

**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 27, 2024**

**12:30 P.M.**

**Call to Order**

**Approval of Agenda**

**Approval of Minutes - February 20, 2024**

[Draft Minutes 022024](#)

**Reading of Correspondence**

**Public Comments**

**Consent Agenda**

1. **Proclamation Request – Sussex Central High School Wrestling Team Division I State Champions**

**Todd Lawson, County Administrator**

1. **Recognition of Retiree – Fred Haas**
2. **Administrator’s Report**

**Hans Medlarz, County Engineer, Ret.**

1. **Wolfe Neck Solar Project**

**A. Recommendation to Award**

[Wolfe Neck Solar Project](#)



## **Mark Parker, Assistant County Engineer**

### **1. Starlight Meadows Road Improvements, Project T24-07**

#### **A. Recommendation to Award**

[Starlight Meadows Recommend to Award](#)

## **Old Business**

### **1. [Change of Zone No. 1991 filed on behalf of Sycamore Chase Expansion](#)**

**“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN MR-RPC MEDIUM-DENSITY RESIDENTIAL – RESIDENTIAL PLANNED COMMUNITY DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 73.95 ACRES, MORE OR LESS” (property lying on the north side of Daisey Road [S.C.R. 370], approximately 0.6 mile west of Bayard Road [S.C.R. 384]) (911 Address: 34665, 34723 & 34771 Daisey Road, Frankford) (Tax Map Parcel: 134-18.00-45.00, 51.00 and P/O 53.00, 54.00 & 54.01)**

[CZ 1991 Sycamore Chase Expansion](#)

## **Grant Requests**

- 1. Friends of the Laurel Library for their Youth Activity Series**  
[Friends of the Laurel Library](#)
- 2. Blades Police Department for their Community Outreach Program**  
[Blades Police Department](#)
- 3. Ocean View Historical Society for barn restoration at Coastal Towns Museum**  
[Ocean View Historical Society](#)
- 4. Rehoboth Art League Inc. for their Historic Homestead Garden Restoration**  
[Rehoboth Art League Inc.](#)
- 5. Seaford Tomorrow, Inc. for their Friday Night Live event**  
[Seaford Tomorrow](#)
- 6. Greater Lewes Foundation for the Lewes Community Garden**  
[Greater Lewes Foundation](#)
- 7. Race4Warriors Inc. for their Race4Warriors event**  
[Race4Warriors Inc](#)

## **Introduction of Proposed Zoning Ordinances**

[Ord Intro CZ2013](#)

## **Council Members' Comments**

**Executive Session - Land Acquisition & Pending & Potential Litigation pursuant to 29 Del.C.§10004(b)**

**Possible action on Executive Session Items**

**1:30 p.m. Public Hearings**

1. **[Conditional Use No. 2409 filed on behalf of Bryan Stewart](#)**

**“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A YEAR-ROUND FOOD VENDOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.12 ACRES MORE OR LESS”** (property lying on the north side of Coastal Highway [Route 1], approximately 0.15 mile east of Savannah Road [Route 9]) (911 Address: 17581 Coastal Highway, Lewes) (Tax Map Parcel: 334-6.00-2.00)

**[Public Hearing CU 2409 Bryan Stewart](#)**

2. **[Conditional Use No. 2410 filed on behalf of Nicasia Chaves Reyes](#)**

**“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A GROCERY STORE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 0.23 ACRES MORE OR LESS”** (property lying on the north side of Garden Circle within the County Seat Gardens Subdivision) (911 Address: 58 Garden Circle, Georgetown) (Tax Map Parcel: 135-9.00-122.00)

**[Public Hearing CU2410 Nicasia Chavez Reyes](#)**

3. **[Change of Zone No. 1999 filed on behalf of Horacio Paxtor](#)**

**“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.11 ACRES, MORE OR LESS”** (property lying on the south side of Handy Road [S.C.R. 337], approximately 545 ft. northwest of DuPont Boulevard [Rt. 113]) (911 Address: 26614 Handy Road, Millsboro) (Tax Map Parcel: 233-5.00-132.00 [p/o])

**[Public Hearing CZ1999 Horacio Paxtor](#)**

4. [Change of Zone No. 2000 filed on behalf of Budget Holdings, LLC](#)

**“AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND C-1 GENERAL COMMERCIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 6.57 ACRES, MORE OR LESS” (properties are lying on the east side of Sussex Highway [Rt. 13], approximately 0.38 mile south of Beach Highway [Route 16]) (911 Address: 12847 Sussex Highway, Greenwood & N/A) (Tax Map Parcel: 530-10.00-58.08 & 58.09)**

[Public Hearing CZ2000 Budget Holdings, LLC](#)

**Adjourn**

**-MEETING DETAILS-**

**In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on February 20, 2024 at 5:00 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 20, 2024**

**A regularly scheduled meeting of the Sussex County Council was held on Tuesday, February 20, 2024, at 12:00 p.m., in Council Chambers, with the following present:**

|                              |                             |
|------------------------------|-----------------------------|
| <b>Michael H. Vincent</b>    | <b>President</b>            |
| <b>John L. Rieley</b>        | <b>Vice President</b>       |
| <b>Cynthia C. Green</b>      | <b>Councilwoman</b>         |
| <b>Douglas B. Hudson</b>     | <b>Councilman</b>           |
| <b>Mark G. Schaeffer</b>     | <b>Councilman</b>           |
| <b>Todd F. Lawson</b>        | <b>County Administrator</b> |
| <b>J. Everett Moore, Jr.</b> | <b>County Attorney</b>      |

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

**Call to  
Order**

**Mr. Vincent called the meeting to order.**

**M 077 24  
Approve  
Agenda**

**Mr. Lawson reported that under Public Hearings, Conditional Use No. 2411 could be removed from today's agenda, the applicant has asked for the hearing to be rescheduled. A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, to approve the Agenda, as amended.**

**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 February 6, 2024, were approved by consensus.**

**Corre-  
spondence**

**Mr. Moore reported that correspondence was received from Clear Space Theatre Company and ReTemp Development Center, Inc. thanking Council for their donations.**

**Public  
Comments**

**There were no public comments.**

**M 078 24  
Approve  
Consent  
Agenda**

**A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to approve the following items under the Consent Agenda:**

- 1. Proclamation Request – Girl Scout Week**
- 2. Use of Existing Wastewater Infrastructure Agreement – IUA-1208  
Long Neck Community Bank, Long Neck Area**
- 3. Use of Existing Wastewater Infrastructure Agreement – IUA-1176**

**East Gate, Johnson's Corner Area**

**Motion Adopted: 5 Yeas**

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

**Perimeter  
Buffer  
Update**

**Mr. Lawson provided Council with an update related to Perimeter Buffers. Mr. Lawson reminded Council that this was ranked as the first item to update for the development design initiative. Staff developed an outline and will draft an Ordinance using this outline.**

**Mr. Lawson explained that the document is broken down into sections and starts with definitions. Within the definition section, there are six specific updates. The terms are provided in high level, summary form and the actual definition have more details.**

**Section II consists of specifics of what is aimed to see in the perimeter buffer which is called the Perimeter Buffer General Standards. This section defines the standards to which a Perimeter Buffer should be planted or preserved, in the cast of existing woodlands. The idea is that the Perimeter Buffer is going to be a standard 30 ft. and then the 20 ft area of protection up against that when woodlands exist. In this section, it states that all trees and shrubs must be local and native species. In addition, the ANSI A300 standards are listed, 70% deciduous and 30% evergreen; 15 trees per 100 feet. All trees and shrubs must be 6 feet in height at time of planting and obtain a minimum height of 10 feet. The buffer can include both existing woodlands and planted trees. When a Resource Buffer (115-193) is required, the Resource Buffer takes precedence over and is not in addition to the Perimeter Buffer. Permanent signage will mark the Perimeter Buffer.**

**Mr. Lawson explained that the Perimeter Buffer rules will distinguish when Existing Woodlands are in place when the Perimeter Buffer is to be located or No Woodlands are in place where the Perimeter Buffer is to be located.**

**The following lists the rules for Existing Woodlands to be used for the Perimeter Buffer:**

- Requires a forest assessment by certified professional.**
- The woodlands will be shown on the site plan and landscape plan.**
- Woodlands shall remain in its natural state with limited activity within.**
- The Perimeter Buffer woodlands will be protected by an area that "buffers-the-buffer" by 20' and is called the Perimeter Buffer Protection Area.**
- The buffer and protection area will be fenced-off/marked during construction.**

**Perimeter  
Buffer  
Update  
(continued)**

- **Selective clearing, removal of invasive species and dead trees in the woodlands is permitted.**
- **Walking trails are permitted in the woodlands.**
- **Access points to the woodlands for buffer maintenance is permitted.**
- **Any removal or damage of trees within the woodlands is subject to mitigation requirements.**
- **The woodlands grounds is forbidden to be cleared, graded, or grubbed.**

**The following lists the rules for Woodlands – Cleared within Five Years of Application:**

- **Cleared area that makes up the Perimeter Buffer is measured and known as “Cleared Area”.**
- **Perimeter Buffer planted back with at least 15 trees every 50 linear feet.**
- **New Woodlands planted that is 2.0 times the size of the Cleared Area; 50 trees per acre.**
- **New Woodlands may border Perimeter Buffer; at no time shall Perimeter Buffer be less than 30’ in width.**
- **Perimeter Buffer and New Woodlands shall meet planting requirements of Section II.**
- **Applicant may choose to replant property other than the one harvested or protect an off-site Woodlands area, as reviewed, and approved by P&Z Commission.**
  - **If off-site, the area must be located within the same twelve-digit HUC defined by USGS.**
  - **Replanted or protected property must be protected under a perpetual conservation.**
  - **Replanted or protected property must be 2.0 times the size of the Cleared Area.**

**The following lists the rules when No Woodlands exist to be used for the Perimeter Buffer:**

- **The developer must comply with the Perimeter Buffer standards and landscape plan.**
- **The newly planted buffer will be fenced off/marked during construction.**
- **All Perimeter Buffer (existing or planted) will have a two-year guarantee.**

**Section III defines the Perimeter Buffer landscape plan including the information and detail to be demonstrated on the plan to meet the requirements and standards. The plan will include the following requirements:**

- **The approximate location of the protective fencing.**



**Perimeter  
Buffer  
Update  
(continued)**

- **The locations, spacing, height, and species of new trees and shrubs.**
- **The location of the Perimeter Buffer signage.**
- **Measures to avoid sedimentation intrusions and erosion.**
- **A summary table of the new trees to be planted and existing trees to be retained.**
- **A note confirming the full cost of replacement for the trees and shrubs.**
- **A planting schedule for the installation of the Perimeter Buffer.**
- **The Perimeter Buffer, per phase, must be planted prior to the first residential building permit for the respective phase.**
- **Provides a “miscellaneous clause” allowing the PZ Commission to approve a plan with other features along the roadway frontage not necessarily part of the Perimeter Buffer requirements.**

**Section IV defines the timing of the Perimeter Buffer installation and the guaranties required for the protection of the buffer’s trees and shrubs. The Perimeter Buffer, per phase, must be planted prior to the first residential building permit for the respective phase. When Woodlands exist, the Perimeter Buffer and Protection Area shall be protected and marked prior to the Notice to Proceed for site work or construction. The developer is responsible for the removal of all stakes, guy wires and protective fencing. A Performance Bond or other guaranty to cover the Perimeter Buffer in the amount of 125% (or \$50,000, whichever is greater) of the cost of the installation and value of the replacement plantings. All guaranties for the Perimeter Buffer (existing or planted) will be for two years.**

**In Section V, Perimeter Buffer Maintenance is discussed that defines the responsibility for the health and survival of the Perimeter Buffer. The developer is responsible for the survival of the Perimeter Buffer for two years. The perpetual maintenance of the Perimeter Buffer will be a recorded declaration or restrictive covenant.**

**Section VI, Perimeter Buffer Tree Mitigation defines what happens when trees or shrubs are removed or damaged without authorization. Tree mitigation will be required when the Perimeter Buffer or Protection Area or existing woodlands is damaged without authorization. An Act of God or natural causes is exempt and subject to the Perimeter Buffer Maintenance Requirements. A mitigation plan must be developed by a licensed professional. Tree replacement will be at a rate of 3 trees for every 1 tree removed or damaged. All trees and shrubs will meet the Perimeter Buffer standards and landscape plan requirements.**

**Section VII defines the penalties for violations of the new requirements that may be imposed. The penalties apply to a violation by a person, the landowner, the HOA, or developer. A fine of \$10,000 per quarter acre, pro rata, of disturbance to the Perimeter Buffer and/or Protection Area may be imposed. A tree mitigation plan for the disturbance will be required. All building permits, zoning permits, and inspections will be held until the tree**

**mitigation is complete and approved by the PZ Commission.**

**It was suggested to add language stating that all fines would need to be paid before permits can be issued.**

**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, Headwater Cove – Phase 4 (Construction Record) and Plover Point (FKA Oak Landing) – Phase 2 (Construction record) received Substantial Completion effective February 15<sup>th</sup>.**

**2. John Kinsley, Jr.**

**It is with great sadness that we inform you that pensioner, John Kinsley Jr., passed away on Wednesday, February 14, 2024. Mr. Kinsley began his career with Sussex County in 1990 where he worked until February 2008 for a total of 17 years of service. His last position with the County was Tech Services Division Manager in the Emergency Medical Services Department. We would like to extend our condolences to the Kinsley family.**

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

**DE Coastal  
Business  
Park Leases/  
DTCC &  
JDJS, LLC**

**Bill Pfaff, Director of Economic Development presented two lease agreements in the Delaware Coastal Business Park for Council's consideration. The first lease presented was for Delaware Technical Community College to provide a truck driving school. The second lease presented was JDJS, LLC to be used as a wood shop and newly expanding sign business known as JennyGems.**

**M 079 24  
Approve  
DTCC Lease**

**A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, that be it moved that the Sussex County Council approve the lease agreement with Delaware Technical Community College, located at 21765 Nanticoke Avenue, which is identified as part of Lot 8, part of Lease Area 2 and part of the Former Runway 16-34 in the Delaware Coastal Business Park, Georgetown, DE as the training location for their Class A CDL Certification program.**

**Motion Adopted: 5 Yeas**

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

**M 080 24**  
**Approve**  
**JDJS, LLC**  
**Lease**

A Motion was made by Mr. Rieley, seconded by Mr. Schaeffer, that be it moved that the Sussex County Council approve the lease agreement with JDJS, LLC t/a JennyGems, located at 21345 Cedar Creek Avenue, which is identified as part of Lot 14, in the Delaware Coastal Business Park for the operation of a woodshop for a gift and sign manufacturing business.

**Motion Adopted: 5 Yeas**

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

**Chesapeake**  
**Utilities**  
**Lease**  
**Agreement**

Hans Medlarz, County Engineer, Ret. presented an advance customer agreement for Rudder Lane for the Chesapeake Utilities Natural Gas Service Expansion for Council's consideration.

**M 081 24**  
**Approve**  
**Chesapeake**  
**Utilities**

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, that be it moved based upon the recommendation of the Sussex County Engineering Department, that County Council approve the customer advance agreement with Chesapeake Utilities Corporation to furnish natural gas services to Delaware Coastal Airport along Rudder Lane 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**

**Inland Bays**  
**DelDOT**  
**Agreement**

Hans Medlarz, County Engineer, Ret. presented a DelDOT utility agreement for the Inland Bays Loop Project for Council's consideration.

**M 082 24**  
**Approve**  
**DelDOT**  
**Utility**  
**Agreement**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it moved based upon the recommendation of the Sussex County Engineering Department, that County Council approve DelDOT utility agreement associated with the Inland Bays loop project 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**

**Long Neck**  
**Communit-**  
**ies**

Hans Medlarz, County Engineer, Ret. presented change order no. 1 for Long Neck Communities for Council's consideration.

**M 083 24**  
**Approve CO**  
**No. 1/Long**

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. 1 for contract S21-10 be approved increasing the contract by \$93,066.11.

**Neck**

**Communit-  
ies**

**Motion Adopted: 5 Yeas**

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

**SCRWF/  
Project C19-  
11/CO No.  
33**

**Hans Medlarz, County Engineer, Ret. presented change order no. 33 for general construction for the South Coastal WRF treatment process upgrade no. 3 & Rehoboth Beach WTP capital improvement program, phase 2 for Council's consideration.**

**M 084 24  
Approve CO  
No. 33/  
SCRWF/  
Project C19-  
11**

**A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it moved based upon the recommendation of the Sussex County Engineering Department, that change order no. 33 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 \$62,212.29.**

**Motion Adopted: 5 Yeas**

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

**Permission  
to Prepare  
& Post  
Notices into  
SCUSSD/  
Bosh Berries**

**John Ashman, Director of Utility Planning & Design Review presented a permission to prepare and post notices for Bosh Berries Annexation into the Sussex County Unified Sanitary Sewer District (Western Sussex Area). The Engineering Department received a request from Davis, Bowen & Friedel, Inc. on behalf of their client Tijmen & Wouter Van Den Bosch the owners/developers of a project known as Bosh 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 Bridgeville. The project will be responsible for System Connection Charge of \$7,7000.00 per EDU based on current rates. The Engineering Department is requesting permission to prepare and post notices for a public hearing on the annexation of the area.**

**M 085 24  
Approve  
Bosh Berries  
Prepare &  
Post Notices**

**A Motion was made by Mrs. Green, seconded by Mr. Hudson that be it moved by the Sussex County Council that the Sussex County Engineering Department is authorized to prepare and post notices for the Bosh Berries Expansion of the Sussex County Unified Sanitary Sewer District to include parcel 131-6.00-1.00 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**

**Adopt  
Boundary/  
South  
Greenwood  
Area  
Adopt  
Boundary/  
South  
Greenwood  
Area  
(continued)**

**John Ashman, Director of Utility Planning & Design Review presented a Resolution to Adopt the Boundary for South Greenwood Area of the Sussex County Unified Sanitary Sewer District for Council’s consideration. 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 8<sup>th</sup> and 15<sup>th</sup>. A public hearing was held in the Council Chambers on January 23, 2024, allowing residents and neighboring parcels until February 2<sup>nd</sup> 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 two parcels.**

**M 086 24  
Adopt  
Resolution  
No. R 003 24**

**A Motion was made by Mrs. Green, seconded by Mr. Hudson to Adopt Resolution No. R 003 24 entitled “A RESOLUTION ESTABLISHING THE PROPOSED BOUNDARY OF THE SUSSEX COUNTY UNIFIED SANITARY SEWER DISTRICT (SCUSSD) SOUTH GREENWOOD AREA”.**

**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/  
CU2397**

**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 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” filed on behalf of Mispillion Solar Farm, 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 087 24  
Adopt  
Ordinance  
No. 2985/  
CU2397**

**A Motion was made by Mrs. Green, seconded by Mr. Hudson to Adopt Ordinance No. 2985 entitled “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” 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**

**M 087 24  
Adopt  
Ordinance  
No. 2985/  
CU2397  
(continued)**

- 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**

**M 087 24**  
**Adopt**  
**Ordinance**  
**No. 2985/**  
**CU2397**  
**(continued)**

- 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 Adopted: 5 Yeas**

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

**Old**  
**Business/**  
**CU2398**

**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 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” filed on behalf of Chaberton Energy (Blue Hen Solar).**

**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 088 24**  
**Adopt**  
**Ordinance**  
**No. 2986/**  
**CU2398**

**A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Ordinance No. 2986 entitled “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” 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 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**

**M 088 24  
Adopt  
Ordinance  
No. 2986/  
CU2398  
(continued)**

- 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.



**M 088 24  
Adopt  
Ordinance  
No. 2986/  
CU2398  
(continued)**

- 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 Adopted: 5 Years**

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

**Old  
Business/  
CU2433**

**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 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” filed on behalf of Chaberton Solar.**

**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.**

**M 089 24  
Adopt  
Ordinance  
No. 2987/  
CU2433**

**A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Ordinance No. 2987 entitled “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” for the reasons and conditions given by the Planning & Zoning Commission as follows 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 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**

**M 089 24  
Adopt  
Ordinance  
No. 2987/  
CU2433  
(continued)**

- 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.**

**M 089 24  
Adopt  
Ordinance  
No. 2987/  
CU2433  
(continued)**

- 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 Adopted: 5 Years**

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

**Old  
Business/  
CU2404**

**Under Old Business, Jamie Whitehouse, Planning & Zoning Director presented a Proposed Ordinance entitled “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” filed on behalf of Elk Development, LLC.**

**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.**

**M 090 24  
Adopt  
Ordinance  
No. 2988/  
CU2404**

**A Motion was made by Mr. Rieley, seconded by Mr. Hudson to Adopt Ordinance No. 2988 entitled “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” 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 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**

**M 090 24  
Adopt  
Ordinance  
No. 2988/  
CU2404  
(continued)**

- 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 for 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.

**M 090 24  
Adopt  
Ordinance  
No. 2988/  
CU2404  
(continued)**

- 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 Adopted: 5 Yeas**

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

**Old  
Business/  
CU2405**

**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 TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 22.97 ACRES, MORE OR LESS” filed on behalf of Elk Development, LLC.**

**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.**

**M 091 24  
Adopt  
Ordinance  
NO. 2989/  
CU2405**

**A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to Adopt Ordinance No. 2989 entitled “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” 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 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**

**M 091 24  
Adopt  
Ordinance  
NO. 2989/  
CU2405  
(continued)**

- 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. DeIDOT 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

**M 091 24  
Adopt  
Ordinance  
NO. 2989/  
CU2405  
(continued)**

- 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 Adopted: 5 Yeas**

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

**Ord. Intros**

**Mr. Moore reported that this item is on the agenda, but the County is in receipt of a letter from the Office of State Planning Coordination regarding the 4 Ordinances to the Land Use Application filed on behalf of CMF Cool Spring, LLC. Based on that letter, all 4 Ordinances would not be introduced at this time while the State's letter is reviewed.**

**CC Member  
Comments**

**There were no Council Member comments.**

**M 092 24  
Recess**

**At 1:08 p.m., a Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to recess until 1:30 p.m. Public Hearings.**

**Motion Adopted: 5 Yeas**

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

**M 093 24  
Reconvene**

**At 1:30 p.m., a Motion was made by Mr. Hudson, seconded by Mr. Rieley to come out of recess into Public Hearings.**

**Motion Adopted: 4 Yeas, 1 Absent**

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

**Rules**

**Mr. Moore read the rules and procedures for Public Hearings.**

**Public  
Hearing/  
CZ1998**

**A Public Hearing was held for a Proposed Ordinance entitled “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) filed on behalf of Louis, Janet & William Melton.**

**Jamie Whitehouse, Planning & Zoning Director presented the application.**

**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.**

**The Council found that Louis Melton, the Applicant, spoke on behalf of his application. Mr. Melton stated that over the last few days, there has been a lot of opposition submitted for this application; that he wanted to provide some background; that he has lived in the area for nearly 9 years; that he supports his community and has a vested interest in doing everything he can to protect the community property values; that he believes that the local real estate is a good investment; that he own other local properties and in each case, have done considerable work to enhance the value of the properties including the property being discussed today; that this zoning request was prompted following a review of the layout of the proposed Sundance Club whose main and only entrance spills out directly across the street from the middle of the property they are requesting to be rezoned; that this fact affects the property value from a normal residential construction stand point; that he suspects any of the opposition would feel the same way if a residential community of 180 homes spilled out directly across the street from their property; Mr. Melton stated that he is proposing a change in zoning from a GR (General Residential) to a B-2 (Neighborhood Community) district; that 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; that on January 20, 2024, the Planning & Zoning Commission approved this petition of a vote of 4-1 in favor; that from listening to the audio from this meeting, he believes that the property location was confused with Old Mill Bridge Road; that he would concur that Old Mill Bridge Road would not be appropriate for this petition; 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 Sussex County continues to grow; that by his calculation, there are 300 people per month to be expected here for the next 7-9 years; that median age in the beach area was**



**Public  
Hearing/  
CZ1998  
(continued)**

reported as 63 in 2020 and that number is about 20 years old than the balance of the State; that with this aging demographic comes the demand for more personal services; 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 there were about 26 opposition comments received; that much of the opposition is from a community that is nearly half a mile from the site and closer to Route 26; that there is also opposition from a community that is caddie corner to this property; that opposition was also received from the Cripple Creek area; that there has been no opposition received from individuals directly adjoining this property; that there is plenty of development taking place along Route 26; that the rapid development along Route 26 leads to more congestion which makes neighborhood business activity more desirable; that traffic at the location in question will be increased due to the development of the 300 homes mentioned previously on the Justice property and Sundance Club; that the Sundance Club and additional turn lane will alleviate some traffic congestion; that any new traffic from new business activity will be low due to the limited footprint of this property; that B-2 permits business that may be inconsistent with area demographics; that this area has been known to flood which is true; that the impact of the already planned housing developments is not known at this time; that building considerations will need to be taken with respect to flooding which will be their responsibility; that a picture of the layout of what the parcel would look like once developed was shared; 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 there is not enough footprint to have a fleet of more than one or two small vans; that the largest component that they are looking at is a coastal style business office complex; that there are some lands that are constrained by setback considerations.

Mr. Hudson questioned what the two current buildings are being used for; that one of the buildings is the applicants shop area; that he keeps a RV in there and a work area; that attached to that is a dwelling with a two-bedroom apartment; that the other property is a Nanticoke home; that the property has a full-time renter on the second floor; that the lower space is expected to be used for a business; that the old dump is located behind the property; that there is a pond located there; that it is unknown what the buildings will be used for at this time; that the applicant believes that the best use of the property would be to provide additional professional office space for tax people, financial advisors or medical providers; that the road is extremely skinny; that Sundance Club is required to expand the width of the road for the length of their property and raise it by 2 inches.

**Public comments were heard.**

Mr. Martin Lampner spoke in opposition to the application; that he was speaking on behalf of Whites Neck Community Alliance; that the Alliance consists of 16 communities; that he does not believe that Mr. Melton is setting

**Public  
Hearing/  
CZ1998  
(continued)**

out to harm the community; that his group disagrees with some of Mr. Melton's assessments; that there are issues on Old Mill Road; that it was stated there are many businesses in the area; that he believes there are not many businesses in the area; that the County map was shown that showed there was AR-1 and Medium Density; that the group feels that they need to protect that; that Mr. Melton will not own the property forever; that it means if this zone is created, it will open it up to others that may not be as respectful in their use of the property; that the area is developing rapidly; that he read information he found from an Institute; that it discusses when under common law is properly applied; that property rights are self-limiting; that there many property owners that are seriously concerned about this; that it is not in keeping with the surrounding communities; that this is residential and should remain residential; that it is not a commercial area; that Millville is working to create a more comprehensive business district; that the possibility of a convenience store creates an area of concern; that they are traditionally open for long hours and become a place for people to gather; that the traffic issues on Old Mill Road are serious; that homes sit close to the road; that this will create more issues with traffic; that Old Mill Road is a dangerous road for those that walk or ride a bike; that there are no shoulders on most of this road; that Sundance will have to make improvements; that any business will bring traffic to the area; that Millville town plan calls to build a retail area and to upgrade the existing Route 26; that business should not be taken out of that area; that he requests that the proposal be rejected; that owners that have brought their properties with the zoning around them have a reason to be able to expect to remain that way unless there is clear reason to change it; that if it is to go forward, it is believed that there needs to be limitations on the property; that he does not believe that this location is for retail; that a convenience store will create more traffic in the area to make it successful; that it is being asked to restrict the use at the site; that it was asked to consider many stipulations if this were to move forward.

Mr. Rieley pointed out that conditions are being requested, however, this is a Change of Zone application. For a Conditional Use, conditions are appropriate. Mr. Moore added that there is no power or authority to impose on conditions on a Change of Zone.

Mr. David Bartlett spoke in opposition of the application; that he resides in Banks Acres which is located near the property; that he provided testimony during the January 3, 2024 Planning & Zoning Commission meeting; that he has spoken with Banksville Park and Banks Acre are opposed to this application; that he does not know any of the members of the Melton family; that his comments are spirited; that the Melton family is trying to change the character of the respective neighborhoods with a zoning request; that night time activities are permitted in B-2 zoning; that if approved, the buildings will be completely out of character with the area; that future owners can do as they please if it is approved B-2; that since the January 3<sup>rd</sup> P&Z meeting, the applicant has submitted exhibits supporting documents as of February 7, 2024; that the owner states soon to be developed or rental space is expensive due to location; that the owner states any traffic increase generated by this B-

**Public  
Hearing/  
CZ1998  
(continued)**

2 rezoning request would be marginal; that Old Mill Road is a two land road with no shoulders; that the owner states that any businesses developed will necessarily need to cater to demographics of surrounding community; that if approved, there is nothing to stop the applicant from placing businesses such as a bar, small engine shop repair, gas station, marijuana dispensary or vape shop; that if approved, there will be a conflict between the Melton Property entrance and the recently approved Sundance Club development; that the applicants have mentioned this in a letter to Mr. Whitehouse; that the applicant mentioned that the 10 acre parcel (Tax ID 134-12.00-72.01) that is west of the subject property is zoned C-1, alluding to the fact that there is already commercially zoned property in the area; that he is correct, however, this property has been zoned C-1 for decades; that it was changed to C-1 and approved by County Council on August 25, 1987; that since that time, this site has been used to store heavy construction equipment and as a landfill; that there are enough daytime and evening businesses on Route 26; that several brand new buildings have just been recently erected and completed on Route 26; that there is vacant land on Route 26 that is already approved and cleared with underground utilities in place for commercial operations; that with the exception of the 10 acre parcel mentioned (Tax ID 134-12.00-72.01), the area in and around this request is nearly 100% residential and farms; that during P&Z meeting, the applicant stated that there are other commercially operated properties in this area; that the applicant mentioned each by name; that he found that Mr. Melton is partially correct, however a number of business he mentioned are zoned residential either AR or GR; that they are not commercially zoned properties; that the Melton property would be completely out of character with this area; that in a letter to Mr. Whitehouse, the applicant made comments regarding a chronic workforce housing shortage; that the application stated that he may include apartments above his businesses; that the housing shortage in this area typically is associated with J1 students, working in the area restaurants; that this occurs just before Memorial Day and ends shortly before Labor Day; that an 216 unit apartment complex known as Tupelo Sands is currently under construction near Beebe emergency/cancer center on Roxana Road; that there are plans to be submitted to the P&Z as well as County Council for the 10 acre property mentioned (Tax ID 134-12.00-72.01) requesting approval for a total of 4 apartment buildings and 56 townhomes creating 128 new units in total; that these units will help address any affordable housing shortage in this area; that during the January 6, 2024 P&Z meeting, attorney Vince Robertson stated that the Justice property application will need to be granted due to the fact that the land is already approved C-1; that the area will still remain residential in nature; that the Justice property backed into set aside land owned by the Bay Forest Community Association to the south and an abandoned county dump to the west owned by the State of Delaware; that it was shown that he believes that there was issues with the required signage; that in a letter that the applicant submitted to Mr. Whitehouse, the applicant states that the Sundance Club development will greatly diminish their lots from fitting into any GR zoning; that he discussed some issues that he had with the P&Z server; that there are many full time residents of Banks Acres & Banksville Park development who are primarily senior citizens; that most

**Public  
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(continued)**

owners do not have the technical ability or computer savvy to submit a comment electronically; that recently Commissioner Mears made a motion to deny CU2436; that he believes that there is no difference between our residential communities and the Peninsula Lakes community that would have been impacted by CU2436; that he hopes that Council will give this serious consideration when rendering an opinion; that the applicant stated that he does not know what they are going to do with their middle property; that if approved, they can place anything they please that meets B-2 regulations; that there is nothing to stop them from nighttime activities if this request is granted; that the residents purchased their homes with the understanding that the surrounding community would remain residential or agricultural in nature; that if approved, this would create a traffic nightmare; that he asked Council to deny this request.

Ms. Teresa Galanaugh Scarpato spoke in opposition of the application; that she is opposed to the zoning; that it sets a precedent for what is to come in the future; that this is a tight area; that the traffic is an issue; that the infrastructure with the internet is a constant battle; that she works from home and continuously gets kicked off the internet; that in August of 2021, her stepson was visiting and his puppy got stung by a bee they believe; that they had to take the dog to Salisbury, MD due to the vet hours; that the traffic getting out of her house was terrible; that she read a letter from the Melrun Acres Homeowners Association; that they oppose the proposed zoning; that the proposed development would put a burden on the infrastructure of the area.

The Public Hearing and public record were closed.

**M 094 24  
Defer  
Action/  
CZ1998**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley to defer action on a Proposed Ordinance entitled "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" for the reasons given by Planning & Zoning.

**Motion Adopted: 5 Yeas**

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

**Public  
Hearing/  
CZ1992**

A Public Hearing was held on a Proposed Ordinance entitled "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],

**Public  
Hearing/  
CZ1992  
(continued)**

**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) filed on behalf of Reed Properties, LLC.**

**Jamie Whitehouse, Planning & Zoning Director presented the application.**

**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.**

**The Council 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 Iron Works 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**

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Hearing/  
CZ1992  
(continued)

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 just read it from the Code; that its goal is to support service businesses and be 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

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CZ1992  
(continued)

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; that 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/Z1923; 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 was not successful; 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

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(continued)**

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 to grant this request for the change of zone application be approved as recommended by the Planning & Zoning Commission.

Mrs. Green asked where the entrances would be located. Mr. Schaeffer questioned how long the two roads have been designated as truck routes.

Public comments were heard.

Mr. Anthony Scarpa spoke in opposition of the application; that he resides in the Pemberton neighborhood; that he is here today representing his communities concerns about the rezoning change; that in 2021, the Reed family submitted an application to the County to change the zoning from AR-1 to HI-1; that County Council denied the HI-1 change citing such a significant change underlying any predictability of the Comprehensive Plan and its Future Land Use Map; that directly across the street from the Reed property is the approved but not yet started Milton Village, a mixed-use; that there will be 208 acre residential and commercial complex with 696 homes, medical building and retail space; that this project is estimated to generate 18,000 daily vehicle trips; that in the past 12 months, his neighborhood has been hit twice by motor vehicles attempting to make the bin by their road; that nearby, Draper Farms is proposed that will contain 1,350 housing units and 60,000 acres of commercial space; that this project is estimated to generate 30,000 daily vehicle trips; that the increase traffic on Gravel Hill Road and Sand Hill Road will create safety and quality of life issues for their neighborhood; that by approving this rezoning, it will allow the Reed family to come back to request that the remaining 64 acres be rezoned the same way; that he expects to see this zoning on Route 113, Route 1 or Route 13, not next to an existing residential neighborhood and Gravel Hill Road; that rezoning this would change the character of their neighborhood forever; that they request that the Council to reject this application.

Rev. Edward Thayer spoke in opposition of the application; that he spoke about the watershed; that behind his property are hundreds of acres of federally protected wetlands and the Pemberton branch; that he is interested in protecting those wetlands; that he urges the Council to reject his proposal.



**The Public Hearing and public record were closed.**

**M 095 24  
Defer  
Action/  
CZ1992**

**A Motion was made by Mrs. Green, seconded by Mr. Hudson to defer action on a Proposed Ordinance entitled “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” for the reasons given by the Planning & Zoning Commission.**

**Motion Adopted: 5 Years**

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

**Public  
Hearing/  
CZ1993**

**A Public Hearing was held on a Proposed Ordinance entitled “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]) filed on behalf of Ocean One Holdings, LLC.**

**Jamie Whitehouse, Planning & Zoning Director presented the application.**

**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.**

**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 parcel contains 115.6 acres; that this 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**

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Hearing/  
CZ1993  
(continued)**

**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. 1 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, is consistent with sound land use planning, 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 westside 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 2045 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 4<sup>th</sup> point of how that plan was developed states that Sussex County Future Land Use Plan is to encourage tourism and other responsible commercial and industrial job providers to locate and invest in the County; that it makes sense for the County to designate this area as one of its growth areas; 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**

**Public  
Hearing/  
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(continued)**

**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; 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 a 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 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; that since that time, 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**

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Hearing/  
CZ1993  
(continued)**

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 there was a MOU that DelDOT entered into with the property owner in March of 2021; that it laid out the process of how this project could apply for and work for the land use entitlement process; that within that MOU with DelDOT, the property owner and DelDOT agreed to a maximum number of average daily trips that will be generated; that the number is 17,699; that at the Commission hearing, there was concerns expressed about the DelDOT number of daily trips; that this was incorporated into the MOU; that a lot of time and thought has gone into this project; that they requested the Council 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 this is a Change of Zone application, not a site plan.

The Council found that D.J. Hughes, P.E. with DBF came forward; that the applicant has worked with DelDOT for several years on this project; that the MOU has been signed by DelDOT and the developer; that the trips include some into the site and some pass by trips that are already on the roadway; that the TIS evaluated the land use that was assumed that led up to the number of trips; that signals are recommended for the ramps coming from Route 1; that another change is that there will be an additional lane under the bridge; that DelDOT has confirmed there is room to do that; that there will be a left turn lane the full length under the bridge from each direction on Route 16; that it will led to a service road that will be signalized at Route 16 which will then come down to a roundabout that will serve the on ramp to Route 1 southbound; that the entrance and frontage improvements are more than what is typically seen; that the service road will run from Route 16 down to the southerly property limits north of the Broadkill River; that the service will be dedicated to public use; that it will be two-way to serve the site and the pad sites; that the off and on ramps will connect to the service road south or the DelDOT ramp where it connects to Route 1; that there is traffic signal agreements; that there is a potential signal at Route 16; 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. 1to prevent cross over traffic from one side to the other.

The Council found that Mr. Hutt came forward to speak on the application; that an image was shown of the potential layout that would include the

**Public  
Hearing/  
CZ1993  
(continued)**

**required service road; 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 about 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 traffic improvement will be constructed prior to any other development on this property; that this smart and responsible growth; 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 this application is a match to County's Comprehensive Plan regarding developing areas; that there are few nearby homes, you have infrastructure improvements with traffic and it is located within a busy intersection; that there are letters of support for the application; that the letters are from Representative Stell Parker Selby, a representative from Milton, the Milton Chamber of Commerce, Kent Sussex Leadership Alliance, Southern Delaware Tourism and two from the Sussex Economic Development Action Committee; that the sixth reasons for the Planning Commission's recommendation states 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 development area which is a growth area, it is one of the few areas in this part of Route 1 that anticipates a more intensive use while protecting the eastern side of Route 1 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 and for all of the stated reasons, the Applicant requests that the change of zone application be approved.**

**Mr. Schaeffer questioned if this application were approved and developed, how many students would it place in the local school system; that there would be no school aged children placed in the school system.**

**Mr. Schaeffer pointed out that the developer has been working with DelDOT for many years prior to making an application. He added that there is water and sewer available along Route 1 which is one of the major arterial roads in the State of Delaware. Mr. Schaeffer stated that the roadway improvements are being built today from Route 16 to Nassau bridge. Mr. Schaeffer added that Mr. Barrasso stated that during the PZ Commission meeting those improvements being built today under capacity with the development which he believes that was not an accurate statement.**

**Mr. Hutt submitted the signed MOU between DelDOT and the owner of the property.**

**A discussion was held about the developer not disclosing the end user for**

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(continued)**

**the property.**

**It was clarified that traffic can go on and off of Route 1 without driving by any subdivisions.**

**Mr. Schaeffer stated that he read Representative Stell Parker Selby's support letter for this application, and he respects her opinion.**

**Mr. Rieley stated that it is not clear to him what he is voting for; that the information may not be available right now; that it would be helpful for some conceptual vision of what is being proposed; that the previous Council decided about drawing a line and stated that they did not want commercial any further north than a certain area; that now, we are beyond Cave Neck Road; that it would be helpful with more clarity.**

**Mr. Vincent stated that it was that the Council at that time did not want commercial on the east side of Route 1; that they thought it should be low density residential and commercial on the west side of Route 1.**

**Public comments were heard.**

**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; that this will create a larger tax base.**

**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. Ronald Brewer spoke about the application; that he is not in favor or opposed; that he lives nearby the property; that he watches the traffic along Route 16; that in ten years he believes that the traffic has doubled; that coming through the Town of Milton, it can't handle it; that there are not good intersections to handle extra developments that are already happening; that he requested to keep the ramp as originally proposed; that he wants to work with the developer as a neighbor; that anything that would help with noise and light would be helpful; that he is familiar with the property and the water runoff needs to be considered.**

**Mr. Jack Bucchioni spoke in opposition of the application; that he is a property owner; that he believes that he is one of the closest property owners; that he spoke about what he sees out of his front window; that it**

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(continued)**

was left out what is below the property in the corridor; that he has lived at his property for 13 years; that he has owned property in Sussex County since the early 1990s; that the flood plains came over Route 1 when Hurricane Sandy came through; that there are unsolved issues relating to noise and light; that Cave Neck is getting squeezed from the North and the South due to the development; that the discussion of what will happen to the rest of the intersections needs to be discussed; that there are thousands of residential properties are right below what everyone has been discussing today; that these residents will be impacted; that he heard different numbers of what would be added to this property; that the support letters do not have standing to him; that none of the people that wrote the support letters live as close as he does to this property; that he requested that more information be gathered and there not to be a vote today to change the zoning; that he wants more facts.

Ms. Janet Lank spoke about the application; that she needs more facts; that the circle being put in is fine, but she questioned how much insight has been put into the size of it; that the circle on New Road she travels, and she feels cramped; that she worries about fire departments going around the circle; that there was an archaeological dig a few years ago at the circle; that she never saw anyone in the back part of the property; that she questioned if it was down; that a church used to be located in the back part of the property; that she has concerns that there could be graves located in that area; that she asked how much of the property will be left green and how much will be black top; that there are three drainage ponds proposed, there is not one close to Route 16; that she currently has water running into her front yard.

Mr. John Miller spoke in opposition of the application; that he sent an email last night; that this is sprawl into the farmland; that the concept of a waterpark/entertainment area at this intersection is horrifying.

Mr. Ennio Mastroianni spoke in opposition of the application; that he resides in Paynters Mill; that his community has established a committee to look at and monitor development along Cave Neck Road and Route 1; that he wonders if the maximum number of cars provided is only for the one corner; that he questioned about all of the other development that will take place in the area; that he asked what happens if the Rookery Golf Course does not make it; that he asked if there would be development taking place at the other two corners on the highway; that there is more and more development that is taking place and they feel that it will be affecting their community; that he requested the decision be deferred until DelDOT speaks with the community about the planned development in play and how those numbers will affect the capacity.

Mr. John Fitzhugh spoke in opposition of the application; that he would like clarification of the total traffic numbers; that one of the proposals had a large parking lot; that he did not see that in the latest drawing presented; that he would like to know if it was going to include the extra piece of land; that none of the documentation mentions anything about a grocery store;

that he questioned why it needs to go to C-3.

**M 096 24  
Defer  
Action/  
CZ1993**

Ms. Monique Fitzhugh spoke in opposition of the application; that she questioned the demarcation line and if it has been amended; that she worries if it is rezoned as C-3, what would stop them from coming in and building something else in the green space.

The Public Hearing and public record were closed.

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson to defer action on a Proposed Ordinance entitled “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” for the reasons given by the Planning & Zoning Commission.

**M 097 24  
Adjourn**

Motion Adopted: 5 Yeas

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

A Motion was made by Mr. Hudson, seconded by Mrs. Green to adjourn at 5:01 p.m.

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

MIKE HARMER, P.E.  
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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:** Hans Medlarz, P.E., County Engineer, ret.

