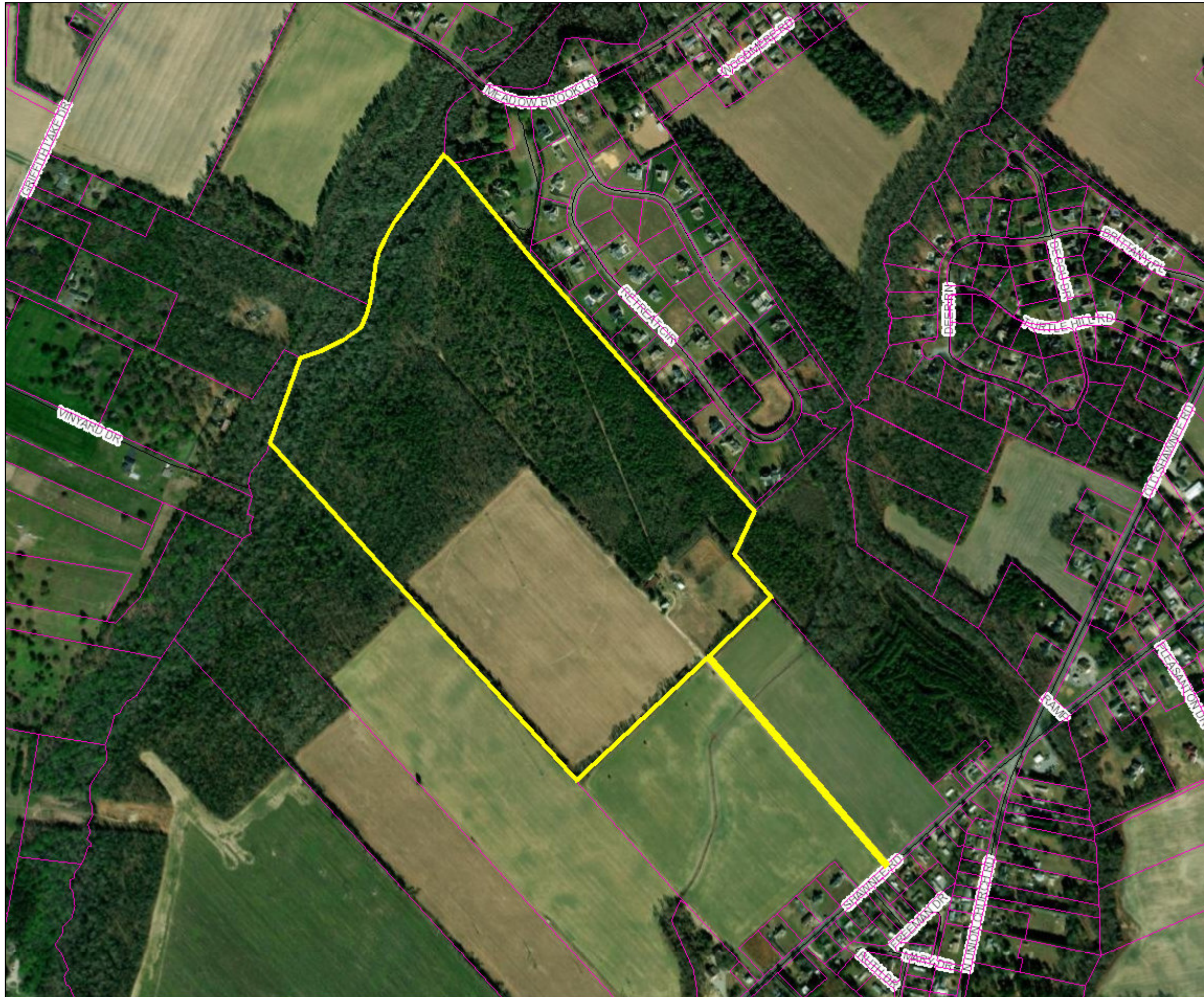
Although there have been multiple applications in this area, since 2011, there have been four (4) Conditional Use applications within a one (1) mile radius of the Application Site.

CU	Applicant	Proposed Use	CC Decision Date	Ordinance No.
2423	Jennifer C. Attix	Commercial Kitchen (for takeout only).	7/18/2023	2940
2298	Freeman Solar, LLC	Solar Farm - to include 75 MW AC photovoltaic electric generation facility.	6/14/2022	2864
2341	Caden Oplinger	Farm Tractor/Truck repair shop	6/7/2022	2858
1909	Thomas P. Collins	Beauty Salon	9/20/2011	2220

Based on the analysis provided, the Conditional Use to allow for a solar array in this location could be considered as being consistent with the surrounding land use, zoning, and uses, subject to considerations of scale and impact.



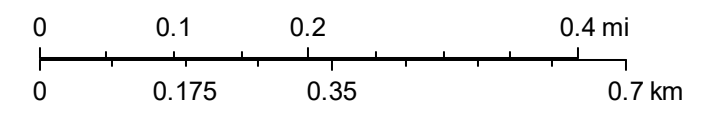
Sussex County



PIN:	130-3.00-63.00
Owner Name	ROBBINS RAYMOND E
Book	1910
Mailing Address	16900 ROBINS NEST RD
City	ELLENDALE
State	DE
Description	500' S/RT.634 2050'
Description 2	E/RT.633
Description 3	N/A
Land Code	

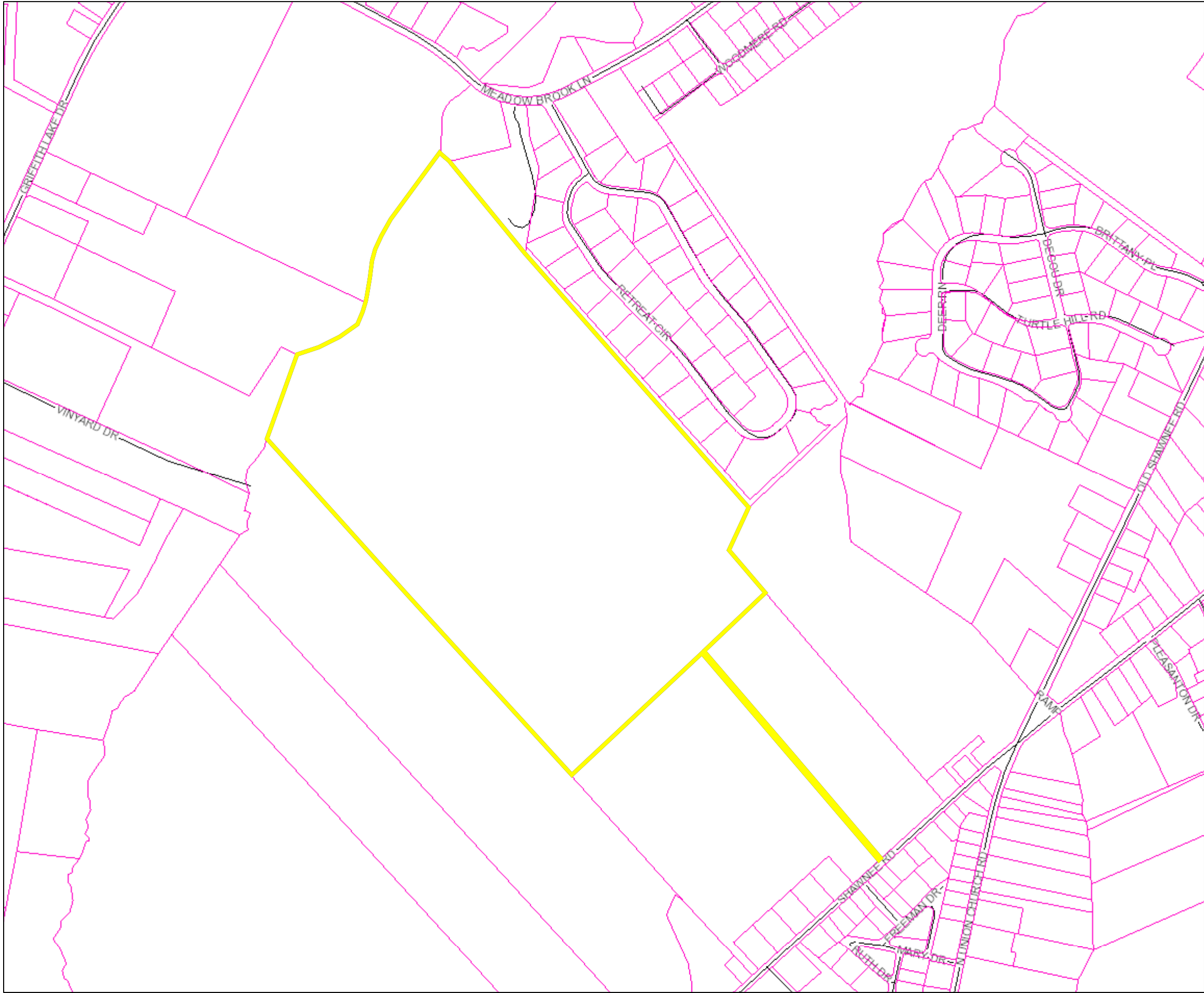
- Tax Parcels
- Streets
- County Boundaries
- Tax Ditch Segments**
 - Tax Ditch Channel
 - DeIDOT Maintained
 - HOA Maintained
 - Pipe - DeIDOT
 - Pipe - Tax Ditch
 - Pipe - Private
 - Pond Feature
 - Special Access ROW
 - Extent of Right-of-Way
 - World Imagery
 - Low Resolution 15m Imagery
 - High Resolution 60cm Imagery
 - High Resolution 30cm Imagery
 - Citations
 - 2.4m Resolution Metadata

1:9,028





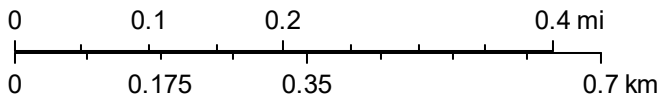
Sussex County



PIN:	130-3.00-63.00
Owner Name	ROBBINS RAYMOND E
Book	1910
Mailing Address	16900 ROBINS NEST RD
City	ELLENDALE
State	DE
Description	500' S/RT.634 2050'
Description 2	E/RT.633
Description 3	N/A
Land Code	

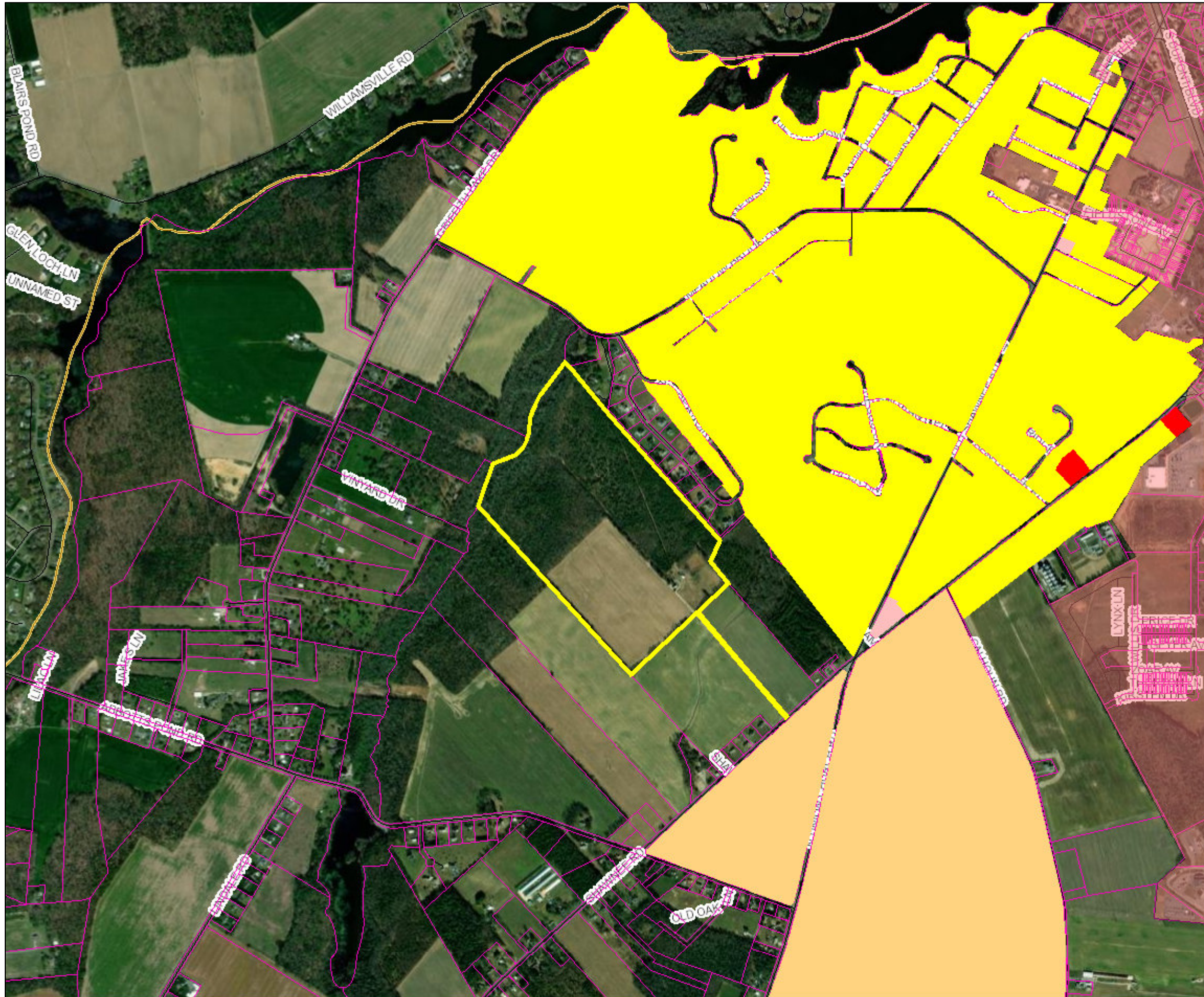
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1:9,028





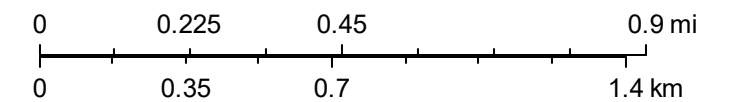
Sussex County



PIN:	130-3.00-63.00
Owner Name	ROBBINS RAYMOND E
Book	1910
Mailing Address	16900 ROBINS NEST RD
City	ELLENDALE
State	DE
Description	500' S/RT.634 2050'
Description 2	E/RT.633
Description 3	N/A
Land Code	

- Municipal Boundaries
- Tax Parcels
- Streets
- County Boundaries
- Tax Ditch Segments
- Tax Ditch Channel
- DelDOT Maintained
- HOA Maintained
- Pipe - DelDOT
- Pipe - Tax Ditch
- Pipe - Private
- Pond Feature
- Special Access ROW
- Extention of Right-of-Way
- World Imagery
- Low Resolution 15m Imagery
- High Resolution 60cm Imagery
- High Resolution 30cm Imagery
- Citations
- 4.8m Resolution Metadata

1:18,056



Introduced: 10/10/23

Council District 2: Mrs. Green
Tax I.D. No.: 130-3.00-63.00 (portion of)
911 Address: 7152 Shawnee Road, Milford

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 121.33 ACRES, MORE OR LESS

WHEREAS, on the 23rd day of September 2022, a conditional use application, denominated Conditional Use No. 2397 was filed on behalf of Mispillion Solar Farm, LLC; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County, and said Planning and Zoning Commission recommended that Conditional Use No. 2397 be _____; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2397 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situated in Cedar Creek Hundred, Sussex County, Delaware, and lying on the northwest side of Shawnee Road (Rt. 36) approximately 0.20 mile southwest of Old Shawnee Road (S.C.R. 42) and being more particularly described in the attached legal description prepared by Century Engineering, LLC, said parcel containing 121.33 acres, more or less.

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



Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: February 16, 2024

RE: County Council Report for C/U 2398 filed on behalf of Chaberton Energy (Blue Hen Solar)

The Planning and Zoning Department received an application (C/U 2398 filed on behalf of Chaberton Energy (Blue Hen Solar)) for a solar farm to be located at Tax Parcel 533-17.00-187.00. The property is located on the southeast side of Hudson Road (S.C.R. 387), approximately 0.61 mile south of the intersection of Lighthouse Road (Route 54) and Hudson Road (S.C.R. 387). The parcel size is 61.15 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on October 26, 2023. At the meeting of October 26, 2023, the Planning & Zoning Commission recommended approval of the application for the 10 reasons and subject to the 9 recommended conditions as outlined within the motion (copied below).

The County Council held a Public Hearing on the application at its meeting on December 12, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration. Below is a link to the minutes of the December 12, 2023, County Council meeting.

[Link to the Minutes of the December 12, 2023 County Council Meeting](#)

Below are the minutes from the Planning & Zoning Commission meeting of October 26, 2023.

Minutes of the October 26, 2023, Planning & Zoning Commission Meeting

In relation to the following six Conditional Use applications regarding solar array uses, Chairman Wheatley stated, *“Sussex County is fully aware of the benefits and operation of these community solar facilities at this point having seen and acted on so many of them. For that reason, the Commission will take that into account and presenters do not need to establish that. Instead, please focus on your specific property, the surrounding area,*



and how your proposed solar facility may impact the surrounding area. The Commission will also take into account all of the written information that is already in the record on each of these applications.”

C/U 2398 Chaberton Energy (Blue Hen Solar)

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 61.15 ACRES, MORE OR LESS. The property is lying on the southeast side of Hudson Road (S.C.R. 387), approximately 0.61 mile south of the intersection of Lighthouse Road (Route 54) and Hudson Road (S.C.R. 387). 911 Address: N/A. Tax Map Parcels: 533-17.00-187.00 (p/o).

Mr. Whitehouse advised the Commission that submitted into the record were the DelDOT Service Level Evaluation Response, the Applicant’s Conceptual Site Plan, a copy of the Applicant’s presentation, a letter from the Sussex County Engineering Department Utility Planning Division, and the Staff Analysis. Mr. Whitehouse stated no comments had been received for the Application.

The Commission found that Mr. Jon Falkowski, Civil Engineer with Becker Morgan Group, Inc. spoke on behalf of the Applicant, also present was Mr. Ryan Boswell, Director of Development with Chaberton Energy. Mr. Falkowski stated that the project is located within Selbyville, essentially at the Maryland line, located along West Line Rd.; that the site consists of 61.15 acres; that the solar area will consist of 20.50 acres; that the site is currently utilize for agricultural and farmland; that the area of the solar array will be located on the agricultural portion; that none of the existing woodlands will be cleared or disturbed for installation of the solar array; that the project will be accessed off West Line Rd.; that there was a Wetland Delineation performed on the site; that an area of non-tidal wetlands were found on the site; that there was tree harvesting performed at the rear of the site; that if there are existing trees, they will be retained; that if there are no trees, they will plant trees to provide a buffer; that they propose a full perimeter landscape buffer in all areas where there is not existing vegetation; that the site will have perimeter fencing and required site access; that there is a tax ditch with a 80 ft. right of way located on the site; that the tax ditch will not be disturbed and the remaining information has been submitted within the Exhibit Booklet for review by the Commission.

The Commission found that one person spoke in support of the Application, and no one spoke in opposition to the Application.

Mr. Richard McCabe spoke in support of the Application. Mr. McCabe stated he is the current property owner; that residential development is approaching his farmland; that he felt the project is a stopgap measure to preserve his land as a non-residential area; that he felt the area will need the electrical energy to help supply all the new residential homes, and the project will be a great source of income for him and his family.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

Mr. Robertson stated he had a prepared motion, which he read into the record per Mr. Mears’ request.

Mr. Mears moved that the Commission recommend approval of C/U 2398 Chamberton Energy (Blue Hen Solar) for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience of and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 61.65 acres. While there are some wetlands on the site, they are not impacted by this use. There is a Tax Ditch that will not be disturbed.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is located along West Line Road and Hudson Road. The land is designated as being within the “Developing Area” according to Sussex County’s Future Land Use Map. This is an appropriate location for this solar array.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. One person spoke in favor of the Application and there was no opposition to this Application.
11. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
 - D. Any lighting at the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
 - F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
 - G. Stormwater management and erosion and sedimentation control facilities shall be

constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.

- H. The Final Site Plan shall include a Decommissioning Plan that includes a financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
- I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2398 Chaberton Energy (Blue Hen Solar), for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Mr. Mears – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea.

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
BRIAN BUTLER
GREGORY SCOTT COLLINS
J. BRUCE MEARS
HOLLY WINGATE



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JAMIE WHITEHOUSE
DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: October 26th, 2023

Application: C/U 2398 Chaberton Energy (Blue Hen Solar)

Applicant: Chaberton Energy
11900 Parklawn Drive, Suite 406
North Bethesda, MD 20852

Owner: Richard H. McCabe Jr./Susan C. Arnold
8595 Shavox Church Road
Whaleyville, MD 21872

Site Location: The property is lying on the southeast side of Hudson Road (S.C.R. 387), approximately 0.61 mile south of the intersection of Lighthouse Road (Route 54) and Hudson Road (S.C.R. 387) in Selbyville, Delaware.

Current Zoning: Agricultural Residential (AR-1) District

Proposed Zoning: Agricultural Residential (AR-1) District

Proposed Use: Solar Energy System/Community Energy Generating Facility (Solar Farm)

Future Land Use Map Designation: Town Center

Councilmanic District: Mr. Hudson

School District: Indian River School District

Fire District: Selbyville Fire Company/District

Sewer: N/A

Water: N/A

Site Area: 61.15 acres +/-

Tax Map IDs: 533-17.00-187.00 (p/o)



JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR
(302) 855-7878 T
jamie.whitehouse@sussexcountyde.gov



Sussex County

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Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Lauren DeVore, AICP Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 20th, 2023
RE: Staff Analysis for C/U 2398 Chaberton Energy (Blue Hen Solar)

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application C/U 2398 Chaberton Energy (Blue Hen Solar) to be reviewed during the October 26th, 2023, Planning and Zoning 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: 533-17.00-187.00 to allow for a solar farm. The property is lying on the southeast side of Hudson Road (S.C.R. 387), approximately 0.61 mile south of the intersection of Lighthouse Road (Route 54) and Hudson Road (S.C.R. 387). The Site Plan for the Application indicates that a 12.50 acre +/- portion of the site will be utilized for the solar farm, which will be fenced, but that the entirety of the Conditional Use Array Area will consist of 31.83 acres out of the larger 61.15 acre +/- parcel.

Further Site Considerations

Staff note that the property is part of the Bunting Tax Ditch Area and contains a Tax Ditch ROW that runs through the western portion of the property of which the Right-Of-Way is measured 80-ft from the Top of Bank (TOB) of the Ditch. The County's Online Mapping System notes that the ditch was amended through Court order Change #14.

Additionally, staff would note that while the County's Online Mapping System does not appear to indicate the presence of regulated tidal wetlands on the property, that this system does note that the presence of lotic and terrene wetland areas on the site. The lotic areas appear to generally align with the Tax Ditch and the agricultural drainage ditches on the property.

The property is located within Flood Zone "X" – Areas determined to be outside the 1% annual chance flood zone and outside the 500-year floodplain. The property is not located within any established Transportation Improvement Districts (TIDs). According to the Delaware Department of Natural Resources and Environmental Control's (DNREC's) Flood Planning Tool, the property is located within the Inland Bays Watershed, the Assawoman Bay Subwatershed and has a Ground Elevation Height at the Parcel of approximately 16-31-ft. A Supplemental Map has been provided which details this information.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use



Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcel has a designation of “Town Center Area.” The adjoining parcels to the north, east and west also have a Future Land Use Map designation of “Town Center.” The Parcel immediately borders West Line Road S.C.R. 396) to the south as well as the Delaware/Maryland State Line.

As outlined in the 2018 Sussex County Comprehensive Plan, Town Centers are areas that are “Part of areas that municipalities have formally designated as future annexation areas in their local Comprehensive Plans, where the municipality would be receptive to annexation requests in the future” (2018 Sussex County Comprehensive Plan, 4-13). The Plan notes that “Commercial uses should serve the daily needs of residents, workers and visitors” (2018 Sussex County Comprehensive Plan, 4-13).

Zoning Information

The subject property is zoned Agricultural Residential (AR-1) District. All adjacent properties to the east, and north and west on the opposite side of Hudson Road (S.C.R. 387) are also zoned Agricultural Residential (AR-1) District.

Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories” in the 2018 Sussex County Comprehensive Plan notes that the Agricultural Residential District is an applicable Zoning District within the “Low Density” Future Land Use Map Designation.

Existing Conditional Uses within the Vicinity of the Subject Property

Although there have been multiple applications in this area, there have been four (4) Conditional Use Applications within a 0.50-mile radius of the Application Site.

Three (3) of the Applications were approved by the Sussex County Council.

The first Application was Conditional Use No. 815 Showell Growers, Inc. to allow for a borrow pit/future fire protection pond within an Agricultural Residential (AR-1) District. The Application was approved by the Sussex County Council at their meeting of Tuesday, April 30th, 1985, and the change was established through Ordinance No. 244.

The second Application was Conditional Use No. 941 Edward Jiekman, Jr. to allow for an auto-repair shop to be located within an Agricultural Residential (AR-1) District. The Application was approved by the Sussex County Council at their meeting of Tuesday, July 10th, 1990, and the change was established through Ordinance No. 699.

The third Application was Conditional Use No. 2060 Shelby Trucking/Construction to allow for a heavy equipment storage, trucking and construction business to be located within an Agricultural Residential (AR-1) District. The Application was approved by the Sussex County Council at their meeting of Tuesday, November 29th, 2016 and the change was established through Ordinance No. 2477.

There was one (1) Application which was denied by the Sussex County Council.

