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Sussex County

DELAWARE
sussexcountyde.gov

PLEASE NOTE

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

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-23.00-2.02 (PORTION OF), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, AND 235-23.00-2.01

WHEREAS, on February 25, 2021, the Sussex County Planning and Zoning Office received a request to consider an amendment to the Future Land Use Map identified as Figure 4.5-1 in the Comprehensive Plan in relation to Tax Parcel No. 235-23.00-2.02 (Portion of), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, and 235-23.00-2.01 (the “Property”); and

WHEREAS, the Property is designated as being within the Low Density Area as set forth in the Future Land Use Map identified as Figure 4.5-1 in the Plan; and the request received is to amend the Area designation of the Property to the Coastal Area; and

WHEREAS, Sussex County Council desires to adopt this Ordinance amending the Future Land Use Map of the Plan with minor amendments; and

WHEREAS, in accordance with the required process for public hearings on ordinances such as this one, both Sussex County Council and the Sussex County Planning & Zoning Commission will hold public hearings on this Ordinance, but limited in scope to this specific proposed amendment to the Future Land Use Map contained in the Plan.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

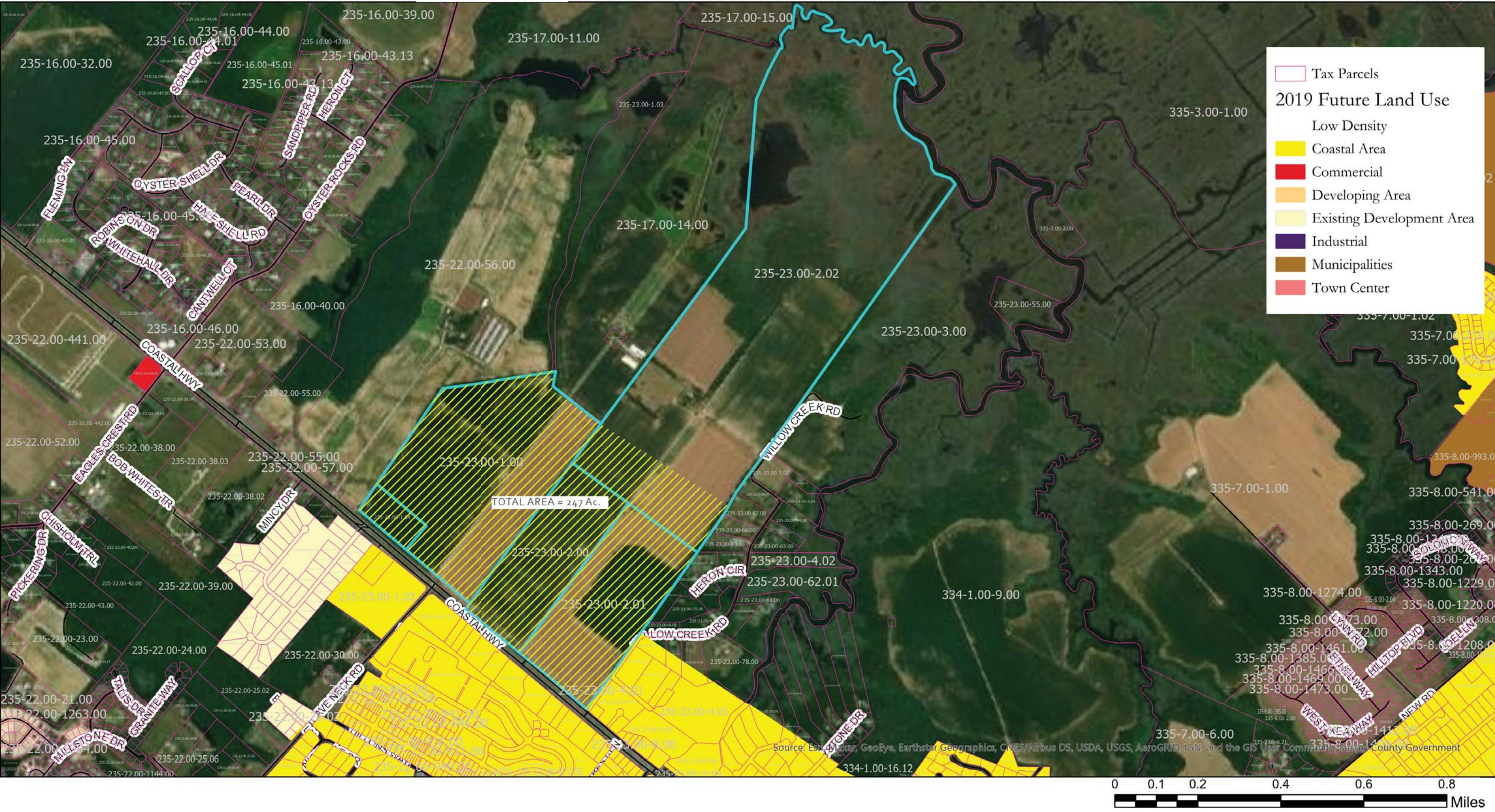
Section 1. The Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan is hereby amended to change the Area designation part of Sussex County Parcel. No. 235-23.00-2.02 (Portion of), 235-23.00-1.00, 235-23.00-1.04, 235-23.00-2.00, and 235-23.00-2.01 from the Low Density Area to the Coastal Area. The parcels so changed are identified in Exhibit A, attached hereto and incorporated herein.

Section 2. This Ordinance shall also take effect following its adoption by majority vote of all members of the County Council of Sussex County, Delaware, and upon certification by the State of Delaware.

Exhibit A : Potential
Comprehensive Plan Amendment



Sussex County





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

July 22, 2021

Jamie Whitehouse, AICP
Director, Department of Planning & Zoning
Sussex County
2 The Circle
P.O. Box 417
Georgetown, DE 19947

RE: PLUS review 2021-06-12; Sussex County Comprehensive Plan Amendment

Dear Mr. Whitehouse:

Thank you for meeting with State agency planners on June 23, 2021 to discuss the proposed Comprehensive Plan Amendment for Sussex County. This proposed amendment would amend the Future Land Use Map for 2 parcels from the Low Density Area to the Coastal Area.

Please note that additional changes to the plan could result in additional comments from the State. Additionally, the comments below reflect only issues that are the responsibility of the agencies that were represented at the meeting.

Office of State Planning Coordination – Contact Dorothy Morris 739-3090

Parcel 235-23.00-1.00 has been seen through PLUS on several occasions for both residential and commercial use. These projects were active during the Sussex County Comprehensive Plan and the 2020 Strategies for State Policies and Spending in which Sussex County was involved and commented. This parcel is within a Level 4 area according to the 2020 Strategies for State Policies and Spending and low density in the SC plan for several reasons including, but not limited to:

- Parcel 1.00 is subject to the Corridor Capacity Preservation program
- These properties border Out of Play land such as the Cedar Trees Farm District.
- There are significant environmental features contiguous to this site plan including tidal wetlands.
- These parcels are not close to public services such as water, sewer, police, fire, and schools.

122 Martin Luther King Jr. Blvd. South – Haslet Armory · Third Floor · Dover, DE 19901
Phone (302)739-3090 · Fax (302) 739-5661 · www.stateplanning.delaware.gov

These parcels consist of approximately 415 acres that would be amended from Low density to Coastal area. Amending the comp plan to designate these parcels as coastal would open up a large number of options for the zoning of this property. In the low density area the owners are allowed a maximum of 2 units per acre where in the Coastal are the density could go as high as 12 units per acre and could allow heavy commercial uses. These uses would be away from public utilities and services.

The Sussex County certification letter dated April 1, 2019 stated the Sussex County comprehensive plan was certified, provided no major changes are enacted. It is the opinion of the Office of State Planning that this change would constitute a major change to the currently certified comprehensive plan and this office, for the reasons stated in this letter, objects to the comprehensive plan amendment.

29 Delaware Code §9103(d) states:

Should the Office of State Planning Coordination make objection to any proposed comprehensive plan or amendments or revisions thereto, then the Office of State Planning Coordination shall immediately enter into negotiation with the county or municipality in an attempt to solicit agreement and resolution. Any agreements reached during these negotiations shall be incorporated into the public record and considered by the governing body prior to final action on the comprehensive plan. If the Office of State Planning Coordination and the county or municipality fail to reach agreement after a period of 45 days, the Office of State Planning Coordination shall report the extent of agreement and areas of continued disagreement to the Cabinet Committee on State Planning Issues for dispute resolution.

This letter serves as our intent to begin the 45 day negotiation period. We will contact the County in the coming days to set up a meeting to discuss our objections and determine the ability to reach an agreement.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- This amendment would facilitate developments known collectively Overbrook Meadows or successors thereto. In September 2014, DelDOT provided comments on a Traffic Impact Study for a commercial development, Overbrook Town Center, which Overbrook Meadows later replaced. Copies of those comments are available at https://deldot.gov/Business/subdivisions/index.shtml?dc=Traffic_Studies
- DelDOT is presently developing plans for a Grade Separated Intersection at this location. Information on that effort is available at <https://deldot.gov/projects/index.shtml?dc=details&projectNumber=T201912201>

Department of Natural Resources and Environmental Control – Beth Krumrine 735-3480

- DNREC reviewers are not in support of this change due to the parcels lying within areas designated as Out of Play and Level 4 by the Delaware Strategies for State Policies and Spending. In addition, these parcels contain environmental features that are inconsistent with more intensive development. In Low Density areas, a maximum of 2 units per acre are allowed; in the Coastal Areas, up to 12 units per acre are allowed, in addition to heavy commercial uses.
- An analysis of historical data indicates that the northern portion of parcel 235-23.00-2.02 and the small, forested portion on the northern edge of parcel 235-23.00-1.00 have likely maintained some degree of forest cover since 1937. Mature forests possess the potential for rare, threatened, or endangered species that rely on this type of habitat.
- Groundwater Recharge Areas are located on parcels 235-23.00-1.00 and 235-23.00-2.02. These areas have soils that are conducive to water infiltrating downward from surface water into groundwater. Preservation of these areas is important for replenishing groundwater supplies and ensuring drinking water for future generations.
- Freshwater and marine wetlands are present on the northern half of parcel 235-23.00-2.02 and lie within the Great Marsh Natural Area and the Delaware Ecological Network. Natural Areas contain lands of statewide significance identified by the Natural Areas Advisory Council as the highest quality and most important natural lands remaining in Delaware. The Delaware Ecological Network consists of lands having significant ecological value. Forest disturbances in these areas will jeopardize habitat on the parcel and possibly beyond the parcel's boundary.
- There is an active Bald Eagle (*Haliaeetus leucocephalus*) nest within parcel 235-23.00-2.02. Bald eagles and their nests are protected under the federal Bald and Golden Eagle Protection Act (BGEPA). Additionally, the nest itself is protected by state law (7 Del. C. § 739).
- The following plants or animals are listed as State of Delaware rare, threatened, or endangered species, which have been documented within the project area.
 - The Broad-winged Hawk (*Buteo platypterus*) is a bird listed under State Rank S1B, State Status E, and SGCN Tier 1.
 - The Northern Harrier (*Circus cyaneus*) is a bird listed under State Rank S1B, State Status E, and SGCN Tier 1.
 - The Great Black-backed Gull (*Larus marinus*) is a bird listed under State Rank S1B and SGCN Tier 1.

- The Black-necked Stilt (*Himantopus mexicanus*) is a bird listed under State Rank S2B and SGCN Tier 1.

Please visit the following website for definitions on the specified State Rank, State Status, and SGCN Ranking:

<https://www.dnrec.delaware.gov/fw/NHESP/Documents/Status%20Ranks%20April%202013.pdf>

- The project lies within a zone that will be affected by mosquitoes due to its location near large expanses of freshwater and estuarine wetlands. Mosquito control issues are increasing as developments infringe on wetland areas, often leading to increased demands for mosquito control services beyond what DNREC has the resources to provide.

State Historic Preservation Office – Contact Carlton Hall 736-7400

Tax Parcel# 235-23.00-1.00

- Prehistoric archaeological potential is moderate throughout the parcel. The parcel is mostly well-drained soils, but it is just on the edge of favorable distance to a historic water source. There is one comparable site along another arm of Fisher Creek, next to the one that extends towards this parcel.
- Historic archaeological potential is low. No indication through historic maps or aerials that there were any structures etc. on the land, and adjacent parcels are vacant as well.

Tax Parcel# 235-23.00-2.02

- Prehistoric archaeological potential is low in northern half of the parcel due to poorly drained soils. However, there are higher points in the topography within favorable distance to one of the arms of Old Mill Creek and overlooking the marshland, which is highly favorable for prehistoric archaeological sites. The Delaware SHPO recommends a Phase I survey.
- Historic archaeological potential is high near the farmstead and there is potentially a cemetery there. There also appears to be another farmstead on the property east of the currently existing farmstead. The Delaware SHPO would highly recommend a survey of that area.
- If any project or development proceeds, the developer should be aware of the Unmarked Human Burials and Human Skeletal Remains Law (Del. C. Title 7, Ch. 54).
- If there is federal involvement, in the form of licenses, permits, or funds, the federal agency, often through its client, is responsible for complying with Section 106 of the National Historic Preservation Act (36 CFR 800) and must consider their project's effects on any known or potential cultural or historic resources. For further information on the Section

106 process please review the Advisory Council on Historic Preservation's website at:
www.achp.gov

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

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Edgell', with a stylized, cursive script.