**RE:** *Wolfe Neck WRF, Lagoon Solar RFP*  
*A. Recommendation to Award*

**DATE:** February 27, 2024

County Council in cooperation with the Lewes Board of Public Works retained the professional engineering firm GHD to conduct a facility upgrade study for the Wolfe Neck WRF. Any treatment expansion at the facility can only occur in the location of the primary treatment lagoon requiring removal of the accumulated biosolids. As a precursor of the removal, all incoming flows must be transferred to treatment lagoons 2 & 3. For the support of the biosolids removal and dewatering equipment, a new electrical service and power distribution center is needed.

On August 15, 2023, Council awarded GHD's Amendment 22 – Advanced Electrical Design in the not to exceed amount of \$427,000. The electrical design will accommodate both the immediate power needs associated with the biosolids project as well as the future plant expansion load. Under any discharge scenario, the treated effluent must be stored prior to final discharge. The compliance points any future discharge permit will be at the effluent pump station. In order to maintain compliance, the algae growth in the storage lagoon must be controlled by limiting the incoming light. A costly liner is one option, but research revealed a similar outcome can be achieved with floating solar panels.

The incoming DP&L service currently does not support the simultaneous facility load in addition to the expected biosolids project load. A solar power contribution can reduce or possibly eliminate any required electric utility upgrades. Furthermore, a solar power contribution can be integrated in the advanced electrical facility switchgear design.

A floating lagoon solar facility would be completely hidden from view below the embankment but give the facility upgrade a “green” component in addition to a lease payment to the County. In March of 2022 the Delaware Public Service Commission approved Order No. 9965



regulating community energy facilities. The County required that the respondents develop a solar system under the Commission's Community Energy Facility Program.

In summary the project provides the following benefits:

- Reduced algae growth by shading +/- 90% of light
- Reduction or elimination of Wolfe Neck Road DP&L distribution line upgrades
- Lease payment of \$2,343,770 over 20-years initial service life of system
- Established sinking fund for the equipment removal
- "Green" project component addressing citizen comments.
- Project integration into new electrical building project

Council approved the Engineering Department to request proposals from qualified solar developers to lease the effluent lagoon surface at the Wolfe Neck RWF on October 23, 2023. On October 26, 2023, an RFP including a draft lease agreement was advertised in the newspaper, as well as available on the County website. In addition, the RFP was directly forwarded to utility companies specializing in solar assets. On December 6, 2023, four (4) fully compliant submittals were received.

The RFP review committee met and ranked the proposals in accordance with the attached summary spreadsheet. The ranking selection was based on lease payment, schedule to deliver the system, as well as local experience. In summary, the Engineering Department requests authorization to finalize the lease terms with Noria Energy/Chaberton Energy and present the agreement to County Council for final approval.

**WOLFE NECK REGIONAL WASTEWATER FACILITY  
FLOATING SOLAR PHOTOVOLTAIC PROJECT  
RFP REVIEW**

|                  |                            |                            | Due Diligence Payment (\$) |             |             | Lease                                   |                | Sinking Fund                         |              |
|------------------|----------------------------|----------------------------|----------------------------|-------------|-------------|---|----------------|--------------------------------------|--------------|
|                  |                            |                            |                            |             |             | Payment (\$/year)                       | 20-yr total    | Payment (\$/year) or initial payment | 20-yr total  |
|                  |                            |                            |                            |             |             |   |                |                                      |              |
| Proposers        | System Size (MegaWatts-DC) | System Size (MegaWatts-AC) | Year 1                     | Year 2      | Year 3      |   |                |                                      |              |
| Noria            | 5.55                       | 4.00                       | \$10,000.00                | \$15,000.00 | \$15,000.00 | \$71,500.00 w/<br>2.5%<br>increase/year | \$2,343,770.00 | \$145,625.00                         | \$238,621.00 |
| NJR Clean Energy | 5.45                       | 4.00                       | \$5,000.00                 | \$5,000.00  | \$5,000.00  | \$20,000.00 w/<br>1.5%<br>increase/year | \$538,800.00   | <sup>2</sup>                         |              |
| Calvert Energy   | 4.20                       | 3.00                       | \$2,500.00                 | \$2,500.00  | \$2,500.00  | \$25,000.00 <sup>1</sup>                | \$538,875.00   | \$10,000.00                          | \$200,000.00 |
| Verogy           | 5.01                       | 4.00                       | \$7,500.00                 | \$7,500.00  | \$7,500.00  | \$80,000.00                             | \$1,600,000.00 | \$4,128.00                           | \$82,560.00  |

<sup>1</sup> The lease payment will be escalated every 5th anniversary by 5%

<sup>2</sup> NJRCEV, in coordination with the Sussex County Council, is willing to post a parental guarantee to offset any decommissioning costs for the proposed project.

# Wolfe Neck Regional Wastewater Facility Floating Community Solar Proposal



NORIA



**CHABERTON**  
ENERGY

## 1 EXECUTIVE SUMMARY

Noria Energy, Chaberton Energy and D3 Energy are pleased to present this offer to Sussex County and the Wolfe Neck Regional Wastewater Facility in response to their Request for Proposals (RFP) for the construction and operation of a floating solar photovoltaic project. This proposal outlines the scope of services and provides a system design, lease payment, projected project schedule and assumptions for the design, development, and construction of the system.

The proposal outlines a single system that will be submitted for participation in the Delaware Community Energy Facilities program:

A 5,554 kW DC and 4,000 kW AC the floating solar array covering lagoon 4 at the Wolfe Neck Regional Wastewater Facility. The floating solar array will cover approximately 11 acres of lagoon 4 and leave room for an additional potential development of a behind-the-meter floating PV system to offset on-site electrical consumption and take advantage of the 'direct payment' option for tax incentives available for governmental entities. The proposed lease payment for the Delaware Community Energy Facilities participant system is \$6,500/acre/year with a 2.5% annual escalation rate. For the development period between award and operation, the proposed due diligence payments are \$10,000, \$15,000, and \$15,000 in years 1, 2, 3 respectively.

We appreciate the opportunity to collaborate with Sussex County and the Wolfe Neck Regional Wastewater Facility on this project. Please let us know if you have questions and we look forward to the potential of working together on a project that provides renewable energy to the people of Delaware, and significant revenue to Sussex County.

Sincerely,



Jonathan Wank  
 CEO, Noria Energy  
[jon@noriaenergy.com](mailto:jon@noriaenergy.com)  
 415.350.1183

[www.noriaenergy.com](http://www.noriaenergy.com)  
 80 Liberty Ship Way, Ste 5  
 Sausalito, CA 94965



Chuck Watkins  
 Director, Development, Chaberton Energy  
[Chuck.Watkins@chaberton.com](mailto:Chuck.Watkins@chaberton.com)  
 206.402.8390

[www.Chaberton.com](http://www.Chaberton.com)  
 1700 Rockville Pike, Suite 305  
 Rockville, MD 20852

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### 3 GENERAL INFORMATION (SOQ)

#### 3.1 General Information

The project team is composed of 4 key organizations as described in the table with their related project experience described below. This team of partners has extensive experience working successfully together and has executed numerous similar projects to the proposed.

| Company                    | Address  | Role  |
|----------------------------|--|---|
| <b>Noria Energy</b>        | 80 Liberty Ship Way, Suite 5,<br>Sausalito, CA 94965   | Lead Development, Permitting,<br>Interconnection, |
| <b>Chaberton Energy</b>    | 1700 Rockville Pike, Suite 305,<br>Rockville, MD 20852 | Development, Permitting,<br>Interconnection       |
| <b>D3 Energy</b>           | 8083 NW 103rd Street,<br>Hialeah Gardens, FL 33016     | Engineering, Procurement, and<br>Construction     |
| <b>Greenbacker Capital</b> | 230 Park Ave. Suite 1560<br>New York, NY 10169         | Financing & Long-term<br>Ownership                |

 Noria is a market leader in developing renewable energy projects for government and commercial customers, specializing in floating and ground mount solar PV, battery storage, and microgrid solutions. Recently, Noria reached final completion on a 4.8 MW floating solar system in Healdsburg, CA. In New Jersey, Noria is currently building a 997 kWdc floating system and has been awarded an additional 5MW floating system on the same water body – very similar to this request for proposal. We have also recently been awarded solar projects of 27 MW and 10 MW in California, as well as a 20 MW behind-the-meter project in Latin America. Noria is currently developing 500MW of projects throughout the US and Latin America. Noria is a focused, efficient developer that prides itself on bringing together the best team to design and execute complex renewable energy projects.

#### Key Personnel

| Name and Title                                   | Contact  |
|--|--|
| Jonathan Wank, CEO                               | <a href="mailto:jon@noriaenergy.com">jon@noriaenergy.com</a>     |
| Alex Mayer, CTO                                  | <a href="mailto:alex@noriaenergy.com">alex@noriaenergy.com</a>   |
| Brian Stevenson, Director of Project Development | <a href="mailto:brian@noriaenergy.com">brian@noriaenergy.com</a> |



D3Energy is uniquely qualified for this project as we are the market leader in floating PV, having built the most floating PV plants in the United States. We have completed floating PV projects for major entities such as the U.S. Army, Florida Power & Light, Duke Energy, and Comcast. We have multiple repeat customers as a testament to our high standard of quality and workmanship. Our experience in installing FPV systems is unparalleled.



| Name and Title                                      | Contact  |
|---|--|
| Lowell S Dunn II, CEO                               | <a href="mailto:Lowellii@d3energy.com">Lowellii@d3energy.com</a> |
| Stetson Tchividjian, Director, Business Development | <a href="mailto:Stetson@d3energy.com">Stetson@d3energy.com</a>   |
| John Dolza, Project Manager                         | <a href="mailto:John@d3energy.com">John@d3energy.com</a>         |



Chaberton Energy has numerous examples of work similar to what is contemplated in this RFP. We currently have over 100MW of community solar projects in active development throughout Maryland and Delaware with a high percentage of that capacity being developed in DP&L territory. We have four CEF projects that have been permitted, have interconnection agreements, and have reached development complete in Sussex and Kent Counties. These projects are scheduled for construction in 2024. We also have two projects in early-stage development in New Castle County, both currently going through the interconnection application process.

| Name and Title                     | Contact  |
|------------------------------------|--|
| Senake Gajamera, CFO               | <a href="mailto:Senake.Gajamera@Chaberton.com">Senake.Gajamera@Chaberton.com</a> |
| Matthew Stavis, VP - Development   | <a href="mailto:Matthew.Stavis@Chaberton.com">Matthew.Stavis@Chaberton.com</a>   |
| John Gnesda P.E., VP – Engineering | <a href="mailto:John.Gnesda@Chaberton.com">John.Gnesda@Chaberton.com</a>         |

### 3.2 Project Experience

#### Noria Energy

Noria Energy is a leader in floating solar with ambitious development goals. Two example project summaries are shown below. These include the now 2<sup>nd</sup> largest operational FPV system in the US, atop the Water Reclamation Facility in Healdsburg, CA, and an integrated floating solar system on the Urrá hydroelectric facility in Colombia. Additionally, Noria has completed a pilot array with a built-in water quality monitoring system on the University of California, Davis campus, funded by a Department of Energy (DOE) research grant.

|                            |   |
|----------------------------|---|
| <b>Customer</b>            | <b>City of Healdsburg, CA</b>   |
| <b>Location</b>            | Healdsburg Water Reclamation Facility   |
| <b>Size/Type</b>           | 4.8 MWdc floating solar   |
| <b>Length of Tenure</b>    | 2018-2020 (full development, construction, commissioning cycle)   |
| <b>Project Description</b> | Noria Energy developed a 4.8 MWdc Floating Project for Healdsburg, CA. The Noria team won a competitive RFP, designed, contracted, and developed the project.   |
| <b>Contact</b>             | Terry Crowley, Utility Director   |
| <b>Address</b>             | 340 Foreman Ln, Healdsburg, CA 95448  |
| <b>Phone</b>               | 707-431-3340  |
| <b>Press</b>               | <a href="https://www.northbaybusinessjournal.com/article/news/healdsburg-debuts-biggest-floating-solar-farm-in-nation/">https://www.northbaybusinessjournal.com/article/news/healdsburg-debuts-biggest-floating-solar-farm-in-nation/</a> |

|                            |   |
|----------------------------|---|
| <b>Customer</b>            | <b>Urrá Hydroelectric Facility</b>  |
| <b>Location</b>            | Urrá  |
| <b>Size/Type</b>           | 1.5 MW integrated floating solar with hydroelectric facility  |
| <b>Length of Tenure</b>    | 2/2022 - ongoing  |
| <b>Project Description</b> | Noria Energy designed, engineered, and developed a 1.5 MW system on the Urrá hydroelectric facility in Colombia   |
| <b>Contact</b>             | Evelyn Villabon, Head of Engineering  |
| <b>Phone</b>               | +57 604-784-8991  |
| <b>Press</b>               | <a href="https://urra.com.co/2022/08/entre-un-80-y-70-avanzamos-en-la-construccion-de-la-planta-piloto-solar-flotante-aquasol/">https://urra.com.co/2022/08/entre-un-80-y-70-avanzamos-en-la-construccion-de-la-planta-piloto-solar-flotante-aquasol/</a> |

### Chaberton Energy

|                            |   |
|----------------------------|---|
| <b>Customer</b>            | <b>Biggins Creek</b>  |
| <b>Location</b>            | Sussex County   |
| <b>Size/Type</b>           | 5.5MWdc ground mount on agricultural land - Delaware Community Energy Facility  |
| <b>Length of Tenure</b>    | -   |
| <b>Project Description</b> | Chaberton Energy has secured review and approval from the planning commission with the conditional use permit hearing this month, Biggins Creek is scheduled for completion in 2024 |
| <b>Contact</b>             | -   |
| <b>Phone</b>               | -   |

|                            |   |
|----------------------------|---|
| <b>Customer</b>            | <b>Blue Hen</b>   |
| <b>Location</b>            | Sussex County   |
| <b>Size/Type</b>           | 5.5MWdc ground mount on agricultural land - Delaware Community Energy Facility  |
| <b>Length of Tenure</b>    | -   |
| <b>Project Description</b> | Chaberton Energy has secured review and approval from the planning commission, Blue Hen is scheduled for completion in 2024 |
| <b>Contact</b>             | -   |
| <b>Phone</b>               | -   |

|                            |   |
|----------------------------|---|
| <b>Customer</b>            | <b>Silvi Sand of Franklin</b>   |
| <b>Location</b>            | Williamstown, New jersey  |
| <b>Size/Type</b>           | 897kWdc behind-the-meter floating solar & 6MWdc Community floating solar  |
| <b>Length of Tenure</b>    | -   |
| <b>Project Description</b> | The phase 1 behind the meter project is finishing permitting and will begin construction in 8/2024 and the Phase 2 community solar project is finishing interconnection this spring |
| <b>Contact</b>             | -   |
| <b>Phone</b>               | -   |

### D3 Energy

Below are four projects developed and constructed by D3Energy that are similar in size and scope as the proposed project. The full project portfolio can be found at: <https://d3energy.com/recent-projects>

|                            |   |
|----------------------------|---|
| <b>Customer</b>            | <b>Orange County Utilities</b>  |
| <b>Location</b>            | 13000 S Orange Ave, Orlando, FL 32824   |
| <b>Size/Type</b>           | 1.2 MWdc floating solar   |
| <b>Length of Tenure</b>    | 6/2023 - present  |
| <b>Project Description</b> | D3Energy developed, engineered, and constructed this 1.2 MW system at the Utilities' water treatment plant. |
| <b>Contact</b>             | Ed Torres, Utility Director   |
| <b>Address</b>             | 9150 Curry Ford Road, Orlando, FL 32825   |
| <b>Phone</b>               | 407-254-9817  |

|                            |  |
|----------------------------|--|
| <b>Customer</b>            | <b>Duke Energy Florida</b>   |
| <b>Location</b>            | 7700 Co Rd 555, Bartow, FL 33830   |
| <b>Size/Type</b>           | 1 MWdc floating solar  |
| <b>Length of Tenure</b>    | 6/2023 - present   |
| <b>Project Description</b> | D3Energy developed, engineered, and constructed a 1MW floating PV plant, Duke's first FPV system, at their Hines Energy Complex. |
| <b>Contact</b>             | Shayna White, Project Manager  |
| <b>Phone</b>               | 407-437-9718   |

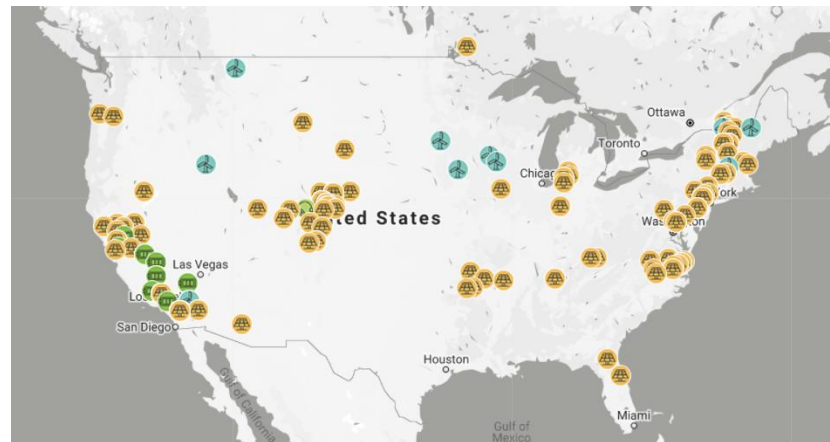
|                            |   |
|----------------------------|---|
| <b>Customer</b>            | <b>U.S. Army</b>  |
| <b>Location</b>            | Fort Bragg, North Carolina  |
| <b>Size/Type</b>           | 1.1 MWdc floating solar   |
| <b>Length of Tenure</b>    | 11/2021 - present   |
| <b>Project Description</b> | D3Energy developed, engineered, and constructed this 1.1 MW system, coupled with a 2MWh Tesla battery, at the Fort Bragg army base. |
| <b>Contact</b>             | Audrey D. Oxendine, Energy & Utilities Manager  |
| <b>Phone</b>               | 910-570-6110 (DSN 670)  |

|                            |  |
|----------------------------|--|
| <b>Customer</b>            | <b>Cox Automotive</b>  |
| <b>Location</b>            | 11801 W Colonial Drive, Ocoee, FL 34761 /  |
| <b>Size/Type</b>           | 2.1 MWdc floating solar  |
| <b>Length of Tenure</b>    | 7/2023 - present   |
| <b>Project Description</b> | D3Energy developed, engineered, and constructed at Cox's two Manheim Auto locations in the Orlando Area. |
| <b>Contact</b>             | David Rossi, Director of Engineering & Sustainability  |
| <b>Address</b>             | 6205 Peachtree Dunwoody Rd, Atlanta, GA 30328  |
| <b>Phone</b>               | 678-645-4795   |

### 3.3 Financing Experience and Capability

Noria Energy and Chaberton Energy both have extensive experience securing financing for solar projects and specifically floating solar projects. We both have trusted financial partners who regularly finance, own, and operate the projects that we develop. During the early stages of development, it is advantageous to avoid choosing a financial partner too soon as it prevents the project from receiving the best rates the market has to offer. We often find it is best to secure financing after interconnection approval is received and the project is accepted into the CEF program. This ensures that no value is left on the table, and all stakeholders receive the best possible rates and service. However, Noria Energy and Chaberton Energy share a common investor in Greenbacker Capital who often finances the projects we develop. By way of showing our financing capability with our common partner Greenbacker Capital. We have included a brief introduction on Greenbacker Capital below:

Over the last 5 years, Greenbacker has invested over \$1.5 billion in renewable energy assets, in 259 projects nationwide, with 800 MW of operating solar energy assets currently under management, over 1 GW in construction, and over 3GW in the pipeline. Greenbacker has built this portfolio by carefully maintaining budget and schedule on each project delivered and matching the portfolio’s production with large-scale energy off-takers. The vast majority of the projects under management, or under development, are in the 1-10 MW range, similar to the types of facilities contemplated in this RFP. Greenbacker has a dedicated asset management and operations team of ~20 full-time professional operators and engineers. By using in-house resources, Greenbacker is able to operate projects more efficiently than third parties, and they can use their strong balance sheet to resolve any issues that may arise.



Greenbacker’s U.S. Footprint (as of June 30, 2021).

## 4. TECHNICAL PROPOSAL

This technical proposal describes a 5,554 kWdc / 4,000 kWac in front-of-the-meter, floating solar system designed for the pond at Wolfe Neck Regional Wastewater Treatment Plant. This DC size was chosen to maximize multiple factors: 1) Solar coverage of the pond 2) Lease payment to Wolfe Neck Regional Wastewater Facility and 3) Production of the community solar installation.

### 4.1 Equipment

A summary of the solar equipment and first year performance is included in the table below. A site map and accompanying single line shows the physical and electrical layout and structure of the solar array.

| <b>Product Specifications</b>       |  |
|-------------------------------------|--|
| <b>Module</b>                       |  |
| Manufacturer:                       | JA Solar                               |
| Watts DC:                           | 545 Wdc                                |
| Model:                              | JA JAM72D30 545                        |
| <b>Racking</b>                      |  |
| Manufacturer:                       | Ciel Et Terre                          |
| Model:                              | Hydrelio aiR                           |
| <b>Inverter</b>                     |  |
| Manufacturer:                       | SMA                                    |
| Model:                              | Sunny Highpower Peak 3 [SHP 150-US-21] |
| <b>Data Acquisition System</b>      |  |
| Manufacturer:                       | Also Energy                            |
| Model:                              | PowerTrack                             |
| <b>System details</b>               |  |
| Azimuth:                            | 210°                                   |
| Tilt:                               | 12°                                    |
| Installed Capacity (kWac/kWdc):     | 4,000 kWac / 5,554 kWdc                |
| First Year Annual Production (kWh): | 8,064 kWh                              |
| Degradation:                        | -0.50%                                 |

The project utilizes all Tier-1 equipment (modules, inverters, racking, and associated electrical equipment) throughout to maximize performance and minimize risk.

### Modules (JA 545)

This System is designed using JAM72D30-545/MB modules. These modules have zero gaps between cells boasting a 20.9% efficiency. Moreover, the 25-year warranty from the supplier guarantees **less than 0.65% year-over-year degradation** after the first year. Other suppliers will be evaluated throughout the process and final selection will be based on 3<sup>rd</sup>-party reliability testing and other commercial considerations. More information at: <https://www.jasolar.com/index.php?m=content&c=index&a=lists&catid=454>.

### Inverters

The system is designed using a 150kWac string inverter from SMA with a 600Vac output. This inverter will be mounted onshore on a trellis to minimize its footprint as shown below. More information is available in Appendix 5 and at: <https://www.sma-america.com/products/solarinverters/sunny-highpower-peak3.html>.

### Racking

We have designed this system with the Ciel et Terre new Hydrelio aiR system, the newest in the company's line of float racking systems. Ciel et Terre is an industry leader in float racking and supports over 850MW of solar capacity across 250 projects. The Hydrelio aiR is designed for 12 degrees of module tilt and uses less plastic than industry standard models. More information is available in Appendix 5 and on their product website: <https://ciel-et-terre.net/solutions/products/>.

## 4.2 Site Layout

Below is a site plan describing the physical layout of the proposed floating photovoltaic system. A larger more detailed PDF is also attached to this RFP response.

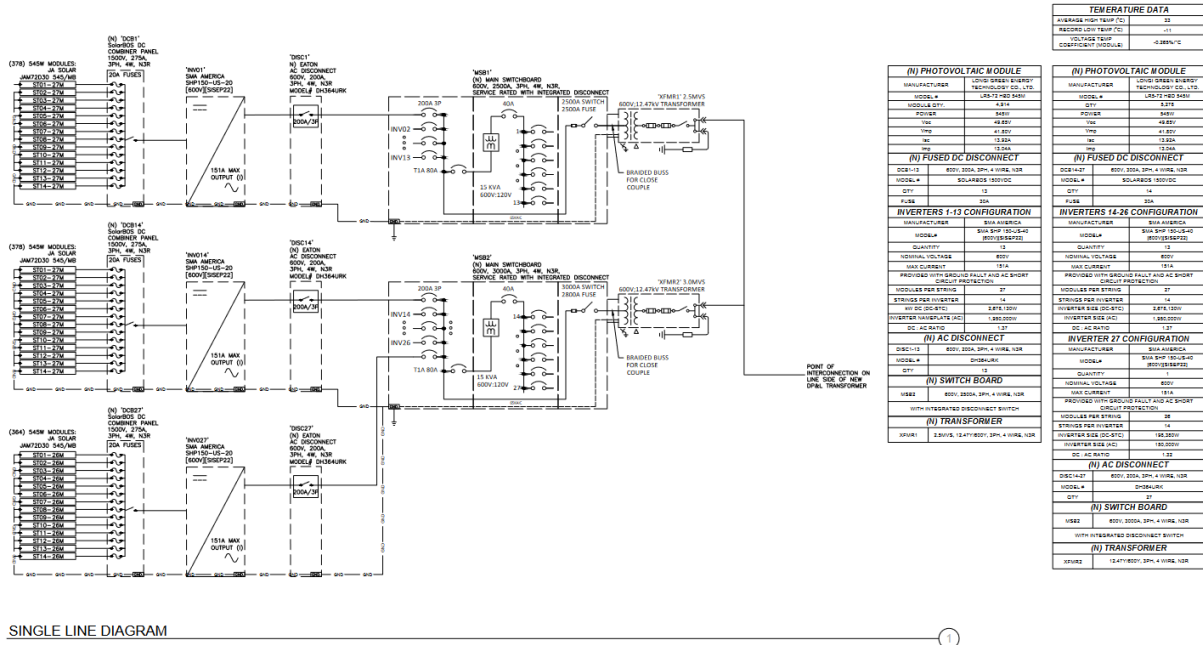


The 4MWac floating photovoltaic system, the largest size allowed in the Delaware CEF, will tie in on the line-side of the new DP&L transformer installed next to the new electrical building. The request for proposal requests that proposals include any equipment that may be furnished by for the solar installation and used in common by the county. Unfortunately, the proposed floating solar community energy facility is not a good fit for electrical equipment that can be used in common with the water treatment facility. The main reason is that the wire runs from the array and inverters to the point of interconnection (as seen in the site plan above) is roughly 1700 feet. In order to transport the required power over this distance without undue conductor costs and voltage drops, we will need to step-up the voltage from 600Vac (at the inverter output) to 12.47kVac as close to the array as possible. We will then directly connect to the utility-side of the transformer at 12.47kVac. It is not possible to put 12.47kVac conductors in the same duct as the 480Vac conductors required for the aerators.

While the proposed floating solar community energy facility is not a good fit for common electrical equipment, there is the possibility of installing a behind-the-meter system on the remaining portion of the pond. This behind-the-meter system could power the aerators with renewable energy and cover a larger portion of pond, both things of value to the facility. Noria specializes in powering water treatment equipment with solar energy and has multiple projects remotely powering water treatment equipment – we would suggest a ‘phase 2’ project wherein a behind-the-meter system is designed and installed to power the aerators, receive solar tax credits (now receivable in the form of direct payments for governmental entities - <https://www.whitehouse.gov/cleanenergy/directpay/>) on electrical equipment, and cover a larger portion of the pond. Please let us know if investigating this possibility is of interest to the county and facility.

### 4.3 Site Electrical

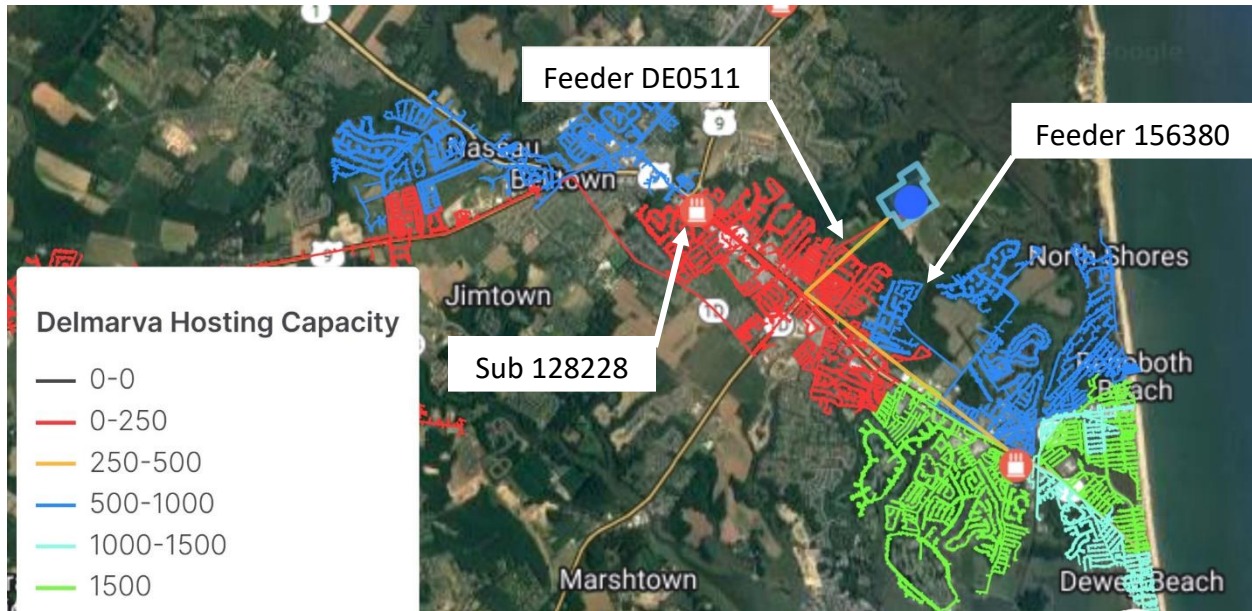
Below is an electrical single line diagram describing the electrical design of the proposed floating photovoltaic system. It shows the 5.554 MWdc array connected to 4.0 MWac of SMA inverters before stepping up to 12.47kV and running to the point of interconnection on the line side of the new DP&L transformer. A larger more detailed PDF is also attached to this RFP response.



### 4.4 Interconnection

The project team has evaluated interconnection at the Wolfe Neck Treatment Facility. In order to connect a community solar installation at the facility, we will need to interconnect to a three-phase utility electrical feeder. Luckily, 'Feeder DE0511' (shown below) is a three-phase electrical feeder that currently delivers the facility's power. This feeder would be our preferred place to interconnect with the utility. However, the 'Delmarva Hosting Capacity Map' (which shows the approximate amount of electrical generation capacity of the Delmarva feeders and substations) indicates that the feeder may not have enough capacity to receive the generation from the community solar installation (the capacity numbers in the lower right are in kW). The capacity map isn't always accurate and only gives limited information, so we filed a 'pre-application report' for Feeder DE0511 on November 17<sup>th</sup>. If there is not enough capacity available on Feeder DE0511, the system will need to upgrade the utility infrastructure to interconnect – this is often necessary with community solar projects. The pre-application report will give us enough information to determine if interconnecting to this feeder is a possibility, and if so, how much the system will need to upgrade the utility feeder.

If interconnection on Feeder DE0511 is not a possibility (which is unlikely), there is another feeder directly to the south of the facility that may also be an option. We have a pre-application report from another community solar project for 'Feeder 156380' and understand that this feeder and substation combination has more remaining capacity. We may not be able to physically interconnect with this feeder as it south of the facility across the small waterway, but it's worth having a backup option.



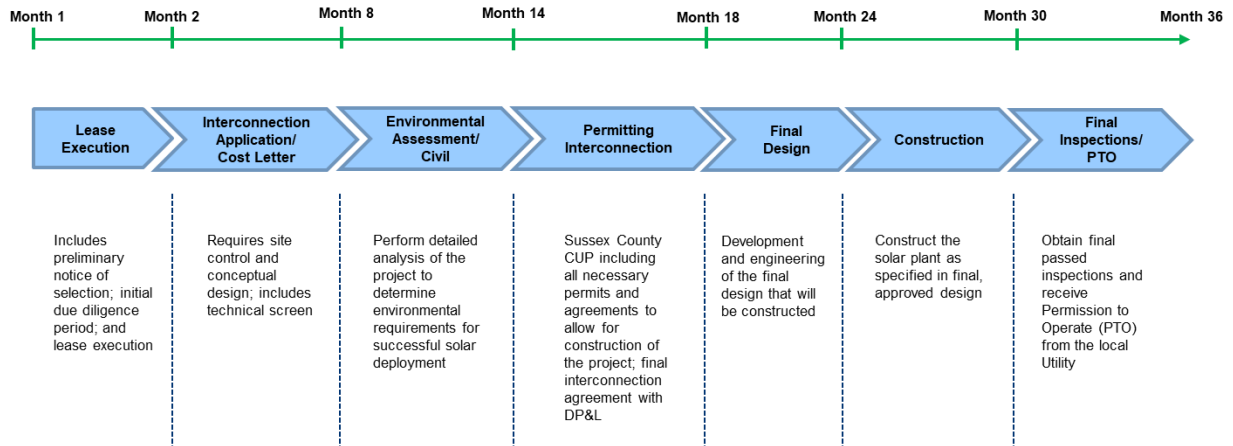
#### 4.5 Project Timeline / Major Milestones

The project team has experience permitting in Sussex County, reaching interconnection agreements with DP&L, and receiving certificate to operate from Delaware’s CEF Program. We are confident in our ability to bring the Wolfe Neck Treatment Facility project to commercial operation within the required three-year period but timelines to navigate the major development milestones can be lengthy. We are hoping the County can “fast track” their own permitting timelines (currently 6 to 12 months) to help the County reach their goals with this project. The expected timeline to meet the Wolfe Neck RFP requirements of obtaining the preliminary Certificate to Operate includes:

| Task   | Target Date   | Notes   |
|--|---|---|
| Preliminary Notice of Selection                | Up to 2 months  |   |
| Initial Due Diligence Notice                   | TBD   | RFP did not specify this period   |
| Lease Execution                                | 10 days prior to expiration of initial due diligence period |   |
| Conceptual Design                              | 3 days  | Preliminary design  |
| Interconnection Application to DP&L            | 1 month from signing Lease                                  | Site control and conceptual design are the two requirements to submit this application to DP&L; Chaberton’s internal timeline is 1 week so this is achievable |
| DP&L Technical Screen                          | 2 months  | DP&L will issue a cost estimate at this stage   |
| DP&L Cost Letter                               | 4 months  |   |
| Preliminary Certificate to Operate Application | December 31, 2024   | Requirement for this application is the cost letter from DP&L   |

A high-level full project timeline can be seen below:





## 4.6 Asset Management / O&M Summary

### Monitoring and Analytics

The floating solar array will utilize best in class monitoring and analytics to ensure the solar array delivers optimal production and savings for Brick Wall Corporation. The floating solar array's performance will be aggregated into an on-site SCADA system provided by Also Energy. In addition, all inverter, transformer, and meteorological data will be available at 5-minute intervals. Features include:

- Comprehensive site hardware analysis
- Losses classified and quantified.
- Curtailment losses
- Soiling analysis without additional hardware
- Virtual irradiance-based models
- Custom dashboards
- Capacity, energy event management
- Data tagging
- Automated data validation and curation

### O&M Services

O&M services are designed to achieve desired performance, reduce uncertainty/risk, and maximize performance. We pride ourselves in meeting our customers' every need by providing solid, lasting support. Key highlights of the O&M plan can include:

| Technical Operations  |   |
|---|---|
| <ul style="list-style-type: none"> <li>Annual maintenance plan</li> <li>Integrated operational event monitoring with work order management system</li> <li>Automated operational event tracking</li> </ul>  | <ul style="list-style-type: none"> <li>Client Service Managers</li> <li>Project analytics and reporting</li> <li>Warranty management</li> </ul>   |
| Field Service Maintenance   |   |
| <ul style="list-style-type: none"> <li>2x per year annual preventive maintenance</li> <li>Corrective maintenance and emergency response with industry-leading response times for system outages, safety issues, or major performance degradation</li> <li>OEM certified technicians and industry expertise</li> </ul> | <ul style="list-style-type: none"> <li>SCADA, networking, and communications services</li> <li>Spare parts procurement and management</li> <li>Safety, health, and environmental management</li> <li>Independent system commissioning</li> <li>Project redesign and repowering</li> </ul> |

## 5. ECONOMIC PROPOSAL

The project team is excited about the prospect of entering into a lease agreement with the Wolfe Neck Regional Wastewater Facility and Sussex County and details of the offer are below.

### 5.1 Lease and Due Diligence Payment

| Property Site Name | System Size (Watts-DC) | System Size (Watts-AC) | Due Diligence Payment (\$) |        |        | Lease Payment (\$/year)               | Sinking Fund Payment (\$/year) |
|--------------------|------------------------|------------------------|----------------------------|--------|--------|---------------------------------------|--------------------------------|
|                    |                        |                        | Year 1                     | Year 2 | Year 3 |                                       |                                |
| Wolfe Neck RWF     | 5,546,400              | 4,000,000              | 10,000                     | 15,000 | 15,000 | \$71,500 with 2.5% Increase each year |                                |

### 5.2 Sinking Fund/Decommissioning

The project team is very familiar with the decommissioning requirements of Sussex County. Sussex County Ordinance 2020 governing the CUP process for solar installations states:

*(7) In order to assure a complete reclamation upon the abandonment, discontinuance or termination of the use, there shall be a decommissioning plan that includes a financial security sufficient to ensure that funds are available for decommissioning and removal of the solar panels, solar farm or solar arrays in their entirety.*

In prior CEP projects in Sussex County we presented a plan to the county with a bond sufficient enough to cover all decommissioning costs. Each project has a specific calculation, but we expect the Wolfe Creek Facility project to require ~\$200,000 bond to cover decommissioning. We can provide a decommissioning plan upon request, but an example cost calculator for one of our Sussex County CEP projects is included below:

| DECOMMISSIONING COST ANALYSIS              |          |      |                |                   |                   |  |
|--|----------|------|----------------|-------------------|-------------------|--|
| PROJECT BLUE HEN (5.98 MW DC / 4.00 MW AC) |          |      | SELBYVILLE, DE |                   |                   |  |
| Description of Item                        | Quantity | Unit | Unit Cost      | Total Cost (2023) | Est Cost (2043)   |  |
| <b>Disassembly and Disposal</b>            |          |      |                |                   |                   |  |
| PV Modules                                 | 11,070   | EA   | \$ 6.25        | \$ 69,188         | \$ 113,372        |  |
| Inverters (string)                         | 32       | EA   | \$ 25.00       | \$ 800            | \$ 1,311          |  |
| Transformers                               | 2        | EA   | \$ 625.00      | \$ 1,250          | \$ 2,048          |  |
| Racking Frame (Tracker)                    | 103      | EA   | \$ 125.00      | \$ 12,875         | \$ 21,097         |  |
| Racking Posts                              | 2,062    | EA   | \$ 20.00       | \$ 41,240         | \$ 67,577         |  |
| LV Wiring                                  | 24,000   | LF   | \$ 0.80        | \$ 19,200         | \$ 31,461         |  |
| MV Wiring                                  | 667      | LF   | \$ 0.80        | \$ 533            | \$ 874            |  |
| Ag Fence                                   | 5,660    | LF   | \$ 4.70        | \$ 26,602         | \$ 43,590         |  |
| Concrete                                   | 30       | CY   | \$ 73.00       | \$ 2,190          | \$ 3,589          |  |
| Gravel (Access road)                       | 206      | CY   | \$ 30.00       | \$ 6,180          | \$ 10,127         |  |
| Removal of utility poles                   | 7        | EA   | \$ 2,000.00    | \$ 14,000         | \$ 22,941         |  |
|  |          |      | Subtotal       | \$ 194,058        | \$ 317,986        |  |
| <b>Site Restoration</b>                    |          |      |                |                   |                   |  |
| Re-seeding (includes seed)                 | 2        | AC   | \$ 2,500.00    | \$ 5,000          | \$ 8,193          |  |
| Re-grading                                 | 100      | CY   | \$ 12.00       | \$ 1,200          | \$ 1,966          |  |
|  |          |      | Subtotal       | \$ 6,200          | \$ 10,159         |  |
| <b>Demolition Cost</b>                     |          |      |                | <b>\$ 200,258</b> | <b>\$ 328,146</b> |  |

- APPENDIX 1 -

**EXHIBIT A: INITIAL DISCLOSURES**

| <b><u>Proposer Information</u></b> |  |
|------------------------------------|--|
| Name of Offering Firm              | Noria Energy Holdings LLC  |
| Address                            | 80 Liberty Ship Way<br>Suite 5<br>Sausalito, California<br>94965 |
| Contact Person                     | Devin Hawkins  |
| Telephone Number                   | (206) 228-6314   |
| E-Mail Address                     | Devin@Noriaenergy.com  |

| <b><u>DISCLOSURES</u></b>   |
|---|
| <p><b>Exceptions to the RFP:</b> Please check the one that applies:</p> <p><input checked="" type="checkbox"/> This Proposal does not take exception to any requirement of the RFP.</p> <p><input type="checkbox"/> This Proposal takes exception to the requirements of the RFP. The specific exceptions are listed in a separate attachment.</p>  |
| <p><b>State Debarment List:</b> Is the Proposer on the State of Delaware's Debarment List?</p> <p style="text-align: center;"><input type="checkbox"/> Yes      <input checked="" type="checkbox"/> No</p> <p>If "yes," attach a sheet fully describing each such matter.</p>   |
| <p><b>Occupational Safety and Health Law Violations:</b> Has the Proposer or any firm, corporation, partnership, or association in which it has an interest:</p> <p>(1) been cited for three (3) or more willful or serious violations of any occupational safety and health act or of any standard, order or regulation promulgated pursuant to such act, during the three-year period preceding the Proposal (provided such violations were cited</p> |

in accordance with the provisions of any state occupational safety and health act or the Occupational Safety and Health Act of 1970, and not abated within the time fixed by the citation and such citation has not been set aside following appeal to the appropriate agency or court having jurisdiction); or

(2) received one or more criminal convictions related to the injury or death of any employee in the three-year period preceding the Proposal?

Yes       No

If "yes," attach a sheet fully describing each such matter.

**Criminal Proceedings:** Has the Proposer or any of its principals (regardless of the place of employment) ever been the subject of any criminal proceedings?

Yes       No

If "yes," attach a sheet fully describing each such matter.

**Ethics and Offenses in Public Projects or Contracts:** Has the Proposer or any of its principals (regardless of the place of employment) ever been found to have violated any state or local ethics law, regulation, ordinance, code, policy or standard or to have committed any other offense arising out of the submission of proposals or bids or the performance of work on public works projects or contracts?

Yes       No

If "yes," attach a sheet fully describing each such matter.

[Signature block on the following page]

**NOTE:**

THIS DOCUMENT, IN ORDER TO BE CONSIDERED A VALID PROPOSAL, MUST BE SIGNED BY A PRINCIPAL OFFICER OR OWNER OF THE BUSINESS ENTITY THAT IS SUBMITTING THE PROPOSAL. SUCH SIGNATURE CONSTITUTES THE PROPOSER’S REPRESENTATIONS THAT IT HAS READ, UNDERSTOOD AND FULLY ACCEPTED EACH AND EVERY PROVISION OF EACH DOCUMENT COMPRISING THE RFP, UNLESS AN EXCEPTION IS DESCRIBED ABOVE. THE PROPOSER ACKNOWLEDGES AND AGREES THAT THESE FORMS MAY BE EXECUTED BY ELECTRONIC SIGNATURE, WHICH SHALL BE CONSIDERED AS AN ORIGINAL SIGNATURE FOR ALL PURPOSES AND SHALL HAVE THE SAME FORCE AND EFFECT AS AN ORIGINAL SIGNATURE. “ELECTRONIC SIGNATURE” SHALL INCLUDE, WITHOUT LIMITATION, ELECTRONICALLY SCANNED AND TRANSMITTED VERSIONS (E.G., VIA PDF) OF AN ORIGINAL SIGNATURE.