This Application was for Conditional Use No. 1076 Georget & Martha Whitworth to allow for boat storage within an Agricultural Residential (AR-1) District. The Application was denied by the Sussex County Council at their meeting of Tuesday, May 31st, 1994.

Conditional Use Applications (w/in a 0.50-mile radius of the subject site)*								
Application Number	Applicant Name	Zoning	Proposed Use	P&Z Date	P&Z Recommendation	CC Date	CC Decision	Ordinance No.
C/U 815	Showell Growers, Inc.	AR-1	Borrow Pit/Future Fire Protection Pond	3/28/1985	Recommended Denial	4/30/1985	Approved	244
C/U 941	Edward Jiekman, Jr.	AR-1	Auto Repair Shop	6/14/1990	Recommended Denial	7/10/1990	Approved	699
C/U 1076	George & Martha Whitworth	AR-1	Boat Storage	5/12/1994	Recommended Denial	5/31/1994	Denied	
C/U 2060	Shelby Trucking/Construction	AR-1	Heavy equipment storage, trucking and construction business	10/27/2016	Recommended Approval	11/29/2016	Approved	2477

Based on the analysis provided, the Conditional Use to allow for a solar farm in this location could be considered as being consistent with the surrounding land use, zoning, and uses, subject to considerations of scale and impact.



CU 2398 Chaberton Energy (Blue Hen Solar)
Tax Parcel ID: 533-17.00-187.00
Aerial Map

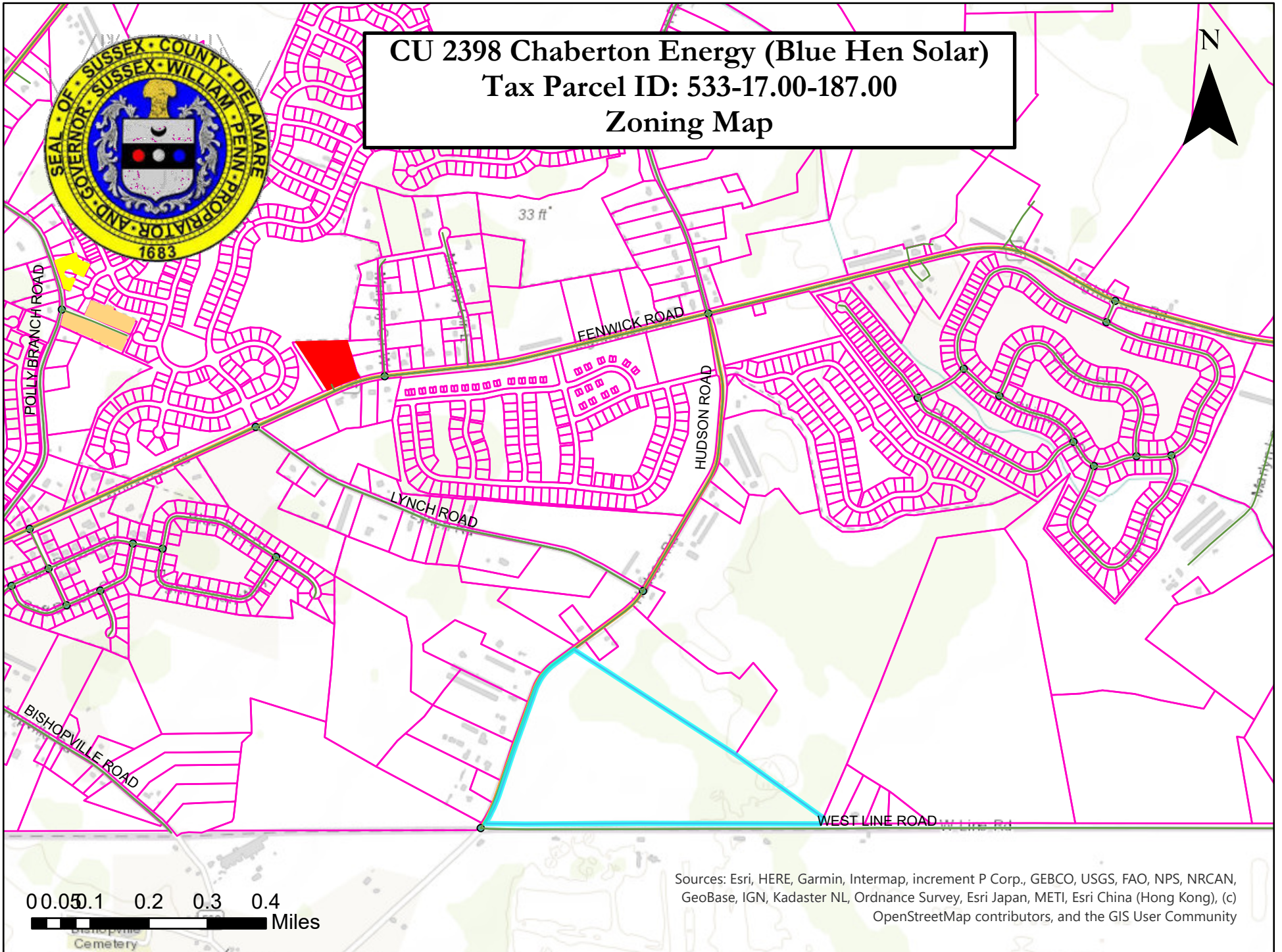


00.03.06 0.12 0.18 0.24
Miles

Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

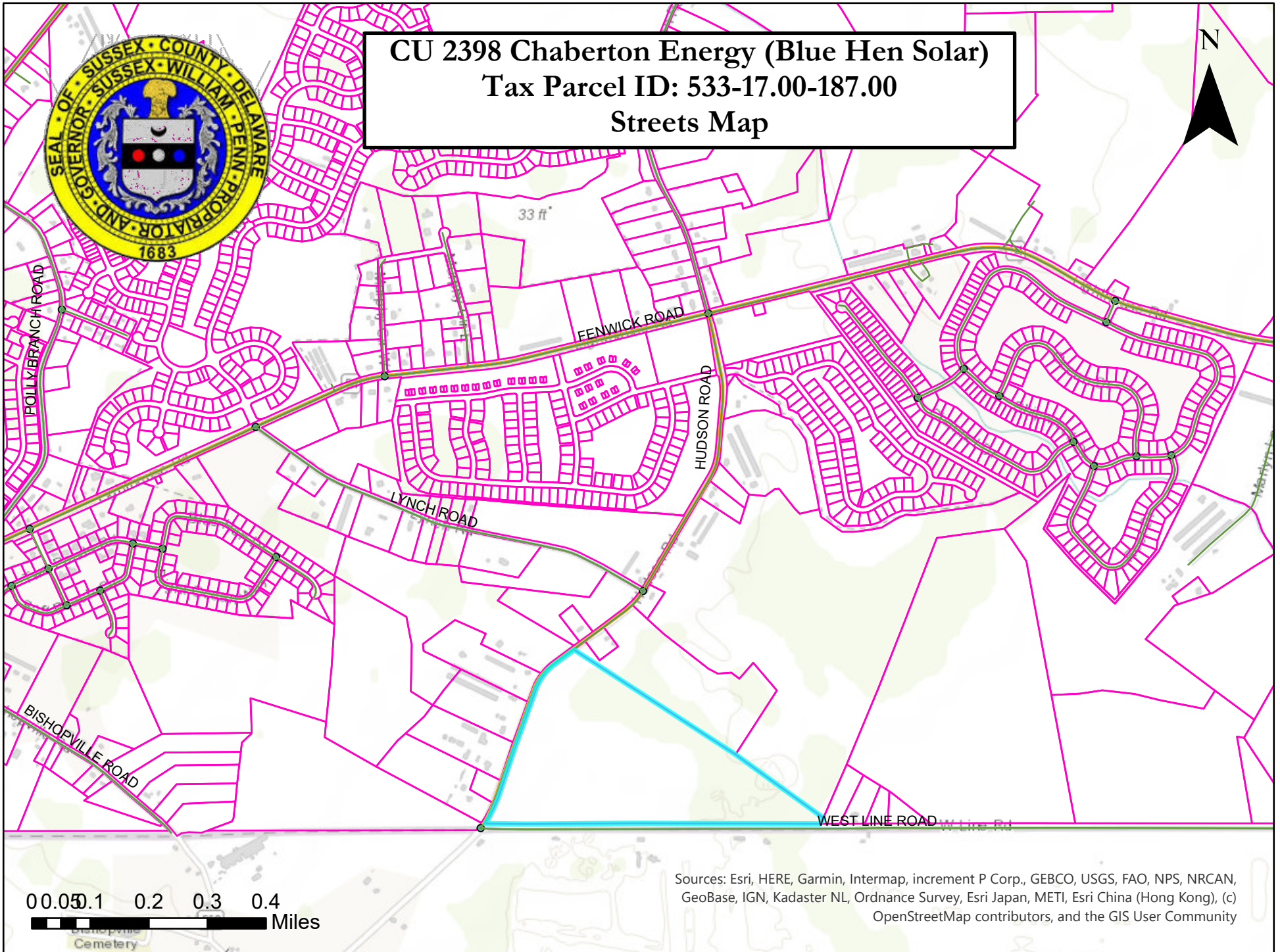


CU 2398 Chaberton Energy (Blue Hen Solar)
Tax Parcel ID: 533-17.00-187.00
Zoning Map





CU 2398 Chaberton Energy (Blue Hen Solar)
Tax Parcel ID: 533-17.00-187.00
Streets Map



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

Introduced: 03/21/23

Council District: Mr. Hudson
Tax I.D. No.: 533-17.00-187.00
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO ALLOW FOR A PROPOSED SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 61.15 ACRES, MORE OR LESS.

WHEREAS, on the 30th day of September 2022, a Conditional Use application, denominated Conditional Use No. 2398 was filed on behalf of Chaberton Energy (Blue Hen Solar); and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2398 be _____; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2398 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on southeast side of Hudson Road (S.C.R. 387), approximately 0.61 mile south of the intersection of Lighthouse Road (Route 54) and Hudson Road (S.C.R. 387), and being more particularly described in the attached legal description prepared by Becker Morgan Group, Inc., said parcel containing 61.15 acres, more or less.

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



Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: February 16, 2024

RE: County Council Report for C/U 2433 filed on behalf of Chaberton Solar

The Planning and Zoning Department received an application (C/U 2433 filed on behalf of Chaberton Solar) for a solar array to be located at Tax Parcel 533-18.00-39.00. The property is located at 38510 Marlyn Lane, Selbyville. The parcel size is 50.50 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on October 26, 2023. At the meeting of October 26, 2023, the Planning & Zoning Commission recommended approval of the application for the 9 reasons and subject to the 9 recommended conditions as outlined within the motion (copied below).

The County Council held a Public Hearing on the application at its meeting on December 12, 2023. At the conclusion of the Public Hearing, action on the application was deferred for further consideration. Below is a link to the minutes of the December 12, 2023, County Council meeting.

[Link to the Minutes of the December 12, 2023 County Council Meeting](#)

Below are the minutes from the Planning & Zoning Commission meeting of October 26, 2023.

Minutes of the October 26, 2023, Planning & Zoning Commission Meeting

In relation to the following six Conditional Use applications regarding solar array uses, Chairman Wheatley stated, *“Sussex County is fully aware of the benefits and operation of these community solar facilities at this point having seen and acted on so many of them. For that reason, the Commission will take that into account and presenters do not need to establish that. Instead, please focus on your specific property, the surrounding area, and how*



your proposed solar facility may impact the surrounding area. The Commission will also take into account all of the written information that is already in the record on each of these applications.”

C/U 2433 Chaberton Solar

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 50.50 ACRES, MORE OR LESS. The property is lying on Marlyn Lane, on the south side of Lighthouse Road (Rt. 54), approximately 1.05 miles east of Hudson Road (S.C.R. 387). 911 Address: 38510 Marlyn Lane, Selbyville. Tax Map Parcel: 533-18.00-39.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant’s Conceptual Site Plan, the Staff Analysis, a copy of the Applicant’s Presentation, the DelDOT Service Level Evaluation Response, and a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated that no comments had been received for the Application.

Chairman Wheatley granted the request that information provided in the record for C/U 2398 Chaberton Solar (Blue Hen Solar) be incorporated into the record for C/U 2433 Chaberton Solar.

The Commission found that Mr. Jon Falkowski, Civil Engineer with Becker Morgan Group, Inc. spoke on behalf of the Applicant, also present was Mr. Ryan Boswell, Director of Development with Chaberton Energy. Mr. Falkowski stated that the project is located within Selbyville, that the entire site consists of 50.5 acres, located within AR-1 (Agricultural Residential); that the solar project is proposed to be located on 35.6 acres of the entire site; that the current property use is for agricultural purposes; that the project site is located just behind Lighthouse Lakes; that they have proposed additional buffering to bolster the landscape in that area; that they held a community meeting on November 6, 2023; that some changes were incorporated into as a result of the community meeting; that the changes consist of a larger buffer with more canopy trees to be added along the boundary with the subdivision; that a few residents had requested additional buffering to be provided on top of the provided landscape buffer; that Buffer A, is the typical standard buffer of 25 ft., which is to be located along the south and west sides of the site; that Buffer B provides the standard 25 ft. buffer, with an additional three canopy trees per 100 linear feet of the buffer where residents have requested it; that the project takes access from Lighthouse Rd. off an existing farm lane; that a tax ditch is located to the northern boundary of the site, and that the project is in compliance with all tax ditch right-of-way setback requirements, as well as all buffer requirements associated with Ordinance No. 2920.

The Commission found that no one wished to speak in support of the Application, and three people spoke in opposition to the Application.

Ms. Stephanie Johnson spoke with questions regarding the Application. Ms. Johnson stated she resides in Lighthouse Lakes; that she questioned how long the Conditional Use would be granted, how long the project lease is, what enforcement will take place if the property is not maintained, and if the energy would be provided for Delmarva Power.

Chairman Wheatley stated that approved Conditional Uses stay with the land; that the Applicant has three years to become substantially underway upon Final Site Plan approval; that if action is not taken

within three years, the Conditional Use will sunset; that if the use is not operated for more than two years, the Conditional Use will sunset; if the Conditional Use sunsets, the Applicant would be required to return to the Commission through a separate Conditional Use application; that the project lease is not an area of concern for the Commission; that if property maintenance does not remain in compliance, a complaint may be filed with the Planning & Zoning or Constables departments and the energy will be provided to Delmarva Power.

Ms. Susan Montgomery spoke in opposition to the Application. Ms. Montgomery stated she resides in Lighthouse Lakes, adjacent to the proposed project; that she felt most solar projects do not impact the number of residential dwellings the current project does; that she understood there is a 200 ft. buffer between dwellings and the solar array; that her house will be 180 ft. away from the project; that in addition to the tax ditch, there are several irrigation ditches; that it was her understanding that these ditches will be addressed with culverts; that there is currently drainage issues in that area, which she does not want to see worsen; that she does not want security lighting to be permitted due to the potential impact to her property; that she understood that 650 subscribers would be permitted for the project, and she felt there was a slim chance that some would be positively impacted financially, and even so, it would not be a significant amount.

Mr. Russell Shaw spoke in opposition to the Application. Mr. Shaw stated he resides in Lighthouse Lakes; that the irrigation ditches are located behind the properties of Lighthouse Lakes; that they are four to five feet across and fairly deep; that the water flow stops because of the uplands; that then the ditch fills with rain; that he previously has had six feet of water across his property and if the ditch is impacted, it could worsen the drainage issues causing flooding to their property.

Mr. Falkowski stated that they had surveyed the entire property; that there are a series of farm ditches throughout the property; that they will be contacting Sussex Conservation District for review and approval; that one of the methods for compliance is a conversion from agricultural land to pollinator mix, also known as meadow grass, will reduce runoff; that none of the farm ditches were considered Jurisdictional Wetlands; that the ditches are farm ditches, being non-regulated, but the ditches do hold water for brief periods with heavy rain; that they will mitigate this by reducing the runoff through the pollinator mix; that they will not plug up the ditches at all; that there may be a crossing with a culvert, but the culvert will be sized appropriately to handle anything that the ditch could handle and it would not impede or further back up any of the stormwater runoff.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

Mr. Robertson stated he had a prepared motion, which he read into the record per Mr. Mears' request.

Mr. Mears moved that the Commission recommend approval of C/U 2433 Chaberton Solar for a solar farm in the AR-1 District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience of and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development.

The solar array will be located on approximately 50.5 acres. There is also a Tax Ditch on the property that will not be disturbed by this use, as well as farm and drainage ditches that will not be disturbed by this use.

3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is set back a significant distance from Lighthouse Road and with the exception of one side of it, the use is surrounded by agricultural lands. The other side is adjacent to homes, and that common boundary will be buffered. The land is designated as being within the “Developing Area” according to Sussex County’s Future Land Use Map. This is an appropriate location for this solar array.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for ground-mounted solar arrays. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. All required fencing shall include interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan. In addition, vegetated buffering that is required by the Code shall be supplemented along the northwest and northeast boundaries adjacent to residential use with additional canopy trees as stated during the public hearing.
 - D. Any lighting at the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
 - F. The location of all transformers or similar equipment or structures shall be shown on the Final Site Plan.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated using Best Management Practices.
 - H. The Final Site Plan shall include a Decommissioning Plan that includes a financial

security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.

- I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2433 Chaberton Energy, for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Mr. Mears – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea.

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
SCOTT COLLINS
BRIAN BUTLER
J. BRUCE MEARS
HOLLY J. WINGATE



Sussex County

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JAMIE WHITEHOUSE, AICP, MRTPI
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: October 26th, 2023

Application: CU 2433 Chaberton Energy (Marlyn Lane)

Applicant: Chaberton Energy – c/o Kate Potapova
11900 Parklawn Dr., Suite 406
North Bethesda, MD 20852

Owner: Marth P. Whitworth
38510 Marlyn Lane
Selbyville, DE 19975

Site Location: Lying on the south side of Lighthouse Road (Rt. 54), approximately 0.26-
miles west of the intersection of Lighthouse Road and Johnson Road
(S.C.R. 390).

Current Zoning: Agricultural Residential (AR-1) Zoning District

Proposed Use: Solar Farm

Comprehensive Land
Use Plan Reference: Developing Area

Councilmanic
District: Mr. Hudson

School District: Indian River School District

Fire District: Selbyville Fire Co.

Sewer: N/A

Water: N/A

Site Area: 35.00 acres +/- (p/o)

Tax Map ID: 533-18.00-39.00



JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR
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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning and Zoning Commission Members
From: Elliott Young, Planner I
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 19, 2023
RE: Staff Analysis for CU 2433 Chaberton Energy

The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application CU 2433 (Chaberton Energy) to be reviewed during the October 26th, 2023, Planning and Zoning 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: 533-18.00-39.00 to allow for a Community Energy Generating Facility. The property is lying on the south side of Lighthouse Road (Rt. 54), approximately 0.26-mile(s) west of the intersection of Lighthouse Road and Johnson Road (S.C.R. 390). The applicant is applying 35.00-acres +/- out of 50.50-acres +/- to be included in the Conditional Use area.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcel has a designation of “Developing Area.” The adjoining parcels to the northeast and east of the subject parcel, also have the Future Land Use Designation of “Developing Area.”

As outlined in the 2018 Sussex County Comprehensive Plan, “Developing Areas are newer, emerging growth areas that demonstrate the characteristics of developmental pressures” and are “adjacent to municipalities within or adjacent to potential future annexation areas of a municipality” (2018 Sussex County Comprehensive Plan, 4-14). The proposal is in proximity to and adjoins the Town of Georgetown.

The adjoining parcels to the northwest of the subject parcel have a Future Land Use Map designation of “Municipality”, these parcels are located within the town jurisdiction of Selbyville, DE. Sussex County strongly favors directing development towards the municipalities that desire it (2018 Sussex County Comprehensive Plan, 4-14). The adjoining parcel to the west of the subject parcel has a Future Land Use Map designation of “Town Center”.

Zoning Information

The subject property is zoned Agricultural Residential (AR-1) District. All adjacent properties to the northeast, south, east, and west of the subject parcels are also zoned Agricultural Residential

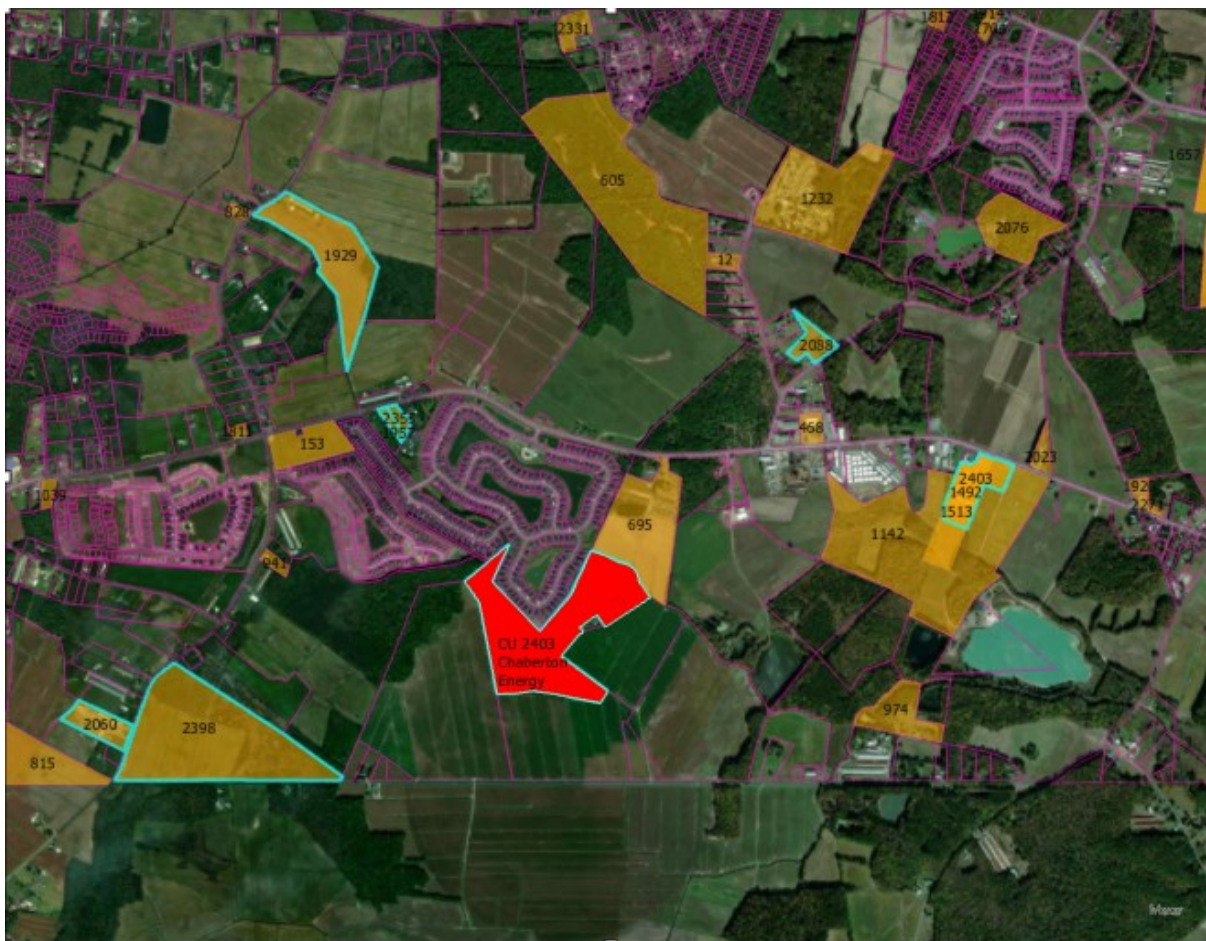


(AR-1) District. The adjoining parcels to the northwest are located within the town jurisdiction of Selbyville, DE.

Existing Conditional Uses within the Vicinity of the Subject Property

Although there have been multiple applications in this area, since 2011, there have been seven (7) Conditional Use applications within a one (1) mile radius of the Application Site.

CU	Applicant	Proposed Use	CC Decision Date	Ordinance No.
1929	Everett Dennis & David Harbin	Farm Tractor and Auto Repair	6/5/2012	2258
1957	George & Sandra VanFleet	Rental and Personal Storage Units	3/19/2013	Denied
2060	Shelby Trucking/Construction	Heavy Equipment Storage, Trucking and Construction Business	11/29/2016	2477
2088	Billy Banning Enterprises, LLC	Dance Studio	Withdrawn	Withdrawn
2355	Dan Velez & Maricrysts Birao	Physical Therapy Office	N/A (CC hearing held on 4/18/2023)	N/A
2398	Chaberton Energy (Blue Hen Solar)	Solar Farm	N/A (Commission on 10/26/2023)	N/A
2403	Beach Buggies, LLC	Retail Sales	8/1/2023	2945








Based on the analysis provided, the Conditional Use to allow for a solar array in this location could be considered as being consistent with the surrounding land use, zoning, and uses, subject to considerations of scale and impact.