David L. Edgell, AICP
Director, Office of State Planning Coordination

Future Land Use Map Amendment

SCTP No. 236-23.00-1.04,
235-23.00-1.30, 235-
23.00-2.00, 235-23.00-
2.01 & 235-23.00-2.02

David C. Hutt, Esquire

Morris James LLP

Public Hearings:

Planning Commission 11/18/2021

County Council 12/14/2021

Table of Contents

1. December 29, 2020 letter to County Council Members and Todd Lawson
2. Sussex County Tax Maps
 - a. 2007 Future Land Use Plan
 - b. 2018 Future Land Use Plan Recommended by the Planning Commission
 - c. 2045 Future Land Use Plan Recommended by County Council
 - d. 2045 Future Land Use Plan Signed by the Governor
 - e. Zoning Map
 - f. Wetlands Map
 - g. Utilities Map
 - h. Water CPCN Map
 - i. Wastewater CPCN Map
3. February 25, 2021 letter to Mr. Whitehouse request FLUM Amendment
4. PLUS Application filed by the Sussex County
5. Revised PLUS Application filed by the Sussex County
6. DELDOT's SR1 and Cave Neck Road GSI Selected Alternative
7. PLUS Letter to J.Whitehouse (July 22, 2021_

TAB “1”

December 29, 2020

The Honorable Michael H. Vincent
The Honorable Samuel R. Wilson, Jr.
The Honorable Irwin G. Burton III
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
Todd F. Lawson, Sussex County Administrator
Sussex County Council
2 The Circle
Georgetown, DE 19947

Re: 2018 Comprehensive Plan

Dear County Council Members and Mr. Lawson:

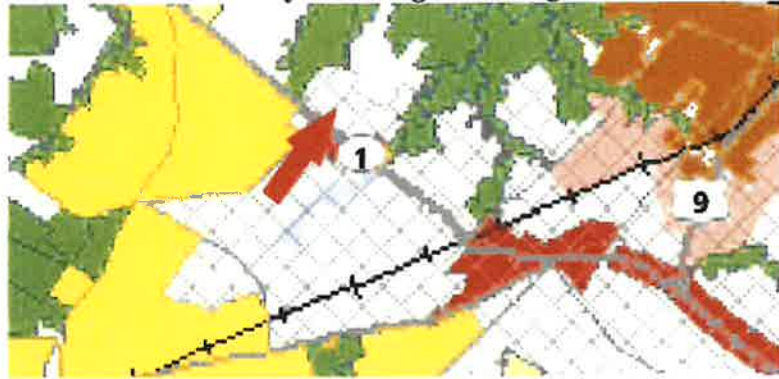
We are sending this letter to express our disappointment and concern regarding changes to our property designations assigned on the Future Land Use Map included in the 2018 Comprehensive Plan update. By way of introduction, we are the current record owners of two pieces of undeveloped property located just north of Lewes on the east side of Route 1. Specifically, the properties are Tax Parcel Nos. 235-23.00-1.00 (the "Chappell Property") and 235-23.00-2.02 (the "Robinson Property") (collectively the "Properties"). Recently the Chappell Property was placed under contract and is now in the process of being sold. Through the buyer's due diligence during the sale process, the Chappells learned that their property was no longer in a "Growth Area" on the Future Land Use Map, which then led to further discussion with neighbors in that area, including the Robinsons.

As you may be aware, the Properties were included in the Environmentally Sensitive Development Area in the Future Land Use Map in the 2008 Comprehensive Plan. For more than a year we monitored the designation of our properties throughout the County's process of preparing the update to the 2008 Comprehensive Plan. At every stage in the process (except for one) the Properties were shown as being in one of the County's Growth Areas.

In fact, the County's website still reflects this history. The drafts of the 2018 Comprehensive Plan update recommended by the Planning Commission and County Council are on the County's website. Both of these drafts show significant portions of the Properties as being in a Growth Area. The following excerpts from the Future Land Map in the draft Comprehensive Plan updates plainly show the Properties as being included within the Environmentally Sensitive Development Area in the 2018 Comprehensive Plan as recommended by the Planning & Zoning Commission (Table 1) and the Coastal Area in the 2018 Comprehensive Plan as recommended by County Council (Table 2).

TABLE 1

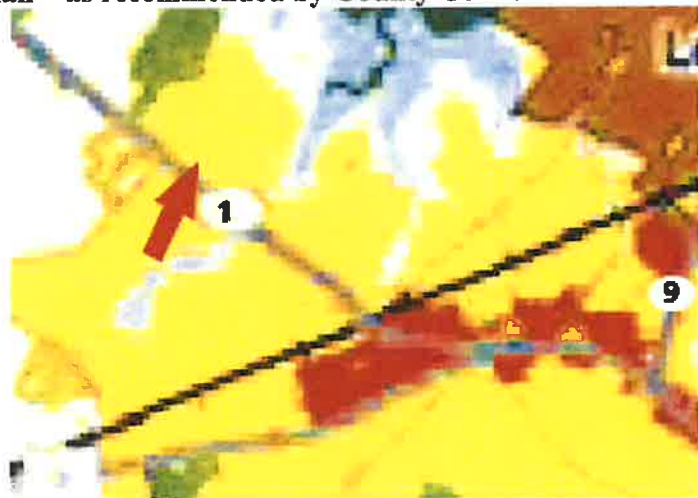
2018 Comprehensive Plan – as recommended by Planning & Zoning Commission



The area where the Properties are located is indicated with a red arrow.

TABLE 2

2018 Comprehensive Plan – as recommended by County Council

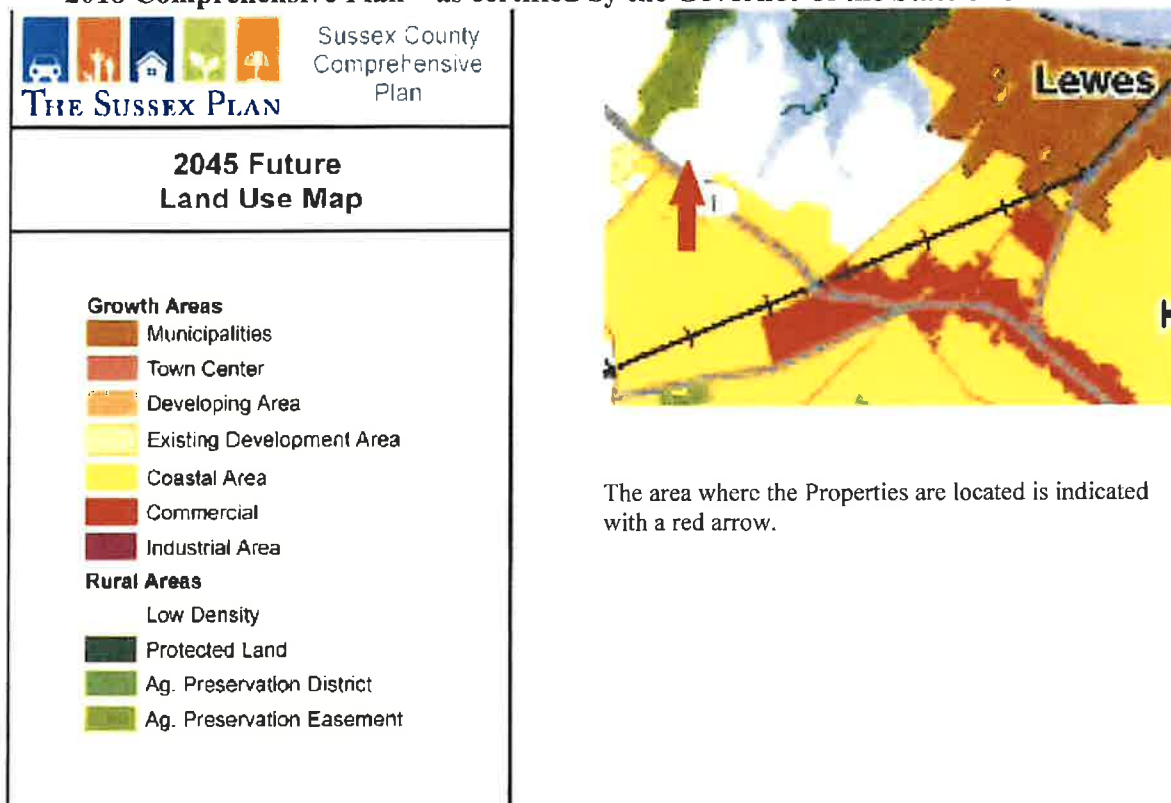


The area where the Properties are located is indicated with a red arrow.

Based on these recommended versions as they were presented to the public, you can imagine our surprise when it was brought to our attention that County Council ultimately submitted a Comprehensive Plan update with a Future Land Use Map to the Governor placing the Properties in the Low Density designation, not a Growth Area as previously indicated. The version ultimately submitted and certified by the Governor is shown below in Table 3.

TABLE 3

2018 Comprehensive Plan – as certified by the Governor of the State of Delaware



The area where the Properties are located is indicated with a red arrow.

Unfortunately, this surprising change of designation only recently came to our attention as the Chappells prepared to sell the Chappell Property. Through further research and investigation, we learned that the County held a public hearing for comment on the version of the Comprehensive Plan recommended by County Council (Table 2) on October 23, 2018. At the October 23rd public hearing, several speakers were heard including requests to change the Future Land Use Map for specific properties. Our Properties were not mentioned or discussed during that public hearing and the public hearing and record on the County's 2018 Comprehensive Plan update was closed.

Unbeknownst to us, at the next meeting former County Councilman George Cole unilaterally raised the issue of our Properties (among others) to be removed from one of the County's Growth Areas. Specifically at 45:35 of the second audio file on the County's website,

Mr. Cole initiated a discussion about this area. Our Properties (among others) were then re-designated on the Future Land Use Map. This means that, after the versions of the Future Land Use Map recommended by the Planning Commission and County Council were considered without comment on our Properties and after the final public hearing on the Comprehensive Plan where our Properties were not discussed, the County substantively changed the Future Land Use Map for our Properties without notice to anyone.

We did not attend the meetings after the public process was concluded since we were content with the designations recommended by both the Planning Commission and County Council. After being unilaterally raised by County Council on October 30th, and without notice to us (or likely other property owners whose lands were removed from a Growth Area), the Future Land Use Map was further modified. Since learning of the change of designation, we have learned that at its meetings on November 13th and November 27th County Council discussed amongst themselves the designation of the Properties and ultimately voted on November 27th to remove them from a Growth Area.

We understand and acknowledge that it is our responsibility as landowners to monitor County Council's proposed recommendations regarding the Comprehensive Plan as it is published for public review. Our frustration and disappointment is that we performed our duty and monitored the process through the conclusion of the public hearing process and somehow without warning or notice the designation for our Properties was changed—after the public record was closed without a single comment about our Properties (until Mr. Cole's post-public hearing comments). It is difficult to imagine why a property owner would continue to monitor this process when during the entire public process, the designation of its property reflected the property owners' view of their property. County Council's unilateral decision changing the Properties' designation in its final submission to the Governor did not provide us with proper notice of the change in designation nor give us an opportunity to properly present our opposition to such change.


As such, we write this letter to provide County Council with notice that we object to the change in designation and respectfully request that County Council restore the Properties' former designation to include the Properties in the Coastal Area, as previously recommended by County Council and the Planning Commission. We appreciate your anticipated cooperation in this matter.

