

Sussex County Council Public/Media Packet

**MEETING:
March 22, 2022**

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**Sussex County Council
2 The Circle | PO Box 589
Georgetown, DE 19947
(302) 855-7743**

COUNTY COUNCIL

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



Sussex County

DELAWARE
sussexcountyde.gov
(302) 855-7743

SUSSEX COUNTY COUNCIL

A G E N D A

MARCH 22, 2022

10:00 A.M.

Call to Order

Approval of Agenda

Approval of Minutes – March 8, 2022

Reading of Correspondence

Public Comments

Todd Lawson, County Administrator

1. Administrator's Report

Karen Brewington, Human Resources Director

1. First Quarter Employee Recognition Awards

Hans Medlarz, County Engineer

1. Center for Inland Bays
 - A. Lighthouse Road Phase I
2. Reaffirmation of Weston Solutions, Inc. as Landfill Professional Services Firm



3. EMS Public Safety Building, Project C19-04

A. Change Order No. 11

B. Temporary LP Gas Service

John Ashman, Senior Manager of Utility Planning & Design Review

1. Request to Prepare and Post Notices

A. Brookland Farm Annexation into the Sussex County Unified Sanitary Sewer District (Johnson's Corner Area)

B. The Knoll Annexation into the Sussex County Unified Sanitary Sewer District (Holt's Landing Area)

Robert Bryant, Airport Manager

1. Schell Aviation Ground Lease Agreement for Lots A & B

10:30 a.m. Public Hearing

1. "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$7,788,761 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE LONG NECK COMMUNITIES SEPTIC ELIMINATION PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH"

Old Business

1. "AN ORDINANCE TO AMEND CHAPTER 99, SECTIONS 99-5, 99-6, 99-7, 99-23, 99-24, 99-26, AND 99-30, AND CHAPTER 115 SECTIONS 115-4, 115-25, 115-193, 115-220 AND 115-221 REGARDING CERTAIN DRAINAGE FEATURES, WETLAND AND WATER RESOURCES AND THE BUFFERS THERETO"

Grant Requests

- 1. Cape Henlopen Senior Center for Rehoboth Concert Band Fundraiser**
- 2. Cape Henlopen School District for H.O. Brittingham Elementary School's Robotics Program**
- 3. Friends of the Georgetown Public Library, Inc. for the Annual 5K Race fundraiser to supplement library program operating costs**
- 4. Mariner Middle School for Business Professionals of America for conference expenses**
- 5. Pop Warner Little Scholars, Inc. for the Woodbridge Football Youth Football Association's equipment, uniform expenses, snacks, and sanitizing needs**

Introduction of Proposed Zoning Ordinances

Council Members' Comments

Executive Session – Pending/Potential Litigation, Personnel and Land Acquisition pursuant to 29 Del.C.§10004(b)

Possible action on Executive Session items

1:30 p.m. Public Hearings

Conditional Use No. 2288 filed on behalf of Broom Solar Partners, LLC

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 72.00 ACRES, MORE OR LESS” (property lying on the north side of Frankford School Road [S.C.R. 92] approximately 0.55 mile west of Pyle Center Road [S.C.R. 20]). (911 Address: N/A) (Tax Parcel: 533-5.00-47.00)

Conditional Use No. 2284 filed on behalf of Eastern Shore Natural Gas Company

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE EXPANSION OF CU 889 (ORDINANCE NO. 536) FOR PUBLIC UTILITIES OR PUBLIC SERVICES USES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 29.98 ACRES, MORE OR LESS” (property being a landlocked parcel accessed off Emma Jane Lane, approximately 0.33 mile south of E. Newton Road [S.C.R. 584]) (911 Address: 17019, 17025, 17035 & 17041 Black Cherry Drive, Bridgeville) (Tax Parcel: 131-10.00-99.00)

Conditional Use No. 2305 filed on behalf of Barnhill Preserve of Delaware, LLC

“AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A ZOOLOGICAL PARK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 7.24 ACRES, MORE OR LESS” (property lying on the northeast side of Peppers Corner Road [S.C.R. 365], approximately 0.61 mile southeast of Roxanna Road [Route 17]). (911 Address: 34215 Peppers Corner Road, Frankford) (Tax Parcel: 134-15.00-124.00)

Adjourn

-MEETING DETAILS-

In accordance with 29 Del.C. §10004(e)(2), this Agenda was posted on March 15, 2022 at 4:30 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, MARCH 8, 2022

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 8, 2022, at 10:00 a.m., in Council Chambers, with the following present:

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

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

**Call to
Order**

Mr. Vincent called the meeting to order.

**M 107 22
Approve
Agenda**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer, to amend the Agenda by deleting “First Quarter Employee Recognition Awards”, and 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 of the March 1, 2022 meeting were approved by consensus.

**Corres-
pondence**

There was no correspondence.

**Public
Comment**

Mr. Henry Clum, Vice-President of DE Manufacturing Homeowners Association spoke about manufactured housing, sewage and drinking water concerns in Sussex County.

**Adminis-
trator’s
Report**

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

1. Project Receiving Substantial Completion

Per the attached Engineering Department Fact Sheet, The Estuary – Phase 3G (Construction Record) received Substantial Completion effective February 17th.

**Adminis-
trator's
Report
(continued)**

2. Council Meeting Schedule

A reminder that Council will not meet on Tuesday, March 15th. The next regularly scheduled Council meeting will be held on Tuesday, March 22nd, at 10:00 a.m.

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

**ARPA
Discussion
&
Recommen-
dation**

Mrs. Jennings explained that in March of 2021, Congress passed the American Rescue Plan of 2021 (ARPA) into law, which established the Coronavirus State and Local Fiscal Recovery Fund. This fund is to be used to help local governments nationwide with COVID-19 pandemic recovery assistance.

Sussex County will receive a total of \$45,495,460 in direct appropriations from the U.S. Treasury. The County received \$22,747,730 on May 17, 2021. The County will receive the 2nd half in May of 2022. All funds must be encumbered by December 31, 2024.

Mrs. Jennings provided the eligible uses for the funding:

- **Replace Public Sector Revenue Loss**
- **Support the Public Health Response to COVID-19**
- **Address the Negative Economic Impacts of COVID-19**
- **Offer Premium Pay for Essential Workers**
- **Invest in Water, Sewer, and Broadband Infrastructure**

Mrs. Jennings explained that each government can do a calculation to determine how much they lost during the COVID-19 timeframe or can take off a \$10 million revenue loss allowance. These funds are to be used for government services traditionally provided by the government. The funds cannot be used for rainy day funds, debt service, additional pension contributions or any activity that would conflict with the ARPA statute.

Mrs. Jennings discussed the public health response to COVID-19. This details information relating to COVID-19 prevention and treatment type of responses.

The next category addresses the negative economic impact that affected households, small businesses, non-profits, and industries. Within each of those categories, there are definitions of what qualifies that a household or small business has been impacted. For impacted households, the income would be at or below 65 percent of area median income (AMI). In addition, you can use the 300% of the federal poverty level which is \$65,880 for a family of three people. For Sussex County, a family of three at a 65 percent calculation, would equal an income of \$43,983. Additionally, there is a category for disproportionately impacted household; this includes income at

**ARPA
Discussion
&
Recommendation
(continued)**

or below 40 percent of area median income. You could also presume any household of three earning below \$40,626 is disproportionately impacted and eligible for services (185% of the Federal Poverty Level). Mrs. Jennings plans to use the impacted household figures with her recommendations.

Once an impacted group is determined, the funds can be used for certain items. For impacted households, the eligible uses include:

- Food assistance and food banks
- Emergency housing assistance
- Health insurance coverage
- Benefits for surviving family members
- Burials, home repairs, and home weatherization
- Cash assistance
- Childcare services
- Assistance to address the impact of early learning loss

For disproportionately impacted households funds are eligible for:

- Remediation of lead paint or other hazards
- Investments in medical facilities and equipment
- Housing vouchers and assistance relocating to neighborhoods with higher economic opportunity
- Investments in neighborhoods to promote improved outcomes
- Improvements to vacant/abandoned properties
- School and other educational equipment and facilities

For an impacted small business, they must have no more than 500 employees, be independently owned, and operated, and not dominate in its field of operation to quality. In addition, they must have had decreased revenue or gross receipts, increased costs and challenges covering payroll, rent, mortgage, and other operating costs. Eligible uses include loans or grants to mitigate financial hardship and technical assistance, counseling, or other services to support business planning.

An impacted nonprofit must be a 501(c)(3) or 501(c)(19), had decreased revenue, increased costs, financial insecurity, and challenges covering payroll, rent, mortgage and other operating costs. Impacted industries shall be a travel, tourism, or hospitality sector. In addition, they should be an industry that experienced at least 8 percent employment loss from pre-pandemic levels. Eligible uses for the funds include loans or grants to mitigate financial hardship and technical assistance that mitigates negative economic impacts of the pandemic.

Mrs. Jennings stated that Counties may use Recovery Funds to restore and bolster public sector capacity, which supports government's ability to deliver critical COVID-19 services. These services include:

**ARPA
Discussion
&
Recommendation
(continued)**

- **Payroll and covered benefits for public safety employees**
- **Rehiring public sector staff to pre-pandemic levels or above pre-pandemic levels (7.5 percent growth); based on employment levels as of January 27, 2020 (30 additional SC employees could be paid by ARPA)**
- **Provide worker retention incentives**
- **Invest in additional technology infrastructure to adapt government operations to the pandemic (video-conferencing software)**

Mrs. Jennings shared information relating to capital expenditures; capital projects must be related to public health and/or negative economic impacts and be proportional to the pandemic impact identified. To ensure the expenditure is eligible, counties are required to write a written justification which includes the following:

- **Description of harm or need to be addressed**
- **Explanation of why the capital expenditure is appropriate (i.e., why existing resources are inadequate)**
- **Comparison of proposed capital expenditure project against at least two alternative capital expenditures and why the proposed capital expenditures is superior.**

Mrs. Jennings provided the information relating to eligibility for Premium Pay for Essential Workers. The eligibility requirements are as follows:

- **Essential workers who face heightened risks of COVID-19 due to the character of their work**
- **Work involving regular in-person interactions and was not able to be performed from a residence**
- **Any work performed by an employee of the state or local government**
- **Treasury urges that priority is placed on low-moderate-income persons.**

She added that premium pay could be up to \$13.00 per hour.

Mrs. Jennings discussed water, sewer, and broadband eligibility requirements. For water, stormwater, and sewer infrastructure to be eligible, it must align with the EPA's Clean Water State Revolving Fund and Drinking Water State Revolving Fund. In addition, it must improve or build wastewater treatment plants, control non-point sources of pollution, improve resilience of infrastructure to severe weather events or assist water systems most in need on a per household basis according to State affordability criteria. Broadband infrastructure must provide services that meet at least 100 megabits per second download.

Mrs. Jennings provided the recommendation goals. The goals are as follows:

**ARPA
Discussion
&
Recommendation
(continued)**

- **Projects that meet ARPA requirements**
- **Projects that can be completed or under contract by December 31, 2024**
- **Do not “grow” government with these temporary funds**
- **Do not invest in something that cannot be supported after the funds are gone**
- **Strengthen the programs/services that are already in place**
- **Align the recommendations with Council priorities**
- **Affordable Housing**
- **Adequate Infrastructure – Sewer and I.T.**
- **Do not duplicate what has already been done or will be done**

Mrs. Jennings showed information about the County services that are already in place and the funding that will be allocated to each service.

Mrs. Jennings further discussed the affordable housing recommendation that will utilize the current Housing Trust Fund program endorsed by Council and will expand its reach. The current program provides direct buyer assistance in the amount of \$10,000 if income is under 80% AMI. For the development loan fund, it is \$100,000 a project or \$10,000 a unit with a cap of \$100,000. Funds are available once a year consisting of a 5-year loan with 0% interest. In addition, there is a deed restriction placed on the property consisting of 20-year affordability or 30-year affordability for rentals. The proposed program allows a direct buyer assistance as follows: 100%-120% AMI - \$10,000, 66%-99% AMI - \$20,000 and 65% AMI and under - \$30,000. A development grant fund is being proposed that would provide \$500,000 a project or \$50,000 a unit with a cap of \$500,000. Funds could be available a second year if activity warrants it. The deed restriction would be 20-year affordability or 30-year affordability for a rental. Mrs. Jennings explained that the change is that the proposed program is a grant rather than a loan. However, it is still deed restricted and the applicant would still need to send in the proper paperwork to verify their eligibility.

Mr. Vincent asked why the program would go from a loan to a grant. Mrs. Jennings explained that it relates to ARPA funds. To do a loan, there are a lot more restrictions and reporting requirements that will live on for many years to come. Once the ARPA funds are spent, they are gone. In addition, concerns were raised from Affordable Housing groups when the loan fund was rolled out. They had concerns that in five years, they would not be able to pay off the loan. Mrs. Jennings further explained that this is only for the ARPA period, it will probably go back to a loan after that timeframe.

Mrs. Jennings shared additional low-income services included in the recommendation. The recommendations are as follows:

- **Increase the allowance from \$7,500 to \$10,000**
- **New roof replacement program – higher threshold; contractors have been able to keep up with these**

**ARPA
Discussion
&
Recommendation
(continued)**

- **New “weatherization” program – completed for finished jobs or jobs in the pipeline (window or door replacements)**
- **Additional funds to help homeowners connecting to our water districts – 65% of AMI or below**
- **Low-income program for delinquent taxes – 65% of AMI or below (people don’t qualify for the above because of taxes they owe)**
- **Low-income program for connection fees – 65% of AMI or below**

It is being recommended to hire one additional person per shift for the EMS and EOC departments to get through COVID; this would mean four additional people per department. If positions are still needed after funding is exhausted, RTT is eligible to be used.

Mrs. Jennings explained the eligible uses and restrictions for the grant program. The recipients must respond to public health emergencies and the negative economic impacts related to the public health emergency. The program is not eligible for affording housing. Only non-profits are eligible for projects of \$500,000 or greater. In addition, they must be able to meet the compliance and reporting requirements of the U.S. Treasury online application process with first round being due April 29th.

Mrs. Jennings provided the steps for the grant program if approved. She noted that all awards through the non-profit grant program, intergovernmental grant program, and the affordable housing grant fund will be brought to Council for a vote.

The first grant request; Intergovernmental Grant was then presented. This is a statewide substance use disorder needs assessment which will be broken down by County that will look into how COVID-19 influenced substance abuse in our communities. The total cost is \$445,097; Kent and Sussex are being asked to contribute \$75,000 each. The project will be coordinated through New Castle County Government. There are two town hall meetings on this initiative scheduled for March 15, 2022, at Delaware Tech in Georgetown.

Mr. Rieley asked what type of data will come back from this study. Mr. Lawson read the scope of work that was used during the RFP process. Mr. Rieley questioned if the data would be shared once the study is completed. Mrs. Jennings replied yes; once completed, it will be a public document.

Mrs. Green asked if the assessment includes the suicide issues that have come along with COVID and substance abuse. Mrs. Jennings replied that if it relates to substance abuse it would be included.

**M 108 22
ARPA
Funding
Approval**

A Motion was made by Mr. Schaeffer, seconded by Mr. Hudson, that be it be moved that the Sussex County Council approves a grant of \$75,000 from its ARPA funding to New Castle County for the purposes of supporting a statewide substance use disorder needs assessment.

**M 108 22
ARPA
Funding
Approval
(continued)**

Motion Adopted: 5 Yeas.
**Vote by Roll Call: Mrs. Green, Yea; Mr. Schaeffer, Yea;
Mr. Hudson, Yea; Mr. Rieley, Yea;
Mr. Vincent, Yea**

**Financial
Transpar-
ency
Website**

Mrs. Jennings shared a new financial transparency website. This will allow residents the ability to see the County's financial data in real-time. It is hoped that the public will use this website, not only to see how the County spends its everyday tax dollars, but also track how the County is spending the \$45.5 million in ARPA funds.

**SC WRF &
RB WTP/
Project C19-
11/CO No.
20**

Mr. Medlarz presented Change Order No. 20 for the South Coastal WRF Treatment Process Upgrade No. 3 & Rehoboth Beach WTP Capital Improvement Program, Phase 2., Project No, C19-11 for Council's consideration. This Change Order includes replacement of the Inland Bay Screens and Masonry Modifications.

**M 109 22
Approve CO
No.20/
Project C19-
11**

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, that be it be moved based on the recommendation of the Sussex County Engineering and Finance Departments, that Change Order No. 20 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 \$260,844.17.

Motion Adopted: 5 Yeas.

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

**Interna-
tional
Building
Code
Discussion**

Mr. Andy Wright, Chief of Building Code presented information for Council's consideration for adoption of a new version of the International Building Code (IBC) and International Residential Code (IRC). Currently, the County uses the 2012 edition. Mr. Wright noted that these are published every three years. Over the past year, inquires have been received from builders asking if Sussex County would consider adopting the newer Codes.

Mr. Wright outlined the significant changes between the 2012 and 2021 editions of the IRC.

The grade floor emergency escape and rescue opening (Definition R 202) requirements are the same. However, it now requires the measurement to be taken from the clear opening and not the sill height.

The wind design criteria change the current basic design wind speeds of 100 to less than 110 mph to the ultimate design wind speeds of 115 to less than 130 mph. There are no new requirements needed.

International Building Code Discussion (continued)

For the dwelling/garage opening protection section, the self-closing device must be adjusted strong enough to bring the door to a close and self-latch.

The code has deleted the requirement of one habitable room to have a minimum floor area of 120 square feet and will now require all habitable rooms to be only 70 square feet in area.

For hazardous locations (glazing and wet surface), the measuring in a straight line has been deleted from the exception. The code now would require any glazing within 60 inches horizontally, from the water's edge of a bathtub, hot tub, spa, whirlpool, or swimming pool or from the edge of a shower, sauna or steam room would have to be safety glazed (tempered glass).

For stair treads and risers, new stair measurements, the County adopted minimum 9-inch treads and maximum 8.25-inch risers. The 2021 edition requires minimum 10-inch tread and a maximum 7.75-inch riser. New stair measurements could be adopted, or older measurements can be adopted.

Mr. Wright believes that the most significant change in the two editions is the Automatic Fire Sprinkler System requirement. The 2021 edition has a requirement that all new one-and-two-family dwellings and townhomes have an automatic fire sprinkler system. Mr. Wright noted when the 2012 code was adopted, there was a work group that recommended for this item to be exempted and if desired, that could be adopted the same way.

A discussion was held about the cost, and water accessibility for a residential fire sprinkler system.

Mr. Rieley asked how the proposed changes impact tiny homes? Mr. Wright replied that he does not believe any of them would be an issue, however, a fire sprinkler system would be difficult.

Mr. Rieley asked if an appendix for mobile homes should be looked further into now. Mr. Wright replied that he believes there is one currently in the International Code Council, however, the Sussex County Code through Chapter 115 lists requirements for manufactured homes. Mr. Lawson added that there have been conversations with Kent County who currently has an appendix in place. Staff is working to determine what that appendix gives owners of manufactured housing that the current Sussex County Code does not afford them.

Mr. Lawson shared that an Ordinance would come back for introduction.

President Vincent gave the gavel over to Vice President Hudson.

Grant Requests

Mr. Vincent requested for this item to be placed on the agenda, Good Ole Boy Foundation, Inc. under Grant Requests. He commented that this is a group of local people mostly in Southern Sussex County that does a

Grant Requests (continued)

tremendous amount of work for the public to benefit their community for free. All of their work and effort is done by volunteers. Most recently, the group helped families that were impacted by the Rigby Hotel fire in Laurel. There were 13 families including 55 people that lived at that property. The Good Ole Boy Foundation, Inc. showed up the night of the fire. They took all of the families to the Laurel Fire Hall and got them hotel rooms that night. The families are now in transitional housing, and some are in permanent properties. The goal is for all of the families to be placed in permanent properties.

Mr. Vincent commented that this group helps families during times of need which he believes Sussex County is all about.

**M 110 22
Good Ole Boys
Foundation,
Inc. Grant**

A Motion was made by Mr. Vincent, seconded by Mr. Schaeffer to grant Good Ole Boy Foundation, Inc. \$25,000.00 from contingency funds to utilize with finalizing all of the people that were affected by the Rigby Hotel fire to get them into permanent housing and any money left over can be utilized for other functions that they do.

Motion Adopted: 5 Yeas.

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

Vice President Hudson gave the gavel back to President Vincent.

**Introduction
of Proposed
Ordinances**

Mrs. Green introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A TOURIST HOME, EVENT VENUE, & HAIR SALON TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 2.05 ACRES, MORE OR LESS”

Mr. Schaeffer introduced the Proposed Ordinance entitled “AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A GR GENERAL RESIDENTIAL DISTRICT TO A GR-RPC GENERAL RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 21.32 ACRES, MORE OR LESS”

Mr. Schaeffer introduced the 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 CERTAIN PORTION OF A PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 1.19 ACRES, MORE OR LESS “

Mr. Schaeffer introduced the Proposed Ordinance entitled “AN

ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN A GR GENERAL RESIDENTIAL DISTRICT FOR A FOOD PANTRY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 0.966 ACRES, MORE OR LESS”

Mr. Hudson introduced the Proposed Ordinance entitled “AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A CONVENIENCE STORE AND OFFICE BUILDING TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES & REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 3.305 ACRES, MORE OR LESS”

The Proposed Ordinances will be advertised for Public Hearing.

**Council
Members’
Comments**

There were no Council Member comments.

**M 111 22
Go Into
Executive
Session**

At 11:20 a.m., A Motion was made by Mr. Hudson, seconded by Mr. Rieley, to recess the Regular Session and go into Executive Session for the purpose of discussing matters relating to pending/potential litigation and land acquisition.

Motion Adopted: 5 Yeas.

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

**Executive
Session**

At 11:30 a.m., an Executive session of the Sussex County Council was held in the Basement Caucus Room to discuss matters relating to potential/pending litigation and land acquisition. The Executive Session concluded at 12:43 p.m.

**M 112 22
Reconvene**

At 12:47 p.m., a Motion was made by Mr. Hudson seconded by Mr. Schaeffer to come out of Executive Session and reconvene the Regular Session.

Motion Adopted: 3 Yeas, 2 Absent

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

E/S Action

There was no action on Executive Session matters.

**M 113 22
Adjourn**

A Motion was made by Mr. Hudson, seconded by Mr. Schaeffer to adjourn at 12:48 p.m.

Motion Adopted: 3 Yeas, 2 Absent

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

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COUNTY ENGINEER

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Sussex County

DELAWARE
sussexcountyde.gov

MEMORANDUM

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

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

RE: ***Delaware Center for the Inland Bays, Site Reforestation
A. Lighthouse Road Phase 1, Project Authorization***

DATE: March 22, 2022

Sussex County has partnered with the Delaware Center for Inland Bays (CIB) on numerous occasions. Both parties wish to continue partnerships in the Inland Bays, as part of the Comprehensive Conservation and Management Plan (CCMP) while at the same time gaining credits under the proposed County's Clean Water Enhancement Program.

On January 29, 2019, Council approved CIB's first Reforestation & Meadow Creation Proposal, in the buffer of the Angola Landfill in proximity of Chapel Branch for \$10,386.07. In April of 2019, almost 2,500 trees were planted and on June 18, 2019, Council approved a close out amendment of \$1,557.98.

On June 25, 2019, Council approved a \$211,151.00 two-phase, multiyear reforestation and wetland creation project in cooperation with the Sussex Conservation District in the Omar Landfill buffer on previously farmed lands, reducing nutrient loading as well as sustaining various animal species. The 20-acre tract off Burbage Road was uniquely suited for this approach because Blackwater Creek, runs adjacent to the tract, draining nutrients and runoff to the Little Assawoman Bay.

The Engineering Department now requests approval of the County's participation in CIB's Community Water Quality Improvement Grant Project on County owned lands off Lighthouse Road adjacent to Bunting Branch in the amount of \$10,635.00. The area to be reforested is 6.5 acres with CIB taking the lead in the planting as well as long term maintenance. The project will start this month and in addition to water quality benefits, the County will generate future credits under the County's Clean Water Enhancement Program, offsetting the capital cost.





PROPOSAL

PROJECT: Lighthouse Road Reforestation, Phase 1

DATE: March 1, 2022

DESCRIPTION: Reforestation project on a 6.5-acre County-owned parcel located off of Route 54 (Lighthouse Road) in southern Sussex County. The intent of the project is to protect waterways and wetlands, reducing nutrient loading to Little Assawoman Bay.

METHOD OF PAYMENT: A Community Water Quality Improvement Grant in the amount of \$25,002.44 was awarded to the Center for the Inland Bays (CIB) to implement this project. Sussex County agreed to provide up to \$6,250 as cash match for the grant. A fee estimate is provided in the attached scope of work.

TOTAL COST: **NTE \$10,635**

ACCEPTED:

APPROVED:

Christopher Bason
Executive Director

Date

Michael Vincent
President

Date

Delaware Center for the Inland Bays
39375 Inlet Road
Rehoboth Beach, DE 19971

Sussex County Council
2 The Circle
Georgetown, DE 19947

SCOPE OF WORK

The Delaware Center for the Inland Bays (CIB) proposes to partner with Sussex County to reforest a 6.5-acre parcel situated adjacent to a restored wetland on County-owned property off of Route 54/Lighthouse Road (Latitude 38.460264, Longitude -75.150013). A Community Water Quality Improvement Grant in the amount of \$25,002.44 was awarded to the Center for the Inland Bays (CIB) to implement this project. Sussex County agreed to provide at least \$6,657.00 as cash match for the grant to plant the project.



The planting is proposed for mid-March 2022. A total of 7,800 trees will be planted on the parcel, and at least 3,000 of these will be protected from deer browse by tree tubes. Species used will include: black locust, black oak, hackberry, persimmon, river birch, shortleaf pine, Virginia pine, white oak, and willow oak. Protection by tree tubes will focus primarily on the oak species; 75% of the oaks will be tubed. The other species are much less susceptible to deer browse pressure. Planting will be completed using a combination of contracted and volunteer labor. Bare-root seedlings will be obtained from the Maryland State Tree Nursery. Contractor selection will be made in compliance with procurement policies of the CIB and the State of Delaware. All activities will be coordinated with the County and with the adjacent landowner, Mr. Richard Tucker.

The project will result in a native, mixed hardwood/pine forest community that creates wildlife habitat. The forest created, when mature, will result in expected annual load reductions of 110.5 pounds total nitrogen and 2.6 pounds total phosphorus to Little Assawoman and Assawoman Bays.

CIB will be responsible for:

- Planning and overall project management, including management of contractors, volunteers, and grant funds/reports;
- Invoicing the County for reimbursement of expenses and reporting on progress;
- Arranging for any required site preparation, including removal of invasive species if needed;
- Purchase of tree seedlings and supplies;
- Installation of trees and tube shelters, using volunteer and contracted labor;
- Post-implementation monitoring to assess planting success and any maintenance needs. Monitoring will occur three months and one year after planting. Monitoring results will be shared with the County;

- Conducting or contracting for any maintenance needed (e.g. mowing, repair of tree tubes, invasive species control);
- Notifying the County of any issues or changes in the scope;
- Public outreach on the project via a press release, social media, and CIB publications.

Sussex County will be responsible for:

- Permanently maintaining the property as forest habitat;
- Providing up to \$10,750 to the CIB to implement and maintain the project through Fiscal Year 2027;
- Allow access to the property for CIB staff and its agents, contractors, and volunteers for the purpose of implementing and monitoring the project;
- Assisting with coordination with adjacent landowners or other partners, as required.

PROJECT COST

| | |
|---------------------------------------|-----------------|
| Total project cost: | \$47,295 |
| CWQIG award to CIB: | \$25,003 |
| Tree for Every Delawarean Initiative: | \$11,657 |
| Sussex County Request: | \$10,635 |

The project budget below includes costs for project planning, implementation, and monitoring/maintenance for five years.

| | |
|---|-----------------|
| CIB staff labor through FY2027 (wages, PTO, benefits, taxes) | \$6,372 |
| Contractual labor - planting | \$12,750 |
| Contractual labor – site prep, project maintenance | \$4,385 |
| Supplies (trees, tree tubes, stakes) | \$18,460 |
| Supplies (volunteer event and maintenance) | \$1,750 |
| Local travel to site | \$283 |
| Indirect costs | \$3,295 |
| TOTAL COSTS | \$47,295 |

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

Memorandum

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

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

RE: *Reaffirmation of Weston Solutions, Inc. as Landfill Professional Services Firm*

DATE: March 22, 2022

Sussex County operated up to six (6) municipal landfills from 1968 to 1984. Over time each site was converted to a transfer station upon reaching its original landfill capacity. Gradually the transfer stations were closed concluding in 1994. The landfill sites were later identified pursuant to Delaware Code, Title 7, Chapter 91 under the Delaware Hazardous Substance Cleanup Act (HSCA). They are regulated by the Department of Natural Resources and Environmental Control (DNREC). The Division of Waste & Hazardous Substances, along with the Division of Water, administer and oversee the regulatory site management.

The State and the County mutually agreed on an Operations & Maintenance (O&M) plan, as well as, a formally recorded Environmental Covenant document for each site. In addition, Sussex County Landfill No.5 in Laurel is a delisted USEPA Federal Superfund Program site. It is governed by supplementary regulatory directives, as specified in a Notice of Conciliation agreement (NOC) made between the EPA, DNREC and Sussex County.

As part of the approved O&M plans, and the agreed upon NOC, a groundwater monitoring program was established, and groundwater sampling is conducted annually. All six Sussex County Landfill sites have monitoring requirements established by the Site Investigation and Restoration Branch (SIRB) of DNREC's Division of Waste & Hazardous Substances.

The present-day monitoring regimen is mainly a result of the inclusion of Laurel landfill on the USEPA Superfund Site listing in 1988, and subsequent inclusion of the other five Sussex County Landfill sites, LF1-Bridgeville, LF2-Stockley, LF 3-Angola, LF 4-Anderson Crossroads, and LF 6-Omar, on the Hazardous Substance Control Act (HSCA) site listing in 1994.



Weston Solutions, Inc. has negotiated regulatory matters on behalf of Sussex County throughout the years, reducing landfill monitoring needs and assisting the County in maintaining regulatory compliance. Weston's staff performs the annual landfill groundwater monitoring outlined in the legal agreements between the State and County. Agreements include two Memorandums of Understanding (MOU), 1988 and 2000; a Landfill Closure Plan from 2003; a Landfill Operations and Maintenance Plan from 2005; a Notice of Conciliation for the Laurel landfill from 1996; and Environmental Covenants for the six landfill sites defined in 2015. Weston also compiles and submits to DNREC the mandatory annual reports for both the NOC and the O&M agreements.

In a Memorandum dated June 25, 1990, the Sussex County Administrator at that time, stated the original selection of Weston for the County's landfill consulting work met all requirements of State law. A Basic Ordering Agreement for services by Weston was subsequently compiled, reviewed by the County Attorney, and approved by Sussex County Council on April 16, 1991. The Engineering Department has continued to utilize Weston Solutions, Inc. under this Basic Operating Agreement for landfill consulting, monitoring, and reporting.

On March 14, 2017 County Council reaffirmed Weston Solutions, Inc. as the Landfill Professional Services Consultant for a five (5) year period starting July 1, 2017, based on their expertise and past performance. Council also approved the not to exceed budget of \$96,900.00 for FY18 task orders. Prior to every new budget year, Weston provides a scope of work, and cost estimates in a task order format. These costs are included with the Engineering Budget submittal and upon approval of the new budget, task orders are executed. With needs generally consistent, the Engineering Department recommended Council approve budget years remaining under the affirmation. On June 18, 2019, Council approved Weston's FY 20, 21 and 22 budget amounts for services not to exceed \$96,900.00 and authorized the County Engineer to execute the annual task orders based on acceptable consultant performance.

Weston Solutions, Inc. has been instrumental in ongoing coordination and negotiation with regulatory agencies and in providing consistent environmental consultation, as well as actual field implementation of our operation and maintenance requirements. They were most recently successful in resolving a reporting requirement change by DNREC, with completion and approval of an initial Remedy Evaluation Report (RER). DNREC's review of draft information resulted in a requirement to increase the RER reporting period from 5-years to almost 30 years, evaluating and reporting on data since the 1987 start of landfill monitoring. The significant effort established a baseline for future 5-year RER reports to be efficiently developed.

Program monitoring and supplementary costs for landfill-related activities is expected to remain consistent with past years. The Engineering Department therefore requests the reaffirmation of Weston Solutions, Inc. as the landfill professional service consultant for a five (5) year period starting July 1, 2022 based on their expertise and past performance, and the County Engineer authorized to execute annual task orders not to exceed \$100,000.00 in total, based on acceptable consultant performance and Council approval of FY budgets.

ENGINEERING DEPARTMENT

HANS M. MEDLARZ
COUNTY ENGINEER

(302) 855-7370 T
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hans.medlarz@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

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

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

RE: ***EMS Public Safety Building – Project C19-04***
A. Change Order Nos. 11 & 12

DATE: March 22, 2022

The single Public Safety Building concept was first introduced in the FY 2019 Budget Ordinance consolidating all EMS training, administration, and logistics functions in one facility. The scope and cost were updated in accordance with a space allocation programming effort in the FY 2020 Budget Ordinance and further refined based on design stages in the FY 2021 & FY 2022 Budget Ordinances reflecting a total project expense of \$12.00 million. The anticipated overall project expenses are still well within budget.

Following a publicly advertised process, Council awarded the EMS Department's - Architectural Consulting Services base contract to the George, Miles and Buhr, Inc. The subsequent Public Safety Building Project C19-04 base agreement covered professional services for an initial not to exceed amount of \$300,000.00.

The State's fire prevention regulations required a single-entry point necessitating a full sprinkler distribution system design and due to the critical nature of the facility, a secondary air conditioning backup in the form of a cooling tower was desired. Council authorized a \$31,720.00 stand-alone purchase order to RMF Engineering for these specialty designs.

In October of 2020, the Departments presented the 60% design review to County Council followed by a 75% design presentation in March of 2021. Based on the County's request, GMB was asked to create fiber optic cabling, audio/visual, security/alarm and fit out specialty scopes for procurement under Cooperative Purchasing Agreements, increasing the project design complexity. Hence, Council approved on March 23, 2021, GMB's Amendment No.1 increasing the not to exceed threshold by \$61,500.00.