Noria Energy Holdings LLC

80 Liberty Ship Way, Suite 5, Sausalito, CA 94965

COMPANY NAME

ADDRESS

DocuSigned by:  
*Jonathan Wank*  
7E143BEAC35049B...

Jon Wank, CEO

SIGNED BY

PRINTED NAME AND TITLE\*

12/14/23

415-330-1183

DATE

TELEPHONE #

87-4027788

Jon@NoriaEnergy.com

FEDERAL TAX IDENTIFICATION #

EMAIL

\* The signatory must be an authorized representative of the Proposer with full power and authority to execute this INITIAL DISCLOSURES form.

***This form must be signed and returned with Proposal.***

- APPENDIX 2 -



## EXHIBIT B: NON-COLLUSION CERTIFICATE

The undersigned Proposer acknowledges and agrees that the attached response and offer submitted by Proposer is submitted in connection with the Proposal to provide the County of Sussex (the "County") with a Lease Agreement. By submission of this bid, each Proposer and each person signing on behalf of any Proposer certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

The prices set forth within this bid have been arrived at independently without collusion, consultation, communication, or agreement, for restricting competition, as to any matter relating to such prices with any other Proposer or with any competitor.

Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other Proposer or to any competitor; and

No attempt has been made or will be made by the Proposer to induce any other person, partnership, or corporation to submit or not to submit a bid for restricting competition.

In compliance with this invitation for proposals, and subject to the conditions thereof, the undersigned offers and agrees that the County may rely upon both the within representations and the indemnifications set forth within the hold harmless agreement attached to this RFP as Exhibit C.

Noria Energy Holdings LLC

80 Liberty Ship Way, Suite 5, Sausalito, CA 94965

COMPANY NAME

ADDRESS

DocuSigned by:

*Jonathan Wank*

Jon Wank, CEO

7E143BEAC35049B...

SIGNED BY

PRINTED NAME AND TITLE

12/14/23

415-330-1183

DATE

TELEPHONE #

87-4027788

Jon@NoriaEnergy.com

FEDERAL TAX IDENTIFICATION #

EMAIL

Subscribed and sworn to before me

this \_\_\_ day of \_\_\_\_\_, 2023

Notary Public

***This form must be signed and returned with Proposal.***

- APPENDIX 3 -

## EXHIBIT C: HOLD HARMLESS AGREEMENT

Proposer hereby agrees that it will indemnify and hold harmless the County of Sussex (the "County") and their respective employees, officers, officials, agents, volunteers and independent contractors, including any of the foregoing sued as individuals (collectively, the "Indemnified Parties"), from and against any and all proceedings, suits, actions, claims, damages, injuries, selections, judgments, losses or expenses, including fines, penalties, punitive damages, reasonable attorney's fees and costs, brought or assessed against, or incurred by, the Indemnified Parties related to or arising from the NON-COLLUSION CERTIFICATE submitted as Exhibit B of this RFP. The Proposer shall be required to pay all attorney's fees and costs incurred by the Indemnified Parties in enforcing any of the Proposer's obligations under this provision, whether a lawsuit or other proceeding is commenced, which obligation shall survive the termination or expiration of the Lease Agreement. Furthermore, at the option of the Indemnified Parties, the Proposer shall provide defense for and defend all claims, demands and causes of action referred to above, and bear all other costs and expenses related thereto.

Noria Energy Holdings LLC

80 Liberty Ship Way, Suite 5, Sausalito, CA 94965

COMPANY NAME

ADDRESS

DocuSigned by:

*Jonathan Wank*

Jon Wank, CEO

7E143BEAC35049B...

SIGNED BY

PRINTED NAME AND TITLE

12/14/2023

415-350-1183

DATE

TELEPHONE #

87-4027788

Jon@NoriaEnergy.com

FEDERAL TAX IDENTIFICATION #

EMAIL

Subscribed and sworn to before me

this \_\_ day of \_\_\_\_\_, 2023

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

***This form must be signed and returned with Proposal.***

- APPENDIX 4 -

**SOLAR ENERGY LEASE AND EASEMENT AGREEMENT  
(Delaware)**

THIS SOLAR ENERGY LEASE AND EASEMENT AGREEMENT (“**Lease**” or “**Agreement**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (the “**Effective Date**”), by and between \_\_\_\_\_ {name} \_\_\_\_\_, { if applicable, marital status / type of entity}, of/having an office at \_\_\_\_\_ {street address} \_\_\_\_\_, {city} \_\_\_\_\_, {state and zip}, as “**Lessor**”, (whether one or more), and **Chaberton Solar Delaware LLC**, a Delaware limited liability company, having an office at 1700 Rockville Pike, Suite 305, Rockville, MD 20852, as “**Lessee**”. Lessor and Lessee are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**”.

**RECITALS**

(a) Lessor is the owner of approximately **103 acres** of real property located in the County of Sussex, State of Delaware, as more particularly described in the vesting deed which is attached hereto as **Exhibit A** (the “**Property**”);

(b) Lessor and Lessee desire that Lessee should lease up to **20 acres** of the Property as preliminarily depicted on **Exhibit B**, together with all solar and air rights, improvements, fixtures, personal property and trade fixtures, appurtenances, tenements, hereditaments, ingress and egress rights, and other Easements (as defined in Section 14) pertaining to the Property (collectively, the “**Premises**”); and

(c) Lessee desires to obtain from Lessor, and Lessor desires to grant to Lessee, an exclusive option to lease the Premises while Lessee undertakes due diligence and development activities, and upon the successful conclusion of such activities, Lessor desires to lease to Lessee, and Lessee desires to lease from Lessor the Premises for the construction and operation of a solar photovoltaic and/or energy storage project on the Premises, including all necessary equipment to deliver solar or stored energy from the Premises to the distribution grid (the “**Project**”).

**AGREEMENT**

**NOW, THEREFORE**, IN CONSIDERATION OF THE FOREGOING RECITALS AND THE AGREEMENTS, COVENANTS AND PROMISES set forth in this Lease and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and agreed by the Parties, Lessor and Lessee, intending to be legally bound hereby, agree as follows:

**1. Option to Lease; Lease and Grant of Easements.** Lessor grants to Lessee, at any time during the Option Period (as defined in Section 4.1), an exclusive, irrevocable, and continuing right and option (the “**Option**”) to lease the Premises and obtain the Easements (as defined in Section 14) upon the terms and conditions set forth herein. Subject to Section 3, during the Option Period (as defined below in Section 4.1), Lessor shall grant no license, easement, option, leasehold, or other right in or affecting the Premises or any right related thereto, nor permit any third party to undertake any activities on the Premises without Lessee’s written consent. Effective as of the Construction Commencement Date (as defined in Section 4.1), Lessor hereby leases to Lessee the Premises, and grants to Lessee the Easements, upon and subject to the terms and conditions in this Lease. Lessee shall have the quiet use and enjoyment of the Premises in accordance with and subject to the terms of this Lease, without any manner of hindrance, interference, or molestation of any kind by Lessor or any person claiming through or under Lessor.

**2. Purpose and Scope of Lease.**

2.1 This Lease is for the uses set forth in this Agreement and Lessee will have the exclusive right to use the Premises for any and all uses related to the Project Activities (as defined in Section 2.2); provided that (a) during the Option Period, Lessee will have the right of access to and from the Premises from a public road through any easements, rights of way, or other access rights held by Lessor for the benefit of the Premises, and the rights to use the Premises on a non-exclusive basis for the purpose of carrying out due diligence and development activities

consistent with the Project Activities, including the activities set forth in Section 2.2.2; and (b) during the Restoration Period (as defined in Section 4.3), Lessee shall have the exclusive right to access and use the Premises for the purpose of completing the Restoration Requirements set forth in Section 13.3. The rights hereby granted to Lessee in this Lease include, without limitation, the Easements and related rights more fully described in Section 14.

2.2 **“Project Activities”** means any and all activities related to developing, installing, constructing, interconnecting, owning, maintaining, and operating one or more solar photovoltaic electric generation systems and/or Energy Storage Technology (as such term is defined under Section 48(c)(6) of the Internal Revenue Code of 1986 and the Inflation Reduction Act of 2022), converting solar or stored energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities related to such uses, including:

2.2.1 constructing, installing, using, replacing, relocating, repowering and removing from time to time, and maintaining and operating the following facilities (collectively, **“Project Facilities”**): (a) solar-powered electric generating facilities, including but not limited to modules, inverters, cables, foundations, panels, mounting units and all necessary ancillary improvements and equipment providing support or otherwise associated therewith; (b) photovoltaic solar power generating equipment or such other solar-powered generating equipment as determined in Lessee’s commercially reasonable judgment to be used to capture and convert solar radiation to produce electricity; (c) fences, gates and other safety and protection facilities; (d) utility installations; (e) Energy Storage Technology; (f) private stormwater management systems; and (g) overhead and underground electrical transmission, collection and communications lines and cables, electric transformers, switching stations, substations, telecommunications equipment, concrete batch plants, power generation facilities to be operated in conjunction with solar array installations, roads, control buildings, operation and maintenance buildings and yards, construction laydown and staging areas, security fencing and related facilities and equipment necessary or convenient for the construction, operation and maintenance of the Project;

2.2.2 any and all activities to determine the feasibility of the Premises for the Project including conducting surveys, studies of environmental, biological, cultural, and geotechnical conditions of the Premises, and other tests; and

2.2.3 all other activities on the Premises whether accomplished by Lessee or a third-party authorized by Lessee, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing.

3. **Uses Reserved by Lessor.** During the Option Period, Lessor shall have the right to harvest rock, minerals, crops, or timber from the Premises provided that any such activities shall be performed in such a manner so as not to adversely affect Lessee’s ability to utilize the Premises for Lessee’s intended purpose of constructing the Project Facilities from the Construction Commencement Date. The cost of any such activities undertaken by Lessor during the Option Period shall be the sole responsibility of Lessor, and the proceeds from the sale of any materials resulting from any such activities performed by Lessor prior to the Construction Commencement Date shall be for the sole benefit of Lessor. Effective as of the Construction Commencement Date (as defined in Section 4.1), Lessor acknowledges that neither Lessor nor Lessor’s lessees or grantees (other than Lessee) shall have any right to occupy or use the Premises until this Lease terminates or expires. Lessor and any of its other lessees or grantees shall immediately cease all activity and presence on the Premises as of the Construction Commencement Date and clear any equipment, facilities or anything else from the Premises that would otherwise potentially interfere with the Project.

4. **Option Period; Term of Lease.** Subject to the other provisions contained herein, the term of this Lease and the Easements contained in this Lease shall be as follows:

4.1 **Option Period.** The **“Option Period”** of this Lease shall be in force for a period of one year, commencing on the Effective Date and expiring at 11:59 PM EST on the one-year anniversary of the Effective Date, unless otherwise extended pursuant to the provision in the immediately following sentence. At Lessee’s option, upon notice to Lessor provided no later than the date that is one month prior to the end of the then-current Option Period or Option Period Extension (each such notice, a **“Option Period Extension Notice”**), and subject to other provisions

contained herein, Lessee may extend the Option Period for up to two additional one-year periods (each additional one-year period, a “**Option Period Extension**”), up to a maximum Option Period of six years. Notwithstanding the provision in the preceding sentence, and subject to Section 4.2, if this Lease has not been terminated in accordance with the terms hereof and, by the date set forth in the preceding sentence, Lessee fails to (i) deliver the Option Period Extension Notice, or (ii) otherwise notify Lessor that Lessee will not be exercising its option to extend the Option Period, Lessee shall be deemed to have exercised its option to extend the Option Period to the next allowable Option Period Extension up to the expiration date of the fifth Option Period Extension. If during the Option Period, Lessee secures all approvals and permits necessary to initiate the Project Activities, and, at its sole discretion, finds the Property suitable for development of the Project Facilities, Lessee shall notify Lessor of its intent to commence construction of the Project Facilities (such notice, the “**Construction Notice**”). The Construction Notice shall: (a) set forth the date on which Lessee shall commence construction of the Project Facilities (the “**Construction Commencement Date**”); and (b) contain an ALTA-compliant and certified survey (“**Survey**”) of the Premises and the Easement Areas (as defined in Section 14.1). Lessee shall deliver the Construction Notice no later than two weeks in advance of the Construction Commencement Date. The Survey shall show (I) a calculation of the actual number of acres contained within the Premises (each being a “**Premises Acre**”); and (II) the final routing and delineation of the Access and Transmission Easements (as defined in Section 14.1), if any. Upon Lessee’s delivery of the Construction Notice to Lessor, (A) Lessee shall be deemed to have exercised the Option; (B) **Exhibit B** and **Exhibit C** shall each be deemed revised (without the need for any additional documentation) to reflect the Premises and Easement Areas as set forth in the Survey, *provided that* upon Lessee’s request, Lessor and Lessee shall execute an amended memorandum of lease to give recordable notice of the revised Premises and Easement Areas and Lessee shall record said amended memorandum within the land records of the applicable county or counties in which the Property is located; and (C) such revised **Exhibit B** shall definitively establish the acreage of the Premises for purposes of calculating the Annual Rent (as defined in Section 5.2.1).

4.2 Lease Term. If this Lease has not been terminated in accordance with the terms hereof before the end of the Option Period (or any extension thereof), the “**Lease Term**” shall commence on the Construction Commencement Date and shall terminate on the 22<sup>nd</sup> anniversary of the Construction Commencement Date, unless otherwise extended pursuant to the provisions of this Section 4.2. At Lessee’s option, upon notice to Lessor (each such notice, a “**Lease Term Extension Notice**”) provided no later than six months prior to the end of the then-current Lease Term or Lease Term Extension, Lessee may extend the Lease Term for up to four additional five-year periods (each additional five-year extension period, a “**Lease Term Extension**”). Lessee shall pay to Lessor, the Annual Rent for the first year of such Lease Term Extension calculated in the manner, and by the date, set forth in Section 5.2.1. For the avoidance of doubt, the expression “**Lease Term**” means the Lease Term together with any Lease Term Extensions.

4.3 Restoration Period. “**Restoration Period**” means the period from the earlier termination or expiration date of the Lease until the last date of Lessee’s completion of the Restoration Requirements under Section 13.3.

5. **Fees and Rent**. Lessee will pay Lessor the following amounts:

5.1 Option Period Fee. Within 30 calendar days of the date hereof, Lessee will tender a one-time nonrefundable payment to Lessor in the amount of **\$10,000.00** (the “**Option Period Fee**”). In the event Lessee extends the then-current Option Period or Option Period Extension, Lessee shall pay to Lessor an additional payment in the amount of **\$15,000.00** (the “**Option Period Extension Fee**”) for each new Option Period Extension, payable no later than five days after the commencement of such Option Period Extension.

5.2 Rent.

5.2.1 During the Lease Term, and any extension thereof, Lessee shall pay to Lessor the Annual Rent (as defined in the immediately following sentence). The “**Annual Rent**” shall be in the amount of **\$6,500.00** per Premises Acre, payable within 45 days of the Construction Commencement Date and on each anniversary of the Construction Commencement Date. During the first anniversary of the Construction Commencement Date and each subsequent anniversary during the Lease Term, the Annual Rent shall increase by **2.5%** over the Annual Rent paid in the previous year.

5.2.2 “**Rent**” means, collectively, the Option Period Fee, Option Period Extension Fee, and the Annual Rent. Subject to Section 13.3, Lessee shall have no obligation to make any additional payments of Rent following the termination or expiration of this Lease.

5.3 Interest on Past Due Payments. All Rent and other fees not paid or tendered when due under this Lease shall bear simple interest at an annual rate equal to the lesser of (a) the Federal Reserve Bank Loan Prime Rate or (b) the maximum rate allowed by Applicable Law (as defined in Section 9.1).

5.4 Payment Adjustments; Partial Ownership; Change in Property Ownership.

5.4.1 Lessor shall provide Lessee with its certified taxpayer identification numbers simultaneously with the execution and delivery of this Lease via an Internal Revenue Service (IRS) Form W-9 (or its equivalent). No payments under this Lease shall be paid, but shall continue to accrue, until Lessee has received such taxpayer identification information. Upon receipt of such taxpayer identification information, all accrued, but unpaid Rent shall be immediately due and payable by Lessee to Lessor. In the event of an assignment of this Lease or sale, assignment or transfer of Lessor’s interest in the Premises, or any part thereof, to a third party, Rent shall be adjusted proportionately with respect to the fee interest in the Premises held by Lessor and said third party beginning with the first payment of Rent due subsequent to said sale, assignment, or transfer. No payments under this Lease shall be paid to said third-party, but shall continue to accrue, until Lessee has received certified taxpayer identification numbers from the third-party via an IRS Form W-9 (or its equivalent). Any Rent paid to Lessor for the year in which a sale, assignment, or transfer has occurred shall be allocated between Lessor and the third-party as determined between Lessor and the third-party but in no event shall Lessee be required to make any additional Rent payments or to otherwise compensate the third-party for its proportionate share of Rent for the year of sale, assignment, or transfer.

5.4.2 Notwithstanding anything to the contrary in this Lease or elsewhere, any obligation under this Lease for Lessee or any Assignee (as defined in Section 11.1) to pay Lessor any amount will be completely and unconditionally satisfied by payment of such amount by Lessee or Assignee, as applicable, to Lessor at the address for Lessor given in this Lease or such other single address designated by not less than 30 days’ prior notice to Lessee and each such Assignee signed by Lessor. At Lessee’s election, such payment may be by joint check or checks payable to any assignee(s) of Lessor under Section 11.5. Lessor shall be solely responsible to notify Lessee and each Assignee in writing of any change in ownership of the Property or any portion thereof.

**6. Ownership of Project Facilities.** Lessor shall have no ownership or other interest in any Project Facilities and Lessee may remove any or all Project Facilities at any time. No part of the Project Facilities or other equipment installed by Lessee on the Premises shall be considered part of the Property, or fixtures, or an improvement to real property. The Project Facilities shall at all times be considered tangible personal property owned exclusively by Lessee. Notwithstanding any provision herein to the contrary, Lessor acknowledges that Lessee shall have no obligation to construct any Project Facilities on the Premises.

**7. Taxes and Assessments.**

7.1 Responsibility of the Parties.

7.1.1 With the exception of the taxes and assessments set forth in Section 7.1.2, Lessor shall pay all taxes of every kind and nature (including real and personal property, income, gross receipts, franchise, profits, sales and withholding taxes), all general and special assessments, water and sewer rents and charges, and all levies, permits, inspection and license fees and other public charges now or hereafter levied or assessed against the Property as liens or assessments as the same shall become due and payable from time to time and before interest or penalties accrue thereon. Lessor shall under no circumstances permit the Property to be sold or advertised for sale for nonpayment of any tax. Lessor shall deliver to Lessee receipts evidencing the payment of such tax within 30 days after Lessee’s demand therefor.

7.1.2 During the Lease Term, Lessee shall pay all taxes and assessments levied or assessed against its personal property located on the Leased Premises, including the Project Facilities and all other taxes (including property tax increases specifically triggered by development and build out of the Project Facilities, or applicable “roll



back” taxes), assessments or other public charges assessed or imposed by reason of the Project Activities or the conduct of Lessee’s business, including, but not limited to, sales and income taxes. Lessee shall have the right to enter into a payment in lieu of tax (“**PILOT**”) agreement with the municipality or county in which the Premises are located for the taxation of Lessee’s personal property located on the Premises. If requested by Lessee, Lessor shall, at the sole expense of Lessee, reasonably cooperate with Lessee in connection with a PILOT agreement.

7.1.3 Lessee may, in its sole discretion, but shall not be obligated to, pay directly to the relevant taxing authority, any taxes with respect to the Property which under this Lease are the responsibility of the Lessor, in order to remove any tax lien or other restriction placed on the Property due to non-payment; in which case Lessee shall receive a credit on its Rent, of any amounts so paid plus an amount equivalent to interest at the rate provided for in Section 5.3 on the amount so paid from the date of payment to the time the Rent being credited is due. Furthermore, any such payment of taxes by Lessee which are the responsibility of Lessor under this Lease shall not obligate Lessee to make any further payments of such taxes.

7.2 Reimbursement. If any taxes payable by Lessee under this Lease are levied or assessed in the name of Lessor as part of the real property taxes payable by Lessor, then, promptly after Lessor timely submits the real property tax bill to Lessee, Lessee shall reimburse Lessor for all such taxes payable by Lessee under this Lease in the amount due without interest or penalties; provided, however, that if penalties and interest are incurred as a result of any failure or omission on Lessee’s part, then Lessee shall be responsible for the same. It is a condition to Lessor’s right to payment or reimbursement of any penalties or interest relating to taxes under this Lease that Lessor submit the real property tax bill (and any other communication from any government authority regarding the same) to Lessee at least 45 days before the tax bill is due.

7.3 Right to Contest. Lessee’s obligations under this Lease are subject to Lessee’s right to contest the same as hereinafter provided. Lessee shall have the right, in its sole discretion and at its sole expense, to contest by appropriate legal proceedings (which may be brought in the name(s) of Lessor or Lessee where appropriate or required), the validity or amount of any assessments or taxes for which Lessee is responsible under this Lease. Lessor shall in all respects cooperate with Lessee in any such contest.

## **8. Indemnities, Insurance, Safety Measures, and Environmental Matters.**

### **8.1 Indemnity.**

8.1.1 Lessee shall indemnify and hold harmless Lessor and its respective directors, officers, members, shareholders and employees (each, a “**Lessor Party**”, and collectively, the “**Lessor Parties**”) from and against any and all Losses incurred by a Lessor Party to the extent arising out of Lessee’s negligence, recklessness, or willful misconduct that may occur in connection with this Lease; provided that Lessee shall not, however, be required to reimburse or indemnify any Lessor Party for any Loss to the extent such Loss is due to the negligence, recklessness, or willful misconduct of any Lessor Party. Lessor shall indemnify and hold harmless Lessee and its directors, officers, members, shareholders and employees (each, a “**Lessee Party**”, and collectively, the “**Lessee Parties**”) from and against any and all Losses incurred by a Lessee Party to the extent arising out of Lessor’s negligence, recklessness, or willful misconduct that may occur in connection with this Lease; provided that Lessor shall not, however be required to reimburse or indemnify any Lessee Party for any Loss to the extent such Loss is due to the negligence, recklessness, or willful misconduct of any Lessee Party.

8.1.2 As used in this Lease, “**Losses**” means all losses, liabilities, claims, demands, suits, causes of action, judgments, awards, damages, cleanup and remedial obligations, interest, fines, fees, penalties, costs and expenses (including all attorneys’ fees and other costs and expenses incurred in defending any such claims or other matters or in asserting or enforcing any indemnity obligation).

8.2 Limitation of Liability. **NOTWITHSTANDING THE FOREGOING, ANY LOSSES FOR WHICH ANY INDEMNIFYING PARTY IS OBLIGATED TO INDEMNIFY ANY INDEMNIFIED PARTY UNDER THIS LEASE SHALL BE REDUCED BY ANY INSURANCE PROCEEDS ACTUALLY RECOVERED BY SUCH INDEMNIFIED PARTY FOR SUCH LOSSES. LESSEE SHALL IN NO CASE BE LIABLE FOR LOST BUSINESS OPPORTUNITIES, LOST PROFITS, OR ANY OTHER SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT MAY RESULT FROM THE CONDUCT OF LESSEE’S PROJECT ACTIVITIES OR OTHERWISE AS A RESULT OF ANY EXERCISE BY LESSEE OF ITS RIGHTS UNDER THIS LEASE.**

8.3 Insurance. Lessee shall, at its expense, obtain and maintain throughout the Lease Term, (i) a broad form comprehensive coverage policy of public liability insurance insuring Lessee and Lessor against loss or liability caused by Lessee's activities on the Premises under this Lease, in an amount not less than \$2,000,000.00 of combined single limit liability coverage per occurrence, accident or incident, which has a commercially reasonable deductible; and (ii) commercial auto liability insurance with a combined single limit of not less than \$1,000,000.00.

8.4 Safety Measures and Recognition of Dangers.

8.4.1 Lessor authorizes Lessee to take reasonable safety measures to reduce the risk of theft of or damage to the Project Facilities or the risk that the Project Facilities will cause damage, injury or death to people, livestock, other animals, and property. Lessee may construct fencing around the entire Premises and take other security precautions if Lessee determines, in its sole discretion, that such fencing or security measures will reduce such risks of theft, damage, death or injury. The expense for any and all fencing constructed by Lessee, or other security measures taken by Lessee, shall be borne solely by Lessee.

8.4.2 **LESSOR RECOGNIZES THE NEED TO EXERCISE EXTREME CAUTION WHEN IN CLOSE PROXIMITY TO ANY OF THE PROJECT FACILITIES. LESSOR AGREES TO EXERCISE CAUTION AT ALL TIMES AND TO ADVISE THE LESSOR PARTIES TO DO THE SAME. LESSOR SHALL TAKE REASONABLE MEASURES TO AVOID ALL RISKS ASSOCIATED WITH ELECTROMAGNETIC FIELDS RESULTING FROM THE PRODUCTION AND TRANSMISSION OF ELECTRICITY AND LESSOR WAIVES ANY AND ALL CLAIMS AND CAUSES OF ACTION WHATSOEVER (WHETHER CURRENTLY EXISTING OR THAT MAY OTHERWISE ARISE OR ACCRUE AT ANY TIME IN THE FUTURE) THAT LESSOR POSSESSES OR OTHERWISE MAY POSSESS AGAINST LESSEE PARTIES ARISING FROM OR RELATING TO SUCH RISKS; PROVIDED, HOWEVER, SUCH WAIVER SHALL NOT BE EFFECTIVE TO THE EXTENT LESSEE OR ANY LESSEE PARTY ENGAGES IN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.**

8.5 Environmental Matters; Hazardous Materials.

8.5.1 Lessee shall not violate, and shall indemnify Lessor Parties against any Losses arising from violation by Lessee or any Lessee Party of, any Environmental Law (as defined in Section 8.5.3) in connection with or related to Lessee's use of the Premises. Lessee's violation of the prohibition in the preceding sentence shall constitute a material breach and default under this Lease. In conformance with the requirements of applicable law, Lessee shall clean up, remove, remedy, repair, and shall have the right to register any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials (as defined in Section 8.5.4) by Lessee or any Lessee Parties in, on or under the Premises.

8.5.2 Lessor shall not violate, and shall indemnify Lessee Parties against any Losses arising from violation by Lessor or any Lessor Party of, any Environmental Law in connection with or related to Lessor's ownership or use of the Property, including without limitation any such violation which may have occurred by Lessor, Lessor Parties or any other person prior to the Effective Date. Lessor's violation of the prohibition in the preceding sentence shall constitute a material breach and default under this Lease. In conformance with the requirements of applicable law, Lessor shall clean up, remove, remedy, and repair any soil or ground water contamination and damage caused by the release or disposal of any Hazardous Materials by Lessor or any Lessor Party in, on, under, or about the Premises or within 200 feet of the Premises.

8.5.3 **"Environmental Laws"** means any and all federal, state, local laws, ordinances, codes, and regulations relating to the generation, manufacture, production, use, storage, release or threatened release, discharge, disposal, transportation, or presence of any Hazardous Materials, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("**CERCLA**") and all laws referred to under the definition of "hazardous substance" in CERCLA.

8.5.4 **"Hazardous Materials"** means any hazardous or toxic material, substance or waste, pollutant, or contaminant as defined or regulated under Environmental Laws, including "hazardous substance" and "pollutant or contaminant" (as such terms are defined or used in CERCLA), petroleum, petroleum products, asbestos, polychlorinated biphenyls, and radioactive materials.

8.6 Brokerage Commissions. Lessee and Lessor agree to indemnify and defend the other Party against

and hold the other party harmless from any and all claims with respect to any commission or equivalent compensation alleged to be owing on account of the indemnifying Party's dealings with any broker or agent. The terms of this Section 8 shall survive the expiration or earlier termination of the Term of this Lease.

**9. Lessee's Representations, Warranties, and Covenants.** Lessee represents, warrants, and covenants to Lessor that:

9.1 Requirements of Governmental Agencies. Lessee, at its expense, shall comply in all material respects with valid laws, ordinances, statutes, orders, rules and regulations of any governmental agency applicable to the Project Facilities (collectively, "**Applicable Law**"). Lessee shall have the right, in its sole discretion, to contest by appropriate legal proceedings, brought in the name of Lessee or in the names of both Lessee and Lessor, the validity or applicability to the Premises or Project Facilities of any Applicable Law. Lessor shall fully cooperate in such contest, so long as it is reimbursed for its out-of-pocket expenses incurred in such contest and cooperation. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee, but Lessee shall protect Lessor from Lessee's failure to observe or comply during the contest with the contested Applicable Law.

9.2 Liens. Lessee shall keep the Premises free and clear of all liens and claims of liens for labor and services performed on, and materials, supplies or equipment furnished to the Premises for Lessee's use or benefit; provided, however, that if such a lien does arise, Lessee has a right to contest such lien and Lessee, within 60 days after it receives notice of the filing of such lien, either bonds around such lien or establishes appropriate reserves therefore, or, otherwise, removes such lien from the Premises pursuant to Applicable Law, in which case Lessee shall not be deemed to have breached this Section 9.2. Nothing in this Section 9.2 or this Lease shall be construed to prohibit Lessee from granting one or more liens on all or any portion of Lessee's right, title or interest under this Lease as security for the repayment of any indebtedness or the performance of any obligation relating in whole or in part to any of the Project Activities.

**10. Lessor's Representations, Warranties and Covenants.** Lessor represents, warrants and covenants as follows:

10.1 Lessor's Authority. Lessor is the sole owner of the Property and has the unrestricted right and authority to execute this Lease and to grant to Lessee the rights granted under this Lease. Each person signing this Lease on behalf of Lessor is authorized to do so, and all persons having any ownership interest in the Property are signing this Lease as Lessor. When signed by Lessor, this Lease constitutes a valid and binding agreement enforceable against Lessor in accordance with its terms.

10.2 No Interference. Lessor's activities and any grant of rights Lessor makes to any person or entity, whether located on the Property or elsewhere, shall not, currently or prospectively, interfere with the construction, installation, maintenance or operation of the Project, Project Facilities, whether located on the Property or elsewhere; access over the Property to the Project Facilities or the Project; any Project Activities; or the undertaking of any other activities permitted under this Lease.

10.3 Treatment of Liens; Third-Party Rights. If at any time during the Lease Term, any lien or any third-party right is found, exists or is claimed to exist against the Property or any portion thereof, that creates rights superior to those of Lessee, and Lessee determines that the existence, use, operation, implementation or exercise of such lien or such third-party right could reasonably be inconsistent with or delay, interfere with, impair or prevent the exercise of any of Lessee's rights under this Lease or the financing of the Project, Lessee shall be entitled to obtain a recordable subordination and non-disturbance agreement (in form and substance reasonably acceptable to Lessee and any Financing Party (as defined in Section 12.2) from the holder of such lien or such third-party right, and Lessor shall use best efforts and diligence in helping Lessee obtain the same at no out of pocket expense to Lessor. Lessor agrees that any right, title, or interest created by Lessor from and after the Effective Date in favor of or granted to any third-party shall be subject to (a) this Lease and all of Lessee's rights, title and interests created in this Lease, and (b) any and all documents executed or to be executed by and between Lessee and Lessor in connection with this Lease.

10.4 Hazardous Materials. To the best of Lessor's knowledge, as of the Effective Date, there are no Hazardous Materials or Hazardous Substance located on the Premises or on the Property within 200 feet of the Premises, the Premises or the Property within 200 feet of the Premises has not been used for the generation,

treatment, storage or disposal of Hazardous Materials or Hazardous Substance, no underground storage tanks have ever been located on the Property and there are no underground storage tanks presently located on the Premises or on the Property within 200 feet of the Premises. Lessor's breach of the foregoing representation shall constitute a material breach and default under this Lease.

10.5 Endangered Species. To the best of Lessor's knowledge, as of the Effective Date, there are no vertebrate, invertebrate or plant species located within the Premises that are in a protected category under federal or state law or would otherwise result in a mitigation obligation in connection with the development of the Project Facilities.

10.6 Access. The Premises are accessible by public roadways or through an Easement granted by Lessor to a public roadway.

10.7 No Litigation and Liens.

10.7.1 Lessor is not a party to any, and to Lessor's actual knowledge, there are no pending or threatened, legal, administrative, arbitral or other proceedings, claims, actions or governmental or regulatory investigations of any kind or nature whatsoever against Lessor (i) challenging the validity or propriety of this Lease, or transactions contemplated in this Lease or (ii) which could reasonably be expected to have a material adverse effect on the ownership or operation of the Property or any part thereof or interest therein. If Lessor learns that any such litigation, claim, action or investigation is threatened or has been initiated, Lessor shall promptly deliver notice thereof to Lessee. Lessor is not subject of any bankruptcy, insolvency or probate proceeding.

10.7.2 To Lessor's knowledge, there are no liens, covenants, restrictions, rights of way, easements or other encumbrances affecting the Premises, which will prevent or limit Lessee's use of the Premises for the purposes permitted under this Agreement, or that are otherwise contrary to the terms of this Agreement.

10.8 Consents and Estoppel Certificates. Lessor shall cooperate with Lessee in the execution and delivery of such consents, estoppel certificates and other documents as a Financing Party, hedge provider, power purchaser, tax equity investor, title insurance company or any other party (collectively, "**Requestor**") may request, including, without limitation, any instruments required to evidence such Requestor's rights under this Lease. Within 15 days of actual receipt of a request to do so from Lessee or from any existing or proposed Requestor, Lessor shall execute an estoppel certificate (a) certifying that this Lease is in full force and effect and has not been modified (or, if the same is not true, stating the current status of this Lease), (b) certifying that to the best of Lessor's knowledge there are no uncured events of default under this Lease (or, if any uncured events of default exist, stating with particularity the nature thereof), and (c) containing any other certifications as may reasonably be requested. Any such statements may be conclusively relied upon by Lessee or any Requestor. The failure of Lessor to deliver such statement within such time shall be conclusive evidence upon Lessor that this Lease is in full force and effect and has not been modified, and there are no uncured events of default by Lessee under this Lease.

10.9 Requirements of Governmental Agencies and Utilities. Lessor shall assist and fully and promptly cooperate with Lessee, so long as Lessor is reimbursed for its out-of-pocket expenses, in complying with or obtaining any land use permits and approvals, building permits, development permits, construction permits, interconnection applications and requirements of any utility or the owner of any transmission facilities, environmental impact reviews or any other approvals required for the financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Project (collectively the "**Permits**"), including execution of applications for such approvals. Lessor consents to and authorizes Lessee, as Lessor's attorney-in-fact, with full authority in the place and stead of Lessor, to sign and file Permits on Lessor's behalf so long as Lessor is given a copy of the Permits at least 10 days prior to such execution and Lessor does not give notice within those 10 days that Lessor believes a portion of such Permit is inaccurate.

10.10 Confidentiality. Lessor shall maintain in the strictest confidence, for the benefit of Lessee, all solar data, all information pertaining to the financial terms of or payments under this Lease, and any and all terms and conditions of this Lease, Lessee's site or product design, methods of operation, methods of construction, power production or availability of the Project Facilities, and the like, whether disclosed by Lessee, or discovered by Lessor,

unless such information either (i) is in the public domain by reason of prior publication through no act or omission of Lessor or any Lessor Party, or (ii) was already known to Lessor at the time of disclosure and which Lessor is free to use or disclose without breach of any obligation to any person or entity. Lessor shall not use such information for its own benefit, publish or otherwise disclose it to others, or permit its use by others for their benefit or to the detriment of Lessee. Notwithstanding the foregoing, Lessor may disclose such information to Lessor's lenders, attorneys, accountants, and other personal advisors; any prospective purchaser of the Property; or pursuant to lawful process, subpoena, or court order; provided Lessor in making such disclosure advises the party receiving the information of the confidentiality of the information and obtains the agreement of said party not to disclose the information.

10.11 Waivers. To the extent that any Applicable Law establishes land use or zoning conditions, restrictions or requirements, including setbacks from the exterior boundaries of the Property for Project Facilities thereon, Lessor, to the extent permissible, waives any and all such conditions or requirements for the benefit of Lessee. Further, if so requested by Lessee, Lessor shall promptly, without demanding additional consideration therefore, execute, and if appropriate cause to be acknowledged and recorded, any waiver or other document or instrument required by any governmental authority. Lessor acknowledges that certain aspects inherent to the operation of the solar energy facilities may result in some nuisance, such as visual impacts, possible increased noise levels, possible glare, and other possible effects of electrical generation and transmission including without limitation potential interference with radio, television, telephone, mobile telephone, or other electronic devices, within 200 feet of the Premises. Without limiting the grant of Easements made in Section 2 and Section 14, Lessor understands and has been informed by Lessee that the Project Facilities may result in some nuisance, and hereby accepts such nuisance, and Lessor waives its right to object to such nuisance.

10.12 No CRP. Lessor is not a party to a Conservation Reserve Program contract with the U.S. Department of Agriculture pursuant to 7 C.F.R. Part 1410 or any state-based conservation easement or reserve program regarding the Property.

10.13 Title Review. Lessor shall, within 10 days after receipt of Lessee's request to do so, deliver all documents related to the Property in Lessor's possession or control to Lessee for Lessee's review, including, without limitation, copies of the following: reports, site plans, surveys, soil studies, phase one, two, three or four environmental reports, other inspection reports, architectural drawings, plans and specifications, studies, and investigations, government notices or agreements, title policies, commitments and reports, abstracts, rent rolls, insurance policies, water rights and well agreements, instruments and agreements relating to oil, gas or mineral rights, mineral exceptions or reservations or conveyances, and mineral leases, agreements regarding third party rights and leases, surveys, loan agreements, lien documents, site assessments, ad valorem property tax applications, agreements, notices, invoices and receipts, appraisals, and any and all notices or correspondence from any governmental authority which indicates that the Property is not in compliance with any applicable ordinance or otherwise addresses any pending or threatened condemnation, planned public improvement, special assessment, or zoning or subdivision change which affects the Property. In addition, Lessee shall have the right to obtain, at Lessee's expense, a current title report relating to the Property to determine the condition of Lessor's title and all the recorded rights of way and easements benefiting or encumbering the Property, as well as all mineral rights encumbering the Property.

## **11. Assignment; Right to Encumber; Division of Lease.**

11.1 Assignment by Lessee. Lessor hereby consents and grants to Lessee the right to grant, sell, lease, convey or assign all or a portion of Lessee's interest in the Lease or the Project Facilities or to grant co-leases (including, without limitation, co-tenancy interests), separate leases, subleases, easements, sub-easements, licenses or similar rights to Lessee's interest in the Lease or the Project Facilities (collectively "**Assignment**") to one or more persons or entities (collectively "**Assignee**"). No Lessor consent shall be required for any change in ownership of Lessee. Lessor further hereby consents and grants to Lessee the right to encumber, hypothecate, mortgage or pledge (including by mortgage, or personal property security instrument) all or any portion of Lessee's right, title, or interest under this Lease or in any Project Facilities to any Financing Party as security for the repayment of any indebtedness or the performance of any Mortgage (as defined in Section 12.2). If any additional consent is needed, Lessor shall not unreasonably withhold, condition, or delay its consent to any assignment that is not allowed by the preceding

sentences of this Section 11.1. All Assignees will be subject to all of the obligations, covenants and conditions applicable to the Lessee under this Lease. Upon Lessee's assignment of its entire interest under this Lease as to all or any portion of the Premises, or as may otherwise be provided in the applicable grant, sale, lease, conveyance or assignment document, Lessor shall recognize the Assignee as Lessee's proper successor, the Assignee shall have all of the assigned rights, benefits and obligations of Lessee under and pursuant to this Lease, and Lessee shall be relieved of all of its obligations relating to the assigned interests under this Lease that relate to acts or omissions which occur or accrue following the effective date of such grant, sale, lease, conveyance or assignment. As clarification, and without prejudice to Lessee's right to encumber its interest in the Lease and the Project Facilities, as permitted herein, Lessee shall have no right to mortgage or encumber the underlying Property.

11.2 Notice to Lessor. Following an Assignment or the granting of a Mortgage as contemplated by Section 11.1, Lessee or the Financing Party will give actual notice of the same (including the address of the Financing Party for notice purposes) to Lessor; provided, however, that the failure to give such notice shall not constitute a default but rather shall, solely with respect to the Mortgage, only have the effect of not binding Lessor hereunder with respect to such Financing Party until such notice is given.

11.3 Cure. Each Assignee that holds a full or partial interest in, or a sublease under this Lease, shall have the same amount of time following delivery of notice of a default, to cure said default as is given to Lessee pursuant to this Lease. If Lessee or an Assignee holds an interest in less than all of this Lease, the Premises or the Project Facilities, any default under this Lease shall be deemed remedied, as to Lessee's or such Assignee's partial interest only (and Lessor shall not disturb such partial interest), if Lessee or Assignee, as the case may be, shall have cured its pro rata portion of the default by paying the fees attributable to the Lease, the Premises or Project Facilities in which Lessee or the Assignee, as the case may be, holds an interest.

11.4 Division into Separate Leases. Lessee may divide the Premises into two or more separate solar energy projects or phases of development if such division becomes necessary to further the development of the Project Facilities. If Lessee elects to divide the Premises into two or more solar energy projects or phases of development, then Lessor shall, within 20 days after written request from Lessee, and without demanding any additional consideration, bifurcate this Lease by entering into and delivering to Lessee two stand-alone new leases (which shall supersede and replace this Lease) that provide Lessee with separate leasehold estates in different portions of the Premises, as designated by Lessee. Each of such new leases shall: (i) specify the portion(s) of the Premises to be covered thereby (and the term "Premises", as used therein, shall refer only to such portion(s)), (ii) contain the same terms and conditions as this Lease (except for any requirements that have been fulfilled by Lessee, any Assignee, or any other person or entity prior to the execution of such new leases, and except for any modifications that may be required to ensure that Lessee's and Lessor's respective combined obligations under such new leases do not exceed their respective obligations under this Lease) and be in a form reasonably acceptable to Lessee and Lessor; (iii) be for a term equal to the then-remaining term of this Lease; (iv) contain a grant of access, transmission, communications, utility and other easements for the benefit of the bifurcated leasehold estates, covering such portion or portions of the Premises as Lessee may designate (but only to the extent permitted in this Lease); (v) require payment to Lessor of only per acre amounts to be paid under this Lease for the acres lease under such new lease; and (vi) to the extent permitted by law, enjoy the same priority as this Lease over any lien, encumbrance or other interest against the Premises.

11.5 Assignments by Lessor. The burdens of this Lease, Easements and other rights contained in this Lease shall run with and against the Property and shall be a charge and burden thereon for the duration of the Lease Term and shall be binding upon and against Lessor and its successors and assigns. Lessor shall notify Lessee in writing of any sale, assignment or transfer of any of Lessor's interest in the Property, or any part thereof. Until such notice is received, along with proof of the successor Lessor's ownership interest, a completed IRS Form W-9, and a revised payment instructions, Lessee shall have no duty to any successor owner, and Lessee shall not be in default under this Lease if it continues to make all payments to the original Lessor before notice of sale, assignment or transfer is received. Lessor agrees it will not assign the rights to payments due to Lessor under this Agreement except to a successor owner of the Premises and, in no case, shall Lessor sever or attempt to sever the solar energy rights or interests from the fee title of the Premises or otherwise convey, assign or transfer or attempt to convey, assign or

transfer this Agreement or any interest herein, except to a successor owner of the Premises. Under no circumstances shall a transfer by Lessor include the Project or the Project Facilities.