Sincerely,



Frederick Chappell

Tax Parcel No. 235-23.00-1.00


Thomas Robinson

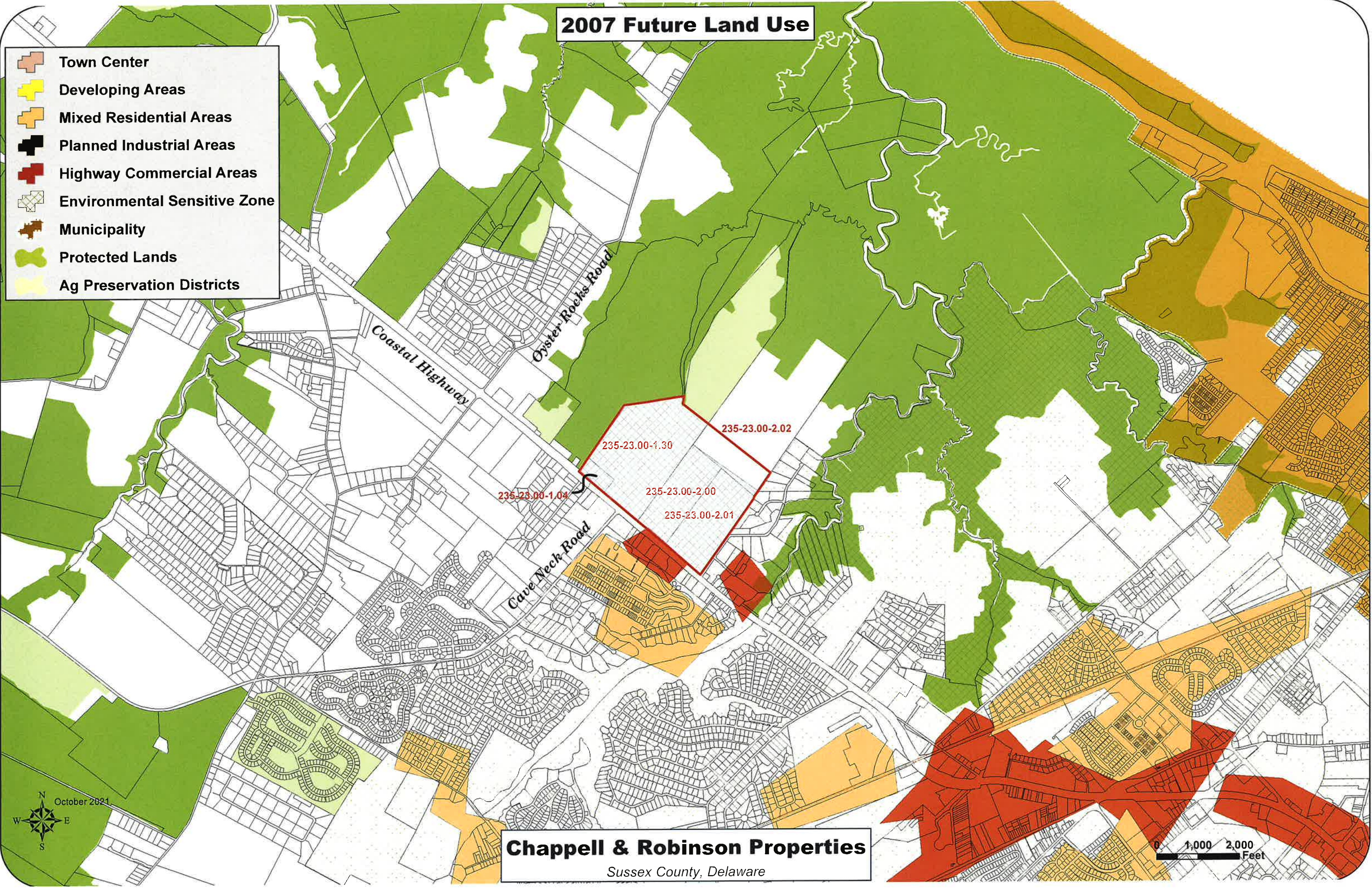
Tax Parcel No. 235-23.00-2.02

Cc: The Honorable Mark G. Schaeffer
The Honorable Cynthia C. Green

TAB “2”

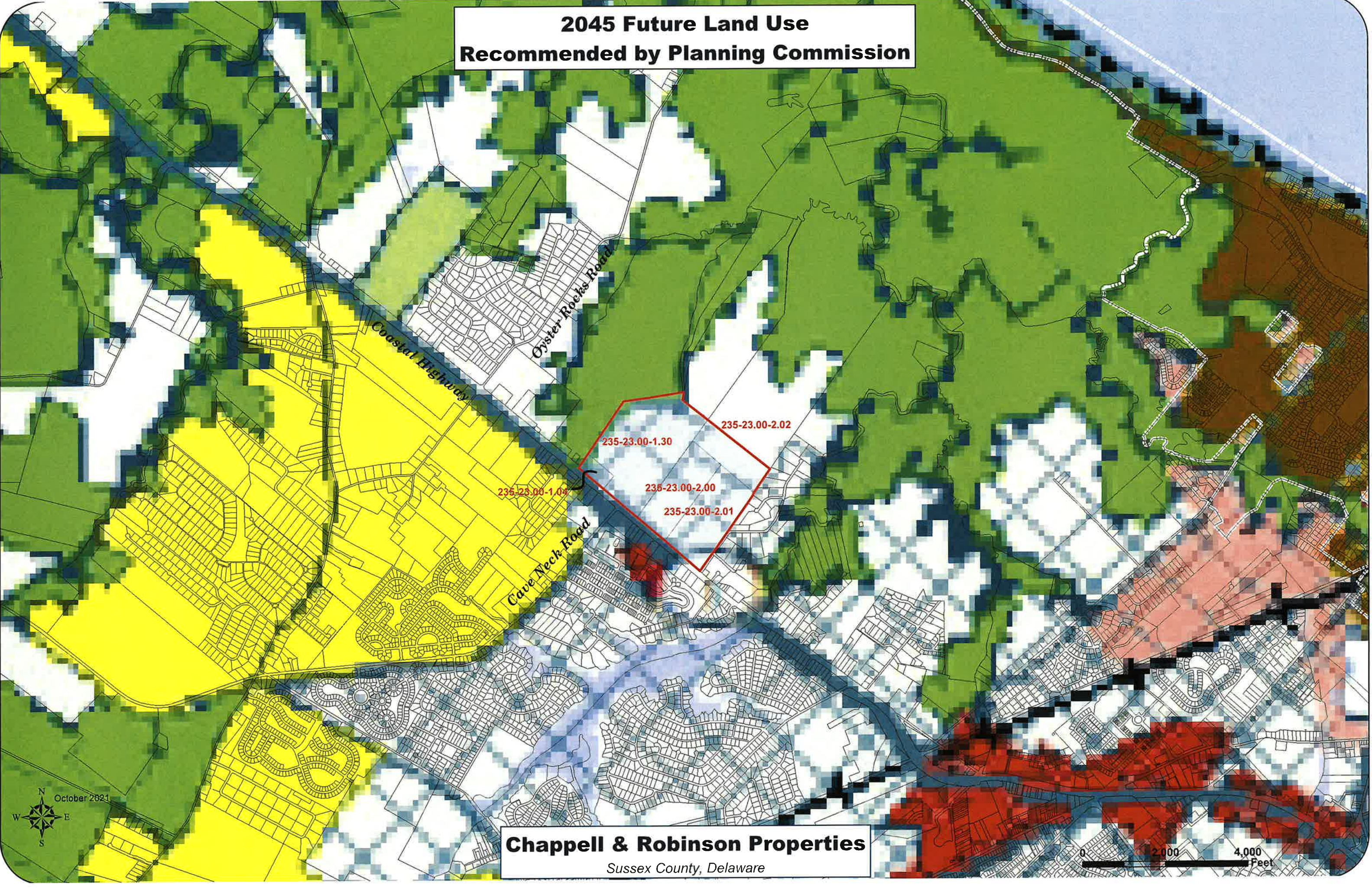
2007 Future Land Use

- Town Center
- Developing Areas
- Mixed Residential Areas
- Planned Industrial Areas
- Highway Commercial Areas
- Environmental Sensitive Zone
- Municipality
- Protected Lands
- Ag Preservation Districts



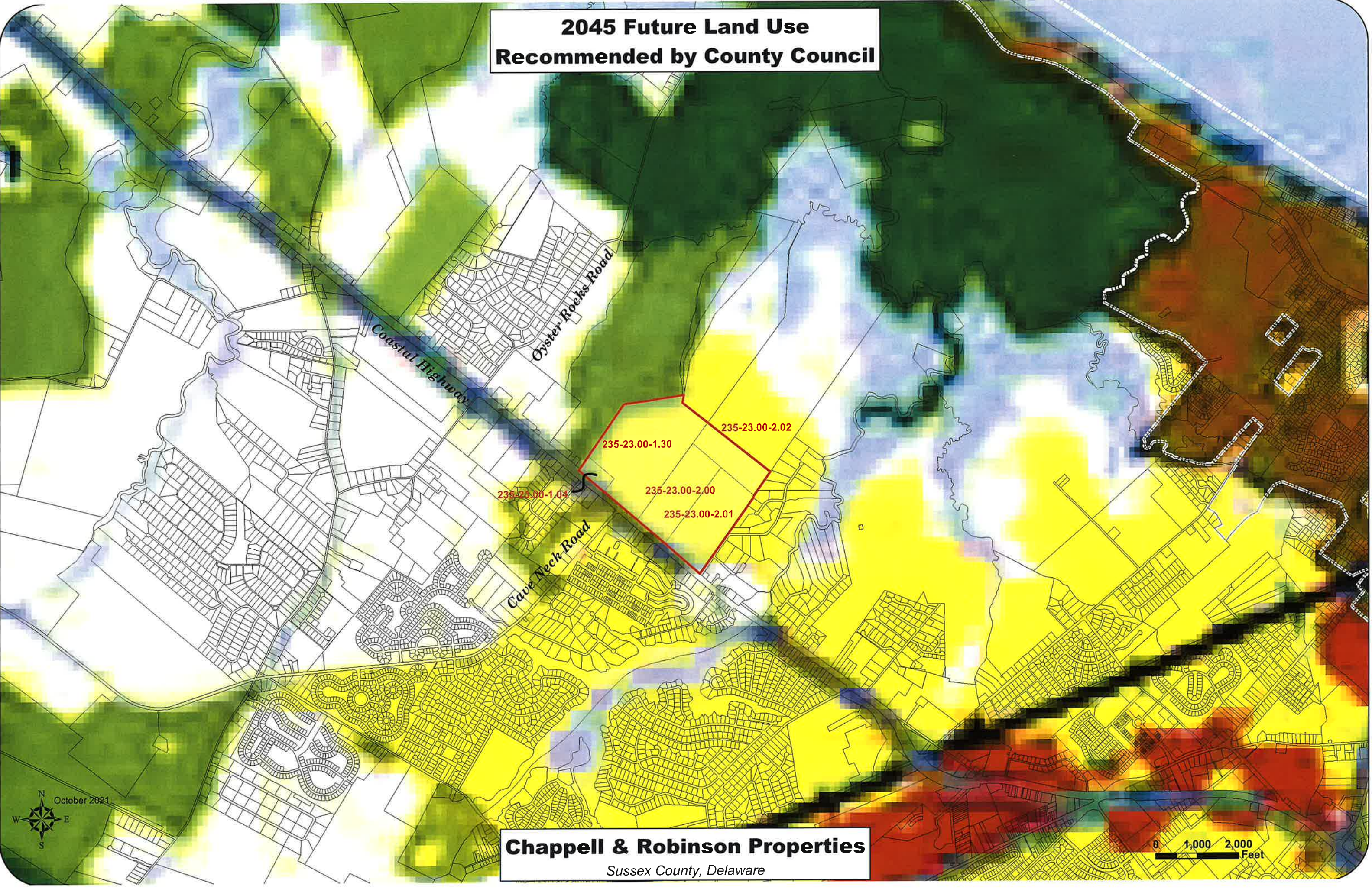
Chappell & Robinson Properties
Sussex County, Delaware

**2045 Future Land Use
Recommended by Planning Commission**



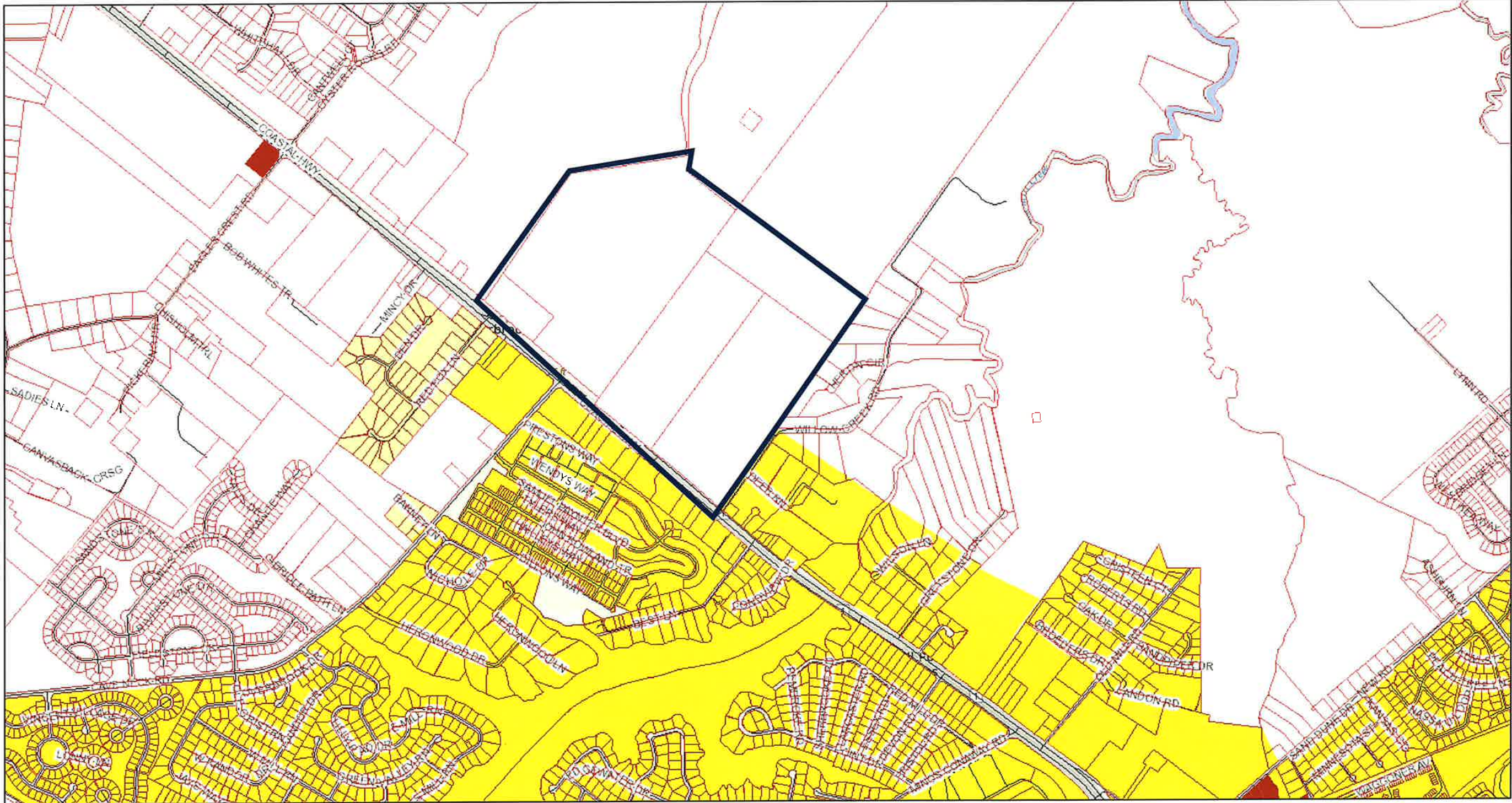
Chappell & Robinson Properties
Sussex County, Delaware