Following the March Council presentation, the scope still evolved considerably due to design revisions and added design features. Consequently, GMB and its subconsultants exceeded the



previously approved allocations bringing the project to bid. GMB offered a discounted fee of \$75,000.00 to cover these services. In addition, they proposed a construction services fee of \$244,500.00. Overall, the professional services were well below 10% of construction, comparing favorably with industry standards and on August 10, 2021, County Council authorized issuance of GMB's Amendments No. 2 & 3 increasing the overall not to exceed amount to \$681,000.00.

On June 4, 2021, the Public Safety Building, Project C19-04 was publicly advertised. On July 14, 2021, eight (8) bids were received and on August 10, 2021, Council awarded the project to Bancroft Construction Company in the amount of \$8,282,169.00.

The documents as bid included provisions to recover pandemic related price increases between *bid and award* for structural and light weight steel material costs. Therefore, on August 31, 2021, Council approved Change Order No. 1 in the not to exceed amount of \$40,000 for structural and Change Order No. 2 in the amount of \$8,800 for light weight steel material price increases.

The structural steel material change order no.1 was based on August 12, 2021, pricing. When Bancroft transmitted the "letter of intent to award", their subcontractor Iron Works, Inc. on August 30th in turn issued material purchase orders. However, the material suppliers responded that material quotations are only binding for one week due to supply chain impacts and volatile steel markets. In consultation with County Leadership, the Engineering Department authorized Bancroft to lock in at the August 30th material costs triggering a \$22,829.00 revision to change order no. 1 approved by Council on September 14, 2021.

When the project bid, the Fire Marshall site permit had been issued but the associated building permit was still under review. When it was finalized two issues had to be addressed (i) fire protection details in the plenum and (ii) a secondary emergency egress from the mezzanine.

The plenum needed to be either sprinkled or all materials had to be fire rated. The only material not meeting the rating was the water piping. The County requested the PVC piping for ease of maintenance. The mechanical subcontractor suggested to add fire rated insulation but switch the valving to PVC under a partial credit for a net change order no. 3 cost of \$13,554.94. In addition, the County EMS team had initiated a proposed change order no. 4 for air filtration system safety upgrades, paid for through American Rescue Plan Act funds in the amount of \$4,740.28. On November 20, 2021, County Council approved both change orders.

The Department and the contractor concluded the change order scope associated with the emergency mezzanine exit required a permit. The work was complex requiring scope modifications for eight (8) trades. The electrical trade also included some minor changes to the outlet configurations to accommodate the selected A/V equipment for a total \$58,245.80 which County Council approved under Change Order No. 5 on January 11, 2022.

The existing EOC allegedly had dual primary electric power feeds based on original design drawings, staff recollection as well as DP&L records. Upon examination of the actual EOC transformer by DP&L, it was determined that the facility had only one feed. Prior to that, the electrical sub-contractor had initiated some limited conduit installations, Council issued a reimbursement Change Order No. 6 in the amount of \$1,905.85.

However, for the project to proceed, DP&L and the County's General Labor & Equipment contractor had to extend primary power to the existing transformer from the opposite side of Rudder Lane. In addition, the transformer and generator location for the building was revised, as

well as vehicle charging circuits added. These changes were priced out and approved by Council on March 1, 2022 under Change Order No. 9 in the amount of \$56,830.98.

In December 2021, following a detailed Miss Utility locate, the Team recognized that there were conflicts between the proposed gravity storm drainage pipe and the existing high voltage lines off site. The stormwater management design had the stormwater pipe system crossing the intersection of Airport Road and Aviation Avenue. Close examination revealed that this crossing was not plausible as the stormwater pipe intersected approximately eight other utilities primarily electric and sewer force mains at different elevations.

While investigating stormwater options, two existing roof drainage pipe conflicts came to light. The combination of both these impacts required a re-work of the entire grading plan, along with the redirection of the storm drainage piping along Airport Road. The Department and the contractor agreed on the scope and pricing, including the required fill and On March 1, 2022, Council issued the associated Change Order No. 7 in the amount of \$62,924.75.

In the filling process of “Lake Thomas”, unsuitable soils were encountered. The site work contractor undercut these areas and restored them with suitable materials. This work was performed on a time and materials basis under Change order No. 11. Also covered under this request is an adjustment to a ceiling and bulkhead location in the corridor leading to the northside of the existing EOC building. The Department recommends acceptance by County Council of Change Order No. 11 in the amount of \$5,427.58.

Bancroft had submitted RFI#44 seeking clarification regarding the EOC kitchen renovations due to a lack of existing condition documentation on the mechanical drawings and insufficient detailing of connections. GMB’s plan envisioned an open ceiling concept with cabinet & countertop which was unable to incorporate the two roof drains in the existing exercise room and kitchen. With an acceptable resolution plan needed, the Department worked with Bancroft and developed the attached “Owner Resolution Plan No.3 addressing the existing conditions. Hence the Department recommends acceptance by County Council of the resulting Change Order No. 12 in the credit amount of (\$15,118.52).

The heating and hot water systems were designed based on availability of natural gas. Chesapeake Utilities’ service extension project from the Coastal Business Park to Rudder Lane is delayed and may not be ready at the time of building commissioning. The utility directed us to seek an interim solution using their subsidiary, Sharp Energy, which already supplies propane to the Joint Maintenance Facility under this arrangement. Upon the Department’s request, Sharp indicated the tanks could be used if both buildings were interconnected. Sharp provided three (3) acceptable gas piping contractors i.e., Choptank Fusion, Thompson Propane and Cahall Construction. The first one could not fit the work in their schedule, the second one felt the design was too close to the trees and only wanted to directionally drill. The last one provided a quotation of \$15,000.00. The Engineering Department is working with the Finance Department to develop a purchase order.



Bancroft Construction Company
1300 N Grant Ave Ste 101
Wilmington, Delaware 19806
Phone: 302 655 3434

Project: CSED0001 - Public Safety Bldg. Addition
21911 Rudder Lane
Georgetown, Delaware 19947

DRAFT

Prime Contract Potential Change Order #011: CEs #032 & 034

Table with 4 columns: Field Name, Value 1, Value 2, Value 3. Includes fields like TO, FROM, PCO NUMBER/REVISION, CONTRACT, REQUEST RECEIVED FROM, CREATED BY, STATUS, CREATED DATE, REFERENCE, PRIME CONTRACT CHANGE ORDER, FIELD CHANGE, LOCATION, ACCOUNTING METHOD, SCHEDULE IMPACT, PAID IN FULL, TOTAL AMOUNT.

POTENTIAL CHANGE ORDER TITLE: CEs #032 & 034

CHANGE REASON: No Change Reason

POTENTIAL CHANGE ORDER DESCRIPTION: (The Contract Is Changed As Follows)

CE #032 - Owner Resolution Plan #2 - Drop Ceilings in Corridor #101
Drop Ceilings in Corridor #101 per Owner Resolution #2

CE #034 - Remove and Replace Unsuitable Material at Phase B Parking Lot
Remove and Replace Unsuitable Material at Phase B Parking Lot per Thompson T & M dated 3.9.22

ATTACHMENTS:

T&M-Under Cut -Sussex Public Safety Building Under.pdf Change Order 2.doc

Table with 5 columns: #, Cost Code, Description, Type, Amount. Includes line items for Gypsum Board and Site Construction, and summary rows for Subtotal, BCC GCs, Bond, Profit, and Grand Total.

Morgan Helfrich (George, Miles & Buhr, LLC)

400 High Street
Seaford Delaware 19973

Sussex County Delaware

2 The Circle P.O. Box 589
Georgetown Delaware 19947

Bancroft Construction Company

1300 N. Grant Avenue Suite 101
Wilmington Delaware 19806

Michael Kalafut 3/14/22

SIGNATURE DATE

SIGNATURE DATE

SIGNATURE DATE



Bancroft Construction Company
 1300 N Grant Ave Ste 101
 Wilmington, Delaware 19806
 P: 302 655 3434

Project: CSED0001 - Public Safety Bldg. Addition
 21911 Rudder Lane
 Georgetown, Delaware 19947

CHANGE EVENT #032 - Owner Resolution Plan #2 - Drop Ceilings in Corridor #101

Origin:

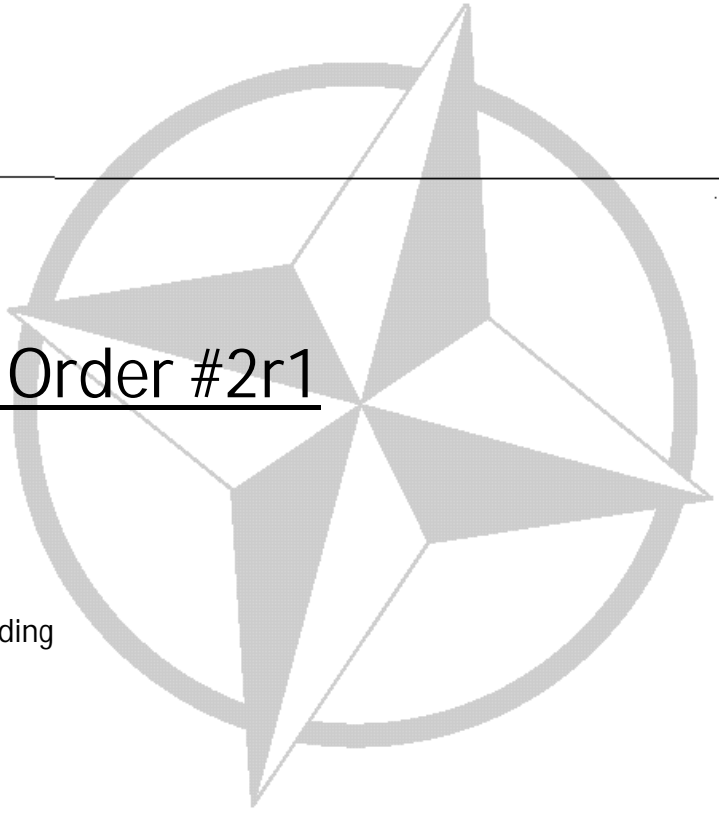
Date Created: 3/3/2022 **Created By:** Tyler Lewis
Status: Open **Scope:** Out of Scope
Type: Owner Contingency **Change Reason:** Owner Directive
Description: Drop Ceilings in Corridor #101 per Owner Resolution #2r1
Attachments: [Change Order 2r1.doc](#)

CHANGE EVENT LINE ITEMS

| Budget Code | Vendor / Contract | Revenue | | | Cost | | | | Over/ Under | Budget Mod. |
|--|--|-------------------|-------------------|-------------------|-------------------|---------------|---------------|-------------------|-----------------|----------------|
| | | ROM | Prime PCO | Latest Price | ROM | RFQ | Commit. | Latest Cost | | |
| 09-250.06 Gypsum Board.Subcontract | North East Contractors, Inc. CSED0001-017 | \$1,109.82 | \$1,109.82 | \$1,109.82 | \$1,109.82 | | | \$1,109.82 | \$0.00 | |
| Description: Drop Ceilings In corridor #101 per CO #2 | | | | | | | | | | |
| 1-511.02 Sr. Project Manager.Regular Labor | | \$55.49 | \$55.49 | \$55.49 | | | | \$0.00 | \$55.49 | |
| 90-999.10 Fee.Fee & Field Cost | | \$70.50 | \$70.50 | \$70.50 | | | | \$0.00 | \$70.50 | |
| Grand Totals | | \$1,235.81 | \$1,235.81 | \$1,235.81 | \$1,109.82 | \$0.00 | \$0.00 | \$1,109.82 | \$125.99 | \$0.00 |

NEC

NORTH EAST CONTRACTORS, INC.
 Commercial • Residential • General Contracting



Change Order #2r1

Bancroft
 Attn: Josh Callahan
 Date: March 11, 2022

Project: Sussex County Public Safety Building
 Drawings by: George, Miles & Buhr
 Dated: 5/28/21

Reference: Owner Plan Resolution 2
 Dated: 2/21/2022

Drop ceiling in corridor 101

| Scope of Work | length | height | sq/ft | \$/unit | material \$ | hours | rate | labor \$ | subtotal |
|---------------|--------|--------|-------|---------|-------------|-------|-------|--------------|-------------|
| ACT | 0 | 0 | 48 | 1.59 | \$ 76.32 | 1.5 | 78.21 | \$ 117.32 | \$ 193.64 |
| drop framing | 8 | 6 | 48 | 1.1 | \$ 52.80 | 2 | 78.21 | \$ 156.42 | \$ 209.22 |
| drywall | 8 | 6 | 48 | 0.43 | \$ 20.64 | 2 | 78.21 | \$ 156.42 | \$ 177.06 |
| drywall | 8 | 1 | 8 | 0.43 | \$ 3.44 | 1 | 78.21 | \$ 78.21 | \$ 81.65 |
| finishing | 16 | 1 | 16 | 0.25 | \$ 4.00 | 4 | 73.83 | \$ 295.32 | \$ 299.32 |
| subtotal | | | | | | | | | \$ 960.89 |
| | | | | | | | | subtotal | \$ 960.89 |
| | | | | | | | | 10% overhead | \$ 96.09 |
| | | | | | | | | 5% profit | \$ 52.85 |
| | | | | | | | | TOTAL | \$ 1,109.82 |



Bancroft Construction Company
 1300 N Grant Ave Ste 101
 Wilmington , Delaware 19806
 P: 302 655 3434

Project: CSED0001 - Public Safety Bldg. Addition
 21911 Rudder Lane
 Georgetown , Delaware 19947

CHANGE EVENT #034 - Remove and Replace Unsuitable Material at Phase B Parking Lot

Origin:

Date Created: 3/9/2022 **Created By:** Tyler Lewis
Status: Open **Scope:** Out of Scope
Type: Owner Contingency **Change Reason:** Unforeseen/Differing Condition
Description: Remove and Replace Unsuitable Material at Phase B Parking Lot per Thompson T & M dated 3.9.22
Attachments: [T&M-Under Cut -Sussex Public Safety Building Under.pdf](#)

CHANGE EVENT LINE ITEMS

| Budget Code | Vendor / Contract | Revenue | | | Cost | | | | Over/ Under | Budget Mod. |
|------------------------|-------------------|------------|-----------|--------------|------------|-----|---------|-------------|----------------|----------------|
| | | ROM | Prime PCO | Latest Price | ROM | RFQ | Commit. | Latest Cost | | |
| 02-001.06 | Thompson & Sons | \$3,764.41 | | \$3,764.41 | \$3,764.41 | | | \$3,764.41 | \$0.00 | |
| Site | ContractingInc | | | | | | | | | |
| Construction.Subcontra | CSED0001001 | | | | | | | | | |
| ct | | | | | | | | | | |

Description:
 Remove & replce unsuitable soil per Thompson T & M 3.9.22

| Budget Code | Vendor / Contract | Revenue | | | Cost | | | | Over/ Under | Budget Mod. |
|---------------------|--------------------------------------|-------------------|---------------|-------------------|-------------------|---------------|---------------|-------------------|-----------------|----------------|
| | | ROM | Prime PCO | Latest Price | ROM | RFQ | Commit. | Latest Cost | | |
| 1-511.02 | Sr. Project Manager.Regular Labor | \$188.22 | \$0.00 | \$188.22 | | | | \$0.00 | \$188.22 | |
| 90-999.10 | Fee.Fee & Field Cost | \$239.13 | \$0.00 | \$239.13 | | | | \$0.00 | \$239.13 | |
| Grand Totals | | \$4,191.76 | \$0.00 | \$4,191.76 | \$3,764.41 | \$0.00 | \$0.00 | \$3,764.41 | \$427.35 | \$0.00 |

Thompson & Sons Contracting Inc.
5367 Big Stone Bch RD
Milford, DE 19963

Time & Material Billing

(Provided by contractor, subcontractor or sub tier contractor)

Bill to Contractor: Bancroft Construction
DATE SUBMITTED: 3/9/2022
CONTRACT: Sussex Public Safety Building
CONTRACTOR: Thompson & Sons Contracting Inc.
PROJECT NAME: Sussex Public Safety Building
Time & Material Billing #1 Undercut Pond

| LABOR SECTION | | | |
|----------------------|--------------------|----------------------------|-----------------|
| TRADESMAN(s): | LABOR HOURS | RATE (per schedule) | SUBTOTAL |
| Operator | 17 hrs | \$35.00 | \$595.00 |
| | | | |
| | | | |
| | | | |
| Subtotal | | | \$595.00 |

| MATERIAL SECTION | | | |
|-------------------------|-----------------|------------------|-------------------|
| MATERIAL: | QUANTITY | UNIT COST | SUBTOTAL |
| #3 Stone & Haul | 65.84 | \$35.00 | \$2,304.40 |
| Fuel | | | \$204.00 |
| | | | |
| | | | |
| Subtotal | | | \$2,508.40 |

| EQUIPMENT SECTION | | | |
|--------------------------|-----------------|------------------|-------------------|
| EQUIPMENT: | QUANTITY | UNIT COST | SUBTOTAL |
| Dump Truck | 2 hr | \$85.00 | \$170.00 |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| Subtotal | | | \$170.00 |
| Complete Subtotal | | | \$3,273.40 |

Work has been completed after getting a verbal to proceed.

| | |
|------------------------------|-------------------|
| OH & PROFIT (15%) | \$491.01 |
| GRAND TOTAL | \$3,764.41 |

6. Factors Affecting Time of Completion

7. Other (explain below):

C. BRIEF DESCRIPTION OF CHANGE ORDER:

Kitchen modifications.

D. JUSTIFICATION FOR CHANGE ORDER INCLUDED?

Yes No

E. APPROVALS

1. Bancroft Construction Company, Contractor

 3/17/22
Signature Date

MICHAEL KALAFUT
Representative's Name in Block Letters

2. Sussex County Engineer

Signature Date

3. Sussex County Council President

Signature Date

ENGINEERING DEPARTMENT

| | |
|---------------------------|----------------|
| ADMINISTRATION | (302) 855-7718 |
| AIRPORT & INDUSTRIAL PARK | (302) 855-7774 |
| ENVIRONMENTAL SERVICES | (302) 855-7730 |
| PUBLIC WORKS | (302) 855-7703 |
| RECORDS MANAGEMENT | (302) 854-5033 |
| UTILITY ENGINEERING | (302) 855-7717 |
| UTILITY PERMITS | (302) 855-7719 |
| UTILITY PLANNING | (302) 855-1299 |
| FAX | (302) 853-5881 |



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

OWNER RESOLUTION PLAN #3:

EOC Exercise & Kitchen Renovation

February 18, 2022

To: Michael Kalafut

From: Ed Leonhartt

In summary, we understand that Bancroft had submitted RFI#44 regarding GMB & RMF's lack of renovation planning for the existing conditions and lack of detail in the mechanical drawings for the planned renovation areas of the EOC. GMB's plan was to paint it all black as described within the open ceiling concept and modify the cabinet & countertop to incorporate the storm drains in the existing EOC exercise room. With an acceptable resolution plan needed, Sussex County worked with Bancroft personnel to develop a plan to address the existing conditions above the ceiling tiles. We understand this adjustment will have credits and additions associated with the adjustments.

No open ceiling concept in the renovated space, items being removed or addressed:

- A) East wall storefront will need to be removed from the project as it had been discussed and a notice should have gone out to Charles Brown regarding this item. Confirmation of communication has been requested and we will be looking for credits with this item. The reason why this was removed was that the demolition of that wall would have impacted controls that were not scoped to be relocated. There are different existing ceiling heights between existing EOC and the vestibule, so it would be impossible to not damage and replace the ceiling in the vestibule when demolition taking place on the wall supporting both ceilings. The existing fire alarm and pull, and other devices in the shared wall are to remain in place.
- B) Ceiling baffles and lighting throughout to be removed, considering moving to a drop/lay in ceiling.
- C) Sprinklers raising of the mains and new upright heads are not required.
- D) Painting of all the structural ceiling, ladder tray, HVAC units & ductwork, hangars, storm drains, sprinkler piping, electrical conduits, and Advantech control box will no longer be required.



- E) Clean up of the existing low voltage cabling and relocation of the fire alarm system items existing in the vestibule wall, is not required.
- F) New smoke detectors and fire alarms for open ceiling is not required.
- G) No need to relocate of the existing Advantech box above the kitchen that serves the vestibule doors.
- H) No repair &/or replace portions of the vestibule ceiling and heater as noted in A) from the demolition of the common wall the vestibule ceiling would need to be addressed.
- I) Possible need for noise dampening insulation around the Trane HVAC units to reduce the noise of the built-in compressors, since ceiling drop/lay in will be insulated grids that match the existing EOC.

New Ceiling Design at to match existing EOC kitchen design & height: NEW 2x2 grid and tiles to match existing EOC at 9'1" in height and to match existing storefront on the northside wall. What would need to be adjusted beyond the current scope of work is noted below:

- A) Existing workout room: Ladder Tray will need to be cut back to within 4 to 12 inches of last support inside/outside the room. Inside/Outside explained: The south wall the supports are just 'inside' of the wall, and there is a bulkhead above the cabinets. Therefore, ceiling height should not be impacted by that last bit of ladder tray if it is cut back properly to allow the bulkhead to be built. Along the east wall the cutting back of the ladder tray will need to take place in the hallway to be within 4 to 12 inches because it is 'outside' the exercise room. Low voltage cables are to be gathered, and hung up closer to the structural ceiling, if needed repurposing the 'shortened' ladder tray **supports** to manage the cabling.
- B) Existing workout room: HVAC 45-degree connector that takes the ductwork under the storm drain is lower than the main trunk out of the unit and the trunk beyond the 45. This configuration will require modification, with possibly reworking the duct work to come out of the unit ~2-feet with a straight branch. On the sides of that main branch break off the flex duct so they can go under the storm drain to the room diffusers.
- C) Existing workout room: Return air duct 90s to be relocated and hung higher to accommodate the higher ceiling height.
- D) Existing workout room: The first set of sprinkler heads off the south wall will need to be moved north from face of bulkhead over casework. Sprinkler system drops will need to be shortened and remain pendant style heads as they exist (protect & reuse).
- E) Existing EOC kitchen: Sprinkler heads are to remain as laid out and the pendant style heads are not to be replaced with new upright style.
- F) Existing EOC kitchen: Remove the network extender equipment from the ceiling tile and preserve & protect for relocate &/or reinstallation.
- G) Existing EOC kitchen: Remove the smoke detector & fire alarm from the ceiling tile and preserve & protect for relocate &/or reinstallation.

- H) Adjustments in the planned lighting within the newly renovated kitchen space is required. The new ceiling lights are to be basic LED recessed (~10-12) dimming 2x2 lighting. John McKee will provide specifications for review & approvals.

NOTABLE Counter-top, cabinets, and walls:

- A) EOC Exercise room RFI #44: Please work to minimize the buildout around the storm drains, so coverage around the storm drains is minimized. A suggestion to discuss with the mechanical contractor about a different routing of the condensing line. The southwest corner storm drain will require modifications to cabinetry and countertops, per GMB. The storm drain in the northwest corner of the existing exercise room will require adjustments in the appliances, pantry, and water bottle dispenser. Adjustments will require the associated electrical outlets to move, and we will remove the bulkhead planned over the appliances on this side. The bulkhead can remain over the upper cabinets for continuity over the cabinets.
- a. Refrigerator would move south in place of the freezer and next to the end of the countertop and cabinets on the east wall.
 - b. The water cooler will be north of the refrigerator and in front of the storm pipe enclosure in what should be ~2' wide space to allow employee access to the water cooler. Access to GFI outlet will be required behind the water cooler as it was planned on the other side of the room.
 - c. On the north side of the storm water drain, we will locate the freezer.
 - d. The pantry will be relocated across the room to the west wall as shown in the plan view.
- B) EOC kitchen & exercise room: All interior walls to remain, so Bancroft and their subcontractors can measure the existing walls to get 100% complete and accurate shop drawings & builds. Please let Sussex County know timing to ensure your access is provided to perform these measurements. The reference red lined drawings do not address this work, the redlines were primarily for site work.
- C) EOC Exercise room: East wall adjacent to existing entrance, remove protect for relocation the fire alarm, thermostats, and room switch.
- D) EOC Exercise room: East wall adjacent to existing entrance, remove the phone and provide to the EOC team.
- E) EOC Exercise room: Remove the existing CATV hook ups in the corner of the room remove and dispose of outlets and coil the wire up within the ceiling space.
- F) NEW EOC kitchen add optional pricing: Owner/end user is requesting optional pricing for under cabinet lighting. The current EOC kitchen area has undercabinet lighting.
- G) Additional drywall is required to be installed per detail (#1/A8.2) for floor to ceiling drywall around the interior of the renovated EOC kitchen.

- H) In circumstances where the existing outlets or other devices are located and can be reused then the expectation is that the owner would receive credit for the planned new outlets or junction boxes.
- I) In locations where outlets are not needed or height changes the interior wall penetrations shall be properly patched, sealed, and painted to match the intended design. Any damage to existing items to remain it will be the responsibility of the General Contractor to protect and preserve, and/or make arrangements to protect and preserve.

Sincerely,

Edward M. Leonhartt

Project Engineer, Sussex County Engineering Department

CC: Thomas Van Dyke, Hans Medlarz, Wes Reed, Tyler Lewis



Bancroft Construction Company
1300 N Grant Ave Ste 101
Wilmington, Delaware 19806
Phone: 302 655 3434

Project: CSED0001 - Public Safety Bldg. Addition
21911 Rudder Lane
Georgetown, Delaware 19947

DRAFT

Prime Contract Potential Change Order #012: CE #035 - EOC Kitchen Changes

Table with 4 columns: Field Name, Value, Field Name, Value. Includes fields like TO, FROM, PCO NUMBER/REVISION, CONTRACT, REQUEST RECEIVED FROM, CREATED BY, STATUS, CREATED DATE, REFERENCE, PRIME CONTRACT CHANGE ORDER, FIELD CHANGE, LOCATION, ACCOUNTING METHOD, SCHEDULE IMPACT, PAID IN FULL, TOTAL AMOUNT.

POTENTIAL CHANGE ORDER TITLE: CE #035 - EOC Kitchen Changes

CHANGE REASON: Design Change

POTENTIAL CHANGE ORDER DESCRIPTION: (The Contract Is Changed As Follows)
CE #035 - EOC Kitchen Changes

ATTACHMENTS:

RE EOC Kiktchen.msg Sussex County PSB Kitchen Window Elevation.pdf CO - 4 Sussex Kitchen Lighting Change.pdf Change Order 3.doc

Table with 5 columns: #, Cost Code, Description, Type, Amount. Lists items like 16-001 - Electrical, 09-250 - Gypsum Board, 08-400 - Entrances and Storefronts with their respective amounts.

Morgan Helfrich (George, Miles & Buhr, LLC)
400 High Street
Seaford Delaware 19973

Sussex County Delaware
2 The Circle P.O. Box 589
Georgetown Delaware 19947

Bancroft Construction Company
1300 N. Grant Avenue Suite 101
Wilmington Delaware 19806

Michael Kalafut 3/16/22

SIGNATURE DATE

SIGNATURE DATE

SIGNATURE DATE



Bancroft Construction Company
 1300 N Grant Ave Ste 101
 Wilmington , Delaware 19806
 P: 302 655 3434

Project: CSED0001 - Public Safety Bldg. Addition
 21911 Rudder Lane
 Georgetown , Delaware 19947

CHANGE EVENT #035 - EOC Kitchen Changes

Origin:

Date Created: 3/16/2022 **Created By:** Tyler Lewis

Status: Open **Scope:** Out of Scope

Type: Owner Contingency **Change Reason:** Design Change

Description:

Attachments: [RE EOC Kiktchen.msg](#), [Sussex County PSB Kitchen Window Elevation.pdf](#), [CO - 4 Sussex Kitchen Lighting Change.pdf](#), [Change Order 3.doc](#)

CHANGE EVENT LINE ITEMS

| Budget Code | Vendor / Contract | Revenue | | | Cost | | | Over/ Under | Budget Mod. |
|--|---|---------------|-----------|---------------|---------------|-----|---------|----------------|----------------|
| | | ROM | Prime PCO | Latest Price | ROM | RFQ | Commit. | | |
| 16-001.06 Electrical.Subcontract | Continental Electrical Service CSED0001-016 | \$(12,240.00) | | \$(12,240.00) | \$(12,240.00) | | | \$(12,240.00) | \$0.00 |
| Description: Continental CO #4 - kitchen changes | | | | | | | | | |
| 09-250.06 Gypsum Board.Subcontract | North East Contractors, Inc. CSED0001-017 | \$(2,396.52) | | \$(2,396.52) | \$(2,396.52) | | | \$(2,396.52) | \$0.00 |
| Description: NEC CO #3 delete baffles, replace with ACT | | | | | | | | | |

| Budget Code | Vendor / Contract | Revenue | | | Cost | | | | Over/ Under | Budget Mod. |
|--|---|----------------------|---------------|----------------------|----------------------|---------------|---------------|----------------------|---------------------|----------------|
| | | ROM | Prime PCO | Latest Price | ROM | RFQ | Commit. | Latest Cost | | |
| 08-400.06 | Charles Brown Glass Entrances and Storefronts.Subcontrac t | \$(482.00) | | \$(482.00) | \$(482.00) | | | \$(482.00) | \$0.00 | |
| Description: CB Glass email dated 3.11.22 | | | | | | | | | | |
| 1-511.02 | Sr. Project Manager.Regular Labor | \$(755.93) | \$0.00 | \$(755.93) | | | | \$0.00 | \$(755.93) | |
| 90-999.10 | Fee.Fee & Field Cost | \$(960.40) | \$0.00 | \$(960.40) | | | | \$0.00 | \$(960.40) | |
| Grand Totals | | \$(16,834.85) | \$0.00 | \$(16,834.85) | \$(15,118.52) | \$0.00 | \$0.00 | \$(15,118.52) | \$(1,716.33) | \$0.00 |

CONTINENTAL Electrical Services LLC.

CHANGE ORDER REQUEST

Submitted To: Bancroft Construction Original Contract: _____
Job Name: Sussex County Public Safety Bldg Date: 2/25/2022
Job #: 21-257 Change Order #: 4

This Change Order Request (C.O.R.) contains an itemized quotation for changes in the Contract Sum or Contract Time in response to proposed modifications to the Original Contract: _____.

Description of Proposed Changes:

- Kitchen Changes including F4 delete and 2X2 addition.

Attached supporting information from: Subcontractor Supplier

| <u>Labor:</u> | | | |
|-------------------------|-------------|--------------|-----------------------|
| <u>Class</u> | <u>Rate</u> | <u>Hours</u> | <u>Total</u> |
| Foreman | \$ - | | \$ - |
| Journeyman | \$ 95.00 | -18 | \$ (1,710.00) |
| Apprentice | \$ - | | \$ - |
| PM/Office | \$ 175.00 | 1 | \$ 175.00 |
| Labor Total = | | | \$ (1,535.00) |
| <u>Material:</u> | | | |
| Misc. Material | | | \$ (10,705.00) |
| Quoted Material | | | \$ - |
| Quoted Material | | | \$ - |
| Quoted Material | | | \$ - |
| Quoted Material | | | \$ - |
| Material Total = | | | \$ (10,705.00) |
| Safety | | | \$ - |
| Shipping / Receiving | | | \$ - |
| Consumables | | | \$ - |
| Warranty | | | \$ - |
| Gross / Receipts Tax | | | \$ - |
| Bond | | | \$ - |
| Misc. Total = | | | \$ - |
| Sub Total = | | | \$ (12,240.00) |
| Overhead & Profit | | | \$ - |
| Grand Total = | | | \$ (12,240) |

We propose hereby to furnish material and labor in accordance with above specifications for the sum of:

CREDIT Twelve Thousand Two Hundred and Forty Dollars and No Cents

\$ (12,240)

Above additional work to be performed under same conditions as specified in original contract unless otherwise stipulated.

The Revision becomes part of and in conformance with, the existing contract and can be voided.

Authorized Signature:

John McKee

Signature: _____

Date: _____



Change Order - Quotation

YAL CONTINENTAL ELECTRIC SERVICE
Attn: Suellen Lewandowski
3 MILL PARK CT
NEWARK, DE 19713-1986

Project: Sussex County Public Safety Bldg
Date: 02/23/22
PO #: 257-03
Change #: 3
Freight in Exempt: Yes

Material Change: **-12,000.00**

| Change Type | Quantity Description | Unit or Lot# | Unit Price | Ext Price | Change Amt | | | | | |
|-----------------|--|-----------------|-------------------|----------------|------------|-----|----|--|--|--|
| ✓ F4 | 45 ASM1S-RL-12-400LF-40K-1C-UNV-LD1-J 48-BKCD-CWH- 8FT | FOCALPO | | | -12,000.00 | | | | | |
| | <table style="margin-left: auto; margin-right: auto;"> <tr> <td><u>Prev Qty</u></td> <td><u>Change Qty</u></td> <td><u>New Qty</u></td> </tr> <tr> <td style="text-align: center;">64</td> <td style="text-align: center;">-19</td> <td style="text-align: center;">45</td> </tr> </table> | <u>Prev Qty</u> | <u>Change Qty</u> | <u>New Qty</u> | 64 | -19 | 45 | | | |
| <u>Prev Qty</u> | <u>Change Qty</u> | <u>New Qty</u> | | | | | | | | |
| 64 | -19 | 45 | | | | | | | | |

| | |
|--------------|-------------------|
| Total | -12,000.00 |
|--------------|-------------------|

From:
YALE WEST CHESTER C371
MAIN OFFICE 610-719-9253
200 GARFIELD AVENUE
WEST CHESTER, PA 19380-4512
Printed By: LYNN COLACHINO
Lynn Colachino
P: 484 983-3500
F: (610) 719-0650

Authorizing Name: LYNN COLACHINO
File Number: 308978
TYPE F4- REMOVE QTY 19

These items are not ordered! To complete this order, sign below and provide a PO # for the order.