## 12. Financing Party Protection.

12.1 Financing Parties. Lessor acknowledges that in order to finance the Project, Lessee may partner with various Financing Parties (as defined below). Without limiting the generality of the foregoing, Lessee may, at any time and from time to time, mortgage, collaterally assign, or otherwise encumber and grant security interests in all or any part of its estate, right, title or interest in or under this Agreement or Lessee's interest in the Premises. Any party who is the mortgagee, beneficiary, or holder of any such security instrument or interest (a "**Secured Lender**") shall, for so long as its security instrument or interest is in existence and until the lien thereof has been extinguished, be entitled to the protections set forth in this Section 12. Lessee or any Secured Lender shall send written notice to Lessor of the name and address of any such Secured Lender. As used in this Lease, (a) the term "**Financing Party**" means any financial institution or other person or entity that from time to time (i) provides financing for some or all of the Project Facilities, any phase or constituent project thereof, or any operations of the foregoing, or otherwise holds a lien or security interest in this Agreement or any interest or estate hereunder, the Project Facilities or any phase or constituent project thereof, any components thereof, or any direct or indirect equity interest in Lessee or any holder of an interest in this Agreement or any interest or estate hereunder, by mortgage, deed of trust or other real or personal property security instrument (including any sale-leaseback arrangement entered into for financing purposes); (ii) provides tax credit financing with respect to some or all of the Project Facilities or any phase or constituent project thereof or any components thereof, including any party acquiring a direct or indirect interest in Lessee or any holder of an interest in this Agreement or any interest or estate hereunder or in any of their respective interest in or estate under this Agreement as a tax credit investor, including, in each case, any agent, security agent, collateral agent, indenture trustee, loan trustee, loan participant or participating or syndicated lenders or investors involved in whole or in part in such financing, secured obligations or tax equity investment, and their respective representatives, successors and assigns; or (iii) any Secured Lender, (b) the term "**Mortgage**" refers to the mortgage, deed of trust or other security interest in this Lease or the Project Facilities given to a Secured Lender in connection with such financing, and (c) the term "**Mortgaged Interest**" refers to the interest in this Lease or the Project Facilities, that is held by the Secured Lender.

12.2 Protections. Any Financing Party, including each Secured Lender, and its respective successors and assigns, are hereby expressly made third party beneficiaries of this Agreement to the extent of their respective rights hereunder and shall be entitled to compel the performance of the obligations of Lessor under this Lease. Lessor and Lessee agree with respect to Financing Parties whose names and addresses have been provided to Lessor in writing that such Financing Parties shall be entitled to the protections in this Section 12.

12.3 Right to Possession, Right to Acquire and Right to Assign. A Financing Party shall have the absolute right (but not the obligation): (a) to assign its security interest; (b) to enforce its lien and acquire title to the leasehold estate by any lawful means; (c) to take possession of and operate the Premises or any portion thereof and to perform all obligations to be performed by Lessee or Assignee under this Lease, or to cause a receiver to be appointed to do so; and (d) to acquire the leasehold estate by foreclosure or by an assignment in lieu of foreclosure and thereafter to assign or transfer the leasehold estate to a third party. Lessor's consent shall not be required for (a) the pledge, mortgage or hypothecation of Lessee's rights in the Lease, the Project Facilities, or Lessee or (b) the acquisition of Lessee's or Assignee's leasehold estate by a third party who acquires the same by foreclosure or assignment in lieu of foreclosure. Lessor agrees to cooperate with Lessee and any of its Financing Parties. Lessor, at no cost thereto, shall execute and deliver all documents reasonably requested by a Financing Party in a form reasonably satisfactory to Lessor, Lessee and any Financing Party.

12.4 Notice of Default; Opportunity to Cure. As a precondition to exercising any rights or remedies as a result of any alleged default by Lessee or Assignee, Lessor shall give notice of the default to each Financing Party concurrently with delivery of such notice to Lessee or Assignee. Lessor shall not be entitled to exercise any remedy for a default unless Lessor has given a written notice of such default to Lessee and to each Financing Party, specifying the nature of the default and the method of cure, and the expiration of the applicable grace periods provided in this

Agreement (and such other applicable cure periods provided in this Agreement). In the event the Lessor gives such a notice of default, the following provisions shall apply:

12.4.1 A “**Monetary Default**” means failure to pay when due any rent or other monetary obligation of Lessee or Assignee to Lessor under this Lease, and such failure continues beyond the expiration of any applicable cure period provided hereunder; any other event of default is a “**Non-Monetary Default**.”

12.4.2 The Financing Party shall have the same period after receipt of notice of default to remedy the default, or cause the same to be remedied, as is given to Lessee or Assignee, plus, in each instance, the following additional time periods: (a) 60 days after receipt of the notice of default in the event of any Monetary Default; and (b) 90 days after receipt of the notice of default in the event of any Non-Monetary Default, provided that such period shall be extended for the time reasonably required to complete such cure, including the time required for any Secured Lender to perfect its right to cure such Non-Monetary Default by obtaining possession of the Premises (including possession by a receiver) or by instituting foreclosure proceedings, provided the Secured Lender acts with reasonable and continuous diligence. The Financing Party shall have the absolute right (but not the obligation) to substitute itself for Lessee or any Assignee and perform the duties of Lessee or any Assignee under this Lease for purposes of curing such defaults. Lessor expressly consents to such substitution, agrees to accept such performance, and authorizes the Financing Party (or its employees, agents, representatives, or contractors) to enter upon the Property to complete such performance with all the rights, privileges and obligations of the Lessee or any Assignee. Lessor shall not terminate this Lease prior to expiration of the cure periods available to a Financing Party as set forth herein.

12.4.3 During any period of possession of the Mortgaged Interest by a Financing Party (or a receiver requested by such Financing Party) or during the pendency of any foreclosure proceedings instituted by a Financing Party, the Financing Party shall pay or cause to be paid the Rent and all other monetary charges payable by Lessee or any Assignee under this Lease which have accrued and are unpaid at the commencement of said period and those which accrue thereafter during said period. Following acquisition of Lessee’s or any Assignee’s Mortgaged Interest by the Financing Party or its assignee or designee as a result of either foreclosure or acceptance of an assignment in lieu of foreclosure, or by a purchaser at a foreclosure sale, this Lease shall continue in full force and effect and the Financing Party or party acquiring title to the Mortgaged Interest shall, as promptly as reasonably possible, commence the cure of all defaults outstanding under this Lease and thereafter diligently process such cure to completion, whereupon Lessor’s right to terminate this Lease based upon such defaults shall be deemed waived; provided, however, that the Financing Party or party acquiring title to the Mortgaged Interest shall not be required to cure those non-monetary defaults which are not capable of being cured or performed by such party (“**Non-Curable Defaults**”). Non-Curable Defaults shall be deemed waived by Lessor upon completion of foreclosure proceedings or acquisition of interest in this Lease by such party.

12.4.4 Any Financing Party or other party who acquires the Mortgaged Interest pursuant to foreclosure or assignment in lieu of foreclosure shall not be liable to perform the obligations imposed on Lessee or an Assignee by this Lease incurred or accruing after such party no longer has ownership of the leasehold estate or possession of the Premises.

12.4.5 Neither the bankruptcy nor the insolvency of Lessee or any Assignee shall be grounds for terminating this Lease as long as the Rent and all other monetary charges payable by Lessee or Assignee under this Lease are paid by the Financing Party in accordance with the terms of this Lease.

12.4.6 Nothing in this Lease shall be construed to extend this Lease beyond the Lease Term or to require a Financing Party to continue foreclosure proceedings after the default has been cured. If the default is cured and the Financing Party discontinues foreclosure proceedings, this Lease shall continue in full force and effect.

12.5 New Lease to Financing Party. If this Lease terminates because of Lessee’s or Assignee’s default or if the Mortgaged Interest is foreclosed, or if this Lease is rejected or disaffirmed pursuant to bankruptcy law or other law affecting creditors’ rights, then Lessor shall, give prompt notice to each Financing Party, and Lessor shall, promptly upon written request from any Financing Party if made within 90 days after such termination, rejection or disaffirmance, without demanding additional consideration, enter into a new lease of the Premises in favor of such Financing Party, on the following terms and conditions:



12.5.1 The terms of the new lease shall commence on the date of termination, foreclosure, or rejection or disaffirmance and shall continue for the remainder of the Lease Term of this Lease, at the same Rent and subject to the same terms and conditions set forth in this Lease.

12.5.2 The new lease shall be executed within 30 days after receipt by Lessor of notice of the Financing Party's election to enter a new lease, provided said Financing Party: (a) pays to Lessor all Rent and other monetary charges payable by Lessee or Assignee, as applicable, under the terms of this Lease up to the date of execution of the new lease, as if this Lease had not been terminated, foreclosed, rejected or disaffirmed, less the Rent and other income actually collected by Lessor; and (b) performs all other obligations of Lessee or Assignee under the terms of this Lease, to the extent performance is then due and susceptible of being cured and performed by the Financing Party; (c) agrees in writing to timely perform, or cause to be performed, all non-monetary obligations which have not been performed by Lessee or any Assignee and would have accrued under this Lease up to the date of commencement of the new lease, except those obligations which constitute Non-Curable Defaults; and (d) reimburses Lessor for Lessor's reasonable attorney fees incurred in reviewing the same. Any new lease granted the Financing Party shall enjoy the same priority as this Lease over any lien, encumbrance or other interest created by Lessor.

12.5.3 At the option of the Financing Party, the new lease may be executed by a designee of such Financing Party without the Financing Party assuming the burdens and obligations of the Assignee thereunder.

12.5.4 If more than one Financing Party makes a written request for a new lease pursuant hereto, then the new lease delivered to each will have priority consistent with those effective prior to the applicable termination, rejection or disaffirmance, such that, without limitation, the lease delivered to any Secured Lender whose security interest was senior shall retain senior priority. Lessor shall be reimbursed all reasonable expenses incurred in determining whose secured interest has senior priority.

12.5.5 Lessor hereby irrevocably agrees and consents to refrain from taking any action to bar, restrain or otherwise prevent a Financing Party from the Premises for the purpose of inspecting the Project.

12.6 Financing Party's Consent to Amendment, Termination or Surrender. Notwithstanding any provision of this Lease to the contrary, the Parties agree that this Lease shall not be modified or amended and Lessor shall not accept a surrender of the Premises or any part thereof or a cancellation or release of this Lease from Lessee or Assignee prior to expiration of the Lease Term without the prior written consent of each Financing Party. This provision is for the express benefit of and shall be enforceable by such Financing Party. In addition, and notwithstanding anything in this Agreement to the contrary, in the event that Lessee should fail to exercise its right to extend the Lease Term for a Lease Term Extension by the applicable date required in Section 4.2 above, Lessee's right to so extend the Lease Term shall nonetheless continue for an additional 30 days following Lessor's delivery of written notice of the failure of Lessee to timely exercise such right to Lessee and each Financing Party. If either Lessee or any Financing Party provides written notice to Lessor, within such 30 days, of its intent that such right to extend be exercised, then timely notice of the exercise of the right to extend the Lease Term for the applicable Lease Term Extension shall be deemed to have been given.

12.7 No Waiver. No payment made to Lessor by a Financing Party shall constitute an agreement that such payment was, in fact, due under the terms of this Lease; and a Financing Party having made any payment to Lessor pursuant to Lessor's wrongful, improper, or mistaken notice or demand shall be entitled to the return of any such payment.

12.8 Further Amendments. Provided that no material default in the performance of Lessee's obligations under this Lease shall have occurred and remain uncured after the expiration of all applicable notice and cure periods, at Lessee's request, Lessor shall (a) amend this Lease to include any provision that may reasonably be requested by an existing or proposed Financing Party, or by any entity that is proposing to directly or indirectly acquire the Project, and (b) shall execute such additional documents as may reasonably be required to evidence such Financing Party's or other entity's rights hereunder; provided, however, that such amendment shall not materially impair the rights of Lessor under this Lease, or extend the Lease Term of this Lease beyond the period of time stated in Section 4. Further, Lessor shall, within 10 days after notice from Lessee or any existing or proposed Financing Party, execute and deliver

thereto a certificate to the effect that Lessor (i) recognizes a particular entity as a Financing Party under this Lease and (ii) will accord to such entity all the rights and privileges of a Financing Party hereunder.

**13. Termination and Remedies.**

13.1 Lessee's Rights. Lessee may, for any reason, by 30 days' notice to Lessor, terminate this Lease or a part hereof and surrender its interest in all or a portion of the Premises, and upon delivery of such notice, all obligations of the Parties hereunder shall cease on the termination date specified in such notice to the extent of such termination; provided, however, that upon each surrender as to any part of the Lease, Lessee shall maintain such easements rights to the surrendered portion as may be appropriate to its enjoyment of the portion not surrendered. Lessee shall pay Lessor all amounts accrued under this Lease through the date of such termination and completion of any restoration pursuant to Section 13.3. Upon such termination, Lessee shall promptly record an appropriate instrument with the office of the County Recorder evidencing the termination of this Lease or a portion hereof. In no event shall Lessor have a right to seek damages against Lessee with respect to this Lease solely by reason of its termination excepting only the amounts accrued through the date of such termination. To compel compliance with this Lease, in the event of a default of any provision of this Lease by Lessor, Lessee shall be entitled to seek all remedies available at law and in equity, including specific performance. In the event Lessee terminates this Lease, neither Lessor nor Lessee shall have any further rights, liabilities, or obligations under this Lease except for any of same that expressly survives such termination.

13.2 Lessor's Rights. Notwithstanding anything to the contrary in the Lease, if Lessee is in default and fails to cure the default after all applicable notice and cure periods (including those contained in Sections 13.2.1 and 13.2.2), Lessor shall have the right and option to do any or all of the following:

13.2.1 If a Monetary Default occurs Lessor may terminate this Lease or pursue an action for damages (or in equity, as the case may be) under this Lease while such Monetary Default is continuing, if all of the following occur:

(a) Lessor simultaneously notifies Lessee and all Financing Parties in writing of such Monetary Default, which notice sets forth in detail the facts pertaining to the default;

(b) Lessee fails to cure such Monetary Default within 60 days after Lessee receives the notice from Lessor of such Monetary Default, or if such cure cannot, with the exercise of commercially reasonable diligence, be completed within such period, Lessee has not begun to diligently undertake the cure within the period provided herein or to thereafter prosecute such cure to completion; and

(c) all Financing Parties fail to cure such Monetary Default within the additional period permitted them under Section 12 of this Lease.

13.2.2 If a Non-Monetary Default occurs, subject to the provision in Section 13.2.3, Lessor may pursue an action for monetary damages (or in equity, as the case may be) under this Lease while such Non-Monetary Default is still continuing if all of the following occur:

(a) Lessor simultaneously notifies Lessee and all Financing Parties in writing of such Non-Monetary Default, which notice sets forth in detail the facts pertaining to the default;

(b) Lessee fails to cure such Non-Monetary Default within 60 days after Lessee receives the notice from Lessor of such Non-Monetary Default, or if such cure cannot, with the exercise of commercially reasonable diligence, be completed within such period, Lessee has not begun to diligently undertake the cure within the period provided herein or to thereafter prosecute such cure to completion; and

(c) all Financing Parties fail to cure such Non-Monetary Default within the additional period permitted them under Section 12 of this Lease.

13.2.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS LEASE OR ANY RIGHTS OR REMEDIES WHICH LESSOR MIGHT OTHERWISE HAVE AT LAW OR IN EQUITY, WITH RESPECT TO ANY LESSEE NON-MONETARY DEFAULT THAT IS NOT CURED WITHIN THE TIME PERIOD CONTEMPLATED IN SECTION 13.2.2 ABOVE, LESSOR SHALL NOT (AND HEREBY WAIVES THE RIGHT TO) COMMENCE ANY ACTION OR PROCEEDING IN WHICH TERMINATION,

CANCELLATION, RESCISSION OR REFORMATION OF THIS LEASE IS SOUGHT AS A REMEDY, AND LESSOR SHALL BE LIMITED TO SEEKING MONETARY DAMAGES FOR SUCH NON-MONETARY DEFAULT.

13.3 Restoration. Upon any surrender, termination or expiration of this Lease, Lessee shall, within 24 months thereof, substantially complete the Restoration Requirements (as defined below). During the Restoration Period, Lessee shall continue to pay the applicable Rent paid immediately prior to the commencement of such Restoration Period, which shall be calculated on a monthly basis (i.e., such Rent divided by 12 months), and payable monthly in advance for each month during the Restoration Period. “**Restoration Requirements**” means (a) the decommissioning of the Project Facilities and restoration of the surface of the Premises to a condition and contour reasonably similar to that existing on the Property as of the Effective Date, wear and tear excepted, (b) removal of all of its above-grade and below-grade Project Facilities and other equipment located on the Premises, except those located 36 inches or more below-grade, (c) burying of all foundations below-grade with topsoil, (d) removal of all concrete, (e) reseeding areas where the pads were located with grasses or natural vegetation, and (f) any other requirements that may be imposed in connection with any land use permits issued in connection with the Project Facilities. Any access roads constructed by Lessee may remain on the Premises at Lessee’s option unless Lessor specifically requests their removal in writing. It is understood that it would not be reasonable to expect that any trees removed in conjunction with the Project be replaced.

13.4 Release of Lease. Upon termination, expiration or surrender of this Lease, in whole or in part, and upon written request by Lessor, Lessee shall provide Lessor with a copy of an appropriate release of Lease.

13.5 Termination of Option. Lessee may, for any reason, by 30 days’ notice to Lessor, terminate the Option granted in Section 1, and upon the effective date of such termination, neither Lessee, nor Lessor, shall have any further obligation to the other under this Lease except for Sections 8.1 and 10.10.

13.6 Injunctive Relief. Notwithstanding any provision to the contrary in this Agreement, in the event of any breach or threatened breach, either party shall have the right to apply for the entry of an immediate order to restrain or enjoin the breach and otherwise specifically to enforce the provisions of this Agreement.

14. Easements. Lessor hereby irrevocably grants and conveys to Lessee the following easements across the Property and any adjacent parcel of land outside the Property owned or controlled by Lessor (“**Adjacent Property**”), appurtenant to Lessee’s leasehold estate in the Premises (such easements set forth in Sections 14.1 to 14.4, collectively, “**Easements**”), which Easements shall run with the land and be binding upon Lessor’s successors and assigns:

14.1 Access and Transmission Easements. Lessor hereby grants to Lessee the following Easements across the Easement Areas (as defined below): (a) an exclusive easement for electrical interconnection purposes; (b) a non-exclusive easement for vehicular and pedestrian access, ingress or egress and access to and from the Premises and Easement Areas and to, across and through any portion of the Property outside the Premises and the Adjacent Property, by means of (i) the now existing or hereafter constructed roads, lanes and rights-of-way on the Property and the Adjacent Property, and (ii) such additional roads, culverts, and bridges as Lessee or anyone else may construct (including rights to maintain, improve, rebuild or relocate such roads, culverts and bridges) from time to time; (c) an exclusive easement to install, maintain, repair, replace and operate on the Property and the Adjacent Property multiple (i) transmission, distribution and collection cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Project, and (ii) communication cables (including fiber optic cables), conduits, wire and/or lines which carry communications of any nature to and from the Project, and (iii) other improvements, facilities, appliances, machinery and equipment in any way related to or associated with any of the foregoing, together with such rights of way as may be reasonably necessary to install, maintain, repair and operate any of the foregoing (the facilities in clauses (i) – (iii), collectively, the “**Interconnection Facilities**”); (d) a temporary easement on, over, across and under the Property or any Adjacent Property, to be used as necessary for access and staging in connection with the construction, operation and maintenance of the Project Facilities (provided that Lessee shall restore any Adjacent Property to the same extent as Lessee shall restore the Property under Section 13.3); and (e) the right to remove fences, gates, cattle guards and any other improvements or structures on the Premises and Easement Areas which interfere with Lessee’s operations. The Easements granted in the immediately preceding clauses (a) to (e), are collectively referred to as the “**Access and Transmission Easements**”. Lessor shall

execute and deliver to Lessee any documents or instruments reasonably requested by Lessee in recordable form to evidence the Access and Transmission Easements, including the applicability of such Access and Transmission Easements to any Adjacent Property, containing all the rights and privileges set forth herein, within 15 days following written request from Lessee. “**Easement Areas**” means those areas of any Adjacent Property or of the Property outside the Premises, which areas are preliminarily depicted in **Exhibit C**, including the Landscape Buffer Area and SWM Area (all as defined in Section 14.3) and the FC Area (as defined in Section 14.4).

14.2 Lessor Easements. To the extent that Lessor holds or has the right to use any access, utility, transmission, water or other easements, rights of way or licenses over lands in the general vicinity of the Property or the Adjacent Property (the “**Lessor Easements**”) on or after the date of this Lease, and such Lessor Easements are or could be used for the benefit of the Property, then the same are hereby included in this Lease, and Lessee shall be entitled to use such Lessor Easements, if such use is permitted under the Lessor Easements and provided that such use does not interfere with Lessor’s use of same. Upon the written request of Lessee, Lessor shall, within 15 days following such request, grant (in recordable form and containing such terms and provisions as may be reasonably requested by Lessee or any Financing Party), for no additional consideration, one or more sub-easements of Lessor Easements to run concurrently with the Lease Term (or for such shorter period as provided in the Lessor Easement).

14.3 Solar Easements. Lessor hereby grants to Lessee the following Easements across the Property and any Adjacent Property (such Easements, collectively, the “**Solar Easements**”): (a) direct access to sunlight and an exclusive easement and right to capture, use and convert the unobstructed solar resources over and across the Premises; (b) an easement for any audio, visual, view, light, shadow, noise, vibration, electromagnetic or other effect of any kind or nature whatsoever resulting, directly or indirectly, from the Project Activities, including but not limited to rights to cast shadows and reflect glare onto all of the Property or any Adjacent Property, from the Project Facilities or any and all other related facilities, wherever located; (c) the right to clear the Premises of trees and other vegetation as required for Lessee to fully utilize its Solar Easements, and to retain the value of any timber removed; (d) the right, but not the obligation to cut and maintain trees and other landscaping features on the Property within 100 feet of the Premises in order to optimize the utilization of the Premises for Project Activities, provided that Lessor shall have the right to use or sell any timber cut or trimmed by Lessee on the Property outside of the Premises; and, if applicable, (e) the right, for no additional consideration, to plant, install, construct, or otherwise create and maintain landscaping features or other visual buffers on certain areas of the Property preliminarily depicted in Exhibit C as the “**Landscape Buffer Area**” when and only to the extent required by Lessee to comply with any conditions or requirements imposed by law or any other person, authority, or entity holding jurisdiction (“**AHJ**”), and, if so required, Lessor shall grant Lessee or the AHJ, within 15 days of Lessee’s request, a stand-alone, recordable, and assignable easement or other similar agreement describing such landscaping features or visual buffers in the Landscape Buffer Area; and (f) the right to construct private stormwater management systems on certain areas of the Property as shown on Exhibit C (the “**SWM Area**”).

14.4 Grant to Utility and AHJ. Lessee, in its sole discretion and without further act of Lessor, shall have the right to grant to the transmitting utility the right to construct, operate and maintain on the Premises or within the Easement Areas, Interconnection Facilities, pursuant to any lease, easement or other agreement used or proposed by the utility. If requested by such utility or Lessee, Lessor shall, for no additional consideration other than the Rent and within 15 days after such request, grant such easement or enter into such other agreement, directly to or with such utility. If and only to the extent required by Lessee to comply with any conditions or requirements imposed by law or any AHJ, Lessor shall, upon payment by Lessee of a reasonable consideration to be agreed upon by the Parties, grant the AHJ, within 15 days of Lessee’s request, a stand-alone, recordable, and assignable easement or other similar agreement related to certain areas of the Property or Adjacent Property (“**FC Area**”) required by such AHJ for forest conservation purposes.

## 15. Miscellaneous Provisions.

15.1 Notice of Lease. Lessor and Lessee shall execute, in conjunction with this Lease, a recordable notice of the Lease and the Easements granted herein, in the form of a memorandum of lease attached hereto as Exhibit D. Lessee shall then record said memorandum within the land records of the applicable county or counties in which the

Property is located. Lessor also consents to the recordation of the interest of an Assignee in the Premises.

15.2 Notices. All notices, requests, demands, waivers and other communications required or permitted to be given under this Leases shall be in writing and may be given by any of the following methods: (a) personal delivery, (b) a writing in portable document format (“PDF”) attached to an email transmission, but only to the extent such transmission is promptly followed by overnight or certified mail, postage prepaid, return receipt requested, (c) overnight or certified mail, postage prepaid, return receipt requested, or (d) next day air courier service. Notices shall be sent to the appropriate party at its address or email address given below:

|                      |  |                              |
|----------------------|--|------------------------------|
| <b>If to Lessor:</b> | <b>If to Lessee:</b>   | Chaberton Solar Delaware LLC |
| Name: _____          | Attention: <u>Land Department</u>  |                              |
| Address: _____       | Address: <u>1700 Rockville Pike, Ste 305</u>                             |                              |
|                      |  | <u>Rockville, MD 20852</u>   |
| Email: _____         | Email: <u><a href="mailto:land@chaberton.com">land@chaberton.com</a></u> |                              |

Any Party may change its address for purposes of this Section 15.2 by giving notice of such change to the other Party.

15.3 Entire Agreement; Amendments. This Lease, including the exhibits, schedules, and any addendum attached hereto, constitutes the entire agreement between Lessor and Lessee respecting its subject matter. In the event of conflict between this Lease and any addendum attached hereto, the express provisions of such addendum will prevail. Any other agreement, understanding or representation respecting the Premises, or any other matter not expressly set forth in this Lease or a subsequent writing signed by both Parties is null and void. Except as provided in Section 4.1, this Lease shall not be modified or amended except in a writing signed by both Parties, and no purported modifications or amendments, including any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party.

15.4 Legal Matters. This Lease shall be governed by and interpreted in accordance with the laws of the State of Delaware. Venue shall be in the county where the Property is located, or if in Federal Court as required by subject matter or personal jurisdiction, in the U.S. District Court for the District where the Property is located. The Parties agree that any rule of construction to the effect that ambiguities are to be resolved in favor of either Party shall not be employed in the interpretation of this Lease and is waived. The prevailing Party in any action or proceeding for the enforcement, protection, or establishment of any right or remedy under this Lease or for the interpretation of this Lease shall be entitled to recover its reasonable attorneys’ fees and costs in connection with such action or proceeding from the non-prevailing Party.

15.5 Severability. Should any provision of this Lease be held, in a final and un-appealable decision by a court of competent jurisdiction, to be either invalid, void, or unenforceable, the remaining provisions hereof shall remain in full force and effect, unimpaired by the holding. Notwithstanding any other provision of this Lease, the Parties agree that in no event shall the Lease Term or any Easement term be longer than, respectively, the longest period permitted by Applicable Law.

15.6 Tax Credits. If under applicable law the holder of any interest under this Lease becomes ineligible for any tax credit, benefit or incentive for alternative energy expenditure established by any local, state or federal government, then, at Lessee’s option, Lessor and Lessee shall amend this Lease or replace it with a different instrument so as to convert Lessee’s interest in the Premises to a substantially similar interest that makes Lessee eligible for such tax credit, benefit or incentive; provided, however, that nothing in this Lease shall entitle Lessee to a fee interest in the Property, diminish Lessee’s payment obligations under this Lease or extend the Lease Term of this Lease.

15.7 Counterparts. This Lease may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument. This Lease may be executed and transmitted via facsimile, PDF, or other similar electronic means complying with the

U.S. federal ESIGN Act of 2000 (e.g. [www.docusign.com](http://www.docusign.com)) and a manual or electronic signature of the undersigned transmitted via such means shall have the same force and effect as a manually signed original.

15.8 Cooperation. Lessor shall cooperate with Lessee, and its permitted successor, assign or Affiliate, in the conduct of their operations consisting of the Project Facilities, Easements, or Transmission Facilities, and in otherwise giving effect to the purpose and intent of this Lease, including, without limitation, in Lessee's or any permitted successor, assign or Affiliate's efforts to obtain from any Governmental Authority or any other person or entity any environmental impact review, permit, entitlement, approval, authorization or other rights necessary or convenient in connection with Lessee's Project Facilities, Access Rights, or Transmission Facilities; and Lessor shall promptly upon request, without demanding additional consideration therefore, execute, and, if appropriate, cause to be acknowledged and recorded, any map, application, document or instrument that is reasonably requested by Lessee, its permitted successor, assign or Affiliate in connection therewith. Without limiting the generality of the foregoing, Lessor agrees (a) if requested by Lessee or its permitted successor, assign or Affiliate to support such application by filing a letter with the appropriate Governmental Authority in a form reasonably satisfactory to Lessee or its permitted successor, assign or Affiliate, and (b) not to oppose, in any way, whether directly or indirectly, any such valid, accurate application or approval at any administrative, judicial or legislative level.

15.9 Relationship. Neither this Lease nor any other agreements or transactions contemplated in this Lease shall in any respect be interpreted, deemed or construed as constituting Lessor and Lessee as partners or joint venturers, or as creating any partnership, joint venture, association or other relationship other than of landlord and tenant; and Lessor and Lessee agree not to make any contrary assertion, contention, claim or counterclaim in any action, suit or other proceeding involving either Lessor or Lessee or the subject matter of this Lease.

15.10 Condemnation. If all or part of the Premises is proposed to be taken as a result of any action or proceeding in eminent domain, or is proposed to be transferred in lieu of condemnation to any authority entitled to exercise the power of eminent domain (collectively, a "**Taking**"), Lessor shall provide Lessee with reasonable advance notice of any impending proceeding or meeting related to such Taking and shall not in the absence of Lessee's consent thereto settle with the Taking authority or agree on compensation for such Taking. This Lease shall terminate as to any portion of the Premises so condemned or taken (except in the case of a temporary Taking after the duration of which Lessee desires to continue this Lease, and the Lease Term shall be extended, in such event, by the duration of such temporary Taking). Subject to any applicable law or regulation, if any, any award or other compensation ("**Award**") payable as a consequence of such Taking shall be paid as follows: (a) Lessor shall first be entitled to receive out of the Award the value of Lessor's fee interest in the Property, valued as if no Project Facilities were on the Property; (b) Lessee shall next be entitled to receive out of the Award (i) the value of the Project Facilities, (ii) any other compensation or benefits payable by law as a consequence of the loss or interruption of Lessee's business and the other costs and expenses incurred by Lessee as consequence of the Taking, and (iii) the remaining present value of Lessee's interest in the Property (determined at the time of the Taking), including the value of Lessee's interests under this Lease; (c) Lessor shall then be entitled to receive out of the Award, taking into account the leasehold and easement estates created by this Lease, the estimated amounts that would have been paid to date of condemnation by Lessee hereunder; and (d) Lessor shall be entitled to any remainder of the Award.

15.11 Joint and Several Liability. If applicable, the obligations under this Lease imposed upon Lessor shall be joint and several obligations of the individuals or entities comprising Lessor.

15.12 Force Majeure. If performance of this Lease or of any obligation under this Lease is prevented, restricted or interfered with by reason of an event of "**Force Majeure**" (as defined in the immediately following sentence), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration of such prevention, restriction or interference and the Lease Term shall be extended for the duration of the Force Majeure event; provided, however, that nothing in this Section 15.12 shall relieve Lessee of its obligations to pay Rent or other monetary obligation payable to Lessor pursuant to this Lease. The affected Party shall use its reasonable efforts to avoid or remove such causes of non-performance and shall continue performance under this Lease whenever such causes are removed. "**Force Majeure**" means flood, drought, earthquake, storm, fire, tornado, lightning, windstorm, unusually inclement weather or other natural catastrophe; acts of God, casualty or accident; war, sabotage, vandalism, civil strife, civil unrest or other violence; strikes or labor

disputes; any law, order, proclamation, regulation, ordinance, action, demand or requirement of any government agency or utility; a Regulatory Suspension (as defined in the immediately following sentence); litigation challenging the validity or content of any permit or approval necessary for the construction or operation of the Project; litigation by Lessor, nearby landowners or third party interest groups challenging the validity or content of this Lease or any aspect of the Project; or any other act or condition beyond the reasonable control of a party hereto. A “**Regulatory Suspension**” shall mean the application of any local, state or federal law, order, rule or regulation which results in the delay, interruption, or suspension of the: (i) construction of the Project; or (ii) transmission, production or sale of electricity from the Project.

15.13 Certain Matters of Construction. The terms “herein”, “hereof”, and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. The section titles appear as a matter of convenience only and shall not affect the interpretation of this Agreement. References in this Agreement to “Sections”, “Schedules” or “Exhibits” shall be to Sections, Schedules or Exhibits of or to this Agreement unless otherwise specifically provided. All references in this Agreement to statutes shall include all amendments of same and implementing regulations and any successor statutes and regulations; to any instrument or agreement (including this Agreement) shall include any and all addendums, modifications and supplements thereto and any and all restatements, extensions or renewals thereof to the extent such modifications, supplements, restatements, extensions or renewals of any such documents are permitted by the terms thereof; to any person shall mean and include the successors, affiliates and permitted assigns of such person; to “including” shall be understood to mean “including, without limitation”; or to the time of day shall mean the time of day on the day in question in the State of Delaware, unless otherwise provided in this Agreement. Unless the context of this Agreement clearly requires otherwise, the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or”.

**\*\*\*SEE ADDENDUM ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF\*\*\***

(Signature Page follows)

**IN WITNESS WHEREOF**, the Parties have executed this Lease as of the Effective Date.

*[If Individuals]*

**Lessor(s):**

By: \_\_\_\_\_

Name: \_\_\_\_\_

*[If Entity (ies)]*

**LESSOR(S):**

**[Entity Name]** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[If Trust]*

**LESSOR(S):**

**[Trust Name]** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LESSEE:**

**Chaberton Solar Delaware LLC** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



**ADDENDUM**

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the, "Lease"),  
dated \_\_\_\_\_, 20\_\_\_\_,  
by and between \_\_\_\_\_,  
and  
**Chaberton Solar Delaware LLC**

In addition to the provisions previously set forth in the Lease and effective as of the date first written above, it is hereby agreed that:

1. **Conflict of Terms:** Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Lease. In the event of a conflict or inconsistency between the printed terms of the Lease and this Addendum, the printed terms of this Addendum shall control and be deemed to supersede the printed terms of the Lease.
2. *{INSERT ALL NON-STANDARD LANGUAGE}*
3. *{INSERT ALL NON-STANDARD LANGUAGE}*

This Addendum shall not affect the terms and conditions set forth in the Lease in any manner except as set forth herein.

**IN WITNESS WHEREOF**, the Lessor and Lessee have hereunto set their hands and official seals the date first written above.

*{INSERT SIGNATURE BLOCK FROM LEASE}*

**Exhibit A**

**LEGAL DESCRIPTION OF PROPERTY**

Assessor's Parcel Number: [\_\_\_\_\_]

That certain real property in the County of [\_\_\_\_\_], State of Delaware, described as follows:

***[See Attached Grant Deed]***

**Exhibit B**  
**PREMISES**

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the, "Lease")  
and Memorandum of Lease Agreement (the, "Memorandum"),

dated \_\_\_\_\_, 20\_\_\_\_,  
by and between \_\_\_\_\_,  
and  
**Chaberton Solar Delaware LLC**

*{INSERT LEGAL DESCRIPTION AND BLACK AND WHITE DEPICTION OF PREMISES}*

*{PRINT 2x – ATTACH TO LEASE AND MEMO}*

THE DEPICTION CONTAINED IN THIS EXHIBIT IS INTENDED TO BE FOR ILLUSTRATIVE PURPOSES ONLY AND DOES NOT CONSTITUTE A SURVEYED REPRESENTATION OF THE BOUNDARIES DEPICTED THEREIN. PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE PREMISES DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE PREMISES IS AT THE SOLE DISCRETION OF LESSEE BUT WILL REMAIN WITHIN THE AREA DEPICTED HEREIN.

**Exhibit C**

**EASEMENT AREAS**

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the, "Lease") and Memorandum of Lease Agreement (the, "Memorandum"),

dated \_\_\_\_\_, 20\_\_\_\_,  
by and between \_\_\_\_\_,  
and  
**Chaberton Solar Delaware LLC**

*{INSERT LEGAL DESCRIPTION AND BLACK AND WHITE DEPICTION OF EASEMENT AREAS}*

*{PRINT 2x – ATTACH TO LEASE AND MEMO}*

PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE EASEMENT AREAS DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE EASEMENT AREAS IS AT THE SOLE DISCRETION OF LESSEE.

**EXHIBIT D**

MEMORANDUM OF LEASE

Parcel No.: \_\_\_\_\_

RECORDING REQUESTED BY AND

WHEN RECORDED RETURN TO:

Chaberton Solar Delaware LLC

Attn: Land Department

1700 Rockville Pike, Suite 305

Rockville, MD 20852

---

(SPACE ABOVE FOR RECORDER'S USE ONLY)

**MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT**

THIS MEMORANDUM OF SOLAR ENERGY LEASE AND EASEMENT AGREEMENT ("Memorandum") has been made to indicate the existence of a Solar Energy Lease and Easement Agreement ("Lease") dated \_\_\_\_\_, 20\_\_\_\_, by and between \_\_\_\_\_, of/having an office at \_\_\_\_\_ as "**Lessor**", (whether one or more), and **Chaberton Solar Delaware LLC**, a Delaware limited liability company, having an office at 1700 Rockville Pike, Suite 305, Rockville, MD 20852, as "**Lessee**".

Lessor did grant demise, lease, and let exclusively unto Lessee, its successors and assigns, the right to develop a solar photovoltaic project or projects and grants certain easements associated therewith, on the lands described below and subject to the provisions contained in the Lease including the following:

1. The Option Period of the Lease is for a period of one year, commencing on the date immediately set forth above and may be incrementally extended, provided certain conditions are met, for up to a maximum of six years in total, thereby continuing the term of the Lease to the end of the "extended" Option Period.
2. The Lease Term of the Lease is for a period of 22 years, commencing on the Construction Commencement Date, as defined in the Lease, and may be incrementally extended, provided certain conditions are met, for up to four additional five-year periods up to a maximum of 20 additional years, thereby continuing the term of the Lease to the end of the "extended" Lease Term.
3. The Property is described in the legal description attached hereto as **Exhibit "A"**.
4. The Premises containing up to \_\_\_\_\_ acres, more or less, is defined as being that portion of the Property more fully described on **Exhibit "B"**, attached hereto and made a part hereof.
5. The Easement Area is defined as being that portion of the Property outside of the Premises which is more fully described on **Exhibit "C"**, attached hereto and made a part hereof, and the term of any such Easements is coterminous with the term of the Lease.

This Memorandum has been executed for the purpose of providing notice of the existence of the Lease and shall not be considered in any way a modification or alteration of the Lease. All terms and conditions of the Lease are hereby incorporated herein by reference as if fully set forth herein. This Memorandum has been entered into for the sole purpose of placing the Lease of record and shall not be deemed to amend, modify, supplement, or change any of the terms and conditions of the Lease in any respect

whatsoever. To the extent of any conflict between this Memorandum and the Lease, the terms of the Lease shall govern and control.

**(SIGNATURE PAGE(S) TO FOLLOW)**

**IN WITNESS WHEREOF**, the Lessor and Lessee have hereunto set their hands and official seals the date first written above.

*[If Individuals]*

**Lessor(s):**

By: \_\_\_\_\_

Name: \_\_\_\_\_

---

Standard Acknowledgement

STATE OF \_\_\_\_\_)

)§:

COUNTY OF \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_ before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

---

Notary Public

**IN WITNESS WHEREOF**, the Lessor and Lessee have hereunto set their hands and official seals the date first written above.

*[If Entity (ies)]*

**LESSOR(S):**

**[Entity Name]** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*[If Trust]*

**LESSOR(S):**

**[Trust Name]** \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

---

Corporate Acknowledgement

STATE OF \_\_\_\_\_)

)§:

COUNTY OF \_\_\_\_\_)

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_ before me, the undersigned, a notary public in and for said state, personally appeared \_\_\_\_\_ {name of person signing} \_\_\_\_\_, who holds the capacity of \_\_\_\_\_ {title} \_\_\_\_\_, for \_\_\_\_\_ {entity name} \_\_\_\_\_, a \_\_\_\_\_ {type of entity} \_\_\_\_\_, and that he/she/they in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself/themselves in such capacity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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



**LESSEE:**

**Chaberton Solar Delaware LLC**

---

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

---

Corporate Acknowledgement

COMMONWEALTH/STATE OF \_\_\_\_\_ )  
 )§:  
COUNTY/PARISH OF \_\_\_\_\_ )

On the \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_\_\_\_ before me, the undersigned, a notary public in and for said state/commonwealth, personally appeared \_\_\_\_\_, who holds the capacity of \_\_\_\_\_, for Chaberton Solar Delaware LLC, **a Delaware limited liability company**, and that he/she/they in such capacity, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself/herself/themselves in such capacity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

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

**Exhibit A**

**LEGAL DESCRIPTION OF PROPERTY**

Assessor's Parcel Number: [\_\_\_\_\_]

That certain real property in the County of [\_\_\_\_\_], State of Delaware, described as follows:

***[See Attached Grant Deed]***

**Exhibit B**  
**PREMISES**

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the, "Lease")  
and Memorandum of Lease Agreement (the, "Memorandum"),

dated \_\_\_\_\_, 20\_\_\_\_,  
by and between \_\_\_\_\_,  
and  
**Chaberton Solar Delaware LLC**

*{INSERT LEGAL DESCRIPTION AND BLACK AND WHITE DEPICTION OF PREMISES}*

*{PRINT 2x – ATTACH TO LEASE AND MEMO}*

THE DEPICTION CONTAINED IN THIS EXHIBIT IS INTENDED TO BE FOR ILLUSTRATIVE PURPOSES ONLY AND DOES NOT CONSTITUTE A SURVEYED REPRESENTATION OF THE BOUNDARIES DEPICTED THEREIN. PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE PREMISES DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE PREMISES IS AT THE SOLE DISCRETION OF LESSEE BUT WILL REMAIN WITHIN THE AREA DEPICTED HEREIN.

**Exhibit C**

**EASEMENT AREAS**

Attached to and made a part of that certain Solar Energy Lease and Easement Agreement (the, "Lease") and Memorandum of Lease Agreement (the, "Memorandum"),

dated \_\_\_\_\_, 20\_\_\_\_,  
by and between \_\_\_\_\_,  
and  
**Chaberton Solar Delaware LLC**

*{INSERT LEGAL DESCRIPTION AND BLACK AND WHITE DEPICTION OF EASEMENT AREAS}*

*{PRINT 2x – ATTACH TO LEASE AND MEMO}*

PRIOR TO THE COMMENCEMENT OF THE LEASE TERM, LESSEE WILL PROVIDE LESSOR WITH A SURVEY OF THE EASEMENT AREAS DEPICTING BOTH ITS SIZE AND LOCATION. THE FINAL SIZE AND LOCATION OF THE EASEMENT AREAS IS AT THE SOLE DISCRETION OF LESSEE.