**2045 Future Land Use
Recommended by County Council**



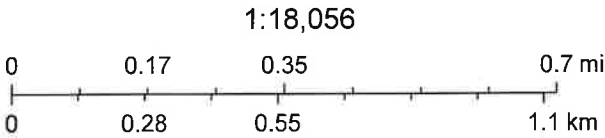
Chappell & Robinson Properties
Sussex County, Delaware

Sussex County



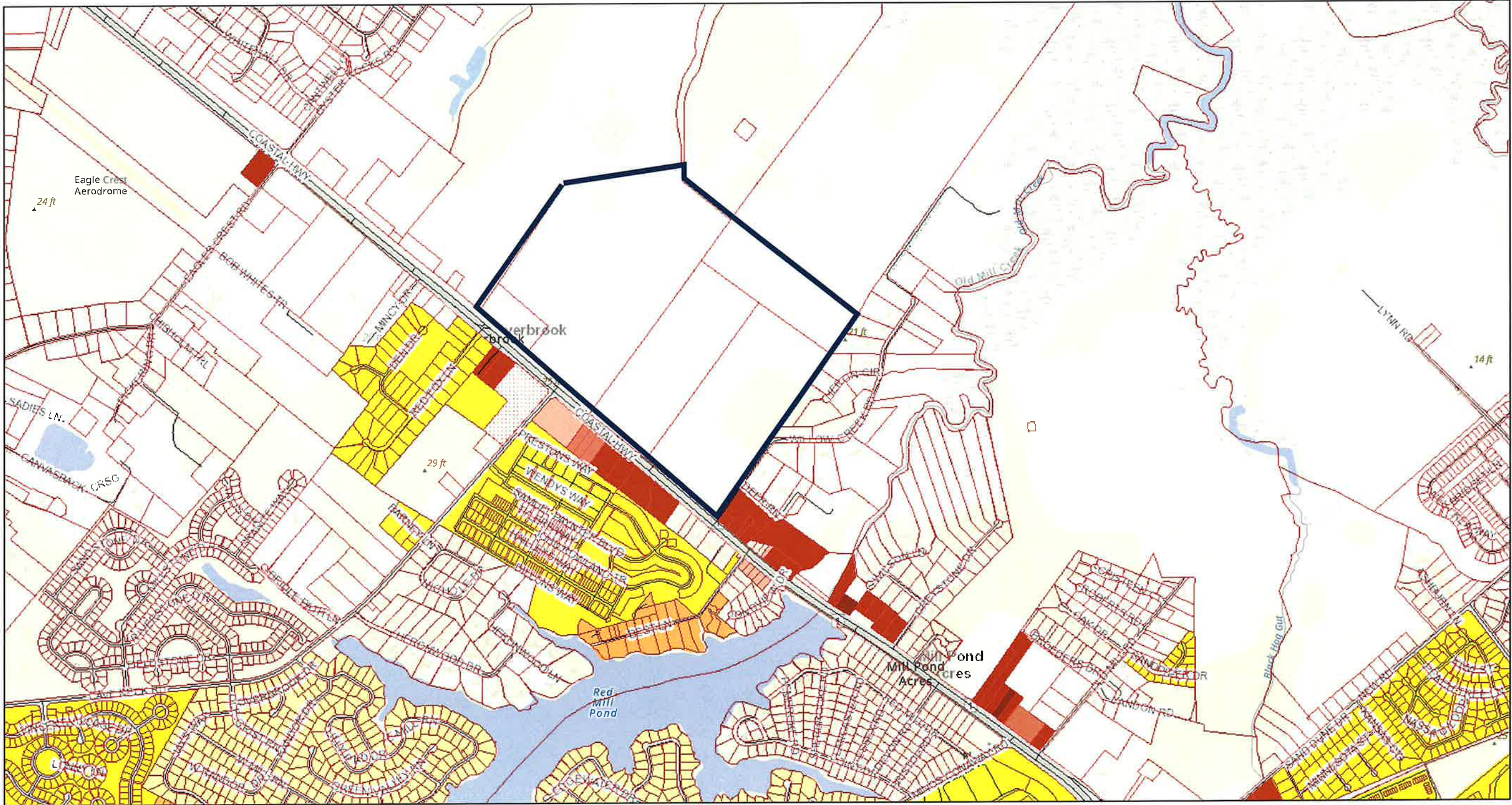
November 8, 2021

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



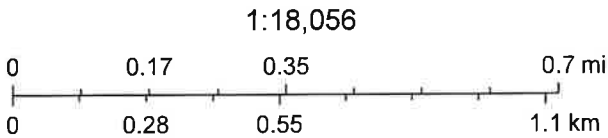
Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community, Sussex County Government

Sussex County



November 8, 2021

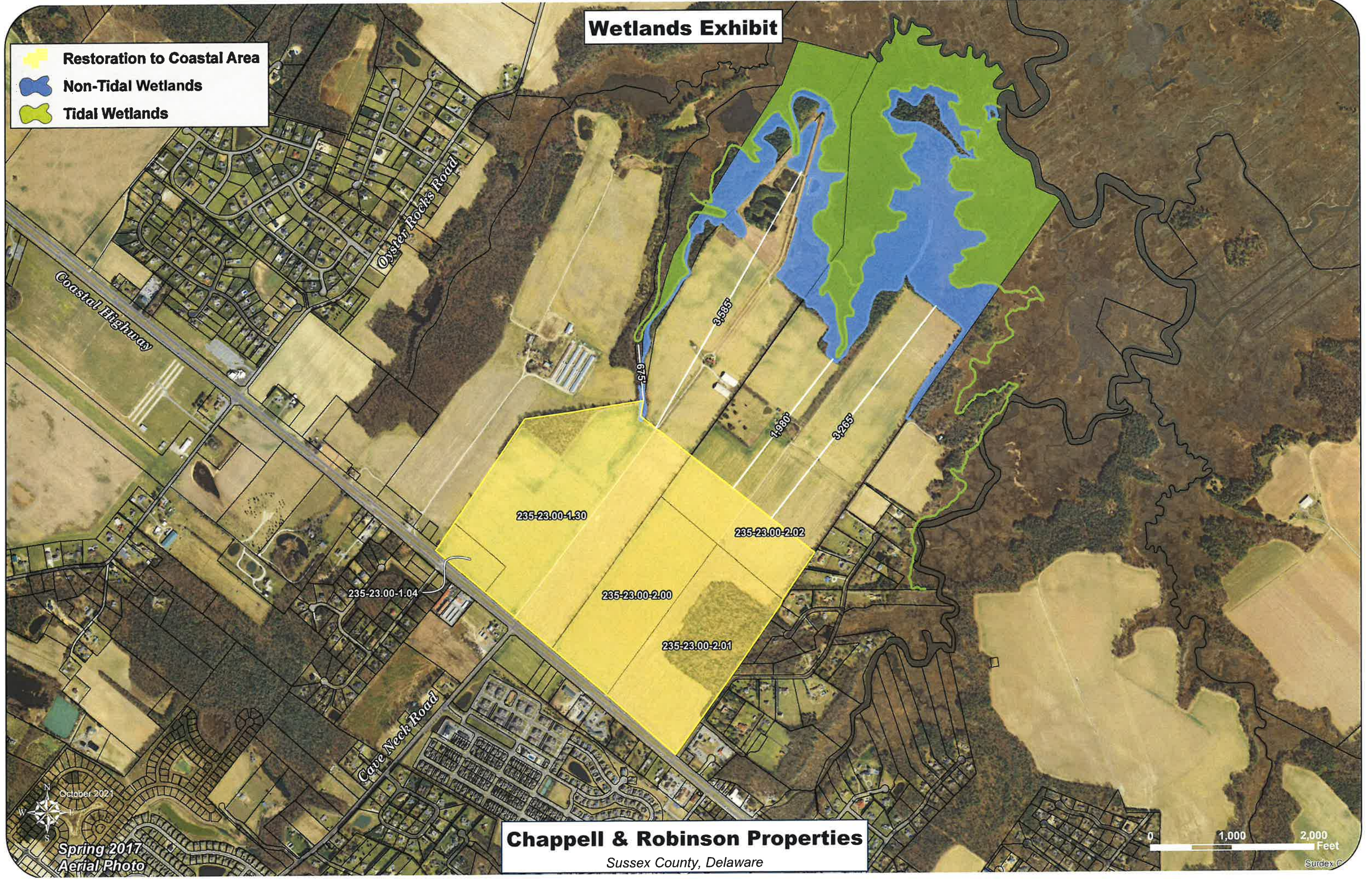
- | | | | | |
|---------------------------------|----------------------------------|-----------------------------|-------------------------------|---------------------------|
| Tax Parcels | Medium Residential - MR | Neighborhood Business - B-1 | General Commercial - C-3 | Marine - M |
| Streets | General Residential - GR | Neighborhood Business - B-2 | General Commercial - C-4 | Limited Industrial - LI-1 |
| Zoning | High Density Residential - HR-1 | Business Research - B-3 | General Commercial - C-5 | Light Industrial - LI-2 |
| Agricultural Residential - AR-1 | High Density Residential - HR-2 | General Commercial - C-1 | Commercial Residential - CR-1 | Heavy Industrial - HI-1 |
| Agricultural Residential - AR-2 | Vacation, Retire, Resident - VRP | General Commercial - C-2 | Institutional - I-1 | County Boundaries |