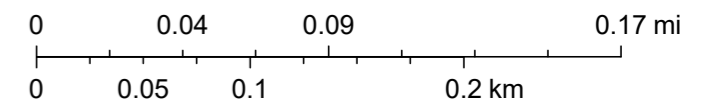
Sussex County



September 27, 2023

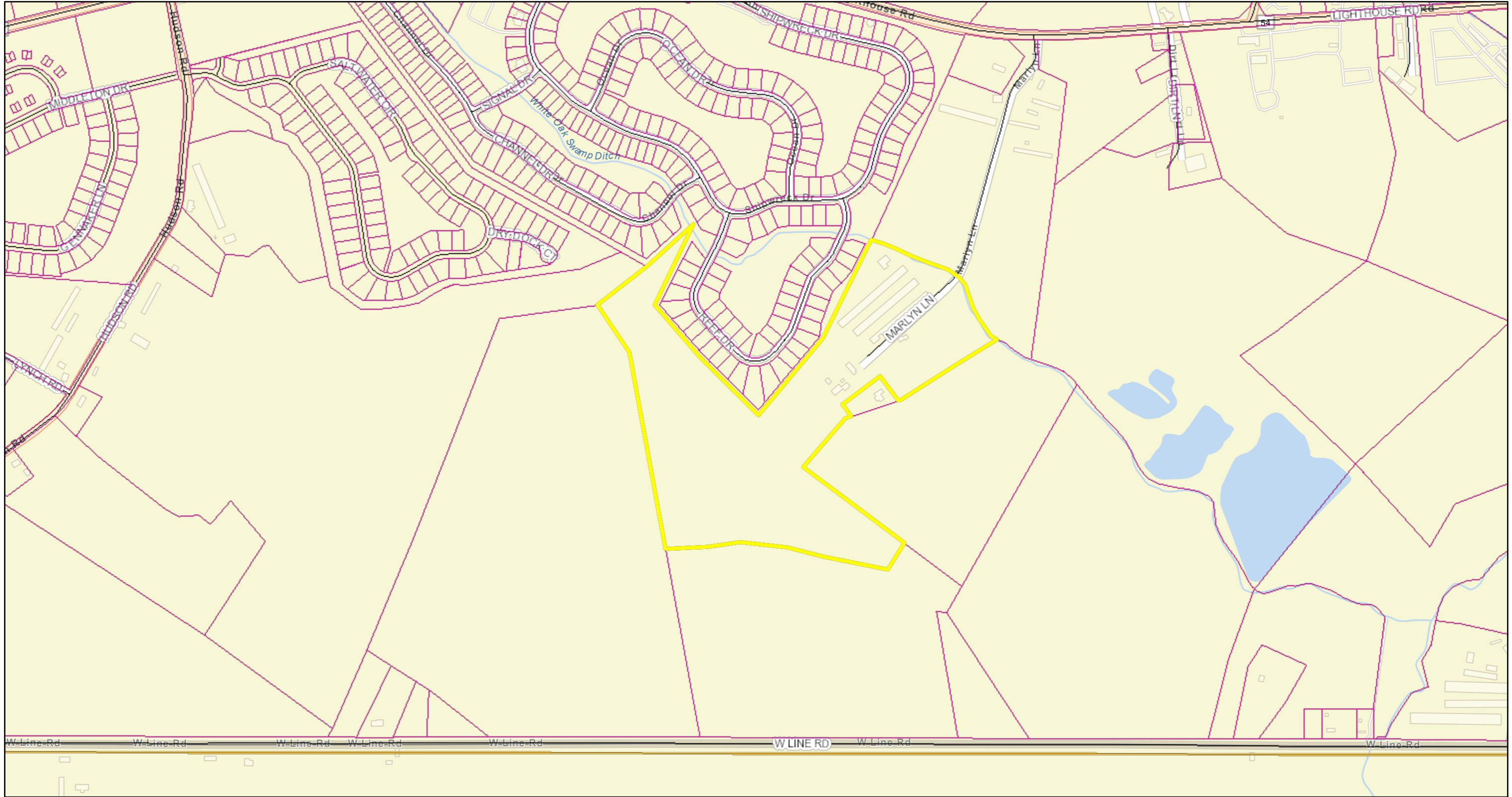
-  Override 1
-  Override 1
-  Tax Parcels
-  Streets
-  County Boundaries

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



Delaware Department of Education, Wetland mapping is supported with funding provided by the Environmental Protection Agency., Delaware Geological Survey, U.S. Geological Survey, Delaware Public Service Commission, FEMA, DNREC, Division of Watershed Stewardship, Drainage Program, john.inkster@state.de.us, Sussex

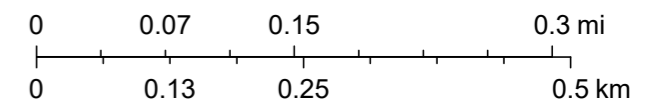
Sussex County



September 27, 2023

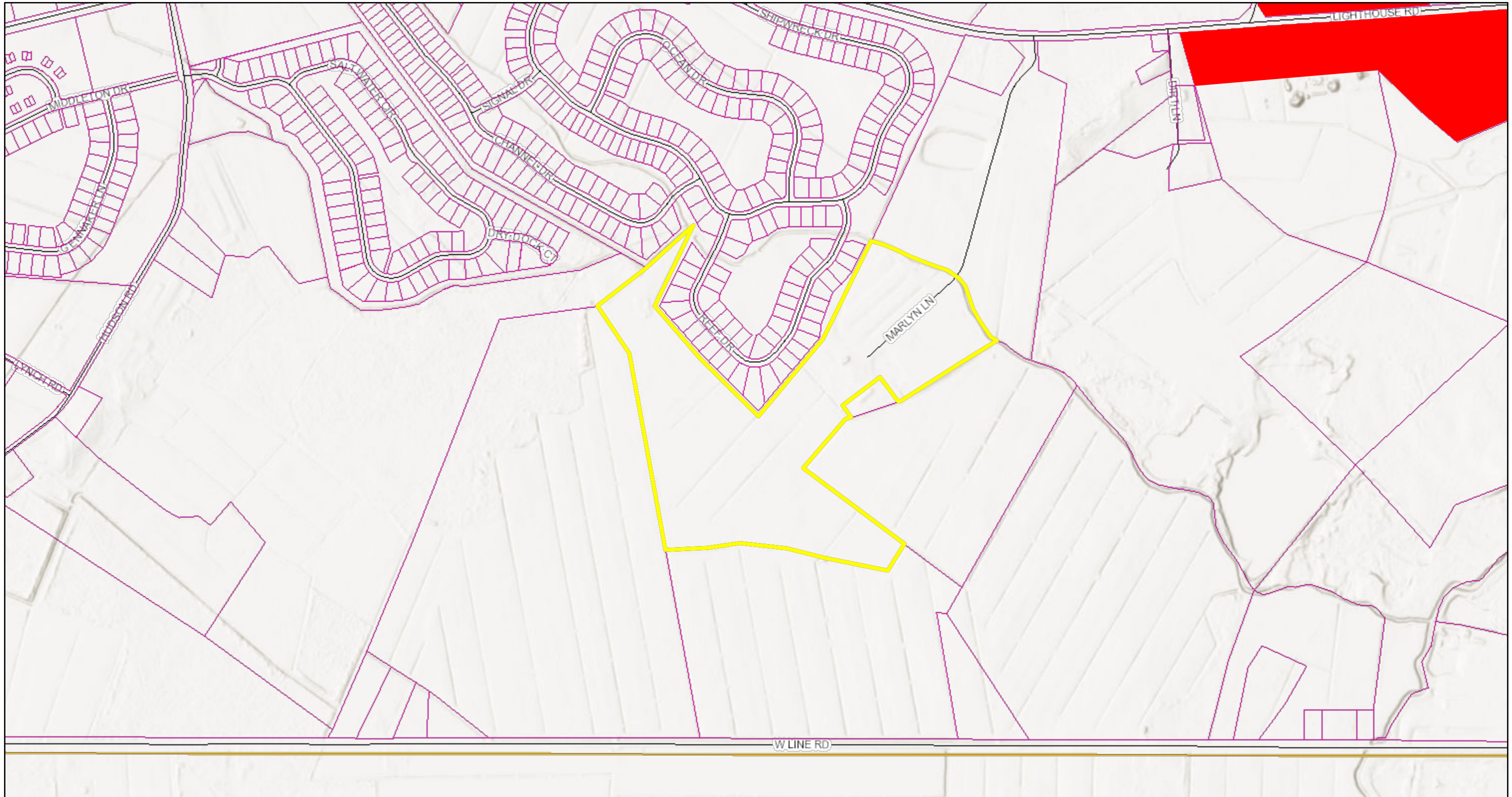
-  Override 1
-  Override 1
-  Tax Parcels
-  Streets
-  County Boundaries

1:9,028



Sussex County Government, Esri Community Maps Contributors, County of Sussex, DE, Delaware FirstMap, VGIN, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

Sussex County



September 27, 2023

polygonLayer Zoning

Override 1

Override 2

General Commercial - C-1

Tax Parcels

Streets

County Boundaries

layer44

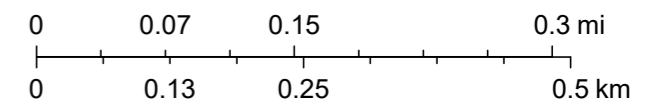
Red: Band_1

Green: Band_2

Blue: Band_3

World Hillshade

1:9,028



Esri, NASA, NGA, USGS, FEMA, Sussex County Government

Introduced: 10/10/23

Council District 4: Mr. Hudson
Tax I.D. No.: 533-18.00-39.00 (p/o)
911 Address: 38510 Marlyn Lane, Selbyville

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 50.50 ACRES, MORE OR LESS

WHEREAS, on the 27th day of March 2023, a conditional use application, denominated Conditional Use No. 2433 was filed on behalf of Chaberton Energy.; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2433 be _____; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2433 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on Marlynn Lane on the south side of Lighthouse Road (Rt. 54) approximately 1.05 miles east of Hudson Road (S.C.R. 367) and being more particularly described in the attached Site Plan prepared by Becker Morgan Group., said parcel containing 50.50 acres, more or less.

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



Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: February 16, 2024

RE: County Council Report for C/U 2404 filed on behalf of Elk Development, LLC

The Planning and Zoning Department received an application (C/U 2404 filed on behalf of Elk Development, LLC) for a solar farm, to be located at Tax Parcel 233-5.00-69.00. The property is located on the northwest side of Thorogoods Road (S.C.R. 333), approximately 0.5 mile southwest of Iron Branch Road (S.C.R. 331). The parcel size is 20.57 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on November 9, 2023. At the meeting of November 9, 2023, the Planning & Zoning Commission recommended approval of the application for the 10 reasons stated and subject to the 9 recommended conditions as outlined within the motion (copied below).

The County Council held a Public Hearing on the application at its meeting on January 9, 2024. At the conclusion of the Public Hearing action on the application was deferred for further consideration. Below is a link to the minutes of the January 9, 2024 County Council meeting.

[Link to the Minutes of the January 9, 2024 County Council Meeting](#)

Below are the minutes from the Planning & Zoning Commission meeting of November 9, 2023.

[Minutes of the November 9, 2023, Planning & Zoning Commission Meeting](#)

C/U 2404 Elk Development, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX



COUNTY, CONTAINING 20.57 ACRES, MORE OR LESS. The property is lying on the northwest side of Thorogoods Road (S.C.R. 333), approximately 0.5 mile southwest of Iron Branch Road (S.C.R. 331). 911 Address: N/A. Tax Map Parcel: 233-5.00-69.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Exhibit Booklet, the Applicant's Conceptual Site Plan, the DelDOT Service Level Evaluation Response letter, a letter received from the Sussex County Engineering Department Utility Planning Division, and the Staff Analysis. Mr. Whitehouse advised the Commission that one letter of support had been submitted for the Application.

The Commission found that Mr. James, Fuqua, Esq. with Fuqua, Willard & Schab, P.A. spoke on behalf of the Applicant, Elk Development, LLC; that also present were Mr. Seth Shafer, P.E. with Pivot Energy, and Mr. Edward Hastings, with Becker Morgan Group. Mr. Fuqua requested that a portion of this presentation be incorporated into the following three Applications, as they share the same Applicant.

Mr. Fuqua stated an exhibit booklet was submitted for all four applications; that Elk Development, LLC is a division of Pivot Energy, Inc.; that Pivot Energy is a national company involved in the development of clean energy projects, such as on site solar facilities and small utility solar projects, which include community solar facilities; that Pivot Energy has financed and developed over 1,200 solar projects throughout the United States; that the current applications propose solar facilities as authorized, and in compliance with, the Delaware Law, which encourages a more decentralized and cleaner approach to power generation through community solar facilities; that the law provides that by subscribing to a community solar project, residential, business and educational users, who are utility customers can participate in renewable and sustainable energy production, with possible future energy costs; that the solar facilities involved in all four of the subject applications, it is anticipated that that upon final approval and required permitting, the site development and solar facility construction would take approximately four to six months to complete; that once completed and operational, the four facilities would have the following in common; that the solar array and equipment area would be enclosed in a seven foot high security fence with a gate and an emergency key box to accommodate emergency access; that one unlit sign, not exceeding 32 sq. ft. is requested; that the sign will identify the operator and the operator's contact information; that the facilities will consist of solar panel modules mounted on single axis trackers that will allow them to follow the path to the sun throughout the day; that the solar racking system itself utilizes drive steel posts or pile foundations, which anchor the racking system to the ground, and that results in minimal ground disturbance or impervious surface cover; that the solar inverters and other equipment will be located on concrete pads; that the power generated by the solar panels will be transferred to DP&L (Delmarva Power & Light grid by interconnection with the existing DP&L power lines; that the overall system and its design comply with the National Electrical Code and will be reviewed and approved by Delmarva Power & Light; that the solar array area itself will be seeded with a pollinator seed mix, which is slow growing, environmentally friendly ground cover; that there are no odors, dust, smoke, or heat associated with the solar operation; that the only sound is a minimal sound, which is a low hum from the inverters; that there is minimal to no glare from the solar panels, which are designed to absorb sunlight, not to reflect it; that there will be landscaping surrounding the fenced area, which will further shield the panels from view; that after construction is completed, traffic to the site would be minimal, as it would only be periodic equipment inspections and maintenance, as well as seasonal property maintenance and grass cuts; that there are no onsite employees, as the equipment is monitored remotely; that each application does have its own DelDOT Service Level Evaluation Response letter, which indicates that

the traffic impact for all the facilities would be diminutive; that there is no proposed or need for sewer, water or trash services for the facilities; that little impervious surface will be created by the facility; that any stormwater management for the sites will comply with the applicable State and County requirements; that as part of the Final Site Plan approval, a Decommissioning Plan will be provided to ensure that upon expiration of the lease, or early termination of the Conditional Use, all equipment and materials will be removed from the site and properly disposed of; that the site will be returned to a physical condition similar to its present state; that the plan also provides for financial security and a form acceptable to the County; that this will guarantee that the cost of the restoration will be available; that the actual estimated amount in terms of that security will be provided as part of the Final Site Plan review and approval process; that after termination of the use and restoration of the site, the land will revert back to its current condition as agricultural land; that solar facilities are permitted as an approved Conditional Use in both the AR-1 (Agricultural Residential) and GR (General Residential) Zoning Districts; that the purpose of a Conditional Use is to provide for a use that is of a public or semi-public character that is essential and desirable for the general convenience, and welfare of the County; that the Commission and County Council had previously determined that solar facilities are in accordance with the County's Comprehensive plan by promoting Goal 7.3 of the Comprehensive Plan, which encourages the use of renewable energy options, such as community solar facilities, and the use is authorized by the recent amendments to the State Law, relating to the development of community solar facilities for renewable energy protection.

Mr. Fuqua stated that specifically, C/U 2404 Elk Development LLC, is referred to as the "Thorogoods A" site; that in addition to the information already provided, the parcel is located on the north side of Thorogoods Rd.; that the site contains 20.7 acres; that approximately 16 acres of the total 20.7 acres will be leased for the use of a community solar facility; that the land is owned by SB Cordrey Farms, LLC; that the site borders the existing manufactured home community of Holiday Acres to the east; that the site is adjacent to agricultural lands located to the north; that to the west is the location of the Conrail Railroad tracks, and the Delaware Power & Light Electrical Powerline easement; that on the other side of the railroad track are existing industrial uses, being the location of Dagsboro Materials, River Asphalt, and Thorogoods Concrete; that directly across from the industrial site, is the 30 acre Cordrey family farm parcel; that the Commission recently recommended approval for a solar facility on that property on September 14, 2023, as C/U 2380; that the site has been in agricultural use; that the site is zoned GR (General Residential); that the site is located within the Developing Area, being a Growth Area according to the Future Land Use Map of the Comprehensive Plan; that lands located to the west and the north of the site are zoned heavy industrial; that there was a revised Site Plan submitted with the last exhibit; that access from the site will be provided from Thorogoods Rd.; that the access would be a 16 ft. wide gravel drive to the turn around area to be located adjacent to a 25' x 15' solar equipment pad; that the solar arrays would be a minimum of 100 ft. from Thorogoods Rd.; that the panels would be a minimum of 50 ft. from the property lines on the north and west; that the panels would be located approximately 100 ft. from the property lines on the east, adjacent to Holiday Acres; that the solar panels would be located a minimum of 200 ft. from any dwelling located within the Holiday Acres community; that there would be a 25 ft. landscape buffer along Thorogoods Rd. and along the agricultural lands along the north; that the landscape buffer would be located along the road; that the eastern boundary is already wooded and would remain as an existing wooded buffer, therefore no landscaping is proposed along the railroad tracks or the adjacent industrial uses to the west; that all buffer areas are shown on the Site Plan, which are referred to in the proposed Conditions of Approval, and it is anticipated that the facility would generate electrical power to serve the annual needs of approximately 700 residential households.

Ms. Wingate questioned where the inverter is proposed to be placed on the site.

Mr. Fuqua stated that the inverter would be placed on the pad area located along the access road, which is located on the opposite side of where the homes are located, and the small hum of the inverter would probably not be heard over the noise generated by the adjacent industrial uses and the railroad.

Mr. Collins questioned if there would be a landscape buffer provided between the project and the mobile home community.

Mr. Fuqua stated yes that the landscape buffer would be provided by an existing wooded buffer that is proposed to remain as is.

The Commission found that no one wished to speak in support of or in opposition to the Application.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

Ms. Wingate moved that the Commission recommend approval of C/U 2404 Elk Development, LLC for a solar array in the GR District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 16.32 acres of a larger 20.57-acre parcel.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options, such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is located adjacent to railroad tracks, with industrial zoning and uses. It is near another solar array Conditional Use that recently received a recommendation of approval. The site will have access via Thorogoods Road. The land is also designated as being within the Developing Area, according to Sussex County's Future Land Use Map. Although the site is located next to an existing residential development, that development is screened by existing vegetation, plus the new buffering and separation that will be required the this use.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural and industrial land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels. DelDOT has determined that the proposed Conditional Use would have a "Diminutive" impact on traffic.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by

the facility.

9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. There was no opposition to this Application and one letter in support of the Application.
11. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for a ground-mounted solar array. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. The existing vegetation, located next to the residential properties shall remain undisturbed, in addition to the fencing, buffering, and separation requirements of Ordinance No. 2920. All required fencing shall require interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
 - D. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
 - F. The location of all transformers, similar equipment, or structures, shall be shown on the Final Site Plan.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated by Best Management Practices.
 - H. The Final Site Plan shall include a Decommissioning Plan that includes financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2404 Elk Development, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

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, AICP, MRTPI
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: November 9th, 2023

Application: CU 2404 Elk Development, LLC

Applicant: Elk Development, LLC (30423A Thorogoods Road)
c/o Robert McNeill
6865 Deerpath Road, Suite 330
Elkridge, MD 21075

Owner: SB Cordrey Farms, LLC
30366 Cordrey Road
Millsboro, DE 19966

Site Location: Lying on the northwest side of Thorogoods Road (S.C.R. 333) approximately (0.5) miles southwest of Iron Branch Road (S.C.R. 331).

Current Zoning: General Residential (GR) Zoning District

Proposed Use: Solar array consisting of a photovoltaic electric generation facility.

Comprehensive Land Use Plan Reference: Developing Area

Councilmanic District: Mr. Rieley

School District: Indian River School District

Fire District: Dagsboro Fire Department

Sewer: N/A

Water: N/A

Site Area: 20.57 acres +/-

Tax Map ID: 233-5.00-69.00



JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR
(302) 855-7878 T
(302) 854-5079 F
jamie.whitehouse@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Mr. Michael Lowrey, Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 31st, 2023
RE: Staff Analysis for C/U 2404 Elk Development, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of Application C/U 2404 Elk Development, LLC to be reviewed during the November 30th, 2023 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.

Please note that the following staff analysis is for informational purposes only and does not prejudice any decision that the Sussex County Planning & Zoning Commission or Sussex County Council may wish to make as part of any Application submitted to the Department.

Tax Parcel ID: 233-5.00-69.00

Proposal: The request is for a Conditional Use for Tax Parcel 233-5.00-69.00 to allow for solar array on a parcel lying on the northwest side of Thorogoods Road (S.C.R. 333) approximately (0.5) miles southwest of Iron Branch Road (S.C.R. 331). The parcel is comprised of 20.57 acres +/-.

Zoning: The properties are zoned General Residential (GR) District. The adjacent parcels to the north and west of the subject property are zoned Heavy Industrial (HI-1) District with the Parcels to the east and south within the General Residential (GR) District.

Future Land Use Map Designation w/in Comprehensive Plan: Developing Area

Applicability to Comprehensive Plan: The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the subject property is designated as a Growth Area and has a land use designation of “Developing Area.” The properties to the north and west of the subject Parcel are categorized as “Industrial Area”, the parcels to the east “Developing Area”, and the parcels to the south are categorized “Coastal Area.”

As outlined in the 2018 Sussex County Comprehensive Plan, Developing Areas are “newer, emerging growth areas that demonstrate the characteristics of developmental pressures”, noting that “portions of the Developing Areas with good road access and few nearby homes should allow for business and industrial parks” (Sussex County Comprehensive Plan, 4-14).



Further Site Considerations:

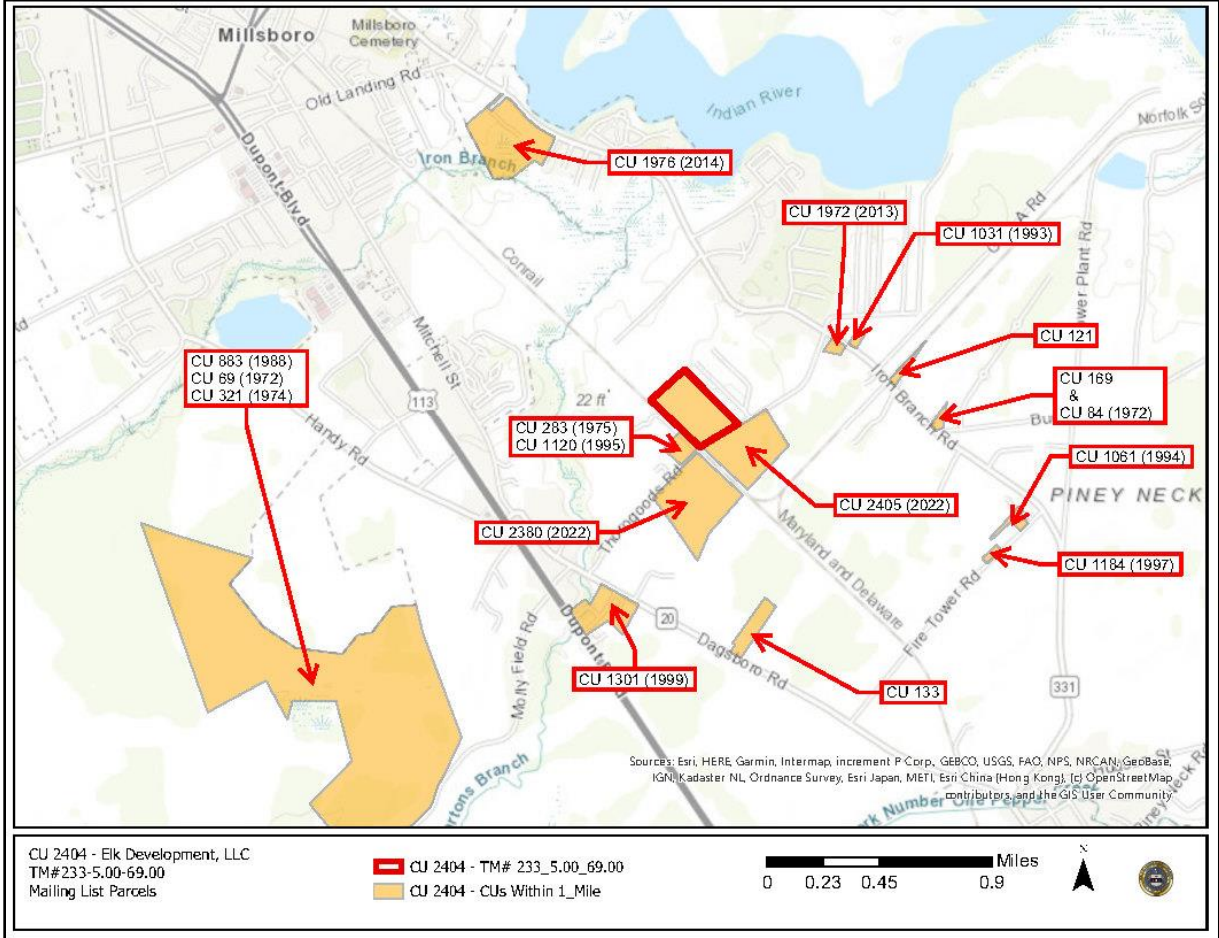
- **Density:** N/A
- **Open Space Provisions:** N/A
- **Agricultural Areas:** The site is within the vicinity of active agricultural lands.
- **Interconnectivity:** N/A
- **Transportation Improvement District (TID):** The parcels are not within the Henlopen Transportation Improvement District.
- **Forested Areas:** N/A
- **Wetlands Buffers/Waterways:** N/A
- **Other Site Considerations (ie: Flood Zones, Tax Ditches, Groundwater Recharge Potential, etc.):** The property is located within Flood Zones X with areas of “Fair” and “Poor” Groundwater Recharge Potential on the site.