Signature: _____

Change Order - Quotation

TO:
 YAL CONTINENTAL ELECTRIC SERVICE
 Attn:Suellen Lewandowski
 3 MILL PARK CT
 NEWARK, DE 19713-1986

Project: Sussex County Public Safety Bldg
Date: 02/25/22
PO #: 257-03
Change #: 6
Freight in Exempt : Yes

Material Change: **1,295.00**

| Change Type | Quantity Description | Unit or Lot# | Unit Price | Ext Price | Change Amt |
|-------------|----------------------|--------------|------------|-----------|------------|
|-------------|----------------------|--------------|------------|-----------|------------|

MARK TYPES ON CARTONS

CALL SUELLEN 48 HOURS BEFORE DELIVERY @ 1-302-294-6311

SHIP UPS/FEDEX GROUND TO:
 CONTINENTAL ELECTRIC
 PO# 257-03
 3 MILL PARK CT
 NEWARK, DE 19713

NOTE: FUTURE RELEASE MAY SHIP INTO YALE-LANCASTER

| ✓ | 14 RAB EZPANFA2X2/D10 2X2 DROP IN FIELD ADJUSTABLE WATTAGE AND COLOR TEMP | 92.500/ea | 1,295.00 | 1,295.00 | | | | | | |
|----------|---|-----------|------------|----------|---|----|----|--|--|--|
| | <table style="margin-left: auto; margin-right: auto;"> <thead> <tr> <th style="text-decoration: underline;">Prev Qty</th> <th style="text-decoration: underline;">Change Qty</th> <th style="text-decoration: underline;">New Qty</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">0</td> <td style="text-align: center;">14</td> <td style="text-align: center;">14</td> </tr> </tbody> </table> | Prev Qty | Change Qty | New Qty | 0 | 14 | 14 | | | |
| Prev Qty | Change Qty | New Qty | | | | | | | | |
| 0 | 14 | 14 | | | | | | | | |
| | ** New Item ** | | | | | | | | | |

| | |
|--------------|----------------|
| Total | 1295.00 |
|--------------|----------------|

From:
 YALE WEST CHESTER C371
 MAIN OFFICE 610-719-9253
 200 GARFIELD AVENUE
 WEST CHESTER, PA 19380-4512
 Printed By: LYNN COLACHINO
 Lynn Colachino
 P: 484 983-3500
 F: (610) 719-0650

Authorizing Name: LYNN COLACHINO
 File Number: 308978
 RAB 2X2

These items are not ordered! To complete this order, sign below and provide a PO # for the order.

Signature: _____



Color: White

Weight: 8.2 lbs

| | |
|--------------------------------------|-------------------------|
| Project: SUSSEX CTY EMS | Type: 2X2 |
| Prepared By: YALE ELECTRIC | Date: 2-25-22 |

| Driver Info | | LED Info | |
|-------------|------------------|----------------|------------------|
| Type | Constant Current | Watts | 30W |
| 120V | 0.25A | Color Temp | Field Adjustable |
| 208V | 0.15A | Color Accuracy | 79-81 CRI |
| 240V | 0.13A | L70 Lifespan | 75,000 Hours |
| 277V | 0.12A | Lumens | 3117-4802 |
| Input Watts | 25.7-41.5W | Efficacy | 106.6-127.5 lm/W |
| | | | lm/W |

Technical Specifications

Field Adjustability

Field Adjustable:

Field Adjustable Light Output:
2' x 2': 25W/30W/40W (factory default 30W)
Color temperature (selectable by 3500K, 4000K and 5000K)

Compliance

UL Listed:

Suitable for damp locations

IESNA LM-79 & IESNA LM-80 Testing:

RAB LED luminaires and LED components have been tested by an independent laboratory in accordance with IESNA LM-79 and LM-80.

DLC Listed:

This product is on the Design Lights Consortium (DLC) Qualified Products List and is eligible for rebates from DLC Member Utilities.
DLC Product Code: PB45PSA0

Performance

Lifespan:

75,000-Hour LED lifespan based on IES LM-80 results and TM-21 calculations

LED Characteristics

LEDs:

Long-life, high-efficacy, surface-mount LEDs

Construction

Operating Temperature:

-30°C (-22°F) to 40°C (104°F)

Lens:

Frosted polystyrene

Mounting:

Recessed ceiling

IC Rated:

Suitable for insulated ceilings

Housing:

Lightweight aluminum housing

Finish:

Formulated for high durability and long-lasting color

Green Technology:

Mercury and UV free. RoHS-compliant components.

Other

Warranty:

RAB warrants that our LED products will be free from defects in materials and workmanship for a period of five (5) years from the date of delivery to the end user, including coverage of light output, color stability, driver performance and fixture finish. RAB's warranty is subject to all terms and conditions found at rablighting.com/warranty.

Technical Specifications (continued)

Other

Trade Agreements Act Compliant:

This product is a product of Cambodia and a "designated country" end product that complies with the Trade Agreements Act

Buy American Act Compliance:

RAB values USA manufacturing! Upon request, RAB may be able to manufacture this product to be compliant with the Buy American Act (BAA). Please contact customer service to request a quote for the product to be made BAA compliant.

Electrical

Driver:

Constant Current, Class 2, 120-277V, 50/60 Hz, 120V: 0.25A, 208V: 0.15A, 240V: 0.13A, 277V: 0.12A

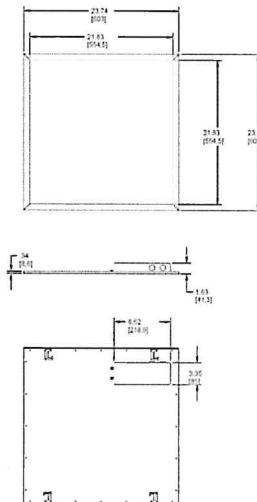
THD:

5.8% at 120V, 11.03% at 277V

Power Factor:

99.4% at 120V, 92.3% at 277V

Dimensions



Features

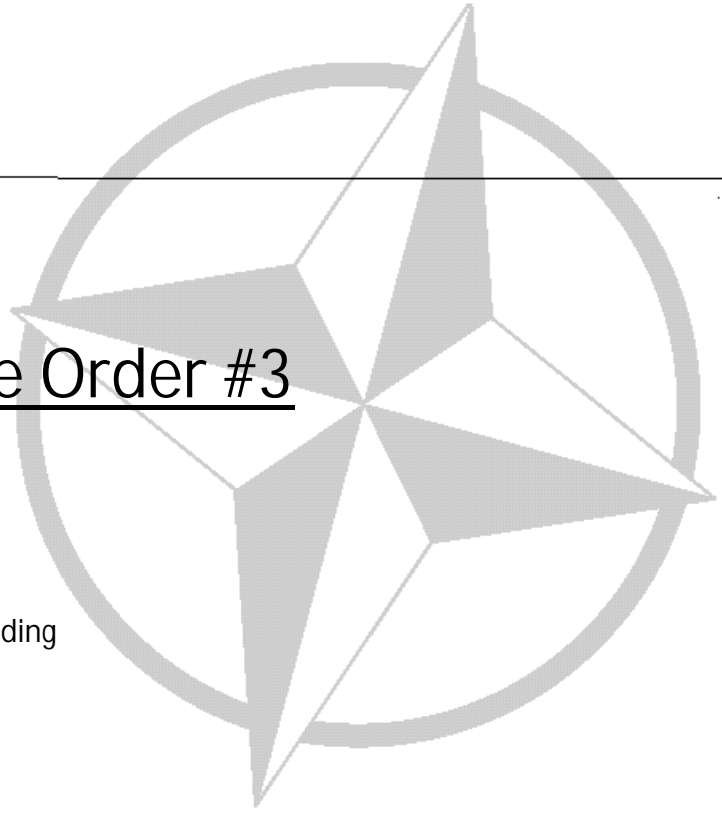
- Field-adjustable light output (3 discrete steps)
- White tunable (3 discrete color temperatures)
- Can be changed before, during or after installation
- 75,000-Hour LED lifespan

Ordering Matrix

| Family | Size | Voltage | Options |
|---------|---|----------------------|--|
| EZPANFA | 2X2 | /D10 | |
| | 1X4 = 1' x 4' 2X2 = 2' x 2' 2X4 = 2' x 4' | /D10 = 0-10V Dimming | Blank = No Option /LC = Lightcloud® Controller /LCS = Lightcloud® Sensor /E2 = Battery Backup |

NEC

NORTH EAST CONTRACTORS, INC.
Commercial • Residential • General Contracting



Change Order #3

Bancroft
Attn: Josh Callahan
Date: March 7, 2022

Project: Sussex County Public Safety Building
Drawings by: George, Miles & Buhr
Dated: 5/28/21

Reference: Owner Plan Resolution 3

delete baffles in kitchen and replace with ACT

| Scope of Work | length | height | sq/ft | \$/unit | material \$ | hours | rate | labor \$ | subtotal |
|--------------------|--------|--------|-------|---------|-------------|-------|-------|-------------|---------------|
| delete 4' baffles | 0 | 0 | 4 | 79 | \$ 316.00 | 4 | 78.21 | \$ 312.84 | \$ (628.84) |
| delete 8' baffles | 0 | 0 | 29 | 132 | \$ 3,828.00 | 29 | 78.21 | \$ 2,268.09 | \$ (6,096.09) |
| hanging kits | 0 | 0 | 31 | 66 | \$ 2,046.00 | 0 | 78.21 | \$ - | \$ (2,046.00) |
| New ACT in kitchen | 0 | 0 | 650 | 7.28 | \$ 4,732.00 | 21 | 78.21 | \$ 1,642.41 | \$ 6,374.41 |
| subtotal | | | | | | | | | \$ (2,396.52) |
| | | | | | | | | subtotal | \$ (2,396.52) |
| | | | | | | | | TOTAL | \$ (2,396.52) |

Fearn, Cheryl

From: Nate Brown <Nate@charlesbrownglass.com>
Sent: Friday, March 11, 2022 11:26 AM
To: Kalafut, Michael
Cc: Lewis, Tyler; Reed, Wesley
Subject: RE: EOC Kiktchen
Attachments: Sussex County PSB Kitchen Window Elevation.pdf

Mike,

Credit for the deletion of this storefront elevation is \$482.00. Credit includes cost of glazing and labor for installation of this window. I cannot provide a credit for the framing as it was released before these changes were made.

Credit includes four (4) lites of 1/4" clear tempered glass at approximately 24" x 46" (43.34 square feet) at \$3.33 per squarefoot for a \$144.00 material credit and includes five (5) man hours at \$67.50 per hour for a labor credit total of \$338.00.

Please let me know if you have any questions or concerns or need something further on this.

Regards,

Nathaniel Brown
Charles Brown Glass Company
6581 Hobbs Road
Salisbury, MD 21804
P: 410-749-3316
F: 410-749-1037
M: 410-726-0991
www.charlesbrownglass.com

From: Kalafut, Michael <MKalafut@bancroftusa.com>
Sent: Friday, March 11, 2022 9:20 AM
To: Nate Brown <Nate@charlesbrownglass.com>
Cc: Lewis, Tyler <TLewis@Bancroftusa.com>; Reed, Wesley <WReed@bancroftusa.com>
Subject: EOC Kiktchen

Nate,

Just called and left a message. We need you to submit a credit for the section of storefront that is being deleted from the scope of work in the existing EOC kitchen. We have all other proposals from subs at this time and we need your proposal so that we can submit to the County. Please submit as soon as possible.

Thanks,
Mike

Michael Kalafut, PE, LEED AP
Senior Project Manager



M. 302.354.8953 E. mkalafut@bancroftusa.com

WILMINGTON | PRINCETON | SALISBURY

www.bancroftconstruction.com | [facebook](#) | [twitter](#) | [linkedin](#)

Project Name: Sussex Cnty Public Safety

3/11/2022 11:10 AM

Frame Set Name: Frame Set 1

Frame Name: Frame 1

Panels: 4

Rows: 1

Metal Group: CBG Interior 450

D/S: 1

Frame Type: Standard

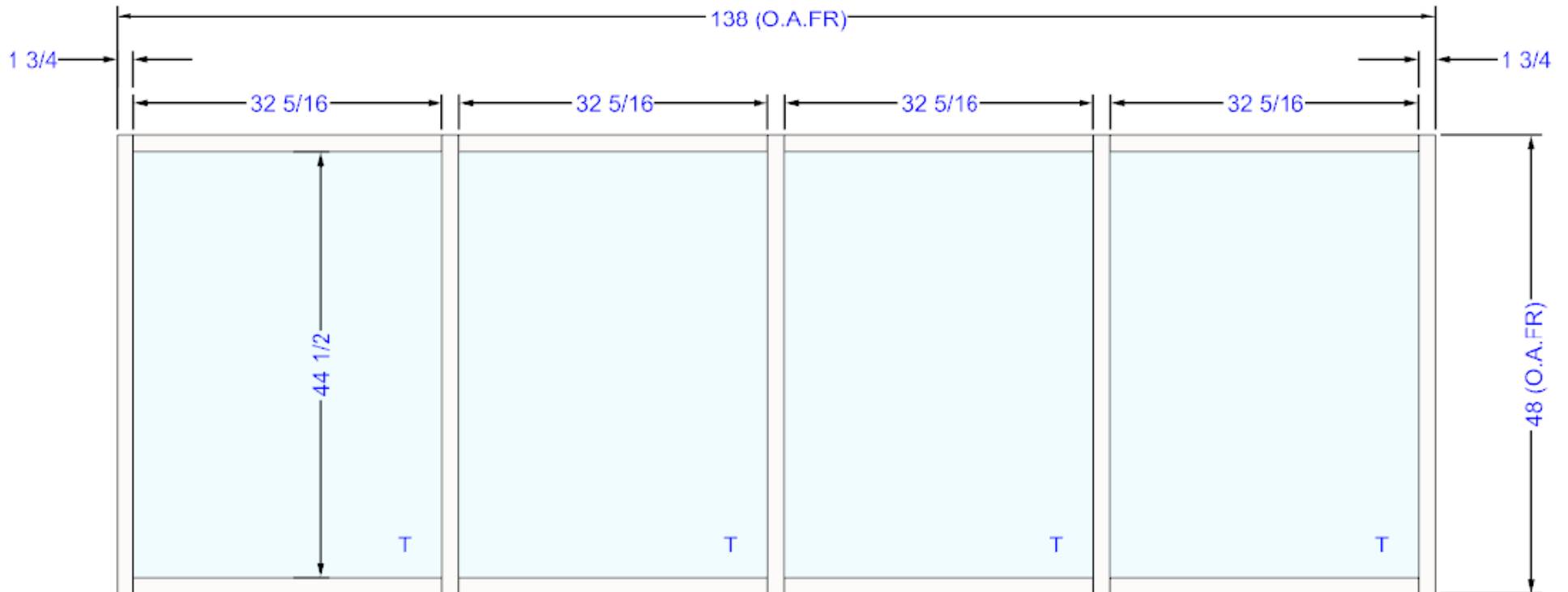
Frame Width: 138

Frame Height: 48

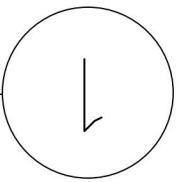
Required: 1

Back Member Color: #14 CLEAR : PERMANODIC

Face Member Color: #14 CLEAR : PERMANODIC



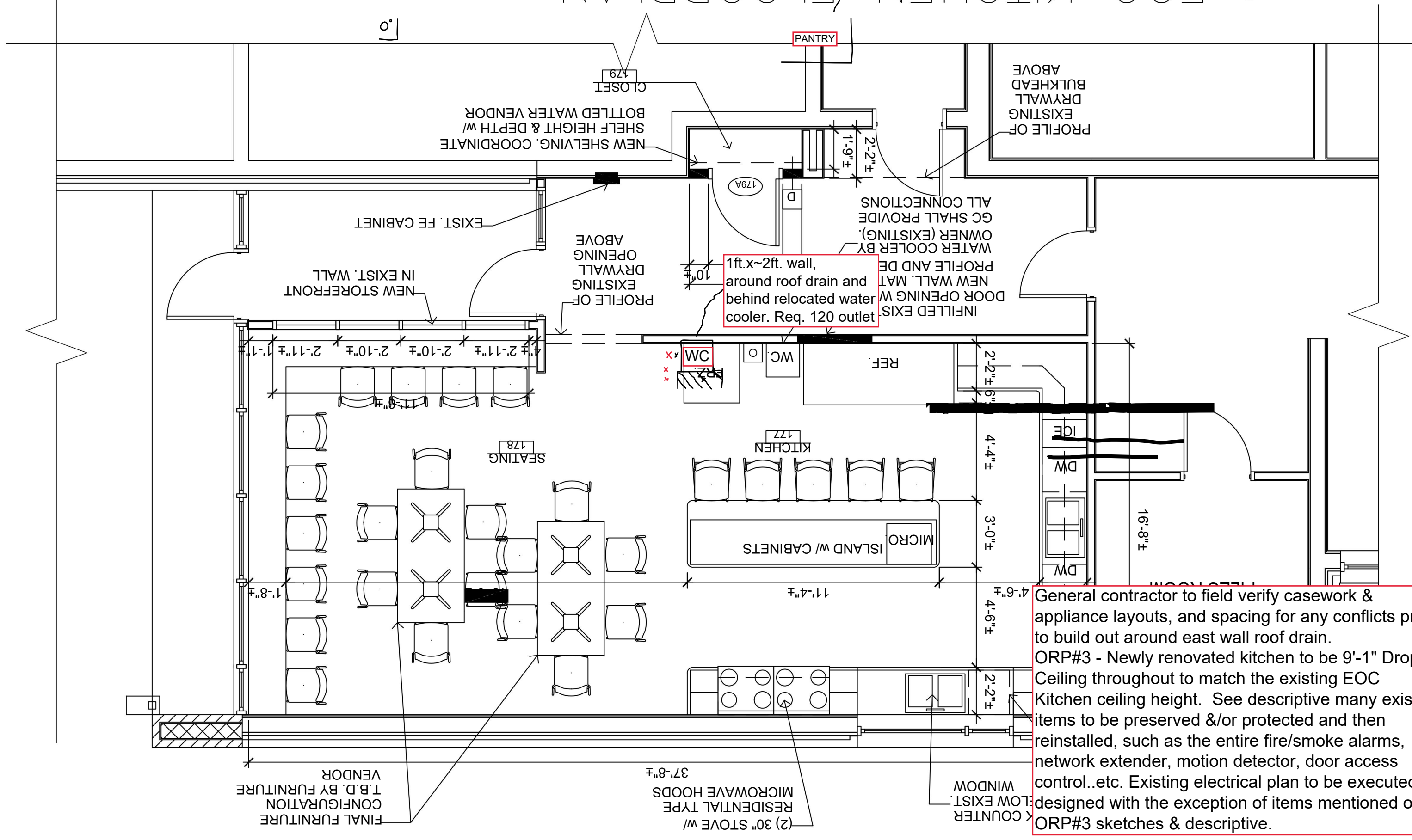
EOC KITCHEN FLOORPLAN



Relocated the designed/planned pantry to west wall. Sized same as original design.

1ft.x~2ft. wall, around roof drain and behind relocated water cooler. Req. 120 outlet

General contractor to field verify casework & appliance layouts, and spacing for any conflicts prior to build out around east wall roof drain.
 ORP#3 - Newly renovated kitchen to be 9'-1" Drop Ceiling throughout to match the existing EOC Kitchen ceiling height. See descriptive many existing items to be preserved &/or protected and then reinstalled, such as the entire fire/smoke alarms, network extender, motion detector, door access control..etc. Existing electrical plan to be executed as designed with the exception of items mentioned on ORP#3 sketches & descriptive.

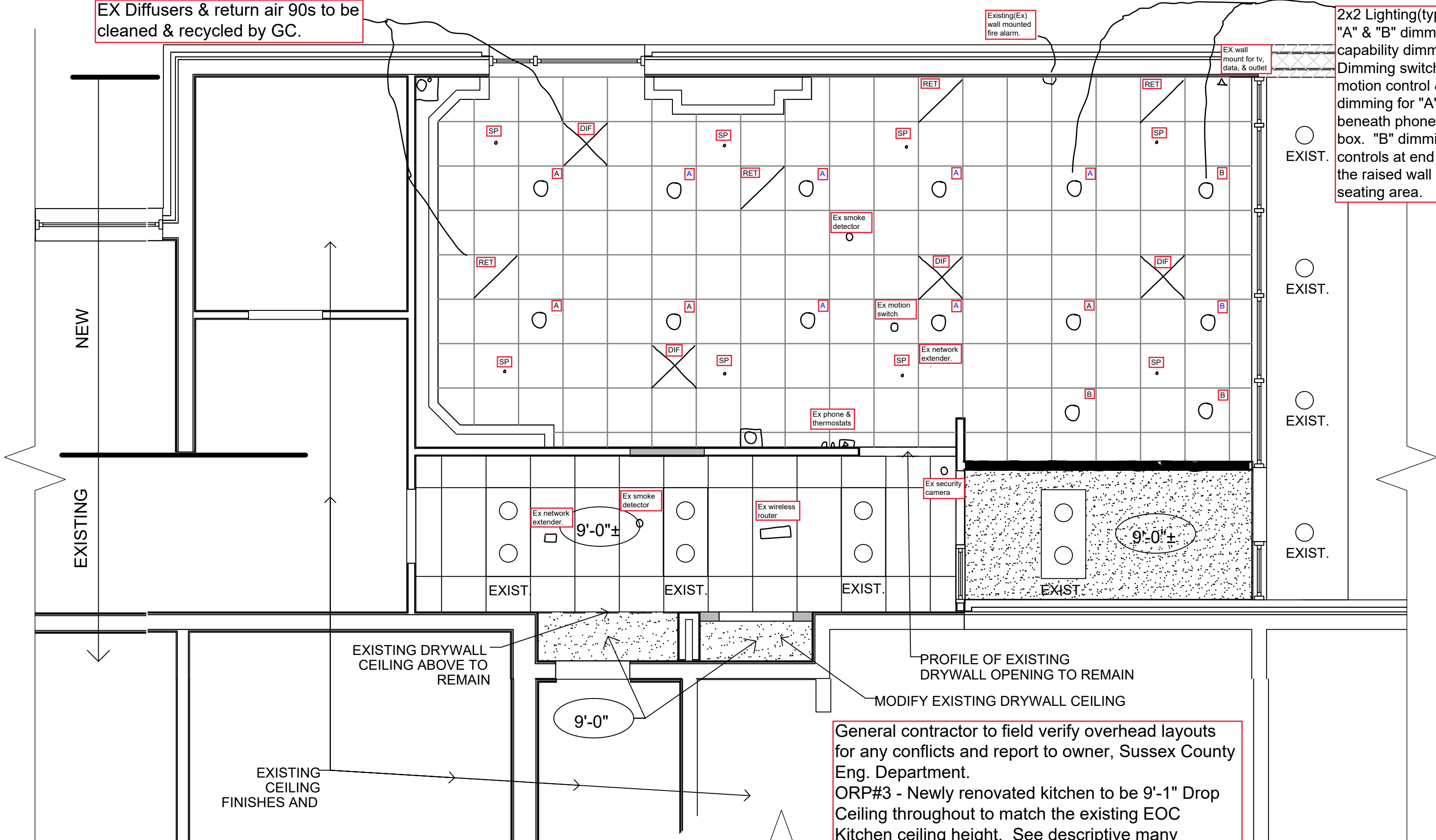


EX Diffusers & return air 90s to be cleaned & recycled by GC.

Existing(Ex) wall mounted fire alarm.

EX wall mount for tv, data, & outlet

2x2 Lighting(typ.) "A" & "B" dimming capability dimming. Dimming switch ex motion control & dimming for "A" beneath phone ex box. "B" dimming controls at end of the raised wall seating area.



1 EOC KITCHEN RCP
NTS

General contractor to field verify overhead layouts for any conflicts and report to owner, Sussex County Eng. Department.
 ORP#3 - Newly renovated kitchen to be 9'-1" Drop Ceiling throughout to match the existing EOC Kitchen ceiling height. See descriptive many existing items to be preserved &/or protected and then reinstalled, such as the entire fire/smoke alarms, network extender, motion detector, door access control..etc. Existing electrical plan to be executed as designed with the exception of items mentioned on ORP#3 sketches & descriptive.


CERTIFICATION OF BIDDER

This is to certify that the undersigned Bidder, Robert Shumate of Cahall Construction on the 9th day of March, 2022, for the Sussex County Project entitled "**Public Safety Building Gas Line**" the following:

1. This Proposal is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization or corporation;
2. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Proposal;
3. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
4. Bidder has not engaged in corrupt, fraudulent, collusive or coercive practices in competing for the Contract. For the purposes of this Paragraph:
 - a. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process;
 - b. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish Proposal prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - c. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Proposal prices at artificial, non-competitive levels; and
 - d. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

CORPORATE SEAL

Signature of Bidder


BY: Cahall Construction, LLC

**CERTIFICATION REGARDING COMPLIANCE
WITH EQUAL OPPORTUNITY REQUIREMENTS**


During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, sexual orientation, gender identity or national origin. The contractor will take positive steps to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, sex, sexual orientation, gender identity or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places available to employees and applicants for employment notices to be provided by the contracting agency setting forth this nondiscrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, sex, sexual orientation, gender identity or national origin."

Dated: 3/9/2022

Cahall Construction, LLC Name of Company

 Signature of Bidder/Prospective Contractor

Robert Shumate Name & Title of Signing Official

Superintendent

23880 Griffith Rd. Business Address

Preston, MD 21055

Seal

Additional documents provided:

Public Safety Building addition: C3.1 Site Plan, C3.0 Grading Plan, E3.1 Electrical Site Plan

**Sussex County Public Safety Building
Gas Line Service**

All bidders and subcontractors must possess a valid State of Delaware Business License. The attached Certification of Bidder and Certification Regarding Compliance with Equal Opportunity Requirements shall be completed and submitted with the Proposal. Bidders are required to return this Proposal request in its entirety to be considered a valid Proposal.

All Proposals shall remain valid for 60 calendar days from the time set for bid opening. A bidder may withdraw their Proposal after it has been submitted, only if the request to do so has been submitted in writing and received prior to the time set for bid opening.

Award will be based on the completeness of the Proposal, the lowest, responsive base Proposal, along with availability of materials & resources to perform the work. All bidders are hereby notified that Sussex County Engineering Department reserves the right to reject any or all Proposals, and to waive informalities at its discretion.

Scale Wage Rates and Davis-Bacon rates do not apply.

Proposal:

Please provide a lump sum price to perform all necessary work:

Part A – Public Safety Building Gas Line

| ITEM NO. | DESCRIPTION | UNITS | QTY | TOTAL PRICE |
|----------|--|-------|------|--------------|
| A-1 | Furnish and installation of 2-inch HDPE gas line from the tank farm behind the Join Services Building to the new EMS addition to Public Safety Building. | LF | 1300 | \$ 13,600.00 |
| A-2 | Materials and tooling to perform open cut across the Rudder Lane and the patch per the DelDOT standard for patching. | LS | 1 | \$ 1400.00 |

Total Proposal in text Fifteen Thousand Dollars

Start availability from time of County Purchase order released, please include time for locate ticket to clear: 5 working days (M-F)

Anticipated completion from the time of starting, date: up to 15 days

Dated: March 9, 2022

Name of Company: Cahall Construction, LLC

Signature of Bidder: [Signature]

Name & Title of Signing Official: Superintendent

Business Address: 23820 Griffith Rd.
Preston, MD 21655

Telephone: (410) 479-5384 office
(410) 310-3009 Bob/cell

Contractor's License No.: _____

ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Proposed Brookland Farm Expansion of the Sussex County Unified Sanitary Sewer District

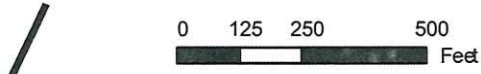
PERMISSION TO POST FACT SHEET

- Expansion of the Sussex County Unified Sanitary Sewer District (Johnson's Corner Area)
- The Engineering Department has received a request from Land Tech Planning, LLC on behalf of their Gulfstream Development, LLC the owners/developers of a project to be known as Brookland Farm.
- The request includes parcel 533-11.00-87.00.
- The project is proposed at 92 single family homes.
- The project will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates.
- The Engineering Department would like to request permission to prepare and post notices for a Public Hearing on the annexation of the area.
- A tentative Public Hearing is currently scheduled for May 10, 2022 at the regular County Council meeting.

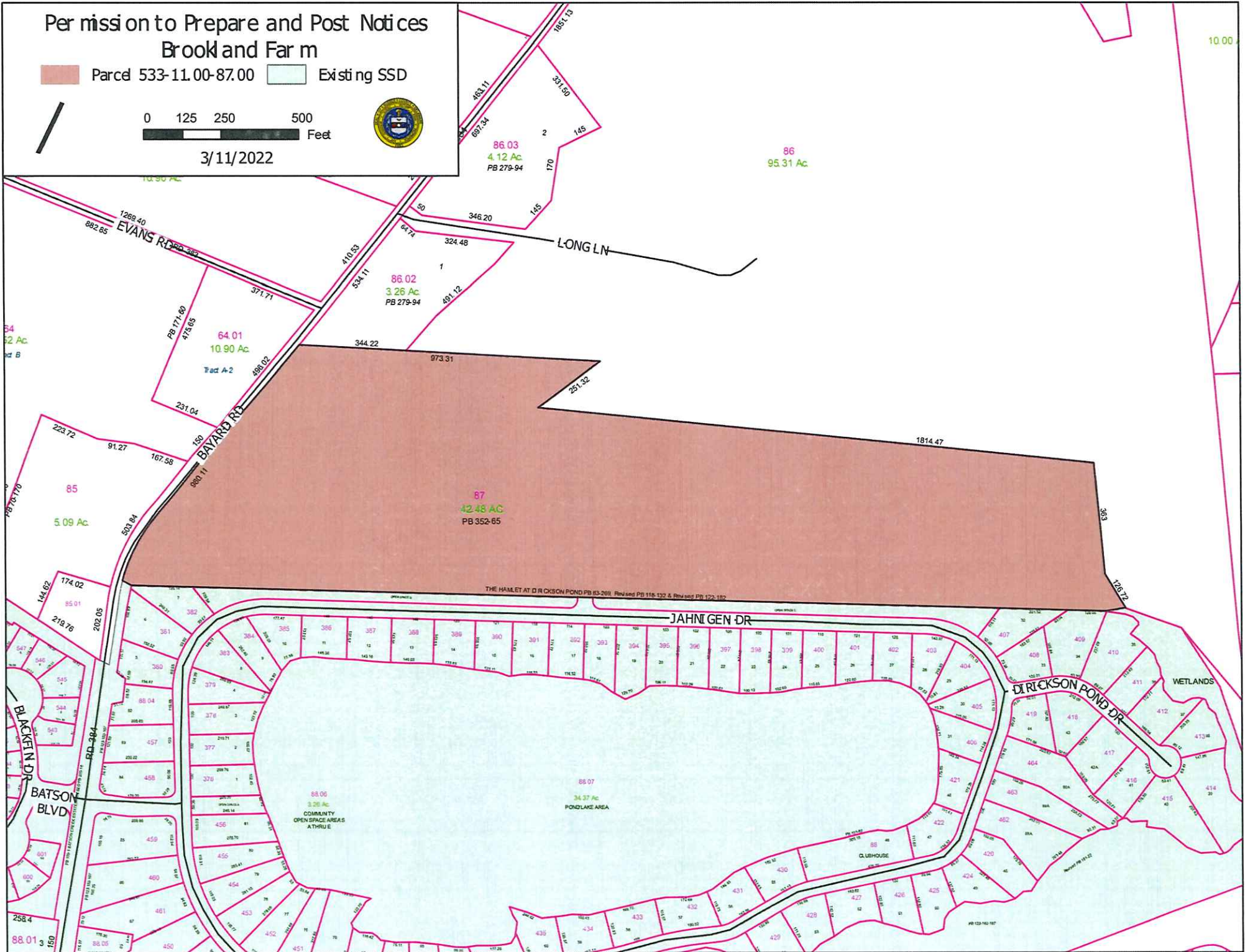


Per mission to Prepare and Post Notices Brook and Farm

Parcel 533-11.00-87.00 Existing SSD



3/11/2022



ENGINEERING DEPARTMENT

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



Sussex County

DELAWARE
sussexcountyde.gov

HANS M. MEDLARZ, P.E.
COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

Proposed The Knoll Expansion of the Sussex County Unified Sanitary Sewer District

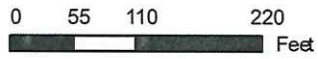
PERMISSION TO POST FACT SHEET

- Expansion of the Sussex County Unified Sanitary Sewer District (Holt's Landing Area)
- The Engineering Department has received a request from Land Tech Planning, LLC on behalf of their Irons Knoll, LLC the owners/developers of a project to be known as The Knoll.
- The request includes parcel 134-7.00-16300.
- The project is proposed at 33 lots.
- The project will be responsible for System Connection Charges of \$6,600.00 per EDU based on current rates.
- The Engineering Department would like to request permission to prepare and post notices for a Public Hearing on the annexation of the area.
- A tentative Public Hearing is currently scheduled for May 10, 2022 at the regular County Council meeting.