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

Wetlands Exhibit

- Restoration to Coastal Area
- Non-Tidal Wetlands
- Tidal Wetlands



Chappell & Robinson Properties
Sussex County, Delaware

Spring 2017
Aerial Photo

Surdex C

Utilities Exhibit

Coastal Highway

Tidewater
12" Watermain

Artesian
8" Sewer
Forcemain

235-23.00-1.04

235-23.00-1.30

235-23.00-2.02

235-23.00-2.00

235-23.00-2.01

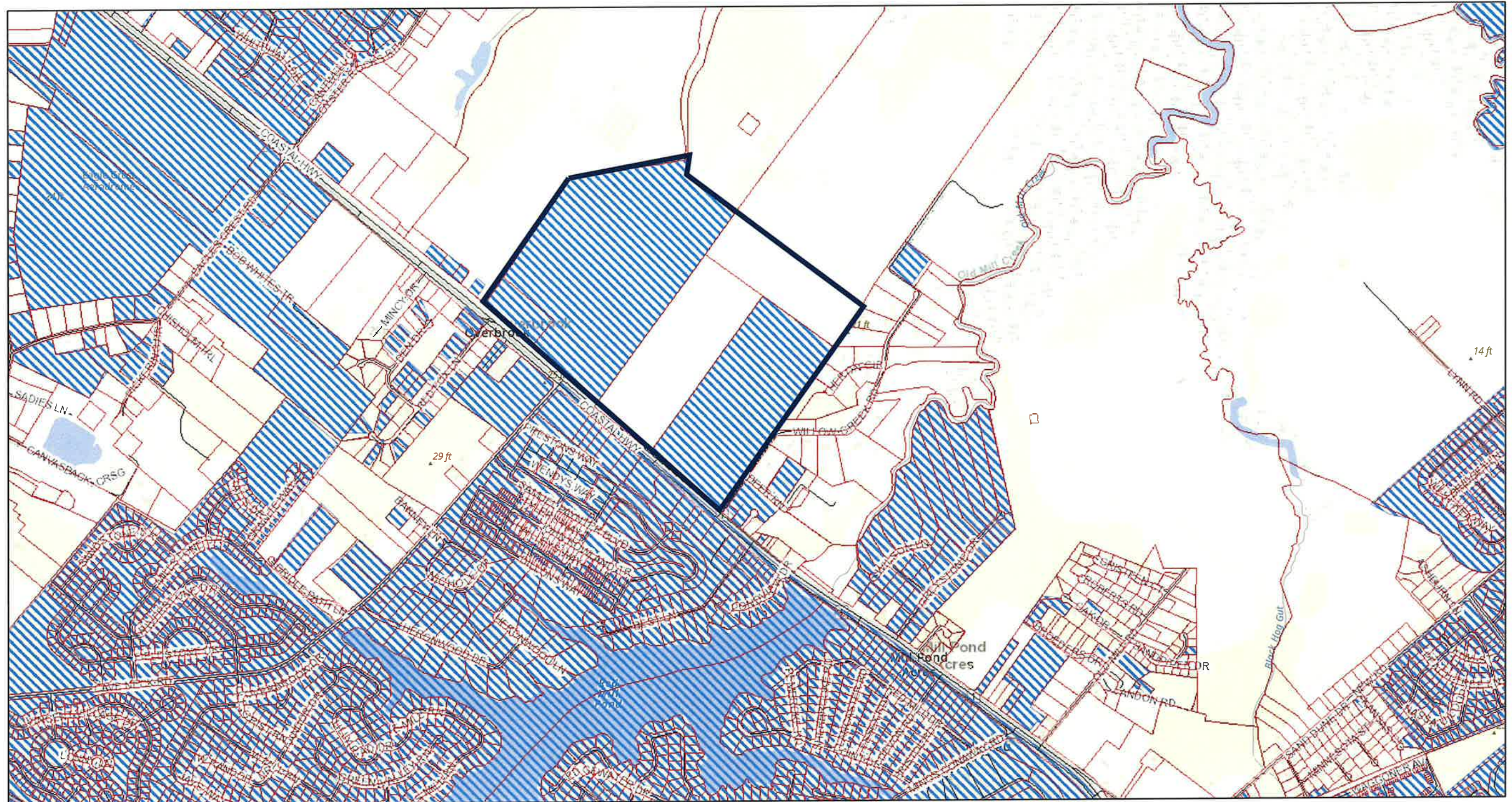
Cave Neck Road

Chappell & Robinson Properties
Sussex County, Delaware

October 2021
Spring 2017
Aerial Photo

0 600 1,200 Feet
Surdex ©

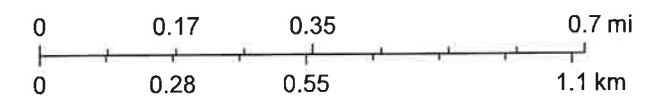
Sussex County



November 8, 2021

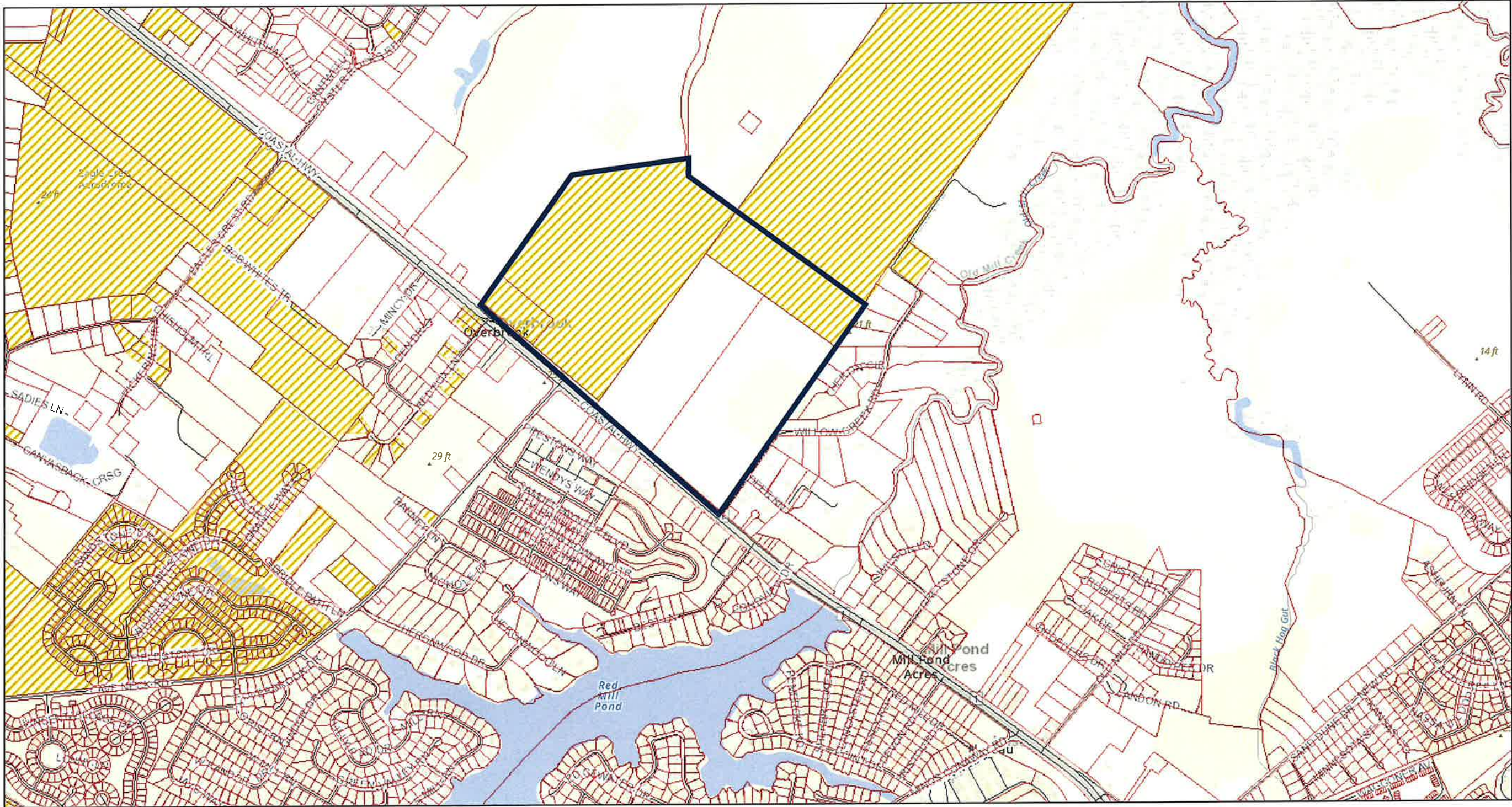
-  Tax Parcels
 Streets
 County Boundaries
 Water CPCN

1:18,056



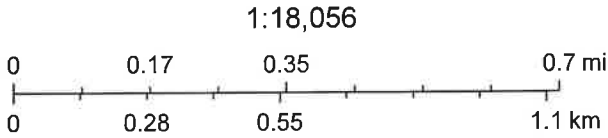
Delaware Public Service Commission, Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community, Sussex County Government

Sussex County



November 8, 2021

- Tax Parcels
- Streets
- County Boundaries
- Wastewater CPCN



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

TAB “3”

Morris James LLP

David C. Hutt
302.856.0018
dhutt@morrisjames.com

February 25, 2021

Via: Hand Delivery and Email (jamie.whitehouse@sussexcountyde.gov)

Jamie Whitehouse, Director
Sussex County Planning & Zoning Office
2 The Circle, P.O. Box 417
Georgetown, DE 19947

**RE: 2018 Comprehensive Plan, 2045 Future Land Use Map
SCTP No.: 235-23.00-1.00, 1.04 & 2.02**

Dear Mr. Whitehouse:

I am writing to follow-up on our conversation about the above-referenced properties. As you may recall, by letter dated December 29, 2020 the Chappell and Robinson families sent a letter to County Council and the County Administrator regarding the future land designation of their properties on the Future Land Use Map. A copy of that letter is enclosed for your ready reference. Stated more precisely, the letter describes their surprise and frustration regarding the change in their properties' designation from prior iterations of the Future Land Use Map.

As indicated in the prior letter, the change to their properties' designation came to light during the sale of parcel 235-23.00-1.00. The sale of that parcel has been completed and I represent the current owners of that parcel (Seaside Lewes, LLC and Derrickson Properties, LLC as well as the Robinson family which owns parcel 235-23.00-2.02). These owners request the restoration of their properties former designation on the Future Land Use Map so their properties are within the Coastal Area as previously recommended by County Council and the Planning Commission.

To facilitate the process, my clients and I request a meeting with you. In addition, please advise if the County has a more formal application that is needed in order for this request to be reviewed by County Council. We look forward to meeting with you and discussing this restoration of their properties prior designation on the Future Land Use Map.

Very Truly Yours,

MORRIS JAMES LLP


David C. Hutt, Esquire

Enclosure

Cc: Honorable Mark G. Schaeffer (via email)

December 29, 2020

The Honorable Michael H. Vincent
The Honorable Samuel R. Wilson, Jr.
The Honorable Irwin G. Burton III
The Honorable Douglas B. Hudson
The Honorable John L. Rieley
Todd F. Lawson, Sussex County Administrator
Sussex County Council
2 The Circle
Georgetown, DE 19947

Re: 2018 Comprehensive Plan

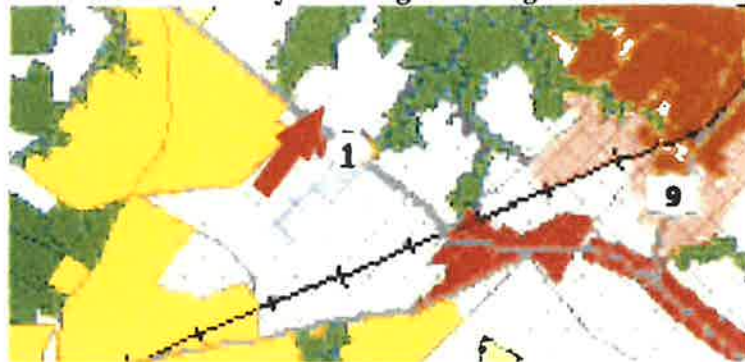
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As you may be aware, the Properties were included in the Environmentally Sensitive Development Area in the Future Land Use Map in the 2008 Comprehensive Plan. For more than a year we monitored the designation of our properties throughout the County's process of preparing the update to the 2008 Comprehensive Plan. At every stage in the process (except for one) the Properties were shown as being in one of the County's Growth Areas.

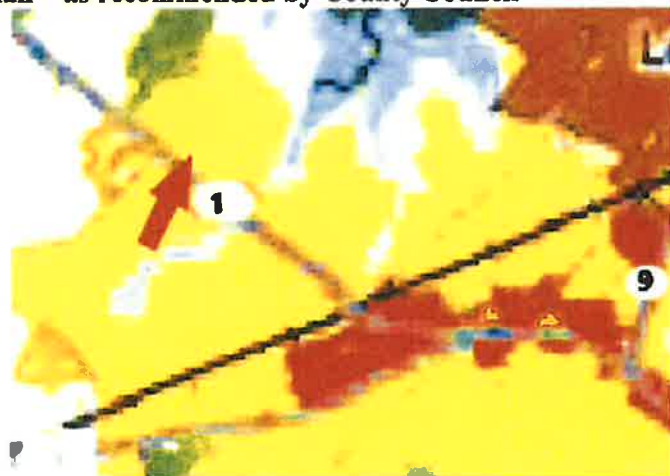
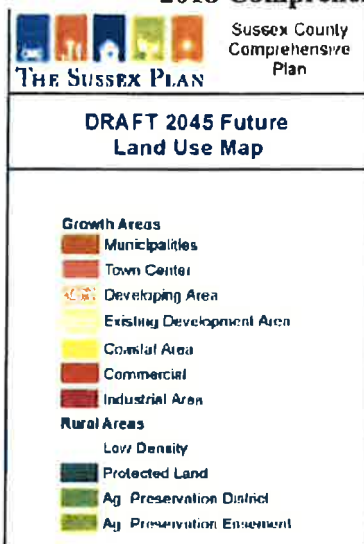
In fact, the County's website still reflects this history. The drafts of the 2018 Comprehensive Plan update recommended by the Planning Commission and County Council are on the County's website. Both of these drafts show significant portions of the Properties as being in a Growth Area. The following excerpts from the Future Land Map in the draft Comprehensive Plan updates plainly show the Properties as being included within the Environmentally Sensitive Development Area in the 2018 Comprehensive Plan as recommended by the Planning & Zoning Commission (Table 1) and the Coastal Area in the 2018 Comprehensive Plan as recommended by County Council (Table 2).

TABLE 1
2018 Comprehensive Plan – as recommended by Planning & Zoning Commission



The area where the Properties are located is indicated with a red arrow.

TABLE 2
2018 Comprehensive Plan – as recommended by County Council















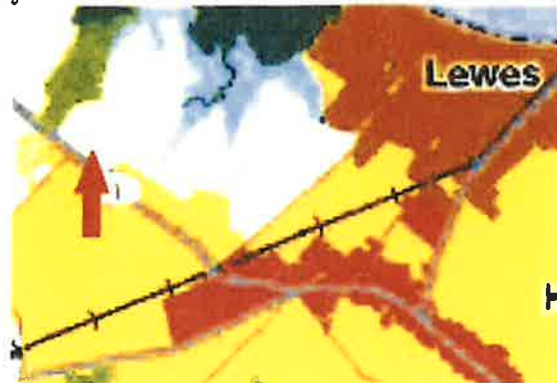
The area where the Properties are located is indicated with a red arrow.

Based on these recommended versions as they were presented to the public, you can imagine our surprise when it was brought to our attention that County Council ultimately submitted a Comprehensive Plan update with a Future Land Use Map to the Governor placing the Properties in the Low Density designation, not a Growth Area as previously indicated. The version ultimately submitted and certified by the Governor is shown below in Table 3.

TABLE 3

2018 Comprehensive Plan – as certified by the Governor of the State of Delaware

 THE SUSSEX PLAN	Sussex County Comprehensive Plan
2045 Future Land Use Map	
<p>Growth Areas</p> <ul style="list-style-type: none">  Municipalities  Town Center  Developing Area  Existing Development Area  Coastal Area  Commercial  Industrial Area <p>Rural Areas</p> <ul style="list-style-type: none">  Low Density  Protected Land  Ag. Preservation District  Ag. Preservation Easement 	



The area where the Properties are located is indicated with a red arrow.