- APPENDIX 6 -



- APPENDIX 7 -



Medium Voltage  
AC Run (buried)

XFMR

Inverters

DC Home Run

**DC:**  
 (10,192) 545W PV Modules  
 5554.64 kW  
 Tilt: 12°  
 Azimuth: 210°

**AC:**  
 (26) 150 kW SMA Inverters  
 (1) 100 kW SMA Inverter  
 4000 kW

DEVELOPER:  
**NORIA**  
 80 LIBERTY SHIP STE 5  
 SALALITO, CA 94965  
 NORIAENERGY.COM

ELECTRICAL ENGINEER:

SEAL:

PROJECT NAME:  
 Wolf Neck Solar I

PROJECT ADDRESS:  
 75°6'53"W 38°44'40"N

| REVISION: | DATE |
|-----------|------|
|           |      |
|           |      |
|           |      |
|           |      |

DRAWN BY: D.T. Tussing  
 CHECKED BY:  
 PROJECT #:  
 DATE: 11/15/2023

SITE PLAN

SHEET NO.  
**PV01**



## 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

RE: ***Starlight Meadows Road Improvements – Chapter 96 Sussex Community Improvements***  
***A. Recommend to Award***

DATE: February 27, 2024

Starlight Meadows is a community consisting of thirty-four (34) assessable parcels located off Williams Farm Road just north of the Town of Milton. The community by letter dated January 11, 2023, requested assistance from the County to repair and improve their existing roads through the Sussex Community Improvement (SCI) Program as defined in Chapter 96 of Sussex County Code. Following the provisions of the Code, the Engineering Department to date has performed the following actions:

- Determined that the community meets eligibility criteria as defined in the Code;
- Petitioned all assessable property owners within the Community regarding inclusion in the SCI Program
- Provided a preliminary cost estimate for road repair and improvements
- Provided the approximate costs to property owners in both lump sum and 10-year repayment options
- Provided advance notification and conducted a community meeting to discuss and receive comments regarding the SCI Program, estimated project costs, and subsequent election process necessary for project implementation

Resolution R015 23 was subsequently presented and approved by Council on August 15, 2023. The resolution accepted the subdivision into the Chapter 96 program and outlined an Election process to determine if the proposed project and estimated cost was or was not favorable to the Starlight Meadows property owners. The Election was held in accordance with Code and the Resolution on September 19, 2023 at the Engineering Administration office, with the Election results certified shortly thereafter.



There were a total of twenty (20) votes cast in the Election, with a total of seventeen (17) YES votes and three (3) NO votes. The vote total of Twenty (20) indicates a fifty-nine (59) percent owner participation in the Election.

Based on the affirmative results of the Election and at the recommendation of the Engineering Department, Council approved Resolution R019 23 on October 24, 2023 authorizing the Engineering Department to proceed with the next implementation step of the project. The Engineering Department subsequently developed a set of Bidding Documents for the proposed road improvements and publicly advertised the project on December 13, 2023. On January 24, 2024, a total of four (4) bids were received and opened publicly in Council Chambers. The low bidder was George & Lynch, Inc. in the amount of \$190,166.50 which include three (3) contingency items.

**Based on a detailed review of all information submitted with the Bid Package, the Engineering Department recommends award of the Contract to the low bidder George & Lynch, Inc.**

Enclosures: Low Bidder Bid Summary

**STARLIGHT MEADOWS ROAD IMPROVEMENTS**  
**PROJECT T24-07**

| ITEM NO.   | DESCRIPTION                           | UNIT | QTY            | UNIT PRICE | TOTAL PRICE         |
|--|---------------------------------------|------|----------------|------------|---------------------|
| Part A - Base Bid Items                              |                                       |      |                |            |                     |
| A.1  | Mobilization<br>(Max 5% of Total Bid) | LS   | 1              | \$9,200.00 | \$9,200.00          |
| A.2  | Pavement Milling, Variable Depth      | SY   | 130            | \$7.00     | \$910.00            |
| A.3  | Pavement Milling, 4" Depth            | SY   | 8495           | \$4.50     | \$38,227.50         |
| A.4  | Type C Hot-Mix Pavement               | TON  | 998            | \$99.00    | \$98,802.00         |
| A.5  | Driveway Tie-in – Hot-Mix/Stone       | EA   | $\frac{25}{3}$ | \$410.00   | \$10,250.00         |
| A.6  | Driveway Tie-in – Concrete            | EA   | $\frac{3}{25}$ | \$305.00   | \$915.00            |
| A.7  | Topsoil, Seed & Mulch                 | SY   | 1410           | \$10.40    | \$14,664.00         |
| A.8  | Pavement Striping                     | LS   | 1              | \$1,260.00 | \$1,260.00          |
| A.9  | Maintenance of Traffic                | LS   | 1              | \$7,000.00 | \$7,000.00          |
| Total Base Bid – Part A                              |                                       |      |                |            | \$181,228.50        |
| Part B - Contingent Bid Items                        |                                       |      |                |            |                     |
| B.1  | Pavement Patch                        | CY   | 30             | \$83.00    | \$2,490.00          |
| B.2  | Graded Aggregate Base Course, Type B  | TON  | 56             | \$76.00    | \$4,256.00          |
| B.3  | Independent Testing                   | HR   | 16             | \$137.00   | \$2,192.00          |
| Total Contingent Bid – Part B                        |                                       |      |                |            | \$8,938.00          |
| <b>TOTAL PROJECT BID (Base Bid + Contingent Bid)</b> |                                       |      |                |            | <b>\$190,166.50</b> |



## 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 23, 2024

RE: County Council Report for C/Z 1991 filed on behalf of Beazer Homes, LLC (Sycamore Chase Expansion)

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The Planning and Zoning Department received an application (C/Z 1991 filed on behalf of Beazer Homes, LLC – Sycamore Chase Expansion) for a change of zone from an AR-1 Agricultural Residential District to an MR Medium Density Residential Zoning District – Residential Planned Community District (MR-RPC) for Tax Parcels 134-18.00-45.00, 51.00, 53.00, 54.00 and 54.01. The property is located at 34665, 34723 and 34771 Daisey Road, Frankford. The parcel size is 73.95 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on November 30, 2023. At the meeting of December 14, 2023, the Planning & Zoning Commission recommended approval of the application for the 10 reasons and subject to the 18 recommended conditions as outlined within the motion (copied below).

The County Council held a Public Hearing on the application at its meeting on January 23, 2024. At the conclusion of the Public Hearing, the record was closed and action on the application was deferred for further consideration. Below is a link to the minutes of the January 23, 2024, County Council meeting.

[Link to the Approved Minutes of the January 23, 2024, County Council Meeting](#)

Below are the minutes from the Planning & Zoning Commission meeting of November 30, 2023, and December 14, 2023.



Minutes of the November 30, 2023, Planning & Zoning Commission Meeting

**C/Z 1991 Sycamore Chase Expansion**

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO AN MR-RPC MEDIUM-DENSITY RESIDENTIAL – RESIDENTIAL PLANNED COMMUNITY DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 73.95 ACRES, MORE OR LESS.** The property is lying on the north side of Daisey Road (S.C.R. 370), approximately 0.6 mile west of Bayard Road (S.C.R. 384). 911 Address: 34665, 34723 & 34771 Daisey Road, Frankford. Tax Map Parcel: 134-18.00-45.00, 51.00 and P/O 53.00, 54.00 & 54.01.

Mr. Whitehouse advised the Commission that submitted into the record were the Staff Analysis, the Applicant's Subdivision Plan, a copy of the PLUS comments and the Applicant's response to the PLUS comments, a copy of the Environmental Assessment and the Public Facilities Evaluation Report, the DelDOT Service Level Evaluation Response, the comments from the Sussex County Engineering Department Utility Planning Division, the Technical Advisory Committee (TAC) comments received from the State Department of Watershed Stewardship, a letter received from Artesian Resources, the Applicant's Exhibit Booklet, and the Applicant's Geotechnical Investigation. Mr. Whitehouse stated that zero comments were received for the Application.

The Commission found that Mr. William Scott, with Scott and Shuman, P.A. spoke on behalf of the Applicant, Beazer Homes, LLC; that also present were Mr. Gavin Robinson with Beazer Homes, LLC, and Mr. Jason Palkewicz, PE with Solutions IPEM. Mr. Scott stated an Exhibit Booklet was submitted with a summary of the proposed project, as well as the other documents mentioned by Mr. Whitehouse; that additionally, there are various aerial maps, statements regarding compliance with the County Code and the Comprehensive Plan; that there are comments regarding the MR Zoning and the RPC overlay; that the request is to rezone the properties from AR-1 (Agricultural Residential) to MR (Medium Density Residential) with an RPC (Residential Planned Community) overlay; that they are proposing 176 lots, consisting of a mixture of single-family and townhouse lots, with active and passive open space; that the parcel is comprised of 74.14 acres; that the property is located adjacent to the existing Sycamore Chase, along Daisy Rd.; that the site is located south of the Town of Ocean View; that the site is zoned AR-1 (Agricultural Residential) and is located with the Coastal Area according to the Comprehensive Plan; that the current condition of the site is predominantly cleared farmland with a small amount of woodlands; that there is approximately four acres of Federal non-tidal wetlands that are concentrated in the upper left portion of the site; that the property is located south of the Town of Ocean View; that the site is also in the nearby area of Fairway Village, which is a large townhouse development, Bear Trap Dunes, Village of Bear Trap Dunes which has 704 units mixed of townhouses, single-family homes and stacked condominiums; that the site is also located near Forest Landing which in an MR-RPC with townhouses and duplexes, Friendship Creek, which was approved in 2018 as a GR (General Residential) Conditional Use with 133 multifamily homes on about 47 acres of land; that nearby Seaway Community was rezoned from AR-1 to MR in February 2023 as a Conditional Use for 57 multifamily units; that across from that is Milos Haven, which was approved in 2019 for 179 units on 71 acres, also as a mixture of single-family dwellings and townhouses; that across from Friendship Creek is the pending community of Lilyvale, which is proposing 174 townhomes on 51 acres; that the site is adjacent to the existing Sycamore Chase development, which consists of 104 units that were approved on 55 acres; that the proposed project area is located in an area where there has been significant historical and ongoing residential

development similar to the character that they propose for the particular project; that the Application did participate in the PLUS process last year; that the PLUS letter and responses from the developer are included in the Exhibit Booklet; that the property is located within Investment Level 3 according to the State Spending Map; that Investment Level 3 areas are designated Growth Areas under the Comprehensive Plan; that the site is located within the Coastal Area, which also is designated a Growth Area and encourages the use of the RPC overlay designation, which allows for a mixture of housing types, as they are proposing; that the purpose of the Comprehensive Plan within the Coastal Area is to encourage the most concentrated forms of new development to be located within Growth Areas; that this includes higher density, residential development; that there are compliance statements included in the Exhibit Booklet, which address each of the components of the Comprehensive Plan; that the Application requests to rezone the site to MR; that the purpose of the MR Zoning District is for medium density residential development to be located in areas which are expected to become generally urban in character, and where sanitary sewers and public water supplies may, or may not, be available at the time of construction; that together with churches, recreational facilities, and accessory uses that may be necessary or normally compatible with residential buildings; that the district seeks to protect existing development of this character and contains vacant land considered appropriate for such development; that the MR Districts permits for a base density of 4.35 units per acre; that there is discussion in the Comprehensive Plan and in the County Code where higher densities could be permitted, where there are central water and sewer available, as there is at the proposed site; that the proposed density for the project is 2.63 units to the acre, which is significantly less than the base density in MR; that MR Zoning would permit as high as 289 units per acre for the site; that the Application request 176 homes; that 96 of which would be townhomes; that 80 of the proposed homes would be single-family detached homes; that the zoning map, located under Exhibit 15, reflects the site being surrounded by other MR and GR (General Residential) properties, along with some C-1 (General Commercial) properties located nearby as well; that the C-1 (General Commercial) District is a closed district, however, would still provide for up to 12 units per acre; that the surrounding areas have been historically and currently developed with residential development similar to what they are proposing; that there is a statement in the Exhibit Book regarding the compliance with the requirements of the MR Zoning District, and the §99-9C Subdivision requirements; that the Application proposes an RPC (Residential Planned Community) overlay; that the purpose of an RPC is to encourage large scale developments as a means of creating a superior living environment through unified developments and to provide for the application of design and ingenuity, while protecting existing and future developments; that by achieving the goals of the Comprehensive Plan, the proposed design uses superior standards in that great care has been taken to identify the portions of the property that are appropriate to be preserved, keeping development away from those areas and directing development towards the other portions of the property; that it is noted that there is 17.6 acres of woodlands on the site; that the plan proposed that 8.7 acres, roughly being half, of the existing woodlands would be preserved; that there is 4.1 acres of Federal non-tidal wetlands located on the property; that the wetlands would largely remain undisturbed and would only be disturbed if utility or road crossings were required; that they would obtain any required permits and comply with all regulations from the U.S. Army Corp of Engineers; that an RPC is encouraged by the Comprehensive Plan to be located within Growth Areas to provide a mixture of housing types as is being proposed; that the proposed development is designed to be compatible with the existing Sycamore Chase community; that there are two interconnections planned, being located at the north and south of the site; that these interconnections will be with the existing Sycamore Chase community; that the Application was submitted prior to the adoption of the Resource Buffer Ordinance, however, they are proposing a 30 ft. setback buffer from the wetlands; that they propose a 20 ft. landscape buffer, except where the property is located adjacent to the existing community, or where there are larger

buffers or wetlands or tax ditches; that there is a 50 ft. buffer proposed from the adjacent existing farmland; that there is 36 acres (48%) of open space; that DelDOT stated the project would have a minor impact on traffic, and therefore no Traffic Impact Study (TIS) is required; that the project thus qualifies for the Area Wide Study Fee rather than the TIS; that they have had meetings with DelDOT, where improvements have been contemplated; that the discussed improvements include moving the frontage of Daisy Rd. along the project's frontage to 11 ft. travel lanes, and five foot shoulders and to improve Daisy Rd. to 11 ft. travel lanes to the extent feasible from Daisy Rd. to Bayard Rd.; that central water and sewer would be provided by Artesian; that Artesian Resources provided an Ability to Serve letter, which was included in the Exhibit Booklet; that stormwater management will be designed in compliance with DENREC and Sussex Conservation District requirements in order to meet or exceed the current regulations; that additionally submitted in the Exhibit Book is a study by Hardin-Knight Associates, Inc., who performed a Subsurface Geotechnical Soils Investigation; that this investigation determined that the proposed project is suitable for the development, including the infrastructure, home construction and stormwater management; that the entrance, which would require approval by DelDOT, is anticipated to be located along Daisy Rd., with two interconnections proposed to the existing Sycamore Chase community; that the lots as shown on the plan are a mixture of single-family lots and townhouse lots, which are encouraged by the Comprehensive Plan; that the proposed density is 2.63 units to the acre; that parking will be provided as required by Sussex County Code for all unites; that proposed amenities, at minimum, would be an outdoor pool, clubhouse and walking trail; that the proposed community would become part of the existing Sycamore Chase, so that all owners on either side of the community would have access to each other's amenities; that the streets will be private, and will be maintained by the Homeowners Association; that sidewalks are proposed on one side of the street, which remains compatible with the existing Sycamore Chase community; that the sidewalks would interconnect with the existing Sycamore Chase community; that street lights, if any, would be downward facing and compatible with the street lighting found within the existing Sycamore Chase community; that landscaping will be provided and will be attractive and compatible with the landscaping found in the existing community; that the proposed project is to become part of the existing Sycamore Chase community, therefore the existing Homeowners Association would take care of the streets, stormwater management, open areas and assessment collection; that the existing Sycamore Chase documents contained a disclosure to all current residents, regarding the possibility of expansion to the proposed property; that the developer has been providing bi-weekly to monthly updates to the HOA regarding the state of development and construction within the existing Sycamore Chase, as well as the proposed expansion; that he requested to provide proposed Findings of Fact and Conditions of Approval, and requested the Commission recommend approval of the Application.

The Commission found that Mr. Gavin Robinson, Vice President of Operations for Beazer Homes, LLC, spoke on behalf of the Application. Mr. Robinson first thanked the Adkins family, who was also in attendance, for allowing them the opportunity to bring the project before the Commission; that Beazer Homes goal is to provide a durable and growing value to their customers; that their goal is to be good stewards of the land and environment; that in 2023, they were named Energy Star Trade Partner of the Year; that they are also named Indoor Air Plus Leader of the Year, which was the first time the award had been provided to a corporate builder; that they are on the pathway to be zero energy ready; that the anticipate being able to build zero energy ready homes by 2025; that they have already began this effort in Sycamore Chase; that they hope to continue their success in the Sycamore Chase Expansion by delivering quality homes, energy efficient homes, and he thanked the Commission for their time.

Mr. Scott concluded that they believed they had demonstrated that the proposed project meets the requirements of the County Code; that the project is consistent with the trend of residential development in the area and the goals of the Comprehensive Plan, by the projects consistency with the Delaware State Spending Strategies Map; that the proposed density is equal to or less than surrounding communities of similar nature; that they believe the proposed project will promote the health, welfare, convenience and prosperity of the County, and help support its economic development, and requested the Commission to consider recommending the Change of Zone Application and MR-RPC overlay for approval.

Mr. Collins questioned if any part of the project is being proposed for workforce housing.

Mr. Scott stated the project is not part of any County program, however, they hope that the townhome units theoretically being priced lower than single-family homes, may provide a more affordable option.

Mr. Robertson advised the Commission that the proposed project is not an expansion of the existing Sycamore Chase subdivision, and that the Application is to be considered as a separate subdivision.

Mr. Scott stated that the project is a subdivision, and they refer to it as an expansion, as it will be an expansion of the community, and is not an expansion of an existing RPC.

The Commission found that there was no one who wished to speak in support, and three people who wished to speak in opposition to C/Z 191 Sycamore Chase Expansion.

Mr. Charles Parsons spoke in opposition to the Application with concerns regarding State Investment Levels and areas where the State does not support development, the protection and natural and cultural resources and open space, and the promotion of agricultural activities, the negative impact on his view and stated his disappointment with the number of approved developments within Sussex County.

Ms. Sherry Parsons spoke in opposition to the Application with concerns regarding the location of an existing agricultural easement, and the possibility that the easement will cut off their access completely.

Ms. Elaine Parsons spoke in opposition to the Application with concerns regarding the number of approved subdivisions, the impact on the wildlife and wildlife habitats, the nature of the area changing from rural to urban, the proposed density, road improvements, and the negative impacts on schools. 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 1991 Sycamore Chase Expansion. Motion by Mr. Mears to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 4 - 0.

#### Minutes of the December 14, 2023, Planning & Zoning Commission Meeting

The Commission discussed the Application that had been deferred since November 30, 2023.

Mr. Robertson read Mr. Mears' prepared motion per Mr. Mears' request.



Mr. Mears moved that the Commission recommend approval of C/Z 1991 Sycamore Chase Expansion for a change in zoning from AR-1 to an MR-RPC based upon the record and for the following reasons:

1. The property is currently zoned AR-1, and it is adjacent to the existing AR-1 subdivision known as Sycamore Chase. The developer is seeking to expand that subdivision but with a variety of housing types including single-family homes and townhomes. The MR-RPC application supports this variety of housing types.
2. The MR-RPC will be integrated into the existing Sycamore Chase development and there will be two interconnecting roadways between the MR-RPC and the existing subdivision.
3. The proposed development will have no more than 176 dwellings consisting of 176 single-family lots and townhomes on 74.12 acres. The net density is 2.37 units per acre which is close to the allowable density in AR-1 and significantly less than the maximum density permitted under the MR zoning.
4. The MR-RPC is consistent with the development trend of the area that includes MR, GR, and C-1 zoning and both single-family homes and townhomes. It is also similar to the densities of nearby communities.
5. Central water and sewer will be provided to the MR-RPC by a publicly regulated utility.
6. The MR-RPC is located near Route 26 and the commercial corridor there. This is an appropriate location for this MR-RPC and the expansion of Sycamore Chase and the variety of housing types that are proposed.
7. With the conditions and stipulations placed upon it, the RPC designation is appropriate since it allows the creation of a superior environment through design ingenuity while protecting existing and future uses. This project will also maintain approximately 36 acres of open space. This represents 48% of the entire site.
8. According to the County's current Comprehensive Plan, the project is in the Coastal Area. Development such as this MR-RPC is appropriate in this area according to the Plan which permits residential development with a mix of housing types.
9. The Applicant has favorably addressed the items set forth in Section 99-9C of the Subdivision Code.
10. This recommendation is subject to the following conditions:
  - A. There shall be no more than 176 dwelling units consisting of single-family homes and townhomes.
  - B. A homeowners' or condominium association shall be formed to provide for the perpetual maintenance, repair, and replacement of buffers, stormwater management facilities, streets, amenities, and other common areas. Alternatively, this project shall be annexed into the existing Sycamore Chase community and homeowners' association to provide for this maintenance and repair.
  - C. All entrances, intersections, roadways, and multi-modal improvements required by DelDOT shall be completed in accordance with DelDOT's requirements.
  - D. The RPC shall be served by central water and sewer provided by a publicly regulated utility.
  - E. Stormwater management and erosion and sedimentation control facilities shall be constructed in accordance with all applicable State and County requirements. These facilities shall be operated in a manner that is consistent with Best Management Practices.
  - F. Interior street design shall meet or exceed Sussex County's Street design requirements.

There shall also be sidewalks on at least one side of the streets within the RPC. The streets and sidewalks shall be interconnected with the streets in Sycamore Chase to provide for vehicular and pedestrian movement between them.

- G. The development shall be served by its own on-site amenities including a clubhouse and swimming pool. All amenities shall be completed in compliance with Sections 99-21 and 115-194.5 of the Sussex County Code.
- H. A 30-foot wide vegetated or forested buffer shall be established along the entire perimeter of the site except for the common boundary with the existing Sycamore Chase subdivision or where wetlands or the tax ditch exist. This buffer shall increase to 50 feet in areas where the development borders any land in agricultural use. This buffer shall utilize existing forest or similar vegetation if it exists in the buffer area. Where trees currently exist in the buffer area, stump removal or construction activities that disturb the existing grade of the area within the buffer shall be prohibited. All silt fencing shall be located at least 10 feet from the interior limit of the buffer area (the edge of the buffer nearest the interior development) and the Final Site Plan shall identify the “Limit of Disturbance” to prevent disturbance of the buffer area. Signage identifying this perimeter buffer as a “non-disturbance area” shall be installed along the buffer at 300-foot intervals.
- I. If requested by the local school district, a school bus stop shall be provided. The location of the bus stop area shall be shown on the Final Site Plan.
- J. The Final Site Plan shall contain the approval of the Sussex Conservation District for the design and location of all stormwater management areas and erosion and sedimentation control facilities.
- K. The Final Site Plan shall include a landscape plan confirming all landscaping to be provided, the preservation of all buffer areas, and the forested areas that will be preserved. The landscape plan shall also identify all “Limits of Disturbance” within the site.
- L. Construction, site work, grading, and deliveries of construction materials shall only occur from Monday through Friday between 8:00 am and 5:00 pm and on Saturdays between 8:00 am and 2:00 pm. A 24-inch by 36-inch “NOTICE” sign in English and Spanish confirming these hours shall be prominently displayed at all entrances to the site during construction.
- M. During site work and initial home construction, all dumpsters, roll-off containers, or similar containers for trash and construction debris shall be covered to eliminate trash and construction materials from blowing across this property or onto neighboring and adjacent properties.
- N. The Applicant shall obtain all the necessary amendments to the tax ditches and their rights of way necessary for this project prior to Final Site Plan approval.
- O. The Final Site Plan and the recorded governing documents for this development shall include the Agricultural Use Preservation Notice.
- P. The Final Site Plan shall include a Grading Plan for the site. No building permit shall be issued for individual lots until an individual lot grading plan has been supplied to and approved by Sussex County. No certificate of occupancy shall be issued until a grading certificate is submitted to the Building Code Department demonstrating general conformity with the individual site grading plan.
- Q. A revised Preliminary Site Plan either depicting or noting these conditions must be submitted to the Office of Planning and Zoning.
- R. 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 Ms. Wingate and carried unanimously to recommend approval of C/Z 1991 Sycamore Chase Expansion for the reasons and the conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Mr. Mears – yea, Ms. Wingate – yea, Mr. Collins – 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: November 30<sup>th</sup>, 2023

**Application:** C/Z 1991 Beazer Homes, LLC

**Applicant:** Beazer Homes, LLC (Attn: Mr. Brian Knauff)  
6085 Marshalee Drive  
Elkridge, MD 21075

**Owner:** Norris J. Adkins Sr. & Kittie F. Adkins  
34771 Daisey Road  
Frankford, DE 19945

Robert E. Bunting & Tammy N. Bunting  
34723 Daisey Road  
Frankford, DE 19945

Norris J. Adkins, Jr. & Laura L. Adkins  
34665 Daisey Road  
Frankford, DE 19945

**Site Location:** The properties are lying on the north side of Daisey Road (S.C.R. 370), approximately 0.17 mile west of Bayard Road (S.C.R. 384) in Frankford, Delaware.

**Current Zoning:** Agricultural Residential (AR-1) District

**Proposed Zoning:** Medium Density Residential, Residential Planned Community (MR-RPC)

**Proposed Use:** Zoning Change to allow for the development of a Residential Planned Community.

**Future Land Use Map Designation:** Coastal Area

**Councilmanic District:** Mr. Hudson

**School District:** Indian River School District



Fire District: Roxana Fire Company/District  
Sewer: Artesian  
Water: Artesian  
Site Area: 73.95 acres +/-  
Tax Map IDs: 134-18.00-45.00, 51.00 & part of 53.00, 54.00 & 54.01

JAMIE WHITEHOUSE, AICP MRTPI  
PLANNING & ZONING DIRECTOR  
(302) 855-7878 T  
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**Sussex County**

DELAWARE  
sussexcountyde.gov

## Memorandum

To: Sussex County Planning and Zoning Commission Members  
From: Ms. Lauren DeVore, AICP Planner III  
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant  
Date: November 21<sup>st</sup>, 2023  
RE: Staff Analysis for C/Z 1991 Beazer Homes, LLC (Sycamore Chase Expansion)

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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/Z 1991 Beazer Homes, LLC (Sycamore Chase Expansion) to be reviewed during the November 30<sup>th</sup>, 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.

This proposal is to include an additional Phase to the existing and previously approved subdivision for the Sycamore Chase (2018-24) (F.K.A. Good Will Farm & Willow Run) Subdivision, which is a cluster subdivision originally containing one-hundred and four (104) single-family lots, private roads, open space and amenities to include a swimming pool and clubhouse facility. The Planning and Zoning Commission approved the Preliminary Subdivision Plan on February 14, 2019, subject to eighteen (18) conditions. The Planning and Zoning Commission approved the Final Subdivision Plan on March 11, 2021.

Specifically, this proposal is for a Change of Zone from an Agricultural Residential (AR-1) District to a Medium Density Residential, Residential Planned Community District (MR-RPC) for the establishment of a Residential Planned Community (RPC) to consist of 86 single-family lots and 90 townhouse units for a total of 176 units with an RPC overlay. The properties are located on the north side of Daisey Road (S.C.R. 370), approximately 0.6 mile west of Bayard Road (S.C.R. 384) in Frankford, Delaware.

As the proposal is for a Residential Planned Community that consists of 50 or more dwelling units and is located within the Coastal Area, the submittal of an Environmental Assessment and Public Facilities Evaluation Report are required (§115-194.3(B)(1) (a-b)&(2)).

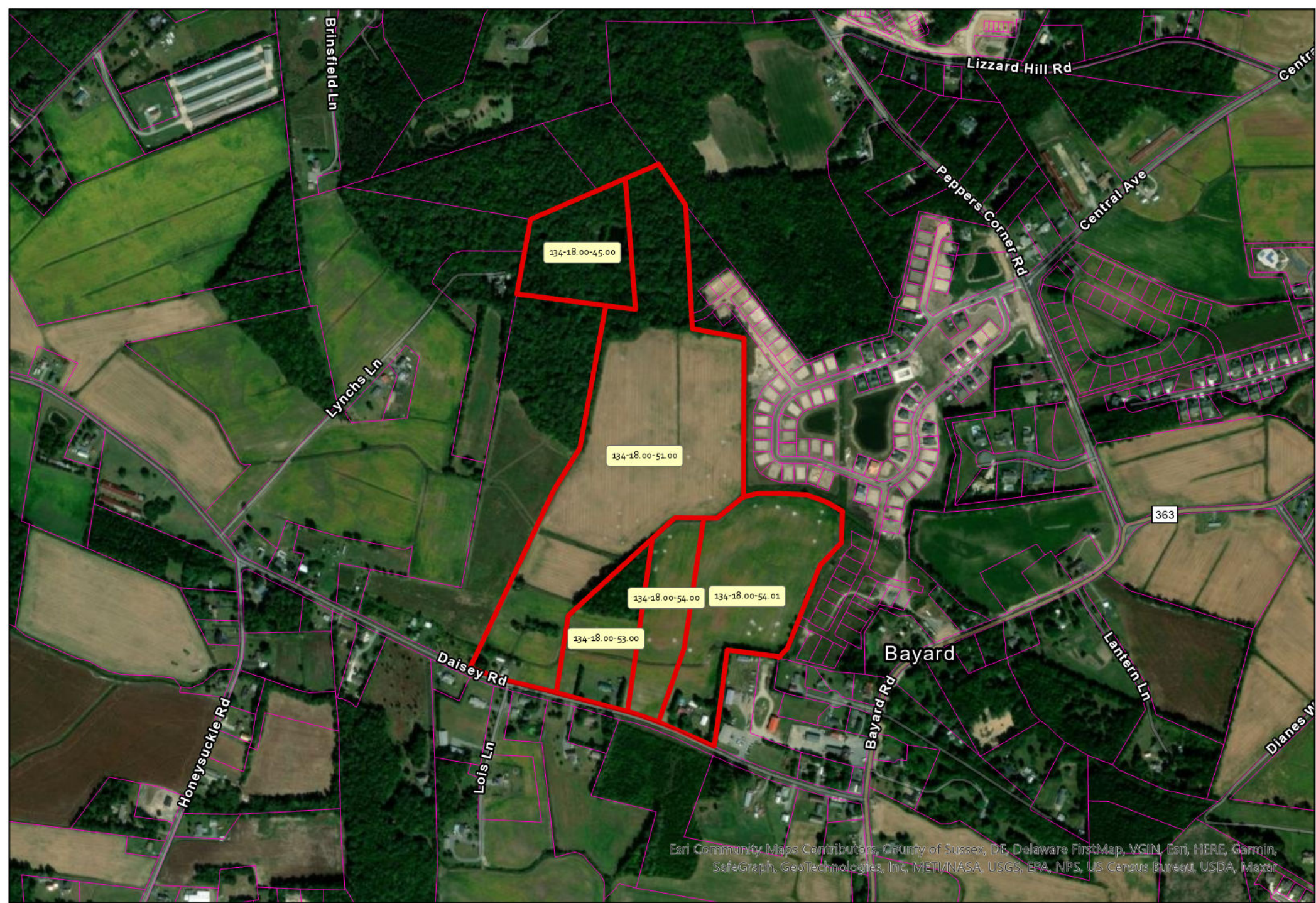
Staff note that the subject Application was received after the adoption of Ordinance No. 2764 “Ordinance Regarding the Coastal Area” which was adopted on February 2, 2021. However, it should be noted that the Application is not for a cluster subdivision within the Agricultural Residential (AR-1) District (as the proposal is to amend the subject properties from AR-1 to the Medium Density Residential, Residential Planned Community District (MR-RPC)) and as the proposal is exclusively for the establishment of a Residential Planned Community (RPC). Therefore, the Superior Design Criteria as outlined in §115-25(F)(1-4) are not a requirement of this proposal.

However, while the Superior Design Criteria for cluster subdivisions within the AR-1 District do not apply to this project, it is important to note that the purpose of the Residential Planned Community District as outlined in the Code is “to encourage large-scale developments as a means




of creating a superior living environment through unified developments, and to provide for the application of design ingenuity while protecting existing and future developments and achieving the goals of the Comprehensive Plan” (§115-118). Therefore, the provision of elements which contribute to a subdivision design that is superior in nature and demonstrates design ingenuity are strongly encouraged.

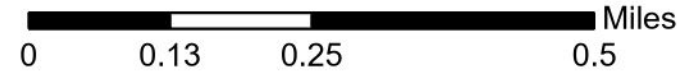
Additionally, it should be further noted that as this proposal was received by the Department of Planning and Zoning on 9/16/22, after the adoption date (5/17/22) but in advance of the effective date of Ordinance No. 2852 the “Drainage and Resource Buffer Ordinance,” the provisions of this Ordinance shall not apply to this RPC as the receipt of the subject Application pre-dated the effective date of this Ordinance. The effective date of the Ordinance is 11/17/2022, 6 months from the date of adoption by the Sussex County Council (5/17/2022).



Esri, Community Maps Contributors, County of Sussex, DE, Delaware FirstMap, VGIN, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, Maxar

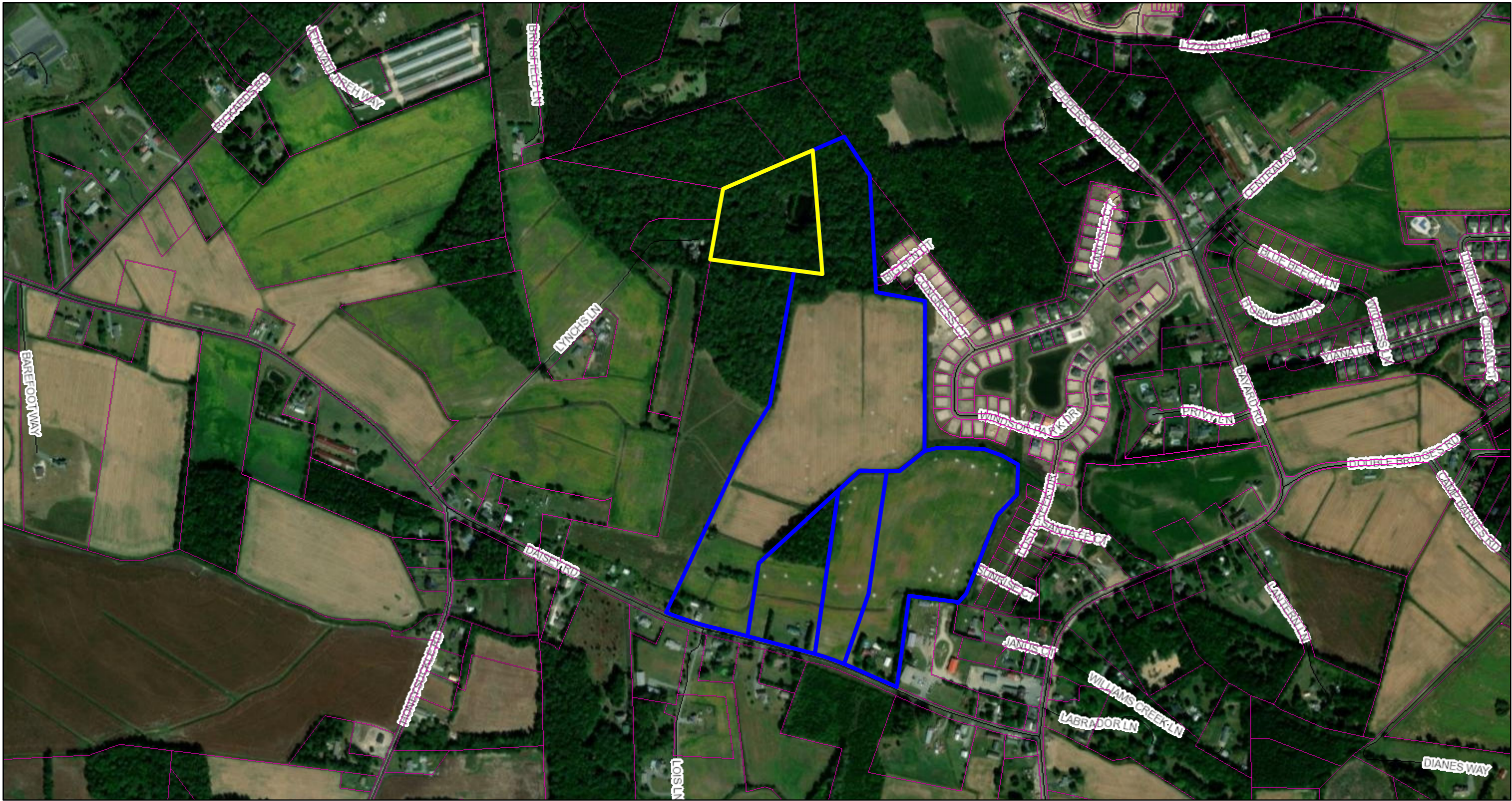
C/Z 1991  
Sycamore Chase Expansion  
Aerial Map

 C/Z 1991 - Sycamore Chase Expansion










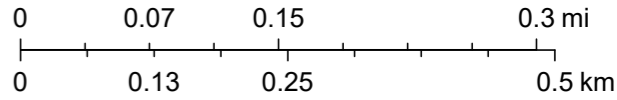
# Sussex County



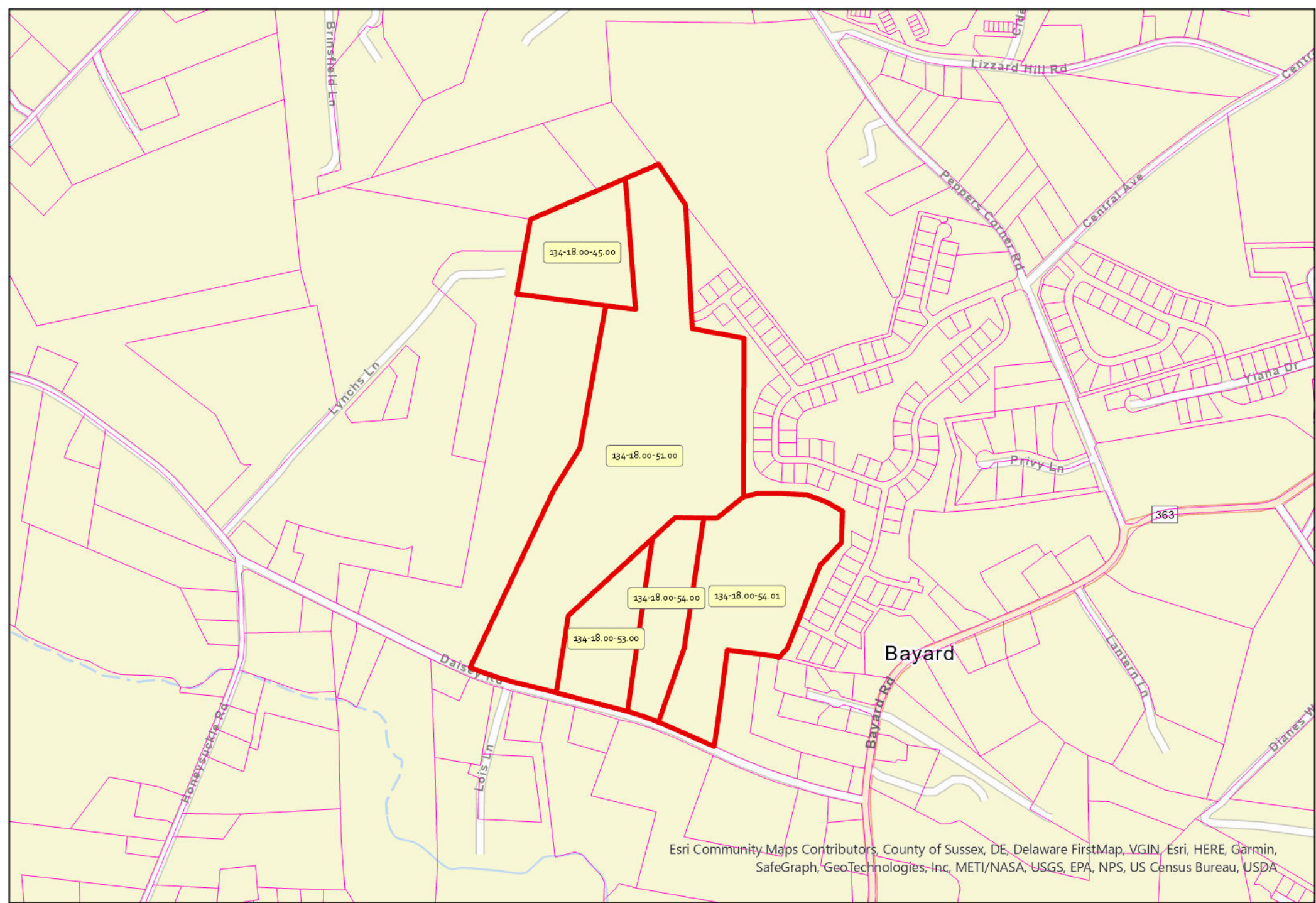
October 31, 2023

-  Override 1
-  Override 1
-  Tax Parcels
-  Streets
-  County Boundaries

1:9,028




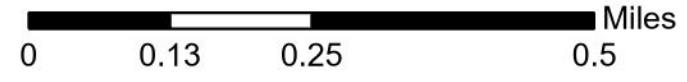
Sussex County Government, Maxar



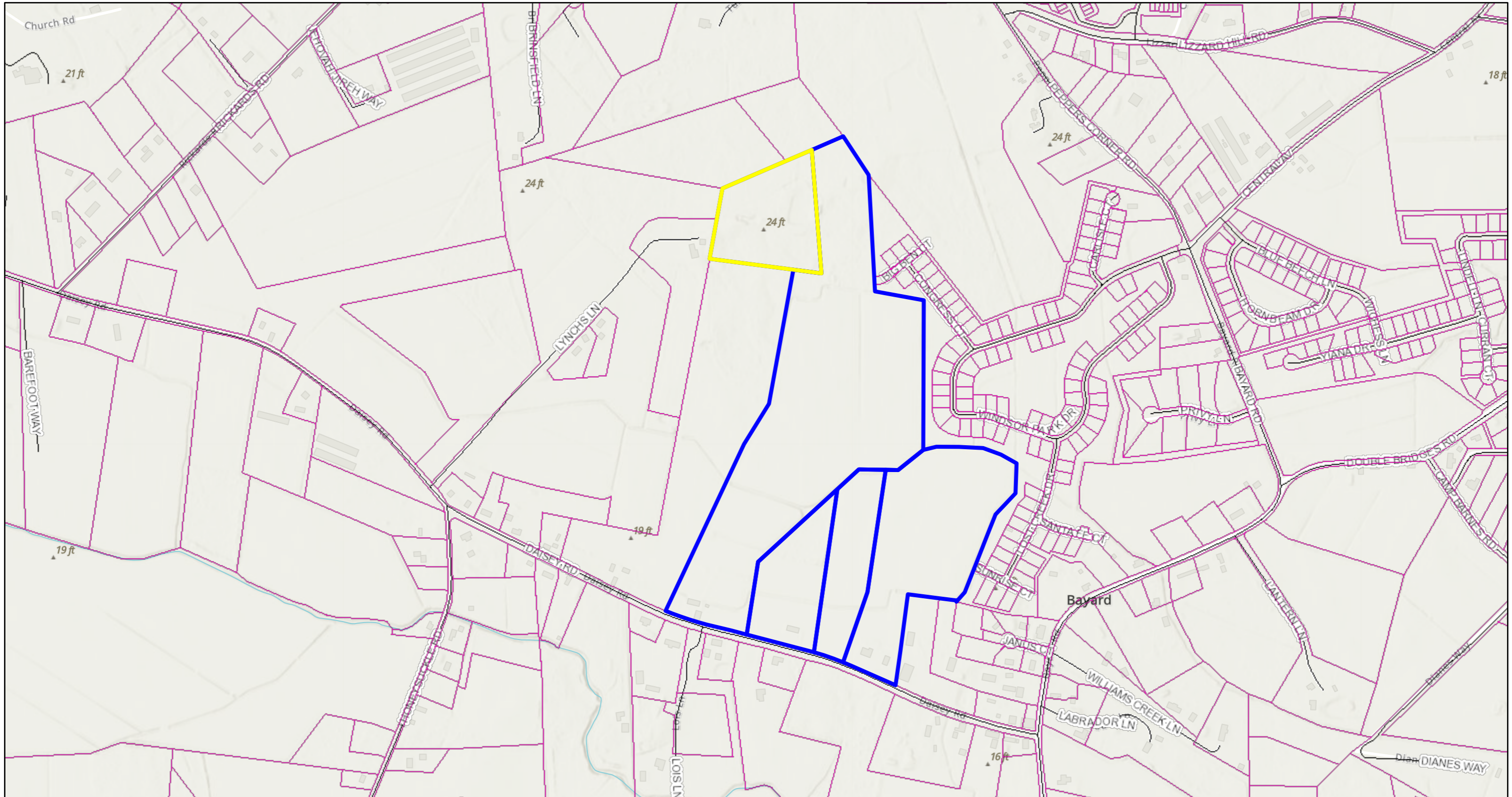
Esri Community Maps Contributors, County of Sussex, DE, Delaware FirstMap, VGIN, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA

C/Z 1991  
Sycamore Chase Expansion  
Street Map






 C/Z 1991 - Sycamore  
Chase Expansion



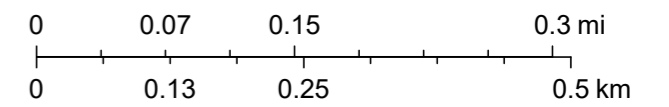
# Sussex County



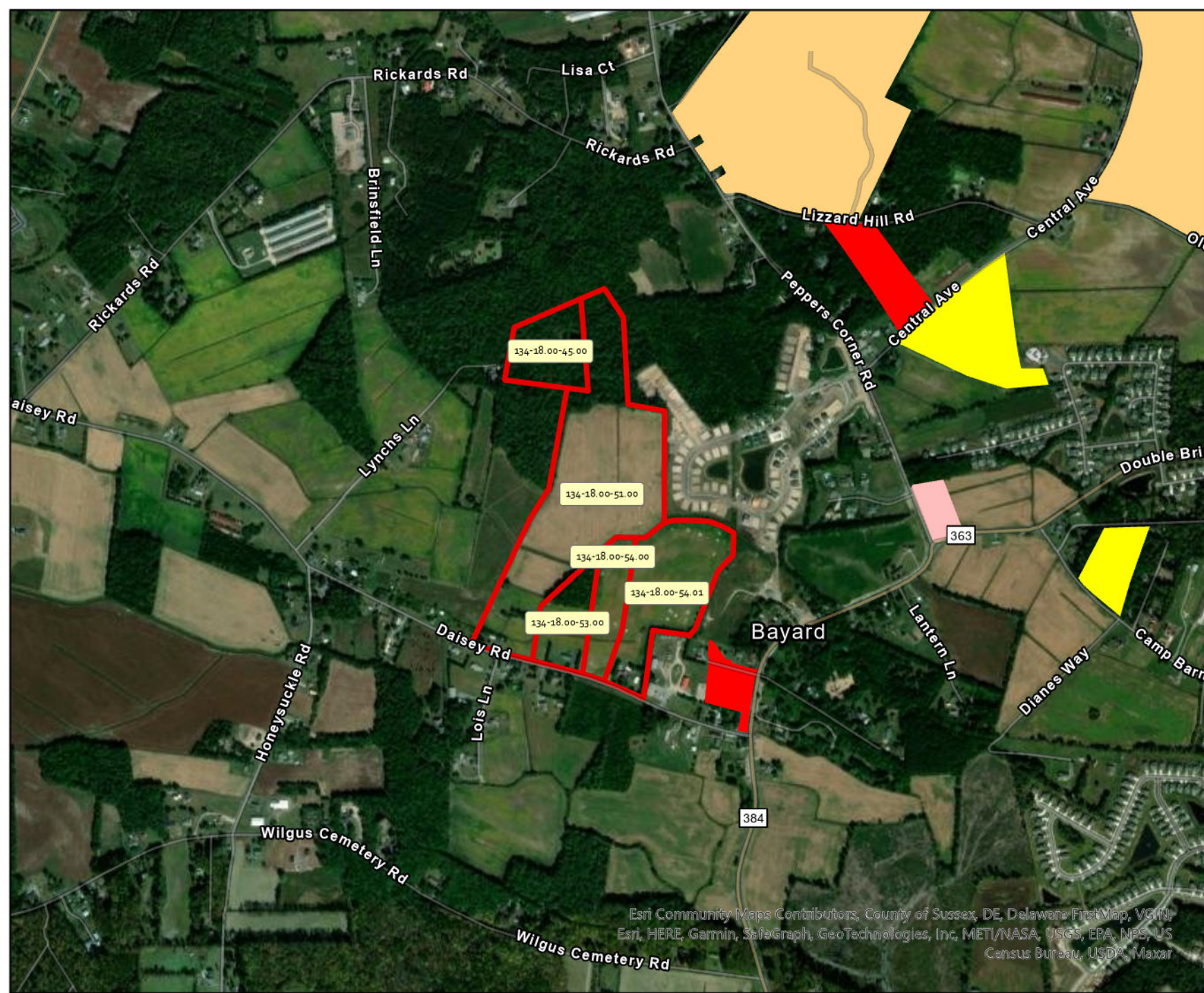
October 31, 2023

-  Override 1
-  Override 1
-  Tax Parcels
-  Streets
-  County Boundaries

1:9,028



Esri, NASA, NGA, USGS, FEMA, 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

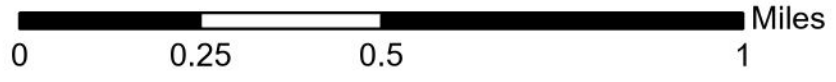


### Zoning

- 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

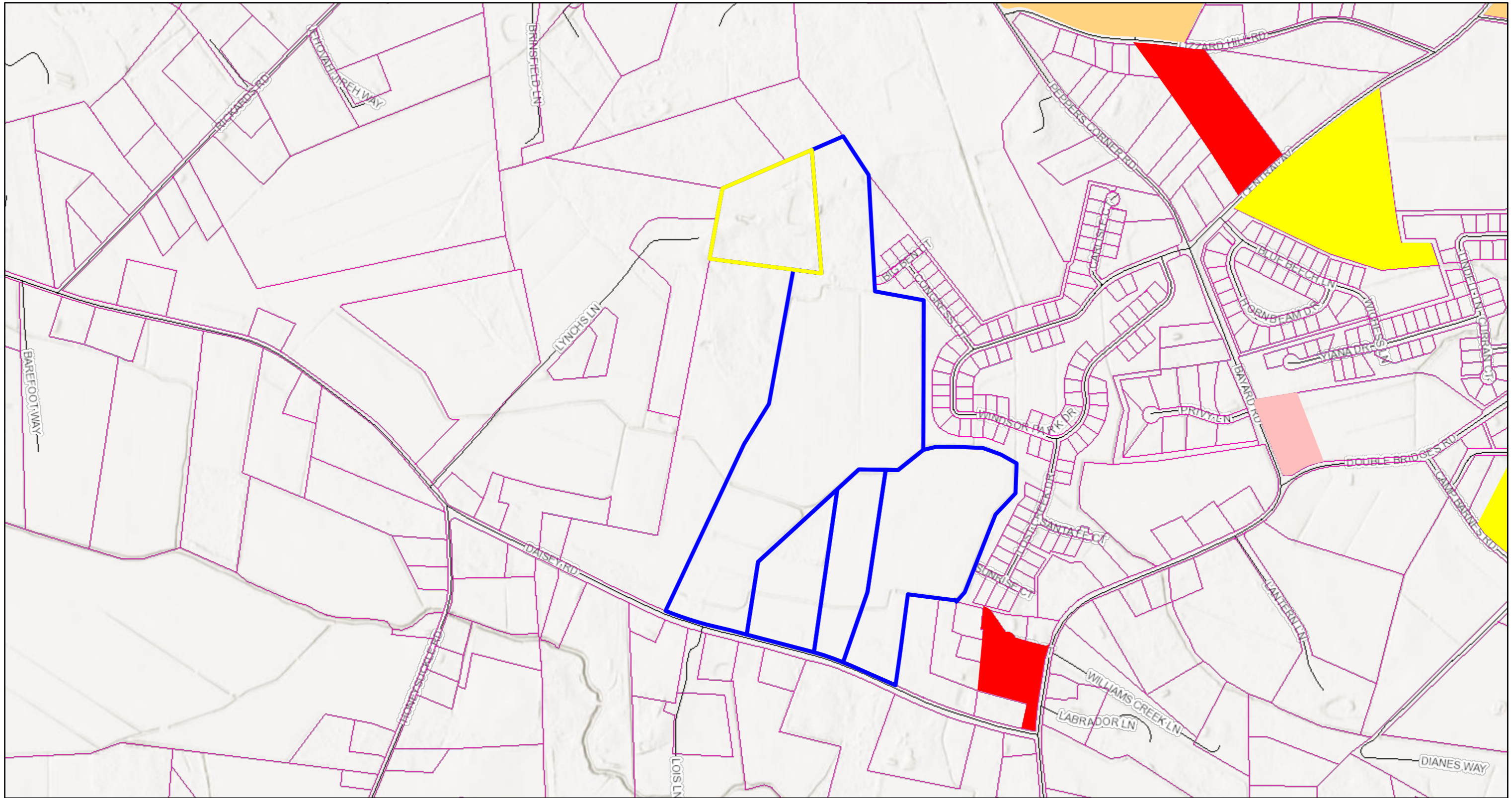
C/Z 1991  
Sycamore Chase Expansion  
Zoning Map

C/Z 1991 - Sycamore Chase Expansion



Esri Community Maps Contributors, County of Sussex, DE, Delaware FirstMap, VGIN, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, US Census Bureau, USDA, Maxar

# Sussex County



October 31, 2023

polygonLayer

Override 1

Override 2

Zoning

Medium Residential - MR

General Residential - GR

Neighborhood Business - B-2

General Commercial - C-1

Tax Parcels

Streets

County Boundaries

layer47

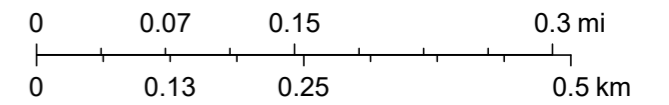
Red: Band\_1

Green: Band\_2

Blue: Band\_3

World Hillshade

1:9,028



Esri, NASA, NGA, USGS, FEMA, Sussex County Government

Introduced: 11/7/23

Council District 4: Mr. Hudson

Tax I.D. Nos.: 134-18.00-45.00, 51.00 and P/O 53.00, 54.00 & 54.01

911 Address: 34665, 34723 & 34771 Daisey Road, Frankford

**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 DENSITY RESIDENTIAL – RESIDENTIAL PLANNED COMMUNITY DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 73.95 ACRES, MORE OR LESS**

WHEREAS, on the 16<sup>th</sup> day of September 2022, a zoning application, denominated Change of Zone No. 1991 was filed on behalf of Beazer Homes, 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. 1991 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 District] and adding in lieu thereof the designation of MR-RPC Medium Density Residential – Residential Planned 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 north side of Daisey Road (S.C.R. 370), approximately 0.6 mile west of Bayard Road (S.C.R. 384) and being more particularly described in the attached legal description prepared by Solutions IPPEM, said parcels containing 73.95 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.

VINCENT.  
yes. 2/8

**Casey Hall**

---

**From:** notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE <notifications@d3forms.com>  
**Sent:** Saturday, February 3, 2024 11:23 AM  
**To:** Casey Hall  
**Subject:** Sussex County DE - Council Grant Form: Form has been submitted

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**Council Grant Form**

|   |  |
|---|--|
| <b>Legal Name of Agency/Organization</b>  | Friends of the Laurel Library ✓                                      |
| <b>Project Name</b>   | Youth Activity Series  |
| <b>Federal Tax ID</b>   | 51-0389380 ✓   |
| <b>Non-Profit</b>   | Yes  |
| <b>Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)</b> | No   |
| <b>Organization's Mission</b>   | "To help the Laurel Library better serve and educate the community." |
| <b>Address</b>  | 101 E 4th Street   |
| <b>City</b>   | Laurel   |
| <b>State</b>  | Delaware   |
| <b>Zip Code</b>   | 19956  |
| <b>Contact Person</b>   | Laina Betts-Dunn   |

|   |  |
|---|--|
| <b>Contact Title</b>  | Treasurer  |
| <b>Contact Phone Number</b>   | 3028419898   |
| <b>Contact Email Address</b>  | <a href="mailto:friends.of.the.library.laurel.de@gmail.com">friends.of.the.library.laurel.de@gmail.com</a> |
| <b>Total Funding Request</b>  | 1000   |
| <b>Has your organization received other grant funds from Sussex County Government in the last year?</b> | No   |
| <b>If YES, how much was received in the last 12 months?</b>   | N/A  |
| <b>Are you seeking other sources of funding other than Sussex County Council?</b>                       | Yes  |
| <b>If YES, approximately what percentage of the project's funding does the Council grant represent?</b> | 50   |
| <b>Program Category (choose all that apply)</b>   | Cultural<br>Educational  |
| <b>Primary Beneficiary Category</b>   | Youth  |



**Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program**

15500

**Scope**

The program The Friends of the Laurel Library would like to sponsor is two educational series. The target audience for these programs would be students in grades 7-12. The series would be STEM (Science Technology Engineering Math) based and offered at two separate time slots each session. The series would run for 20 sessions, but be split in half to encourage new enrollment. One session would be held directly after school and the second session would be held that same day, but later, so that students involved in extracurricular activities such as sports can participate. Snacks would be provided before each session began. (Snacks are funded/provided through a grant the library already receives directly from a national grant.) Similar learning series in our area cost about \$50 per session, including materials and the instructor. After completing an informal interest inventory with students that came in-person to the library during a 7 day period, the majority of students would be interested in a computer coding series. All students in Laurel School District are issued a Chromebook, and this will be beneficial for much of the series. The Coding Series Agenda would be as follows:

Section 1

- Intro to Midjourney
- Intro to ChatGPT
- Prompt Engineering for Software Engineers
- Basics to Programmin I
- Basics to Programming II
- Basics to Programming III
- Learn to Code with Blockly
- Intro to PyTorch and Neural Networks
- Learn JavaScript: Fundamentals (2 parts)

Section 2

- Intro to Generative AI

Optimizing Code with Generative AI  
 Streamline Resume Creation with Generative AI  
 Creating Quick STEAM Activities with Generative AI  
 Pair Programming with Generative AI  
 Debug Python Code with Generative AI  
 Create Your Own Business Model with Generative AI  
 Create a Sales Plan for Generative AI

**Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)** 0.00

**Description** personnel

**Amount** 1,000.00

**Description** materials/supplies

**Amount** 1,000.00

**TOTAL EXPENDITURES** 2,000.00

**TOTAL DEFICIT FOR PROJECT OR ORGANIZATION** -2,000.00

**Name of Organization** Friends of the Laurel Library

**Applicant/Authorized Official** Laina Betts-Dunn

**Date** 02/03/2024

**Affidavit Acknowledgement** Yes

VINCENT  
YES. 2/1

**Casey Hall**

---

**From:** notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE <notifications@d3forms.com>  
**Sent:** Tuesday, January 30, 2024 11:14 AM  
**To:** Casey Hall  
**Subject:** Sussex County DE - Council Grant Form: Form has been submitted

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**Council Grant Form**

**Legal Name of Agency/Organization** BLADES POLICE DEPT

**Project Name** Community Outreach Program

**Federal Tax ID** 51-6001393

**Non-Profit** Yes

**Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)** No

**Organization's Mission** The community Outreach program will bring in funds to fund the year of 2024 activities that the Blades Police Dept will host. We are asking Businesses and private sectors for funding. We are planning several events during this year. the Funding will support the Community Outreach Program which funds the events. we have 6 events coming up\* These funds will be for the entire year. The Sussex County employees are invited to all events and Will be on our flyers as a sponsor.

**Address** 20 WEST 4TH ST

**City** BLADES  
**State** Delaware  
**Zip Code** 19973  
**Contact Person** Lori Lynch  
**Contact Title** ADMIN ASSISTANT FOR BLADES P  
**Contact Phone Number** 3026297329  
**Contact Email Address** [loretta.lynch@cj.state.de.us](mailto:loretta.lynch@cj.state.de.us)

**Total Funding Request**

1500.00

**Has your organization received other grant funds from Sussex County Government in the last year?**

Yes

**If YES, how much was received in the last 12 months?**

1300.00

**Are you seeking other sources of funding other than Sussex County Council?**

Yes

**If YES, approximately what percentage of the project's funding does the Council grant represent?**

25

**Program Category  
(choose all that  
apply)** Other

**Program Category  
Other** events

**Primary Beneficiary  
Category** Other

**Beneficiary Category  
Other** blades citizens

**Approximately the  
total number of  
Sussex County  
Beneficiaries served,  
or expected to be  
served, annually by  
this program** 1000

**Scope** The need for these funds is important to the Police Dept as we are a non-profit organization that rely on mostly on the generously of businesses and private sector. Without these funds we would not be able to have these events for the Children and families of Blades De.

**Please enter the  
current support your  
organization receives  
for this project (not  
entire organization  
revenue if not  
applicable to request)** 2,000.00

**Description** operating costs

**Amount** 3,000.00

**Amount** 0.00

**TOTAL EXPENDITURES** 3,000.00

**TOTAL DEFICIT FOR  
PROJECT OR  
ORGANIZATION** -1,000.00

**Name of Organization** BLADES POLICE DEPT

**Applicant/Authorized  
Official** CHIEF MARTIN WILLEY

**Date** 01/30/2024

**Affidavit  
Acknowledgement** Yes

HUDSON.  
YES. 2/1

**Casey Hall**

**From:** notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE  
<notifications@d3forms.com>  
**Sent:** Monday, January 29, 2024 12:25 PM  
**To:** Casey Hall  
**Subject:** Sussex County DE - Council Grant Form: Form has been submitted

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**Council Grant Form**

|   |   |
|---|---|
| <b>Legal Name of Agency/Organization</b>  | <del>Historic Village in</del> Ocean View <b>Historical Society</b> ✓   |
| <b>Project Name</b>   | Barn restoration at Coastal Towns Museum  |
| <b>Federal Tax ID</b>   | 26-1719840 ✓  |
| <b>Non-Profit</b>   | Yes   |
| <b>Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)</b> | No  |
| <b>Organization's Mission</b>   | To preserve and share the rich history of the Coastal Towns of Delaware through planned activities, speakers, fundraisers, tours, and exhibits. |
| <b>Address</b>  | Mailing Address: PO Box 576; Village address: 39 Central Avenue   |
| <b>City</b>   | Ocean View  |
| <b>State</b>  | Delaware  |
| <b>Zip Code</b>   | 19970   |

**Contact Person** Barbara Slavin  
**Contact Title** President  
**Contact Phone Number** 302-593-8814  
**Contact Email Address** [President@hvov.org](mailto:President@hvov.org)

**Total Funding Request**

\$4000

**Has your organization received other grant funds from Sussex County Government in the last year?**

No

**If YES, how much was received in the last 12 months?**

N/A

**Are you seeking other sources of funding other than Sussex County Council?**

No

**If YES, approximately what percentage of the project's funding does the Council grant represent?**

N/A

**Program Category (choose all that apply)**

Cultural  
Educational

**Primary Beneficiary Category**

Elderly Persons (62 +)



**Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program**

1400

**Scope**

In existence since 2008, the Historic Village in Ocean View is open each Wednesday in the summers, by request anytime, and at all Ocean View Town events. We receive donations, and apply for grant money to maintain and improve our Village. The Coastal Towns Museum, located across from the Town Park, represents Fenwick, South Bethany, \* Bethany, Millville, and Ocean View. It showcases significant events and historical remembrances of all these towns. A "Woodhouseum" (refurbished by an Eagle Scout), a 3-seater outhouse, and a 1901 barn accent the 1904 Gothic Revival house.

**Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)**

1,500.00

**Description**

Barn renewal

**Amount**

2,000.00

**Description**

Landscaping

**Amount**

600.00

**Description**

Operating Costs

**Amount**

750.00

**TOTAL EXPENDITURES** 3,350.00

**TOTAL DEFICIT FOR  
PROJECT OR  
ORGANIZATION** -1,850.00 \*

**Name of Organization** Historic Village in Ocean View

**Applicant/Authorized  
Official** Barbara Slavin

**Date** 01/29/2024

**Affidavit  
Acknowledgement** Yes

SCHJEFFER  
yes. 2/7.

## Casey Hall

**From:** notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE  
<notifications@d3forms.com>  
**Sent:** Monday, February 5, 2024 12:20 PM  
**To:** Casey Hall  
**Subject:** Sussex County DE - Council Grant Form: Form has been submitted

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### **Council Grant Form**

**Legal Name of Agency/Organization**

Rehoboth Art League *inc.*

**Project Name**

Historic Homestead Garden Restoration

**Federal Tax ID**

51-0097839 ✓

**Non-Profit**

Yes

**Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)**

No

**Organization's Mission**

Based in our historic setting and working in partnership with other organizations throughout the region, the Rehoboth Art League leads in sponsoring art exhibitions, education and other programs that inspire all community members to embrace the lifelong value of art.

**Address**

12 Dodds Lane

**City**

Rehoboth Beach

**State**

DE

|   |  |
|---|--|
| <b>Zip Code</b>   | 19971  |
| <b>Contact Person</b>   | Sara Ganter  |
| <b>Contact Title</b>  | Executive Director   |
| <b>Contact Phone Number</b>   | 302-227-8408   |
| <b>Contact Email Address</b>  | <a href="mailto:sara@rehobothartleague.org">sara@rehobothartleague.org</a> |
| <b>Total Funding Request</b>  | \$1,000.00   |
| <b>Has your organization received other grant funds from Sussex County Government in the last year?</b> | No   |
| <b>If YES, how much was received in the last 12 months?</b>   | N/A  |
| <b>Are you seeking other sources of funding other than Sussex County Council?</b>                       | Yes  |
| <b>If YES, approximately what percentage of the project's funding does the Council grant represent?</b> | 10   |
| <b>Program Category (choose all that apply)</b>   | Cultural   |

**Primary Beneficiary Category** Other

**Beneficiary Category Other** All communities are served

**Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program** 25000

**Scope** Founded in 1938, the Rehoboth Art League continues its long-standing mission of encouraging artists and arts education through its exhibits, programs, events, and historic campus in Henlopen Acres. The Rehoboth Art League is now seeking grant funding that will allow us to replace the ailing roof on the pavilion in our historic Homestead Garden.

Developed in the 1930s by art league founder Louise Corkran, the Homestead Garden is the formal English garden located behind our Peter Marsh Homestead, which was built in 1743 and is recognized on the National Register of Historic Places. The league maintains the garden in Mrs. Corkran's vision, and it is overseen by our corps of dedicated volunteers, who weed, plant, prune, and upkeep the landscape's historic plantings. The entryway to the garden is a brick pathway that winds behind the Homestead and through the cedar pavilion, which was gifted by the Board of Trustees to the art league in 1999 during a prior garden renovation campaign. Now twenty-five years old, the pavilion's cedar shingles are deteriorating badly and need replacement. The structure itself remains intact, and there is a seating area with benches as one walks through the pavilion itself. Without roof replacement, the structural integrity of the pavilion is at risk. In the meantime, fallen shingles are collecting in the historic garden and endanger visitors.

As part of preservation efforts for the Homestead and its surrounding access points, the Rehoboth Art League is in the process of attending to a variety of capital projects on the property. Upgrades in ADA access to the garden have been completed and mean that pathways have been reconfigured and tripping hazards eliminated to increase access for those with mobility impairments. As part of the garden, the pavilion's preservation is also a priority. The structure remains an important gateway to our organization's history, as an entry to our Homestead \* Garden, which is always free and open to the public. Our campus welcomes thousands of people each year, and the league wants to ensure that its facilities and open property continues to be hazard-free and remain in the spirit of historic preservation for which we are known. By preserving the pavilion's cedar roof through its replacement, we will ensure that our Homestead and garden remain accessible to Sussex County visitors for many years to come.

**Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)**

8,000.00

**Description**

Construction (replacement shingles, frame repair)

**Amount**

9,000.00

**TOTAL EXPENDITURES**

9,000.00

**TOTAL DEFICIT FOR PROJECT OR ORGANIZATION**

-1,000.00

**Name of Organization**

Rehoboth Art League

**Applicant/Authorized  
Official** Sara Ganter

**Date** 01/31/2024

**Affidavit  
Acknowledgement** Yes

VINCENT  
YCS. 2/15

**Casey Hall**

---

**From:** notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE <notifications@d3forms.com>  
**Sent:** Tuesday, February 13, 2024 6:51 PM  
**To:** Casey Hall  
**Subject:** Sussex County DE - Council Grant Form: Form has been submitted

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**Council Grant Form**

**Legal Name of Agency/Organization**

Seaford Tomorrow, Inc ✓

**Project Name**

Friday Night Live -

**Federal Tax ID**

47-5519548 ✓

**Non-Profit**

Yes

**Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)**

No

**Organization's Mission**

Seaford Tomorrow is an all-volunteer non-profit organization formed with the specific purpose of improving Seaford's Downtown Business District in support of the local economy. The program is two-fold: Facade Improvement Grant program, and an Event Program. A key element of the Event program is the Friday Night Live events, put on in the Seaford downtown during the warmer 6 months (May-Oct). These evening events are every 3rd Friday evening in the month, and feature live music, food and dessert trucks, and a few fun games (corn hole, etc). It is an opportunity for the Seaford-Blades community to come out and enjoy a fun and entertaining evening in the



downtown. We hope to draw residents into the downtown to benefit our downtown merchants.

**Address** 404 High St  
**City** Seaford  
**State** DE  
**Zip Code** 19973  
**Contact Person** Ian (Toby) French  
**Contact Title** Chair  
**Contact Phone Number** (302) 257-0966

**Contact Email Address** [tobyfrench32@yahoo.com](mailto:tobyfrench32@yahoo.com)

**Total Funding Request** \$3000.00

**Has your organization received other grant funds from Sussex County Government in the last year?** No

**If YES, how much was received in the last 12 months?** N/A

**Are you seeking other sources of funding other than Sussex County Council?** No

**If YES, approximately what percentage of the project's funding does the Council grant represent?**

N/A

**Program Category (choose all that apply)**

Cultural  
Other

**Program Category Other**

Community

**Primary Beneficiary Category**

Elderly Persons (62 +)

**Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program**

300

**Scope**

Seaford Tomorrow's Friday Night Live events are put on in the Seaford downtown during the warmer 6 months (May-Oct). These evening events are every 3rd Friday evening in the month, and feature live music, food and dessert trucks, and a few fun games (corn hole, etc). It is an opportunity for the Seaford-Blades community to come out and enjoy a fun and entertaining evening in the downtown. We hope to draw residents into the downtown to benefit our downtown merchants. This grant is being requested to offset the expense of bands hired for the live music, typically averaging around \$800 each event. Many of the bands brought in are local talent, supporting cultural pursuit in Sussex County. These events grew substantially last year, so we are adding additional evenings (2/mo in Aug & Sep), and requiring moving to a larger venue. Great success!

**Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)** 1,600.00

**Description** Hiring of bands for live music.

**Amount** 6,400.00

**Description** New yard signs advertising events

**Amount** 300.00

**TOTAL EXPENDITURES** 6,700.00

**TOTAL DEFICIT FOR PROJECT OR ORGANIZATION** -5,100.00

**Name of Organization** Seaford Tomorrow

**Applicant/Authorized Official** Ian G French

**Date** 02/13/2024

**Affidavit Acknowledgement** Yes

Schaeffer  
Yes. 2/15

## Casey Hall

**From:** notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE  
<notifications@d3forms.com>  
**Sent:** Thursday, February 8, 2024 5:52 PM  
**To:** Casey Hall  
**Subject:** Sussex County DE - Council Grant Form: Form has been submitted

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

### Council Grant Form

|   |   |
|---|---|
| <b>Legal Name of Agency/Organization</b>  | <del>Lewes Community Garden</del><br>Greater Lewes Foundation! ✓  |
| <b>Project Name</b>   | capital improvement - Lewes Comm. Found. Garden. ✓  |
| <b>Federal Tax ID</b>   | Greater Lewes Foundation EIN 51-0400365 ✓   |
| <b>Non-Profit</b>   | Yes   |
| <b>Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)</b> | No  |
| <b>Organization's Mission</b>   | Our mission is to create and maintain a sustainable community garden by sharing knowledge, experience, and friendship.<br>Last year we donated over 500 lbs of fresh produce to local food banks and the Greater Lewes Community Village. |
| <b>Address</b>  | we receive correspondence at the Lewes po box 436   |
| <b>Address 2</b>  | donations handled by Greater Lewes Foundation po box 110  |
| <b>City</b>   | Lewes   |

|   |  |
|---|--|
| <b>State</b>  | DE   |
| <b>Zip Code</b>   | 19958  |
| <b>Contact Person</b>   | Catherine Harris   |
| <b>Contact Title</b>  | head fundraising   |
| <b>Contact Phone Number</b>   | 302-463-0393   |
| <b>Contact Email Address</b>  | <a href="mailto:cather1neharris@hotmail.com">cather1neharris@hotmail.com</a> |
| <b>Total Funding Request</b>  | \$1500   |
| <b>Has your organization received other grant funds from Sussex County Government in the last year?</b> | No   |
| <b>If YES, how much was received in the last 12 months?</b>   | N/A  |
| <b>Are you seeking other sources of funding other than Sussex County Council?</b>                       | Yes  |
| <b>If YES, approximately what percentage of the project's funding does the Council grant represent?</b> | 25   |

|  |  |
|--|--|
| <b>Program Category<br/>(choose all that apply)</b>  | Educational<br>Health and Human Services   |
| <b>Primary Beneficiary Category</b>  | Low to Moderate Income   |
| <b>Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program</b>                    | 200  |
| <b>Scope</b>   | <p>*We need another lockable shed, and want to build a bed for gardeners that cannot kneel. We also want to add more native plants outside the vegetable beds. If we have enough funding, may build a few more beds.</p> <p>PLEASE NOTE: WE RECEIVED \$1500 FROM THE SUSSEX COUNTY COUNCIL LAST YEAR, BUT THIS PROGRAM KEPT ERASING THE NUMBER WHEN I TYPED IT. I COULD NOT SUBMIT THE APPLICATION ONLINE WITHOUT OMITTING THIS INFORMATION.</p> |
| <b>Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)</b> | 0.00   |
| <b>Description</b>   | shed   |
| <b>Amount</b>  | 4,800.00   |
| <b>Description</b>   | mobility bed, seating  |
| <b>Amount</b>  | 700.00   |

|  |                        |
|--|------------------------|
| <b>Description</b>                               | native plants          |
| <b>Amount</b>                                    | 500.00                 |
| <b>TOTAL EXPENDITURES</b>                        | 6,000.00               |
| <b>TOTAL DEFICIT FOR PROJECT OR ORGANIZATION</b> | -6,000.00              |
| <b>Name of Organization</b>                      | Lewes Community Garden |
| <b>Applicant/Authorized Official</b>             | Catherine Harris       |
| <b>Date</b>                                      | 02/08/2024             |
| <b>Affidavit Acknowledgement</b>                 | Yes                    |

Rieley  
yes. 2/15.

**Casey Hall**

---

**From:** notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE <notifications@d3forms.com>  
**Sent:** Tuesday, February 13, 2024 4:38 PM  
**To:** Casey Hall  
**Subject:** Sussex County DE - Council Grant Form: Form has been submitted

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**Council Grant Form**

**Legal Name of Agency/Organization** RACE4WARRIORS ✓ Inc.

**Project Name** RACE4WARRIORS

**Federal Tax ID** 83-0579793 ✓

**Non-Profit** Yes

**Does your organization or its parent organization have a religious affiliation? (If yes, fill out Section 3B.)** No

**Organization's Mission** MISSION STATEMENT  
The orchestration of an annual Race4Warriors event to honor veterans who have served in the Middle East. To provide support to our Wounded Warriors and Homeless Veterans, while educating our communities and strengthening their bonds with our veterans.  
VISION STATEMENT  
Connect education with community involvement to enhance our support of veterans who have served in the Middle East.



**Address** 26183 Tuscany Drive  
**City** Millsboro  
**State** DE  
**Zip Code** 19966  
**Contact Person** CMSgt (Ret) First Sergeant Michael R Bellerose  
**Contact Title** CEO  
**Contact Phone Number** 6033918685  
**Contact Email Address** [Bellerose@Race4Warriors.org](mailto:Bellerose@Race4Warriors.org)

**Total Funding Request**

2,000

**Has your organization received other grant funds from Sussex County Government in the last year?**

No

**If YES, how much was received in the last 12 months?**

N/A

**Are you seeking other sources of funding other than Sussex County Council?**

Yes

**If YES, approximately what percentage of the project's funding**

9

**does the Council grant represent?**

**Program Category (choose all that apply)**

Educational  
Other

**Program Category Other**

Veteran Support

**Primary Beneficiary Category**

Other

**Beneficiary Category Other**

Wounded Warriors in DE/ Homeless Vets in DE

**Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program**

5000

**Scope**

ALL FUNDS RAISED WILL BE USED TO SUPPORT PROGRAMS IN DELAWARE TO SUPPORT VETERANS. \*

Over 2.7 million service members have been deployed to the war zones of Iraq and Afghanistan since 2001. These numbers do not include our service members deployed during the Persian Gulf War, or as early as August 1982 when the Marines were deployed as part of a temporary multinational force in Lebanon. "According to the United States Department of Housing and Urban Development, the number of homeless veterans in the U.S. "was more than the combined seating capacity of the football stadiums for the Army, Navy, Air Force, Marine Corps, and Coast Guard—which together seat 123,192 people." This is a powerful image that relays the need to care about veteran homelessness." More than 52,000 service members have been physically wounded in the current conflicts. It is estimated that as many as 400,000 service members live

with the invisible wounds of war, including combat stress, traumatic brain injury (TBI), depression, and post-traumatic stress disorder (PTSD).

Our organization assists to help in these efforts through fund raising and educating individuals who attend the event.

**Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request)** 10,500.00

**Description** Cape Henlopen State Park Fees

**Amount** 3,500.00

**Description** Sussex County EMS \*

**Amount** 1,500.00

**Description** Race (Operational Cost)

**Amount** 5,000.00

**Description** Concert (Operational Cost)

**Amount** 4,550.00

**Description** Insurrence

**Amount** 2,300.00

**Description** Marketing

**Amount** 3,000.00

**TOTAL EXPENDITURES** 19,850.00

**TOTAL DEFICIT FOR PROJECT OR ORGANIZATION** -9,350.00

**Name of Organization** RACE4WARRIORS

**Applicant/Authorized Official** Dr. Michael Bellerose

**Date** 02/13/2024

**Affidavit Acknowledgement** Yes

To Be Introduced: 2/27/24

Council District 1: Mr. Vincent  
Tax I.D. No.: 532-13.00-84.00 (p/o)  
911 Address: 36671 Sussex Highway, Delmar

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND A C-1 GENERAL COMMERCIAL DISTRICT TO A C-3 HEAVY COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN LITTLE CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 11.92 ACRES, MORE OR LESS**

WHEREAS, on the 23<sup>rd</sup> day of May 2023, a zoning application, denominated Change of Zone No. 2013 was filed on behalf of 4 Points Towing & Roadside, 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. 2013 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 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 parcels of land, lying and being situate in Little Creek Hundred, Sussex County, Delaware, and lying on the east side of Sussex Highway (Rt. 13), approximately 650 ft. south of Iron Hill Road (S.C.R. 454A) and being more particularly described in the attached legal description prepared by The Malmberg Firm, LLC, said portion of the parcel containing 10.25 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 23, 2024

RE: County Council Report for C/U 2409 filed on behalf of Bryan Stewart

---

The Planning and Zoning Department received an application (C/U 2409 filed on behalf of Bryan Stewart) for a year-round food vendor, to be located at Tax Parcel 334-6.00-2.00. The property is located 17581 Coastal Highway, Lewes. The parcel size is 1.12 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on January 24, 2024. At the meeting of February 7, 2024, the Planning & Zoning Commission recommended approval of the application for the 6 reasons stated and subject to the 4 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of January 24, 2024, and February 7, 2024.

Minutes of the January 24, 2024, Planning & Zoning Commission Meeting

### **C/U 2409 Bryan Stewart**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A YEAR-ROUND FOOD VENDOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.12 ACRES MORE OR LESS.** The property is lying on the north side of Coastal Highway (Route 1), approximately 0.15 mile east of Savannah Road (Route 9). 911 Address: 17581 Coastal Highway, Lewes. Tax Map Parcel: 334-6.00-2.00.

Mr. Whitehouse advised the Commission that submitted into the record were the Applicant's Conceptual



sketch, a copy of the Confirmation of Lease of the property, a letter from Sussex County Engineering Department Utility Planning Division, and a copy of the Staff Analysis.

The Commission found that Mr. Bryan Stewart spoke on behalf of his Application. Mr. Stewart stated he represents the Crab Connect at 17580 Coastal Hwy, Lewes DE, and is requesting approval to remain open year-round; that the business provides a service of affordable crabs to not only families visiting the beach, but also locals and crab houses, and that his business is keeping 10 crabbers working in the Delaware Bay year-round.

Mr. Robertson stated that the reason for the Conditional Use rather than a food vendor sticker was that the Commission had established a process where applicants can avoid a zoning hearing and get approval through the Conditional Use.

The Commission found one person was present with neutral questions regarding the Application, and no one was present in support of or in opposition to the Application.

Mr. Bill Hines spoke on behalf of GPM Investments, in regard to the Application; that he stated the property management was informed of the hearing and were concerned that there was a building going to be put up.

Chairman Wheatley responded that this Application is just to ensure that his food truck is in compliance with the Code and that nothing else can be done to the property that is not already there without them returning and reapplying under a new 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.

In relation to C/U 2409 Bryan Stewart. Motion by Mr. Collins to defer action for further consideration, seconded by Ms. Wingate and carried unanimously. Motion carried 5-0.

#### Minutes of the February 7, 2024, Planning & Zoning Commission Meeting

The Commission discussed this application which had been deferred since January 24, 2024.

Ms. Wingate moved that the Commission recommend approval for C/U 2409 Bryan Stewart for a year-round food vendor based on the information contained in the record and for the following reasons:

1. This is an application to allow a food truck or trailer selling crabs to be located on part of a property developed as a gas station and convenience store.
2. The site is zoned C-1 General Commercial, which permits various uses that are more intensive than what is proposed here, including full-scale restaurants. A small trailer or truck selling crabs in the parking lot is consistent with the underlying C-1 zoning.
3. The Applicant has stated that he has a growing customer base at this location and that it is a convenient location for people to come buy crabs.

4. The use will not adversely affect neighboring properties, the community or area roadways.
5. A representative of the owner of the property stated that there is no objection to the use as long as it remains in its current configuration as a truck or trailer and does not become a permanent structure.
6. No parties spoke in opposition to this application.
7. This recommendation is subject to the following conditions:
  - A. The use shall be limited to a mobile or temporary seafood vendor. When not in continuous operation, it must be removed from the site, and it must not become permanently affixed to the site.
  - B. The use shall comply with all setback and parking requirements.
  - C. Any trash containers associated with the use shall be screened from view of neighboring properties and roadways.
  - D. The Final Site Plan for this use shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2409 Bryan Stewart for the reasons and conditions stated in the motion. Motion carried 4-0.

Vote by roll call: Ms. Wingate-yea, Mr. Mears-yea, Mr. Butler-yea, Chairman Wheatley- yea.



**PLANNING & ZONING COMMISSION**

ROBERT C. WHEATLEY, CHAIRMAN  
HOLLY J. WINGATE, VICE-CHAIRMAN  
J. BRUCE MEARS  
GREGORY SCOTT COLLINS  
BRIAN BUTLER



**Sussex County**

DELAWARE  
SUSSEXCOUNTYDE.GOV  
302-855-7878 T  
302-854-5079 F  
JAMIE WHITEHOUSE, AICP MRTPI  
PLANNING & ZONING DIRECTOR

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**  
Planning Commission Public Hearing Date: January 24<sup>th</sup>, 2024

Application: C/U 2409 Bryan Stewart

Applicant: Mr. Bryan Stewart  
5 Ashburn Drive  
Lewes, DE 19958

Owner: Primo Properties, LLC  
4501 Route 42, Suite 2  
Turnersville, NJ 08012

Site Location: The property is lying on the north side of Coastal Highway (Route 1), approximately 0.15 mile east of Savannah Road (Route 9). The property is located at 17581 Coastal Highway, Lewes, DE 19958.

Current Zoning: General Commercial (C-1) Zoning District

Proposed Use: Year-round food vendor

Comprehensive Land Use Plan Reference: Commercial Area

Councilmanic District: Mr. Schaeffer

School District: Cape Henlopen School District

Fire District: Lewes Fire Department

Sewer: Private

Water: Private

Site Area: 1.12 acres +/-

Tax Map ID: 334-6.00-2.00



## PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN  
HOLLY J. WINGATE, VICE-CHAIRMAN  
J. BRUCE MEARS  
GREGORY SCOTT COLLINS  
BRIAN BUTLER



## Sussex County

DELAWARE  
SUSSEXCOUNTYDE.GOV  
302-855-7878 T  
302-854-5079 F  
JAMIE WHITEHOUSE, AICP MRTPI  
PLANNING & ZONING DIRECTOR

# Memorandum

To: Sussex County Planning Commission Members  
From: Mrs. Christin Scott, Planner II  
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant  
Date: January 17, 2024  
RE: Staff Analysis for C/U 2409 Bryan Stewart

---

This memo is to provide background and analysis for the Planning Commission to consider as a part of Application C/U 2409 Bryan Stewart to be reviewed during the January 24<sup>th</sup>, 2024 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:** 334-6.00-2.00

**Proposal:** The request is for a Conditional Use for Tax Parcel 334-6.00-2.00 to allow for a year-round food vendor on a parcel lying on the north side of Coastal Highway (Route 1), approximately 0.15 mile east of Savannah Road (Route 9). The parcel is comprised 1.12 acres +/-.

**Zoning:** The Parcel is zoned General Commercial (C-1) District. The adjacent parcels to the east of the subject property are zoned General Commercial (C-1) District. Parcels to the north are zoned Medium Density Residential (MR) District. Parcels to the south and further west are zoned General Commercial (C-1) District.

**Future Land Use Map Designation w/in Comprehensive Plan:** Commercial 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 "Commercial Area." The properties to the east, west, and south of the subject Parcel are also categorized as "Commercial Area" with the parcels to the north categorized as "Coastal Area."