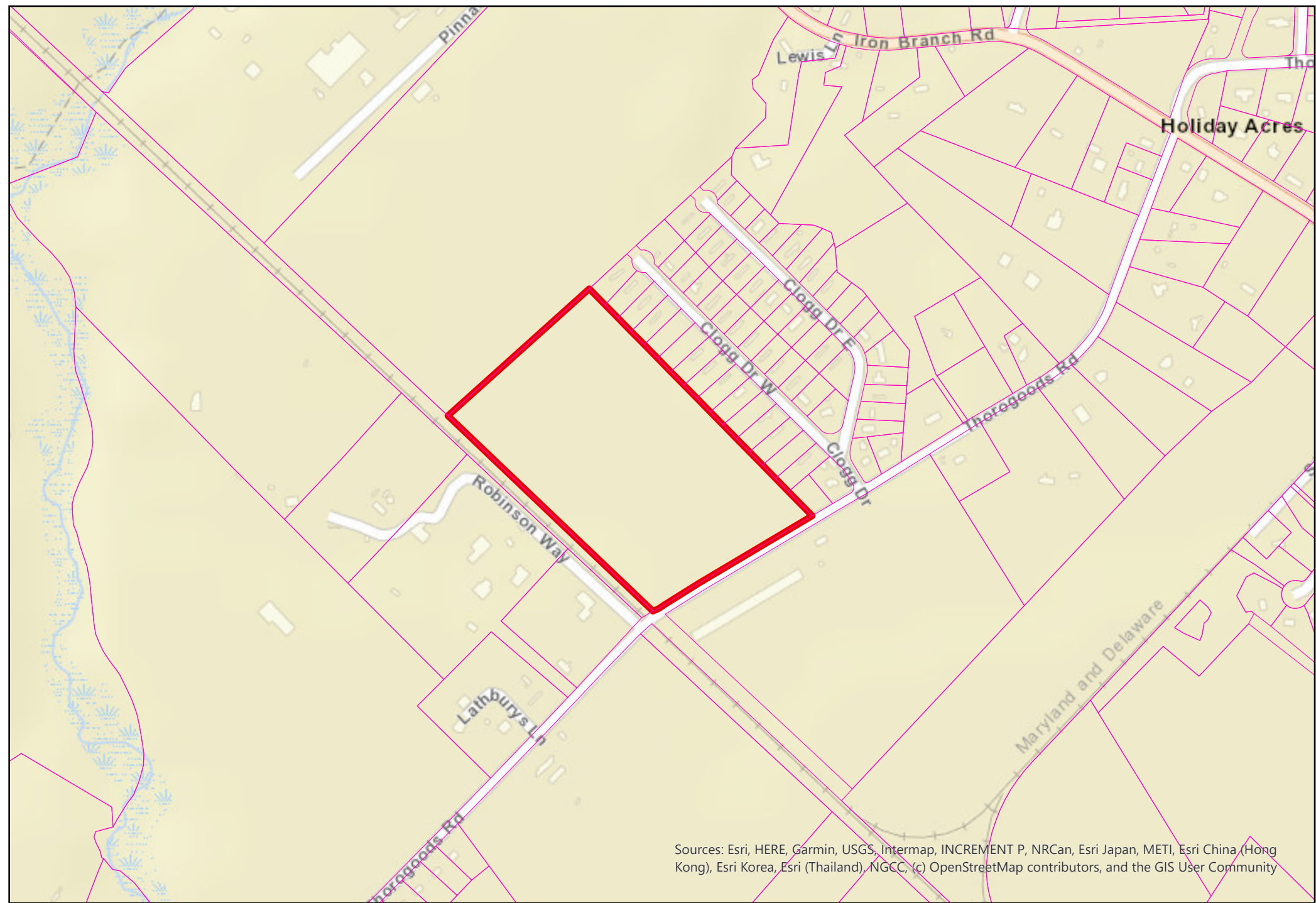
Based on the analysis of the land use, surrounding zoning and uses, a Conditional Use Application to allow for a solar array, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

Existing Conditional Uses within the Vicinity of the Subject Site: A Data Table and Supplemental Map have been supplied which provide further background regarding the approval status of Applications in the area, including the location of all other Conditional Use Applications that are less than 1 mile distance from the subject site.

Conditional Use Applications						
(Within a 1-mile radius of the subject site)						
Application Number	Application Name	Zoning District	Proposed Use	CC Decision	CC Decision Date	Ordinance Number
69	Bruce Moore	AR-1	Borrow Pit	Approved	8/8/1972	N/A
84	Ellison & Sara Bunting	AR-1	Automobile Repair Shop	Approved	10/1/1972	N/A
121	Richard & Connie Webb	AR-1	Small Engine Repair	Approved	N/A	N/A
133	Donald L. Atkins	AR-1	Custom Cutting & Packaging Of Meats & Retail	Approved	N/A	N/A
169	Alvin & Henrietta Daisey	AR-1	Ceramic Shop	Approved	N/A	N/A
231	Indian River Land Co	AR-1	2 Borrow Pits	Approved	8/27/1974	N/A
283	Frank Thoroughgood	AR-1	Auto Salvage, Auto Sales & Sale Of Auto Parts	Approved	7/29/1975	N/A
883	Gladys A. Swann	AR-1	Borrow Pit	Denied	12/13/1988	N/A
1031	Henry Fisher	AR-1	Repair Vacuum Cleaners	Denied	3/30/1993	N/A
1061	Gregory P. Mitchell	AR-1	Parts Storage & Truck Facility	Approved	2/1/1994	950

1120	Sara V. Thoroughgood	AR-1	Truck Repair Shop	Approved	6/27/1995	1039
1184	State of Delaware	AR-1	480 Ft Radio Tower	Approved	7/15/1997	1155
1301	Independent Associates, Inc.	C-1	Crematorium	Approved	8/31/1999	1339
1972	Harry G. Miller	GR	Auto Repair Shop	Approved	12/3/2013	2330
1976	Indian River School District	AR-1	Elementary School Expansion	Approved	1/7/2014	2332
2380	Dagsboro Thorogoods Solar 1, LLC	AR-1	Solar Farm	N/A	N/A	N/A
2404	Elk Development, LLC	GR	Solar Farm	N/A	N/A	N/A
2405	Elk Development, LLC	GR	Solar Farm	N/A	N/A	N/A

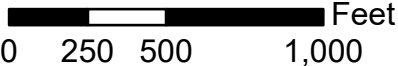




Sources: Esri, HERE, Garmin, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), NGCC, (c) OpenStreetMap contributors, and the GIS User Community

CU 2404 - Elk Development, LLC
TM#233-5.00-69.00
Street Map

 CU 2404 - TM# 233_5.00_69.00

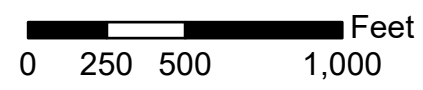


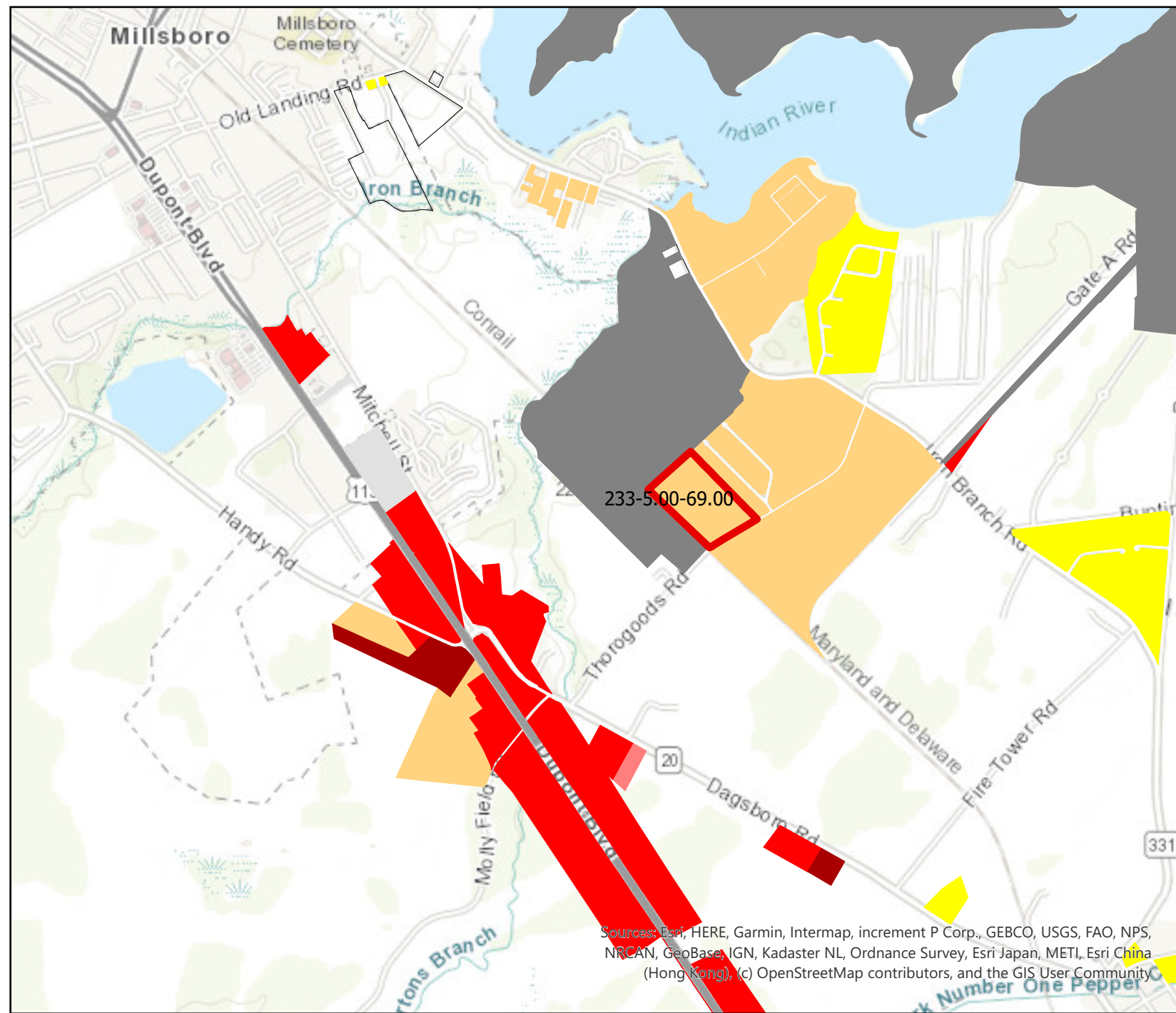


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CU 2404 - Elk Development, LLC
TM#233-5.00-69.00
Aerial Map

 CU 2404 - TM# 233_5.00_69.00



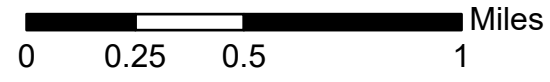


- ### Zoning
- Agricultural Residential - AR-1
 - Agricultural Residential - AR-2
 - Medium Residential - MR
 - General Residential - GR
 - High Density Residential - HR-1
 - High Density Residential - HR-2
 - Vacation, Retire, Resident - VRP
 - Neighborhood Business - B-1
 - Neighborhood Business - B-2
 - Business Research - B-3
 - General Commercial - C-1
 - General Commercial - C-2
 - General Commercial - C-3
 - General Commercial - C-4
 - General Commercial - C-5
 - Commercial Residential - CR-1
 - Institutional - I-1
 - Marine - M
 - Limited Industrial - LI-1
 - Light Industrial - LI-2
 - Heavy Industrial - HI-1

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

CU 2404 - Elk Development, LLC
 TM#233-5.00-69.00
 Zoning Map

CU 2404 - TM# 233_5.00_69.00



Introduced: 4/25/2023

Council District 5: Mr. Rieley
Tax I.D. No.: 233-5.00-69.00
911 Addresses: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 20.57 ACRES, MORE OR LESS

WHEREAS, on the 31st day of October 2022, a conditional use application, denominated Conditional Use No. 2404 was filed on behalf of Elk Development, LLC; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2404 be _____; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2404 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situate in Dagsboro Hundred, Sussex County, Delaware, and lying on the northwest side of Thorogoods Road (S.C.R. 333), approximately 0.5-mile southwest of Iron Branch Road (S.C.R. 331), and being more particularly described in the attached legal description prepared by Pivot Energy, Inc., said parcel containing 20.57 acres, more or less.

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



Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: February 16, 2024

RE: County Council Report for C/U 2405 filed on behalf of Elk Development, LLC

The Planning and Zoning Department received an application (C/U 2405 filed on behalf of Elk Development, LLC) for a solar farm, to be located at Tax Parcel 233-5.00-187.01. The property is located on the southeast side of Thorogoods Road (S.C.R. 333), approximately 0.5 mile southwest of Iron Branch Road (S.C.R. 331). The parcel size is 22.97 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on November 9, 2023. At the meeting of November 9, 2023, the Planning & Zoning Commission recommended approval of the application for the 11 reasons stated and subject to the 9 recommended conditions as outlined within the motion (copied below).

The County Council held a Public Hearing on the application at its meeting on January 9, 2024. At the conclusion of the Public Hearing action on the application was deferred for further consideration. Below is a link to the minutes of the January 9, 2024, County Council meeting.

[Link to the Minutes of the January 9, 2024 County Council Meeting](#)

Below are the minutes from the Planning & Zoning Commission meeting of November 9, 2023.

[Minutes of the November 9, 2023, Planning & Zoning Commission Meeting](#)

C/U 2405 Elk Development, LLC

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 22.97 ACRES, MORE OR LESS. The property is lying on the



southeast side of Thorogoods Road (S.C.R. 333), approximately 0.5 mile southwest of Iron Branch Road (S.C.R. 331). 911 Address: N/A. Tax Map Parcel: 233-5.00-187.01.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual Site Plan, the property's legal description, the DelDOT Service Level Evaluation Response, the Staff Analysis, the Applicant's Exhibits, and the Applicant's Decommissioning Plan. Mr. Whitehouse advised the Commission that two mail returns and no comment letters were received for the Application.

The Commission found that Mr. James, Fuqua, Esq. with Fuqua, Willard & Schab, P.A. spoke on behalf of the Applicant, Elk Development, LLC; that also present were Mr. Seth Shafer, P.E. with Pivot Energy, and Mr. Edward Hastings, with Becker Morgan Group.

Mr. Fuqua requested the following information provided in the public hearing for C/U 2404 be incorporated into the record for C/U 2405 Elk Development, LLC. Mr. Fuqua stated an exhibit booklet was submitted for all four applications; that Elk Development, LLC is a division of Pivot Energy, Inc.; that Pivot Energy is a national company involved in the development of clean energy projects, such as on site solar facilities and small utility solar projects, which include community solar facilities; that Pivot Energy has financed and developed over 1,200 solar projects throughout the United States; that the current applications propose solar facilities as authorized, and in compliance with, the Delaware Law, which encourages a more decentralized and cleaner approach to power generation through community solar facilities; that the law provides that by subscribing to a community solar project, residential, business and educational users, who are utility customers can participate in renewable and sustainable energy production, with possible future energy costs; that the solar facilities involved in all four of the subject applications, it is anticipated that that upon final approval and required permitting, the site development and solar facility construction would take approximately four to six months to complete; that once completed and operational, the four facilities would have the following in common; that the solar array and equipment area would be enclosed in a seven foot high security fence with a gate and an emergency key box to accommodate emergency access; that one unlit sign, not exceeding 32 sq. ft. is requested; that the sign will identify the operator and the operator's contact information; that the facilities will consist of solar panel modules mounted on single axis trackers that will allow them to follow the path to the sun throughout the day; that the solar racking system itself utilizes drive steel posts or pile foundations, which anchor the racking system to the ground, and that results in minimal ground disturbance or impervious surface cover; that the solar inverters and other equipment will be located on concrete pads; that the power generated by the solar panels will be transferred to DP&L (Delmarva Power & Light grid by interconnection with the existing DP&L power lines; that the overall system and its design comply with the National Electrical Code and will be reviewed and approved by Delmarva Power & Light; that the solar array area itself will be seeded with a pollinator seed mix, which is slow growing, environmentally friendly ground cover; that there are no odors, dust, smoke, or heat associated with the solar operation; that the only sound is a minimal sound, which is a low hum from the inverters; that there is minimal to no glare from the solar panels, which are designed to absorb sunlight, not to reflect it; that there will be landscaping surrounding the fenced area, which will further shield the panels from view; that after construction is completed, traffic to the site would be minimal, as it would only be periodic equipment inspections and maintenance, as well as seasonal property maintenance and grass cuts; that there are no onsite employees, as the equipment is monitored remotely; that each application does have its own DelDOT Service Level Evaluation Response letter, which indicates that the traffic impact for all the facilities would be diminutive; that there is no proposed or need for sewer, water or trash services for

the facilities; that little impervious surface will be created by the facility; that any stormwater management for the sites will comply with the applicable State and County requirements; that as part of the Final Site Plan approval, a Decommissioning Plan will be provided to ensure that upon expiration of the lease, or early termination of the Conditional Use, all equipment and materials will be removed from the site and properly disposed of; that the site will be returned to a physical condition similar to its present state; that the plan also provides for financial security and a form acceptable to the County; that this will guarantee that the cost of the restoration will be available; that the actual estimated amount in terms of that security will be provided as part of the Final Site Plan review and approval process; that after termination of the use and restoration of the site, the land will revert back to its current condition as agricultural land; that solar facilities are permitted as an approved Conditional Use in both the AR-1 (Agricultural Residential) and GR (General Residential) Zoning Districts; that the purpose of a Conditional Use is to provide for a use that is of a public or semi-public character that is essential and desirable for the general convenience, and welfare of the County; that the Commission and County Council had previously determined that solar facilities are in accordance with the County's Comprehensive plan by promoting Goal 7.3 of the Comprehensive Plan, which encourages the use of renewable energy options, such as community solar facilities, and the use is authorized by the recent amendments to the State Law, relating to the development of community solar facilities for renewable energy protection.

Mr. Fuqua stated that specifically, C/U 2405 Elk Development LLC, is referred to as the "Thorogoods B" site; that the site is located on the south side of Thorogoods Rd.; that it is directly across the road from Thorogoods A Site, related to C/U 2404; that the subject site is comprised of approximately 22.9 acres; that approximately 11 acres of the total 22.9 acres would be leased; that the land is currently owned by SB Cordrey Farm, LLC; that on the east and south of the site there are existing woods; that there are some non-tidal wetlands located within the wooded area and part of the property located on the opposite side of the woodlands; that to the west the site is located adjacent to the Conrail Railroad tracks, and the Delaware Power & Light Electrical Powerline easement; that on the other side of the railroad tracks is the location of C/U 2380, which was the community solar application the Commission recommended for approval in September 2023; that the land is currently in agricultural use; that the site is zoned GR (General Residential); that the site is located within the Coastal Area according to the Future Land Use Map of the Comprehensive Plan; that the Coastal Area is considered a Growth Area; that currently there is an old chicken house located on the property; that the chicken house is proposed to be removed; that the site's access will be from Thorogoods Rd.; that the access would be provided by a 16 ft. wide gravel drive, with a turnaround located next to a 15' x 25' equipment pad; that the closest solar array from Thorogoods Rd. would be located 133 ft. from the road; that on the east and the south, the security fence would be located approximately 75 ft. from the existing wood line located on the site; that in the southwest corner of the site the closest solar array would be 62 ft. from the property line; that to the west, the closest array is located 75 ft. from the property line adjacent to the railroad; that there would be a 25 ft. wide landscape buffer, which would be set back approximately 100 ft. from Thorogoods Rd.; that no buffer is proposed along the other sides of the site, as there is existing woods proposed to remain, and along the areas adjacent to the railroad tracks and the Delaware Power & Light Electrical Powerline easement located to the west; that the buffers will be as reflected on the Site Plan; that no landscape buffers are proposed to the east and south due to the existing trees; that it is anticipated that the facility would generate electrical power to serve the annual needs of approximately 410 residential households and he stated he had already submitted the Application's proposed Conditions of Approval for consideration.

The Commission found that no one wished to speak in support of or in opposition to the Application.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

Ms. Wingate moved that the Commission recommend approval of C/U 2405 Elk Development, LLC for a solar array in the GR District based on the record made during the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use because it has a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. This is an adaptive use of farmland that will preserve it from more intensive development. The solar array will be located on approximately 11.2 acres of a larger 22.97-acre parcel.
3. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan, which encourages the use of renewable energy options, such as solar arrays. There was testimony that this solar array would benefit residential, business, and municipal subscribers with lower power costs.
4. The proposed solar array is located adjacent to railroad tracks, with industrial zoning and uses located diagonally across these tracks from this site. It is also near another solar array that recently received a recommendation of approval. The site will have access via Thorogoods Road. The closest solar array to Thorogoods Road will be more than 100 feet from the road. A landscape buffer will also be installed along Thorogoods Road. The land is also designated as being within the Coastal Area, according to Sussex County's Future Land Use Map.
5. This Application generally complies with Ordinance No. 2920 regarding solar arrays. Therefore, specific conditions regarding its operation and screening are not necessary.
6. The solar array is located in an area that primarily consists of agricultural and industrial land. With the conditions imposed by the operation of Ordinance No. 2920 including separation distances and buffering, the proposed use will not have any adverse impact on the surrounding property.
7. The proposed solar generation facility will not result in any noticeable increase in traffic on area roadways. There are no regular employees at the site, only periodic visits for inspections, maintenance, or repair of the solar panels. DelDOT has determined that the proposed Conditional Use would have a "Diminutive" impact on traffic.
8. Based on the record there is no significant noise, glare, dust, or odor that will be generated by the facility.
9. The proposed use provides a renewable energy source that is a benefit to the residents and businesses of Sussex County.
10. There was no opposition to this Application and one letter in support of the Application.
11. This recommendation is subject to the conditions set forth in Ordinance No. 2920 and the following additional conditions:
 - A. The use shall be for a ground-mounted solar array. No other types of electric generation shall be permitted at the site.
 - B. The Final Site Plan shall clearly show the limits of the Conditional Use area for this solar array, as well as the remaining acreage that is not part of the Conditional Use.
 - C. A landscape buffer shall be installed along Thorogoods Road, as shown on the Applicant's Site Plan presented during the public hearing. In addition, all required fencing shall include

- interwoven screening. The fence location and type of screening shall be shown on the Final Site Plan.
- D. Any lighting on the facility shall only consist of perimeter lighting needed for security purposes. Any lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - E. One unlit sign, not to exceed 32 square feet in size, shall be permitted. The sign shall identify the operator of the solar farm and shall provide contact information in case of an emergency.
 - F. The location of all transformers, similar equipment, or structures, shall be shown on the Final Site Plan.
 - G. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated by Best Management Practices.
 - H. The Final Site Plan shall include a Decommissioning Plan that includes financial security to ensure that funds are available for decommissioning and removal of the solar farm in its entirety throughout the life of the Conditional Use.
 - I. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Collins and carried unanimously to recommend approval of C/U 2405 Elk Development, LLC for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Ms. Wingate – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley – yea

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
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302-854-5079 F
JAMIE WHITEHOUSE, AICP, MRTPI
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: November 9th, 2023

Application: CU 2405 Elk Development, LLC

Applicant: Elk Development, LLC (30423B Thorogoods Road)
c/o Robert McNeill
6865 Deerpath Road, Suite 330
Elkridge, MD 21075

Owner: SB Cordrey Farms, LLC
30366 Cordrey Road
Millsboro, DE 19966

Site Location: Lying on the southeast side of Thorogoods Road (S.C.R. 333)
approximately (0.5) miles southwest of Iron Branch Road (S.C.R. 331).

Current Zoning: General Residential (GR) Zoning District

Proposed Use: Solar array consisting of a photovoltaic electric generation facility.

Comprehensive Land
Use Plan Reference: Coastal Area

Councilmanic
District: Mr. Hudson

School District: Indian River School District

Fire District: Dagsboro Fire Department

Sewer: N/A

Water: N/A

Site Area: 22.97 acres +/-

Tax Map ID: 233-5.00-187.01



JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR
(302) 855-7878 T
(302) 854-5079 F
jamie.whitehouse@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Mr. Michael Lowrey, Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: October 31st, 2023
RE: Staff Analysis for C/U 2405 Elk Development, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of Application C/U 2405 Elk Development, LLC to be reviewed during the November 30th, 2023 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.

Please note that the following staff analysis is for informational purposes only and does not prejudice any decision that the Sussex County Planning & Zoning Commission or Sussex County Council may wish to make as part of any Application submitted to the Department.

Tax Parcel ID: 233-5.00-187.01

Proposal: The request is for a Conditional Use for Tax Parcel 233-5.00-187.01 to allow for solar array on a parcel lying on the southeast side of Thorogoods Road (S.C.R. 333) approximately (0.5) miles southwest of Iron Branch Road (S.C.R. 331). The parcel is comprised of 22.97 acres +/-.

Zoning: The Parcel is zoned General Residential (GR) District. The adjacent parcels to the north and east of the subject property are General Residential (GR) District, parcels to the west are zoned Heavy Industrial (HI-1) District and Agricultural Residential (AR-1') with the Parcels to the south within the General Residential (GR) District.

Future Land Use Map Designation w/in Comprehensive Plan: Coastal Area

Applicability to Comprehensive Plan: The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the subject property is designated as a Growth Area and has a land use designation of "Coastal Area." The properties to the north and west of the subject Parcel are categorized as "Developing Area", and the parcels to the south and east are categorized "Coastal Area."

As outlined in the 2018 Sussex County Comprehensive Plan, Coastal Areas contain "ecologically important and sensitive characteristics as well as other coastal lands", noting that "region is among the most desirable locations in Sussex County for new housing" and "light commercial, office and institutional uses can be appropriate" (Sussex County Comprehensive Plan, 4-15).