Unfortunately, this surprising change of designation only recently come to our attention as the Chappells prepared to sell the Chappell Property. Through further research and investigation, we learned that the County held a public hearing for comment on the version of the Comprehensive Plan recommended by County Council (Table 2) on October 23, 2018. At the October 23rd public hearing, several speakers were heard including requests to change the Future Land Use Map for specific properties. Our Properties were not mentioned or discussed during that public hearing and the public hearing and record on the County's 2018 Comprehensive Plan update was closed.

Unbeknownst to us, at the next meeting former County Councilman George Cole unilaterally raised the issue of our Properties (among others) to be removed from one of the County's Growth Areas. Specifically at 45:35 of the second audio file on the County's website,

Mr. Cole initiated a discussion about this area. Our Properties (among others) were then re-designated on the Future Land Use Map. This means that, after the versions of the Future Land Use Map recommended by the Planning Commission and County Council were considered without comment on our Properties and after the final public hearing on the Comprehensive Plan where our Properties were not discussed, the County substantively changed the Future Land Use Map for our Properties without notice to anyone.

We did not attend the meetings after the public process was concluded since we were content with the designations recommended by both the Planning Commission and County Council. After being unilaterally raised by County Council on October 30th, and without notice to us (or likely other property owners whose lands were removed from a Growth Area), the Future Land Use Map was further modified. Since learning of the change of designation, we have learned that at its meetings on November 13th and November 27th County Council discussed amongst themselves the designation of the Properties and ultimately voted on November 27th to remove them from a Growth Area.

We understand and acknowledge that it is our responsibility as landowners to monitor County Council's proposed recommendations regarding the Comprehensive Plan as it is published for public review. Our frustration and disappointment is that we performed our duty and monitored the process through the conclusion of the public hearing process and somehow without warning or notice the designation for our Properties was changed—after the public record was closed without a single comment about our Properties (until Mr. Cole's post-public hearing comments). It is difficult to imagine why a property owner would continue to monitor this process when during the entire public process, the designation of its property reflected the property owners' view of their property. County Council's unilateral decision changing the Properties' designation in its final submission to the Governor did not provide us with proper notice of the change in designation nor give us an opportunity to properly present our opposition to such change.

As such, we write this letter to provide County Council with notice that we object to the change in designation and respectfully request that County Council restore the Properties' former designation to include the Properties in the Coastal Area, as previously recommended by County Council and the Planning Commission. We appreciate your anticipated cooperation in this matter.

Sincerely,


James H. Chappell

Frederick A. Chappell

Tax Parcel No. 235-23.00-1.00


Thomas Robinson

Tax Parcel No. 235-23.00-2.02

Cc: The Honorable Mark G. Schaeffer
The Honorable Cynthia C. Green

TAB “4”

**Preliminary Land Use Service (PLUS) Application
Pre-Update Review Request
Municipal Comprehensive Plans
Comprehensive Plan Amendments
Municipal Ordinances**

Delaware Office of State Planning Coordination

122 Martin Luther King Jr. Blvd., South • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-5661

All sections related to your project must be completed. Incomplete applications could lead to delays in scheduling your review. If you need assistance or clarification, please call the State Planning Office at (302) 739-3090.

REQUESTED REVIEW: Check one

Comprehensive Plan Pre-Update Review
Complete Sections 1 and 3 only

☐

Comprehensive Plan or Update
Complete Sections 1 and 3 only

☐

Comprehensive Plan Amendment
Complete Sections 1 and 2 only

☒

Municipal Ordinance Review
Complete Sections 1 and 2 only

☐

Date of most recently certified comprehensive plan:

April 1, 2019

Link to most recently certified comprehensive plan, if available:

If a link to the plan is not available, you must submit a copy of your plan with this application for a Pre-Update Review or a Comprehensive Plan Amendment.

<https://sussexcountye.de.gov/sites/default/files/PDFs/2018CompPlan-Final.pdf>

**Preliminary Land Use Service (PLUS) Application
Pre-Update Review Request
Municipal Comprehensive Plans
Comprehensive Plan Amendments
Municipal Ordinances**

Delaware Office of State Planning Coordination

122 Martin Luther King Jr. Blvd., South • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-5661

SECTION 1: MUNICIPAL INFORMATION

Name of Municipality: Sussex County	
Address: Sussex County Administrative Offices PO Box 589 Georgetown, DE, 19947	Contact Person: Jamie Whitehouse, Director of Planning & Zoning
	Phone Number: 302-855-7878
	Fax Number:
	E-mail Address: jamie.whitehouse@sussexcountyde.gov

Application prepared by:	
Address: As above	Contact Person:
	Phone Number:
	Fax Number:
	E-mail Address:

**Preliminary Land Use Service (PLUS) Application
Pre-Update Review Request
Municipal Comprehensive Plans
Comprehensive Plan Amendments
Municipal Ordinances**

Delaware Office of State Planning Coordination

122 Martin Luther King Jr. Blvd., South • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-5661

**SECTION 2. COMPREHENSIVE PLAN AMENDMENT OR MUNICIPAL
ORDINANCE DESCRIPTION**

Please describe the submission.

Summary: This is a request to consider the potential amendment of the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel No's 235-23.00-1.00 and 235-23.00-2.02. The location of the amendment is shown in Appendix/Exhibit A.

Background: On February 25, 2021, the Sussex County Planning & Zoning Department received a written request to consider the potential amendment of the Future Land Use Map. The Property is designated as being within the Low Density Area as set forth in the Future Land Use Map identified as Figure 4.5-1 in the Plan.

Sussex County Council wishes to consider the potential amendment of the Future Land Use Map of the Comprehensive Plan to change the area designation of Sussex County Parcel. No's 235-23.00-1.00 and 235-23.00-2.02 as shown in Appendix/Exhibit A, from the Low Density Area to the Coastal Area.

The parcels are located on the north side of SR.1 opposite the intersection of Cave Neck Rd (SCR. 88) and SR. 1. The combined area of the parcels is 415 Acres, more or less.

The County is requesting that the potential amendment of the Future Land Use Map be considered for review at the June 2021 PLUS meeting.

Exhibit A : Potential
Comprehensive Plan Amendment



Sussex County

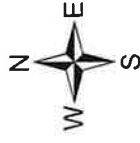
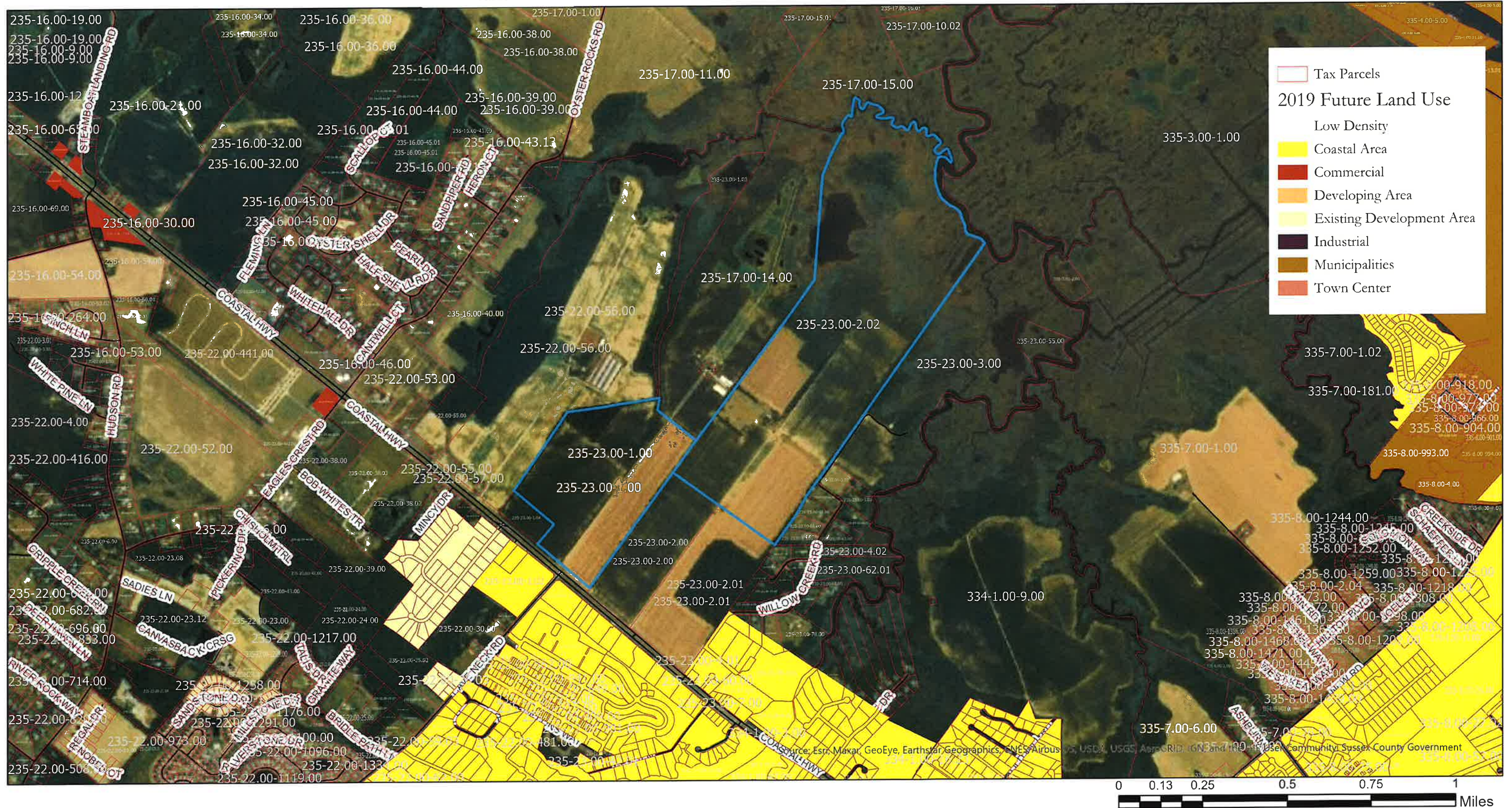
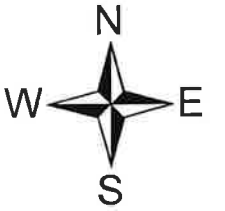


Exhibit A : Potential
Comprehensive Plan Amendment



Sussex County



TAB “5”

**Preliminary Land Use Service (PLUS) Application
Pre-Update Review Request
Municipal Comprehensive Plans
Comprehensive Plan Amendments
Municipal Ordinances**

Delaware Office of State Planning Coordination

122 Martin Luther King Jr. Blvd., South • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-5661

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REQUESTED REVIEW: Check one

Comprehensive Plan Pre-Update Review
Complete Sections 1 and 3 only

☐

Comprehensive Plan or Update
Complete Sections 1 and 3 only

☐

Comprehensive Plan Amendment
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Municipal Ordinance Review
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☐

Date of most recently certified comprehensive plan:

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**Preliminary Land Use Service (PLUS) Application
Pre-Update Review Request
Municipal Comprehensive Plans
Comprehensive Plan Amendments
Municipal Ordinances**

Delaware Office of State Planning Coordination

122 Martin Luther King Jr. Blvd., South • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-5661

SECTION 1: MUNICIPAL INFORMATION

Name of Municipality: Sussex County	
Address: Sussex County Administrative Offices PO Box 589 Georgetown, DE, 19947	Contact Person: Jamie Whitehouse, Director of Planning & Zoning
	Phone Number: 302-855-7878
	Fax Number:
	E-mail Address: jamie.whitehouse@sussexcountysde.gov

Application prepared by:	
Address: As above	Contact Person:
	Phone Number:
	Fax Number:
	E-mail Address:

**Preliminary Land Use Service (PLUS) Application
Pre-Update Review Request
Municipal Comprehensive Plans
Comprehensive Plan Amendments
Municipal Ordinances**

Delaware Office of State Planning Coordination

122 Martin Luther King Jr. Blvd., South • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-5661

**SECTION 2. COMPREHENSIVE PLAN AMENDMENT OR MUNICIPAL
ORDINANCE DESCRIPTION**

Please describe the submission.

Summary: This is a request to consider the potential amendment of the Future Land Use Map of the Comprehensive Plan in relation to Tax Parcel No's 235-23.00-1.00 and 235-23.00-2.02. The location of the amendment is shown in Appendix/Exhibit A.