As outlined in the 2018 Sussex County Comprehensive Plan, Commercial Areas include concentrations of retail and service uses that are mainly located along arterials, and highways. As opposed to small, traditional downtown areas that are often historic and pedestrian-friendly, Commercial Areas include commercial corridors, shopping centers, and other medium and large



commercial vicinities geared towards vehicular traffic. In addition to primary shopping destinations, this area would also be the appropriate place to locate hotels, motels, car washes, auto dealerships, and other medium and larger scale commercial uses not primarily targeted to the residents of immediately adjacent residential areas. These more intense uses should be located along main roads or near major intersections. Institutional and commercial uses may be appropriate depending on surrounding uses. Mixed-use buildings may also be appropriate for these areas.

**Further Site Considerations:**

- **Density:** N/A
- **Open Space Provisions:** N/A
- **Agricultural Areas:** The site is not within the vicinity of active agricultural lands.
- **Interconnectivity:** Provided
- **Transportation Improvement District (TID):** The parcel is 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 Zone X and in an area of “Good” Groundwater Recharge Potential.

Based on the analysis of the land use, surrounding zoning and uses, a Conditional Use Application to allow for a year-round food vendor, 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 since 2011, 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<br>CU Number | Application<br>Name   | Zoning<br>District | Proposed<br>Use  | CC Decision<br>Date | CC<br>Decision | Ordinan<br>ce<br>Number |
|--------------------------|---|--------------------|--|---------------------|----------------|-------------------------|
| 1912                     | Wm. A. Bell<br>& Kathleen<br>M. Sperl-<br>Bell                        | AR-1               | Professional Office  | 11/8/2011           | Approved       | 2226                    |
| 1928                     | Devin Rice  | AR-1               | Storage of Equipment<br>and a Home Office                    | 5/15/2012           | Approved       | 2256                    |
| 1974                     | Sara Kay I.<br>Phillips   | AR-1               | Hair Salon   | 1/14/2014           | Approved       | 2334                    |
| 2002                     | Beach Bum<br>Distilling   | C-1                | DISTILLERY WITH<br>TOURS/TASTING/RET<br>AIL                  | 12/16/201<br>4      | Approved       | 2382                    |
| 2012                     | Ocean<br>Atlantic<br>Communiti<br>es<br>(Covered<br>Bridge<br>Trails) | MR                 | Multi-family -<br>Townhouses and<br>Condo Units              | 12/15/201<br>5      | Approved       | 2430                    |
| 2024                     | Stockley<br>Materials,<br>LLC   | AR-1               | Commercial<br>landscaping<br>materials, storage<br>and sales | 9/15/2015           | Approved       | 2417                    |
| 2033                     | BDRP, LLC   | MR                 | Multi-family Dwelling<br>Structures (Duplexes)               | 2/12/2016           | Withdrawn      | <Null>                  |
| 2034                     | Beachfire<br>Brewery<br>Co., LLC                                      | AR-1               | Restaurant and<br>Brewery                                    | 3/8/2016            | Approved       | 2438                    |
| 2058                     | Old<br>Orchard<br>Ventures -  | MR                 | Multi-family (duplex)<br>dwelling structures<br>(24 units)   | 10/25/201<br>6      | Approved       | 2472                    |

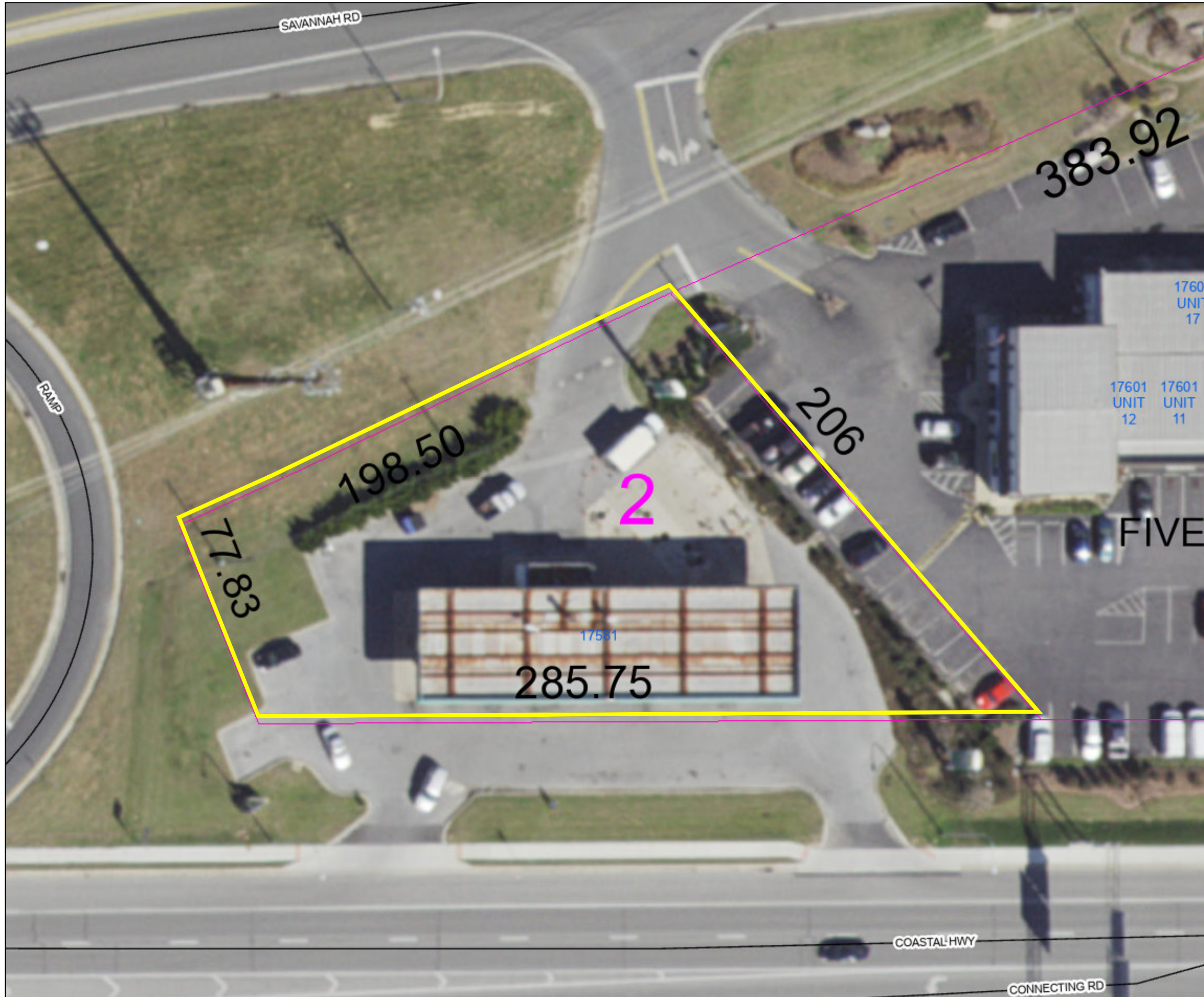
|      |  |      |  |            |          |        |
|------|--|------|--|------------|----------|--------|
|      | Oyster Cove                                  |      |  |            |          |        |
| 2064 | R & K Partners                               | AR-1 | medical offices                                | 3/7/2017   | Approved | 2484   |
| 2067 | Stockley Materials, LLC                      | AR-1 | Landscaping material sales and storage         | 4/11/2017  | Approved | 2492   |
| 2069 | Rudolph Joseph Johnson                       | AR-1 | Workout Studio                                 | 4/25/2017  | Approved | 2494   |
| 2073 | Delmarva Power & Light Co.                   | C-1  | Expansion to an existing electrical station    | 3/7/2017   | Approved | 2486   |
| 2074 | Quail Valley 1525, LLC (Midway Fitness)      | AR-1 | Commercial use as a Therapy and Fitness Center | 8/8/2017   | Denied   | <Null> |
| 2106 | MDI Investment Group, LLC (C/O Doug Compher) | MR   | multi-family (52 townhouses)                   | 3/20/2018  | Approved | 2566   |
| 2116 | William and Stacey Smith                     | AR-1 | professional offices                           | 3/20/2018  | Approved | 2569   |
| 2132 | Dorothy Darley                               | AR-1 | Hair Studio                                    | 7/31/2018  | Approved | 2590   |
| 2136 | Christine Degnon                             | AR-1 | medical offices                                | 10/23/2018 | Approved | 2608   |
| 2137 | John W. Ford                                 | AR-1 | professional offices                           | 7/31/2018  | Approved | 2592   |
| 2149 | Covered Bridge Trails, LLC                   | MR   | Amended Condition of Approval of CU 2012       | 7/24/2018  | Approved | 2588   |

|      |                                     |      |   |            |           |        |
|------|-------------------------------------|------|---|------------|-----------|--------|
| 2159 | Elisabeth Ann Burkhardt             | AR-1 | professional office   | 1/15/2019  | Approved  | 2628   |
| 2160 | Procino, Wells, and Woodland, P.A.  | AR-1 | Professional Office   | 3/19/2019  | Approved  | 2638   |
| 2169 | Robert & Debora Reed                | AR-1 | Multi-family  | 6/18/2019  | Approved  | 2663   |
| 2188 | Donovan's Painting and Drywall, LLC | AR-1 | contractor's office with storage  | 10/29/2019 | Approved  | 2686   |
| 2190 | Steven & Helene Falcone             | AR-1 | Office  | 1/7/2020   | Approved  | 2699   |
| 2261 | What Is Your Voice, Inc.            | AR-1 | Use Existing Garage for Office uses and one-story pole building for rental storage facilities (4 units) in connection w/ Applicant's non-profit corporation | 9/14/2021  | Approved  | 2800   |
| 2281 | Susan Riter                         | AR-1 | Borrow Pit  | 6/8/2021   | Withdrawn | <Null> |
| 2313 | John Ford                           | AR-1 | Realty Office   | 9/20/2022  | Approved  | 2885   |
| 2316 | Lighthouse Construction, Inc.       | AR-1 | Office Building   | 9/27/2022  | Approved  | 2888   |
| 2321 | Coastal Construction, LLC           | AR-1 | Kitch/Bathroom Showroom   | 1/3/2023   | Denied    | <Null> |

|      |                               |      |  |           |          |      |
|------|-------------------------------|------|--|-----------|----------|------|
| 2327 | Howard L. Ritter & Sons, Inc. | AR-1 | Expansion of a non-conforming borrow pit | 1/24/2023 | Approved | 2901 |
| 2352 | CB Lewes, LLC                 | MR   | Multi-family (30 units)                  | 6/14/2022 | Approved | 2866 |



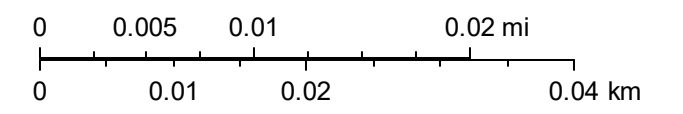
# Sussex County



|                        |                       |
|------------------------|-----------------------|
| <b>PIN:</b>            | 334-6.00-2.00         |
| <b>Owner Name</b>      | PRIMO PROPERTIES LLC  |
| <b>Book</b>            | 2897                  |
| <b>Mailing Address</b> | 4501 ROUTE 42 SUITE 2 |
| <b>City</b>            | TURNERSVILLE          |
| <b>State</b>           | NJ                    |
| <b>Description</b>     | NE INTERS/RT 1        |
| <b>Description 2</b>   | RT 9                  |
| <b>Description 3</b>   | SAVANNAH RD           |
| <b>Land Code</b>       |                       |

- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries

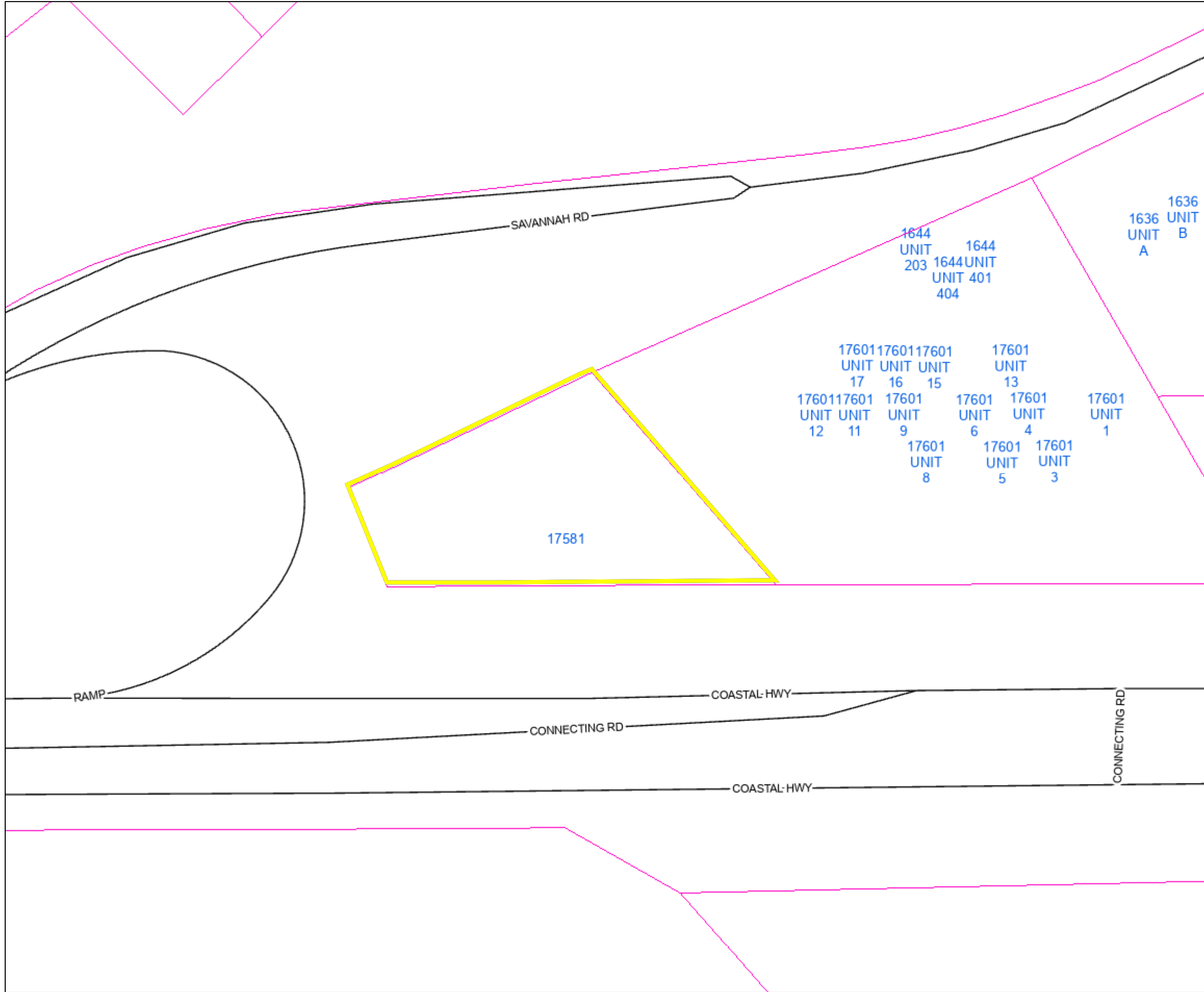
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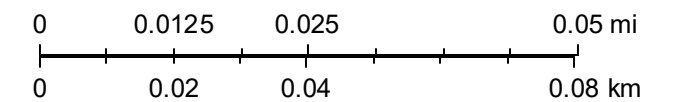
# Sussex County



|                        |                       |
|------------------------|-----------------------|
| <b>PIN:</b>            | 334-6.00-2.00         |
| <b>Owner Name</b>      | PRIMO PROPERTIES LLC  |
| <b>Book</b>            | 2897                  |
| <b>Mailing Address</b> | 4501 ROUTE 42 SUITE 2 |
| <b>City</b>            | TURNERSVILLE          |
| <b>State</b>           | NJ                    |
| <b>Description</b>     | NE INTERS/RT 1        |
| <b>Description 2</b>   | RT 9                  |
| <b>Description 3</b>   | SAVANNAH RD           |
| <b>Land Code</b>       |                       |

- polygonLayer  
Override 1
- polygonLayer  
Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries

1:1,128



# Sussex County

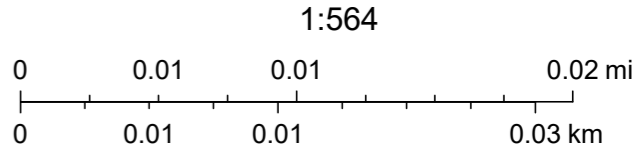


December 21, 2023

- Override 1  
 Override 2  
 C1: General Commercial  
 Tax Parcels  
 911 Address

- Streets  
 County Boundaries  
 World Imagery  
 Low Resolution 15m Imagery

- High Resolution 60cm Imagery  
 High Resolution 30cm Imagery  
 Citations  
 15cm Resolution Metadata



State of Delaware, Maxar, Microsoft, Sussex County Government, Sussex County Mapping and Addressing

Introduced: 01/24/23

Council District 3: Mr. Schaeffer  
Tax I.D. No.: 334-6.00-2.00  
911 Address: 17581 Coastal Highway, Lewes

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A C-1 GENERAL COMMERCIAL DISTRICT FOR A YEAR-ROUND FOOD VENDOR TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.12 ACRES MORE OR LESS**

WHEREAS, on the 18<sup>th</sup> day of November 2022, a conditional use application, denominated Conditional Use No. 2409 was filed on behalf of Bryan Stewart; 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. 2409 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 115-79, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2409 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 Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the north side of Coastal Highway (Route 1), approximately 0.15 mile east of Savannah Road (Route 9), and being more particularly described in the attached deed prepared by Young, Conaway, Stargatt & Taylor, LLP., said parcel containing 1.12 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 23, 2024

RE: County Council Report for C/U 2410 filed on behalf of Nicasia Chavez Reyes

---

The Planning and Zoning Department received an application (C/U 2410 filed on behalf of Nicasia Chavez Reyes) for a grocery store, to be located at Tax Parcel 135-9.00-122.00. The property is located 58 Garden Circle, Georgetown, within the County Seat Gardens Subdivision. The parcel size is 0.23 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on January 24, 2024. At the meeting of February 21, 2024, the Planning & Zoning Commission recommended approval of the application for the 8 reasons stated and subject to the 9 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of January 24, 2024, and February 21, 2024.

Minutes of the January 24, 2024, Planning & Zoning Commission Meeting

### C/U 2410 Nicasia Chaves Reyes

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A GROCERY STORE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 0.23 ACRES MORE OR LESS.** The property is lying on the north side of Garden Circle within the County Seat Gardens Subdivision. 911 Address: 58 Garden Circle, Georgetown. Tax Map Parcel: 135-9.00-122.00.

Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicant's



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

Elevation Plan, a copy of the Conceptual Site Plan, a copy of a letter from Sussex County Engineering Department Utility Planning Division, a copy of the Staff Analysis and a copy of the DelDOT Service Level Evaluation Response. Mr. Whitehouse stated no comments were received for the application.

Mr. Whitehouse introduced Ms. Maria Pena who was present for language translation if required.

The Commission found Mr. Danny Perez spoke on behalf of the Applicant who was present in the audience. Mr. Perez stated that the Applicant had been operating a grocery store on this property for some time now and would like to continue to operate as usual; that all surrounding neighbors are in approval of the store operating; that the hours of operation are Monday through Friday 10:00 am – 7:00 pm, Saturday 10:00 am-8:00 pm and Sunday 10:00 am-5:00 pm; that there is sufficient parking available and would not interfere with the flow of street traffic; that the store is only approximately 900 sq. ft., and it is not too large for the area.

Ms. Wingate asked how many employees work at the shop, and if there were any HOA restrictions or any documents limiting the Applicants from running the store.

Mr. Perez stated that only the Applicants ran the store; that they live in the dwelling in front of it; that there is no HOA documentation that limits their ability to run the store, and they could obtain statements from the property owner if needed.

Mr. Collins questioned the hours in which deliveries were made.

Mr. Perez stated that all deliveries were made within the hours of operation of the store and for the most part the Applicants purchase most of their supplies themselves rather than having many deliveries to the store.

Ms. Wingate questioned the Commission if they needed to worry about the HOA of the development.

Mr. Roberston stated that when a conditional use is requested within a subdivision they normally request to know if there are any restrictive covenants so as to not ignore their requests, and to allow the Commission to make an informed decision, and for those reasons he suggests to hold the record open while they look into this and report back to the Commission.

The Commission found there was no one present 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.

In relation to C/U 2410 Nicasia Chaves Reyes. Motion by Ms. Wingate to defer action for further consideration, seconded by Mr. Collins and carried unanimously. Motion carried 5-0.

Minutes of the February 21, 2024, Planning & Zoning Commission Meeting

The Commission discussed this application which had been deferred since the January 24, 2024, meeting.

Commissioner Wingate moved that the Commission recommend approval of Conditional Use # 2410 for NICASIA CHAVES REYES for a grocery store on land that is zoned GR – General Residential based upon the record made during the public hearing and for the following reasons:

1. This small grocery store currently exists on this property. It is more like a food pantry than a grocery store given its size and the fact that canned and dry goods are the primary items sold there. No food preparation occurs on the site. There was testimony in the record that it is useful and convenient for nearby residents.
2. The property is located within an older subdivision. After the public hearing on this application the record was held open to determine whether any restrictions exist that might affect this application. The development has restrictive covenants dating back to the 1970s. One of the covenants prohibits commercial activities unless permitted by the developer. Because the applicant did not have an opportunity to explain or comment on whether these covenants affect this small store, County Council should explore this issue with the applicant during its public hearing. It has been the policy of Sussex County that while it is not bound by private deed restrictions, it should not completely ignore their existence, either.
3. The Applicant stated that the store is located in an existing building that is located at the rear of the property. The Applicants will reside in the home located on the property.
4. The property is in the Developing Area according to Sussex County's Comprehensive Plan. Uses like this small grocery are appropriate in the Developing Area.
5. Deliveries to and from the business will be relatively infrequent and small in nature. The deliveries will not be in the form of large trucks or similar vehicles.
6. There is no indication that the use will adversely affect roadways or area traffic. Instead, there was testimony that this small store primarily serves the needs of the residents of the surrounding community, so most of them are able to walk to the location.
7. Given the size and location of the business, the use will not have any negative impact on neighboring properties.
8. No parties appeared in opposition to this application.
9. This recommendation is subject to the following conditions:
  - a. The applicant shall comply with any DelDOT requirements associated with the use.
  - b. Any security lighting shall be screened so that it does not shine on neighboring properties or roadways.
  - c. One unlighted sign shall be permitted. It shall not be any larger than 24 square feet in size.
  - d. The areas for parking shall be shown on the Final Site Plan and clearly marked on the site itself.
  - e. No outdoor storage or sales shall be permitted.
  - f. Any trash containers shall be screened from the view of neighboring properties and roadways.
  - g. The failure to abide by these conditions may result in the termination of this Conditional Use.

- h. Because there are old restrictive covenants that may impact this use, County Council should request additional information during its public hearing about whether the restrictions are still in effect, whether they have been waived or abandoned, or whether the developer or HOA has consented to this use.
- i. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Motion by Commissioner Wingate, seconded by Commissioner Mears and carried unanimously to recommend approval of the Conditional Use. Motion carried 5-0.

**PLANNING & ZONING COMMISSION**

ROBERT C. WHEATLEY, CHAIRMAN  
HOLLY J. WINGATE, VICE-CHAIRMAN  
J. BRUCE MEARS  
GREGORY SCOTT COLLINS  
BRIAN BUTLER



**Sussex County**

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SUSSEXCOUNTYDE.GOV  
302-855-7878 T  
302-854-5079 F  
JAMIE WHITEHOUSE, AICP MRTPI  
PLANNING & ZONING DIRECTOR

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

Planning Commission Public Hearing Date: January 24<sup>th</sup>, 2024

Application: CU 2410 Nicasia Chavez Reyes

Applicant: Nicasia Chavez Reyes  
58 garden Circle  
Georgetown DE 19947

Owner: Eliza Spray Juarez-Sanchez  
2 Ebony Street  
Georgetown DE 19947

Site Location: Lying on the northside of Garden Circle on the northeast corner of the intersection of Garden Circle and Ivory Street and on the south side of Wilson Road in County Seat Gardens.

Current Zoning: General Residential (GR) Zoning District

Proposed Use: A grocery store

Comprehensive Land Use Plan Reference: Developing Area

Councilmanic District: Mr. Rieley

School District: Indian River School District

Fire District: Georgetown Fire Department

Sewer: On Site Wastewater

Water: Private Well

Site Area: 1,025 Square Feet +/-

Tax Map ID: 135-9.00-122.00





## PLANNING & ZONING COMMISSION

ROBERT C. WHEATLEY, CHAIRMAN  
HOLLY J. WINGATE, VICE-CHAIRMAN  
J. BRUCE MEARS  
GREGORY SCOTT COLLINS  
BRIAN BUTLER



# Sussex County

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302-855-7878 T  
302-854-5079 F  
JAMIE WHITEHOUSE, AICP MRTPI  
PLANNING & ZONING DIRECTOR

## Memorandum

To: Sussex County Planning Commission Members  
From: Mr. Michael Lowrey, Planner III  
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant  
Date: December 7<sup>th</sup>, 2023  
RE: Staff Analysis for C/U 2410 Nicasia Chavez Reyes

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This memo is to provide background and analysis for the Planning Commission to consider as a part of Application C/U 2410 Nicasia Chavez Reyes to be reviewed during the January 24<sup>th</sup>, 2024 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:** 135-9.00-122.00

**Proposal:** The request is for a Conditional Use for Tax Parcel 135-9.00-122.00 to allow for a grocery store on a parcel lying on the northeast corner of the intersection of Garden Circle and Ivory Street and on the south side of Wilson Road in County Seat Gardens. The parcel is comprised 10,123 Square Feet +/-.

**Zoning:** The Parcel is zoned General Residential (GR) District. The adjacent parcels to the east, west, and south of the subject property are zoned General Residential (MR) District and parcels to the north are zoned Agricultural Residential (AR-1) District. Regardless of any recommendation by the Planning & Zoning Commission and final decision by County Council related to this Conditional Use application, the owner is required to seek variances via the Board of Adjustment related to dimensional and setback requirements in order for the property to be brought into compliance. "Attachment A" has been attached to this document detailing the dimensional relief required to bring the property into compliance.

**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 east, west, and south of the subject Parcel are also categorized as "Developing Area" with the parcels to the north categorized as "Low Density Area."



As outlined in the 2018 Sussex County Comprehensive Plan, Developing Areas are emerging growth areas that “that demonstrate the characteristics of developmental pressures” and “adjacent to municipalities, within or adjacent to potential future annexation areas of a municipality, or adjacent to Town Centers” (2018 Sussex County Comprehensive Plan, 4-14). The Plan also notes that “in selected areas and at appropriate intersections, commercial uses should be allowed”. Furthermore, the Plan notes “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” (2018 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 parcel is 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 Zone X and in an area of “Fair” Groundwater Recharge Potential.

Based on the analysis of the land use, surrounding zoning and uses, a Conditional Use Application to allow for a grocery store, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.

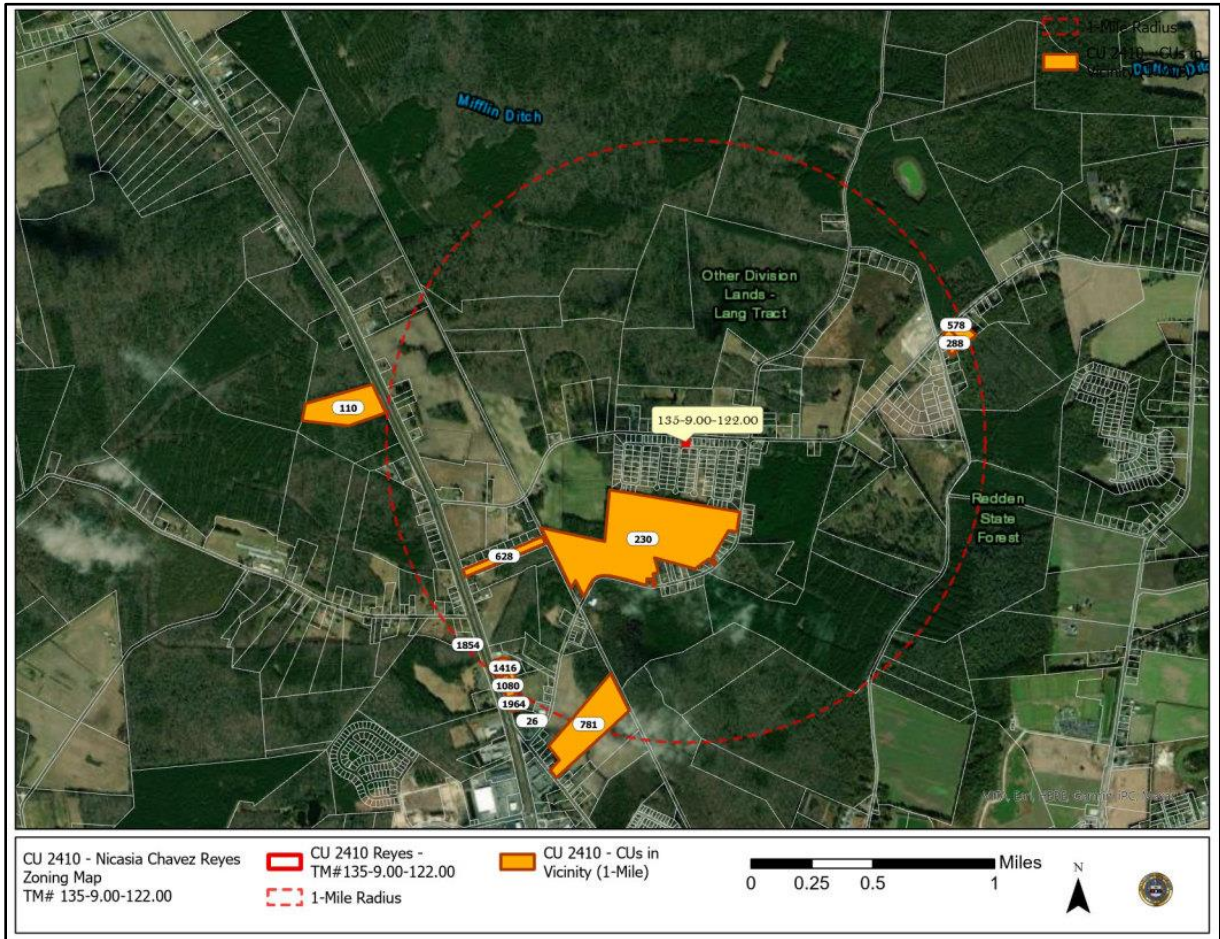
**Existing Conditional Uses within the Vicinity of the Subject Site:** A Data Table and Supplemental Map have been supplied which provide further background regarding the approval status of Applications in the area, including the location of all other Conditional Use Applications that are less than 1 mile distance from the subject site.

## Conditional Use Applications

(Within a 1-mile radius of the subject site)

| Application<br>CU Number | Application<br>Name           | Zoning<br>District | Proposed<br>Use  | CC<br>Decision | CC Decision<br>Date | Ordinance<br>Number |
|--------------------------|-------------------------------|--------------------|--|----------------|---------------------|---------------------|
| 26                       | Hester Monroe                 | AR-1               | Addition To<br>Existing Service<br>Station                         | Approved       | 11/9/1971           | N/A                 |
| 110                      | Francis R.<br>Moore           | AR-1               | Manufactured<br>Concrete Septic<br>Tanks &<br>Associated Uses      | Approved       | 3/6/1973            | N/A                 |
| 230                      | Harvey<br>Donovan Sr          | GR                 | Erect Storage<br>Bldgs for Non-<br>Conforming<br>Salvage Yard      | Approved       | 8/27/1974           | N/A                 |
| 288                      | Frank<br>Warrington Jr        | GR                 | Manufacture<br>Precast Steps,<br>Lawn Ornaments<br>& Utility Barns | Approved       | 9/2/1975            | N/A                 |
| 578                      | Cordia W.<br>Warrington       | GR                 | Automotive<br>Repair Shop  | Approved       | N/A                 | N/A                 |
| 628                      | Rodney F.<br>Baker            | AR-1               | Hardware<br>Business   | Withdrawn      | N/A                 | N/A                 |
| 781                      | David Yost &<br>Helen Hignutt | AR-1               | Candy & Gift<br>Shop   | Approved       | 2/28/1984           | N/A                 |
| 1080                     | Tri-Gas & Oil                 | C-1                | Propane Storage<br>Tanks   | Approved       | 8/2/1994            | 978                 |
| 1416                     | Tri-Gas & Oil<br>Co., Inc.    | C-1                | Fuel Oil Tanks   | Approved       | 10/16/2001          | 1496                |
| 1854                     | Tapa Homes,<br>LLC            | AR-1               | Model<br>Home/Office   | Approved       | 9/28/2010           | 2148                |

|      |                     |      |                |          |           |      |
|------|---------------------|------|----------------|----------|-----------|------|
| 1964 | Salman P. Chaudhary | AR-1 | Used Car Sales | Approved | 7/16/2013 | 2315 |
|------|---------------------|------|----------------|----------|-----------|------|



**Attachment A** – (CU 2410 - Nicasia Chavez Reyes)

Tax ID 135-9.00-122.00

58 Garden Circle

Manufactured home – placed in 1986 – No CO issued

Per Assessment records – a shed was added to tax records with BP 130582 for an addition to MH in 1993

Addition to shed was permitted in 1998 per BP 169492

Shed permit issued in 2015 and CO issued – references and 8x8 shed?

Complaint Ref# 6081 – July 2022

Per Constable notes – owner worked quickly to submit documents to begin CU process

Variances needed:

2.2-ft var from the 30-ft front yard for existing MH

4.9-ft & 5.9-ft var from the 10-ft side yard for existing sunroom

1-ft var from the 10-ft side yard for existing MH

7.8-ft var from the 15-ft thru lot setback requirement for existing shed/this shed is also over the side property line


3-ft & 4.7-ft var from the 15-ft thru lot setback requirement for existing shop

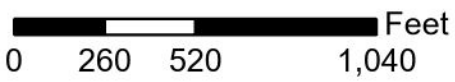
0.6-ft var from the 10-ft side yard for existing shop



VITA, Delaware FirstMap, Esri, HERE, Garmin, INCREMENT P, NGA, USGS

CU 2410 - Nicasia Chavez Reyes  
Streets Map  
TM# 135-9.00-122.00


 CU 2410 Reyes -  
TM#135-9.00-122.00





State of Delaware, Maxar, Microsoft, VITA, Esri, HERE, Garmin, iPC

CU 2410 - Nicasia Chavez Reyes  
Aerial Map  
TM# 135-9.00-122.00

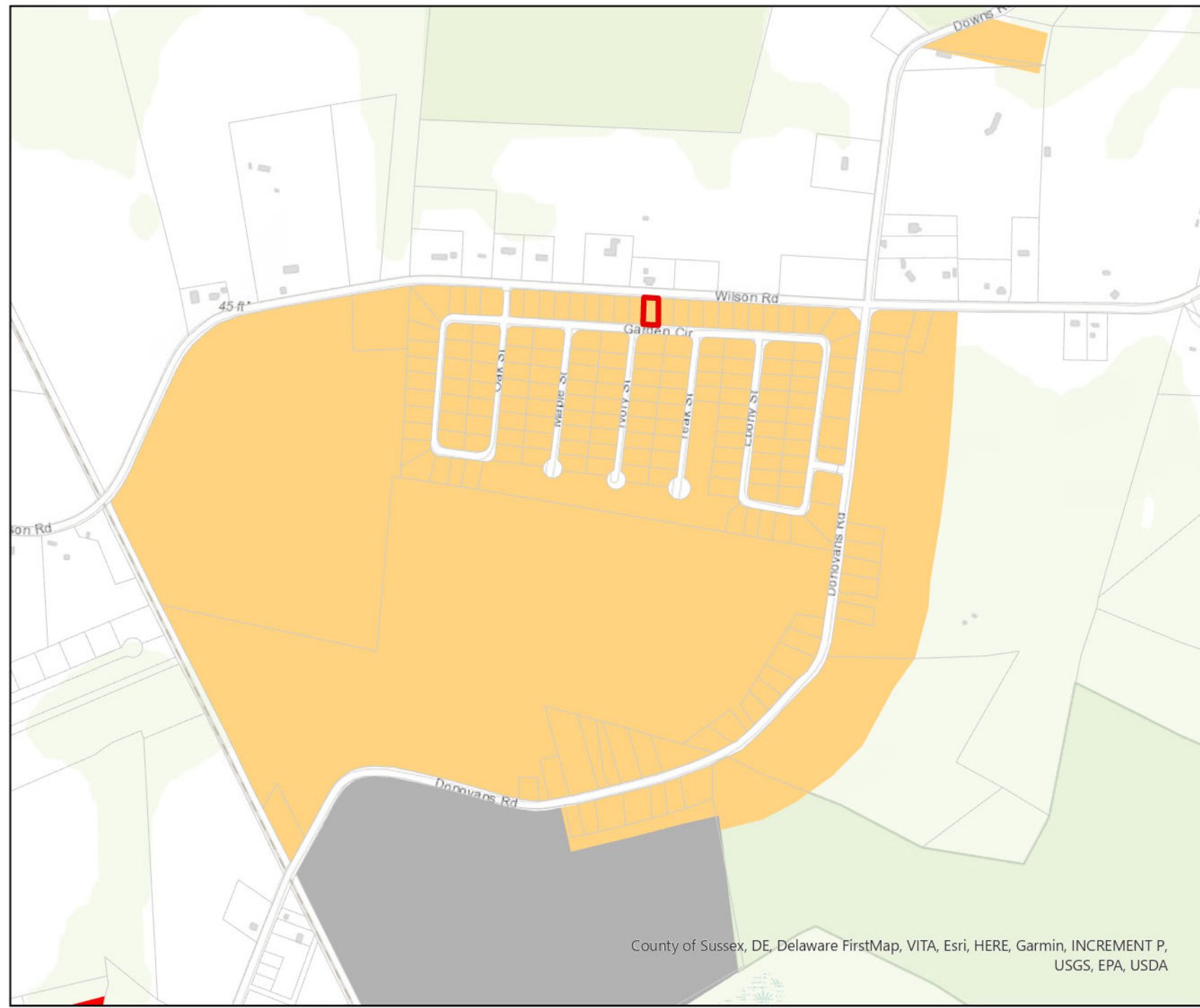
 CU 2410 Reyes -  
TM#135-9.00-122.00

 Feet  
0 25 50 100




# Zoning

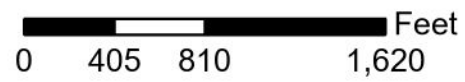
- Agricultural Residential - AR-1
- Agricultural Residential - AR-2
- Medium Residential - MR
- General Residential - GR
- High Density Residential - HR-1
- High Density Residential - HR-2
- Vacation, Retire, Resident - VRP
- Neighborhood Business - B-1
- Neighborhood Business - B-2
- Business Research - 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



County of Sussex, DE, Delaware FirstMap, VITA, Esri, HERE, Garmin, INCREMENT P, USGS, EPA, USDA

CU 2410 - Nicasia Chavez Reyes  
Zoning Map  
TM# 135-9.00-122.00

 CU 2410 Reyes -  
TM#135-9.00-122.00





Introduced: 1/2/24

Council District 5: Mr. Rieley  
Tax I.D. No.: 135-9.00-122.00  
911 Address: 58 Garden Circle, Georgetown

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN GR GENERAL RESIDENTIAL DISTRICT FOR A GROCERY STORE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 0.23 ACRE MORE OR LESS**

WHEREAS, on the 17<sup>th</sup> day of November 2024, a conditional use application, denominated Conditional Use No. 2410 was filed on behalf of Nicasia Chavez Reyes; 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. 2410 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. 2410 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 Georgetown Hundred, Sussex County, Delaware, and lying on the north side of Garden Circle within the County Seat Gardens Subdivision and being more particularly described in the attached legal description prepared by Tunnell & Raysor, P.A. said parcels containing 0.23 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.



## 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 23, 2024

RE: County Council Report for C/Z 1999 filed on behalf of Horacio Paxtor

---

The Planning and Zoning Department received an application (C/Z 1999 filed on behalf of Horacio Paxtor for a change of zone from a GR General Residential District to a C-2 Medium Commercial Zoning District for Tax Parcel 233-5.00-132.00 (portion of). The property is located at 26614 Handy Road, Millsboro. The parcel size is 1.11 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on January 24, 2024. At the meeting of January 24, 2024, the Planning & Zoning Commission recommended approval of the application for the 6 reasons as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meeting of January 24, 2024.

Minutes of the January 24, 2024, Planning & Zoning Commission Meeting

### C/Z 1999 Horacio Paxtor

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.11 ACRES, MORE OR LESS.** The property is lying on the south side of Handy Road (S.C.R. 337), approximately 545 ft. northwest of DuPont Boulevard (Rt. 113). 911 Address: 26614 Handy Road, Millsboro. Tax Map Parcel: 233-5.00-132.00 (p/o).



Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicant's survey, a copy of the DelDOT SLER, a copy of the Staff Analysis, and a copy of a letter from the Sussex County Department of Utility Planning Division.

The Commission found that Mr. John Roach, of John B. Roach Engineering, spoke on behalf of the Applicant, Mr. Horacio Paxtor. Mr. Roach stated that the Applicant is requesting a partial rezoning of their property as it currently is a C-1 (General Commercial) and GR (General Residential); that the Applicant would like to change it to C-2 (Medium Commercial) in order to move their current business (Tri-State Manufactured Homes) onto this property and build approximately a 2,000 sq. ft. building; that they have met with PLUS and started that process; that it is private well and septic; that the Fire Marshall only had concerns about the parking which they are willing to change to accommodate the fire department.

The Commission found there was one person present in opposition to the Application.

Mr. Clarence Taylor spoke in opposition to the Application. Mr. Taylor spoke with concern about the current conditions of Handy Road and the potential impact of traffic for the commercial use.

Upon there being no further questions, Chairman Wheatley closed the public hearing.

At the conclusion of the public hearing, the Commission discussed the public hearing.

Mr. Robertson read Ms. Wingate's prepared motion per Ms. Wingate's request.

Ms. Wingate moved that the Commission recommend approval of C/Z 1999 Horacio Paxtor for a change in zone from GR General Residential to C-2 Medium Commercial based on the record made during the public hearing and for the following reasons:

1. The property currently has a split zoning with the property's frontage already zoned C-1. The back of the property is zoned GR, which is the subject of this application. This application brings the entire property under commercial zoning.
2. Since the C-1 District is a closed zoning district, it is not possible to rezone this property to be entirely C-1. C-2 zoning is the most consistent zoning.
3. The properties on either side are also partially zoned C-1. This property is also zoned CR-1 to the rear. C-2 zoning is consistent with the surrounding property.
4. This rezoning eliminates split zoning, which creates issues with different setbacks and use requirements. Bringing the property under one zoning classification is beneficial to both the property owner and Sussex County's administration of the property.
5. Any future development of this portion of the property will require a site plan approval from the Sussex County Planning & Zoning Commission.
6. For all of these reasons, the change in zone from GR to C-2 is appropriate in these circumstances.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/Z 1999 Horacio Paxtor for the reasons stated in the motion. Motion carried 5-0.