Further Site Considerations:

- **Density: N/A**
- **Open Space Provisions: N/A**
- **Agricultural Areas:** The site is within the vicinity of active agricultural lands.
- **Interconnectivity: N/A**
- **Transportation Improvement District (TID):** The parcels are not within the Henlopen Transportation Improvement District.
- **Forested Areas:** A limited amount of existing trees exist parallel to the agricultural drainage on the site.
- **Wetlands Buffers/Waterways:** The site appears to contain a drainage ditch or similar bisecting the Parcel from north to south on the western portion of the site.
- **Other Site Considerations (ie: Flood Zones, Tax Ditches, Groundwater Recharge Potential, etc.):** The property is located within Flood Zones X with areas of “Fair” and “Good” Groundwater Recharge Potential on the site.

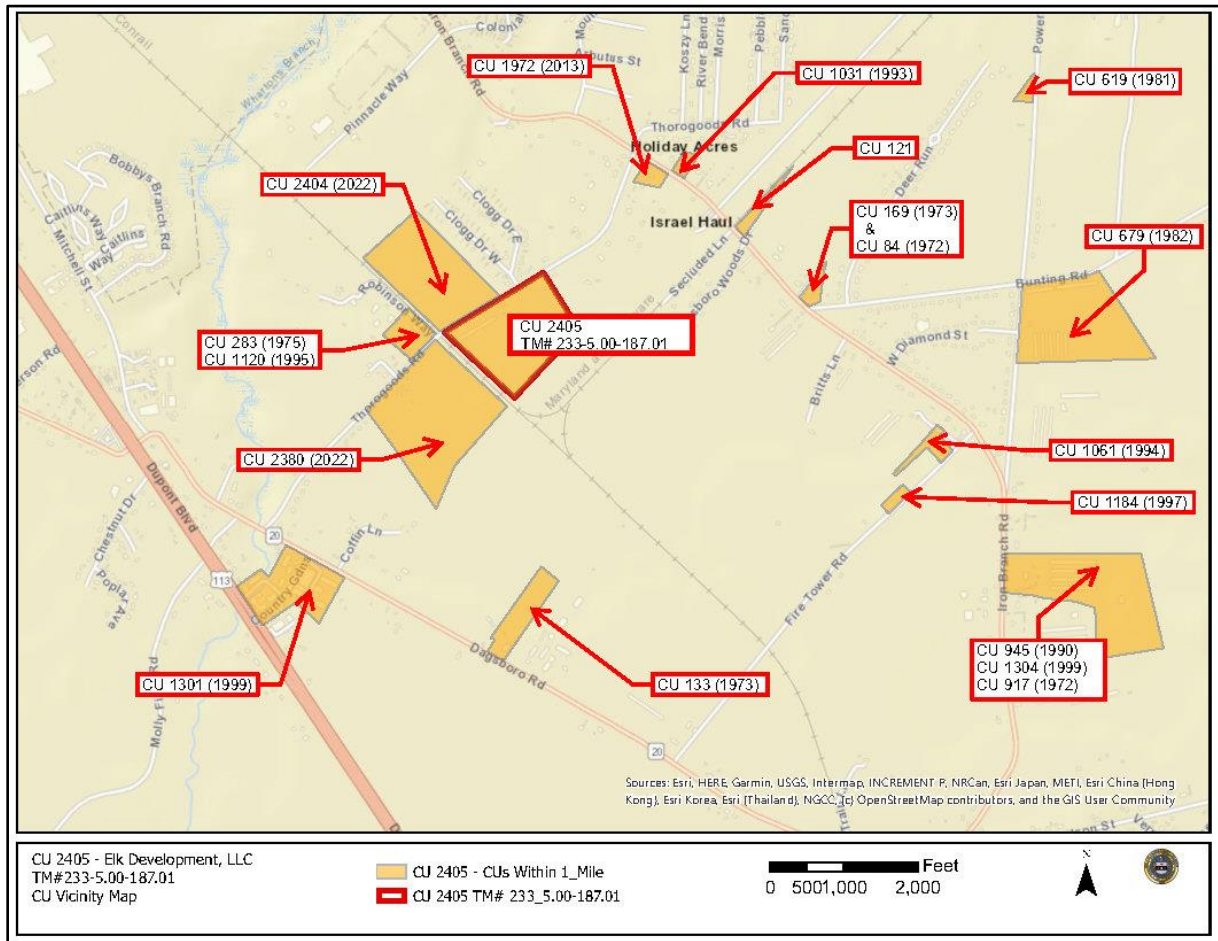
Based on the analysis of the land use, surrounding zoning and uses, a Conditional Use Application to allow for a solar array, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

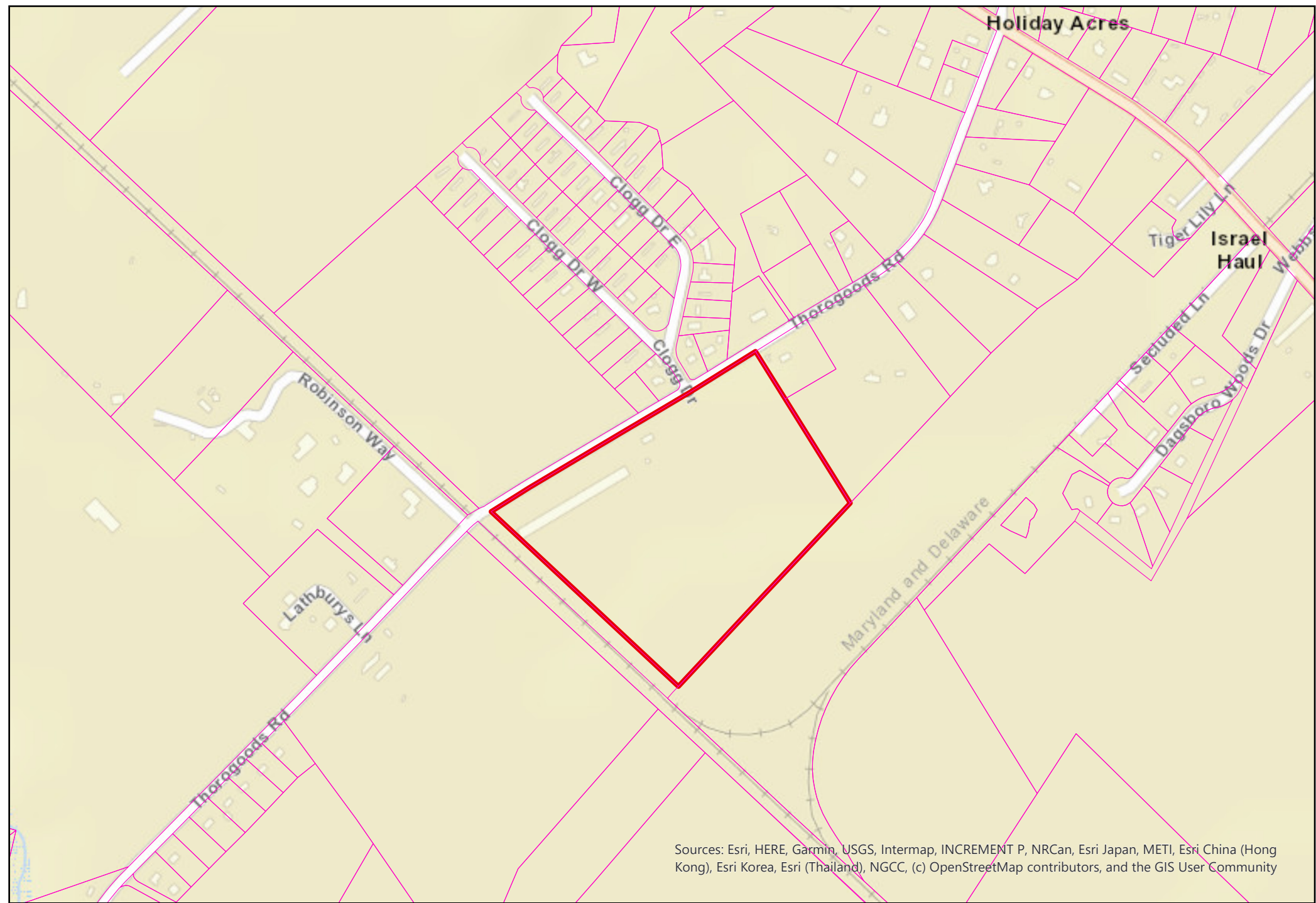
Existing Conditional Uses within the Vicinity of the Subject Site: A Data Table and Supplemental Map have been supplied which provide further background regarding the approval status of Applications in the area, including the location of all other Conditional Use Applications that are less than 1 mile distance from the subject site.

Conditional Use Applications						
(Within a 1-mile radius of the subject site)						
Application Number	Application Name	Zoning District	Proposed Use	CC Decision	CC Decision Date	Ordinance Number
84	Ellison & Sara Bunting	AR-1	Automobile Repair Shop	Approved	10/1/1972	N/A

121	Richard & Connie Webb	AR-1	Small Engine Repair	Approved	4/24/1973	N/A
133	Donald L. Atkins	AR-1	Custom Cutting & Packaging Of Meats & Retail	Approved	5/22/1973	N/A
169	Alvin & Henrietta Daisey	AR-1	Ceramic Shop	Approved	10/23/1973	N/A
283	Frank Thoroughgood	AR-1	Auto Salvage, Auto Sales & Sale Of Auto Parts	Approved	7/29/1975	N/A
619	Ralph C. Short	AR-1	Auto Repair Shop	Approved	3/31/1981	N/A
679	Coastal Supply Co	AR-1	Light Manufacturing	Approved	5/11/1982	N/A
917	Curtis Steen	AR-1	Borrow Pit	Withdrawn	N/A	N/A
1031	Henry Fisher	AR-1	Repair Vacuum Cleaners	Denied	3/30/1993	N/A
1061	Gregory P. Mitchell	AR-1	Parts Storage & Truck Facility	Approved	2/1/1994	950
1120	Sara V. Thoroughgood	AR-1	Truck Repair Shop	Approved	6/27/1995	1039
1184	State of Delaware	AR-1	480 Ft Radio Tower	Approved	7/15/1997	1155
1301	Independent Associates, Inc.	C-1	Crematorium	Approved	8/31/1999	1339


1304	Harry G. Miller	GR	Auto Repair Shop	Approved	12/3/2013	2330
1972	Indian River School District	AR-1	Elementary School Expansion	Approved	1/7/2014	2332
2380	Dagsboro Thorogoods Solar 1, LLC	AR-1	Solar Farm	N/A	N/A	N/A
2404	Elk Development, LLC	GR	Solar Farm	N/A	N/A	N/A
2405	Elk Development, LLC	GR	Solar Farm	N/A	N/A	N/A

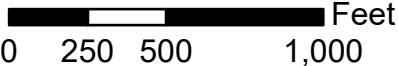


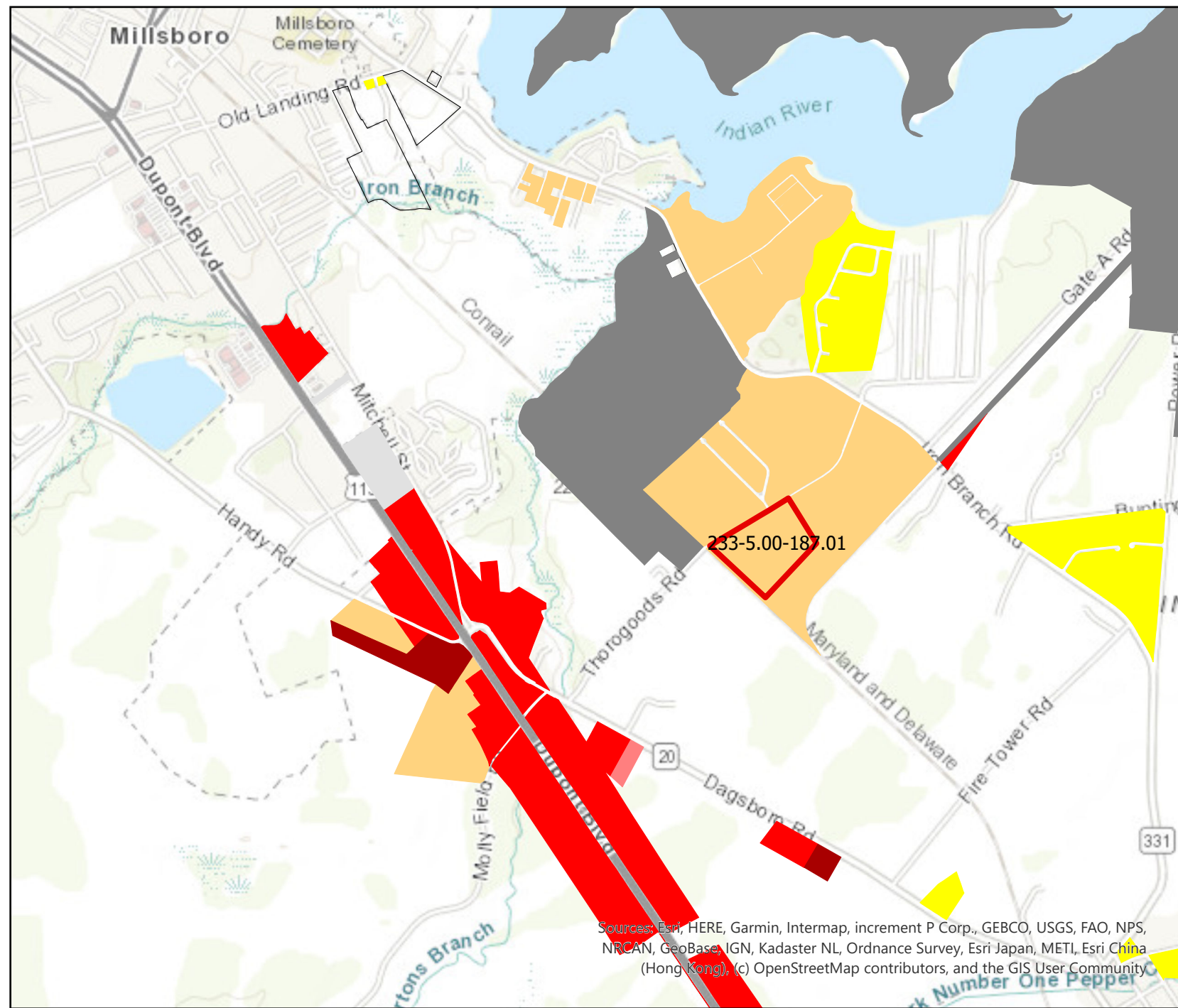


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CU 2405 - Elk Development, LLC
TM#233-5.00-187.01
Streets Map

 CU 2405 TM# 233_5.00-187.01



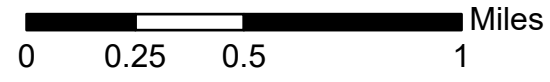


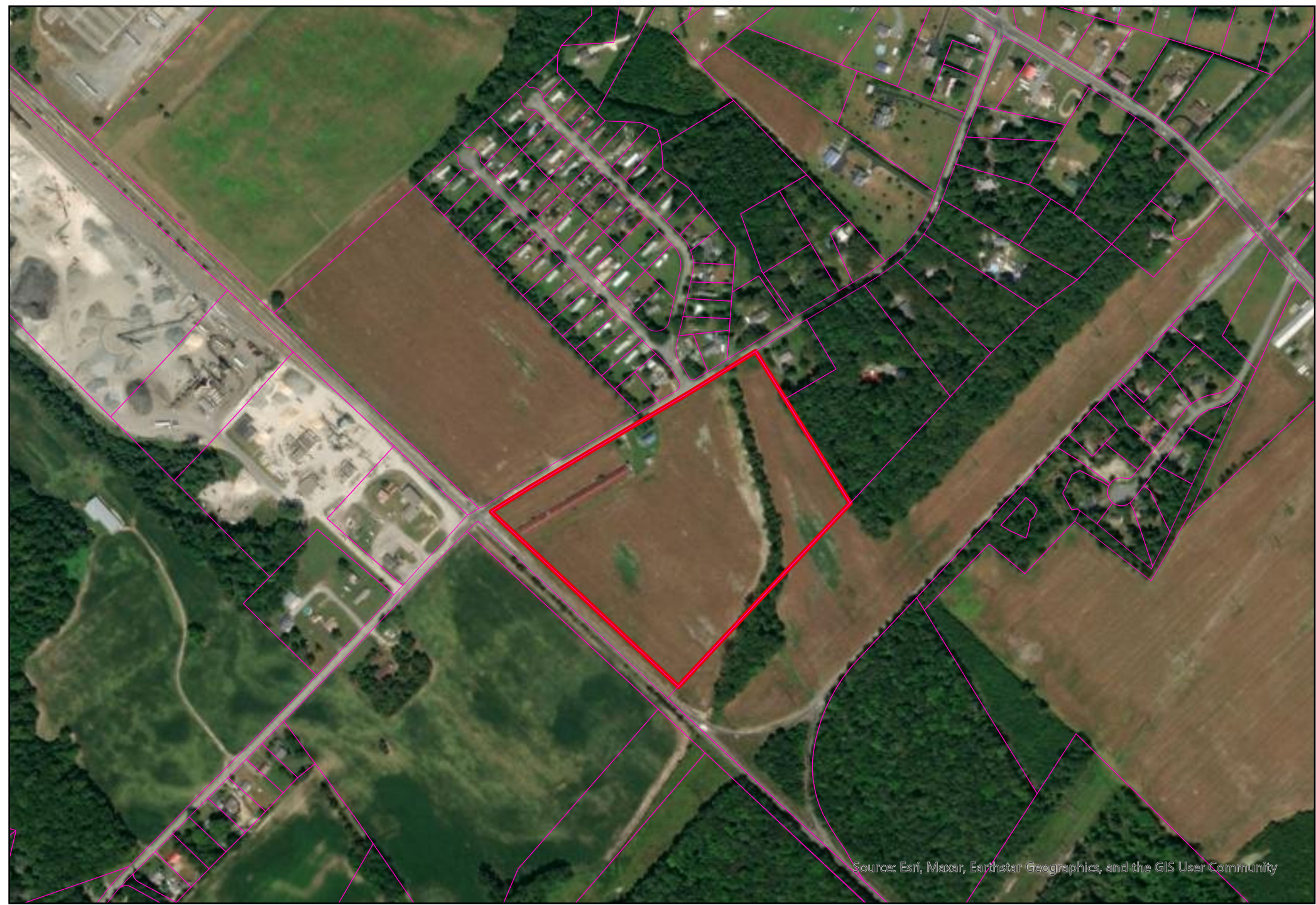
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 - High Density Residential - HR-1
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 - Vacation, Retire, Resident - VRP
 - Neighborhood Business - B-1
 - Neighborhood Business - B-2
 - Business Research - B-3
 - General Commercial - C-1
 - General Commercial - C-2
 - General Commercial - C-3
 - General Commercial - C-4
 - General Commercial - C-5
 - Commercial Residential - CR-1
 - Institutional - I-1
 - Marine - M
 - Limited Industrial - LI-1
 - Light Industrial - LI-2
 - Heavy Industrial - HI-1
 - CU 2405 TM# 233_5.00-187.01

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

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 TM#233-5.00-187.01
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CU 2405 TM# 233_5.00-187.01

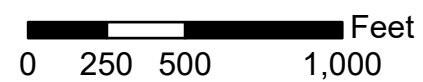




Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community

CU 2405 - Elk Development, LLC
TM#233-5.00-187.01
Aerial Map

 CU 2405 TM# 233_5.00-187.01



Introduced: 4/25/2023

Council District 4: Mr. Hudson
Tax I.D. No.: 233-5.00-187.01
911 Addresses: 30423 Thorogoods Road, Dagsboro

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 22.97 ACRES, MORE OR LESS

WHEREAS, on the 31st day of October 2022, a conditional use application, denominated Conditional Use No. 2405 was filed on behalf of Elk Development, LLC; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2405 be _____; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article VI, Subsection 115-39, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2405 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land, lying and being situate in Dagsboro Hundred, Sussex County, Delaware, and lying on the southeast side of Thorogoods Road (S.C.R. 333), approximately 0.5-mile southwest of Iron Branch Road (S.C.R. 331), and being more particularly described in the attached legal description prepared by Pivot Energy, Inc., said parcel containing 22.97 acres, more or less.

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

To Be Introduced: 2/20/24

Council District 5: Mr. Rieley

Tax I.D. No.: 235-27.00-11.00, 12.00, 13.00, 14.00 & 334-4.00-34.00

911 Address: N/A, 28645 Log Cabin Hill Road, Lewes, & 16915 Hudson Road, Milton

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A MR-RPC MEDIUM RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 637 ACRES, MORE OR LESS

WHEREAS, on the 14th day of April 2023, a zoning application, denominated Change of Zone No. 2010 was filed on behalf of CMF Cool Spring, LLC; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 2010 be _____; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcels of land, lying and being situate in Broadkill Hundred, Sussex County, Delaware, and lying on the north and south side of Log Cabin Hill Road (S.C.R. 247), the east and west side of Cool Spring Road (S.C.R. 290), the east side of Hudson Road (S.C.R. 258), and the north side of Lewes Georgetown Highway (Rt. 9) at the intersection of Cool Spring Road (S.C.R. 290) and Lewes Georgetown Highway (Rt. 9) and being more particularly described in the attached legal description prepared by _____, said parcels containing 637 acres, more or less.

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

To Be Introduced: 2/20/24

Council District 5: Mr. Rieley
Tax I.D. No.: 235-27.00-11.00
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR AN EDUCATIONAL FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 194.17 ACRES, MORE OR LESS

WHEREAS, on the 14th day of April 2023, a Conditional Use Application, denominated Conditional Use No. 2441 was filed on behalf of CMF Cool Spring, LLC; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2441 be _____; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2441 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Broadkill Hundred, Sussex County, Delaware, and lying on the south side of Log Cabin Hill Road (S.C.R. 247), the west side of Cool Spring Road (S.C.R. 290) and the north side of Lewes Georgetown Highway (Rt. 9) at the intersection of Cool Spring Road (S.C.R. 290), the east side of Hudson Road (S.C.R. 258), and Lewes Georgetown Highway (Rt. 9) and being more particularly described in the attached legal description prepared by _____, said parcel containing 194.17 acres, more or less.

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

To Be Introduced: 2/20/24

Council District 5: Mr. Rieley
Tax I.D. No.: 235-27.00-11.00
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR-RPC MEDIUM DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR AN ASSISTED LIVING FACILITY AND MEDICAL OFFICES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 194.17 ACRES, MORE OR LESS

WHEREAS, on the 14th day of April 2023, a Conditional Use Application, denominated Conditional Use No. 2442 was filed on behalf of CMF Cool Spring, LLC; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Conditional Use No. 2442 be _____; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2442 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Broadkill Hundred, Sussex County, Delaware, and lying on the south side of Log Cabin Hill Road (S.C.R. 247), the west side of Cool Spring Road (S.C.R. 290), the east side of Hudson Road (S.C.R. 258), and the north side of Lewes Georgetown Highway (Rt. 9) at the intersection of Cool Spring Road (S.C.R. 290) and Lewes Georgetown Highway (Rt. 9) and being more particularly described in the attached legal description prepared by _____, said parcel containing 194.17 acres, more or less.

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

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 334-4.00-34.00, 235-27.00-11.00, 12.00, 13.00, & 14.00.

WHEREAS, on April 13th, 2023, the Sussex County Planning and Zoning Office received an application for a requested Comprehensive Plan Amendment to amend the Future Land Use Map element of the Comprehensive Plan to change the Area designation of Sussex County Parcel No. 334-4.00-34.00, 235-27.00-11.00, 12.00, 13.00, & 14.00 from the Low Density Area to the Coastal Area; and

WHEREAS, the Parcel is comprised of 796.26 acres of land, lying and being within Broadkill Hundred, and are located on the north and south side of Log Cabin Hill Road (S.C.R. 247), the east and west side of Cool Spring Road (S.C.R. 290), the east side of Hudson Road (S.C.R. 258), and the north side of Lewes Georgetown Highway (Rt. 9) at the intersection of Cool Spring Road (S.C.R. 290) and Lewes Georgetown Highway (Rt. 9).

WHEREAS, The Property is designated as being within the Low Density Area as set forth in the Future Land Use Map identified as Figure 4.5-1 in the 2018 Comprehensive Plan for Sussex County.

WHEREAS, Sussex County Council desires to adopt this Ordinance amending the Future Land Use Map of the Plan with minor amendments; and

WHEREAS, in accordance with the required process for public hearings on ordinances such as this one, both Sussex County Council and the Sussex County Planning & Zoning Commission will hold public hearings on this Ordinance, but limited in scope to this specific proposed amendment to the Future Land Use Map contained in the Plan.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan is hereby amended to change the area designation of Sussex County Parcel No. 334-4.00-34.00, 235-27.00-11.00, 12.00, 13.00, & 14.00 from the Low Density Area to the Coastal Area. The entirety of Sussex County Parcel No. 334-4.00-34.00, 235-27.00-11.00, 12.00, 13.00, & 14.00 so changed is identified in Exhibit A, attached hereto, and incorporated herein.

Section 2. This Ordinance shall also take effect following its adoption by majority vote of all members of the County Council of Sussex County, Delaware, and upon certification by the State of Delaware.



Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: February 16, 2024

RE: County Council Report for C/Z 1998 filed on behalf of Louis, Janet & William Melton

The Planning and Zoning Department received an application (C/Z 1998 filed on behalf of Louis, Janet & William Melton) for a change of zone from a GR General Residential District to a B-2 Neighborhood Community Zoning District for Tax Parcels 134-12.00-73.00, 73.01, 73.02 & 73.03. The property is located at 36294, 36306 and 36328 Old Mill Road, Ocean View. The parcel size is 2.11 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on January 3, 2024. At the meeting of January 24, 2024, the Planning & Zoning Commission recommended approval of the application for the 7 reasons as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of January 3, 2024, and January 24, 2024.