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Exhibit A : Potential
Comprehensive Plan Amendment

Sussex County

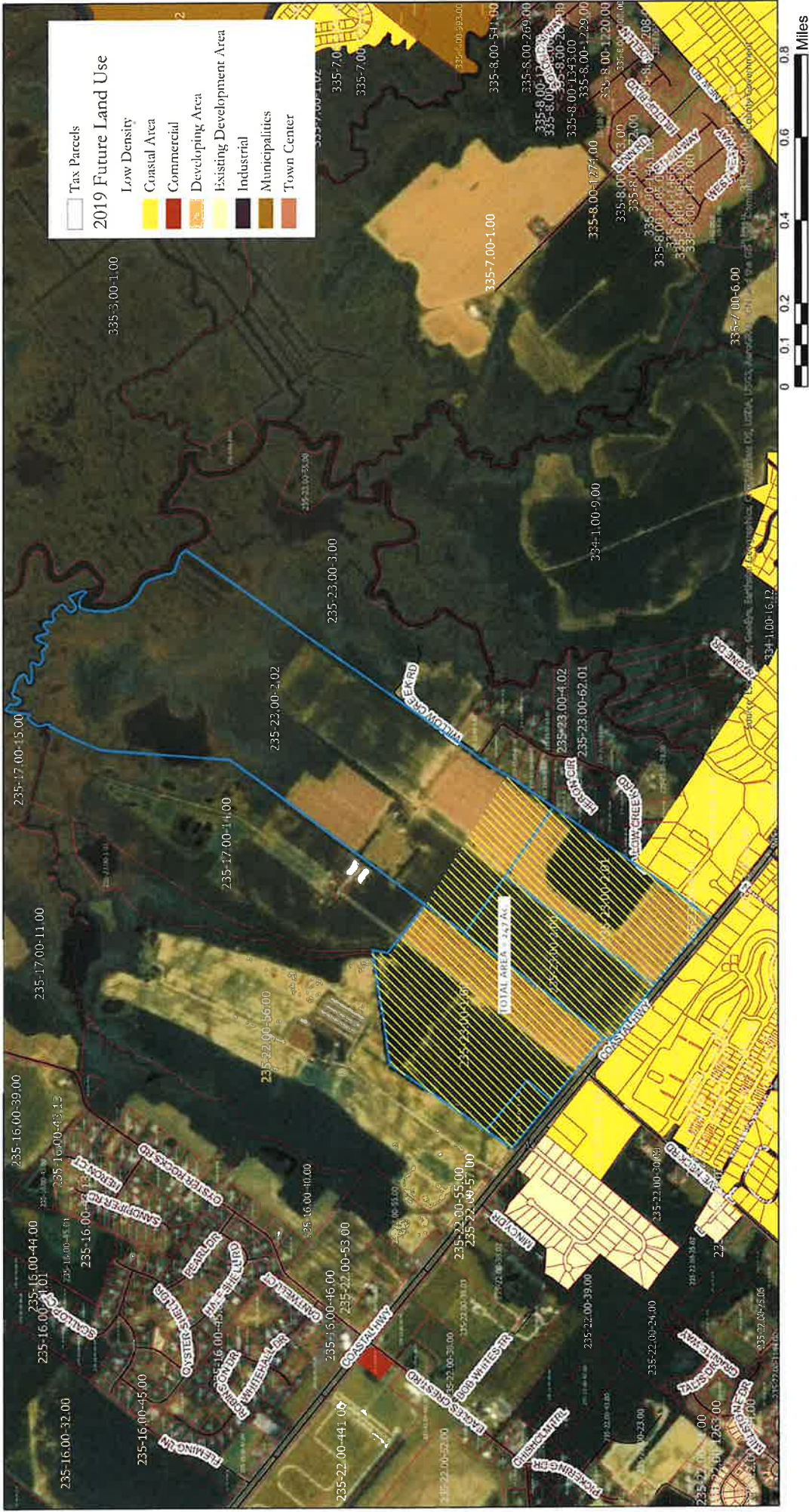
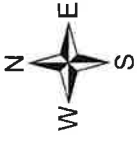
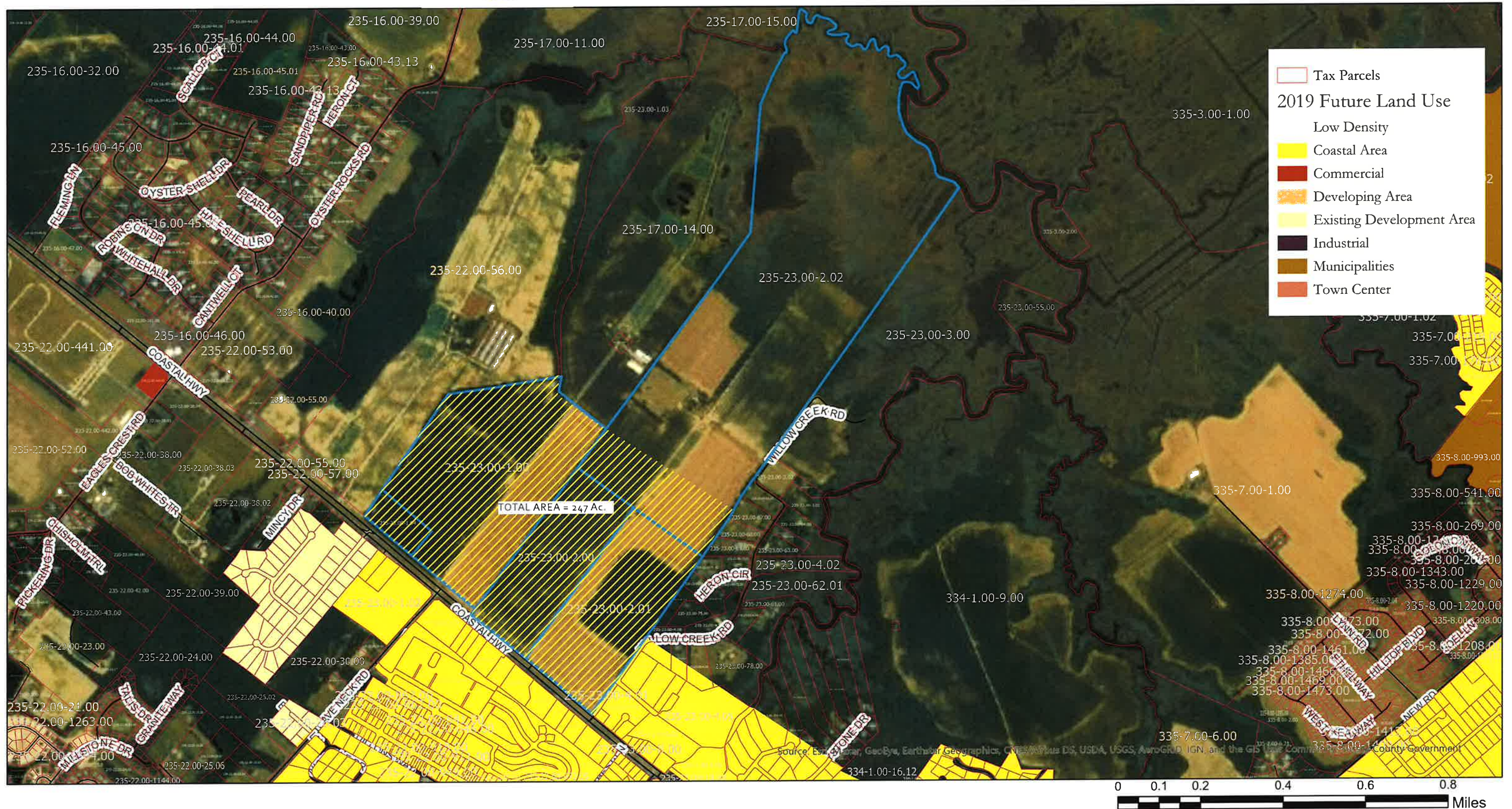
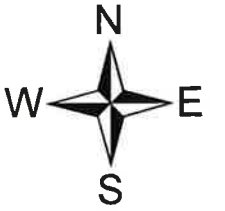


Exhibit A : Potential
Comprehensive Plan Amendment



Sussex County



Morris James_{LLP}

David C. Hutt
302.856.0018
dhutt@morrisjames.com

February 25, 2021

Via: Hand Delivery and Email (jamie.whitehouse@sussexcountyde.gov)

Jamie Whitehouse, Director
Sussex County Planning & Zoning Office
2 The Circle, P.O. Box 417
Georgetown, DE 19947

**RE: 2018 Comprehensive Plan, 2045 Future Land Use Map
SCTP No.: 235-23.00-1.00, 1.04 & 2.02**

Dear Mr. Whitehouse:

I am writing to follow-up on our conversation about the above-referenced properties. As you may recall, by letter dated December 29, 2020 the Chappell and Robinson families sent a letter to County Council and the County Administrator regarding the future land designation of their properties on the Future Land Use Map. A copy of that letter is enclosed for your ready reference. Stated more precisely, the letter describes their surprise and frustration regarding the change in their properties' designation from prior iterations of the Future Land Use Map.

As indicated in the prior letter, the change to their properties' designation came to light during the sale of parcel 235-23.00-1.00. The sale of that parcel has been completed and I represent the current owners of that parcel (Seaside Lewes, LLC and Derrickson Properties, LLC as well as the Robinson family which owns parcel 235-23.00-2.02). These owners request the restoration of their properties former designation on the Future Land Use Map so their properties are within the Coastal Area as previously recommended by County Council and the Planning Commission.

To facilitate the process, my clients and I request a meeting with you. In addition, please advise if the County has a more formal application that is needed in order for this request to be reviewed by County Council. We look forward to meeting with you and discussing this restoration of their properties prior designation on the Future Land Use Map.

Very Truly Yours,

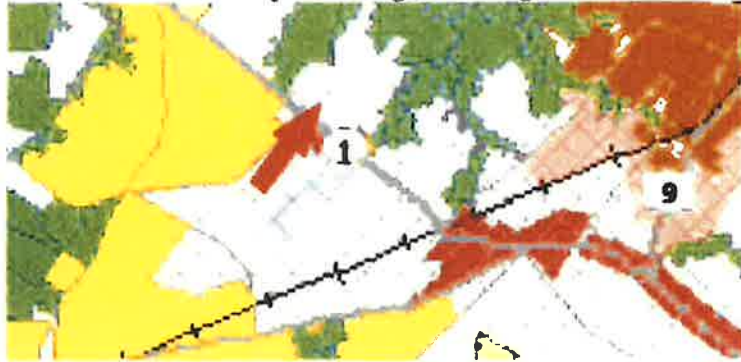
MORRIS JAMES LLP


David C. Hutt, Esquire

Enclosure

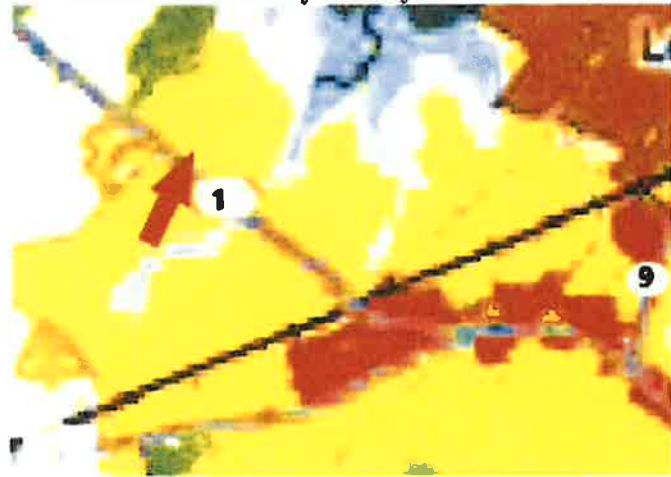
Cc: Honorable Mark G. Schaeffer (via email)

TABLE 1
2018 Comprehensive Plan – as recommended by Planning & Zoning Commission



The area where the Properties are located is indicated with a red arrow.

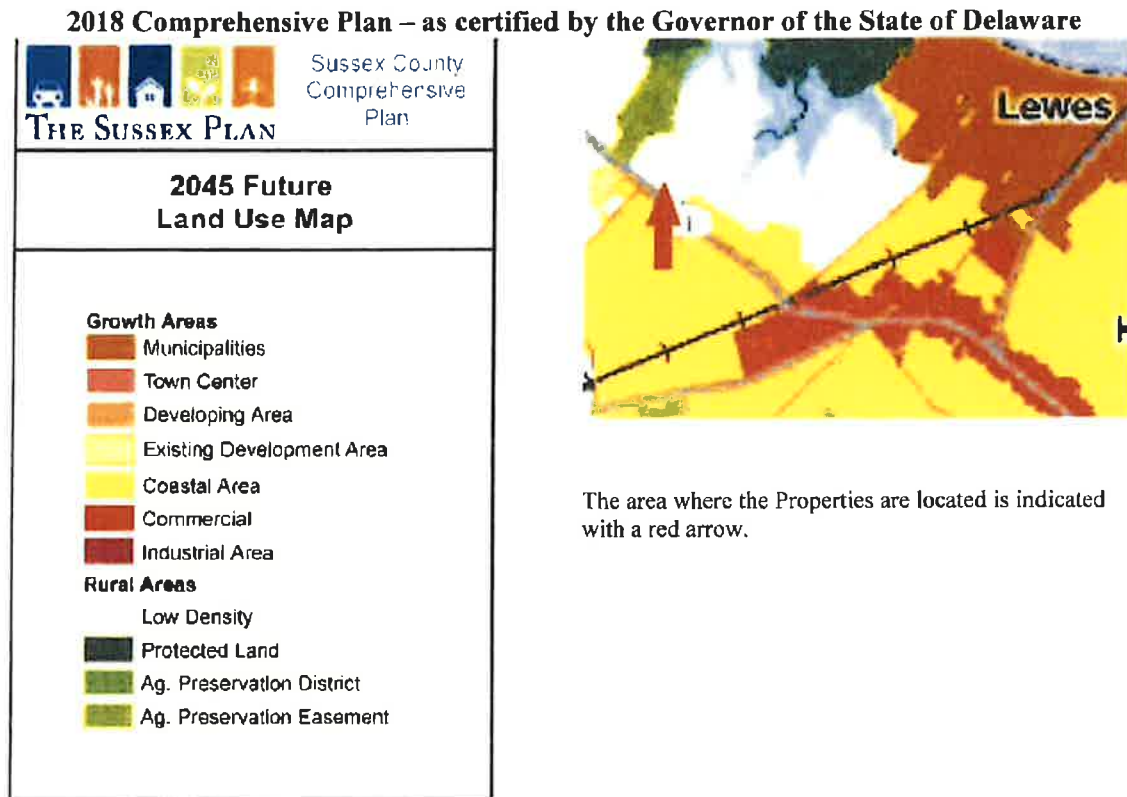
TABLE 2
2018 Comprehensive Plan – as recommended by County Council



The area where the Properties are located is indicated with a red arrow.