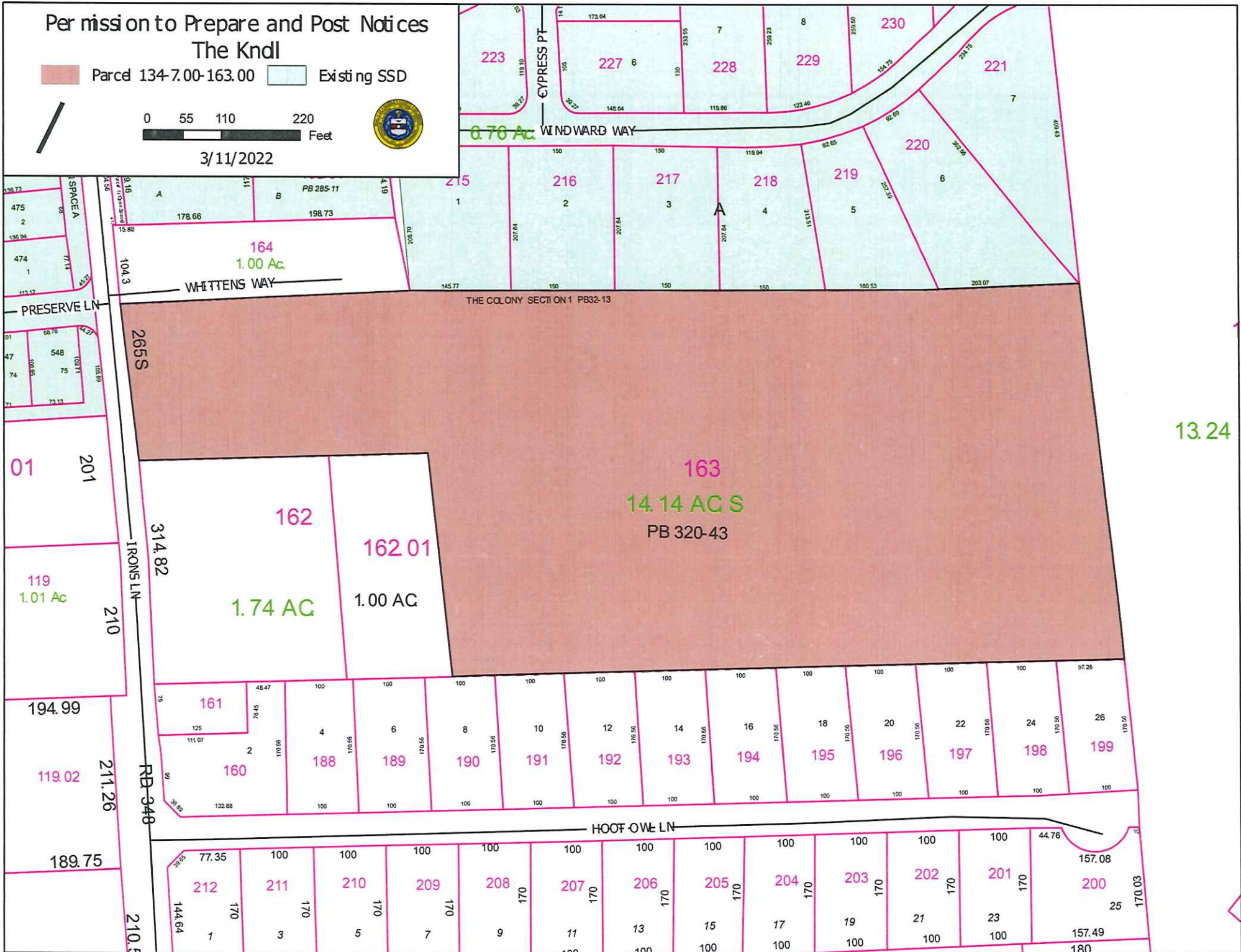


Per mission to Prepare and Post Notices
The KndI

Parcel 134-7.00-163.00 Existing SSD



3/11/2022



ENGINEERING DEPARTMENT

ADMINISTRATION (302) 855-7718
AIRPORT & BUSINESS PARK (302) 855-7774
ENVIRONMENTAL SERVICES (302) 855-7730
PUBLIC WORKS (302) 855-7703
RECORDS MANAGEMENT (302) 854-5033
UTILITY ENGINEERING (302) 855-7717
UTILITY PERMITS (302) 855-7719
UTILITY PLANNING (302) 855-1299
FAX (302) 855-7773



Sussex County

DELAWARE
sussexcountyde.gov
HANS M. MEDLARZ, P.E.
COUNTY ENGINEER
ROBERT L. BRYANT, A.A.E.
AIRPORT MANAGER

MEMORANDUM

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

FROM: Hans Medlarz, P.E., County Engineer &
Robert L. Bryant, A.A.E., Airport Manager

RE: *Commercial Hangar Development – Approval of Lease Agreement*

DATE: March 11, 2022

During its meeting held on February 9, 2021, Sussex County Council accepted a proposal submitted by Schell Aviation, LLC for the “Commercial Hangar Development” of Lots A & B. Schell Aviation (Tenant) proposed redevelopment to include the construction of two (2) New Hangar buildings.

Presented for approval by the Sussex County Council is the **Airport Ground Lease and Specialized Aviation Service Operations Agreement**. The agreement includes:

- Term of this Lease shall be for a period of thirty (30) years with the option to renew the Lease for two (2) additional ten (10) year consecutive terms.
- Annual rent shall begin at \$11,217.60 based on 28,044 sf at the rate of \$0.40 per sf. It is understood and agreed that total square footage being leased is 51,740 sf but that during the initial term, Tenant will not be charged rent for 23,696 square feet of apron and taxilane pavement as required in the Lease.
- As soon as reasonably possible, but in all events no later than the date when the Current Index Pricing is within ten percent (10%) of the sixty (60) month average of the Producer Price Index for Metals and Metal Products: Cold Rolled Steel Sheet and Strip, Tenant shall demolish and remove the existing Old Hangars at Tenant’s sole cost and expense.
- After the demolition and removal of the Old Hangars, Tenant shall construct, at Tenant’s sole expense, the two (2) New Hangars on the Leased Property. Unless otherwise agreed to in



writing by Landlord, each of the New Hangars shall measure approximately Ten Thousand (10,000) square feet, more or less.

- Annual rent shall be adjusted every five (5) subject to increases in the Consumer Price Index.
- Use of the Leased Property shall be limited to the following Commercial Aeronautical Activities, Specialized Aviation Service Operations (SASO),
 - 1. Aircraft Storage Operator (SASO)
 - 2. Aircraft Maintenance Operator (SASO).

The Engineering Department is requesting Sussex County Council approval of the **Airport Ground Lease and Specialized Aviation Service Operations Agreement.**

AIRPORT GROUND LEASE

AND

SPECIALIZED AVIATION SERVICE OPERATIONS AGREEMENT

THIS IS AN AGREEMENT OF LEASE (this "**Lease**"), made and entered into this ____ day of _____, A. D. 2021, (the "**Effective Date**") by and between:

SUSSEX COUNTY, a political subdivision of the State of Delaware, party of the first part, hereinafter referred to as "**Landlord**",

-AND-

SCHELL AVIATION LLC, a Delaware Limited Liability Company, with an address of 20184 Phillips Street, Rehoboth Beach, DE 19971, hereinafter referred to as "**Tenant**".

RECITALS:

WHEREAS, Landlord owns Lot A located at 21469 Rudder Lane, Georgetown, Delaware, and Lot B located at 21449 Rudder Lane, Georgetown, Delaware at Delaware Coastal Airport (Lot A and Lot B are collectively referred to as the "**Leased Property**"), as shown on the drawing attached hereto as Exhibit A; and

WHEREAS, the combined square footage of Lot A and Lot B totals 51,740 square feet (see Exhibit A); and

WHEREAS, there exists on Lot A and Lot B buildings known as old Lot A – Hangar and old Lot B - Hangar, which are owned by Landlord; and

WHEREAS, Landlord and Tenant agree that Tenant shall demolish, at Tenant’s sole expense, the old Lot A – Hangar and Lot B – Hangar buildings (hereinafter collectively “the Old Hangars”); and

WHEREAS, Landlord and Tenant agree that Tenant shall construct and install, at Tenant’s sole expense, two (2) new hangars (collectively “**the New Hangars**”) and all necessary apron and taxilane pavement used for the operation, maneuvering, and parking of aircraft on the Leased

Landlord Initials _____

1

Tenant Initials _____

Property and that said construction shall be completed in accordance with the terms of this Lease, including Paragraph 10.b. and Paragraph 10.c., below; and

WHEREAS, in consideration of Tenant's demolition of the Old Hangars and Tenant's construction and installation of the New Hangars, the apron, and the taxilane pavement as aforesaid, Landlord agrees to credit Tenant rent during the initial term of the Lease but not during the option terms, if exercised, for 23,696 square feet of the Leased Property thereby reducing the square footage of rent that Landlord will charge from 51,740 square feet to 28,044 square feet ; and

WHEREAS, Tenant wishes to provide Specialized Aviation Service Operations (SASO) to the public as more fully described in Paragraph 5.b. below; and

WHEREAS, Tenant wishes to lease the Leased Property from Landlord pursuant to the terms set forth herein; and

WHEREAS, Landlord is willing to lease the Leased Property to the Tenant.

W I T N E S S E T H:

IN CONSIDERATION of the mutual covenants hereinafter expressed, the parties hereto agree as follows:

1. **Leased Property**: Landlord hereby leases to Tenant and Tenant hereby leases from Landlord, subject to the conditions hereinafter expressed, certain airplane hangar sites upon the lands of the Sussex County Airport, Sussex County, Delaware, (the "**Leased Property**") identified as **Lot A**, and having a physical address of 21469 Rudder Lane and **Lot B**, and having a physical address of 21449 Rudder Lane, Georgetown, DE 19947 as shown on a drawing attached hereto as Exhibit A.

2. **Right to Access**: Landlord agrees that the Tenant, its servants, employees, agents and invitees shall have at all times the free and uninterrupted right of access to the said Leased Property.

Landlord Initials _____

2

Tenant Initials _____

3. **Term:** It is mutually agreed by the parties hereto that the term of this Lease shall be for a period of thirty (30) years, to commence on the ____ day of _____, A. D. 2022 (the "**Commencement Date**"), and terminating on the ____ day of _____, A. D. 2052, both dates inclusive, unless sooner terminated as provided herein. Provided that Tenant is current with all rent payments owed to Landlord and is otherwise compliant with the terms and conditions of this Lease, Tenant shall have the option to renew the Lease for two (2) additional ten (10) year consecutive terms subject to the same terms and conditions as stated in this Lease Agreement. Each option term shall be considered independently from the other option term for purposes of notice to renew. To exercise the option, Tenant must give written notice to Landlord at least ninety (90) days prior to the termination date of the original lease term and of any option period of its intent to exercise the option. At the end of the lease term and the two (2) option terms, if exercised, the parties agree that this Lease Agreement shall terminate and that Tenant shall have no right to continue to occupy the Leased Property absent a new lease being executed.

4. **Rent:**

a. Throughout the duration of the Lease Term, Tenant covenants and agrees to pay Landlord annual rent in the minimum amount of Eleven Thousand Two Hundred Seventeen 60/100 Dollars (\$11,217.60) with rent being due in advance in monthly installments of Nine Hundred Thirty-Four 80/100 Dollars (\$934.80) which shall be paid on or before 1st day of each month of the Lease Term. The aforesaid rent figure is based on 28,044 square feet at the rate of \$0.40 per square foot per year. It is understood and agreed that the total square footage being leased to Tenant is 51,740 square feet but that, during the initial term, Tenant will not be charged rent for 23,696 square feet provided that Tenant completes the demolition of the Old Hangars and the construction and installation of the New Hangars and the apron and taxilane pavement as required in this Lease. It is further understood and agreed that the aforesaid credit shall not apply

Landlord Initials _____

3

Tenant Initials _____

to any option term of this Lease. The first monthly installment shall be due on or before _____, 2022.

b. The annual rent under this Paragraph 4 of this Lease Agreement shall be adjusted every five (5) years of the Lease term and any option term, if exercised, to reflect any change in the cost of living. The adjustment, if any, will be calculated on the basis of the percentage increase equal to the most recent Consumer Price Index, for All Items, All Urban Consumers, published by the Department of Labor. If publication of the above index shall be discontinued, then another index generally recognized as authoritative, shall be substituted as selected by Landlord. The rent for each subsequent five (5) year period, including the option terms if exercised, will be adjusted by the percentage increase from the last preceding five (5) year period, if any, not to exceed fifteen percent (15%) in any preceding five year period.

c. Within thirty (30) days after Landlord gives Tenant notice of the adjusted rent, Tenant will pay the adjusted rent retroactive to the first month of the then current five (5) year lease period. The adjusted rent will be the yearly rent for the balance of the then current five (5) year lease period. Upon Tenant's request, Landlord will give Tenant written notice indicating how the adjusted rent amount was computed.

d. **Rent during Renewal Terms:** If Tenant exercises an option to renew the Lease pursuant to Paragraph 3, the minimum annual rent during the option term shall be \$20,696.00 plus all adjustments for cost-of-living increases as calculated in Paragraph 4(c) from the Effective Date of this Lease to the first day of the option term. Rent during the option terms shall be subject to further adjustments for cost-of-living increases in accordance with Paragraph 4(c). All rent due during the option terms shall be paid in equal monthly installments.

e. **Payment Provisions:** Payments made after the fifteenth (15th) day of the month in which due shall be subject to a late fee of five percent (5%) of the total amount

outstanding. All payments should be made to Sussex County Council, Sussex County Accounting Office, P.O. Box 589, Georgetown, Delaware 19947, or such other place or places as may from time to time be designated in writing by Landlord.

5. **Use:**

a. The use of the Leased Property and the New Hangars to be constructed thereon shall at all times comply with all laws, orders, ordinances, regulations, and requirements of any governmental authority having jurisdiction, including all rules, regulations, and policies for Delaware Coastal Airport. Use of the Leased Property shall also comply with National Fire Protection Associated Standards, including but not limited to NFPA 409 relating to aircraft hangars, and NFPA 410 relating to aircraft maintenance. Tenant shall comply with all environmental laws, ordinances, regulations, statutes, and rules which apply to the Leased Property and Tenant's use thereof. Tenant shall maintain, at Tenant's own cost and expense, the Leased Property, including the New Hangars and any other improvements thereon in good, clean condition and state of repair free from noxious activities or appearance and in accordance with any current or future Airport guidelines or policies. At the end of the lease term or any extension thereof, Tenant shall deliver to Landlord the Leased Property and any improvement which may be located thereon in good order and condition, wear and tear from reasonable use thereof and damage by the elements not resulting from the neglect or fault of Tenant excepted. Tenant shall neither encumber nor obstruct the sidewalks, driveways, yards, or entrances, but shall keep and maintain the same in a clean condition, free from debris, trash, refuse, snow, and ice. Tenant shall be responsible for providing grass cutting, trash removal, and snow removal services to the Leased Property. Grass (if any) shall be mowed regularly so as to prevent grass from growing beyond six (6) inches in height.

b. Use of the Leased Property shall be limited to the following Commercial

Landlord Initials _____

5

Tenant Initials _____

Aeronautical Activities, Specialized Aviation Service Operations (SASO), and shall be subject to the most current, as may be amended from time to time in Landlord's sole discretion, Delaware Coastal Airport Policies, Minimum Standards for Commercial Aeronautical Activity, and Rules and Regulations:

1. Aircraft Storage Operator (SASO)

2. Aircraft Maintenance Operator (SASO)

c. Storage, Self-Fueling, and other Self Service Activities upon Tenant-owned aircraft performed by the Tenant's own employees and using the Tenant's own equipment is permitted and shall be subject to the most current, as may be amended from time to time in Landlord's sole discretion, Delaware Coastal Airport Policies, Minimum Standards for Commercial Aeronautical Activity, and Rules and Regulations.

d. Fuel sales into aircraft not owned by the Tenant are not allowed as a Specialized Aviation Service Operations

e. Tenant agrees to supply to Landlord information as to the type and identification number of the aircraft using the Leased Property.

6. **Landlord Obligations.** Landlord shall at all times under the terms hereof maintain Delaware Coastal Airport as an active airport facility in compliance with the regulations of the Federal Aviation Administration.

7. **Utilities:** Landlord shall be responsible to ensure water, sewer, and electric service are available to the Leased Property. Tenant shall pay for all utilities of whatsoever kind which are furnished to the Leased Property. Tenant shall be responsible for all connection costs, fees, and expenses associated with utilities provided to the Leased Property. Tenant shall be responsible for the installation of a water meter servicing the Leased Property. Landlord shall be responsible for the maintenance of the water meter servicing the Leased Property. Tenant shall be solely

responsible for water charges, and Landlord shall have no obligation for the same.

8. **Taxes:** Tenant shall pay all ad valorem taxes or any other taxes, including taxes levied by Sussex County, on any improvements erected on the Leased Property and all equipment installed therein.

9. **Right to Contest:** Tenant shall have the right in good faith to contest by legal proceedings or otherwise the assessment upon the Leased Property by any governmental authority levying or attempting to levy taxes thereon. Landlord shall cooperate with Tenant, but at no expense to Landlord, in any such protest as Tenant shall make. In the event Tenant shall determine to contest such taxes, Tenant shall, within the time herein set forth for the payment of such taxes, post with the proper governmental authorities such sum of money or take such other action satisfactory to Landlord, as will protect the property from nonpayment during such contest. Further, Tenant shall obtain the participation of the Landlord in any tax appeal, if required.

10. **Improvements:**

a. As soon as reasonably possible, but in all events no later than the date when the Current Index Pricing is within ten percent (10%) of the sixty (60) month average of the Producer Price Index for Metals and Metal Products: Cold Rolled Steel Sheet and Strip, Tenant shall demolish and remove the existing Old Hangars at Tenant's sole cost and expense. The demolition and removal of the Old Hangars shall at all times comply with all laws, orders, ordinances, regulations, and requirements of any governmental authority having jurisdiction. Once demolition and removal of the existing Old Hangars has commenced, such demolition and removal shall proceed without delay until the same is completed. Cessation of work after the demolition and removal has started and before completed thereof for a continuous period of thirty (30) days shall be prima facie evidence of Tenant's failure to comply with this requirement. Failure to complete

the demolition and removal of the –Old Hangars pursuant to this Paragraph shall be considered a default of the Lease.

b. After the demolition and removal of the Old Hangars as set forth in Paragraph 10(a), Tenant shall construct, at Tenant’s sole expense, the New Hangars on the Leased Property. Unless otherwise agreed to in writing by Landlord, each of the New Hangars shall measure approximately Ten Thousand square feet, more or less. Tenant shall design and obtain all necessary permits for the construction of the New Hangars within sixty (60) days after the demolition and removal of the Old Hangars as set forth in Paragraph 10(a) and Tenant shall start construction as soon as reasonably possible thereafter, but in all events no later than six (6) months after the demolition and removal of the Old Hangars as set forth in Paragraph 10(a). Once construction has commenced, such construction shall proceed without delay until the same is completed. Cessation of work after the construction has started and before completed thereof for a continuous period of thirty (30) days shall be prima facie evidence of Tenant’s failure to comply with this requirement. Failure to complete said construction pursuant to this Paragraph shall be considered a default of the Lease.

c. On or before the completion of the construction of the New Hangars, Tenant shall construct, at Tenant’s sole expense, 23,696 square feet of apron and taxiway pavement needed for the operation, maneuvering, and parking of aircraft on the Leased Property. A 3,444 square foot (246’ x 14’) section of the apron pavement immediately in front of the two (2) new hangars is considered part of the hangars. The design and load bearing capacity of the apron and taxiway shall be consistent and the apron and taxiway shall support 60,000 pounds, which is the estimated static, maximum gross takeoff weight of the following aircraft which were identified in the January 27, 2021 Revision to Request for Proposal submitted by Tenant: 1) Gulfstream G100, 2) Cessna

CJ4, and 3) Hawker 400. Failure to complete said construction pursuant to this Paragraph shall be considered a default of this Lease.

d. Tenant shall be responsible for all maintenance and repair to any improvements, including the New Hangars, apron and taxilane pavement, grass cutting, trash removal, and general housekeeping duties located on the Leased Property. Construction, maintenance, and repair to said improvements shall be at Tenant's sole cost and expense, including all necessary fees and permits. Construction of any and all improvements on the Leased Property, including the New Hangars, apron, and taxilane, shall be subject to approval by the County Engineer and shall be in compliance with all governmental requirements. The construction and use of the Leased Property and improvements to be constructed thereon, including the New Hangars, apron, and taxilane, shall at all times comply with all laws, orders, ordinances, regulations, and requirements of any governmental authority having jurisdiction. Title to the New Hangars and other improvements made by Tenant shall be and remain vested in Tenant until the termination of this lease, at which time the New Hangars and improvements, erected on the Leased Property and any fixtures which are a part thereof, shall remain a part to the Leased Property and shall be the property of Landlord. Notwithstanding the foregoing, upon completion of construction of the taxilane and apron, ownership of the taxilane and apron shall vest in Landlord. Any trade fixtures, which were installed on the Leased Property by Tenant and which are removable without substantial damage to the improvements and the Leased Property shall remain the property of the Tenant, provided that Tenant shall promptly repair any damage to the improvements on the Leased Property caused by their removal and that Tenant is not in default of any covenant or agreement contained in this Lease Agreement; otherwise such trade fixtures shall not be removed and Landlord shall have a lien thereon to secure itself on account of its claims.

e. Tenant shall provide to Landlord a performance bond in the form and amount that

Landlord Initials _____

9

Tenant Initials _____

Landlord requires to ensure that Tenant meets its obligations under this Paragraph 10. A form of the bond is attached hereto as Exhibit B.

f. Force Majeure. Except as otherwise provided here within, Tenant shall not be in default under this Lease if Tenant's performance as required under this Paragraph 10 is delayed or prevented by or due to strike, lockout, inability to obtain labor and materials, war, riot, unusually severe weather conditions, acts of God and other similar causes beyond the control of Tenant, and the time within which Tenant must comply with any of the terms, covenants and conditions of this Lease shall be extended by a period of time equal to the period of time that performance by Tenant is delayed or prevented by the causes specified above. Notwithstanding the above, it is understood and agreed that Tenant's performance shall not be excused, delayed or prevented by the current COVID 19 pandemic.

11. Acceptance of Leased Property: Tenant hereby accepts the Leased Property in "as is" condition and acknowledges that the Leased Property is suitable for Tenant's intended use thereof.

12. Compliance with Laws: Tenant shall promptly comply with all laws, ordinances, rules, regulations, requirements and directives of the Federal, State and County Government and Public Authorities and of all their departments, bureaus and subdivisions, applicable to and affecting the said premises, their use and occupancy, for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the said premises, during the term hereof; and shall promptly comply will all orders, regulations and directives of the State Fire Marshal or similar authority and of any insurance companies which have issued or are about to issue policies of insurance covering the said Property and its contents, for the prevention of fire or other casualty, damage or injury, at the Tenant's own cost and expense. Tenant agrees during the term of this Lease and any extension thereof, to comply with all laws, ordinances, lawful orders

and regulations issued by the Federal Aviation Administration (“the FAA”) or any other governmental authority, including Sussex County, which affect or have jurisdiction over the said Leased Property. Tenant shall comply with the rules and regulations of Delaware Coastal Airport (“the Airport”) which rules and regulations may be altered from time-to-time.

13. **Subordination of Agreement to Certain Agreements with Federal Government; FAA Approval:** This Agreement shall be subordinate in all respects to the provisions of any existing or future leases, contracts or agreements between Landlord and the United States or any agency thereof relative to aircraft operating areas of the Airport, the execution of which has been or may be required as a condition precedent to the expenditure of federal funds for the development of the Airport. Although this Agreement shall be effective upon the execution hereof by the parties hereto, it shall nevertheless be subject to approval by the FAA, and the parties hereby covenant and agree to make any modifications or amendments hereto that may be required to obtain such approval.

14. **Assignment of Lease:** Subject to Section 24 hereof, Tenant shall not have the right to assign this Lease or enter into a sublease of all or part of the Leased Property without the written approval of Landlord which shall not be unreasonably withheld, conditioned, or delayed. Unless otherwise agreed in writing, such assignment or subletting shall in no way relieve Tenant of any responsibility of rent or for the performance of any of the other covenants or conditions hereof. The prospective assignee or subtenant shall be subject to inquiries concerning the nature of the use of the Leased Property. Such assignee or subtenant shall in writing assume all of the obligations to be performed by Tenant hereunder. Tenant agrees to pay for any attorney’s fees incurred by Landlord resulting from any sublease or assignment. In the event Tenant receives Landlord approval for the assignment of this Lease or for the sublease of all or part of the Leased Property, it is expressly understood and agreed that the Leased Property shall only be used for the purposes

agreed to by Landlord. Tenant acknowledges that Landlord may require additional insurance for the Leased Property as a condition of approval for any proposed assignment or sublease.

15. **Right to Inspection:** Landlord or its authorized representative may enter the Leased Property at any time without the consent of Tenant in case of emergency, and Landlord or its authorized representative may enter the Leased Property upon the giving of reasonable notice to the Tenant for inspections of the Leased Property. Reasonable notice shall mean no less than 48 hours prior to the entry, unless Landlord is entering to make repairs specifically requested by Tenant. Tenant shall not unreasonably withhold consent to Landlord or its authorized representative to enter the Leased Property to inspect it or make necessary or agreed upon repairs or improvements.

16. **Hold Harmless:** Tenant further agrees that Tenant will not hold Landlord and/or any of its agents, employees, directors, officers, volunteers, consultants and elected or appointed officials responsible or liable for any loss occasioned by fire, theft, rain, windstorm, hail or from any other cause whatsoever, whether the cause be the direct, indirect or merely a contributing factor in producing the loss or damage to any airplane, automobile, the New Hangars and associated equipment as shall be appurtenant and necessary thereto, or any other personal property, parts or surplus that may be located in or stored outside of the hangars, or upon the apron, field, runways, taxiways or other location at the Airport; and Tenant agrees that the airplane(s) and their contents are stored, whether on the field or in a hangar, at Tenant's own risk. To the fullest extent permitted by law, Tenant waives any right of recovery from Landlord for any loss of or damage to its real or personal property, improvements and aircraft, regardless of the cause of origin, including the negligence of Landlord and its agents, employees, directors, officers, volunteers, consultants and elected or appointed officials. Tenant shall advise its property insurer(s) of the foregoing and such waiver shall be permitted under any insurance policies maintained by Tenant. And further,

to the fullest extent permitted by law, Tenant agrees to hold harmless, indemnify and defend Landlord, and its agents, employees, directors, officers, volunteers, consultants and elected or appointed officials from and against any and all claims, damages, liability and defense costs arising from the Tenant's occupancy of the Leased Property or operations incidental thereto or its obligations under the Agreement.

17. **Indemnification**: To the extent permitted by law, Tenant shall indemnify, defend and hold Landlord and its appointed and elected officials, employees, agents, and volunteers harmless from any and all claims arising from Tenant's use of the Leased Property, the conduct of its business, or from any activity, work or things which may be permitted or suffered by Tenant in or about the Leased Property, and shall further indemnify, defend and hold Landlord and its appointed and elected officials, employees, agents, and volunteers harmless from and against any and all claims arising from any breach or default in the performance of any obligation on Tenant's part to be performed under the provisions of this Lease Agreement or arising from any negligence of Tenant or any of its agents, contractors, employees or invitees and from any and all costs, attorney's fees, expenses and liabilities incurred in the defense of any such claim or any action or proceeding brought thereon. Tenant hereby assumes all risk of damage to property or injury to persons in or about the Leased Property from any cause, and Tenant hereby waives all claims in respect thereof against Landlord and its appointed and elected officials, employees, agents, and volunteers, except as prohibited by law. Tenant hereby agrees that, except as prohibited by law, Landlord and its appointed and elected officials, employees, agents, and volunteers shall not be liable for injury to Tenant's business or any loss of income there from or for damage to the equipment, wares, merchandise, or other property of Tenant, Tenant's employees, invitees, customers, or any other person in or about the Leased Property; nor shall Landlord and its appointed and elected officials, employees, agents, and volunteers be liable for injury to the person

of Tenant, Tenant's employees, agents or contractors and invitees, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water, rain or other elements, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air conditioning or lighting fixtures, or from any other cause, whether the said damage or injury results from conditions arising upon the Leased Property.

18. **Landlord Representations:** Landlord agrees, covenants and represents as follows:

a. That Tenant, its volunteers, servants, employees, agents and invitees shall at all times during the term of this lease and any extension thereof have free and uninterrupted non-exclusive right of access in common with others (over paved roadways) to the Leased Property herein relevant for all varieties and types of vehicular traffic and movement. And, Tenant shall have the right in common with others so authorized, to use the common areas of the Airport, including runways, taxiways, taxilanes, aprons, roadways, and other conveniences for the ground movement, take-off, flying and landing of aircraft. Landlord agrees, at no expense to Tenant, to provide and maintain all roadways required to afford such access to the Leased Property from nearby public highways and roads. Provided, however, that Landlord shall not be obligated to provide snow removal services, grass cutting, or any other maintenance on the Leased Property.

b. That the Leased Property is owned in fee simple by the Landlord and that the Leased Property herein relevant is free from any encumbrances of any type.

c. That Landlord has the right to make this Lease and that it will execute or procure any further assurances of title that may be required by Tenant.

d. That electric services are available to the Leased Property.

e. That water and sewer services are available to the Leased Property.

f. That Tenant, on paying the rent and performing the conditions and covenants herein contained, shall and may peaceably and quietly have, hold and enjoy the Leased

Property for the term aforementioned

19. **Signs:** Landlord will not suffer or permit to be maintained upon the outside or any improvements on the Leased Property any billboards or advertising signs except that Tenant may maintain neatly painted, electric or neon sign or signs; such signs, however, as to their size, construction, location, content, color and general appearance, to be approved by Landlord.

20. Landlord reserves the right to further develop or improve the landing and ground movement areas of the Airport as Landlord sees fit, regardless of the view or desires of the Tenant and without Tenant's interference or hindrance. In addition, it is specifically agreed that this Lease is non-exclusive and that Landlord reserves the right to lease other property at the facility for identical or similar uses.

21. **Notices:** It is mutually agreed by the parties hereto that any notice under this Lease shall be in writing and must be either hand delivered or sent by Registered or Certified Mail to the last address of the party to whom the notice is to be given, as designated by such party in writing. Landlord hereby designates its address as Sussex County Administrative Office Building, Attention: Airport Manager, 2 The Circle, P O Box 589, Georgetown, Delaware 19947. Tenant hereby designates its address as 20184 Phillips Street, Rehoboth Beach, DE 19971.

22. **Insurance:** During the Term of this Lease, Tenant shall secure and maintain at its own expense the following insurance:

a. **Aircraft Liability Insurance** that insures against bodily injury and property damage claims arising from the Tenant's ownership, maintenance or use of Tenant-owned and non-owned aircraft while stored at or being operated to or from the Leased Property, with a combined single limit of \$1,000,000 per occurrence.

b. **Airport Liability Insurance** that insures against bodily injury, property damage, personal and advertising injury claims arising from the Tenant's occupancy of the Leased

Landlord Initials _____

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Tenant Initials _____

Property or operations incidental thereto with combined single limits of \$5,000,000 per occurrence, \$5,000,000 general aggregate and \$5,000,000 products/completed operations aggregate. Such insurance shall be endorsed to name Landlord and its appointed and elected officials, employees, agents and volunteers as additional insureds on a primary and non-contributory basis for claims caused in whole or in part by Tenant or others acting on its behalf. A copy of the additional insured endorsement(s) that evidence the required additional insured status must accompany any certificate of insurance provided to Landlord.

c. **Workers' Compensation & Employers' Liability Insurance** that insures Tenant's workers' compensation obligations to its employees in Delaware under State or Federal law. Employers' liability insurance must be secured with minimum limits of \$500,000 for bodily injury by accident, \$500,000 each employee for bodily injury by disease, and a \$500,000 policy limit for bodily injury disease.

d. **Business Auto Liability Insurance** that insures against bodily injury and property damage claims arising out of the maintenance, use or operation of any auto with a minimum combined single limit of \$1,000,000 per accident.

e. **Hangar Keepers Liability Insurance** that insures against physical loss of or damage to aircraft while in the care, custody and control of Tenant including, but not limited to, the storage, servicing, fueling and repair of non-owned aircraft. The minimum limits of liability for this insurance are \$5,000,000 any one occurrence and any one aircraft.

f. **Pollution Liability Insurance** that insures claims for pollution and remediation legal liability arising out of or in connection with the Tenant's occupancy of the Leased Property. The minimum limits of liability for this insurance are \$1,000,000 each pollution condition and \$1,000,000 annual aggregate. This insurance shall name Landlord, and its appointed

and elected officials, employees, agents, and volunteers as additional insureds on a primary and non-contributory basis. The endorsement(s) evidencing the required additional insured status must be submitted in conjunction with certificates of insurance furnished to Landlord. Tenant must continue to maintain such insurance, covering incidents occurring or claims made, for a period of three (3) years after termination of the Lease.

g. **Property and Business Income Insurance** - All risk (special form) property insurance that insures against direct physical loss of or damage to the New Hangars(both during and after construction) and Tenant's personal property (other than Tenant-owned aircraft) including fixtures and equipment located on the Leased Properties, on a replacement cost valuation basis, with limits not less than 100% of the insurable replacement cost of all such property. Tenant shall also secure, all risk (special form) business income and extra expense insurance in amounts satisfactory to protect its interests as a result of direct physical loss of or damage to property, fixtures and equipment located on the Leased Property. Landlord shall be an insured on Tenant's property, business income and extra expense insurance as its interests may appear.

h. **Demolition and Construction Insurance** - During the period of demolition of the existing buildings and construction of the New Hangars, Tenant shall at all times obtain and maintain insurance consistent with the requirements set forth in Exhibit C attached hereto.

i. **Waiver of Subrogation** - To the fullest extent permitted by law, Tenant waives any right of recovery from Landlord, and its appointed and elected officials, employees, agents, and volunteers, for any loss, damage or injury to the Old Hangars or the New Hangars and Tenant's personal property including fixtures and equipment located on the Leased Property (or resulting loss of income or extra expense), regardless of the cause of origin, including the

negligence of the Landlord and its appointed and elected officials, employees, agents and volunteers. To the fullest extent permitted by law, Tenant's property insurer shall not hold any right of subrogation against Landlord, and its elected and appointed officials, employees, agents, and volunteers. Tenant shall advise its insurer(s) of the foregoing and such waiver shall be permitted under any property, business income and extra expense insurance policies maintained by Tenant. Any deductible amount(s) selected by Tenant shall be the sole responsibility of Tenant.

j. **Evidence of Insurance / Insurers** - Tenant shall furnish certificates of insurance, acceptable to Landlord, to the Manager, Delaware Coastal Airport, Sussex County, Delaware evidencing all insurance required herein at execution of this Lease and prior to each renewal thereafter. Such insurance shall be written with insurers allowed to do business in Delaware, with a Financial Strength Rating of "A-" or better, and a Financial Size Category of "Class VII" or better in the latest evaluation of the A.M. Best Company, unless otherwise approved by the Landlord. All insurance policies required hereunder shall be endorsed to provide that the policy is not subject to cancellation or non-renewal in coverage until sixty (60) days prior written notice has been given to Landlord. Therefore, a copy of the endorsements to the required policies that confirm the insurer is obligated to send notice to Landlord as required herein, must accompany all certificates of insurance. Liability policies required herein (other than pollution liability) may not be written on a "claims made" basis without the prior written approval of Landlord. If Tenant shall fail, refuse or neglect to secure and maintain any insurance required of Tenant or to furnish satisfactory evidence of insurance, premiums paid by Landlord shall be recoverable by Landlord from Tenant, together with interest thereon, as additional rent promptly upon being billed therefore.

k. All policy limits as stated herein shall be adjusted every five (5) years in accordance with increases in the consumer price index to levels satisfactory to Landlord.

1. For each type of commercial operation allowed by this Lease, Tenant shall secure and maintain, at its own expense, insurance subject, as may be amended from time to time in Landlord's sole discretion, to the most current Delaware Coastal Airport Policies, Minimum Standards for Commercial Aeronautical Activity, and Rules and Regulations.