Vote by roll call: Ms. Wingate – yea, Mr. Mears – yea, Mr. Collins – yea, Mr. Butler – yea, Chairman Wheatley - yea

**PLANNING & ZONING COMMISSION**

ROBERT C. WHEATLEY, CHAIRMAN  
HOLLY J. WINGATE, VICE-CHAIRMAN  
J. BRUCE MEARS  
GREGORY SCOTT COLLINS  
BRIAN BUTLER



**Sussex County**

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302-854-5079 F  
JAMIE WHITEHOUSE, AICP MRTPI  
PLANNING & ZONING DIRECTOR

**PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET**  
Planning Commission Public Hearing Date: January 24<sup>th</sup>, 2024

Application: C/Z 1999 Horacio Paxtor

Applicant: Horacio Paxtor  
223 W. State Street  
Millsboro, DE 19966

Owner: Horacio Paxtor  
223 W. State Street  
Millsboro, DE 19966

Site Location: The property is lying on the south side of Handy Road (S.C.R. 337), approximately 545 ft. northwest of DuPont Boulevard (Rt. 113).

Current Zoning: GR (General Residential) Zoning District

Proposed Zoning: C-2 (Medium Commercial) Zoning District

Comprehensive Land Use Plan Reference: Developing Area

Councilmanic District: Mr. Rieley

School District: Indian River

Fire District: Millsboro Fire Company

Sewer: N/A

Water: N/A

Site Area: 1.11 acres

Tax Map ID: 232-5.00-132.00



JAMIE WHITEHOUSE, AICP MRTPI  
PLANNING & ZONING DIRECTOR  
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(302) 854-5079 F  
jamie.whitehouse@sussexcountyde.gov



**Sussex County**

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## Memorandum

To: Sussex County Planning Commission Members  
From: Ann Lepore, Planner I  
CC: Vince Robertson, Assistant County Attorney, and applicant  
Date: January 11, 2024  
RE: Staff Analysis for CZ 1999 – Horacio Paxtor

---

The purpose of this memo is to provide background and analysis for the Planning & Zoning Commission to consider as a part of application CZ 1999 (Horacio Paxtor) to be reviewed at the January 24, 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 a portion of Tax Parcel 233-5.00-132.00 to allow for a change of zone from a General Residential (GR) District to a Medium Commercial (C-2) District. The property is lying on south side of Handy Road (S.C.R. 337) approximately 545 ft. northwest of DuPont Boulevard (Rt. 113) containing 1.11-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 “Developing Area”. All adjoining parcels to the south, east, and west have a Future Land Use Map designation of “Developing Area”. Parcels to the north which are separated by Handy Road (S.C.R. 337) also have a Future Land Use Map designation of “Developing Area”.

As outlined within the 2018 Sussex County Comprehensive Plan, 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 (2018 Sussex County Comprehensive Plan, 4-14).



**Zoning Information:** The subject property is split-zoned General Commercial (C-1) District and General Residential (GR) District. The properties to the east and west are zoned General Residential (GR) District and General Commercial (C-1) District. The property across Handy Road (S.C.R. 337) to the north is zoned General Commercial (C-1) District. The property to the south is zoned Commercial Residential (CR-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 proposed zoning of Medium Commercial (C-2) is listed as an applicable zoning district in the “Developing Area”.

**Existing Change of Zones within the Vicinity of the Subject Property:** Since 2011, there have been four (4) Change of Zone applications within a 1-mile radius of the application site.

|                       | Change of Zone Application<br>(Within a 1.0-mile radius of the subject Site) |                 |                 |             |                  |                  |
|-----------------------|--|-----------------|-----------------|-------------|------------------|------------------|
| Application Number    | Application Name   | Zoning District | Proposed Zoning | CC Decision | CC Decision Date | Ordinance Number |
| <b><u>CZ 1913</u></b> | FW & SW Thoroughgood Family, LP  | AR-1            | HI-1            | Approved    | 10/20/2020       | 2746             |
| <b><u>CZ 1906</u></b> | Eliud Samuel Ramirez-Mejia   | AR-1            | C-2             | Approved    | 10/27/2020       | 2748             |
| <b><u>CZ 1781</u></b> | Riverview Associates II  | AR-1            | CR-1            | Approved    | 9/22/2015        | 2418             |
| <b><u>CZ 1756</u></b> | Delmarva Power & Light Co.   | AR-1            | CR-1            | Approved    | 10/7/2014        | 2369             |



### Site Considerations

- **Density:** N/A
- **Open Space Provisions:** N/A
- **Agricultural Areas:** N/A
- **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 within the “X” Flood Zone. This parcel is located within an area of fair groundwater recharge.



Based on the analysis of the land use, surrounding zoning and uses, a Change of Zone from an Agricultural Residential (AR-1) District to a Medium Commercial (C-2) District could be considered as being consistent with the land use, based on size and scale, with area zoning and surrounding uses.



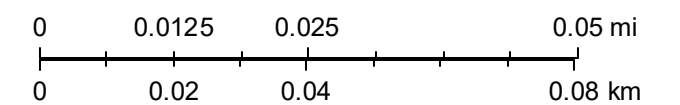
# Sussex County



|                        |                         |
|------------------------|-------------------------|
| <b>PIN:</b>            | 233-5.00-132.00         |
| <b>Owner Name</b>      | PAXTOR HORACIO          |
| <b>Book</b>            | 5150                    |
| <b>Mailing Address</b> | 223 W STATE ST          |
| <b>City</b>            | MILLSBORO               |
| <b>State</b>           | DE                      |
| <b>Description</b>     | SW SIDE OF HANDY RD (R  |
| <b>Description 2</b>   | OF DUPONT BLVD (RT 113) |
| <b>Description 3</b>   | N/A                     |
| <b>Land Code</b>       |                         |

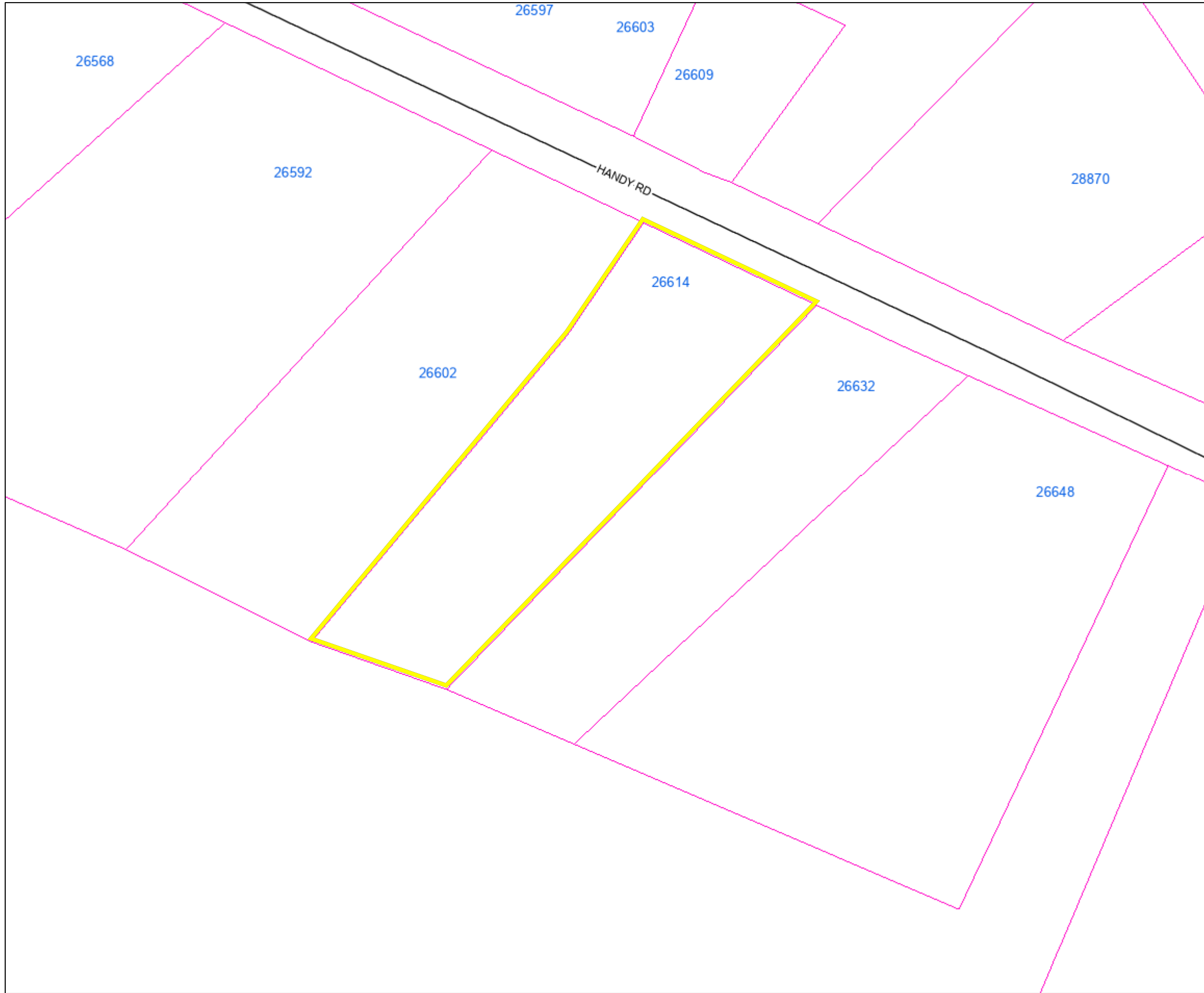
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- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries

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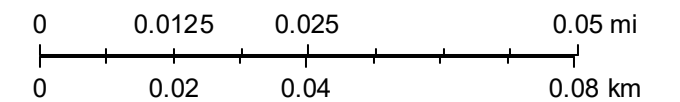
# Sussex County



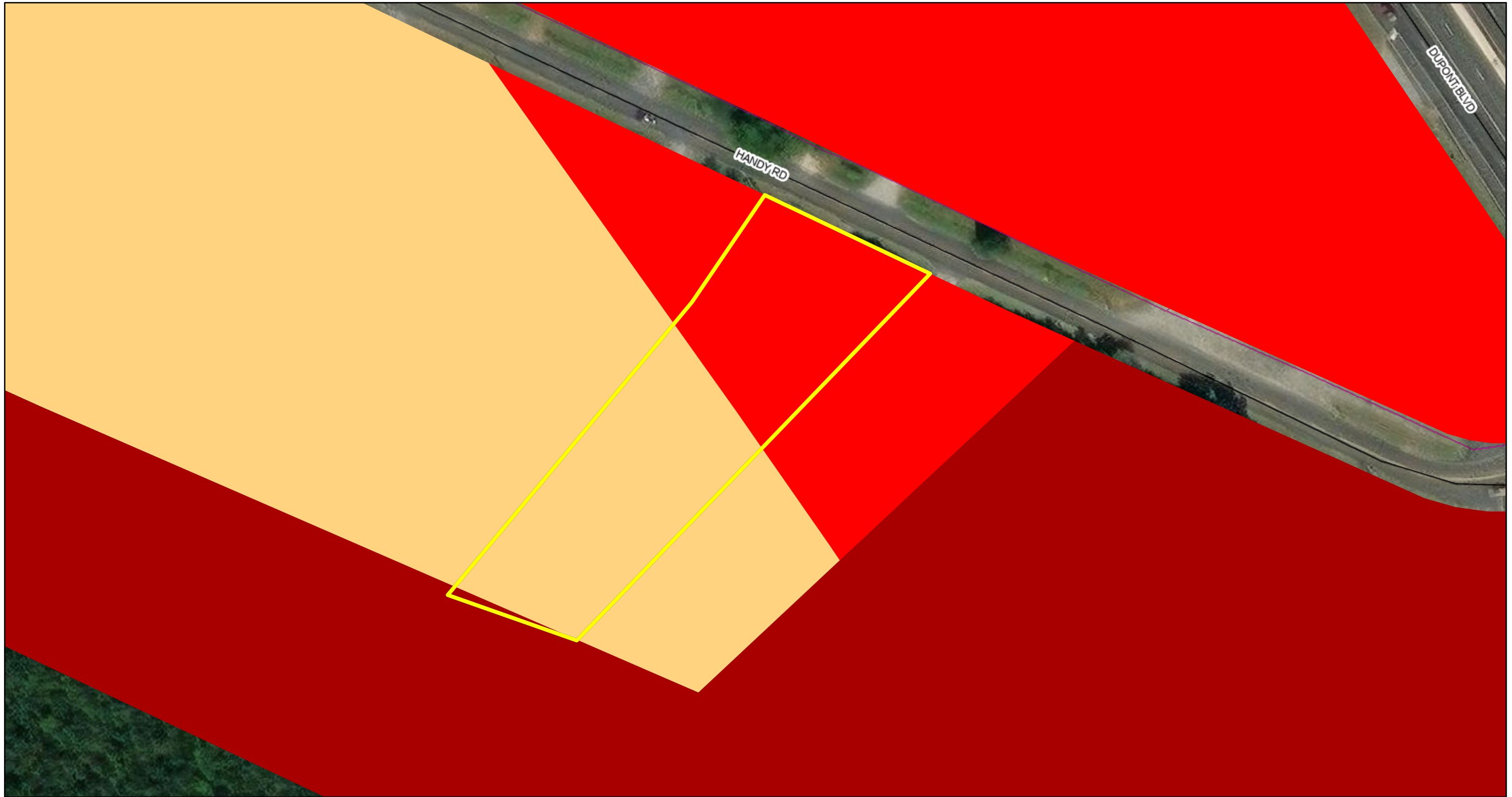
|                        |                         |
|------------------------|-------------------------|
| <b>PIN:</b>            | 233-5.00-132.00         |
| <b>Owner Name</b>      | PAXTOR HORACIO          |
| <b>Book</b>            | 5150                    |
| <b>Mailing Address</b> | 223 W STATE ST          |
| <b>City</b>            | MILLSBORO               |
| <b>State</b>           | DE                      |
| <b>Description</b>     | SW SIDE OF HANDY RD (R  |
| <b>Description 2</b>   | OF DUPONT BLVD (RT 113) |
| <b>Description 3</b>   | N/A                     |
| <b>Land Code</b>       |                         |

- polygonLayer**
- Override 1
- polygonLayer**
- Override 1
- Tax Parcels
- 911 Address
- Streets
- County Boundaries

1:1,128



# Sussex County



December 21, 2023


polygonLayer


 Override 1


 Override 2

Zoning

 General Residential - GR


 Commercial Residential - CR-1

 C1: General Commercial

 Tax Parcels

911 Address

 Streets

 County Boundaries

World Imagery

Low Resolution 15m Imagery

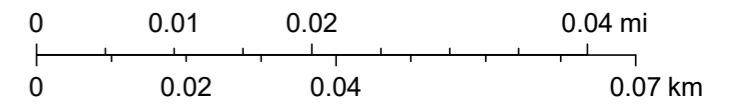
High Resolution 60cm Imagery

High Resolution 30cm Imagery

Citations

30cm Resolution Metadata

1:1,128



Maxar, Microsoft, Sussex County Government, Sussex County Mapping and Addressing

Reintroduced: 12/5/23

Council District 5: Mr. Rieley  
Tax I.D. No.: 233-5.00-132.00 (portion of)  
911 Address: 26614 Handy Road, Millsboro

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR A PORTION OF A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 1.11 ACRES, MORE OR LESS**

WHEREAS, on the 4<sup>th</sup> day of November 2022, a zoning application, denominated Change of Zone No. 1999 was filed on behalf of Horacio Paxtor; 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. 1999 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 [GR General Residential] and adding in lieu thereof the designation and 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 parcels of land, lying and being situate in Dagsboro Hundred, Sussex County, Delaware, and lying on south side of Handy Road (S.C.R. 337) approximately 545 ft. northwest of DuPont Boulevard (Rt. 113) and being more particularly described in the attached legal descriptions prepared by Tunnell & Raysor, P.A., said parcels containing 1.11 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.



## 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 23, 2024

RE: County Council Report for C/Z 2000 filed on behalf of Budget Holdings, LLC

---

The Planning and Zoning Department received an application (C/Z 2000 filed on behalf of Budget Holdings, LLC) for a change of zone from an AR-1 Agricultural Residential District to a C-2 Medium Commercial Zoning District for Tax Parcels 530-10.00-58.08 & 58.09. The property is located at 12847 Sussex Highway, Greenwood. The parcel size is 6.57 acres +/-

The Planning & Zoning Commission held a Public Hearing on the application on January 24, 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 24, 2024.

Minutes of the January 24, 2024, Planning & Zoning Commission Meeting

### C/Z 2000 Budget Holdings, LLC

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND C-1 GENERAL COMMERCIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 6.57 ACRES, MORE OR LESS.** The properties are lying on the east side of Sussex Highway (Rt. 13), approximately 0.38 mile south of Beach Highway (Route 16). 911 Address: 12847 Sussex Highway, Greenwood & N/A. Tax Map Parcel: 530-10.00-58.08 & 58.09.



Mr. Whitehouse advised the Commission that submitted into the record were a copy of the Applicant's Conceptual Site Plan, a copy of the Applicant's Exhibit Booklets, a copy of the Applicant's findings of facts, a copy of the Staff Analysis, and a copy of the DelDOT Service Level Evaluation Response. Mr. Whitehouse stated there were no comments submitted for the application.

The Commission found that Mr. Edwin Tennefoss with Site Works Engineering spoke on behalf of the Applicant and Owner, Budget Holdings, LLC. Mr. Tennefoss stated that they are requesting a change of zone from a C-1 (General Commercial) and AR-1 (Agricultural Residential) to C-2 (Medium Commercial); that currently the Applicant has an existing mini storage on one parcel and they would like to expand the business to the other, however, they are not zoned to allow for it; that currently there is a stormwater pond in front of the parcel and a service road that runs through the two parcels; that DelDOT did their study and it came back as a low traffic use; that they are looking to expand by adding 14, 30'x80' units and six, 15'x160' units, fencing off the area around the units and paving within that area; that by changing to a C-2 zoning will allow for the parcels to remain consistent and will allow for the storage facility to be there.

The Commission found that no one was present 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 read Mr. Butler's motion per Mr. Butler's request.

Mr. Butler moved that the Commission recommend approval of C/Z 2000 Budget Holdings, LLC for a change in zone from AR-1 Agricultural Residential and C-1 General Commercial to C-2 Medium Commercial based on the record made during the public hearing and for the following reasons:

1. The property currently has a split zone of AR-1 and C-1. This rezoning of the entire property to C-2 will bring the entire property under one uniform zoning classification.
2. The C-2 zoning classification will allow the applicant to expand its existing storage facility within this property.
3. The properties on either side are also partially zoned C-1. This property is also zoned CR-1 to the rear. C-2 zoning is consistent with the surrounding property.
4. This rezoning eliminates split zoning, which creates issues with different setbacks and use requirements. Bringing the property under one zoning classification is beneficial to both the property owner and Sussex County's administration of the property.
5. There are other commercial uses and zonings in this area. This rezoning to C-2 is consistent with the surrounding zonings and use.
6. Any future development of this portion of the property will require a site plan approval from the Sussex County Planning & Zoning Commission.
7. For all of these reasons, the change in zone from GR to C-2 is appropriate in these circumstances.

Motion by Mr. Butler, seconded by Mr. Collins and carried unanimously to recommend approval of C/Z 2000 Budget Holdings, LLC for the reasons stated in the motion. Motion carried 5-0.

Vote by roll call: Mr. Butler – yea, Mr. Collins – yea, Ms. Wingate – yea, Mr. Mears – yea, Chairman Wheatley - yea



**PLANNING & ZONING COMMISSION**

ROBERT C. WHEATLEY, CHAIRMAN  
HOLLY J. WINGATE, VICE-CHAIRMAN  
J. BRUCE MEARS  
GREGORY SCOTT COLLINS  
BRIAN BUTLER



**Sussex County**

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JAMIE WHITEHOUSE, AICP MRTPI  
PLANNING & ZONING DIRECTOR

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

Planning Commission Public Hearing Date: January 24<sup>th</sup>, 2024

Application: CZ 2000 Budget Holdings, LLC

Applicant: Budget Holdings, LLC  
12308 Tuckers Road  
Greenwood, DE 19950

Owner: Budget Holdings, LLC  
12308 Tuckers Road  
Greenwood, DE 19950

Site Location: Lying on the east side of Sussex Highway (Route 13), approximately 110 feet south of the intersection of Sussex Highway (Route 13), Midway Crossing, and Cheer Lane.

Current Zoning: General Commercial (C-1) Zoning District & Agricultural Residential (AR-1) Zoning District.

Proposed Zoning: A Change of Zone from General Commercial (C-1) Zoning District & Agricultural Residential (AR-1) Zoning District to Medium Commercial (C-2) Zoning District

Comprehensive Land Use Plan Reference: Developing Area & Municipalities Area

Councilmanic District: Ms. Green

School District: Woodbridge School District

Fire District: Greenwood Fire Department

Sewer: Private (On-Site Septic)

Water: Private (On-Site Well)

Site Area: 6.35 acres +/-

Tax Map ID: 530-10.00-58.08 & 530-10.00-58.09



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: Michael Lowrey, Planner III  
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant  
Date: December 12, 2023  
RE: Staff Analysis for CZ 2000 Budget Holdings, LLC

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The purpose of this memo is to provide background and analysis for the Planning and Zoning Commission to consider as a part of Application CZ 2000 Budget Holdings, LLC to be reviewed at the January 24, 2024 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 Change of Zone for Tax Parcels: 530-10.00-58.08 & 530-10.00-58.09 from the current split-zoning of General Commercial (C-1) Zoning District & Agricultural Residential (AR-1) Zoning District to Medium Commercial (C-2) Zoning District to allow for a commercial self-storage facility. The property is lying on the east side of Sussex Highway (Route 13), approximately 110 feet south of the intersection of Sussex Highway (Route 13), Midway Crossing, and Cheer Lane. The Parcels are comprised of a total of 6.35 acres +/-.

### Zoning Information

The subject parcels are currently split-zoned with both in the General Commercial (C-1) Zoning District & Agricultural Residential (AR-1) Zoning District. A majority of the parcel extending from the frontage on Sussex Highway is in the (C-1) District with the rear of the Parcels within the (AR-1) District. All adjacent properties to the north are within the municipal boundary of the Town of Greenwood. The parcels adjacent to the west and immediate south are within the (C-1) District and Agricultural Residential (AR-1) District.

### 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 parcels have designations of “Developing Area” and “Municipalities” with the parcels to the north and east having a Future Land Use Map designation of “Municipality” exclusively. The “Municipality” designation as the municipal boundary of the Town of Greenwood is immediately to the north of the site. The parcels to the south and west have the designation of “Commercial Area” along the Sussex Highway (Route 13) corridor.

As outlined within the 2018 Sussex County Comprehensive Plan, 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



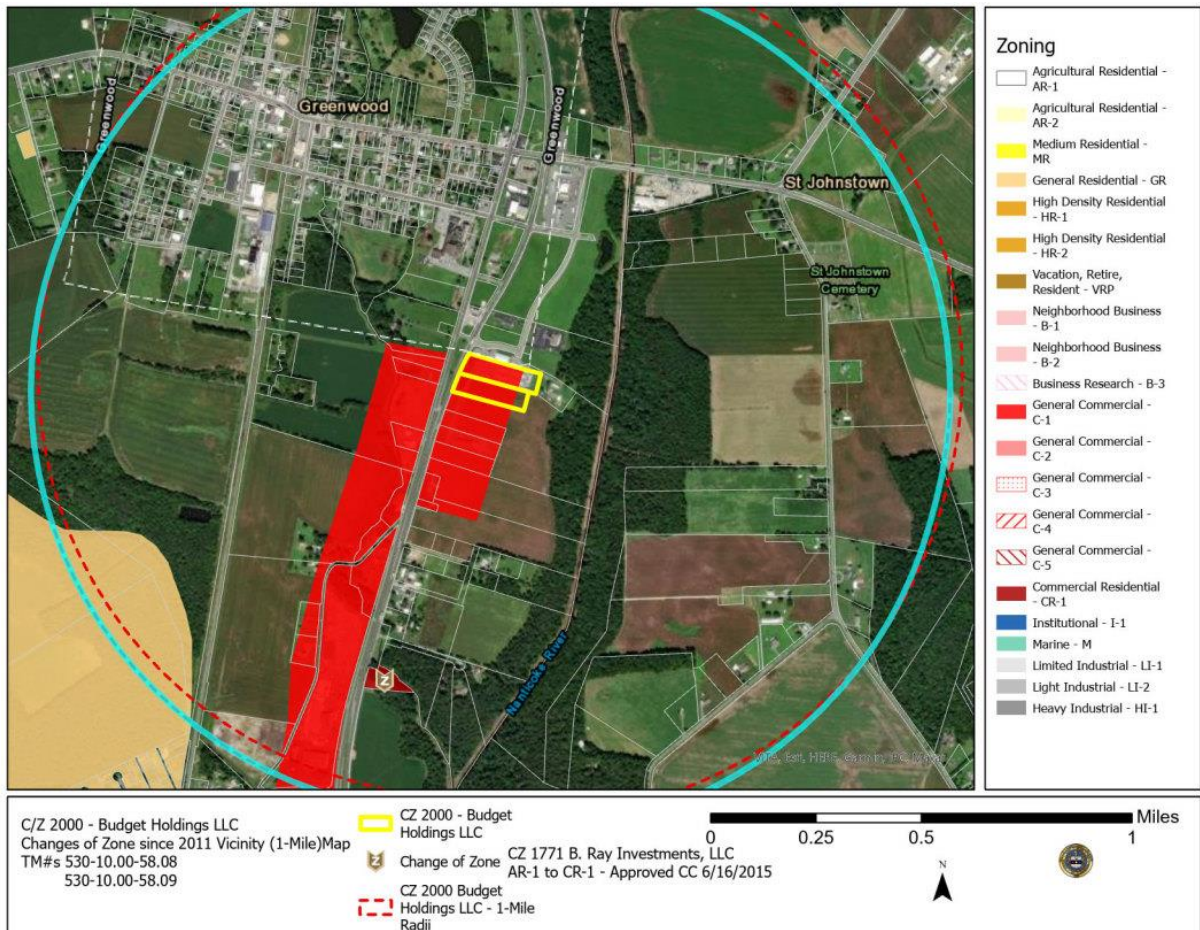
annexation areas of a municipality, or adjacent to Town Center” (Sussex County Comprehensive Plan, 4-14). The Plan recommends that “in selected areas and at appropriate intersections, commercial uses should be allowed” including the guidance that “portions of the Developing Areas with good road access and few nearby homes should allow for business and industrial parks” and notes that commercial uses “can be appropriate to provide for convenient services and to allow people to work close to home” (Sussex County Comprehensive Plan, 4-14).

Table 4.5-2 “Zoning Districts Applicable to Future Land Use Categories” in the 2018 Sussex County Comprehensive Plan notes that the proposed Medium Commercial (C-2) Zoning District is an applicable Zoning District within the “Developing Area” Future Land Use Map Designation.

Changes of Zone within the Vicinity of the Subject Property (Since 2011)

Since 2011, there has been one (1) Change of Zone application within a one (1) mile radius of the Application Site.

| Change of Zone No. | Applicant               | Zoning Change | Decision | Zoning Change | CC Decision Date | Ordinance No. |
|--------------------|-------------------------|---------------|----------|---------------|------------------|---------------|
| 1771               | B. Ray Investments, LLC | AR-1 to CR-1  | Approved | AR-1 to CR-1  | 6/16/2015        | 2403          |



### Site Considerations

- **Density:** N/A
- **Open Space Provisions:** N/A
- **Agricultural Areas:** The site is within the vicinity of active agricultural lands.
- **Interconnectivity:** Any improvements at the site will be required to provide interconnectivity with adjacent parcels per the Combined highway Corridor Zone (CHCOZ) (§115-194.1).
- **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.):** Parcel is located within the “X” Flood Zone. The parcel is located within areas of “fair” and “good” groundwater recharge.

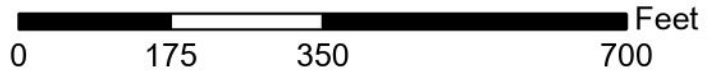
Based on the analysis provided, the Conditional Use to allow for commercial self-storage at this location could be considered as being consistent with the surrounding land use, zoning, and uses, subject to considerations of scale and impact.



Maxar, Microsoft, VITA, Esri, HERE, Garmin, iPC

C/Z 2000 - Budget Holdings LLC  
Aerial Map  
TM#s 530-10.00-58.08  
530-10.00-58.09

 CZ 2000 - Budget Holdings LLC

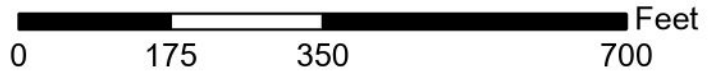




Maxar, Microsoft, VITA, Esri, HERE, Garmin, iPC

C/Z 2000 - Budget Holdings LLC  
Aerial Map  
TM#s 530-10.00-58.08  
530-10.00-58.09

 CZ 2000 - Budget Holdings LLC






VITA, Delaware FirstMap, Esri, HERE, Garmin, INCREMENT P, NGA, USGS

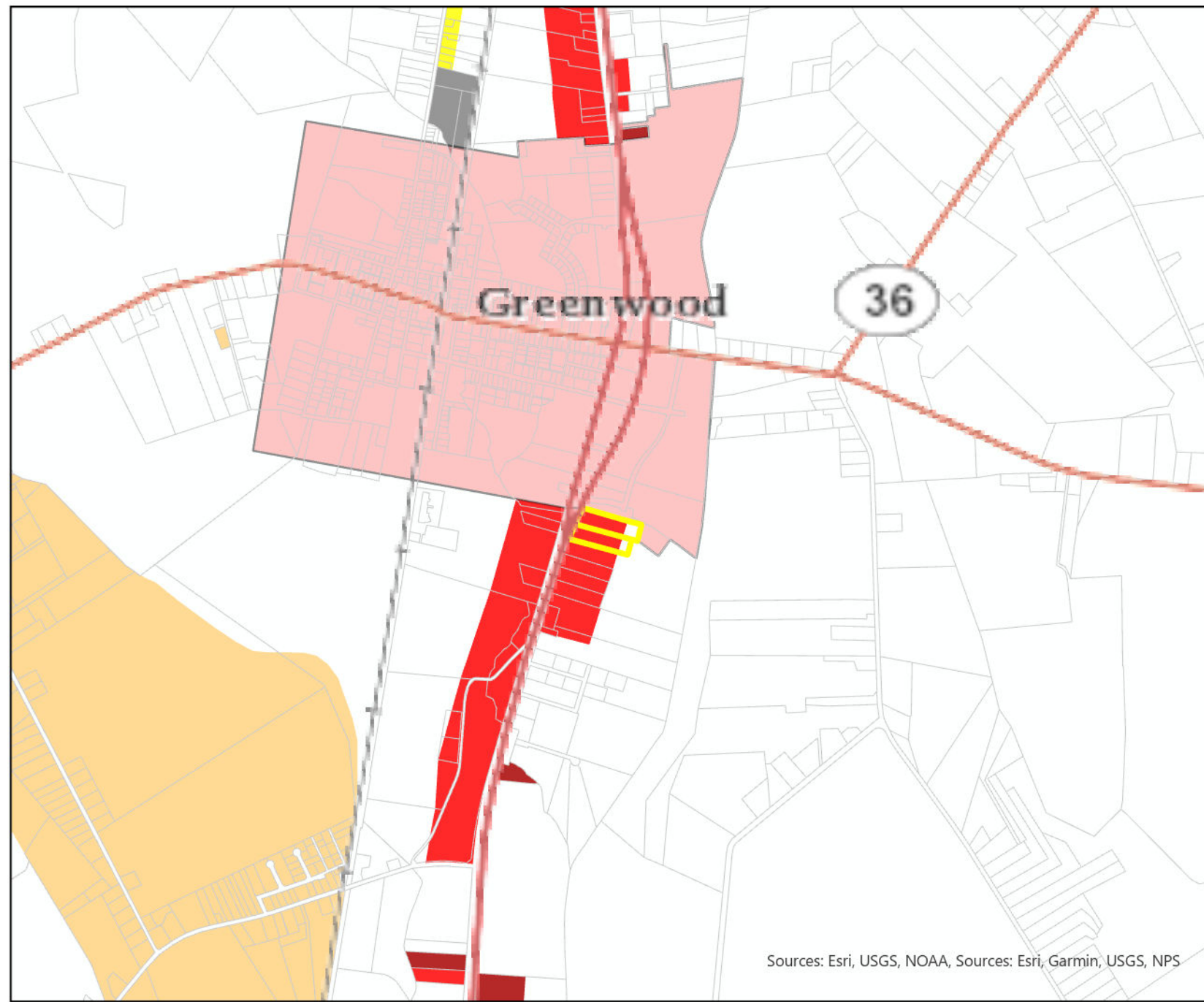
C/Z 2000 - Budget Holdings LLC  
Streets Map  
TM#s 530-10.00-58.08  
530-10.00-58.09

 CZ 2000 - Budget Holdings LLC





# Zoning

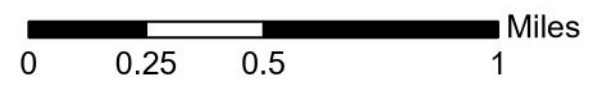
-  Agricultural Residential - AR-1
-  Agricultural Residential - AR-2
-  Medium Residential - MR
-  General Residential - GR
-  High Density Residential - HR-1
-  High Density Residential - HR-2
-  Vacation, Retire, Resident - VRP
-  Neighborhood Business - B-1
-  Neighborhood Business - B-2
-  Business 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



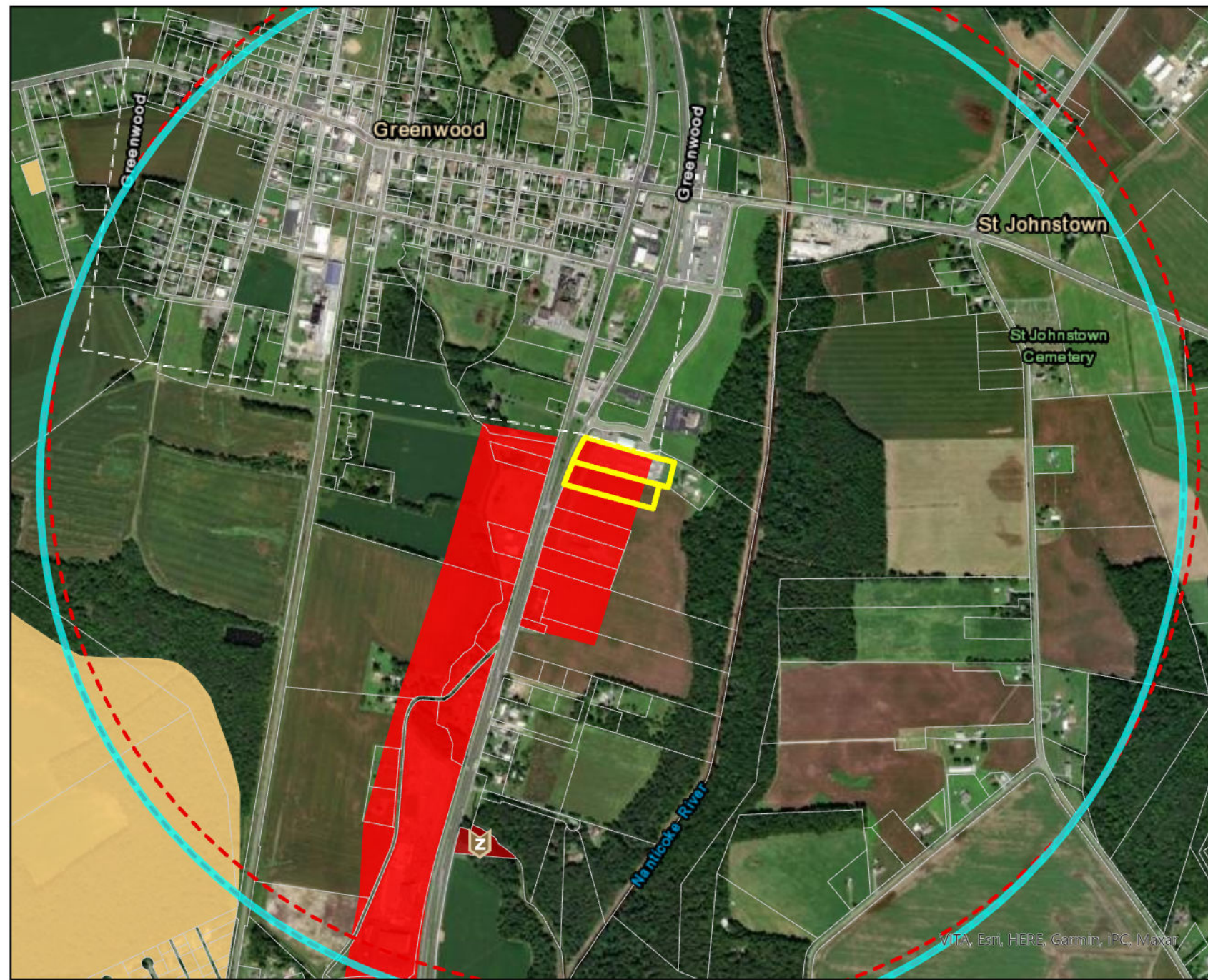
Sources: Esri, USGS, NOAA, Sources: Esri, Garmin, USGS, NPS

C/Z 2000 - Budget Holdings LLC  
 Zoning Map  
 TM#s 530-10.00-58.08  
 530-10.00-58.09

-  CZ 2000 - Budget Holdings LLC
-  Municipal Boundaries





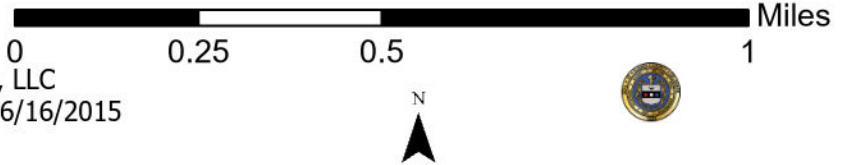


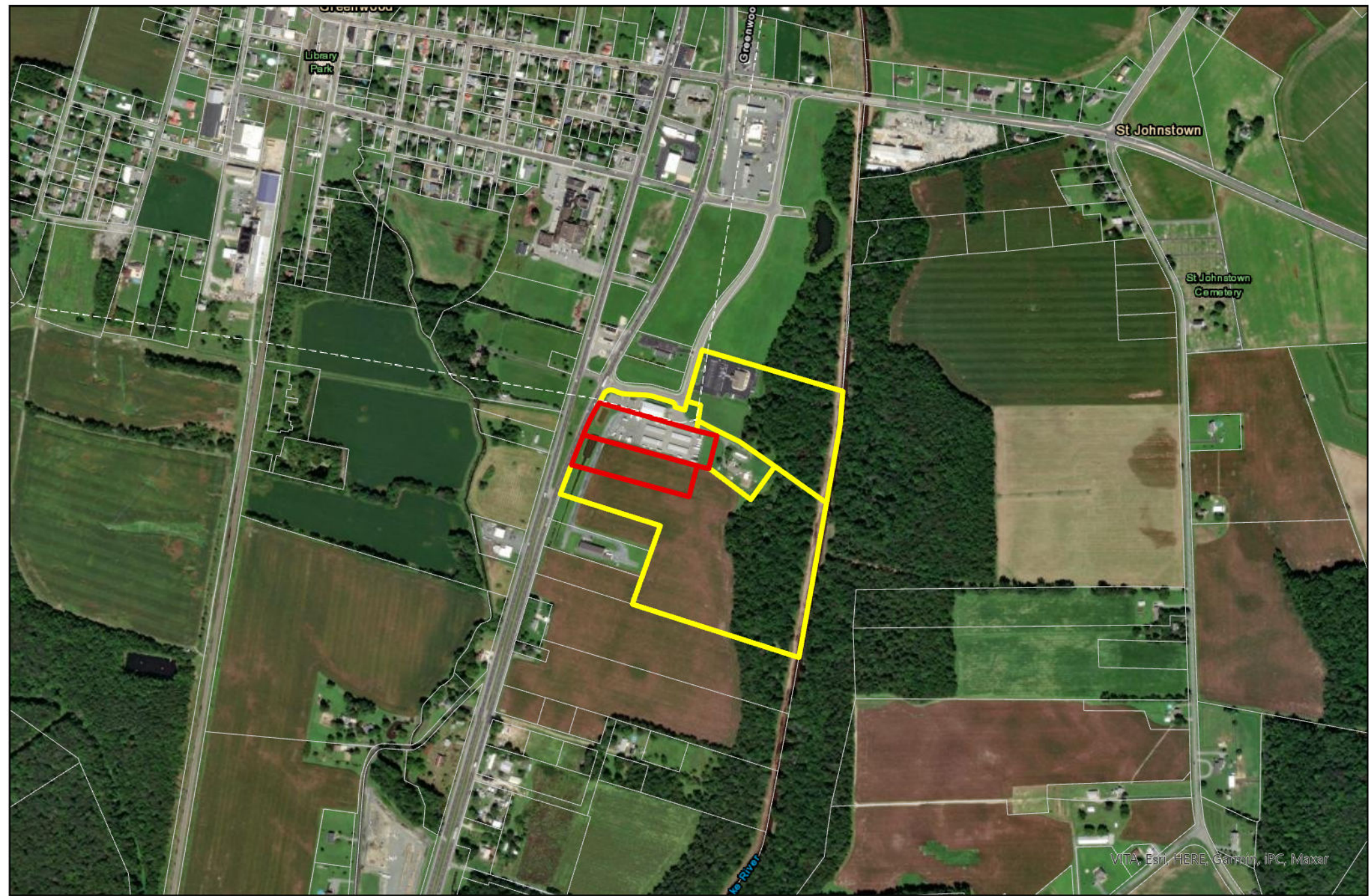
### Zoning

|  |                                  |
|--|----------------------------------|
|  | 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          |

C/Z 2000 - Budget Holdings LLC  
 Changes of Zone since 2011 Vicinity (1-Mile)Map  
 TM#s 530-10.00-58.08  
 530-10.00-58.09

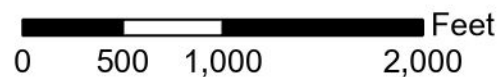
CZ 2000 - Budget Holdings LLC  
 Change of Zone CZ 1771 B. Ray Investments, LLC AR-1 to CR-1 - Approved CC 6/16/2015  
 CZ 2000 Budget Holdings LLC - 1-Mile Radii





C/Z 2000 - Budget Holdings LLC  
Mailing List Parcels Map  
TM#s 530-10.00-58.08  
530-10.00-58.09

-  CZ 2000 - Budget Holdings LLC
-  CZ 200 - Mailing List Parcels



Introduced: 4/25/2023

Council District 2: Mrs. Green

Tax I.D. No.: 530-10.00-58.08 & 58.09

911 Address: 12847 Sussex Highway, Greenwood & N/A

ORDINANCE NO. \_\_\_\_

**AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND C-1 GENERAL COMMERCIAL DISTRICT TO A C-2 MEDIUM COMMERCIAL DISTRICT FOR CERTAIN PARCELS OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 6.57 ACRES, MORE OR LESS**

WHEREAS, on the 7<sup>th</sup> day of November 2022, a zoning application, denominated Change of Zone No. 2000 was filed on behalf of Budget 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. 2000 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 C-1 General Commercial] and adding in lieu thereof the designation C-2 Medium Commercial District as it applies to the properties 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 Northwest Fork Hundred, Sussex County, Delaware, and lying on east side of Sussex Highway (Rt. 13), approximately 0.38 mile south of Beach Highway (Route 16), and being more particularly described in the attached legal descriptions prepared by Haller & Hudson and Wilson, Halbrook & Bayard, P.A., said parcels containing 6.57 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.