Based on these recommended versions as they were presented to the public, you can imagine our surprise when it was brought to our attention that County Council ultimately submitted a Comprehensive Plan update with a Future Land Use Map to the Governor placing the Properties in the Low Density designation, not a Growth Area as previously indicated. The version ultimately submitted and certified by the Governor is shown below in Table 3.

TABLE 3



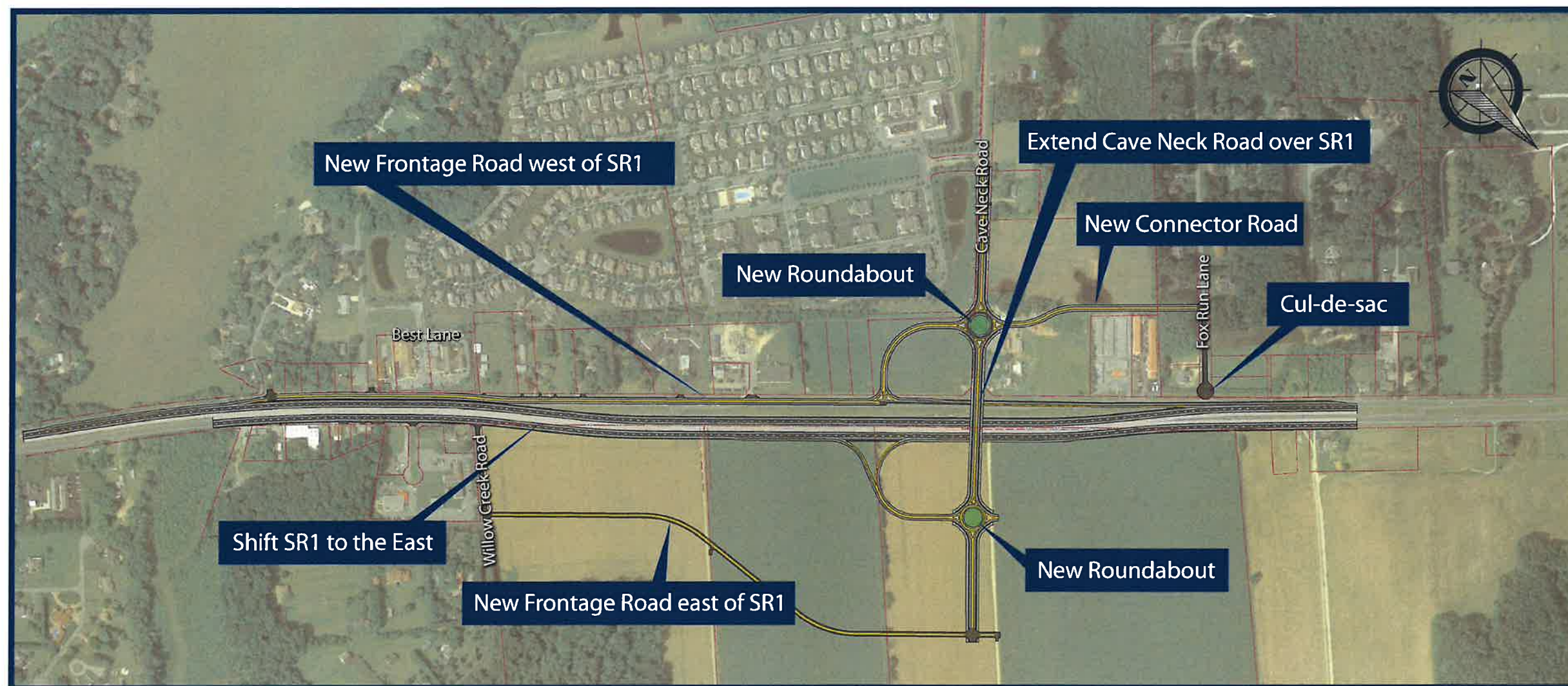
Unfortunately, this surprising change of designation only recently come to our attention as the Chappells prepared to sell the Chappell Property. Through further research and investigation, we learned that the County held a public hearing for comment on the version of the Comprehensive Plan recommended by County Council (Table 2) on October 23, 2018. At the October 23rd public hearing, several speakers were heard including requests to change the Future Land Use Map for specific properties. Our Properties were not mentioned or discussed during that public hearing and the public hearing and record on the County's 2018 Comprehensive Plan update was closed.

Unbeknownst to us, at the next meeting former County Councilman George Cole unilaterally raised the issue of our Properties (among others) to be removed from one of the County's Growth Areas. Specifically at 45:35 of the second audio file on the County's website,

TAB “6”

SR1 and Cave Neck Road Intersection

Selected Alternative



TAB “7”



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

July 22, 2021

Jamie Whitehouse, AICP
Director, Department of Planning & Zoning
Sussex County
2 The Circle
P.O. Box 417
Georgetown, DE 19947

RE: PLUS review 2021-06-12; Sussex County Comprehensive Plan Amendment

Dear Mr. Whitehouse:

Thank you for meeting with State agency planners on June 23, 2021 to discuss the proposed Comprehensive Plan Amendment for Sussex County. This proposed amendment would amend the Future Land Use Map for 2 parcels from the Low Density Area to the Coastal Area.

Please note that additional changes to the plan could result in additional comments from the State. Additionally, the comments below reflect only issues that are the responsibility of the agencies that were represented at the meeting.

Office of State Planning Coordination – Contact Dorothy Morris 739-3090

Parcel 235-23.00-1.00 has been seen through PLUS on several occasions for both residential and commercial use. These projects were active during the Sussex County Comprehensive Plan and the 2020 Strategies for State Policies and Spending in which Sussex County was involved and commented. This parcel is within a Level 4 area according to the 2020 Strategies for State Policies and Spending and low density in the SC plan for several reasons including, but not limited to:

- Parcel 1.00 is subject to the Corridor Capacity Preservation program
- These properties border Out of Play land such as the Cedar Trees Farm District.
- There are significant environmental features contiguous to this site plan including tidal wetlands.
- These parcels are not close to public services such as water, sewer, police, fire, and schools.

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Phone (302)739-3090 · Fax (302) 739-5661 · www.stateplanning.delaware.gov

These parcels consist of approximately 415 acres that would be amended from Low density to Coastal area. Amending the comp plan to designate these parcels as coastal would open up a large number of options for the zoning of this property. In the low density area the owners are allowed a maximum of 2 units per acre where in the Coastal area the density could go as high as 12 units per acre and could allow heavy commercial uses. These uses would be away from public utilities and services.

The Sussex County certification letter dated April 1, 2019 stated the Sussex County comprehensive plan was certified, provided no major changes are enacted. It is the opinion of the Office of State Planning that this change would constitute a major change to the currently certified comprehensive plan and this office, for the reasons stated in this letter, objects to the comprehensive plan amendment.

29 Delaware Code §9103(d) states:

Should the Office of State Planning Coordination make objection to any proposed comprehensive plan or amendments or revisions thereto, then the Office of State Planning Coordination shall immediately enter into negotiation with the county or municipality in an attempt to solicit agreement and resolution. Any agreements reached during these negotiations shall be incorporated into the public record and considered by the governing body prior to final action on the comprehensive plan. If the Office of State Planning Coordination and the county or municipality fail to reach agreement after a period of 45 days, the Office of State Planning Coordination shall report the extent of agreement and areas of continued disagreement to the Cabinet Committee on State Planning Issues for dispute resolution.

This letter serves as our intent to begin the 45 day negotiation period. We will contact the County in the coming days to set up a meeting to discuss our objections and determine the ability to reach an agreement.

Department of Transportation – Contact Bill Brockenbrough 760-2109

- This amendment would facilitate developments known collectively Overbrook Meadows or successors thereto. In September 2014, DelDOT provided comments on a Traffic Impact Study for a commercial development, Overbrook Town Center, which Overbrook Meadows later replaced. Copies of those comments are available at https://deldot.gov/Business/subdivisions/index.shtml?dc=Traffic_Studies
- DelDOT is presently developing plans for a Grade Separated Intersection at this location. Information on that effort is available at <https://deldot.gov/projects/index.shtml?dc=details&projectNumber=T201912201>

Department of Natural Resources and Environmental Control – Beth Krumrine 735-3480

- DNREC reviewers are not in support of this change due to the parcels lying within areas designated as Out of Play and Level 4 by the Delaware Strategies for State Policies and Spending. In addition, these parcels contain environmental features that are inconsistent with more intensive development. In Low Density areas, a maximum of 2 units per acre are allowed; in the Coastal Areas, up to 12 units per acre are allowed, in addition to heavy commercial uses.
- An analysis of historical data indicates that the northern portion of parcel 235-23.00-2.02 and the small, forested portion on the northern edge of parcel 235-23.00-1.00 have likely maintained some degree of forest cover since 1937. Mature forests possess the potential for rare, threatened, or endangered species that rely on this type of habitat.
- Groundwater Recharge Areas are located on parcels 235-23.00-1.00 and 235-23.00-2.02. These areas have soils that are conducive to water infiltrating downward from surface water into groundwater. Preservation of these areas is important for replenishing groundwater supplies and ensuring drinking water for future generations.
- Freshwater and marine wetlands are present on the northern half of parcel 235-23.00-2.02 and lie within the Great Marsh Natural Area and the Delaware Ecological Network. Natural Areas contain lands of statewide significance identified by the Natural Areas Advisory Council as the highest quality and most important natural lands remaining in Delaware. The Delaware Ecological Network consists of lands having significant ecological value. Forest disturbances in these areas will jeopardize habitat on the parcel and possibly beyond the parcel's boundary.
- There is an active Bald Eagle (*Haliaeetus leucocephalus*) nest within parcel 235-23.00-2.02. Bald eagles and their nests are protected under the federal Bald and Golden Eagle Protection Act (BGEPA). Additionally, the nest itself is protected by state law (7 Del. C. § 739).
- The following plants or animals are listed as State of Delaware rare, threatened, or endangered species, which have been documented within the project area.
 - The Broad-winged Hawk (*Buteo platypterus*) is a bird listed under State Rank S1B, State Status E, and SGCN Tier 1.
 - The Northern Harrier (*Circus cyaneus*) is a bird listed under State Rank S1B, State Status E, and SGCN Tier 1.
 - The Great Black-backed Gull (*Larus marinus*) is a bird listed under State Rank S1B and SGCN Tier 1.

- The Black-necked Stilt (*Himantopus mexicanus*) is a bird listed under State Rank S2B and SGCN Tier 1.

Please visit the following website for definitions on the specified State Rank, State Status, and SGCN Ranking:

<https://www.dnrec.delaware.gov/fw/NHESP/Documents/Status%20Ranks%20April%202013.pdf>

- The project lies within a zone that will be affected by mosquitoes due to its location near large expanses of freshwater and estuarine wetlands. Mosquito control issues are increasing as developments infringe on wetland areas, often leading to increased demands for mosquito control services beyond what DNREC has the resources to provide.

State Historic Preservation Office – Contact Carlton Hall 736-7400

Tax Parcel# 235-23.00-1.00

- Prehistoric archaeological potential is moderate throughout the parcel. The parcel is mostly well-drained soils, but it is just on the edge of favorable distance to a historic water source. There is one comparable site along another arm of Fisher Creek, next to the one that extends towards this parcel.
- Historic archaeological potential is low. No indication through historic maps or aerials that there were any structures etc. on the land, and adjacent parcels are vacant as well.

Tax Parcel# 235-23.00-2.02

- Prehistoric archaeological potential is low in northern half of the parcel due to poorly drained soils. However, there are higher points in the topography within favorable distance to one of the arms of Old Mill Creek and overlooking the marshland, which is highly favorable for prehistoric archaeological sites. The Delaware SHPO recommends a Phase I survey.
- Historic archaeological potential is high near the farmstead and there is potentially a cemetery there. There also appears to be another farmstead on the property east of the currently existing farmstead. The Delaware SHPO would highly recommend a survey of that area.
- If any project or development proceeds, the developer should be aware of the Unmarked Human Burials and Human Skeletal Remains Law (Del. C. Title 7, Ch. 54).
- If there is federal involvement, in the form of licenses, permits, or funds, the federal agency, often through its client, is responsible for complying with Section 106 of the National Historic Preservation Act (36 CFR 800) and must consider their project's effects on any known or potential cultural or historic resources. For further information on the Section

106 process please review the Advisory Council on Historic Preservation's website at:
www.achp.gov

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

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Edgell', written in a cursive style.

David L. Edgell, AICP
Director, Office of State Planning Coordination