23. **Landlord Not Liable for Debts, Acts, or Omission of Tenant:** Tenant shall not be the agent or partner of Landlord and Tenant shall have no authority to make any contract or do any act so as to bind Landlord or as to render Landlord or the Leased Property liable therefore. Tenant will save Landlord and the Leased Property harmless from any penalty, damages, neglect, or negligence of Tenant, property damage, illegal act or otherwise. Any improvements by Tenant on said Leased Property shall be constructed at the sole expense of Tenant, and Landlord and its appointed and elected officials, employees, agents, and volunteers shall not be liable in any way for any amount of money arising out of said construction. Before starting construction, Tenant shall have recorded on the public records of Sussex County, Delaware, such legal notice as may be necessary wherein the public is advised that Landlord and its appointed and elected officials, employees, agents, and volunteers are not in any way liable for any claims or obligations for labor and materials on said job, and that the laborers, material men and subcontractors shall look solely to Tenant for payment and shall not be entitled to place a lien against said demised property. If any mechanic's or materialmen's lien is filed or any claim made on account of labor or other material furnished, alleged to have been furnished or to be furnished to Tenant at the Leased Property or against Landlord as the owner thereof, Tenant shall within ninety (90) days after written notice from Landlord thereof, either pay or bond the same or procure the discharge thereof in such manner as may be provided by law. Tenant will indemnify Landlord and its appointed and elected officials, employees, agents, and volunteers for its costs, legal fees and expenses in defending any action, suit or proceedings which may be brought thereon or for the enforcement of

such lien, or liens and Tenant shall pay any damages and any judgment entered thereon and save harmless and indemnify Landlord and its appointed and elected officials, employees, agents, and volunteers from any claims of damages resulting there from. Failure to do so shall entitle Landlord to resort to remedies as are provided herein in the case of any default of this Lease Agreement, in addition to such as are permitted by law.

24. **Leasehold Mortgage.** Tenant shall have the right, without Landlord's consent, to collaterally assign, pledge and/or mortgage all of Tenant's rights and interests under this Lease Agreement, its interest in any sublease of the Leased Property, or the rentals payable thereunder, to any provider of construction, interim, or long-term financing, or any refinancing thereof, and any trustee or agent acting on their behalf ("**Tenant Lenders**") as security for Tenant's obligations under all documents and instruments evidencing, guaranteeing or executed by Tenant in connection with any said financing ("**Financing Documents**"), on the condition that (i) said Tenant Lenders are investors customarily in the business of making loans, (ii) Tenant is limited to one mortgagee, assignee or pledgee at a time, (iii) Landlord obtains copies of all Financing Documents, (iv) that any assignees or subtenants shall not have such right to mortgage, assign or pledge this Lease Agreement, (v) the Financing Documents not alter any terms of this Lease Agreement, (vi) the Tenant Lenders have no greater rights for notice and cure of Tenant events of default except as otherwise set forth in this Lease Agreement, and (vii) there be no uncured event of default hereunder. In the event of such a collateral assignment, pledge and/or mortgage and upon occurrence of an Event of Default by Tenant under this Lease or the Financing Documents, as the case may be, the Tenant Lenders shall have the right (but not the obligation) to assume, all of the rights, interests and obligations of Tenant thereafter arising under this Lease. Landlord or Tenant, upon request of the other, shall promptly execute and deliver to the requesting party, and/or Tenant Lenders, a written consent to any such collateral assignment, pledge and/or mortgage of

this Lease Agreement and such written certificates as to the due authorization, execution and delivery by the executing party, and enforceability against Landlord or Tenant of this Lease Agreement as Landlord or Tenant and/or Tenant Lenders may reasonably request. Notwithstanding the foregoing, whenever Landlord shall send notice of default to Tenant, Landlord shall, at such time, also send notice of such default to Tenant Lenders (if adequate contact information has been provided to Landlord) in the same manner as notices are required hereunder and Tenant Lenders shall have the same period in which to cure as does Tenant plus five (5) days. For the purposes of this Section, "Affiliate" shall be defined as with respect to any Person, any other Person that, directly or indirectly, controls or is controlled by or is under common control with such Person, and shall include the spouse of any natural person. The term "control" and any derivatives thereof shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract, or otherwise. "Person" shall mean an individual, partnership, association, corporation or other entity.

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

26. **Condemnation:** If at any time during the term hereof the whole of the Leased Property shall be taken for any public or quasi-public use under any statute or by right of eminent

domain, then and in such event, when possession shall have been taken of the Leased Property by the condemning authority, the Lease Agreement hereby granted and all rights of Tenant hereunder shall immediately cease and terminate and the rent shall be apportioned and paid to the time of such termination. If pursuant to the provisions of this article, this Lease Agreement shall have been terminated and if prior to such termination, Tenant shall have made any improvements upon the Leased Property, Landlord shall be entitled to all of the condemnation proceeds except that Tenant shall be entitled to the proceeds of any condemnation awarded on account of the value of the New Hangars constructed by Tenant.

27. **Partial Condemnation:** If after commencement of this Lease Agreement only a part of the Leased Property, shall be taken or condemned, Landlord shall be entitled to any condemnation proceeds made with respect to the Leased Property except that Tenant shall be entitled to any award made for any portion of the New Hangars which may be condemned. In the event such condemnation shall leave a portion of the demised premises which in Tenant's sole judgment is usable by Tenant, the Lease Agreement shall remain in full force and effect, but the rents herein reserved to Landlord shall be adjusted so that Tenant shall be entitled to a reduction in rent in the proportion that the value of land taken bears to the value of the entire Leased Property. If a portion of the Leased Property is taken or condemned prior to commencement of construction hereunder, the proceeds shall belong solely to Landlord and the rental hereunder shall not be abated. Provided however, that Tenant shall have the right to terminate this Lease Agreement if in its sole judgment the premises have been rendered unsuitable for its purpose.

28. **Damage and Casualty:** If more than fifty percent (50%) of Tenant improvements located on the Leased Property are damaged by fire or other casualty, Landlord may elect to 1) terminate this Lease Agreement, provided Tenant first removes all structures on the land at its expense and restores the surface of the land to its condition at the date of the initial term of this

Lease Agreement, or 2) require that Tenant restore the improvements with reasonable promptness. Landlord shall make such election to repair the Leased Property or terminate this Lease by giving notice thereof to Tenant within thirty (30) days from the day Landlord receives notice that the Leased Property had been destroyed or damaged by fire or other casualty. In the event Landlord elects to terminate the Lease, the rent is to be paid to the date of termination. In the event Landlord elects to require restoration of the improvements, the rent shall be apportioned and suspended during the time of restoration taking into account the proportion of the Leased Property rendered untenantable. If a dispute arises as to the amount of rent due under this clause, Tenant agrees to pay the full amount claimed by Landlord. Tenant shall, however, reserve the right to proceed by law to recover the excess payment, if any. Landlord shall be an insured on Tenant's property and business income insurance in an amount sufficient to protect its interest therein. Tenant shall be liable for all damage occurring through fault or negligence of Tenant or those employed by or acting for Tenant. Landlord shall not be liable for any damage, compensation or claim by reason of inconvenience or annoyance arising from the necessity of repairing any portion of the Leased Property, the interruption in the use of the Leased Property or the termination of this Lease by reason of the destruction of the Leased Property.

29. **Default:**

a. **Events of Default Defined.** The following shall be "events of default" under this Lease and the terms "event of default" or "default" shall mean, whenever they are used in this Lease any one or more of the following events:

(1) failure by the Tenant to pay the rents required to be paid at the times specified herein and continuing for a period of thirty (30) days after notice by mail is given to the Tenant that the rental payment referred to in such notice has not been received;

(2) failure by the Tenant to observe and perform any covenant,

condition or agreement of this Lease on its part to be observed or performed, other than as referred to in Subsection (1) of this Section, for a period of sixty (60) days after written notice, specifying such failure and requesting that it be remedied, given to the Tenant by Landlord, unless the Landlord shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Landlord will not unreasonably withhold its consent to an extension of such time if it is possible to correct such failure and corrective action is instituted by the Tenant within the applicable period and diligently pursued until the default is corrected; or

(3) the dissolution or liquidation of the Tenant or the filing by the Tenant of a voluntary petition in bankruptcy, or failure by the Tenant promptly to lift or bond (if legally permissible) any execution, garnishment or attachment of such consequences as will impair its ability to carry on its operation, or the commission by the Tenant of any act of bankruptcy, or adjudication of the Tenant as bankrupt or assignment by the Tenant for the benefit of its creditors, or the entry by the Tenant into an agreement of compromise with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Tenant in any proceedings for its reorganization instituted under the provisions of the Federal Bankruptcy Statutes, as amended, or under any similar act which may hereafter be enacted. The term "dissolution or liquidation of the Tenant", as used in this subsection, shall not be construed to include the cessation of the corporate existence of the Tenant resulting from a merger or consolidation of the Tenant into or with another corporation or of a dissolution or liquidation of the Tenant following a transfer of all or substantially all its assets.

(4) Failure by Tenant to abide by any laws, statutes, rules or regulations relating to the Leased Property or the Delaware Coastal Airport and continuing for a period of thirty (30) days after notice by mail is given to Tenant that the violation referred to in such notice

has not been corrected.

b. **Remedies of Default.** Whenever any event of default referred to in subsections (1) through (4) above shall have happened and be subsisting beyond any applicable notice and cure periods, Landlord may take any one or more of the following remedial steps:

(1) Apply any money or property of Tenant's in Landlord's possession to discharge in whole or in part any obligation or covenant to be observed or performed by Tenant hereunder.

(2) Perform any obligation or covenant to be performed by Tenant hereunder and charge Tenant therefore.

(3) Terminate the Lease.

(4) Seek and obtain a summary possession order to enter the Leased Property and take possession of the same and hold Tenant liable for the rent thereafter accruing and due until such time as Landlord can obtain another suitable Tenant of the Leased Property under the same terms hereof.

c. No remedy herein conferred upon or reserved to Landlord or Tenant shall exclude any other remedy herein or by law provided, but each shall be cumulative and in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

30. **No Waiver of Subsequent Breach:** Tenant agrees that any waiver by Landlord of the performance of any one of the conditions of this Lease shall not be deemed to constitute a waiver of the right of Landlord to proceed against Tenant upon any subsequent breach of the same or other conditions of this Lease.

31. **Non-Performance by Landlord:** This Lease and the obligation of Tenant to pay the rent hereunder and to comply with the covenants and conditions hereof, shall not be affected, curtailed, impaired or excused because of Landlord's inability to supply any service or material

Landlord Initials _____

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Tenant Initials _____

called for herein, by reason of any rule, order, regulation or preemption by any governmental entity, authority, department, agency or subdivision or for any delay which may arise by reason of negotiations for the adjustment of any fire or other casualty loss or because of strikes or other labor trouble or for any cause beyond the control of Landlord.

32. **Attorney's Fees:** Tenant shall pay to Landlord, Landlord's reasonable attorney's fees, costs, and charges, if Landlord employs an attorney or requires the use of an attorney, including appointed County Attorneys, to protect the interest of Landlord if Tenant is adjudged bankrupt, or legal process is levied upon the interest of the Tenant in the Lease or the Leased Property, or if Tenant violates any of the terms of this Lease or Landlord is otherwise required, in Landlord's exclusive judgment, to protect and defend the interests of Landlord under this Lease.

33. **Severability:** The terms, conditions, covenants and provisions of this Lease shall be deemed to be severable. If any clause or provisions herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, it shall not affect the validity of any other clause or provision herein, but such other clauses or provisions shall remain in full force and effect. Landlord may pursue the relief or remedy sought in any invalid clause, by conforming the said clause with the provisions of the statutes or the regulations of any governmental agency in such case made and provided as if the particular provisions of the applicable statute or regulations were set forth herein at length.

34. **Airport Protection:**

a. It shall be a condition of this lease, that Landlord reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace

for landing on, taking off from or operating on the airport.

b. Tenant expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to such a height so as to comply with Title 14, Code of Federal Regulations, Part 77.

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

35. **Non-Discrimination:**

a. Tenant for its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, creed, sexual orientation, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that Tenant shall use the Leased Property in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

b. **Economic Nondiscrimination.** To the extent Tenant engages in any aeronautical activity for furnishing services to the public at the Delaware Coastal Airport, Tenant shall:

1. Furnish said services on a reasonable, and not unjustly

discriminatory, basis to all users thereof, and

2. Charge reasonable, and not unjustly discriminatory, prices for each unit or service, provided that Tenant may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.

c. That in the event of breach of any of the above nondiscrimination covenants, Landlord shall have the right to terminate the Lease and to re-enter and as if said lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed, including exercise or expiration of appeal right.

36. **Property Rights Reserved:** This Lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which Landlord acquired the Leased Property from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the Lease of said lands from Landlord, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by Landlord pertaining to the Sussex County Airport

37. **Successors and Assigns:** It is mutually agreed by the parties hereto that the terms "Landlord" and "Tenant" shall refer to and bind not only the parties hereto but also their respective successors, heirs and assigns.

38. **Miscellaneous:** In all reference herein to any parties, person, entities or corporations, the use of any particular gender or the plural or singular number is intended to include the appropriate gender or number as the text of the within instrument may require. All the terms, covenants and conditions herein contained shall be for and shall inure to the benefit of and shall bind the respective parties hereto, and their heirs, executors, administrators, personal or legal

representatives, successors and assigns.

39. **Contingent upon Approval by Sussex County Council:** The effectiveness of this Lease shall be contingent upon approval of the Sussex County Council in the form of a Motion or Resolution. In the absence of said approval, this Lease shall be null and void and of no further force and effect.

40. **Memorandum.** At the request of Tenant, Landlord agrees to execute a memorandum of this Lease in recordable form, which Tenant may cause to be recorded. Upon termination of this Lease, the parties agree to sign a termination of the memorandum, which Landlord shall be entitled to execute and record unilaterally if Tenant refuses to do so.

41. **Estoppels.** At any time and from time to time during the Term of this Lease upon written request of either party and at the reasonable cost and expense of the party requesting the same, Landlord or Tenant, as the case may be, will, within ten (10) days after such request, execute, acknowledge and deliver to the other party a certificate stating: (i) this Lease is unmodified and in full force and effect (or, if this Lease has been modified, stating that this Lease is in full force and effect as modified and identifying the modifications); (ii) the dates to which the Rent payable hereunder has been paid; and (iii) whether or not there are any existing defaults hereunder to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any.

42. **Governing Law.** This Lease and all issues arising hereunder shall be governed by the laws of the State of Delaware.

43. **Entire Contract:** This Lease Agreement contains the entire contract between the parties. No representative, agent or employee of Landlord has been authorized to make any representation or promises with reference to the within letting or to vary, alter or modify the terms hereof. No additions, changes or modifications, renewals or extensions hereof, shall be binding unless reduced to writing and signed by Landlord and Tenant.

Landlord Initials _____

29

Tenant Initials _____

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers and their corporate seals to be hereunto affixed, the day and year first above written.

SUSSEX COUNTY

APPROVED AS TO FORM:

By: _____
President of County Council

By: _____
County Attorney

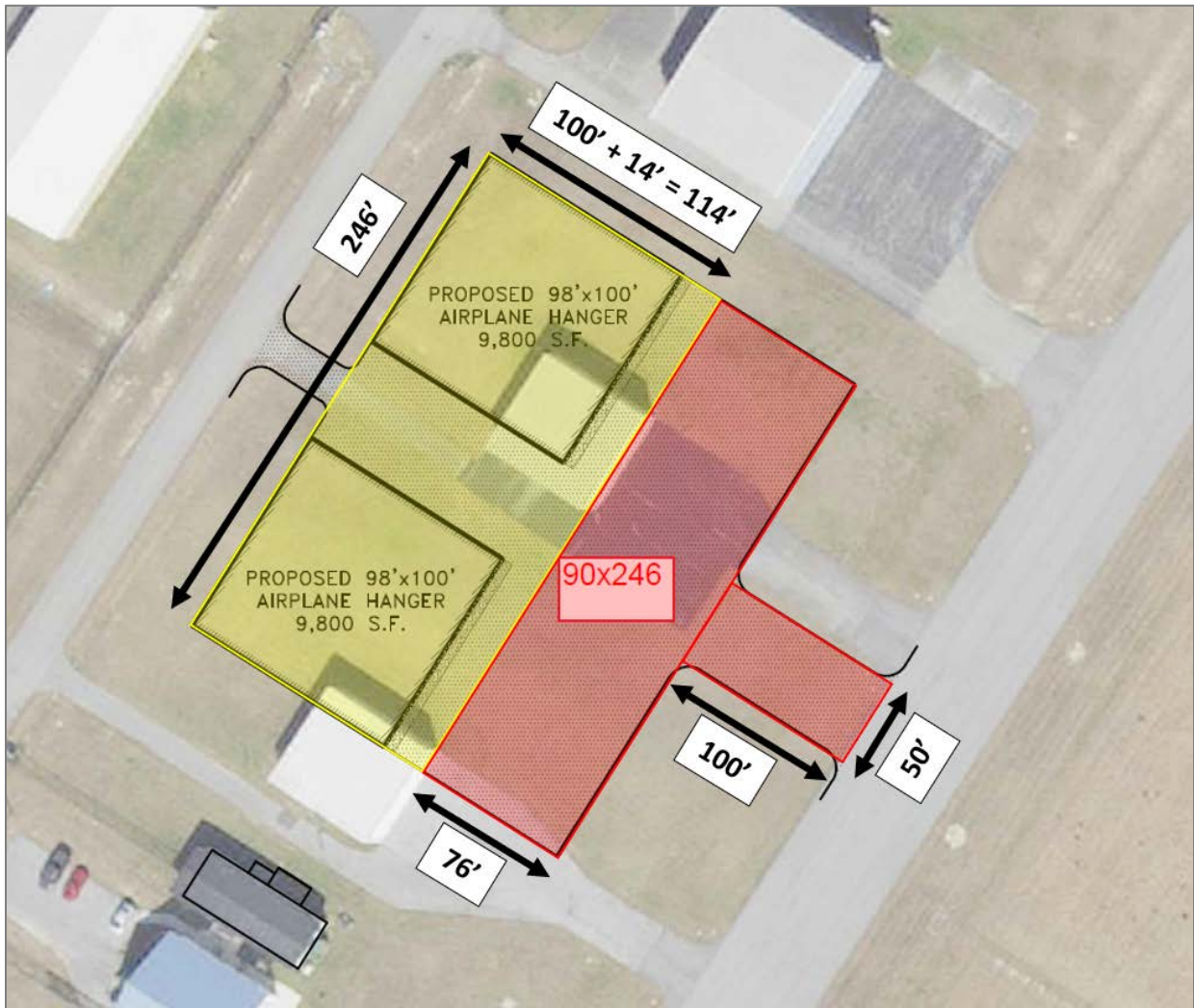
Attest: _____
Clerk, County Council

TENANT

SCHELL AVIATION LLC

By: _____
Name: Christopher H. Schell
Title: Manager

Exhibit A
Property Description



246' x 114' (includes 2 hangars, 50' separation between 2 hangars, and 14' apron immediately in front of the two (2) new hangars is considered part of the hangars.

246' x 76' (apron pavement needed for the operation, maneuvering and parking of aircraft)

100' x 50' (taxilane pavement needed for the operation, maneuvering and parking of aircraft)

Exhibit B
Performance Bond Form

Landlord Initials _____

Tenant Initials _____

PERFORMANCE BOND

A BOND TO ACCOMPANY AND FOR:

AGREEMENT NO.: 21469 Rudder Lane, Georgetown, DE Lease
21449 Rudder Lane, Georgetown, DE Lease

AGREEMENT NAME: 21469 Rudder Lane, Georgetown, DE Lease
21449 Rudder Lane, Georgetown, DE Lease with Schell Aviation LLC

KNOWN ALL MEN BY THESE PRESENTS THAT:

Schell Aviation LLC (Developer), 20184 Phillips Street, Rehoboth Beach, Sussex County, Delaware 19971 as principal and

_____ (Surety) in the County of _____ and State of

_____ as surety legally authorized to do business in the State of Delaware, are held firmly bound unto the Sussex County Council, or the County Officers thereof, in the sum of Two Million Dollars (\$2,000,000.00), to be paid to the said Sussex County Council, for the uses hereinafter stated, for which payment well and truly to be made, we do bind ourselves, our and each and every of our heirs, executors, administrators, successors, and assigns jointly and severally for and in the whole firmly by these presents.

NOW THE CONDITION OF THIS OBLIGATION IS SUCH THAT:

If the said above DEVELOPER, who has a LEASE AGREEMENT within Sussex County of the State of Delaware, to lease certain real property located at 21469 Rudder Lane, Georgetown, DE and at 21449 Rudder Lane, Georgetown, DE (collectively "the

Subject Property”) and as part of the LEASE AGREEMENT, DEVELOPER has agreed to perform the following (which is collectively referred to as “the WORK”: 1) to demolish and remove at its expense the old Lot A – Hangar and old Lot B - Hangar (“the Old Hangars”) located on the Subject Property, 2) to construct two (2) new hangars (“the New Hangars”), each hangar measuring approximately Ten Thousand square feet, more or less, 3) to construct and install a 50 foot by 114 foot separation area between the New Hangars, 4) to construct and install a 246 foot by 14 foot apron immediately in front of the New Hangars which apron is considered part of the New Hangars, 5) to construct and install a 246 foot by 76 foot apron pavement area needed for the operation, maneuvering and parking of aircraft, and 6) to construct and install at 100 foot by 50 foot taxiway pavement area needed for the operation, maneuvering and parking of aircraft, on the Leased Property with all plans and specifications to be approved and deemed necessary by the Sussex County Engineering Department. DEVELOPER shall well and truly provide and furnish all the materials, appliances and tools and perform all the WORK required under and pursuant to the terms and conditions of said AGREEMENT, and of the proposal, plans and specifications contained therein and shall also indemnify and keep harmless the Sussex County Council and Councilmembers thereof and all employees of said County, from all costs, damages, and expenses growing out of or by reason of the work and completion of the above mentioned AGREEMENT, and shall well and truly pay all and every person furnishing material or performing labor in and about said AGREEMENT, all and every sum or sums of money due him, them or any of them, for all such labor and materials for which the AGREEMENT is liable; then this obligation shall be void or else to be and remain in full force and virtue, with the funds held by Sussex County pursuant to this Bond applied to the costs of the Work secured hereby.

Landlord Initials _____

Tenant Initials _____

In the event the funds held by Sussex County pursuant to this Bond are insufficient to complete the work or to furnish the materials which Developer is obligated to provide, and Sussex County shall incur any costs of any nature whatsoever to administer the funds or to complete the work or furnish the materials, Sussex County shall have the right to seek reimbursement from the Developer, including, without limitation, the right to bring an action to recover such costs in the appropriate Court in the State of Delaware located in Sussex County. In such event, Developer shall be liable not only for the principal due, but also reasonable attorney's fees and costs incurred by Sussex County.

THE FOLLOWING PARAGRAPH SETS FORTH A WARRANT OF AUTHORITY FOR AN ATTORNEY TO CONFESS JUDGMENT AGAINST THE DEVELOPER. IN GRANTING THIS WARRANT OF ATTORNEY TO CONFESS JUDGMENT AGAINST THE DEVELOPER, THE DEVELOPER HEREBY KNOWINGLY, INTENTIONALLY, AND VOLUNTARILY AND, ON THE ADVICE OF THE SEPARATE COUNSEL OF THE DEVELOPER, UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS THE DEVELOPER HAS OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY FOR HEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES AND THE STATE OF DELAWARE.

Upon acceleration of the outstanding costs and expenses of any deficiency under this Bond, if any, and / or after entry of any judgment pursuant to this Bond, legal interest shall accrue thereafter at the applicable legal interest rate until the judgment is paid in full.

This obligation shall survive foreclosure, sale, assignment, conveyance, or transfer of the real property or the Agreement, or both, which is the subject of this Bond. In the event of such foreclosure, sale, assignment, conveyance, or transfer, this Bond shall be released by the County only upon the submission of replacement security satisfactory in the sole discretion of the County, or in the event the Agreement is complete and all conditions of this Bond have been fulfilled.

Sealed with our Seals and dated this _____ day of _____ in the year of our Lord 2021.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

DEVELOPER

SCHELL AVIATION LLC

ATTEST:

By: _____(SEAL)
Name: Christopher H. Schell
Title: Manager

(CORPORATE SEAL)

SURETY

ATTEST:

By: _____(SEAL)
Title: _____

Exhibit C

Demolition and Construction Insurance Requirements

Whether the work is performed by Tenant or a contractor, prior to the approval of demolition and construction operations, Tenant will provide Landlord with certificates of insurance satisfactory to Landlord that the following insurance is in effect during the demolition and construction operations:

- a. Workers' compensation insurance with statutory benefits as required by any state or Federal law and employers' liability insurance with minimum limits of \$500,000 each accident for bodily injury by accident, \$500,000 each employee for bodily injury by disease; and \$500,000 policy limit for bodily injury by disease.
- b. Business auto liability insurance that insures against bodily injury and property damage claims arising out of the ownership, maintenance or use of any auto, in amount not less than \$1,000,000 combined single limit each accident.
- c. Commercial general liability insurance that insures against bodily injury, property damage, personal and advertising injury claims arising out of or in connection with demolition and construction operations at the Leased Property. The minimum limits of liability for this insurance are \$1,000,000 combined single limit per occurrence, \$1,000,000 personal and advertising injury, \$2,000,000 combined single limit general aggregate per project; and \$1,000,000 combined single limit products/completed operations aggregate.
- d. Pollution liability insurance that insures claims for pollution and remediation legal liability arising out of or in connection with the with demolition and construction operations at the Leased Properties. The minimum limits of liability for this insurance are \$1,000,000 each pollution

condition and \$1,000,000 annual aggregate.

e. As respects commercial general liability and pollution liability insurance, Landlord and its appointed and elected officials, employees, agents and volunteers shall be additional insureds on primary and non-contributory basis with respect to liability caused in whole or in part by the entity performing demolition and construction operations at the Leased Property. As respects commercial general liability insurance, the additional insured status shall apply to both ongoing operations and products and completed operations.

ORDINANCE NO. [_____]

**AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$7,788,761 OF
GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH
THE LONG NECK COMMUNITIES SEPTIC ELIMINATION PROJECT AND
AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH**

WHEREAS, pursuant to Title 9, Delaware Code, Section 7001(a) Sussex County (the “County”) has “all powers which, under the Constitution of the State, it would be competent for the General Assembly to grant by specific enumeration, and which are not denied by statute” (the “Home Rule Power”);

WHEREAS, acting pursuant to its Home Rule Power, and pursuant to Title 9, Delaware Code, Chapters 65 and 67, the County has authorized the design, construction and equipping of the Long Neck Communities Septic Elimination Project, which will finance the installation of a gravity sewer collection system for the Long Neck Communities along Branch, Autumn and Tucks Road and in the Sherwood Forest North community (the “Project”);

WHEREAS, pursuant to Title 9, Delaware Code, Section 6706, the County is authorized to issue its bonds and to pledge its full faith and credit thereto, to finance the cost of any object, program or purpose for which the County is authorized to raise, appropriate or expend money under Chapter 67 of Title 9; and

WHEREAS, acting pursuant to the aforesaid authority, the County desires to authorize the issuance of general obligations of the County to finance the costs of the Project and for the other purposes described herein.

NOW THEREFORE THE COUNTY OF SUSSEX HEREBY ORDAINS (AT LEAST FOUR FIFTHS OF THE MEMBERS OF COUNCIL CONCURRING HEREIN):

Section 1. Amount and Purpose of the Bonds. Acting pursuant to Title 9, Delaware Code, Chapters 65 and 67, Sussex County shall issue its negotiable general obligations in the maximum aggregate principal amount not to exceed \$7,788,761 (the “Bonds”) to finance or reimburse the County for a portion of the cost of the design, construction and equipping of the Project, with the expectation that up to \$3,860,000 of principal forgiveness will be applied in order to reduce the principal amount of the Bonds outstanding to \$3,928,761 upon Project completion.

The monies raised from the sale of the Bonds (including the investment earnings thereon) after the payment of the costs of issuance, shall be held in one or more Project accounts and shall be expended only for the purposes authorized herein or as may otherwise be authorized by subsequent action by County Council. Authorized purposes include the costs of planning, constructing, acquiring and equipping the Project or any portion thereof; interest on the Bonds and any interim financing during the construction period and for a period of up to one year following the estimated date of completion; the reasonable costs of issuance of the Bonds and any interim financing; the repayment of temporary loans incurred

with respect to the Project; and the reimbursement of authorized costs previously expended by the County from other funds.

Section 2. Security for the Bonds. The principal, interest and premium, if any, on the Bonds may be paid by ad valorem taxes on all real property subject to taxation by the County without limitation as to rate or amount, except as limited by Title 9, Delaware Code Section 8002 (c). Pursuant to Title 9, Delaware Code, Section 6706, the full faith and credit of the County is pledged to such payment. The Bonds shall contain a recital that they are issued pursuant to Title 9, Delaware Code, Chapter 67, which recital shall be conclusive evidence of their validity and of the regularity of their issuance. While the Bonds are backed by the County's full faith and credit, it is expected that the debt service will be paid from revenues of the Subdivision.

Section 3. Terms of the Bonds. The Bonds shall be sold at such prices and upon such other terms and conditions consistent with the provisions of this Ordinance and otherwise as the County Administrator shall determine to be in the best interests of the County. The Bonds shall bear interest at such rate or rates and shall mature in such amounts and at such times, but not exceeding thirty (30) years from the date of completion of the Project, and shall be subject to redemption, as the County Administrator shall determine.

Section 4. Sale of the Bonds. The Bonds may be issued in one or more series and shall be sold in one or more public sales or private negotiated transactions upon such terms and conditions as the County Administrator shall determine shall be in the best interest of the County. It is anticipated that the Bonds will be sold to the State of Delaware Water Pollution Control Revolving Fund (acting by and through the Delaware Department of Natural Resources and Environmental Control) (or any successor agency).

Section 5. Details of the Bonds. The County Administrator is authorized to determine the details of the Bonds including the following: the date or dates of the Bonds; provisions for either serial or term bonds; sinking fund or other reserve fund requirements; due dates of the interest thereon; the form of the Bonds; the denominations and designations of the Bonds; registration, conversion and transfer provisions; provisions for the receipt, deposit and investment of the proceeds of the Bonds; provisions for the replacement of lost, stolen, mutilated or destroyed Bonds; and provisions for issuing uncertificated obligations and all procedures appropriate for the establishment of a system of issuing uncertificated debt. The Bonds shall be executed by the manual or facsimile signature of the County Administrator, shall contain an impression of the County seal or a facsimile thereof and shall be attested by the manual signature of the County Clerk. The County Administrator shall determine the form of the Bonds.

Section 6. Debt Limit. It is hereby determined and certified, as of the effective date hereof, that the issuance of the Bonds is within the legal debt limit of the County.

Section 7. Further Action. The President of the County Council, the County Administrator, the Finance Director and the County Clerk are authorized and directed to take such other action on behalf of the County, as may be necessary or desirable to effect the adoption of this Ordinance and the issuance and sale of the Bonds and to provide for their security and to carry out the intent of this Ordinance, including the publication of notices and advertisements and the execution and delivery of customary closing certificates.

Section 8. Effective Date. This Ordinance shall become effective immediately upon its passage.

The County Clerk is hereby directed to publish a notice of the adoption hereof in accordance with Section 7002(m)(2) of Title 9 of the Delaware Code, as amended.

ADOPTED this [] day of _____, 2022.

SUSSEX COUNTY, DELAWARE

Attest:

Clerk
Sussex County Council

President
Sussex County Council

[SEAL]

APPROVED AS TO LEGALITY AND FORM:

County Attorney

SYNOPSIS: This Ordinance provides for the issuance of up to \$7,788,761 of Sussex County General Obligation Bonds in order to finance or reimburse the County for a portion of the costs for the design, construction and equipping of the Long Neck Communities Septic Elimination Project, which will finance a gravity sewer collection system for the Long Neck Communities along Branch, Autumn and Tucks Road and in the Sherwood Forest North community (collectively, the “Project”), with the expectation that up to \$3,860,000 of principal forgiveness will be applied in order to reduce the principal amount of the Bonds outstanding to \$3,928,761 upon Project completion.

JAMIE WHITEHOUSE, AICP
DIRECTOR OF PLANNING & ZONING
(302) 855-7878 T
(302) 854-5079 F
jamie.whitehouse@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: March 17, 2022

RE: County Council Old Business Report for Ordinance Relating to Drainage Features, Wetlands, Water Resources and the Buffers Thereto.

On October 12, 2021, the County Council introduced an Ordinance to amend Chapter 99 and Chapter 115 of the Code of Sussex County regarding certain drainage features, wetlands, and water resources and the buffers thereto.

The Planning and Zoning Commission held a public hearing on November 4, 2021. At the meeting of December 16, 2021, the Commission recommended adoption of the Ordinance subject to recommended revisions as outlined within the motion (included below).

The County Council held a public hearing on the Ordinance at its meeting of January 11, 2022. At the conclusion of the meeting, a motion was made, and adopted to suspend the Public Hearing and continue the Public Hearing at its meeting of February 22, 2022. It was clarified that the suspension of the public hearing would mean that the hearing would continue on at the future date and that, if someone had spoken at the meeting of January 11, 2022, they would not get the opportunity to speak again.

At the conclusion of the Public Hearing held on February 22, 2022, the County Council deferred action on the Ordinance for further consideration.

Below are the approved minutes from the Planning & Zoning Commission meeting of November 4, 2021 and the approved minutes of the Planning & Zoning Commission meeting of December 16, 2021. The approved County Council meeting minutes of the meetings of January 11, 2022 and February 22, 2022 can be found at the links below:

[Link to Sussex County Council Meeting Minutes of January 11, 2022](#)



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

[Link to Sussex County Council Meeting Minutes of February 22, 2022](#)

Minutes of the November 4, 2021 Planning & Zoning Commission Meeting

AN ORDINANCE TO AMEND CHAPTER 99, SECTIONS 99-5, 99-6, 99-7, 99-23, 99-24, 99-26, AND 99-30, AND CHAPTER 115 SECTIONS 115-4, 115-25, 115-193, 115-220 AND 115-221 REGARDING CERTAIN DRAINAGE FEATURES, WETLANDS AND WATER RESOURCES AND THE BUFFERS THERETO.

Mr. Whitehouse advised the Commission that since the notice of the Ordinance, the Planning & Zoning Department has received a total of five written responses; that these responses were received after the circulation of the paperless packet and the responses have been printed and circulated to the Commission; that of those five responses, none are in opposition to the Ordinance; that all of the responses offer constructive comments on the content to the Ordinance and there is an additional public hearing scheduled before the Sussex County Council for December 7, 2021, at 1:30 pm.