Minutes of the January 3, 2024, Planning & Zoning Commission Meeting

C/Z 1998 Louis, Janet & William Melton

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A B-2 NEIGHBORHOOD COMMUNITY DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.11 ACRES, MORE OR LESS. The properties are lying on the southwest side of Old Mill Road (S.C.R. 349) and the northwest corner of Railway Road (S.C.R. 350), at the intersection of Railway Road (S.C.R. 350) and Old Mill Road (S.C.R. 349). 911 Address: 36294, 36306, & 36328 Old Mill Road, Ocean View & N/A. Tax Map Parcels: 134-12.00-73.00, 73.01, 73.02, & 73.03.



Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Site Plan, a copy of the Applicant's exhibits, a copy of DelDOT's Service Level Evaluation Response, and a copy of the Staff Analysis. Mr. Whitehouse stated that there are four comments received for the Application, with one being a duplicate.

The Commission found that Louis Melton, the Applicant, spoke on behalf of his application. Mr. Melton stated that he proposed a change in zoning from a GR (General Residential) to a B-2 (Neighborhood Community) district; Mr. Melton paraphrased the purpose of the district as to provide primarily office retail, shopping, and personal services to serve the needs of a relatively small area; Mr. Melton stated that he had performed research and found that the population of Sussex County has grown by about 300 people a month; that he stated the baby boomer curve is going to continue with the demographics to the area; that there are approximately 2,000 homes within a mile range of the parcel listed in the Application; that those homes are being occupied by a median age of 63 and the aging demographics comes with the demand for more personal services in which they are asking for a rezoning of this area to provide infrastructure support off of Rt. 26; that with the increased traffic on Rt. 26 the accessibility of such services as beauty salons, accounting services, medical, etc. are difficult to access during the summer and is reason to allow for the infrastructure to be developed to help the local residents; that across the street from the property is the Sundance Club, which only has one main entrance, which along with the development of Evans Farm will need to widen Old Mill Rd to provide ingress and egress, by doing so we will benefit from those; that currently, there are two other structures on the property; that on the left is a 3,200 sq. ft. building which has a garage and a 1,200 sq. ft. apartment; that the middle lot is currently empty and on the right is a home; that the middle lot is the location they would like the infrastructure to go, but currently they did not have anything specific; that they did not believe this is suitable for any nighttime activities like a restaurant or bar due to the traffic pattern; that some opposition was submitted stating that there were no businesses in the area, but he had found approximately six or seven businesses within a close proximity.

The Commission found that there was no one who wished to speak in support of Application C/Z 1998 Louis, Janet & William Melton and one person who wished to speak in opposition to the Application.

Mr. Dave Bartlett, spoke on behalf of residents in Banks Acres, in opposition to the Application regarding the surrounding Commercial zoning within a one mile circumference of the proposed property; that the current area has an influx of empty commercial properties that the above stated businesses could go into rather than changing the current zone; that the area in and around the requested area for the most part is residential and farms and zoned as AR-1; that placing a commercial building in the center of that zone would be completely out of character; that by allowing the zone to be changed to B-2 there would be nothing stopping the development of any nighttime activity even if the Applicant stated that was not what they are proposing; that ultimately, the proposal will create a traffic nightmare, it could place unwanted or unneeded businesses in an area that is currently all residential in nature and would have the possibility of future unwanted businesses in the area, thereby decreasing property values for existing property owners, and he requested that the Planning Commission deny the request for a change in zone.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/Z 1998 Louis, Janet & William Melton. Motion by Mr. Mears to defer for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4-0.

Minutes of the January 24, 2024, Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since January 3, 2024.

Mr. Mears moved that the Commission recommend approval of C/Z 1998 for Louis, Janet & William Melton for a change in zone from GR “General Residential” to B-2 “Business Community” based upon the record made during the public hearing and for the following reasons:

1. B-2 Business Community Zoning is designed to allow office, retail shopping, and personal service uses that serve a relatively small area, including low-density and medium-density neighborhoods.
2. The site is in the Coastal Area according to the current Sussex County Comprehensive Plan. B-2 zoning and the uses permitted in that District are appropriate in the Coastal Area according to the Plan.
3. This location is centrally located in an area that contains a lot of existing and new low- and medium-density residential development. It will provide a convenient location for B-2 uses and will reduce the need for current and future nearby residents to have to travel to Route 26 for shopping and services that can be located on this site. It is an appropriate location for B-2 zoning.
4. The rezoning will not adversely affect area roadways or traffic.
5. The rezoning will also not adversely affect nearby properties or property values.
6. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
7. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.

Motion by Mr. Mears, seconded by Mr. Collins and carried to recommend approval of C/Z 1998 Louis, Janet & William Melton, for the reasons stated in the motion. Motion carried 4-1.

Ms. Wingate stated nay, for the concerns she had in relation to the small road condition, and stated that she would rather see small businesses on Roxana Rd.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – nay, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley - yea

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
BRIAN BUTLER
GREGORY SCOTT COLLINS
J. BRUCE MEARS
HOLLY WINGATE



Sussex County

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JAMIE WHITEHOUSE
DIRECTOR

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: January 3rd, 2024

Application: C/Z 1998 Louis Melton, Janet Melton, & William M. Melton

Applicant: Louis Melton, Janet Melton, & William M. Melton
22476 Grebe Lane
Ocean View, DE 19970

Owner: Louis Melton, Janet Melton, & William M. Melton
22476 Grebe Lane
Ocean View, DE 19970

Site Location: The properties are lying on the southwest corner of the intersection of Railway Road (S.C.R. 350) and Old Mill Drive (S.C.R. 349) in Ocean View, Delaware.

Current Zoning: General Residential (GR) District

Proposed Zoning: Business Community (B-2) District

Future Land Use
Map Designation: Coastal Area

Councilmanic
District: Mr. Hudson

School District: Indian River School District

Fire District: Millville Fire Company/District

Sewer: Sussex County

Water: Tidewater

Site Area: 2.11 acres +/-

Tax Map IDs: 134-12.00-73.00, 73.01, 73.02, & 73.03



JAMIE WHITEHOUSE, AICP MRTPI
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Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Christin Scott, Planner II
CC: Vince Robertson, Assistant County Attorney, and applicant
Date: December 19, 2023
RE: Staff Analysis for CZ 1998 Louis, Janet, & William M. Melton

The purpose of this memo is to provide background and analysis for the Planning & Zoning Commission to consider as a part of application CZ 1998 (Lewis, Janet, & William M. Melton) to be reviewed at the January 3rd, 2024, Planning & Zoning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for Tax Parcels 134-12.00-73.00, 73.01, 73.02, and 73.03 to allow for a change of zone from a General Residential (GR) zoning district to a Business Community (B-2) zoning district. The property is lying on the southwest side of Old Mill Road (S.C.R. 349) and the northwest corner of Railway Road (S.C.R. 350) at the intersection of Railway Road (S.C.R. 350) and Old Mill Road (S.C.R. 349) containing 2.11-acres +/-.

Please note that the following staff analysis is for informational purposes only and does not prejudice any decision that the Sussex County Planning & Zoning Commission or Sussex County Council may wish to make as part of any Application submitted to the Department.

Comprehensive Plan Analysis: The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcel has a designation of “Coastal Area”. All adjoining parcels to the north, south, east, and west have a Future Land Use Map designation of “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 (2018 Sussex County Comprehensive Plan, 4-16).

Zoning Information: The subject property is zoned General Residential (GR). The properties to the south as well as the properties to the east and west are zoned General Residential. The property to the north, across Old Mill Road (S.C.R. 349) is zoned General Residential (GR) and the properties to the west and northwest of the subject site are zoned Medium Density Residential (MR) and General Commercial (C-1).



The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories,” the proposed zoning of Business Community (B-2) is listed as an applicable zoning district in the “Coastal Area”.

Existing Change of Zones within the Vicinity of the Subject Property: Since 2011, there has been three (0) Change of Zone applications within a 1-mile radius of the application site.

Site Considerations

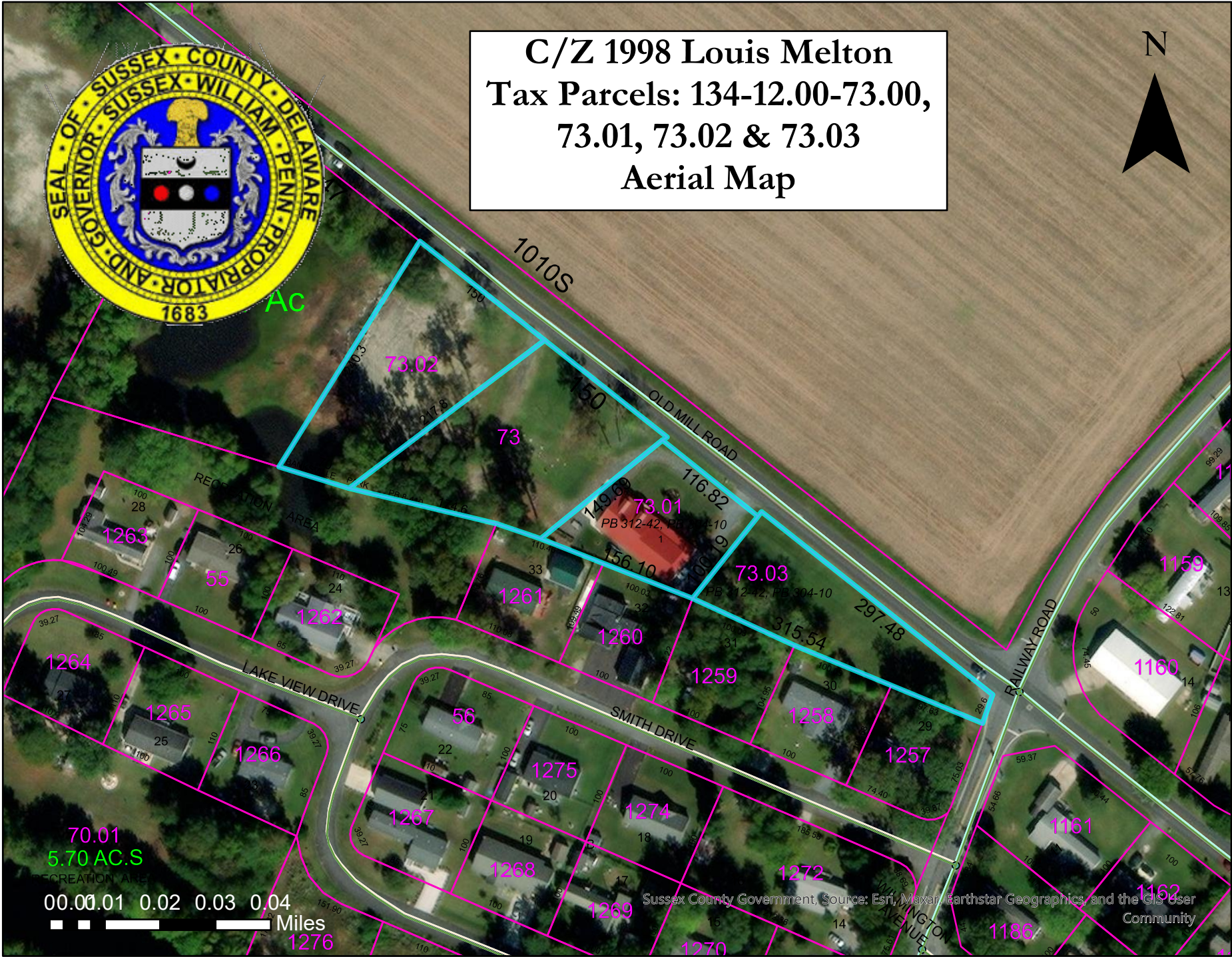
- **Density:** N/A
- **Open Space Provisions:** N/A
- **Agricultural Areas:** This parcel is in the vicinity of lands used for agricultural purposes.
- **Interconnectivity:** N/A
- **Transportation Improvement District (TID):** N/A
- **Forested Areas:** N/A
- **Wetlands Buffers/Waterways:** N/A
- **Other Site Considerations (ie: Flood Zones, Tax Ditches, Groundwater Recharge Potential, etc.):** The parcel is located in flood zone “X” the 0.2% Annual Flood Hazard Zone. The parcel is located within areas of fair groundwater recharge.

Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from an General Residential (GR) Zoning District to a Business Community (C-3) Zoning District could be considered as being consistent with the land use, based on size and scale, with area zoning and surrounding uses.



Ac

**C/Z 1998 Louis Melton
Tax Parcels: 134-12.00-73.00,
73.01, 73.02 & 73.03
Aerial Map**



70.01
5.70 AC.S

00.00 0.01 0.02 0.03 0.04
Miles

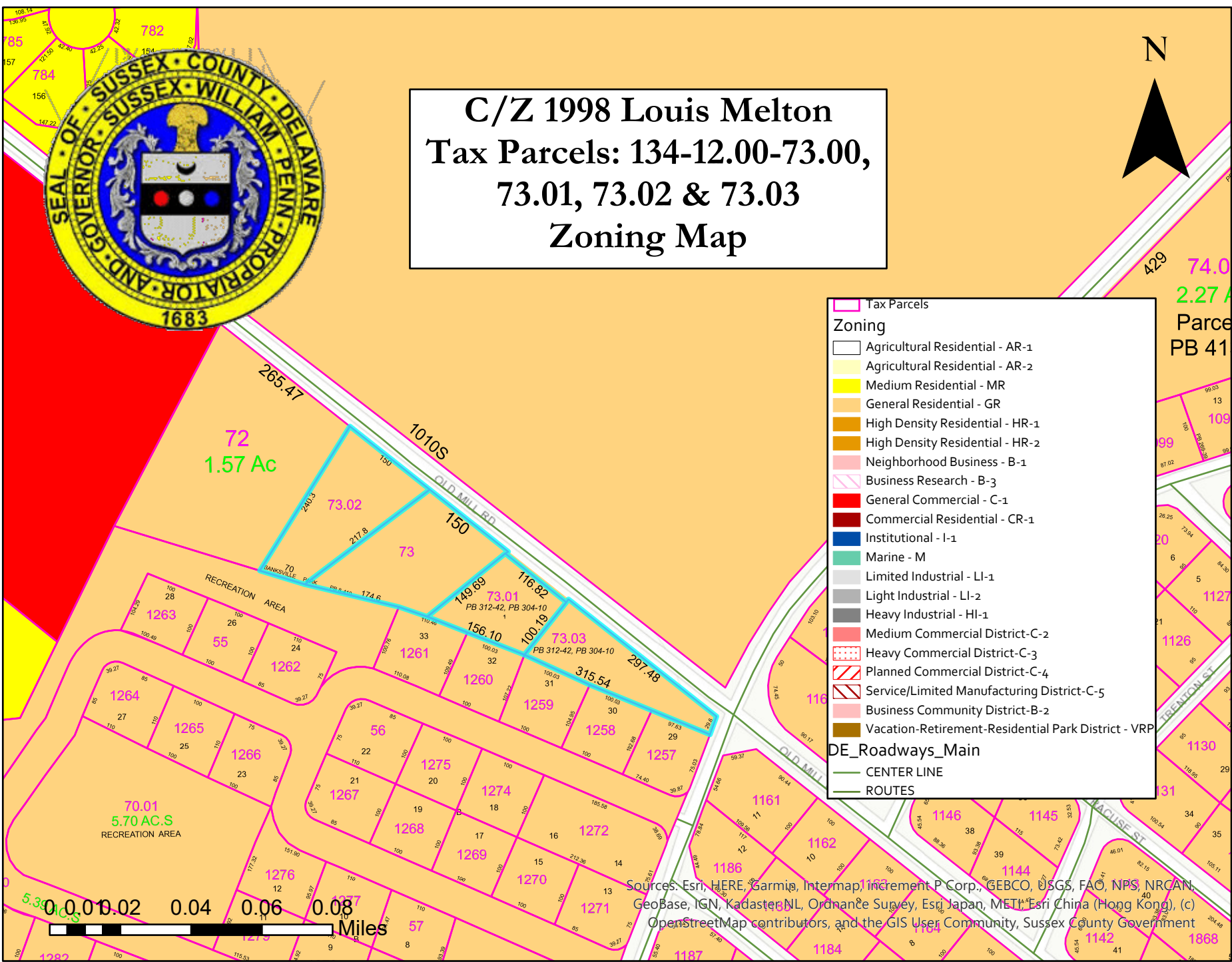
Sussex County Government, Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community



C/Z 1998 Louis Melton Tax Parcels: 134-12.00-73.00, 73.01, 73.02 & 73.03 Zoning Map



- Tax Parcels
- Zoning**
- Agricultural Residential - AR-1
- Agricultural Residential - AR-2
- Medium Residential - MR
- General Residential - GR
- High Density Residential - HR-1
- High Density Residential - HR-2
- Neighborhood Business - B-1
- Business Research - B-3
- General Commercial - C-1
- Commercial Residential - CR-1
- Institutional - I-1
- Marine - M
- Limited Industrial - LI-1
- Light Industrial - LI-2
- Heavy Industrial - HI-1
- Medium Commercial District-C-2
- Heavy Commercial District-C-3
- Planned Commercial District-C-4
- Service/Limited Manufacturing District-C-5
- Business Community District-B-2
- Vacation-Retirement-Residential Park District - VRP
- DE_Roadways_Main**
- CENTER LINE
- ROUTES



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

Introduced: 9/19/23

Council District 4: Mr. Hudson

Tax I.D. No.: 134-12.00-73.00, 73.01, 73.02, & 73.03

911 Address: 36294, 36306, & 36328 Old Mill Road, Ocean View & N/A

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A B-2 BUSINESS COMMUNITY DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 2.11 ACRES, MORE OR LESS

WHEREAS, on the 1st day of November 2022, a zoning application, denominated Change of Zone No. 1998 was filed on behalf of Louis, Janet & William Melton; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1998 be _____; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [GR General Residential] and adding in lieu thereof the designation and B-2 Business Community District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcels of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the southwest side of Old Mill Road (S.C.R. 349) and the northwest corner Railway Road (S.C.R. 350) at the intersection of Railway Road (S.C.R. 350) and Old Mill Road (S.C.R. 349) and being more particularly described in the attached legal descriptions prepared by Scott and Schuman, P.A., D. Stephen Parsons, P.A., & Parsons & Robinson, P.A. said parcels containing 2.11 acres, more or less.

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

JAMIE WHITEHOUSE, AICP
DIRECTOR OF PLANNING & ZONING
(302) 855-7878 T
pandz@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: February 16, 2024

RE: County Council Report for C/Z 1992 filed on behalf of Reed Properties, LLC

The Planning and Zoning Department received an application (C/Z 1992 filed on behalf of Reed Properties, LLC) for a change of zone from an AR-1 Agricultural Residential District to a C-2 Medium Commercial Zoning District for Tax Parcel 235-13.00-29.01. The property is located at 14742 Gravel Hill Road, Milton. The parcel size is 2.99 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on January 3, 2024. At the meeting of January 24, 2024, the Planning & Zoning Commission recommended approval of the application for the 11 reasons as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of January 3, 2024, and January 24, 2024.

Minutes of the January 3, 2024, Planning & Zoning Commission Meeting

C/Z 1992 Reed Properties, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.99 ACRES, MORE OR LESS. The property is lying on the west side of Gravel Hill Road (Rt. 30), approximately 300 feet south of Milton Ellendale Highway (Rt.16), and the south side of Milton Ellendale Highway (Rt. 16), approximately 300 ft. west of Gravel Hill Road (Rt. 30). 911 Address: 14742 Gravel Hill Road, Milton. Tax Map Parcel: 235-13.00-29.01.



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

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the survey, the Staff Analysis, a copy of the DelDOT Service Level Evaluation Response, and a copy of a letter from the Sussex County Engineering Department Utility Planning Division. Mr. Whitehouse stated zero comments were submitted for the Application.

The Commission found that Mr. David Hutt, Esq. with Morris James, LLP, spoke on behalf of the Applicant, Reed Properties LLC, and the Owner, Whitewater Enterprise, LLC; that also present was Mr. Brandon White, who is a part of the ownership group of the two LLCs. Mr. Hutt stated that the Application was for three acres, located near the intersection of Rt. 16, also known as the Milton Ellendale Hwy; and Rt. 30, also known as Gravel Hill Rd, which is south of Rt. 16 and becomes Isaacs Rd; this application seeks to rezone the property from AR-1 (Agricultural Residential) District to C-2 (Medium Commercial) District; that the property wraps around the Iron Works Facility at that intersection, located within commercial zoning, but has an industrial type feel given the nature of their work; that diagonally across Rt. 16 is Kemp's Liquors and as you travel East on Rt. 16 towards the Town Of Milton you come to a site that is under construction presently, which is the Jerry Ann McLamb Medical Pavilion that's being constructed by Beebe Healthcare; that the Town of Milton's corporate limits are about one mile from this site, so it's just West of the Town of Milton; that to the South of this property and to the West are other parts that are owned by the Reed family, in which the name comes from; that to the West of the properties that are family owned there is a substantial agricultural and poultry operation located off of Rt. 16; that when moving across to the Northwest quadrant, the area is in agricultural preservation, that is part of the spray areas that Artesian refers to as SURF, or Sussex Regional Reclamation Facility, which is a series of agricultural fields and woodlands that are used for their wastewater treatment process; that moving to the other side of now Isaacs Rd., or Rt. 30, is Kemp's Liquors and Iron Works, which is on the South side, also has a location, office and other activities on the North side of that property; that one can see there are residential subdivisions if you move to the South a little bit, which is beyond the property limits, but the family owns properties that extend from Rt. 16 down to the railroad near the Pemberton community, situated along Gravel Hill Rd.; that there are no improvements on this property based on the tax map, other than two billboards located along the Eastern boundary of the property adjacent to the IronWorks site; that other than the billboards, the property is unimproved and as you can see used as part of agricultural activities at this time; that there are a wide variety of uses ranging from industrial, commercial and poultry south of the railroad tracks; that people are familiar with Baker Petroleum site and Wyoming Mill Works, which are industrial type use; that as one moves toward Milton, there is the medical use that was mentioned and several other businesses; that as one approaches the municipal limits the zoning map corresponds with that; that as one would anticipate, the Iron Works site is zoned C-1 (General Commercial), as is their other site on the Northside of Rt. 16; that the Kemp's Liquor site is B-1 (Neighborhood Business); that there is a fairly substantial area of C-1 that is situated along Rt. 16 on both sides of the highway; that the orangish color that is south of that C-1 zone is the County's High Density Residential district; that the other lands that are south of the family owned lands are zoned AR-1, as is the subject property; that the grayish area south of the railroad tracks is HI-1 (Heavy Industrial), where Baker Petroleum and Wyoming Mill Works are located; that the Future Land Use Map for this property is unshaded which means that is within the low density area; that the low density area is one of the County's rural areas within the Comprehensive Plan; that immediately adjacent to the property of the C-1 properties is the beige color, which are all in the developing area; that if one moves toward the Town of Milton you get to the town center, the darker color, which is anticipated to be either within municipal limits or within their annexation area; that to the south of the property the industrial uses have an industrial designation on the Future Land Use Map; that in describing this low density area, the

Comprehensive Plan for Sussex County states that business development should be largely confined to businesses addressing the needs of these uses; that the two uses that its referring to are in the preceding sentence, are agricultural activities and homes; that the purpose of this application is for a satellite location for my clients business, which is a well drilling business, Aquatech Water Specialties; that as the site is larger than what would be needed for just the satellite building or offices, the goal is to create some flex warehousing where contractors in the area could serve residences, businesses and homes as anticipated within the low density area; that according to Table 4.5-2, of the Comprehensive Plan, titled Zoning Districts Applicable to Future Land Use Categories, the C-2 (Medium Commercial) Zoning District is an applicable zoning district within the low density area on the Future Land Use Map; that because C-2 is one of the applicable zoning districts for this area pursuant to the Comprehensive Plan, it is important to look at what the Zoning Code states is the purpose of that C-2 (Medium Commercial) district; that the Zoning Code states, the district supports uses that include retail sales and performance of consumer services; that it permits a variety of retail, professional and services businesses; that the district shall be primarily located near arterial and collector streets; that it accommodates community commercial uses that do not have outside storage or sales; that this application is consistent with the purpose of the C-2 zoning district as I just read it from the Code; that its goal is to support service businesses and it is located near arterial and collector streets; that there is substantial frontage along Rt. 16 of the Milton Ellendale Highway and it has frontage on Rt. 30 or Gravel Hill Rd.; that DelDOT has designated both of these roads as major collectors and Gravel Hill Rd., which is also Rt. 30, is also alternate to Rt. 5 and has been designated by DelDOT as a truck route; that Gravel Hill Rd. is one of the more important NS truck routes that connects areas in Northern Sussex County, starting with Milford to areas in central and Southern Sussex County, going past Milton and then down to Georgetown, Millsboro and beyond; that Rt. 16 is one of the primary East West corridors in Sussex County; This property's location, just off of this intersection is a key component and reasons why C-2 is an appropriate zoning district for that; that the property meets the height, area and bulk requirements that are in the Zoning Code for a C-2 parcel; that this requires a minimum of 15,000 sq. ft. of area, a minimum width of 75 ft., and a minimum depth of 100 ft; that this property meets all of the requirements and it can meet all the other setbacks, height, area and bulk requirements that would be part of any construction, given the three acre size and the frontage along the roads; that there are no wetlands located on the property; that the property is not within a floodplain as it is shown within Flood Zone X on the FEMA map, which reflects the site to be located outside of the 500 year floodplain; that there are no Chapter 89 or source water protection issues which means the property is not located within an Excellent Recharge Area or a Wellhead Protection Area; that central water and central sewer are available to the property through Artesian and Tidewater which is viewable from the CPCN map; that one of the primary concerns is traffic; that a Service Level Evaluation Request was sent to DelDOT; that DelDOT responded that the application should be considered without a Traffic Impact Study (TIS); that the determination of traffic for that site will be made upon specific use, the ultimate specific use and the site plan for that use; that this property has been the subject of two other land use applications, one is referenced in the staff review report as a conditional use application in 2008; that the property was smaller then, only two acres, where the area at the southern end of the property was not within or not part of the property; that at that time Aquatech was going to move its entire operation from the Lewes area to this location; that for various reasons that did not occur, even though the County Council did grant approval of the conditional use; that however, the conditional use did lapse for non-use; that currently, the main location would stay in Lewes and the subject site would be a satellite location, allowing other contractors to use the flex space opportunity at this intersection; that it was thought that a change of zone application would be a more appropriate application, rather than

trying for another conditional use; that otherwise every time a new business wanted to join we would have to go back through the land use entitlement process; that in addition to the 2008 application, the property was also the subject of an assemblage of three properties that started at Rt. 16 and went down to the railroad, which was a change of zone application seeking to change the designation of all 67 acres, the entire family property, within that portion from AR-1 (Agricultural Residential) to the HI-1 (Heavy Industrial), being the same district as the Baker Petroleum immediately to the South; that the application was C/Z 1923; that the Planning Commission recommended approval of that change of zone to the Heavy Industrial district; that unfortunately, County Council did not see that the same way and we the application did not achieve three affirmative votes; that this application is much smaller land area and is a much less intense application than the prior Heavy Industrial zoning district application; that this change of zone is appropriate given the location of these three acres of the property is bordered by two major collectors, two of Sussex County's primary east-west and north-south roads being Rt. 16 and Rt. 30; that the remainder of the property boundaries are the Iron Works site, which is zoned C-1 (General Commercial), and used more industrial than a commercial type fashion; that the remaining boundaries are other lands owned by family members; that if the application is successful before County Council and the neighbor to the south and west did not like a use, they would need to take it up with a family members at that time; that based on the Comprehensive Plan, the Zoning Code of the location of this property, and the nature of the character of the surrounding area my client requests that the Planning Commission recommend to County Council that the change of zone application be approved. Mr. Hutt requested to submit the proposed Findings of Fact at the conclusion of his presentation.