The Commission found present were Mr. Vincent Robertson, Assistant County Attorney, to speak on behalf of the Ordinance to amend chapters of the Sussex County Code regarding drainage features, wetlands, water resources and buffers; that also present were Mr. Jamie Whitehouse, Sussex County Director of Planning Zoning, Mr. Todd Lawson, Sussex County Administrator, and Mr. Hans Medlarz, Sussex County Director of Engineering; that this started during 2018 Comprehensive Land Use Plan; that there are references all throughout the plan; that the reference make their way into the Ordinance, as a lot of the whereas clauses that are in the Ordinance; that there is a basis for that; that there was recognition of which the Sussex County Code needed updating; that there are undefined terms and some ambiguities which led to enforcement issues; that there are problems in that it places potential buffer requirements on properties that are currently used for agricultural purposes; that this was something that has never been enforced but has been stated in Sussex County Code; that what was in the Sussex County Code did not do anything to deal with the resources themselves, such as the rivers, streams and tidal bodies of water; that they chose that to be a goal moving forward; that the General Assembly as adopted Senate joint resolution 2; that this directs the Delaware Department of Natural Resources and Environmental Control to begin coordinating with federal agencies to carry out permitting authority for certain State non-tidal wetlands or create a statement on the non-tidal wetlands program; that this would be for the purpose of shifting permitting authority from the Federal level to the State; that the desire is to keep that control within Sussex County; that the new present Ordinance is 34 pages which amend parts of Chapter 99 and Chapter 115; that presented are two pages of whereas clauses, five pages of definitions which were required to be repeated for Chapter 99 and Chapter 115 and four pages of verbiage from the old Code which was deleted; that this Ordinance will not apply to undeveloped land; that this Ordinance is only triggered for residential land use permits; that this Ordinance will not apply to land that does not have a resource upon it; that there have been a lot of sensitive discussions to avoid the Ordinance becoming a back door to address density; that density should be addressed head on or not; that he requested to make it clear that to the fullest extent possible the Ordinance should be neutral in regards to density on a property as one goes to seek development on it; that it is not to say there may not be a swing of a lot or two, based on geometry and things of that nature; that there were multiple discussions within the working group to make sure everyone was comfortable with that; that they tried to avoid arbitrary lines drawn on a piece

of paper; that to accomplish this there are methods of averaging the buffers; that the line will be drawn where it makes sense; that there are also incentives in the Ordinance; that this is an incentive to protect things that are worthwhile rather than another arbitrary line on a piece of paper; that for example, if there is a forest which could be preserved versus an open area of land that has no environmental significance, the desire is for the forest to be preserved; that this is an opportunity, through the Ordinance, to provide a mechanism to maintain the resource; that there are a few ways to do this; that one way is to require easements to get to the resource; that there were several people within the working group pointed out from their own personal experience; that if you have an issue and some kind of resource, you know it requires action to be fixed, but often takes a lot of hassle to get to the resource, that one of things the Ordinance will provide is easements to provide access to the resources; that if there is a problem which is causing issues upstream, one will now be able to have access to the resource to address any issues; that currently when land use Applications are presented, buffers are addressed but often times not the resource itself; that the Ordinance frontloads the look at the resource; that this will allow reaction to anything that needs to be addressed; that this will allow these issues to be addressed at the time the land use Application comes through and during the time site work will be occurring; that it is a lot easier to fix an issue during these times than post development; that he presented the goals, objectives and strategies from the 2018 Comprehensive Land Use Plan that deal with or support the initiative of the current Ordinance; that this also gives rise to the whereas clauses within the Ordinance; that this was not something that was drummed up by staff; that this was derived directly from the 2018 Comprehensive Plan; that a working group was created approximately a year and a half ago; that he presented the names of the people within the working group; that the working group consisted of 13 members; that it is a wide range of people; that the working group contained people from Sussex Conservation District, The University of Delaware; Sussex County Engineering Department, as well as public representatives, environmental scientist, the Delaware Center for Inland Bays, land owners, farmers and Planning & Zoning staff; that there was a consultant, that acted as a facilitator, who also had an environmental background; that this helped everyone speak the right language and focus on what was relevant; that it was a very good working group; that there were a lot of different viewpoints; that there were a lot of conversations that occurred; that the working group participated in nine, three hour meetings; that these meetings took place between February 2019 to August 2019; that this was aside from subject matter presentations that were provided from members who were experts in the field; that the working group members did have homework assignments; that a lot of time and energy was spent constructing a draft Ordinance, which led to what was introduced; that the goal of the Ordinance was to provide recommendation to Sussex County Council for updating the buffer Ordinance as it applies to development projects; that this is what led to the origins of the working group based upon the Comprehensive Plan; that he presented the initiative details; that these are the goals, established by the working group, from the beginning; that General, Water Quality, Habitat and Flood Mitigation and Drainage initiatives were presented; that these four items make it into the definition of the buffer within the Ordinance; that these are the guiding principles; that there was a lot of conversation to construct the initiatives; that there are 13 sections of the Ordinance; that there is some repetition within the 13 sections, as things must be restated between Section 99 to 115; that the first section is the definitions; that the definitions currently within the Sussex Code were not all that great; that there were some terms that were not defined at all; that it took the group three to four meetings to come up with the definitions; that defined are femoral streams, intermittent streams, non-tidal wetlands, the ordinary high watermark delineation,

perineal non-tidal rivers and streams, resource buffer, major subdivision and minor subdivision and tax ditches; that the group did not create a buffer from the tax ditch, but were required to define a tax ditch to better explain how buffers do not necessarily apply to tax ditches; that these definitions are spelled out very clearly in terms that can be uniformly applied; that the second section is the general requirements and restrictions; that this section requires resources and resource buffers to be depicted on the preliminary and final plot plans for each major subdivision of land; that the third section is a technical one; that there currently is a preliminary conference requirement for all subdivisions; that it took out a reference to major and minor subdivisions; that this is now addressed in the definition of the terms of Section 99-4; that the fourth section deals with information to be shown; that currently Section 99-23 has a checklist of items that need to be shown on a preliminary site plan; that it does add the additional items that need to be added to the preliminary site plan regarding the resources and the resource buffers; that the Applicant will have to show the resources and the resource's buffers; that the boundary and type of any tidal and non-tidal wetlands must be shown; that all existing native forest and non-forest meadows must be shown with the future resource buffer; that this Ordinance seeks to maintain existing forests and meadows within the buffer area; that the desire is to avoid clear cutting of trees and meadows and then going back and planting things; that they desire to keep them in their natural state; that to use the calculations for buffer averaging or incentives a proposed access easement must be shown and a reference to the drainage assessment report; that the fifth section requires a resource and resource buffer management plan to be recorded as part of the subdivision; that this is currently a requirement; that the buffer management plan must be within the restrictive covenants as a method for providing for the perpetual maintenance of streets, roads, drainage, stormwater management facilities, open spaces and common areas; that the group is only adding to that requirement the maintenance and management of the buffers and the resources; that the sixth section is the same as section four; that this section recalls the checklist items for Preliminary Site Plans; that the sixth section stated the same checklist of items is required to be shown on the Final Site Plan; that the seventh section deals with construction plans which is currently within the Sussex County Code; that it states the public access easement needs to be shown on the construction plans; that the eighth section which is restatement of the same definitions stated in Chapter 99; that the group chose to put them in both places to stay consistent and avoid having to flip back and forth; that the ninth section is one the group picked up; that the Applicant would now have to comply with the buffer requirements which apply for all subdivisions; that this was to avoid any inconsistencies between the two places; that the tenth section establishes the heart of the Ordinance; that the group deleted what was currently within the Ordinance; that it was up to four pages of verbiage deleted; that it now jumps right into the requirements; that subsection A of the requirements addresses the resource buffer width, that the width must be established in accordance with Table I; that Zone A being the closest to the resource; that there was discussions among the working group about that the numbers should be; that as a result of the conversations, the group came up with tidal waters having a full buffer width of 100-ft. in Zone A; that there are two buffer zones – Zone A and Zone B; that Zone A is the area located the closest to the resource and beyond that is Zone B; that there are different things you can do within Zone B which is not permitted in Zone A in some situations; that for tidal waters it is a 100-ft. of total buffer width; that this is comprised of 50-ft. in both Zone A and Zone B; that tidal wetlands is also a 100-ft. of total buffer width, which is made up of 50-ft. in Zone A and 50-ft. in Zone B; that perennial non-tidal rivers and streams the total buffer width is 50-ft.; that this is broken down of 25-ft. in Zone A and 25-ft. in Zone B; that non-tidal wetlands and intermittent streams both

have a total buffer width of 30-ft.; that this is broken down with 15-ft. in Zone A and 15-ft. in Zone B; that ephemeral streams are streams that do not exist very often but sometimes show up after a rain event; that the group chose not to require a buffer from ephemeral streams; that Section B deals with resource buffer width averaging; that the group wanted to make it so there was some flexibility, in regard to the Zone B buffer; that Applicant's will be able to average that Zone B buffer within the boundaries of the development; that averaging is not available within Zone A; that the averaging cannot exceed double the width of what Zone B would be; that an Applicant could not have a large arm of Zone B located on one corner of the property and have no Zone B located everywhere else; that this allows for averaging but not manipulation of the averaging to create it to be practically non-existent; that Section 10C deals with the permitted activities for Zones A and B; that this was another section the group spent a lot of time on; that if it is not listed on the chart presented, it is therefore not permitted; that the chart spells out all the different types of uses that can be permitted within the buffer areas; that stormwater management water quality BPMs is permitted but had a limitation; that the chart is to make permitted uses within the buffer areas clear to everyone; that an Applicant cannot subdivide the buffers, unless it is a phase line; that this means there can be no lots located within Zone A and Zone B; that all lots have to be separate and outside of the buffer zones; that Section 10D addresses the buffer standards; that if an area is an existing forest or meadow, it is encouraged to maintain the existing forest or meadow, subject to selective cutting; that if the area is neither an existing forest or meadow, it is encouraged the Applicant establish it in either forest or meadow; that there are definitions for what a forest and non-forest meadow would be; that Section 10E defines the definition for Selective Cutting; that the group recognized the Applicant should be permitted to remove brush or forest understory; that selective cutting does not mean clear cutting; that it does not mean the use of heavy machinery to remove stumps and other things of that nature; that Section 10F is the maintenance of drainage conveyances; that this is the section that establishes easements; that this is the section that addresses taking action on any problems that may exist on the resource before development; that Section 10G addresses resource buffer options; that this is the section addressing incentives; that the group added this to deal with ways to protect other areas that may be offset within the buffers that are required by the rest of the section; that for example, if an Applicant is preserving the forest within the resource buffer, that has been in existence for at least five years prior to the date of the application; the Applicant can receive a corresponding area reduction in the resource buffer Zone B or the Applicant can receive a corresponding reduction in the perimeter landscape buffer; that the idea is, it is more important to preserve existing forest than it may be to preserve an area with no value or environmental importance; that there is also a credit to preserve offsite lands to perpetual conservation easements; that this would allow the Applicant to reduced Zone A and/or Zone B, depending on the credit in corresponding amount or percentage amount based on the land the Applicant is preserving offsite; that if an Applicant were to preserve land on the opposite side of a stream from where the property is located, creating buffers on both sides of the stream; with a conservation easement on the other side of the stream, the Applicant will receive a credit on the Applicant's side of the property; that the group looked at this as a positive for other land owners and farmers; that now value has been created where it did not previously exist on the adjacent property; that this will encourage the developer to go out and acquire a conservation easement on the property across the stream, which the Applicant can then use to their benefit within the subdivision; that the group does recognize they do need to make some minor textual changes to provide some clarity; that this would be brought back to the Commission in a recommendation should the Commission act

favorably upon the Ordinance; that subsection H address resource and resource buffer management maintenance; that this is along the same lines discussed previously; that this encourages to get issues fixed at the time the development is occurring; that this would be facilitated through the Planning & Zoning staff, as well as the Sussex County Engineering as they review the condition of the resources, what is shown on the plan and look at ways to improve the resources through the construction process on the site itself; that Section 10I addresses modifications and exceptions; that the current buffer ordinance has this; that the group wanted a safety valve on it; that if there were conditions which are special and unique to the property, not created by the actions of the Applicant; or the exceptions will not adversely affect the functions or the resource or the buffers, there should be the ability to grant some relief by the Planning & Zoning Commission; that one thing stated is if the Commission should grant that relief it should not be something, that could otherwise be resolved through buffer averaging; that the group provided that flexibility with the intension the Applicant use it; that it is discouraged the Applicant come back in requesting modifications, when there is design flexibility; that this does allow the Commission some leeway within certain guidelines to grant modifications to the buffer requirements; that Section 11 and Section 12 restates the Preliminary and Final Site Plan requirements; that the last section is the effective date and when the Ordinance was introduced by Sussex County Council; the Sussex County Council introduced the Ordinance with a six month lead time; that the Ordinance will not take effect until six months after the date of adoption and there is a map included in the presentation that offer examples of what the buffers would be and how they would work.

The Commission found that Mr. Hans Medlarz, Director of Sussex County Engineering, spoke on behalf of the Ordinance; that when looking at the map it provides the various resources; that the first resource would be the stream; that the stream has a buffer on the stream itself; that if wetlands are present around the intermittent or perennial stream, the buffer is then located around the wetlands; that in the definitions the various resources have been defined; that on the map tidal wetlands are not shown, but non-tidal wetlands are shown; that the wetland located in the upper left is a good example of where a wetland would be connected to the body of water with a stream which would require the wetland area to be buffered; that located to the lower left, there is a wetland area not connected; that this is also known as isolated wetlands; that these wetlands are not required to be buffered; that this is also true with man-made ponds, which is considered a non-buffered feature, not a resource; that located on the bottom right, there is a wetland area associated with a perennial stream which is required to be buffered; that this a play on the various buffers with Zone A and Zone B; that presented is a non-tidal example, not a tidal example; that the buffers in regards to tax ditches was a difficult item; that currently tax ditches are not considered a resource, which requires no buffering; that tax ditches to have associated rights-of-ways; that they may have wetlands located within the rights-of-ways; that if a wetland is located on a tax ditch right-of-way and extends past the tax ditch right-of-way, it would be required to be buffered; that agricultural ditches are not defined and are not covered by the proposed Ordinance.

Ms. Stevenson questioned the density increase; that part of the Ordinance is to preserve forest; that she questions if an Applicant performs some clearing of the forest, such as dead trees, but in the process other trees die, would the Applicant be required to replant the trees to keep the density the same.

Mr. Medlarz stated that once the project is accepted the entire responsibility shifts to the future owner; that in regards to residential development would be an HOA Homeowners Association; that the enforcement of whatever the interpretation of the density is, would shift to that entity; that if there were a major storm prior to the transition, the Sussex County Engineering Department would be making the requirement for the final acceptance of the plans and in the end, he would like it to be very clear, neither the Planning & Zoning Department nor the Sussex County Engineering Department is the enforcing agents after the project is complete.

Mr. Mears questioned if there was anything in place to keep property owners from clear-cutting the proposed buffers years before applying to develop.

Mr. Robertson stated there is nothing in place to keep property owners from cutting the buffers, but the Ordinance does offer an incentive to keep it.

Mr. Medlarz stated the buffers cannot be subdivided, which make the buffers, not private property; that this creates property owners to be taking the law into their own hands and would be subject to enforcement actions; that clear-cutting the buffers prior to development is not, not prohibited and the incentive options speak to that, trying to incentivize it to not happen.

The Commission found that Mr. Rich Borrasso provided comment on the Ordinance; that his interest and knowledge of the topic runs deep because of his heavy engagement in the Comprehensive Plan process, as well as being a participant in the Wetland Buffer Working Group; that the latter was a great experience in an open forum which allowed for the free expression of points of view, exchange of ideas and spirited dialogue; that subject matter experts brought their experiences; that it was a learning experience that enabled him to gain a broader perspective on what he considers to be one of the most critical conservation decisions in County history; that it has been over 30 years since current wetland buffers have been deliberated; that a lot has happened in Sussex County over the last three decades; that one of his biggest takeaways from the group was that updating buffer regulations is not a property rights issue, but one of, striking a balance between private and public need; that to better reinforce this point, he reads an abstract from The Public/Private Balance In Land Use Regulation by Stanford Professor Mark W. Cordes; Private land ownership in America has always involved a balance between private and public interest; that protection of private interest is necessary to encourage investments to improve property, essential to meeting critical needs, such as housing and providing for personal autonomy and privacy; that private property has long been limited by implied public interest; that investment expectations regarding future uses of undeveloped land should include the possibility of regulation to protect public interests; that much of the value in private property has been added by government “giving’s”; that it cannot be viewed as unfair when government regulations for important purposes diminish some of that value; that fairness concerns must be evaluated from a broader perspective of “reciprocity”; that this will recognize although a landowner might be adversely affected by some regulatory actions, the same person is often benefitted by other regulatory actions; that overall a general adjustment of benefits and burdens occur; that he is pleased to see Sussex County Council exercise its authority to regulate land use; that he is more grateful the actions are aligned to goals and objectives outlined in the Sussex County Comprehensive Plan; that the public wants to see Sussex County Council priorities guided by strategies laid out in the plan, that it is a good example; that the public expects better alignment in the amending of existing codes and introduction of new ordinances in the future; that this Ordinance seeks to, consider strategies for preserving environmental areas from

development and the protection of wetlands and waterways; that it recognizes the Inland Bays, their tributaries and other waterbodies as valuable open space area of ecological importance; that it determines if amendments are needed which will better help protect groundwater, waterways, sensitive habitat areas and other critical natural lands; that it calls for the protection of the natural functions and quality of Sussex County's surface waters, groundwaters, wetlands and floodplains; that it identifies an appropriate range of wetland buffer distances based upon location and context; that it balances the protection of land equity with the protection of the resources defined in the Ordinance and their associated functions; that it works to establish a framework under which future property owners and Owners Associations will maintain the resources, resource buffers, and properties adjacent to, the systems that they are a part of in the future to ensure the ongoing positive conveyance of drainage features; that the Ordinance promotes and protects the health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex County; that according to The State of Delaware 2018 Combined Watershed Assessment Report (305(b)) and Determination for the Clean Water Act, Section 303(d) List of Waters needing TMDLs and the Center for the Inland Bays research shows our area has lost about half of its original wetlands due to drainage, conversion to other land uses, and sea level rise; that Wetlands and their beneficial functions continue to be lost; that 1,434 acres of Sussex County's wetlands were lost between 1992 and 2007 and 1,147 acres of wetlands were lost between 2007 and 2019; that saltmarshes continue to disappear and have decreased around the Inland Bays from a total of 10,838 acres in 1938 to 7,300 acres in 2007; that this is a 32% decrease; that many of the wetlands that remain are in poor condition; that an example of this is the health of streamside wetlands and saltmarshes in the Inland Bays watershed have received a grade of D; that in a most recent DNREC assessment of water pollution found that 87% of streams, ponds and bay within Sussex County were polluted due to high bacteria levels, high levels of nutrients or low dissolved oxygen levels; that in the Inland Bays Watershed, all assessed waters were found to be polluted by excess nutrients, 50% by bacteria, and 11% had low dissolved oxygen; that while significant improvements to the water quality of the Inland Bays have been realized, measured pollutant loads from the watershed to the Bays have not decreased; that many of the tributaries of the Inland Bays have very high pollutant levels and very poor water quality; that flooding which decades ago usually happened only during a powerful or localized storm, now happen frequently; that Lewes recorded an average number of four flood days in 2000; that in 2017, there were 15 flood days recorded; that in 2030, between 15-30 high tide flood days are projected; that from 2008-2015 over 13,500 building permits were issued; that a significant portion of this development has been in areas at risk of flooding; that from 2010 to 2017, Sussex County had the third highest number of homes, which was 1,233 homes, built in a 10-year flood risk zone of any county in the United States; that sea levels have been rising off the coast of Delaware for more than a century; that they will continue to do so at about twice the global average; that this is because of a geological phenomenon known as "subsidence"; that this means the section of the earth's crust beneath the Mid-Atlantic states is sinking at a rate slightly greater than one inch per decade, or about one foot per century; that Delaware's coastal communities already experience several days of high-tide flooding annually; that the problem is forecasted to grow; that the National Oceanic and Atmospheric Administration (NOAA) predicts that Lewes could see upwards of 30 high-tide flooding days annually by 2030 and as many as 135 by 2050; that Sussex County roads and bridges have the highest risk of inundation due to the sea level rise in the state; that this is according to DNREC's Sea Level Rise Vulnerability Assessment; that Sea Level Rise directly affects travel on roadways as a result of flooding, inundation, erosion of road bases, removal of sediment

around bridges abutments or piers and reduced bridge clearance; that in Sussex County approximately 357 miles of roads and bridges that lie in the path of sea level rise may be adversely impacted; that according to the 2016 State of Delaware Inland Bays, from 1992 to 2012 upland forest decreased by 14 square miles in the Inland Bays watershed; that the existing water resource and buffer regulations are inadequate and failing to protect groundwater, waterways, sensitive habitat area and other critical natural lands in Sussex County; that regarding the proposed Ordinance Amendment, SARG has read, understands and is in agreement with the Wetland Buffer Workgroup regarding definitions, resources subject to the Ordinance, buffer purpose, buffer widths, two-zone buffer approach, buffer activities permitted and restricted, buffer averaging, buffers and lot lines, and resource management requirements; that however there are provision in the proposed Ordinance amendments that were altered or added post workgroup recommendations; that there was either no or limited debate on these provisions except one off with Sussex County officials in recent months; that personally he spent three hours with two other colleagues earlier in the week; that he feels strongly that this alone does not constitute an implied workgroup recommendation; that there are most likely modifications to the Buffer Ordinance Introduction dated October 21, 2021 in front of the Commission currently; that he has no objection and he looks forward to the potential modifications; that it is unrealistic to expect the public to be able to review and consider on the day of the public hearing; that he requested a motion to keep the record open to allow for future public comment; that he feels selective cutting should be removed; that he references Line 705 D. regarding the Resource Buffer Standards; that in the January 9, 2020 Ordinance draft, it was defined as “Selective Clearing”; that this was defined as the removal or limbing of trees greater than two inches in diameter measure at breast height which does not change the areal extent of the forest boundary by concentrated removal of trees in one specific area; that based on the March 4, 2020 draft, which was shared with Sussex County Council, it is defined as “Selective Cutting” to be forest management activities; that includes the removal of trees less than three inches in diameter at breast height and the removal of understory vegetation less than three inches DBH and “Selective Cutting” shall not alter the canopy extent of the Resource by impacting an area more than 30 feet wide or one third the width of the Resource Buffer, which is less; that however in the proposed Ordinance Amendment it states “Selective Cutting” is defined as the removal or limbing of trees greater than three inches in diameter at breast height and no disruption of a contiguous forest canopy for a width greater than thirty feet; that it is apparent the “selective clearing” or “cutting” is a contradiction with the aforementioned overarching Buffer Standard; that it is vague and open for interpretation by developers; that more importantly the future caretakers of the Standards, that being the ability for HOA’s to govern their residents; that the most difficult to understand are the provisions in Section G.; that he does understand that any improvements to the resource water and wetland buffers are not intended to reduce density; that in the Agricultural Residential Zone up to two dwellings per acre is permitted today and will be with the proposed increases in the buffer widths outlined in the proposed amendment; that sometimes boundary irregularities present site plan design challenges; that for this reason there was a consensus from the work group to include the buffer averaging tool to provide flexibility to developers in unique situations; that some believe that the Buffer Averaging provisions more than sufficiently provide for flexibility; that there continues to be this desire for more flexibility; that depending on who you speak with “flexibility” to some is evading the proposed buffer width guidelines in order to respond to consumer demand for greater access and or proximity to the water resources; that also the belief some buffer options provide superior benefit via conservation and preservation easements in exchange for

buffer reductions; that whichever the case each must scientifically demonstrate their ability to protect the resources and their associated functions; that they should do this by improving and protecting water quality via sediment filtration, reduce impact of nutrient loading on resources, moderate water temperature and enhance infiltration and stabilization of channel banks; that provide wildlife habitat via nesting, breeding, and feeding opportunities provide sanctuary and refuge during high water events; protect critical water's edge habitat and protect rare, threatened and endangered species associated with each resource and its upland edge; that it should enhance and/or maintain the flood plain storage functionality via reduction 158 of flood conveyance velocities and dissipation of stormwater discharge; that each must demonstrate functional equivalency, both in terms of timing, protection, enforcement and ongoing maintenance and remediation; that at no time shall any incentives allow for the resource Buffer Zone A reductions and at no time reduce the buffer widths or permitted uses to less than the current Resource Buffer regulations; that specifically regarding G.1. which proffers "incentivizing the retention of forests", he believe this is a band aid on a much more critical wound in Sussex County; that he believes this issue goes way beyond forest preservation in resource buffer areas alone; that if the County is serious about addressing the vast decimation of forests and trees there must be a separate study with solutions that encompass tree conservation throughout all of Sussex County; that there are countless examples in neighboring jurisdictions where tree conservation is a priority; that it is working; that present is a distraction, especially when G.1 (a), (b), and (c) considers allowing the encroachment on the existing Forest and/or Landscape Buffers on the same property; that forest and/or landscape buffers intended purpose is to provide screening and open space between major subdivision; that allowing the reduction and/or elimination of the forest and/or landscape buffer has no relevance and provides no substitute or remedy for protecting the buffer resource; that this option must be removed; that regard H. Resource and Resource Buffer Maintenance and Management, he believes this is a long time in coming; that it will help to ensure that the resource buffers will continue to perform their intended purpose; that there needs to be a language included that any and all measure for access easement have minimal to no effect on disrupting the normal purpose and function of the buffers up to and including the width and number of access points; that he would like to make reference to Aesop's Fables of The Hare and the Tortoise, The Ant and the Grasshopper, The Fox and the Crow and most specifically The Goose that Laid the Golden Egg; that metaphorically the goose represents the world class water resources in Sussex County; that depending on your perspective the golden egg represents the benefits the public derives from their grandeur and indirect value derived from the ability for economic gain; that the golden egg is finite; that we are not creating more of these resources and we must work together to not kill the goose that laid the golden egg.

The Commission found that Dr. Edward Launay provided comment on the proposed Ordinance; that he is a professional wetland scientist and environmental consultant with Environmental Resources; that he was also a member of the Wetland Buffer Workgroup; that he supports the Ordinance as currently written, with one notable exception; that he has understanding and hope, that with a new section of the Ordinance, Section G. Resource Buffer Options, become more refined and better articulated as the Ordinance moves through the approval process; that he wishes to speak in the "Selective Clearing"; that Selective Clearing is the Resource Buffer Standards at Section 10.D2, Lines 705-707, which states that forest subject to the proposed Ordinance, all existing trees and understory shall be preserved and maintained in their natural state; that allowing Selective Cutting within a forested resource buffer does not constitute maintaining the resource buffer in a natural state; that as

specified in the definition of Resource Buffers, which is Lines 145-159, resource buffers under the proposed ordinance are intended to provide resource protection, water quality protection, protection in conservation of wildlife habitats, and flood plain functions; that it is his personal and professional opinion that the provision allowing for Selective Cutting within resource buffers severely diminishes the functional values of proposed resource buffers; that allowing the removal of an entire natural forest understory, including shrubs, trees smaller than 3-in. in diameter, compounding that adverse impact by allowing the intensive select removal of large caliber trees; that as written, the Selective Cutting definition allows for the potential removal of essentially every other large tree in a forest stand; that in his opinion it is nearly equal to essentially having no buffer at all; that this is his interpretation as to what it is meant under Selective Cutting; that he feels the Commission might find it of interest, that he was the person that suggested the use of those words; that as a group there were individuals with the ability to do things to manipulate within the buffers was an essential item to the exercise of constructing the buffer Ordinance; that the reasons given were it may be tough to enforce and there must be ways to get into and around the buffers; that he states these things have been addressed; that he is requesting all references to selective cutting be removed from the Ordinance; that this will keep forested resource buffers truly protected in their natural state; that many provisions are included in the Ordinance which already allow for a wide variety of activities within the resource buffer; that these include walking trails, gaining access to the water front, a variety of water related projects along the waterfront; that these projects include the removal of any invasive species, or individual trees that pose a safety hazard to public or private property; that these are all included on the list of activities permitted within the resource buffer; that there is no need for selective cutting; that including selective cutting within the document, the way it is currently written only serves to give the developer a blueprint for how to adversely impact and disturb the resource buffer prior to turning it over to a homeowners association; that he feels it is best to not say anything at all; that the County can decide where something happens or how forcefully they choose to control situations after the homeowners association owns the property; that in his experiences there will always be a homeowner that tries to encroach the buffer to make their backyard bigger, but most of the time, there are always other members of that HOA community which are quick to enforce the provisions; that he feels there is often times a good deal of self-enforcement; that he feels this is a good mechanism that we can rely on; that currently the document is acting as a blueprint for a developer to maximize his return while disturbing the buffer; that before the Buffer Workgroup was constructed, himself, Mr. Chris Bason and another environmental consultant were asked to make a presentation in front of Sussex County Council; that Mr. Bason presented a slide of a project on Whites Creek; that the slide presented a before slide with many mature pine trees and after slide with the majority of the mature pine trees removed; that several Commissioners questioned how that could happen; that he explained to Council the way the current buffer Ordinance is written and the way it has been enforced over the previous years, a person could pretty much do what they wanted and plant along the way; that is essentially what had happened in that situation on the slide; that currently that is what the Buffer Ordinance currently allows; that he believed the goal of the new Buffer Ordinance was to prevent situations like that from happening; that if the Ordinance should be approved with Selective Clearing the way it is currently written, developers will be back to doing the same thing again; that the Resource Buffer Options section is a more recently developed part of the proposed Ordinance; that it was largely composed after the involvement of the wetland workgroup; that over the past few weeks he has been able to review and discuss Section 10.G, Lines 782-859, with other members of the workgroup and

County staff; that there are many questions about the intent, as well as how this section of the Ordinance would be applied have been answered in his mind; that many needed improvements to the text have been made in order to better define the intent; that improvements were being made up to the date of the public hearing; that he does support the goals and intentions outlined in the Buffer Options section; that he appreciated the opportunity to better understand the options, while providing input on them; that he believes this section of the Ordinance will require some additional work as the Ordinance moves forward to County Council; that he plans to continue working the Sussex County staff on this part of the document; that there are topics such as developing suitable templates for future conservation easements to protect offsite resource buffers; that this is already currently proposed; that the future conservation easement document needs to be worked out and truly understood; that the document does not yet exist; that it is his personal and professional opinion that the Ordinance does offer adequate flexibility through buffer averaging and other measure to ensure flexibility and enhance design project it applies to without the Resource Buffer section; that after his most recent review of this section and consultations with the staff, he is in support of the Resource Buffer section; that as intended he believes it will offer a positive impact to the goals and resource protection and provide incentives for the retention of existing forest prior to future development; that the ongoing refinement of the section will undoubtedly need further effort; that if the proposed Buffer Ordinance did not move forward, he does believe there should be some incentive to ensure no clearing of the buffer from the moment they present an Application; that he makes the suggestion to construct a third Resource Buffer Table; that the table could reduce some of the buffer widths with the provision of demonstrating the future resource buffers on the project would not have been disturbed for five years advance of the project; that this would qualify the Applicant for buffer that are less than those proposed in Table A; that he would like the Commission to understand, often times, a tax ditch is a perennial stream; that currently buffers are required from tax ditches; that he believes Mr. Medlarz meant to say we are applying resource buffers, but are not being applied to the tax ditch buffer that applies to the tax ditch; that tax ditches already require a maintenance buffer; that often times the tax ditch buffer may be wider than the resource buffer; that his interpretation is if the resource buffer would be wider than the tax ditch buffer, the resource buffer would extend past the tax ditch buffer, within a Zone B, which allow certain activities, and extend beyond the tax ditch right-of-way; that saying we will not regulate a tax ditch is wrong; that he may be wrong in his interpretation; that there is no need to provide an easement to get into a tax ditch; that the easement already exists and is controlled by the State of Delaware; that anytime any maintenance is needed regarding tax ditches, an approval is required from DNREC and Army Corp of Engineers and if an Applicant receives the approvals, they would be exempt from the Buffer Ordinance.

Mr. Robertson stated he agrees with Mr. Launay in regards to tax ditches; that tax ditches in and of themselves do not require buffers but if they are considered a perennial stream it may require a buffer; that if there is a tax ditch easement, the buffer would not begin from the easement; that the buffer would be where the easement would be; that they will not require trees to be where an easement would be located; that he feels they are both correct in some extent; that the working group worked on the Ordinance through 2019; that product of the working group was an evolving document; that since the Ordinance was introduced to Sussex County Council the document has not changed.

Mr. Medlarz stated not all streams are tax ditches and not all tax ditches are streams, but some streams are tax ditches and if a stream is a tax ditch, it will be required to have a buffer.