The Commission found that there was no one who wished to speak in support of or in opposition to C/Z 1992 Reed Properties, LLC.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/Z 1992 Reed Properties, LLC. Motion by Mr. Butler to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4 – 0.

Minutes of the January 24, 2024, Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since January 3, 2024.

Mr. Robertson read Mr. Butler's motion into the record per Mr. Butler's request.

Mr. Butler moved that the Commission recommend approval of C/Z 1992 Reed Properties, LLC for a change in zone from AR-1 Agricultural-Residential zoning to C-2 "Medium Commercial" zoning based upon the record made during the public hearing and for the following reasons:

1. C-2 Medium Commercial Zoning is designed to support retail sales and the performance of consumer services. It is intended to be located near arterial and collector roads.
2. The Applicant's property is 2.99 acres that is currently zoned AR-1 along Route 16 at the intersection with Route 30. Both of these roads are identified as "Major Collector" roads by DelDOT, and Route 30 is designated as a Truck Route by DelDOT. This intersection is an appropriate location for C-2 Zoning.

3. The property is adjacent to property that is zoned C-1 and used in an industrial manner. It is approximately one mile from the Milton town limits. To the east on the opposite side of Route 30, the properties are zoned C-1, HR, and AR-1. Although the Applicant's remaining land to the south is zoned AR-1, beyond that is a large parcel of land with rail service that is zoned HI-1 and contains a bulk-fuel plant, gasoline and diesel sales, and propane storage tanks. Across Route 16 is a 500-acre parcel that serves as part of the wastewater disposal area for Artesian Wastewater Management's Sussex Regional Reclamation Facility. This is an appropriate location for C-2 zoning.
4. The site is served by both central water and central sewer.
5. C-2 Zoning at this location at this intersection will benefit nearby residents of Sussex County by providing a convenient location for the uses permitted in that Zone.
6. There is no evidence that this rezoning will have an adverse impact on neighboring properties or area roadways.
7. The site is in the "Low Density Area" according to the Sussex County Land Use Plan and Future Land Use Map. C-2 Zoning is appropriate in the Low-Density Area according to the Plan.
8. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
9. No parties appeared in opposition to the rezoning application.
10. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.
11. For all of these reasons, the C-2 Zoning District is appropriate for this location.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to recommend approval of C/Z 1992 Reed Properties, LLC for the reasons stated in the motion. Carried 5-0.

Vote by roll call: Mr. Butler – yea, Mr. Collins – yea, Mr. Mears – yea, Ms. Wingate – yea, Chairman Wheatley - yea

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
HOLLY J. WINGATE, VICE-CHAIRMAN
SCOTT COLLINS
J. BRUCE MEARS
BRIAN BUTLER



Sussex County

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JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: January 3rd, 2024

Application: C/Z 1992 Reed Properties, LLC

Applicant: Reed Properties, LLC
22482 Camp Arrowhead Road
Lewes, DE 19958

Owner: White Water Enterprise, LLC
22482 Camp Arrowhead Road
Lewes, DE 19958

Site Location: Located on the west side Gravel Hill Road (Route 30), approximately 300-ft south of Milton Ellendale Highway (Route 16) and the south side of Milton Ellendale Highway (Route 16) approximately 300-ft west of Gravel Hill Road (Route 30).

Current Zoning: Agricultural Residential (AR-1) Zoning District

Proposed Zoning: Medium Commercial (C-2) Zoning District

Comprehensive Land Use Plan Reference: Low Density

Councilmanic District: Ms. Green

School District: Cape Henlopen School District

Fire District: Milton Fire Co.

Sewer: Private (On-site septic)

Water: Private (On-site well)

Site Area: 2.99-acre(s) +/-

Tax Map ID.: 235-13.00-29.01



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Sussex County

DELAWARE
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Memorandum

To: Sussex County Planning Commission Members
From: Ms. Lauren DeVore, AICP Planner III
CC: Vince Robertson, Assistant County Attorney, and applicant
Date: November 6th, 2023
RE: Staff Analysis for C/Z 1992 Reed Properties, LLC

The purpose of this memo is to provide background and analysis for the Planning & Zoning Commission to consider as a part of Application C/Z 1992 (Reed Properties, LLC) to be reviewed at the January 3rd, 2024, Planning & Zoning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for Tax Parcel 235-13.00-29.01 to allow for a change of zone from an Agricultural Residential (AR-1) District to a Medium Commercial (C-2) District with no proposed use indicated. The property is lying on the west side of Gravel Hill Road (Route 30) and the south side of Milton-Ellendale Highway (Route 16), approximately 400-feet south of the intersection of Gravel Hill Road (Route 30) and Milton-Ellendale Highway (Route 16). The parcel to be re-zoned contains 2.99 acres +/- and is located at 14742 Gravel Hill Road in Milton, Delaware.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcel has a Rural Area designation of "Low Density Area." The adjoining parcels to the south, west, and north across Milton Ellendale Highway also have a Future Land Use Map designation of "Low Density." The adjoining lands to the east have a Future Land Use Map designation of "Developing Area".

As outlined in the 2018 Sussex County Comprehensive Plan, Low Density Areas are areas that the County envisions as "a predominantly rural landscape where farming co-exists with appropriate residential uses and permanently preserved property" (Sussex County Comprehensive Plan, 4-18). The Plan also notes that commercial uses "should be limited in their location, size and hours of operation" and "more intense commercial uses should be avoided" and commercial uses "may be appropriate depending on surrounding uses" (Sussex County Comprehensive Plan, 4-19).

Zoning Information

The parcel is zoned Agricultural Residential (AR-1) District. Adjacent parcels to the north, south, and west are zoned Agricultural Residential (AR-1) District. The properties to the east are zoned General Commercial (C-1) District.



The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories,” the current Agricultural Residential District (AR-1) and the proposed zoning of Medium Commercial (C-2) District are currently listed as an Applicable Zoning Districts within the “Low Density” Future Land Use Map designation.

Existing Change of Zones within the Vicinity of the Subject Property

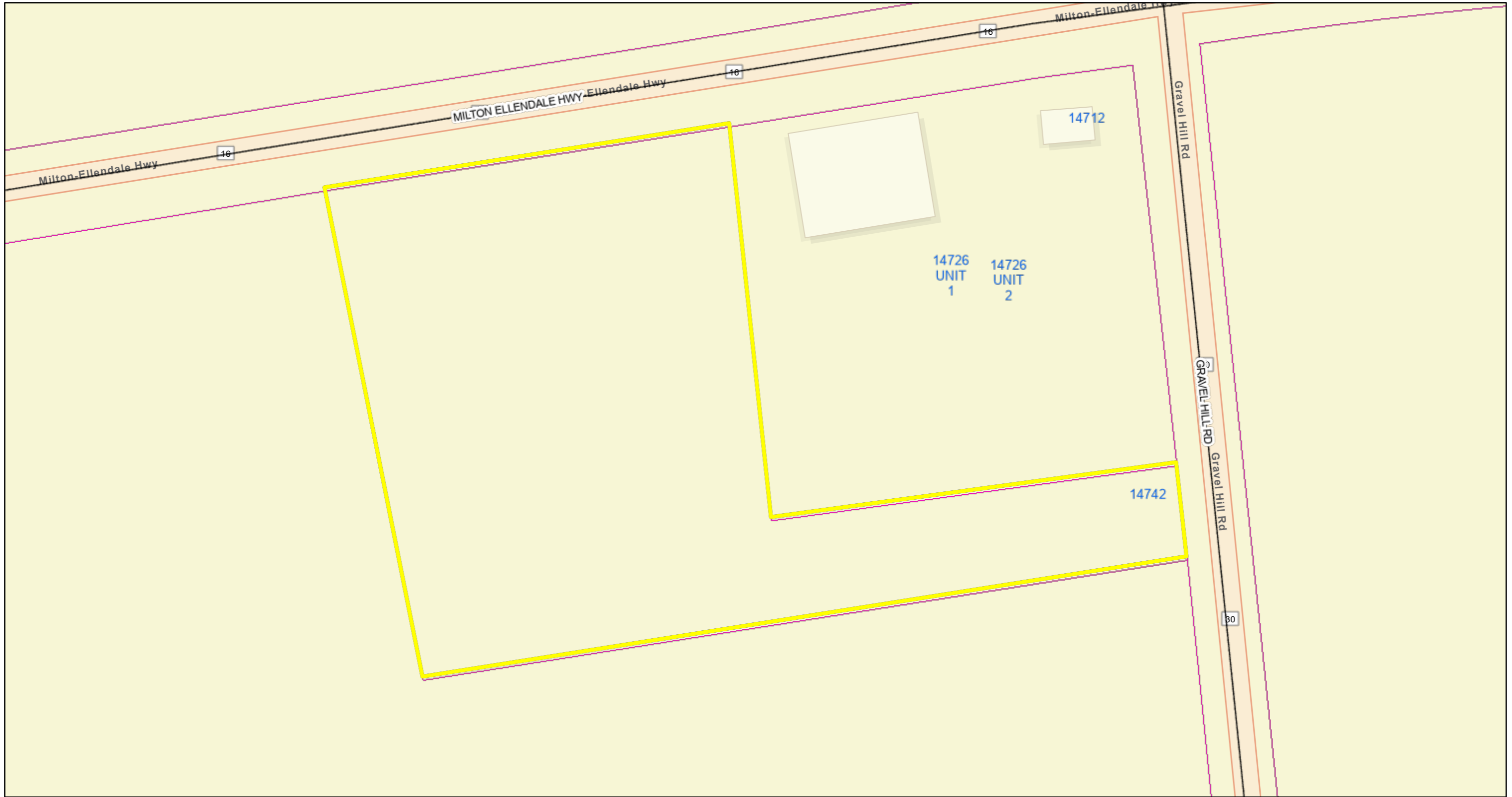
Since 2011, there have been zero (0) Change of Zone Applications within a 1-mile radius of the Application site.








Site Considerations

- **Density:** N/A
- **Open Space Provisions:** N/A
- **Agricultural Areas:** This parcel adjoins lands actively used for agricultural purposes.
- **Interconnectivity:** N/A

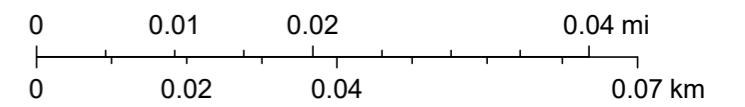
Sussex County



November 16, 2023

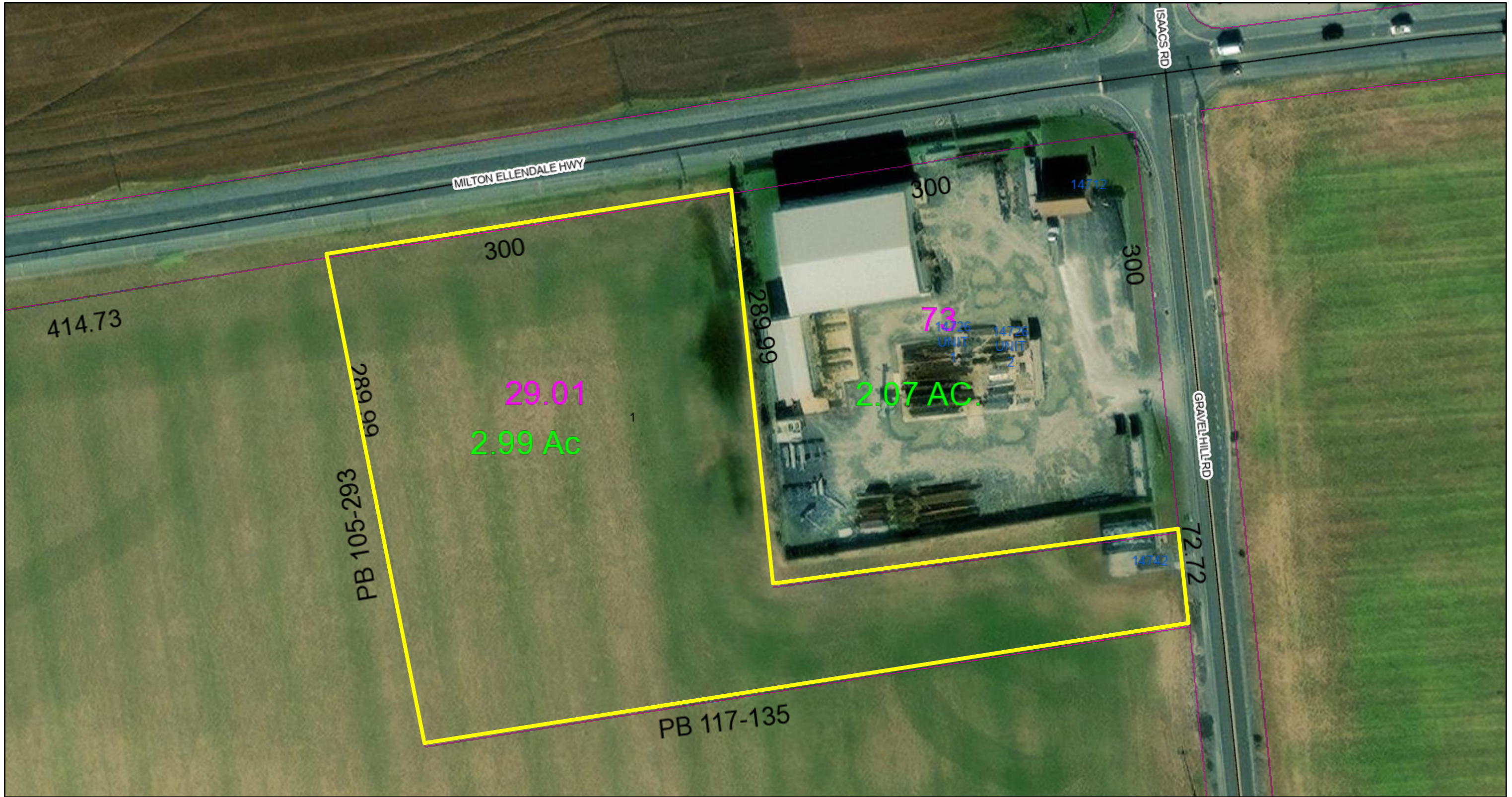
-  Override 1
-  Tax Parcels
-  Streets
-  Override 1
- 911 Address
-  County Boundaries

1:1,128



Sussex County, Sussex County Government, Sussex County Mapping and Addressing, Esri Community Maps Contributors, County of Sussex, DE, Delaware FirstMap, VGIN, © OpenStreetMap, Microsoft, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

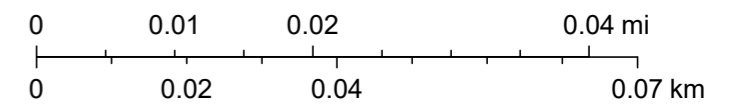
Sussex County



November 16, 2023

- Override 1
- Tax Parcels
- Streets
- Override 1
- 911 Address
- County Boundaries

1:1,128



Delaware Department of Education, Wetland mapping is supported with funding provided by the Environmental Protection Agency., Delaware Geological Survey, U.S. Geological Survey, Maxar, Microsoft, Delaware Public Service Commission, FEMA, DNREC, Division of Watershed Stewardship, Drainage Program,

Sussex County

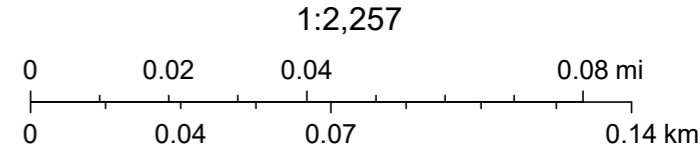


November 16, 2023

- polygonLayer
- Override 1
- Override 2
- Zoning
- High Density Residential - HR-1

- Neighborhood Business - B-1
- General Commercial - C-1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries
- World Imagery
- Low Resolution 15m Imagery

- High Resolution 60cm Imagery
- High Resolution 30cm Imagery
- Citations
- 60cm Resolution Metadata



Maxar, Microsoft, Sussex County, Sussex County Government, Sussex County Mapping and Addressing

Reintroduced: 12/12/23

Council District 2: Mrs. Green
Tax I.D. No.: 235-13.00-29.01
911 Address: 14742 Gravel Hill Road, Milton

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 2.99 ACRES, MORE OR LESS

WHEREAS, on the 19th day of September 2022, a zoning application, denominated Change of Zone No. 1992 was filed on behalf of Reed Properties, LLC; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1992 be _____; and

WHEREAS, on the ____ day of _____ 2024, a public hearing was held, after notice, before the County Council of Sussex County, and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential] and adding in lieu thereof the designation C-2 Medium Commercial District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece, or parcel of land lying and being situate in Broadkill Hundred, Sussex County, Delaware, and lying on the west side of Gravel Hill Road (Rt. 30) approximately 300 ft. south of Milton Ellendale Highway (Rt. 16) and the south side of Milton Ellendale Highway (Rt. 16) approximately 300 ft. west of Gravel Hill Road (Rt. 30) and being more particularly described in the attached legal description prepared by Tunnell & Raysor, P.A., said parcels containing 2.99 ac., more or less.

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



Memorandum

To: Sussex County Council
The Honorable Michael H. Vincent
The Honorable Cynthia C. Green
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
The Honorable Mark G. Schaeffer

From: Jamie Whitehouse, AICP, Director of Planning & Zoning

CC: Everett Moore, County Attorney

Date: February 16, 2024

RE: County Council Report for C/Z 1993 filed on behalf of Ocean One Holdings, LLC

The Planning and Zoning Department received an application (C/Z 1993 filed on behalf of Ocean One Holdings, LLC) for a change of zone from an AR-1 Agricultural Residential District to a C-3 Heavy Commercial Zoning District for Tax Parcel 235-8.00-39.00. The property is located on the west side of Coastal Highway (Rt. 1), and the southeast side of Broadkill Road (Rt. 16), at the intersection of Coastal Highway (Rt. 1) and Broadkill Road (Rt. 16). The parcel size is 64.85 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on January 3, 2024. At the meeting of January 24, 2024, the Planning & Zoning Commission recommended approval of the application for the 10 reasons as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of January 3, 2024, and January 24, 2024.

Minutes of the January 3, 2024, Planning & Zoning Commission Meeting

C/Z 1993 Ocean One Holdings, LLC

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 64.85 ACRES, MORE OR LESS. The property is lying on the west side of Coastal Highway (Rt. 1), and the southeast side of Broadkill Road (Rt. 16), at the intersection of Coastal Highway (Rt. 1) and Broadkill Road (Rt. 16). 911 Address: N/A. Tax Map Parcel: 235-8.00-39.00 (p/o).



Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicant's Exhibit Booklet, a copy of the DelDOT Service Level Evaluation Response, a copy of the Applicant's Traffic Impact Study, a copy of the DelDOT response to the Traffic Impact Study, and a copy of the Staff Analysis. Mr. Whitehouse stated that the Application received nine written comments, which were included in the Commission's paperless packet.

The Commission found that Mr. David Hutt, Esq. with Morris James, LLP, spoke on behalf of the Applicant, Ocean One Holdings, LLC; that also present were two principal owners, Mr. Joel Sens, Mr. Chris Kalil, and additionally, Mr. DJ Hughes, P.E. and Senior Traffic Engineer, with DBF, Inc. Mr. Hutt stated that the application relates to 64.8 acres, which amounts to the frontage along Rt. 16 and Rt. 1, Rt. 1 running left to right, and Rt. 16 going up and down; that the 50.7 acres making up the remainder of the property will remain as its current zoning of AR-1 (Agricultural Residential); that the property is located along the eastern side of Rt. 16, outside the Town of Milton; that the property lies at the intersection of Rt. 1 (Coastal Highway), and Rt. 16 (Broadkill Rd), and directly across from the Rookery Golf Course; that currently, DelDOT has a construction project underway at this location to install a grade-separated interchange for Rt. 1, to go over top of Rt. 16 (Broadkill Rd); that when looking at the Google Earth image, one can see the property is located at the corner of Rt. 1 and Rt. 16; that the Rookery Golf Course is directly across Rt. 1 on the Eastern side; that immediately to the south of the property is the Milton NAPA Auto Parts store; that to the west of the property is an assemblage of lands that is within an Agricultural Preservation District and the Smith Landing Campground situated along the river; that along Rt. 16 west toward the Town of Milton and the intersection of Reynolds Rd., is the Lockwood Design and Construction office, a self-storage facility adjacent to that and Frantic Frets Music and Antique store; that adjacent to that is Fuel Automotive; that north of Rt. 16 in close proximity to the site is the Eagles Nest facilities, whose uses include a church, a preschool and the elementary and middle school campuses for Delmarva Christian School; that to the north of that is the Deep Branch Family Campground; that between the church and the campground there is a proposed assisted living facility that the Planning Commission had approved a Preliminary Site Plan, with Final Site Plan approval currently being worked on; that to the northeast side of Rt. 1, across from the Rookery Golf Course is a GR (General Residential) subdivision, Grants Way; that to the east of the Rookery Golf Course is the subdivision, Woodfield Preserve; that presently there are no improvements to this property and it is currently used for agricultural purposes; that the property is within an area where there is a diverse amount of uses ranging from various businesses to schools, golf courses, churches, campgrounds and agricultural area; that this property has fewer residential areas with individual residences along Rt. 16 and some of the roads that come off of Rt. 16 and Rt. One but there are only two residential communities within close proximity; that many of the items discussed correspond with the appropriate zoning designation; that when one looks at the Zoning Map, one can see it is consistent with sound land use, by having commercial ventures, activities and zoning along intersections, like Rt. 1; that following Rt. 1, there is a C-1 (General Commercial), commercially zoned property at the intersection of Rt. 5, and another C-1 parcel located at the intersection of Deep Branch Rd and Rt. 1; that travelling south you will see another C-1 zoning at the Eagles Nest facilities, a commercial zone on both sides of Rt. 1 and Hudson Rd; that commercial zones continue on the north to south and east to west side of Rt. 1 extending to Eagle Crest Rd and Cave Neck Rd; that the County has approved two more change of zone requests at Cave Neck Rd. and Rt. 1 for C-3 (Heavy Commercial) being for Chapel Farm, also known as C/Z 1982 and C-2 (Medium Commercial) for Alice Robinson, known as C/Z 1916; that the Future Land Use Map designates the property as being located within a developing area, which the County has designated as an area of growth; that the property is at the location of a major intersection within Sussex County; that DelDOT has listed Rt. 1 as principal

arterial; that Sussex County Zoning Code classifies Rt. 1 as a major arterial roadway being one of three primary North-South corridors in the State of Delaware; that Rt. 16 is another primary road within Sussex County being an East-West corridor designated by DelDOT as a major collector; that the property is located at the intersection of major roadways recognized by both DelDOT and Sussex County; that currently, DelDOT is spending more than \$30 million to create a grade separated intersection at this location; that central water is available to this property through Artesian Water Company and sewer is available through Artesian Wastewater Management; that the Comprehensive Plan states that a growth area within appropriate intersections, commercial uses should be allowed within developing areas with good road access and few nearby homes should allow for business and industrial parks; that the Comprehensive Plan states that developing area infrastructure should have central water and sewer facilities; that all of these features of the Comprehensive Plan meet the description of the property and purpose of this application; that the Application's consistency with the description of developing areas and the comprehensive plan, the application is consistency with the purpose of the C-3 Zoning District as it sits along a major arterial road and the application is intended to serve local and regional residents as well as the traveling public; that the Office of State Planning Coordination publishes the state strategies for state policies and spendings regarding how the state views land use on the state strategies map, this property has been designated as being within Investment Level 3, which states the site is located in an area favorable for longer term planning and anticipation of future development; that for the property to be a C-3 zoning, it is required to be a minimum of one acre, a minimum of 75 feet wide, and a minimum of 100 feet deep, all of which this property meets; that the primary portion of the property does not contain wetlands; that the area at the southern tip of the property does show a wetland area; that if this application is successful, those wetlands would be formally delineated and the requirements of Sussex County's Resource Buffer Protection requirements would be applied and followed; that the majority of the property is not in a floodplain, however there is a potential for a portion to be within an AE designated area, but given its location, it would not impact any use or development; that there are no Chapter 89 Source Water Protection areas on the property, as there is no Wellhead Protection areas, nor does the property contain any Excellent Groundwater Recharge areas; that central water and sewer are available through Artesian Water Resources; that a Willing & Able letter to provide central water and sewer letter to this site was provided to Mr. Whitehouse from Artesian Resources; that a Service Level Evaluation request was sent to DelDOT and the report indicated that DelDOT, through its conversations with the developer, knew of potential uses, and with the size and acreage involved that a traffic impact study would be a requirement due to the impact on the traffic here; that as of December 26, 2023 a Traffic Impact Study Review Letter from DelDOT clarified the maintenance of the proposed service road and on/off ramps would be the state's responsibility moving forward; that Ocean's One Holdings, LLC acquired the property in 2019 at which time it was 120 acres; DelDOT acquired 4.5 acres in the northeast corner of the property as part of the grade separated intersection improvements; that since the acquisition DelDOT and the Applicant have had several discussions about the potential uses of the property in order to create a plan to incorporate improvements to the current grade separation as to prevent anyone from going back and reworking the entirety of it; that the application is the next step in that process; that they requested the Commission look at the Traffic Impact Study and realize that this is a proposed concept; that the developer currently has no contracts or letters of intent and this is a conceptual vision for potential uses; that the Applicant's vision for the property is a retail and entertainment complex for not only local residents but tourists who travel the Rt.1 corridor; that the current Traffic Impact Study Review Letter relates to the entirety of the parcel, being the full 115 acres, and the subject request is only on just a portion of that property; that one of the key components of the Traffic Impact Study Review Letter is

the offsite requirements that the developer will have; that some of which DBF, Inc. added into an image provided to show them if the application should be successful; that there are the DelDOT Development Coordination Manual Entrance and frontage improvements, the design and construction of a service road between Broadkill Rd and the southerly limits of the property, to which the service road will need to be built to State standards and dedicated to public use for this property and the property to the south of the service road will start at Rt. 16 and extend all the way to the southern boundary; that a service road is required at this location because Rt. 1 is included within DelDOT's Corridor Capacity Preservation Program; that a second requirement in the Traffic Impact Study Review Letter is the design and construction of a dual lane roundabout as the property's access point comes off of Rt. 16; that this would require a relocation of Ramp C, and it would be incorporated, going through the access point to Rt. 1; that the offsite improvements include an on/off ramp to and from the service road to Rt. 1 as a connection point, an all-way stop-controlled intersection with exclusive roads for the service road where it intersects with Rt. 1, a traffic signal installation and agreements at two intersections created by the grade-separated interchange and approximately \$105,000 contribution to the traffic signal revolving fund for potential future traffic light at Zion Church Rd along Rt. 16; that the last requirement is the closure of the third median South of Rt. 16 and Rt. 1 to prevent cross over traffic from one side to the other; that this is not a site plan review being presented, but rather DelDOT's off site improvement requirements; that when one adds all of the areas for the service road, the roundabout and the on/off ramps to Rt. 1, the total acreage is 7.8 acres of the site which is adequate for the service road; that design details have yet to be determined and this is only a potential concept; that the application is different from others because it allows road improvements to precede the improvements that would come from the site plans for change of zone since the grade separation is already under way; that the intended use of this property is in the nature of a business or commercial park and when looking to the surrounding area it is consistent with the references in the Comprehensive Plan; that there are few nearby homes, you have infrastructure improvements with traffic and it is located within a busy intersection; that this application has nine letters submitted, five of which are in support of the application; that the letters are from Representative Stelle Parker Selby, a representative from Milton, the Milton Chamber of Commerce, Kent Sussex Leadership Alliance, Southern Delaware Tourism and the Sussex Economic Development Action Committee, and for all of the stated reasons, the Applicant requests that the Planning Commission recommend to County Council that the change of zone application be approved.

Mr. Collins stated that since there are no specific plans and no specific businesses in place, the site could be anything commercial.

Mr. Roberston questioned if the Application had gone through PLUS.

Mr. Hutt stated that the project had not gone through PLUS because the requested zoning classification is consistent with the Comprehensive Plan and it does not qualify for the Office of State Planning to review it, but a site plan that exceeded 50,000 sq. ft. would require a PLUS review.

The Commission found that there were three people who wished to speak in support of C/Z 1993, Oceans One Holdings, LLC, and four people who wished to speak in opposition to the Application.

Mr. Scott Thomas, Executive Director for Southern Delaware Tourism, spoke in support of the Application regarding the opportunities with respect to tourism and promoting visitation and new entertainment for not only those who are traveling here but also those who already live here.

Ms. Karen Falk, Executive Director of the Milton Chamber of Commerce, spoke in support of the Application regarding the potential to significantly enhance our local economy, generate employment opportunities, increase consumer spending, and foster a dynamic business environment.

Ms. Karen Sposato, a resident of Milton, DE for 30 years, spoke in support of the Application regarding the project elevating the Milton region with much-needed shopping, entertainment, and lodging.

Mr. Naoto Kada, a property owner of Milton, DE for 25 years, spoke in opposition to the Application regarding the buffer zone for the project; that Mr. Kada stated his property sits directly across from the project location; that he had to give up 150 ft. of frontage to DelDOT and would like to have a buffer zone put in with heavy vegetation to minimize the noise from the heavy commercial zone.

Ms. Monique Fitzhugh, a property owner near the planned development, spoke in opposition to the Application regarding the idea that there is no plan in place for the development and that approving a change of zoning before knowing what the applicant is proposing would create problems as they are asking to change from agricultural to heavy commercial, leaving the possibilities open to anything from a theme park to a gas station.

Mr. Rich Barrasso spoke on behalf of Sussex Alliance for Responsible Growth, also known as SARG, in opposition to the Application regarding the concern of the safe travel along Rt. 1 due to the capacity being exceeded based on the current designs and that the plan to change zones to the highest use for C-3 without a plan in place for site development could lead to more issues as the project moves on.

Mr. Donald McLamb, a neighboring property owner, spoke in opposition to the Application stating that the reason there are no homes within close proximity to the site is because his wife's family, who owns the property next to it, has put about 300 plus acres into Farmland Preservation to keep it from being developed and continue farming it for life; that the family also owns the campground on that same property and has concerns about the increased traffic, access roads and environmental concerns that develop with a heavy commercial district such as the issue of runoff.

Upon there being no further questions Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the Application.

In relation to C/Z 1993 Ocean One Holdings, LLC. Motion by Mr. Collins to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 4-0.

Minutes of the January 24, 2024, Planning & Zoning Commission Meeting

The Commission discussed the Application which had been deferred since January 3, 2024.

Mr. Collins moved that the Commission recommend approval of C/Z 1993 for Ocean One Holdings, LLC for a change in zone from AR-1 to C-3 "Heavy Commercial" based upon the record made during the public hearing and for the following reasons:

1. C-3 Heavy Commercial Zoning is designed to allow auto-oriented retail and service businesses that serve local and regional residents. Permitted Uses include retail uses, restaurants, offices, and vehicle service stations.

2. The site has frontage along Route 1 and Route 16 at the intersection of those two significant roadways. Route One is identified as an “Other Principal Arterial” by DelDOT and a “Major Arterial Roadway” in the Sussex County Code. DelDOT identifies Route 16 as a “Major Collector”. This location is appropriate for C-3 zoning.
3. This site is the location of a grade-separated intersection (or overpass) that is being constructed by DelDOT with on-ramps and off-ramps. DelDOT and this developer have coordinated throughout the intersection design process about the design of this site and its access including an internal service road. This coordination has taken into account the possibility that this property would be rezoned to C-3. For all of these reasons, C-3 Zoning is appropriate for this property.
4. A Traffic Impact Study was required for this site by DelDOT, and DelDOT issued its Review Letter of that study on December 26, 2023. That Review Letter clarified the maintenance of the proposed service road and on- and off-ramps to the site. After taking into account the development of the entire property, DelDOT confirmed the proposed off-site road improvements will include, but not be limited to (1) typical entrance and frontage improvements; (2) design and construction of a service road between Route 16 and the southerly limits of the property; (3) design and construction of a dual-lane roundabout for the property’s access to Route 16 and an on-ramp to Route One; (4) design and construction of an on/off ramp to Route One; (5) construction of an all-way stop intersection where the service road intersects the Route One ramps; (6) traffic signal installation and agreements at two intersections created by the new Route One overpass; (7) closure of medians within Route One near the overpass; and (8) typical bicycle, pedestrian and transit improvements within the property and off-site.
5. The site will be served by central water and sewer.
6. Sussex County has anticipated the development of this particular site based upon the investment that DelDOT is making in the intersection there. According to the current Sussex County Comprehensive Plan, this site is designated as being in the “Developing Area” which is a “Growth Area”. It is one of the few areas in this part of Route One that anticipates a more intensive use while protecting the eastern side of Route One from more intensive development. This planning suggests that development beyond the current AR-1 zoning can occur in this specific location and C-3 zoning is appropriate here.
7. This application received support from several sources, including the Milton Chamber of Commerce, the Kent Sussex Leadership Alliance, Southern Delaware Tourism, the Southern Delaware Economic Development Action Committee, and State Representative Parker Selby. The theme of this support was summarized best by Representative Parker Selby, who stated that this is “a project that looks like smart growth with safety and the economy in mind.”
8. The proposed rezoning meets the general purpose of the Zoning Code by promoting the orderly growth, convenience, order prosperity, and welfare of the County.
9. Any future use of the property will be subject to Site Plan review by the Sussex County Planning and Zoning Commission.
10. For all of these reasons, it is appropriate to recommend approval of this Change in Zone from AR-1 to C-3 at this location.

Motion by Mr. Collins, seconded by Ms. Wingate and carried unanimously to recommend approval of C/Z 1993 Ocean One Holdings, LLC for the reasons stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Collins – yea, Ms. Wingate – yea, Mr. Mears – yea, Mr. Butler – yea, Chairman Wheatley - yes

PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN
HOLLY J. WINGATE, VICE-CHAIRMAN
SCOTT COLLINS
J. BRUCE MEARS
BRIAN BUTLER



Sussex County

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JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET

Planning Commission Public Hearing Date: January 3rd, 2024

Application: CZ 1993 Ocean One Holdings, LLC

Applicant: Ocean One Holdings, LLC
179 Rehoboth Avenue Suite 1081
Rehoboth Beach, DE 19971

Owner: Ocean One Holdings, LLC
179 Rehoboth Avenue Suite 1081
Rehoboth Beach, DE 19971

Site Location: Located on the west side Coastal Highway (Rt. 1) and the south side of Broadkill Road (Rt. 16), approximately 1.67-mile(s) northwest of the intersection of Coastal Highway and Hudson Road (S.C.R. 258).

Current Zoning: Agricultural Residential (AR-1) Zoning District

Proposed Zoning: Heavy Commercial (C-3) Zoning District

Comprehensive Land Use Plan Reference: Developing Area

Councilmanic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Milton Fire Co.

Sewer: Artesian Water Company, Inc.

Water: Artesian Wastewater Management

Site Area: 64.855-acre(s) +/-

Tax Map ID.: 235-8.00-39.00



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PLANNING & ZONING DIRECTOR
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Sussex County

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Memorandum

To: Sussex County Planning Commission Members
From: Jamie Whitehouse, AICP, Planning & Zoning Director
CC: Vince Robertson, Assistant County Attorney, and applicant
Date: November 6, 2023
RE: Staff Analysis for CZ 1993 Ocean One Holdings, LLC

The purpose of this memo is to provide background and analysis for the Planning & Zoning Commission to consider as a part of application CZ 1993 (Ocean One Holdings, LLC) to be reviewed at the January 3rd, 2024, Planning & Zoning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Change of Zone for Tax Parcel 235-8.00-39.00 to allow for a change of zone from an Agricultural Residential (AR-1) zoning district to a Heavy Commercial (C-3) zoning district. The property is lying on the west side of Coastal Highway (Rt. 1) and the south side of Broadkill Road (Rt. 16), approximately 1.67-mile(s) northwest of the intersection of Coastal Highway and Hudson Road (S.C.R. 258). A portion of the parcel containing 64.855-acres +/- out of 113.85-acres +/- is to be considered for this Change of Zone application.

Comprehensive Plan Analysis

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use Map in the plan indicates that the parcel has a designation of "Developing Area". All adjoining parcels to the north, south, and west have a Future Land Use Map designation of "Low Density". The parcels to the east across Coastal Highway have multiple Future Land Use Map designations of "Existing Development Area" and "Low Density".

As outlined within the 2018 Sussex County Comprehensive Plan, The Developing Areas are newer, emerging growth areas that demonstrate the characteristics of developmental trends. Most of the proposed Developing Areas are adjacent to municipalities, within or adjacent to potential future annexation areas of a municipality, or adjacent to Town Centers. – A range of housing types are appropriate in Developing Areas, including single family homes, townhouses, and multi-family units. In selected areas and at appropriate intersections, commercial uses should be allowed. A variety of office uses would be appropriate in many areas. Portions of the Developing Areas with good road access and few nearby homes should allow for business and industrial parks. Appropriate mixed-use development should also be allowed. In doing so, careful mixtures of homes with light commercial and institutional uses can be appropriate to provide for convenient services and to allow people to work close to home (Sussex County Comprehensive Plan, 4-14).

Zoning Information



The parcel is zoned Agricultural Residential (AR-1) Zoning District. Adjacent parcels to the north, south, and west are also zoned Agricultural Residential (AR-1) Zoning District. The properties to the north and northeast across Coastal Highway have multiple zoning districts that contain General Commercial (C-1), General Residential (GR), and Agricultural Residential (AR-1) Zoning Districts.

The 2018 Sussex County Comprehensive Plan outlines Zoning Districts by their applicability to each Future Land Use category. Under Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories,” the Agricultural Residential Zoning District (AR-1) and the proposed zoning of Heavy Commercial (C-3) are listed as applicable zoning districts in the “Developing Area”.

Existing Change of Zones within the Vicinity of the Subject Property

Since 2011, there has been three (3) Change of Zone applications within a 1-mile radius of the application site.

Conditional Use No.	Applicant	Current Zoning	Proposed Zoning	CC Decision Date	Ordinance No.
1743	Charles & Cristy Greaves	AR-1	CR-1	3/25/2014	2342
1833	Eagles Nest Fellowship Church	AR-1	CR-1	11/28/2017	2535
1970	Eagles Nest Fellowship Church	AR-1	I-1	N/A (Withdrawn)	N/A



Site Considerations

- **Density:** N/A
- **Open Space Provisions:** N/A
- **Agricultural Areas:** This parcel is actively used for agricultural purposes and adjoins lands actively used for agricultural purposes.
- **Interconnectivity:** N/A
- **Transportation Improvement District (TID):** N/A
- **Forested Areas:** N/A
- **Wetlands Buffers/Waterways:** N/A
- **Other Site Considerations (ie: Flood Zones, Tax Ditches, Groundwater Recharge Potential, etc.):** A minor portion located in the southeast side of the subject parcel is located within the “AE” Flood Zone as well as the 0.2% Annual Flood Hazard Zone. The parcel is located within areas of fair and good groundwater recharge.

Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from an Agricultural Residential (AR-1) Zoning District to a Heavy Commercial (C-3) Zoning District could be considered as being consistent with the land use, based on size and scale, with area zoning and surrounding uses.



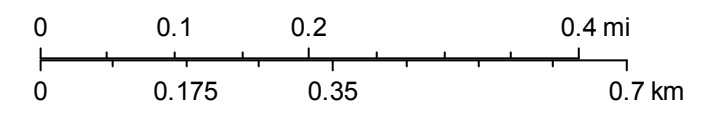
Sussex County



PIN:	235-8.00-39.00	
Owner Name	OCEAN HOLDINGS LLC	ONE
Book	5128	
Mailing Address	179 REHOBOTH AVE STE 1	
City	REHOBOTH BEACH	
State	DE	
Description	RD DRAWBRIDGE TO	
Description 2	MILTON FX	
Description 3	N/A	
Land Code		

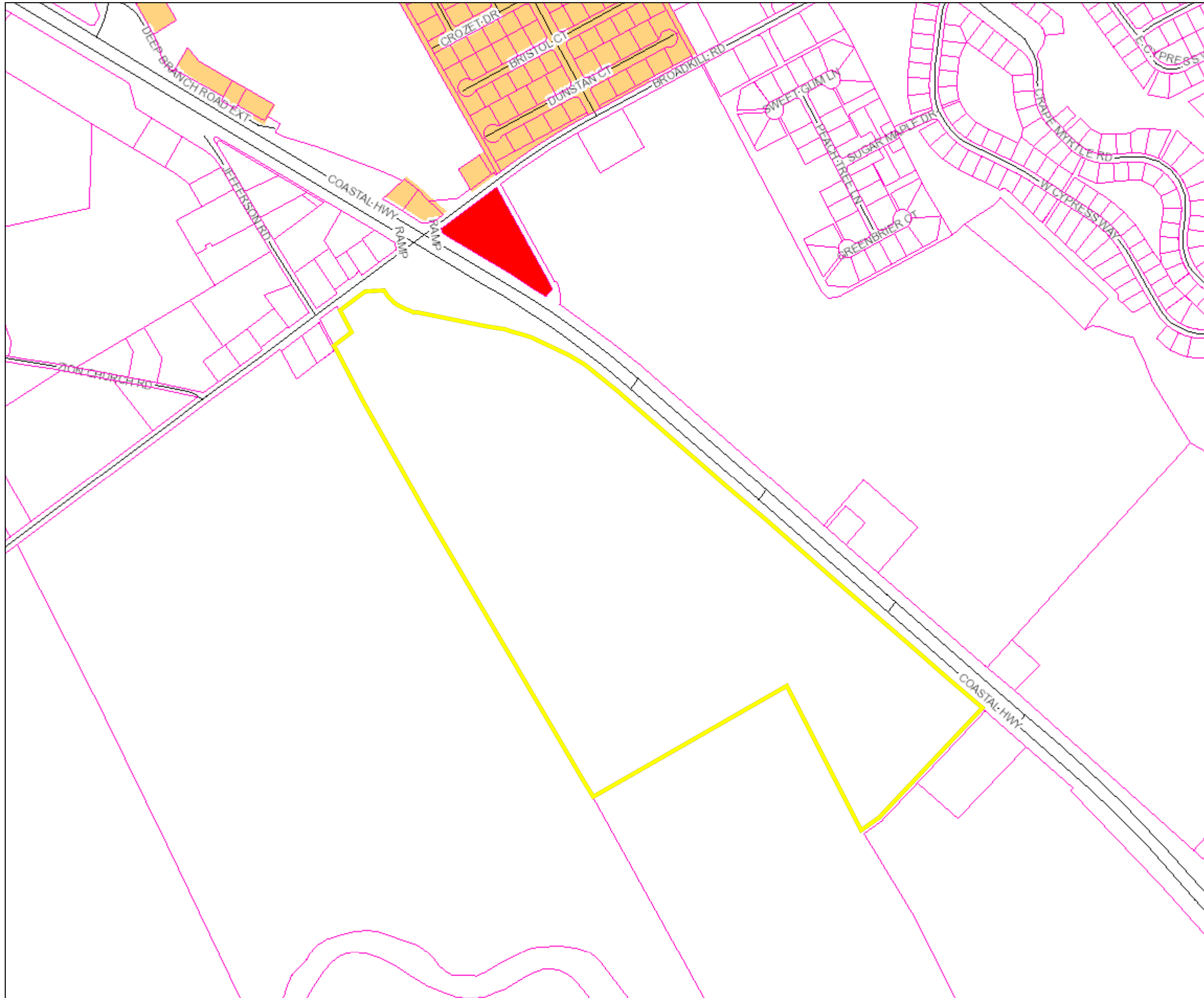
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Sussex County



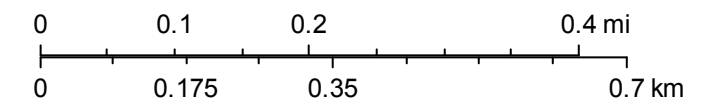
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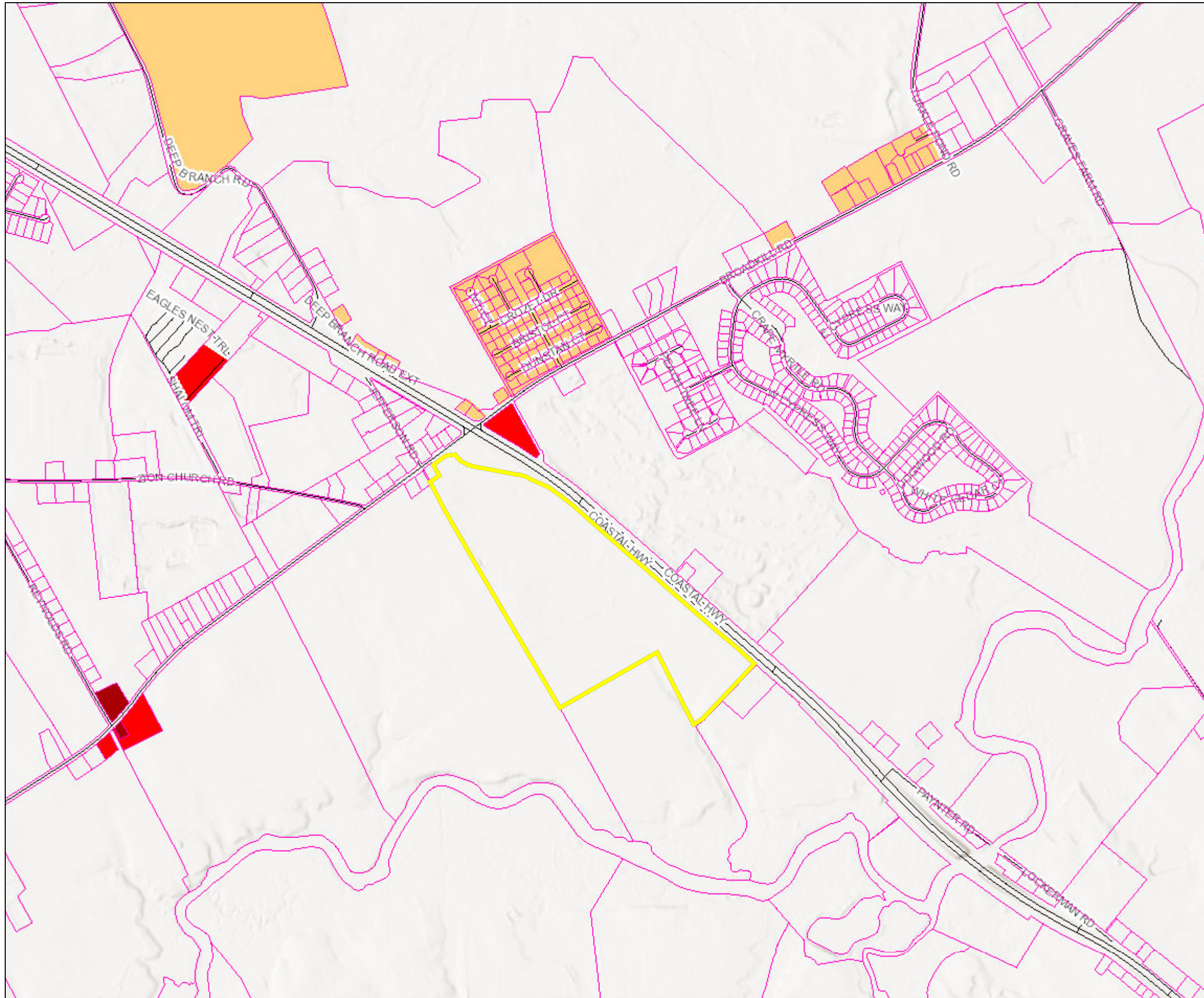
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- Tax Parcels
- Streets

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Sussex County



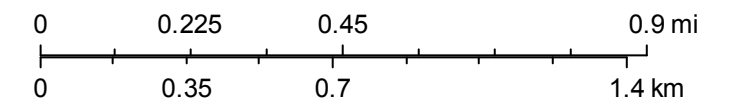
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Description 3	N/A	
Land Code		

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 - Override 1
- polygonLayer

 - Override 1
- ⋯ Tax Parcels
- Streets

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Introduced: 02/21/23

Council District 3: Mr. Schaeffer
Tax I.D. No.: 235-8.00-39.00 (P/O)
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 64.85 ACRES, MORE OR LESS

WHEREAS, on the 21st day of September, 2022, a zoning application, denominated Change of Zone No. 1993 was filed on behalf of Ocean One Holdings, LLC; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and said Planning and Zoning Commission recommended that Change of Zone No. 1993 be _____; and

WHEREAS, on the ____ day of _____ 2023, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County,

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential] and adding in lieu thereof the designation C-3 Heavy Commercial District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Broadkill Hundred, Sussex County, Delaware, and lying on the west side of Coastal Highway (Rt. 1) and the southeast side of Broadkill Road (Rt. 16) at the intersection of Coastal Highway (Rt. 1) and Broadkill Road (Rt. 16) and being more particularly described in the attached legal description prepared by Baird Mandalas Brockstedt, LLC., said parcels containing 64.85 ac., more or less.

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