The Commission found that Mr. Chris Bason, Executive Director for Delaware Center for the Inland Bays; that Mr. Bason presented a PowerPoint presentation to the Commission; that the presentation discussed the importance of Wetlands and Buffers to Inland Bays Comprehensive Conservation & Management Plan, the relevant water quality and land use trends in the Inland Bays, over comparison of the proposed Ordinance to those of nearby jurisdictions and recommended amendments to the proposed Ordinance; that the first iteration of the Inland Bays Comprehensive Conservation & Management Plan was in 1995; that it was amended in 2012 and again in 2021; that it has seven signatories; that the County is one of the signatories; that the mission is to bring back the water quality to the Inland Bays by reducing nutrient pollution and restoring ecosystems, education and mediating flooding and adapting to climate change; that the buffer action is within the Inland Bays Management Plan; that the idea is to take the bays we currently have, which is a system dominated by algae due to excessive nutrients, and restore the system by reducing the nutrients; that this will allow sunrays to get to the bottom of the bay floor; that they have had success with wastewater and reducing the nutrients going into the bay; that they have had little success, over the past 30 years, controlling the nutrients coming off of the land; that they have seen no reduction in this source since the 1980's; that in the Little Assawoman Bay they have recently seen an increase in the nutrients, that we are backsliding on Delmarva and Sussex County in regards to water quality; that excessive algae growth often creates zero oxygen at night; that this leads to the death of our fish, shellfish and plant life; that this past year there were 15 fish kills recorded within the Inland Bays; that this is the largest recording of fish kills since 1985; that buffers are very important to water quality; that buffers can be the solution to these issues; that land use has changed dramatically of the last 25 years; that between 1992 -2017 we have had 30 sq. miles of development; that we have lost almost four square miles of wetlands; that we have lost 10 square miles of upland forest; that we have lost 22 sq. miles of agriculture; that there has been an 18% decrease in the upland forest cover from 1992-2017; that all forests are important to the watershed, but those closest to the resources are the most important; that we are also losing our saltmarshes; that we have lost over 3,600 acres of salt marsh since the 1930's; that the saltmarshes are now drowning due to sea level rise; that the only way to protect the marshes is to provide a buffer to the marshes to move into; that most development is taking place around the bays; that flooding is on the rise; that in 2020 there were eight High Tide Flood Days; that NOAA projects by 2030 there will be between 15-30 High Tide Flood Days; that we are building within flood prone areas; that from 2010-2017 Sussex County had the highest number of homes built within the 10-year flood risk zone of any ocean coastal county in the United States; that he presented a Wetland and Waterways Buffer Policy Comparison chart; that Sussex County's does not come close in many areas to what other jurisdictions are requiring; that achievements of the Ordinance includes the consensus points of the buffer workgroup on features, widths, activities, site design and flexibility with buffer averaging, the specific purposes of the buffer, requiring a Management Plan and including access through easements; that his recommendation for the Ordinance are the requirement for protecting and restoring the forest, restriction of selective cutting to small lengths of buffers on only tidal wetlands, waters and freshwater ponds, removal of the Resource Buffer Options section and clarification to Maintenance of Drainage Conveyance; that he would like to see existing forests being preserved from the time the Application is submitted; that forested buffers are more beneficial than grass buffers as they provide 36% more nitrogen; that a forest is an assemblage of different trees and different layers; that selective cutting currently does not have a defined purpose within the proposed Ordinance; that it does not seem to serve the purpose of the Ordinance over all; that he feels Selective Cutting is for the purpose

of views capes; that these situations should be made specific within the Ordinance; that he recommends Selective Cutting should only be permitted for 20% of the buffer feature length; that this should only apply to buffers on tidal waters, wetlands and freshwater ponds were views area commonly desired; that he believes flexibility for site design is addressed through buffer averaging; and options should not reduce the width of a buffer; that any options should not reduce the effectiveness of another part of the Ordinance with a separate purpose; that he feels incentives should be, if an Applicant increased the width of their buffer, maybe they would be granted a few additional lots and he feels there should be clarification on the definition of “positive conveyance.”

The Commission found that Mr. Preston Schell with Ocean Atlantic Companies spoke in favor to the Ordinance; that he stated he is heavily in favor of the Ordinance; that he feels it was a long time coming; that he was not part of the working group but is thankful for their hard work; that he feels the working group came to a lot of solutions that he had not even thought of; that he likes the idea over the averaging; that the options for developers are a great idea; that what he appreciates the most is the guidance it offers the Commission; that proposed Applications, especially for cluster subdivisions, it is a guessing game as to what level of buffer the Commission or County Council will be satisfied by; that sometimes developers will come in and do the minimum; that he has always tried to exceed the requirement; that sometimes in doing so, it seems like you give an inch and they take a mile type of situation; that he feels the proposed Ordinance is very detailed and outlined well; that it allows everyone to see the Ordinance in more black and white; that it allows all developers to be on the same playing field and will be treated equally; that he agrees with Mr. Basons previous comments and recommendations; that he does not agree with Mr. Launay in regards to the Selective Cutting and he does not feel the developers will be the issue; that the issue will be with the homeowners and stated anyone can see an example of this within Coastal Club at how well homeowners obey the fact that they are prohibited from clearing trees within the buffer.

The Commission found that Mr. Jim Erikson provided comment to the proposed Ordinance; that he feels there should be clarification to who the beneficiaries would be for the easements; that he feels there should be clarification to the easements in regards to should they be cleared or should they remain in their natural state; that he does have some concern with the drainage assessment report; that he would like confirmation if drainage assessment would only be looked at on the property; that it would be difficult to request someone to go offsite, identify something and obtain access to fix it when it is not under their control; that he is curious as to who will perform the review and making the decisions; that in Section H, he worries slightly about the stormwater impacts of opening up the restriction, if the restriction has been in place for a long time; that he feels there could be a crisscross of communication in regards to grading plans depending on the engineer, and their standpoint when performing grading plans; that he is concerned walking trails, as they are currently constructed, may not be allowed as the Ordinance is currently written and he does feel there needs to be slight revisions to the Ordinance, but generally supports the Buffer Ordinance.

The Commission found that Mr. Scott Shaughnessy, Ms. Emily Knearl, and Ms. Michelle Forsley spoke by teleconference in support of the proposed Buffer Ordinance; that he does agree and support the comments made by Mr. Borrasso, Mr. Launay, and Mr. Bason; that he mentions concerns regarding flooding, what enforcement will look like, selective tree cutting, reserves in trusting HOAs and condo associations appropriately enforcing buffer regulations, the size of the non-tidal wetlands,

intermittent and ephemeral stream buffers and the procedures which go along with the buffers once the Application is submitted.

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

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

In relation to the Wetlands Buffer Ordinance. Motion by Mr. Hopkins, seconded by Ms. Stevenson and carried unanimously to defer action for 14 days, leaving the record open for the public written comment. Motion carried 4-0.

Minutes of the December 16, 2021 Planning & Zoning Commission Meeting

The Commission discussed the Ordinance which had been deferred since November 18, 2021.

Mr. Mears moved the Commission recommend approval of the Buffer Ordinance” that amends various sections of Chapters 115 and 99 based on the record made during the public hearing and for the following reasons, but also with several recommended revisions based upon the record made during the public hearing and for the following reasons:

1. The current language in our Code regarding wetland buffers needs to be updated. It has ambiguities and it has not been applied uniformly over the years. It also contains regulations for agricultural drainage ditches which the County needs to remove.
2. The 2018 Comprehensive Plan contains many Goals, Objectives, and Strategies calling for Code improvements that protect waterways and wetlands, which are recognized as valuable open space of ecological importance. These are spelled out in detail in several of the “Whereas” clauses of the Ordinance. This Ordinance follows the direction of our Comprehensive Plan and all of the thoughtful work that went into drafting and adopting that Plan.
3. The Ordinance follows the efforts of a diverse and dedicated “Working Group” that was convened over many months to establish the framework for amending Chapters 99 and 115 of the Code of Sussex County regarding resource protection, buffers, and the maintenance of waterways and drainage areas. This ordinance is the result of that effort along with input from County staff.
4. The ordinance clearly details what is permitted and what is not permitted within the buffer areas.
5. The ordinance provides flexibility instead of a more arbitrary “one line fits all” requirement. The flexibility includes buffer width averaging within a development. It also includes several incentives with the intent to preserve and protect the existing resources such as forested areas or both sides of a waterway when that is most beneficial.
6. There was a lot of very valuable public input through the hearing process. A majority of the information given to the Commission was in favor of this Ordinance, but with constructive suggestions for improving it. For instance, there appears to be a strong desire to eliminate “selective cutting” from the buffer areas, since that could be detrimental to several of the goals of having the buffer areas in the first place.
7. This Ordinance also strikes a proper balance between the protection of land values and the protection of the Resources defined in the Ordinance. For instance, this Ordinance protects

these Resources in way that should result in better residential development plans without affecting the density of the residential development.

8. This Ordinance will promote and protect the health, safety, convenience, orderly growth, and welfare of the inhabitants of Sussex County.
9. The Ordinance can be improved with several changes based upon information provided in the public record and by staff, listed by Section and Line Numbers, as follows:
 - a. Section 1, Line 76 and Section 8, Lines 380 regarding the definition of “Ephemeral Streams”: After “A feature”, add “, excluding laterals draining agricultural fields,”. This will confirm that ephemeral streams do not include ag ditches within farmland.
 - b. Section 1, Line 87 and Section 8, Line 391 regarding the definition of “Intermittent Streams”: After “A well-defined channel”, add “, excluding laterals draining agricultural fields,”. This will confirm that intermittent streams do not include ag ditches within farmland.
 - c. Section 1, Line 118 and Section 8 Line 403 regarding the definition of “non-Tidal Wetlands”: After “adjacent Wetlands”, add “and ultimately downstream navigable waters”. This clarifies that Non-Tidal Wetlands do not include isolated wetlands.
 - d. Section 1, Line 184 and Section 8, Line 469: Delete “tidal datum” at the end of the definition of “Tidal Waters (Mean High Water Line)”.
 - e. Section 4, Line 279: Revise this line so that it now states “(2) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be identified.”
 - f. Section 4, after §99-23T.(7) after Line 292, add a new subsection (8) as follows: “(8) Any walking trails, including the method of construction and the materials used to establish the trails.”
 - g. Section 6, Line 319: Revise this line so that it now states “(b) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be identified.”
 - h. Section 6, after §99-26A.(21) after Line 334, add a new subsection (22) as follows: “(22) Any walking trails, including the method of construction and the materials used to establish the trails.”
 - i. Section 10, “Table 2: Resource Buffer Activities by Zone”, amend Item #17 regarding “Walking Trails” so that it now states, “Walking Trails where any impervious area runoff is managed under a Sussex Conservation District Permit.”
 - j. Section 10, Line 702, replace the word “native” with “natural” in the reference to forests.
 - k. Section 10, Line 707: Delete the sentence “‘Selective Cutting’ (Subsection E) activities may be implemented.”
 - l. Section 10, Line 725: Replace “Selective Cutting” with “Removal of Invasive Species” as the heading for Subsection E, and delete lines 727 through 733 regarding “Selective Cutting”. At line 735, re-number subsection (2) as subsection (1), and replace lines 735 through 737 as follows to permit the removal of invasive species: “Invasive species control shall be completed under the guidance and approval of a Licensed Forester, ISA Certified Arborist, Registered Landscape Architect, or Qualified Resource Buffer Professional.”
 - m. Section 10, Line 797, regarding incentives, insert the word “natural” before the word “forest”. At Line 799, after the word “achieved”, insert the words “by adding the area to Zone B,”.
 - n. Section 10, Line 804, regarding incentives, replace the word “widths” with “area”.

- o. Section 10, Line 813 through 819 regarding incentives, replace the current language so that it is clarified and restated as follows:
“(a)(i) When the creation of an off-site Resource Buffer is protected under a perpetual conservation easement, then a 75 percent corresponding area reduction of the Resource Buffer Zones A and/or B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer and perpetual conservation easement shall be considered the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County, and it must be located within the same twelve-digit hydrologic unit code as defined by the United States Geological Survey as the proposed development.”
- p. Section 10, Line 821 through 827 regarding incentives, replace the current language so that it is clarified and restated as follows:
“(a)(ii) When the creation of an off-site Resource Buffer for forest preservation is protected under a perpetual conservation easement, then a 125 percent corresponding area reduction of the Resource Buffer Zones A and/or B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer and perpetual conservation easement shall be considered the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County, and it must be located within the same twelve-digit hydrologic unit code as defined by the United States Geological Survey as the proposed development.”
- q. Section 10, Line 832 regarding incentives, after “Sussex County” insert “prior to final acceptance of the first phase of the proposed development by the Sussex County Engineering Department”. At Line 835, after “Resource Buffer area”, insert “on that same resource”.
- r. Section 10, Line 838 through 844 regarding incentives, replace the current language so that it is clarified and restated as follows:
“(c)(i) When a proposed development has a pre-existing property boundary that is located in the center of an Intermittent or Perennial Stream and the entire Resource (including the off-site portion of it) including an off-site Resource Buffer Zone A is protected under a perpetual conservation easement, then a corresponding area reduction of the Resource Buffer Zones B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer Zone A and perpetual conservation easement shall be considered the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County.”
- s. Section 10, Line 846 through 852 regarding incentives, replace the current language so that it is clarified and restated as follows:
“(ii) When a proposed development has a pre-existing property boundary that is located in the center of an Intermittent or Perennial Stream and the entire Resource (including the off-site portion of it) including an off-site Resource Buffer Zone A in the form of a natural forest is protected under a perpetual conservation easement, then a corresponding 125% area reduction of the Resource Buffer Zones B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer Zone A and perpetual

- conservation easement shall be considered the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County.”
- t. Section 11, Line 946: Revise this line so that it now states “(b) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be identified.”
 - u. Section 11, after §115-220B(17)(g) after Line 959, add a new subsection (h) as follows: “(h) Any walking trails, including the method of construction and the materials used to establish the trails.”
 - v. Section 12, Line 974: Revise this line so that it now states “(b) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be identified.”
 - w. Section 12, after §115-221B(19)(h) after Line 989, add a new subsection (g) as follows: “(g) Any walking trails, including the method of construction and the materials used to establish the trails.”

Motion by Mr. Mears, seconded by Mr. Hopkins and carried unanimously to recommend approval of the Ordinance, for the reasons and conditions stated in the motion. Motion carried 5 - 0.

1 **AN ORDINANCE TO AMEND CHAPTER 99, SECTIONS 99-5, 99-6, 99-7,**
2 **99-23, 99-24, 99-26, AND 99-30, AND CHAPTER 115 SECTIONS 115-4, 115-**
3 **25, 115-193, 115-220 AND 115-221 REGARDING CERTAIN DRAINAGE**
4 **FEATURES, WETLAND AND WATER RESOURCES AND THE BUFFERS**
5 **THERE TO.**

6
7 WHEREAS, Pursuant to the provisions of Title 9, Chapters 68 and 69 of the
8 Delaware Code, the Sussex County Government has the power and authority to
9 regulate the use of land and to adopt a Comprehensive Land Use Plan; and

10 WHEREAS, Pursuant to Chapters 99 and 115 of the Code of Sussex County, the
11 Sussex County Government has undertaken to regulate the use of land; and

12 WHEREAS, the existing Section 115-193 of the Code of Sussex County currently
13 regulates the use of land adjacent to certain wetlands and water bodies; and

14 WHEREAS, the existing Section 115-193 of the Code of Sussex County is in need
15 of improvement regarding its interpretation, application and protection of Resources;
16 and

17 WHEREAS, certain Resources are in need of substantial enhancements to ensure
18 that Sussex County’s drainage network is improved now and maintained in the
19 future; and

20 WHEREAS, the 2019 Sussex County Comprehensive Plan contemplates the review
21 and improvement of the protection of wetlands and waterways in Sussex County;
22 and

23 WHEREAS, Goal 4.3 and Objective 4.3.1 of the Future Land Use Element of the
24 2019 Sussex County Comprehensive Plan states that Sussex County should
25 “Consider strategies for preserving environmental areas from development and the
26 protection of wetlands and waterways”, and this Ordinance carries out that
27 Objective; and

28 WHEREAS, Goal 4.6 and Strategy 4.6.2 of the Future Land Use Element of the 2019
29 Sussex County Comprehensive Plan states that Sussex County should “Recognize
30 the Inland Bays, their tributaries and other waterbodies as valuable open space areas
31 of ecological importance”, and this Ordinance carries out that Strategy; and

32 WHEREAS, Goal 5.1 of the Conservation Element of the 2019 Sussex County
33 Comprehensive Plan states that Sussex County should “Encourage development
34 practices and regulations that support natural resource protection”, and this
35 Ordinance carries out that Goal; and

36 WHEREAS, Strategy 5.1.2.2 of the Conservation Element of the 2019 Sussex
37 County Comprehensive Plan states that Sussex County should “Review appropriate
38 sections of Sussex County’s zoning and subdivision codes to determine if
39 amendments are needed that will better help protect groundwater, waterways,
40 sensitive habitat areas and other critical natural lands in Sussex County”, and this
41 Ordinance carries out that Strategy; and

42 WHEREAS, Goal 5.3 of the Conservation Element of the 2019 Sussex County
43 Comprehensive Plan calls for the protection of the natural functions and quality of
44 the County’s surface waters, groundwater, wetlands and floodplains, and as part of
45 that Goal, the Plan includes Strategies 5.3.1.1, 5.3.1.2 and 5.3.1.6, which
46 respectively state that Sussex County should “Consider developing a program for
47 wetlands and waterways protection”, “Identify an appropriate range of wetlands
48 buffer distances based upon location and context”, and “Recognize the Inland Bays,
49 their tributaries and other waterbodies as valuable open space areas of ecological
50 and economic importance”, and this Ordinance carries out these Goals and
51 Strategies; and

52 WHEREAS, in adopting this Ordinance, it is the intent of Sussex County Council to
53 balance the protection of land equity with the protection of the Resources defined in
54 the Ordinance and their associated functions; and

55 WHEREAS, in adopting this Ordinance, it is the intent of Sussex County to establish
56 a framework under which future property owners and Owners Associations will
57 maintain the Resources, Resource Buffers, the properties they are on or adjacent to,
58 and the systems that they are a part of in the future and to ensure the ongoing positive
59 conveyance of drainage features; and

60 WHEREAS, it has been determined that this Ordinance promotes and protects the
61 health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex
62 County.

63

64 **NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

65

66 **Section 1. The Code of Sussex County, Chapter 99, Article I, §99-5**
67 **“Definitions,” is hereby amended by inserting the italicized and underlined**
68 **language alphabetically:**

69

70 **§99-5 Definitions.**

71 For purposes of this Chapter, certain terms and words are hereby defined:

72

73 . . .

74

75 **EPHEMERAL STREAMS**

76 *A feature, excluding laterals draining agricultural fields, that carries only runoff in*
77 *direct response to precipitation with water flowing only during and shortly after*
78 *large precipitation events. An Ephemeral Stream may or may not have a well-defined*
79 *channel, its aquatic bed is always above the water table during a year of normal*
80 *rainfall, and runoff is its primary source of water. An Ephemeral Stream typically*
81 *lacks the biological, hydrological, and physical characteristics commonly*
82 *associated with the continuous or intermittent conveyance of water.*

83

84 . . .

85

86 **INTERMITTENT STREAMS**

87 *A well-defined channel, excluding laterals draining agricultural fields, that contains*
88 *flowing water for only part of the year, typically during winter and spring when the*
89 *aquatic bed is below the water table, connecting otherwise isolated Non-Tidal*
90 *Wetlands to downstream Tidal/Perennial Waters/Streams. The flow may be heavily*
91 *supplemented by runoff. An Intermittent Stream often lacks the biological and*
92 *hydrological characteristics commonly associated with the continuous conveyance*
93 *of water.*

94

95 . . .

96

97 **MAJOR SUBDIVISION**

98 Any subdivision of land *creating six or more new Lots* [involving a proposed new
99 street or the extension of an existing street].

100

101 . . .

102

103 **MINOR SUBDIVISION**

104 Any subdivision *creating five or less Lots* [fronting on an existing street and not
105 involving any new street] and not adversely affecting the development of the
106 remainder of the parcel or adjoining property and not in conflict with any provisions
107 or portion of the County Comprehensive Plan, Official Map, Zoning Ordinance, or
108 this chapter. *Only one such subdivision shall be approved per year per parcel. The*
109 *maximum number of lots created in the minor subdivision process shall not exceed*
110 *four plus one for each 10 acres of original parcel size.*

111

112 . . .

113

114 **NON-TIDAL WETLANDS**

115

116 *Non-Tidal Wetlands are those wetlands, not classified by this Chapter as Tidal*
117 *Wetlands, which lie contiguous or abutting to Tidal Waters, Tidal Wetlands,*
118 *Perennial Streams or those Intermittent Streams providing a surface water*
119 *connection between adjacent Wetlands and ultimately downstream navigable*
120 *waters. Non-Tidal Wetlands also include those Wetlands only separated from*
121 *otherwise contiguous or abutting Wetlands by constructed dikes, barriers, culverts,*
122 *natural river berms and beach dunes.*

123

124 . . .

125

126 **ORDINARY HIGH WATER MARK DELINEATION**

127

128 *The boundary of Perennial Non-Tidal Rivers or Streams, Intermittent Streams or*
129 *Ephemeral Streams shall be defined by the Ordinary High Water Mark. Ordinary*
130 *High Water Mark means the line on a shore or bank established by the fluctuations*
131 *of water and indicated by physical characteristics such as a clear, natural line*
132 *impressed on the bank, shelving, changes in the character of soil, destruction of*

133 terrestrial vegetation, the presence of litter and debris, or other similar physical
134 characteristics indicating the frequent presence of flowing water.

135

136 . . .

137 **PERENNIAL NON-TIDAL RIVERS AND STREAMS**

138 A well-defined channel that contains flowing water year-round during a year of
139 normal rainfall with the aquatic bed located below the water table for most of the
140 year and which is not subject to tidal influence. Groundwater is the primary source
141 of water for a Perennial Stream, but it also carries runoff. A Perennial Stream
142 exhibits the typical biological, hydrological, and physical characteristics commonly
143 associated with the continuous conveyance of water.

144

145 . . .

146

147 **RESOURCE BUFFER - WETLANDS AND WATERS**

148 A managed area between residential land uses and Resources that is not
149 subdividable once established, with the exception of a subdivision boundary
150 resulting from an approved phase. Resource Buffers function to:

- 151 • Protect the Resources and their associated functions.
- 152 • Improve/protect water quality via sediment filtration, reduce impact of
153 nutrient loading on Resources, moderate water temperature, and enhance
154 infiltration and stabilization of channel banks.
- 155 • Provide wildlife habitat via nesting, breeding, and feeding opportunities;
156 provide sanctuary/refuge during high water events; protect critical water's
157 edge habitat; and protect rare, threatened, and endangered species associated
158 with each Resource and its upland edge.
- 159 • Enhance and/or maintain the flood plain storage functionality via reduction
160 of flood conveyance velocities as well as dissipation of stormwater discharge
161 energy.

162

163 . . .

164

165 **RESOURCES**

166 Those Wetlands and waters to be provided with a Resource Buffer due to their
167 importance to Sussex County. These Resources include Tidal Waters, Tidal
168 Wetlands, Non-Tidal Wetlands, Perennial Streams, and those Intermittent Streams
169 providing a surface water connection between Wetlands.

170
171 . . .

172
173 **TAX DITCH**

174
175 A Tax Ditch is a drainage channel or conveyance and the corresponding right-of-
176 way established and/or formed in accordance with Title 7, Chapter 41 of the
177 Delaware Code, and approved by a “ditch order” entered by the Superior Court of
178 the State of Delaware and County of Sussex.

179
180 . . .

181
182 **TIDAL WATERS (MEAN HIGH-WATER LINE)**

183 Those waters occurring below the mean high-water line of any tidal water body,
184 tidal stream, or tidal marsh, which is defined as the average height of all the high-
185 tide water recorded over a nineteen-year period as defined by the National Oceanic
186 and Atmospheric Administration.

187
188 . . .

189
190 **TIDAL WETLANDS**

191 Areas under the jurisdiction of Title 7, Chapter 66 of the Delaware Code, as
192 regulated and mapped by the Department of Natural Resources and Environmental
193 Control.

194
195 . . .

196
197 **WATER DEPENDENT ACTIVITIES**

198 Activities that are approved through federal and state permit programs that meet the
199 definition of water dependent activities included in those programs. Water-

200 dependent uses are uses that can only be conducted on, in, over, or adjacent to the
201 water; each involves, as an integral part of the use, direct access to and use of the
202 water. Examples include marinas, boat ramps/launches, docks, piers, water intakes,
203 aquatic habitat restoration, and similar uses.

204
205 . . .

206
207 **WATER RELATED ACTIVITIES**

208 Water Related Activities are those considered ancillary to and supporting permitted
209 Water Dependent Activities completed on adjacent uplands. Examples include utility
210 connections, limited points of access, loading/unloading areas, and similar uses.

211
212 . . .

213
214 **WETLANDS**

215 Wetlands are areas that are inundated or saturated by surface or groundwater at a
216 frequency and duration sufficient to support, and that under normal circumstances
217 do support, a prevalence of vegetation typically adapted for life in saturated soil
218 conditions. Agricultural land consisting of “Prior Converted Croplands” as defined
219 by the National Food Security Act Manual (August 1988), are not wetlands. The
220 procedure for delineating the boundary of all wetlands, except for Tidal Wetlands
221 as defined by this ordinance, shall be the methodology provided in the Corps of
222 Engineers Wetland Delineation Manual (January 1987) and the Regional
223 Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and
224 Gulf Coastal Plain Region (November 2010).

225
226 **Section 2. The Code of Sussex County, Chapter 99, Article I, §99-6 “General**
227 **Requirements and Restrictions”, is hereby amended by deleting the language**
228 **in brackets and inserting the italicized and underlined language in existing**
229 **subsection J. and as a new subsection K. thereof as follows:**

230
231 **§99-6 General Requirements and Restrictions.**

232
233 . . .

234

235 J. A forested and/or landscape buffer, as defined in § 99-5, Subsections A
236 through J must be depicted on the preliminary and final plot plans for each major
237 subdivision of lands [into four or more lots] and must be established in accordance
238 with all the requirements of the definition of "forested and/or landscaped buffer
239 strip," Subsections A through J in § 99-5.

240

241 . . .

242

243 K. Resources and Resource Buffers, as defined in § 99-5 must be depicted on the
244 preliminary and final plot plans for each major subdivision of lands and must
245 comply with the requirements of §115-193.

246

247 **Section 3. The Code of Sussex County, Chapter 99, Article II, §99-7**
248 **“Preliminary Conference”, is hereby amended by deleting the language in**
249 **brackets in subsection C. thereof as follows:**

250

251 **§99-7 Preliminary Conference.**

252

253 . . .

254

255 C. If the Director determines that the proposed subdivision represents a minor
256 subdivision of a parcel, existing as of the effective date of this amended provision,
257 on a street other than a major arterial roadway, and if the Director determines that
258 review by the Commission is not necessary or desirable, he may waive the
259 requirement of preparing a preliminary plat and may authorize the preparation of a
260 record plat for purposes of recordation. He may, however, request review assistance
261 from other concerned agencies prior to authorizing preparation of the plat. Lots in
262 any minor subdivision plat approved by the Director, without review by the
263 Commission, shall have a minimum area of 3/4 of an acre and a minimum width of
264 150 feet and shall utilize entrances as approved by the Delaware Department of
265 Transportation. [Such a minor subdivision shall be limited to four lots per parcel, as
266 well as one additional lot for each 10 acres of parcel size, with a maximum of four
267 subdivided lots approved for recordation per calendar year.]

268

269 **Section 4. The Code of Sussex County, Chapter 99, Article IV, §99-23**
270 **“Information to Be Shown”, is hereby amended by inserting the italicized and**
271 **underlined language as a new subsection T. thereof:**

272 **§99-23 Information to Be Shown.**

273 The preliminary plat shall be drawn in a clear and legible manner and shall show the
274 following information”

275 . . .

276 *T. The location of all Water and Wetland Resources and their Resource Buffers.*

277 *(1) The boundary and type of any Non-Tidal/Tidal Wetland or water resources*
278 *(Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will*
279 *be shown per methods identified in the definitions of Wetlands and Ordinary High*
280 *Water Line Delineation.*

281 *(2) All existing (i.e., at the time of application) natural forest, managed forest and*
282 *non-forest meadow within the future Resource Buffer shall be identified.*

283 *(3) The area limits of the required Resource Buffers.*

284 *(4) Calculations supporting Resource Buffer width averaging (§115-193B).*

285 *(5) Calculations supporting Resource Buffer enhancement calculations and*
286 *corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-*
287 *193F).*

288 *(6) Proposed access easement layout for access to Resource Buffers and the*
289 *adjacent Resources with a note that such access easements are “public access*
290 *easements for maintenance purposes”. For purposes of this requirement, “public”*
291 *shall mean, and be limited to, those parties requiring access for maintenance*
292 *purposes.*

293 *(7) A reference by title, author and date, to the “Drainage Assessment Report”*
294 *required by Section 115-193.F.2.*

295 *(8) Any walking trails, including the method of construction and the materials*
296 *used to establish the trails.*

297

298 **Section 5. The Code of Sussex County, Chapter 99, Article IV, §99-24**
299 **“Supporting Statements”, is hereby amended by inserting the italicized and**
300 **underlined language as a new subsection G thereof:**

301 **§99-24 Supporting Statements**

302 The preliminary plat shall be accompanied by the following written and signed
303 statements in support of the subdivision's application for tentative approval:

304 . . .

305 *G. A Resource and Resource Buffer Management Plan that describes measures*
306 *for managing the Resource and Resource Buffer(s) required pursuant to Chapter*
307 *115, Article XXV, Section 115-193 on the site. The Resource and Resource Buffer*
308 *Management Plan shall be included as part of the recorded declaration for the*
309 *subdivision.*

310

311 **Section 6. The Code of Sussex County, Chapter 99, Article V, §99-26,**
312 **“Information to Be Shown”, is hereby amended by inserting the italicized and**
313 **underlined language as a new subsection A.(21) and C thereof:**

314 **§99-26 Information to Be Shown.**

315 A. The final plat shall be legibly and accurately drawn and show the following
316 information:

317 . . .

318 *(21) The location of all Resource Buffers.*

319 *(a) The boundary and type of any Non-Tidal/Tidal Wetland or water resources*
320 *(Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will*
321 *be shown per methods identified in the definitions of Wetlands and Ordinary High*
322 *Water Line Delineation.*

323 *(b) All existing (i.e., at the time of application) natural forest, managed forest and*
324 *non-forest meadow within the future Resource Buffer shall be identified.*

325 *(c) The area limits of the required Resource Buffer.*

326 *(d) Calculations supporting Resource Buffer width averaging (§115-193B).*

327 (e) Calculations supporting Resource Buffer enhancement calculations and
328 corresponding Forested and/or Landscaped Buffer reductions, if applicable (§155-
329 193F).

330 (f) Proposed access easement layout for access to Resource Buffers and the
331 adjacent Resources with a note that such access easements are “public access
332 easements for maintenance purposes”. For purposes of this requirement, “public”
333 shall mean, and be limited to, those parties requiring access for maintenance
334 purposes.

335 (g) A statement incorporating the Resource and Resource Management and
336 Maintenance Plan by reference.

337 (h) A reference by title, author and date, to the “Drainage Assessment Report”
338 required by Section 115-193.F.2.

339 (22) Any walking trails, including method of construction and the materials used
340 to establish the trails.

341 . . .

342 C. An AutoCAD drawing file containing all items required in Section A above
343 shall be submitted in electronic format. The data shall be referenced in NAD 1983
344 StatePlane Delaware FIPS 0700 (U.S. Feet) Projected Coordinate System.

345
346 **Section 7. The Code of Sussex County, Chapter 99, Article VI, §99-30, “Plans”,**
347 **is hereby amended by inserting the italicized and underlined language as a new**
348 **subsection J. and K. thereof:**

349 **§99-30 Plans.**

350
351 Plans, profiles and specifications for the required improvements shall be prepared
352 by the subdivider and submitted for approval by the appropriate public authorities
353 prior to construction. No construction shall commence prior to the issuance of a
354 notice to proceed by the County Engineer or his or her designee for the required
355 improvements. All plans, profiles and specifications approved by the County
356 Engineer or his or her designee with the issuance of a notice to proceed shall remain
357 valid or, if substantial construction is not actively and continuously underway, they
358 shall expire upon the expiration of the final site plan. Prior to the issuance of a notice
359 to proceed, the County Engineer may require the owner and/or his designee to

360 execute an agreement addressing the required improvements. The plans and profiles
361 submitted for all new construction shall include the following:

362

363 . . .

364

365 J. Resources and Resource Buffers.

366

367 K. Proposed access easement layout with a note that such access easements are
368 “public access easements for maintenance purposes”. For purposes of this
369 requirement, “public” shall mean, and be limited to, those parties requiring access
370 for maintenance purposes.

371

372 **Section 8. The Code of Sussex County, Chapter 115, Article I, §115-4**
373 **“Definitions and Word Usage,” is hereby amended by inserting the italicized**
374 **and underlined language alphabetically in Subsection B thereof:**

375

376 **§115-4 Definitions and Word Usage.**

377

378

379

380 B. General definitions. For the purpose of this chapter, certain terms and words
381 are hereby defined as follows:

382

383

384

385 **EPHEMERAL STREAMS**

386 A feature, excluding laterals draining agricultural fields, that carries only runoff in
387 direct response to precipitation with water flowing only during and shortly after
388 large precipitation events. An Ephemeral Stream may or may not have a well-defined
389 channel, its aquatic bed is always above the water table during a year of normal
390 rainfall, and runoff is its primary source of water. An Ephemeral Stream typically
391 lacks the biological, hydrological, and physical characteristics commonly
392 associated with the continuous or intermittent conveyance of water.

393

394 . . .

395

396 **INTERMITTENT STREAMS**

397 A well-defined channel, excluding laterals draining agricultural fields, that contains
398 flowing water for only part of the year, typically during winter and spring when the
399 aquatic bed is below the water table, connecting otherwise isolated Non-tidal
400 Wetlands to downstream Tidal/Perennial Waters/Streams. The flow may be heavily
401 supplemented by runoff. An Intermittent Stream often lacks the biological and
402 hydrological characteristics commonly associated with the continuous conveyance
403 of water.

404
405 . . .

406 **NON-TIDAL WETLANDS**

407 Non-Tidal Wetlands are those Wetlands, not classified by this Chapter as Tidal
408 Wetlands, which lie contiguous or abutting to Tidal Waters, Tidal Wetlands,
409 Perennial Streams or those Intermittent Streams providing a surface water
410 connection between adjacent Wetlands and ultimately downstream navigable
411 waters. Non-Tidal Wetlands also include those Wetlands only separated from
412 otherwise contiguous or abutting Wetlands by constructed dikes, barriers, culverts,
413 natural river berms and beach dunes.

414
415 . . .

416
417 **ORDINARY HIGH WATER MARK DELINEATION**

418
419 The boundary of Perennial Non-Tidal Rivers or Streams, Intermittent Streams or
420 Ephemeral Streams shall be defined by the Ordinary High Water Mark. Ordinary
421 High Water Mark means the line on a shore or bank established by the fluctuations
422 of water and indicated by physical characteristics such as a clear, natural line
423 impressed on the bank, shelving, changes in the character of soil, destruction of
424 terrestrial vegetation, the presence of litter and debris, or other similar physical
425 characteristics indicating the frequent presence of flowing water.

426
427 . . .

428 **PERENNIAL NON-TIDAL RIVERS AND STREAMS**

429 A well-defined channel that contains flowing water year-round during a year of
430 normal rainfall with the aquatic bed located below the water table for most of the
431 year and which is not subject to tidal influence. Groundwater is the primary source
432 of water for a perennial stream, but it also carries runoff. A Perennial Stream
433 exhibits the typical biological, hydrological, and physical characteristics commonly
434 associated with the continuous conveyance of water.

435
436 . . .
437

438 **RESOURCE BUFFER - WETLANDS AND WATERS**

439 A managed area between residential land uses and Resources that is not
440 subdividable once established, with the exception of a subdivision boundary
441 resulting from an approved phase. Resource Buffers function to:

- 442 • Protect the Resources and their associated functions.
- 443 • Improve/protect water quality via sediment filtration, reduce impact of
444 nutrient loading on Resources, moderate water temperature, and enhance
445 infiltration and stabilization of channel banks.
- 446 • Provide wildlife habitat via nesting, breeding, and feeding opportunities;
447 provide sanctuary/refuge during high water events; protect critical water's
448 edge habitat; and protect rare, threatened, and endangered species associated
449 with each Resource and its upland edge.
- 450 • Enhance and/or maintain the flood plain storage functionality via reduction
451 of flood conveyance velocities as well as dissipation of stormwater discharge
452 energy.

453
454 . . .
455

456 **RESOURCES**

457 Those wetlands and waters to be provided with a Resource Buffer due to their
458 importance to Sussex County. These Resources include Tidal Waters, Tidal
459 Wetlands, Non-Tidal Wetlands, Perennial Streams, and those Intermittent Streams
460 providing a surface water connection between Wetlands.

461
462 . . .
463

464 **TAX DITCH**

465

466 A Tax Ditch is a drainage channel or conveyance and the corresponding right-of-
467 way established and/or formed in accordance with Title 7, Chapter 41 of the
468 Delaware Code, and approved by a “ditch order” entered by the Superior Court of
469 the State of Delaware and County of Sussex.

470

471 . . .

472

473 **TIDAL WATERS (MEAN HIGH-WATER LINE)**

474 Those waters occurring below the mean high-water line of any tidal water body,
475 tidal stream, or tidal marsh, which is defined as the average height of all the high-
476 tide water recorded over a nineteen-year period as defined by the National Oceanic
477 and Atmospheric Administration.

478

479 . . .

480

481 **TIDAL WETLANDS**

482 Areas under the jurisdiction of Title 7, Chapter 66 of the Delaware Code, as
483 regulated and mapped by the Department of Natural Resources and Environmental
484 Control.

485

486 . . .

487

488 **WATER DEPENDENT ACTIVITIES**

489 Activities that are approved through federal and state permit programs that meet the
490 definition of water dependent activities included in those programs. Water-
491 dependent uses are uses that can only be conducted on, in, over, or adjacent to the
492 water; each involves, as an integral part of the use, direct access to and use of the
493 water. Examples include marinas, boat ramps/launches, docks, piers, water intakes,
494 aquatic habitat restoration, and similar uses.

495

496 . . .

497

498 **WATER RELATED ACTIVITIES**

499 Water Related Activities are those considered ancillary to and supporting permitted
500 Water Dependent Activities completed on adjacent uplands. Examples include utility
501 connections, limited points of access, loading/unloading areas, and similar uses.

502 . . .

503 **WETLANDS**

504 Wetlands are areas that are inundated or saturated by surface or groundwater at a
505 frequency and duration sufficient to support, and that under normal circumstances
506 do support, a prevalence of vegetation typically adapted for life in saturated soil
507 conditions. Agricultural land consisting of "Prior Converted Croplands" as defined
508 by the National Food Security Act Manual (August 1988), are not wetlands. The
509 procedure for delineating the boundary of all wetlands, except for Tidal Wetlands
510 as defined by this ordinance, shall be the methodology provided in the Corps of
511 Engineers Wetland Delineation Manual (January 1987) and the Regional
512 Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and
513 Gulf Coastal Plain Region (November 2010).

514 **Section 9. The Code of Sussex County, Chapter 115, Article IV, §115-25**
515 **"Height, Area and Bulk Requirements," is hereby amended by deleting the**
516 **language in brackets and inserting the italicized and underlined language in**
517 **Subsection F(3)(a)[4] thereof:**

518

519 **§115-25** Height, Area and Bulk

520

521 F. Review procedures for cluster development

522

523 . . .

524

525 (3) The Planning & Zoning Commission shall determine that the following
526 requirements are met before approving any preliminary plan and such
527 application shall be reviewed on an expedited basis.

528

529 (a) The cluster development sketch plan and the preliminary plan of
530 the cluster subdivision provides for a total environment and design
531 which are superior, [and] *in* the reasonable judgment of the Planning
532 Commission, to that which would be allowed under the regulations for
533 the standard option. For the purposes of this subsection a proposed

534 cluster subdivision which provides for a total environment and design
535 which are superior to that allowed under the standard option
536 subdivision is one which, in the reasonable judgment of the Planning
537 Commission meets all of the following criteria:

538
539 . . .

540
541 [4] [A minimum of 25 feet of permanent setback must be
542 maintained around the outer boundaries of all wetlands, except
543 for tidal waters, tidal tributary streams and tidal wetlands and
544 from the ordinary high water line of perennial nontidal rivers and
545 nontidal streams as provided for in §115-193B under Ordinance
546 No. 774 where a fifty-foot permanent setback is required. No
547 buildings or paving shall be placed within these setbacks.] *The*
548 *preliminary plan shall comply with the requirements of §115-*
549 *193.*

550
551 **Section 10. The Code of Sussex County, Chapter 115, Article XXV, §115-193**
552 **“Buffer Zones for Wetlands and Tidal and Nonperennial Waters,” is hereby**
553 **amended by amending the Title thereof to state “Resource Protection” and**
554 **deleting the language in brackets and inserting the italicized and underlined**
555 **language:**

556
557 **§115-193 [Buffer Zones for Wetlands and Tidal and Nonperennial Waters]**
558 **Resource Protection**

559
560 [A.

561 Definitions. As used in this section, the following terms shall have the meanings
562 indicated:

563 **BUFFER ZONE**

564 An existing naturally vegetated area or an area purposely established in
565 vegetation which shall not be cultivated in order to protect aquatic, wetlands,
566 shoreline and upland environments from man-made encroachment and
567 disturbances. The "buffer zone" shall be maintained in natural vegetation, but
568 may include planted vegetation where necessary to protect, stabilize or
569 enhance the area.

570

571 MEAN HIGH-WATER LINE OF TIDAL WATER

572 The average height of all the high-tide water recorded over a nineteen-year
573 period as defined by the National Oceanic and Atmospheric Administration
574 tidal datum.

575 PERENNIAL NONTIDAL RIVERS AND STREAMS

576 Any body of water which continuously flows during a year and which is not
577 subject to tidal influence.

578 TIDAL TRIBUTARY STREAM

579 A stream under tidal influence, either connecting fresh or salt water.

580 TIDAL WETLANDS

581 Areas under the jurisdiction of Title 7, Chapter 66, of the Delaware Code, as
582 the chapter appears as of the date of the adoption of this Article, as regulated
583 and mapped by the Department of Natural Resources and Environmental
584 Control.

585 WETLANDS

586 A private or state wetland as defined by the Delaware Department of Natural
587 Resources and Environmental Control regulations and maps as promulgated
588 pursuant to Chapter 66, Title 7, of the Delaware Code, as the chapter appears
589 upon the date of the adoption of this Article.

590 B. A fifty-foot buffer zone is hereby established landward from the mean high
591 water line of tidal waters, tidal tributary streams and tidal wetlands and from the
592 ordinary high water line of perennial nontidal rivers and nontidal streams in Sussex
593 County.

594 C. Excluded from buffer zone designation are farm ponds, tax ditches and other
595 man-made bodies of water where these waters are not located on or within perennial
596 streams. A buffer zone shall not be required for agricultural drainage ditches if the
597 adjacent agricultural land is the subject of a conservation farm plan established with
598 the Sussex Conservation District.

599 D. Excluded from buffer zone regulations are facilities necessarily associated
600 with water-dependent facilities (maritime, recreational, educational or fisheries
601 activities that cannot exist outside of the buffer by reason of the intrinsic nature of
602 their operation) and the installation, repair or maintenance of any stormwater

603 management facility, sanitary sewer system, culvert, bridge, public utility, street,
604 drainage facility, pond, recreational amenity, pier, bulkhead, boat ramp, waterway
605 improvement project or erosion-stabilization project that has received the joint
606 approval of the County Engineering Department and the appropriate federal, state
607 and local agencies. An existing public storm-drain system may be extended in order
608 to complete an unenclosed gap or correct a drainage problem, subject to receiving
609 the approval of the County Engineering Department and the appropriate federal,
610 state and local agencies.

611 E. Grandfathering provision. The following types of land uses may be developed
612 notwithstanding the provisions of this section:

613 (1) Existing improvements and construction as of the date of the approval
614 of this section may continue. Alterations or expansions which shall be
615 attached to a preexisting structure built on nonconforming land, pursuant to
616 this section, will not be permitted unless proven that such improvement is
617 constructed at an equal distance or landward of the preexisting structure which
618 is most proximate to the wetland area and a variance is granted as provided
619 below.

620 (2) Subdivision plats and site plans approved and of record in the office of
621 the Director of Planning and Zoning or in the office of the Recorder of Deeds
622 in and for Sussex County prior to the adoption of this section, originally
623 adopted July 19, 1988, or approved and similarly of record as of the effective
624 date of this amendment, adopted July 2, 1991, may be developed as of record
625 and shall be subject to setbacks or buffer restrictions established for the use
626 when originally approved. Any previously approved and similarly recorded
627 subdivision plats and site plans, if approved prior to the original date of this
628 section on July 19, 1988, or prior to this amendment, adopted July 2, 1991,
629 may be amended if it is determined by the Planning and Zoning Commission
630 that the amended plan represents an equal or less intrusive use on the buffer
631 area or setback area.

632 F. Variances to the provisions of this section will be considered by the Board of
633 Adjustment under the following conditions:

634 (1) That findings are made by the Board of Adjustment which demonstrate
635 that special conditions or circumstances exist that are peculiar to the land or
636 structure within the county and that a literal enforcement of provisions within
637 the buffer zone as designated by this section would result in unwarranted
638 hardship.

639 (2) That the variance request is not based upon conditions or circumstances
640 which are the result of actions by the applicant, nor does the request arise from
641 any condition relating to land or building use, either permitted or
642 nonconforming, on any neighboring property.

643 (3) That the granting of a variance will not adversely affect water quality
644 or adversely impact fish, wildlife or plant habitat within the designated buffer
645 zones and in waters adjacent to buffer zones. Variances will be in harmony
646 with the general spirit and intent of the section and any subsequent
647 regulations.

648 (4) That applications for a variance will be made, in writing, to the Board
649 of Adjustment, with a copy to the County Administrator.

650 (3) Any land upon which development has progressed to the point of
651 pouring of a foundation or the installation of structural improvements as of
652 the date of the approval of this section shall be permitted to be developed,
653 provided that there shall be no further encroachment upon the buffer zone, as
654 required in Subsection E(1) above.]

655
656 A. Resource Buffer Widths.

657
658 1. Resource Buffer Widths shall be established in accordance with Table
659 1, with Zone A being closest to the Resource.

660
661 2. Resource Buffers are not required landward/adjacent to those portions
662 of Resources to be filled or developed with a valid U. S. Army Corps of
663 Engineers or Delaware Department of Natural Resources and
664 Environmental Control permit.

665
666 3. No Resource Buffer shall overlay a Tax Ditch or Tax Ditch Right of
667 Way. If a proposed development contains a Tax Ditch, with a right-of-
668 way of less than the total Resource Buffer Width, then that area of the
669 Resource Buffer outside of the right-of-way shall be designated as Zone
670 B.

671

672

| <u>Table 1: Resource Buffer Widths</u> | | | |
|---|--------------------------------------|---------------------------|---------------------------|
| <u>Resource Type</u> <u>(See Definitions, §115-4B)</u> | <u>Full Buffer Width (ft)</u> | <u>Zone A (ft)</u> | <u>Zone B (ft)</u> |
| <u>Tidal Waters</u> | <u>100</u> | <u>50</u> | <u>50</u> |
| <u>Tidal Wetlands</u> | <u>100</u> | <u>50</u> | <u>50</u> |
| <u>Perennial Non-tidal Rivers and Streams</u> | <u>50</u> | <u>25</u> | <u>25</u> |
| <u>Non-tidal Wetlands</u> | <u>30</u> | <u>15</u> | <u>15</u> |
| <u>Intermittent Streams</u> | <u>30</u> | <u>15</u> | <u>15</u> |
| <u>Ephemeral Streams</u> | <u>0</u> | <u>0</u> | <u>0</u> |

673

674 B. Resource Buffer Width Averaging.

675

676 1. Resource Buffer width averaging may be utilized to adjust the required
 677 Zone B Resource Buffer width thereby allowing flexibility for the
 678 proposed development, so long as the overall square footage of the
 679 Zone B Resource Buffer is maintained.

680

681 2. Criteria for utilizing Resource Buffer width averaging:

682 (a) Resource Buffer width averaging is not available for Zone A.

683 (b) The overall square footage of Zone B Resource Buffer must be
 684 achieved within the boundaries of the proposed development unless a
 685 Resource Buffer Option permitted under subsection G is utilized.

686 (c) Resource Buffer width averaging may be used on all of the Zone
 687 B Resource Buffers within the boundaries of the proposed development.

688 (d) Zone B Resource Buffer averaging shall not be expanded more
 689 than double the width of Zone B Resource Buffer as referenced in
 690 Section 115-193A.

691 (e) The overall square footage of Zone B Resource Buffer must be
 692 calculated based upon the entire length of the Resource borderline that
 693 is located within the boundaries of the proposed development.

694
 695 C. Permitted Activities.

696
 697 Activities in Zone A and B shall be “Permitted” or “Not Permitted” as set forth in
 698 the following Table. Uses not specifically identified shall be prohibited, unless the
 699 contrary is clear from the context of the Table, as determined by the Commission.

| <u>Table 2: Resource Buffer Activities by Zone</u> | | |
|--|-------------------------|-------------------------|
| <u>ACTIVITY</u> | <u>ZONE A</u> | <u>ZONE B</u> |
| <u>1. Impacts to resource buffers resulting from State and/or Federally permitted disturbances to Resources (wetlands/waters) such as maintenance of Resources and Resource Buffers, utilities, roads, bridges, docks, piers, boat ramps, bulkheads, shoreline stabilization, and resources authorized to be filled or disturbed for development.</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |
| <u>2. Water-related facilities and ancillary uses required to support water-dependent projects approved by a federal or state permit, including but not limited to: marinas, wharfs, community docking facilities, boat ramps, and canoe/kayak launches.</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |
| <u>3. Repair or maintenance of existing infrastructure or utilities, including roads, bridges, culverts, water lines, and sanitary sewer lines.</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |
| <u>4. Temporary impacts resulting from installation of utilities by trenching</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |

| <u>Table 2: Resource Buffer Activities by Zone</u> | | |
|---|-------------------------|-------------------------|
| <u>ACTIVITY</u> | <u>ZONE A</u> | <u>ZONE B</u> |
| <i>methods which are part of State or Federally approved utility installation projects or the installation of utilities by directional boring methods.</i> | | |
| <u>5. Stormwater Management conveyances as approved by the Sussex Conservation District.</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |
| <u>6. Tax Ditch Maintenance as approved by DNREC Drainage Program.</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |
| <u>7. Maintenance or repair of drainage conveyances not within a Tax Ditch Right of Way as approved by the Sussex County Engineering Department or Sussex Conservation District.</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |
| <u>8. Structural crossings of Resources such as bridges or boardwalks which may not require a State or Federal permit.</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |
| <u>9. Maintenance or modification to previously existing structures and improvements within existing footprint.</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |
| <u>10. State or Federally approved wetland restoration, creation, and enhancement projects.</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |
| <u>11. State or Federally approved flood plain restoration, or Resource restoration projects involving the maintenance, repair, restoration, creation, or enhancement of Resources and their Resource Buffers.</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |
| <u>12. Soil Erosion and Sediment Control measures as approved by Sussex Conservation District.</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |
| <u>13. Forest Management Activities conducted under the guidance and direction of a Licensed Forester,</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |

| <u>Table 2: Resource Buffer Activities by Zone</u> | | |
|---|--|-----------------------------|
| <u>ACTIVITY</u> | <u>ZONE A</u> | <u>ZONE B</u> |
| <i>Arborist, Landscape Architect, or Qualified Resource Buffer Professional.</i> | | |
| <u>14. Invasive Species Control (plant, insect, animal) conducted in accordance with State and Federal law.</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |
| <u>15. Planting/establishment of non-invasive native species (as listed by DNREC).</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |
| <u>16. Installation, repair, maintenance, and removal of wells (potable, monitoring, injection as approved by state/federal agencies).</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |
| <u>17. Walking Trails where any impervious area runoff is managed under a Sussex Conservation District Permit</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |
| <u>18. Extended Detention dry and wet stormwater management ponds.</u> | <u>NOT PERMITTED</u> | <u>PERMITTED</u> |
| <u>19. Removal of any dead, dying, damaged, or unstable live tree from a Resource or Resource Buffer which presents an imminent danger to property or public safety.</u> | <u>PERMITTED</u> | <u>PERMITTED</u> |
| <u>20. Stormwater Management Water Quality BMPs as approved by the Sussex Conservation District.</u> | <u>PERMITTED</u> <i>(Limited to 10% of Total square footage of Zone A in a proposed development)</i> | <u>PERMITTED</u> |
| <u>21. Sewage disposal facilities.</u> | <u>NOT PERMITTED</u> | <u>NOT PERMITTED</u> |
| <u>22. Storage of hazardous materials and siting of industrial sites, landfills, or junkyards.</u> | <u>NOT PERMITTED</u> | <u>NOT PERMITTED</u> |

| <u>Table 2: Resource Buffer Activities by Zone</u> | | |
|--|-----------------------------|-----------------------------|
| <u>ACTIVITY</u> | <u>ZONE A</u> | <u>ZONE B</u> |
| <u>23. Swimming pools, community clubhouses, and all Non-Water-Dependent or Non-Water Related improvements not specifically permitted under this section.</u> | <u>NOT PERMITTED</u> | <u>NOT PERMITTED</u> |

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D. Resource Buffer Standards.

1. All existing (i.e., at the time of application) conditions, including the vegetative land features, and the proposed conditions within the proposed Resource Buffer shall be identified on the Preliminary Site Plan.
2. If a proposed development contains a Resource, then the associated Resource Buffer shall conform with the following criteria based on vegetative features existing at the time of Preliminary Site plan Submission:
 - (a) Established natural forests and non-forest meadows predominated by non-invasive species shall be retained.
 - (i) Forest: Subject to §115-193C, all existing trees and understory constituting a proposed Resource Buffer shall be preserved and maintained in their natural state. Invasive species may be removed from the Resource Buffer.
 - (ii) Non-forest Meadow: Subject to §115-193C, all existing meadows constituting a proposed non-forested Resource Buffer that are composed of herbaceous and shrub species shall be preserved and maintained in their natural state. Non-forest meadow may also include old field areas with a mixture of herbaceous vegetation, shrubs and trees transitioning to a forested condition through natural succession. Invasive species may be removed from the Resource Buffer.
 - (b) Grazed pasture, managed turf, active cropland or areas of bare earth not stabilized with vegetative cover shall be re- established as native forest or

728 non-forest meadow prior to determination of substantial completion of the
729 proposed development phase where that “unstabilized” area is located by
730 planting of non-invasive species or through the process of natural succession
731 augmented with invasive species control.

732 E. Removal of Invasive Species.

733
734 1. Invasive species control shall be completed under the guidance and approval of a
735 Licensed Forester, ISA Certified Arborist, Registered Landscape Architect, or
736 Qualified Resource Buffer Professional.

737
738 F. Maintenance of Drainage Conveyances

739
740 1. All Resource Buffers identified on a Final Site Plan shall be designated as a
741 drainage and access easement permitting access by any future owners’
742 association, federal, state or local agency and the public, for the limited
743 purpose of maintenance or monitoring of drainage capacity or conveyance by
744 any future owners’ association; federal state or local agency; and the public.
745 In addition, a corresponding easement for access into each individual
746 Resource Buffer established on the site shall, whenever possible, be provided
747 from a public road or street within a proposed development.

748
749 2. If a Resource Buffer abuts or contains features such as ephemeral,
750 intermittent or perennial streams which are not part of an established Tax
751 Ditch and which convey drainage from or through a site proposed for
752 development, a “Drainage Assessment Report” shall be prepared by a
753 registered Delaware Professional Engineer. As part of the pre-application
754 process, Sussex County will determine the information to be included in the
755 Drainage Assessment Report. At a minimum, the Drainage Assessment
756 Report shall identify the following concerning measures needed for drainage
757 conveyances:

758
759 (a) Identification of any unstable or eroding stream banks or
760 conveyance requiring stabilization or restoration measures.

761
762 (b) The location of any stream blockages such as debris jams, fallen
763 or unstable trees, beaver dams or similar impediments to conveyance.

764

765 (c) The location of any sand or gravel deposition within a channel
766 or conveyance which impedes the flow of water produced by a storm
767 having an annual probability of occurrence of 10%.

768
769 (d) A discussion of all recommended measures to remedy any
770 impediment to drainage conveyance or drainage stability.

771
772 (e) A summary of required local, state or federal permits required to
773 remedy any impediment to drainage conveyance.

774
775 (f) The easement width and a sufficient number of easements to provide
776 adequate access to the Resource for maintenance.

777
778 3. Remedies required by Sussex County as a result of the Drainage
779 Assessment Report shall be shown on the Final Site Plan.

780
781 G. Resource Buffer Options

782
783 1. A proposed development shall be permitted to utilize the following options,
784 consistent with §115-193, Section B. Resource Buffer Width Averaging, to
785 incentivize the retention of forests:

786
787 (a) When the preservation of a forest within the Resource Buffer that has
788 been in existence for at least five years prior to the date of application
789 as identified by a Licensed Forester, Arborist, Landscape Architect, or
790 Qualified Resource Buffer Professional is achieved, then a
791 corresponding area reduction of either the Resource Buffer Zone B
792 along the entire or part of that Resource; or the Forested and/or
793 Landscaped Buffer required in Chapter 99 in areas adjacent to like-
794 zoned land is permitted.

795
796 (b) When the Preservation of a natural forest connected to (but not within)
797 a Resource Buffer in excess of the requirements listed in Section 115-
798 193.A. is achieved by adding the area to Zone B, then a corresponding
799 area reduction of either non-Forest Resource Buffer Zone B on the same
800 Resource, or Forested and/or Landscaped Buffer required in Chapter
801 99 in areas adjacent to like-zoned land is permitted.

802

803 (c) When the provision of Resource Buffer area in excess of the
 804 requirements listed in Section 115-193.A. is achieved, then a
 805 corresponding area reduction of the Forested and/or Landscaped Buffer
 806 required in Chapter 99 in areas adjacent to like-zoned land is permitted.

807
 808 2. A proposed development shall be permitted to utilize the following options to
 809 incentivize the retention or expansion of Resource Buffers or provide
 810 additional functional benefit of Resource Buffers:

811
 812 (a) (i)When the creation of an off-site Resource Buffer is protected under a
 813 perpetual conservation easement, then a 75 percent corresponding area
 814 reduction of the Resource Buffer Zones A and/or B in the same Resource
 815 within the development is permitted. The upland line of that new off-site
 816 Resource Buffer and perpetual conservation easement shall be
 817 considered the edge of the Resource for locating a Resource Buffer in
 818 the event that the off-site land is developed in the future. The perpetual
 819 conservation easement shall be for the benefit of a conservation
 820 organization approved by Sussex County, and it must be located within
 821 the same twelve-digit hydrologic unit code as defined by the United
 822 States Geological Survey as the proposed development.

823
 824 (ii)When the creation of an off-site Resource Buffer for forest preservation
 825 is protected under a perpetual conservation easement, then a 125
 826 percent corresponding area reduction of the Resource Buffer Zones A
 827 and/or B in the same Resource within the development is permitted. The
 828 upland line of that new off-site Resource Buffer and perpetual
 829 conservation easement shall be considered the edge of the Resource for
 830 locating a Resource Buffer in the event that the off-site land is developed
 831 in the future. The perpetual conservation easement shall be for the
 832 benefit of a conservation organization approved by Sussex County, and
 833 it must be located within the same twelve-digit hydrologic unit code as
 834 defined by the United States Geological Survey as the proposed
 835 development.

836
 837 (b) Funding, partially or entirely, an off-site restoration project under the
 838 Sussex County Clean Water Enhancement Program, subject to approval
 839 of the Sussex Conservation District, with completion of the restoration

840 by Sussex County prior to final acceptance of the first phase of the
 841 proposed development by the Sussex County Engineering Department
 842 in the same twelve digit hydrologic unit code as defined by the United
 843 States Geological Survey as the proposed development with a
 844 corresponding Resource Buffer Zone A and/or B reduction equal to the
 845 Resource Buffer area on that same resource created in the off-site
 846 project.

847
 848 (c) (i) When a proposed development has a pre-existing property boundary
 849 that is located in the center of an Intermittent or Perennial Stream and
 850 the entire Resource (including the off-site portion of it) including an off-
 851 site Resource Buffer Zone A is protected under a perpetual conservation
 852 easement, then a corresponding area reduction of the Resource Buffer
 853 Zones B on the same Resource development is permitted. The upland line
 854 of that new off-site Resource Buffer Zone A and perpetual conservation
 855 easement shall be considered the edge of the Resource for locating a
 856 Resource Buffer in the event that the off-site land is developed in the
 857 future. The perpetual conservation easement shall be for the benefit of
 858 a conservation organization approved by Sussex County.

859
 860 (ii) When a proposed development has a pre-existing property boundary
 861 that is located in the center of an Intermittent or Perennial Stream and
 862 the entire Resource (including the off-site portion of it) including an off-
 863 site Resource Buffer Zone A in the form of a natural forest is protected
 864 under a perpetual conservation easement, then a corresponding 125%
 865 area reduction of the Resource Buffer Zones B on the same Resource
 866 within the development is permitted. The upland line of that new off-site
 867 Resource Buffer Zone A and perpetual conservation easement shall be
 868 considered the edge of the Resource for locating a Resource Buffer in
 869 the event that the off-site land is developed in the future. The perpetual
 870 conservation easement shall be for the benefit of a conservation
 871 organization approved by Sussex County.

872
 873 3. For purposes of this Subsection G., “Forest” shall mean: A vegetative
 874 community dominated by trees and other woody plants covering a land area
 875 of 10,000 square feet or greater. Forest includes: (1) areas that have at least
 876 100 trees per acre with at least 50% of those having a two-inch or greater

877 diameter at 4.5 feet above the ground and larger, and (2) forest areas that
 878 have been cut but neither stumps were removed nor the land surface regraded.

879

880

881 H. Resource and Resource Buffer Maintenance and Management.

882

883 1. Resource and Resource Buffer Management Plan

884 Any proposed development where Resource Buffers are required shall submit
 885 a Resource and Resource Buffer Management Plan, prepared by a Qualified
 886 Resource Buffer Management Professional, that describes measures for
 887 maintaining or improving the Resource and the Resource Buffer(s) on the site.

888 The Resource and Resource Buffer Management Plan shall be proffered as
 889 part of the Supporting Statement requirements of §99-24, or at the time of
 890 Preliminary Site Plan approval for any residential conditional use. The
 891 maintenance standards or management actions associated with the Resource
 892 and Resource Buffer Management Plan shall be included as an obligation of
 893 the owners' association in the recorded declaration for any new development.

894 The Resource and Resource Buffer Management Plan shall describe how the
 895 Resource Buffer will be managed to maintain its functions and cite any
 896 measures to be implemented for the enhancement of Resource Buffers or their
 897 functions. It shall also include a narrative discussing the overall plan for
 898 access easements sufficient for expected short- and long-term maintenance
 899 and management needs.

900 2. Any Perennial or Intermittent Stream within a proposed development
 901 that does not exhibit a positive conveyance (regardless of whether it is part of
 902 a Tax Ditch) shall be identified by phase on the Detailed Grading Plan as
 903 follows:

904 (a) If the deficient Perennial or Intermittent Stream has adjacent
 905 Non-Tidal Wetlands, the applicant shall restore the conveyance
 906 channel to a positive conveyance (i.e. the removal of conveyance
 907 impediments) within the entire site prior to the issuance of substantial
 908 completion of the final approved phase. This restoration shall be in
 909 compliance with all applicable federal, state and county requirements.

910 (b) If the deficient Perennial or Intermittent Stream has no adjacent
 911 Non-Tidal Wetlands, the applicant shall restore the conveyance

912 channel to a positive conveyance (i.e. the removal of conveyance
913 impediments) within the entire site prior to the issuance of substantial
914 completion of the first approved phase. This restoration shall be in
915 compliance with all applicable federal, state and county requirements.

916 I. Modifications and Exceptions.

917
918 The Planning and Zoning Commission shall be authorized, as part of the site plan
919 review process, to grant preliminary or final site plan approval with modifications
920 of, or exceptions to, the foregoing requirements upon the submission of a detailed
921 and specific written request from the applicant with supporting documentation from
922 a Qualified Wetland Resource Professional or Qualified Resource Buffer
923 Management Professional, but only upon the satisfaction of all of the following
924 conditions:

925
926 1. When the Commission finds that special conditions or circumstances
927 exist that are peculiar to the land or structure and that a literal enforcement
928 of a specific requirement of this section would result in unwarranted hardship.

929
930 2. That the modification or exception request is not based upon conditions
931 or circumstances which are the result of actions by the applicant, nor does
932 the request arise from any condition relating to land or building use, either
933 permitted or nonconforming, on any neighboring property.

934
935 3. That the granting of a modification or exception will not adversely
936 affect the functions of the Resource or its Resource Buffer as set forth in the
937 definition of that term. Waivers shall be in harmony with the general spirit
938 and intent of this section and any subsequent regulations.

939
940 4. That the basis for the modification or exception cannot be achieved
941 through Resource Buffer Width Averaging as provided by §115-193B.

942
943 5. That in no event shall there be a modification or exception to the width
944 requirements of Zone A.

945
946 The date of any modification or exception by the Commission shall be noted on the
947 final site plan.

948 J. These requirements shall only apply to subdivisions governed by Chapter 99,
949 Residential Planned Communities and uses identified in §115-219A(1) and (2).

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Section 11. The Code of Sussex County, Chapter 115, Article XXVIII, §115-220 “Preliminary Site Plan Requirements”, is hereby amended by inserting the italicized and underlined language as a new Subsection B(17) thereof:

§115-220 Preliminary Site Plan Requirements

...

B. The preliminary site plan shall show the following:

...

(17) In the case of a proposed development with the uses identified in §115-219A(1) and (2) or Residential Planned Communities, the site plan shall include all required Resource Buffers and the following:

(a) The boundary and type of any Non-Tidal/Tidal Wetland or water resources (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will be shown per methods identified in the definitions of Wetlands and Ordinary High Water Line Delineation.

(b) All existing (i.e., at the time of application) natural forest, managed forest and non-forest meadow within the future Resource Buffer shall be indentified.

(c) The limits of the required Resource Buffers.

(d) Calculations supporting Resource Buffer width averaging (§115-193B).

(e) Calculations supporting Resource Buffer enhancement calculations and corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-193F).

(f) Proposed access easement layout for access to Resource Buffers and the adjacent Resources with a note that such access easements are “public access easements for maintenance purposes”. For purposes of this requirement, “public” shall mean, and be limited to, those parties requiring access for maintenance purposes.

(g) A reference by title, author and date, to the “Drainage Assessment Report” required by Section 115-193.F.2.

979 (h) Any walking trails, including the method of construction and the materials
980 used to establish the trails.

981

982 **Section 12. The Code of Sussex County, Chapter 115, Article XXVIII, §115-221**
983 **“Final Site Plan Requirements”, is hereby amended by inserting the italicized**
984 **and underlined language as a new Subsections B(19) and E. thereof:**

985 **§115-221 Final Site Plan Requirements**

986 . . .

987 B. The final site plan shall show the following:

988 (19) In the case of a proposed development with the uses identified in §115-
989 219A(1) and (2) or Residential Planned Communities, the site plan shall include all
990 required Resources and Resource Buffers including the following, where applicable:

991 (a) The boundary and type of any Non-Tidal/Tidal Wetland or water resources
992 (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will
993 be shown per methods identified in the definitions of Wetlands and Ordinary High
994 Water Line Delineation.

995 (b) All existing (i.e., at the time of application) natural forest, managed forest and
996 non-forest meadow within the future Resource Buffer shall be identified.

997 (c) The limits of the required Resource Buffers.

998 (d) Calculations supporting Resource Buffer width averaging (§115-193B).

999 (e) Calculations supporting Resource Buffer enhancement calculations and
1000 corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-
1001 193F).

1002 (f) Proposed access easement layout for access to Resource Buffers and the
1003 adjacent Resources with a note that such access easements are “public access
1004 easements for maintenance purposes”. For purposes of this requirement, “public”
1005 shall mean, and be limited to, those parties requiring access for maintenance
1006 purposes.

1007 (g) A statement incorporating the Resource and Resource Management and
1008 Maintenance Plan by reference.

1009 (h) A reference by title, author and date, to the “Drainage Assessment Report”
1010 required by Section 115-193.F.2.

1011 (g) Any walking trails, including the method of construction and the materials
1012 used to establish the trails.

1013 . . .

1014 E. An AutoCAD drawing file containing all items required in Section A above
1015 shall be submitted in electronic format. The data shall be referenced in NAD 1983
1016 StatePlane Delaware FIPS 0700 (U.S. Feet) Projected Coordinate System.

1017

1018 **Section13. Effective Date.**

1019 This Ordinance shall take effect upon six (6) months from the date of adoption by
1020 Sussex County Council. Provided however, that it shall not apply to any completed
1021 applications on file with the Sussex County Office of Planning & Zoning.

Schaeffer.
OK 3.3.22.

Casey Hall

From: notifications=d3forms.com@mg.d3forms.com on behalf of Sussex County DE <notifications@d3forms.com>
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Council Grant Form

Legal Name of Agency/Organization

✓ Cape Henlopen Senior Center

Project Name

Rehoboth Concert Band Fundraiser

Federal Tax ID

51-0105667 ✓

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 mission of the Cape Henlopen Senior Center is to enhance the quality of life of our senior citizens by adding life to years and years to life and to promote and expand the Center's programs to make them ore visible in the community and attracting more seniors who are moving into the area.

Address

11 Christian Street

Address 2

City Rehoboth

State DE

Zip Code 19971

Contact Person Linda Bonville

Contact Title Administrator

Contact Phone Number 302 227-2055

Contact Email Address Lindachsc@aol.com

Total Funding Request 1800.00

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? 5500.00

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

If YES, approximately what percentage of the project's funding N/A

does the Council grant represent?

Program Category (choose all that apply) Other

Program Category Other Fundraiser

Primary Beneficiary Category Elderly Persons (62 +)

Beneficiary Category Other

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program 1200

Scope

The Cape Henlopen Senior Center has actively served the elderly population in the Rehoboth Beach and surroundings communities since 1966. We are seeking financial support from Sussex County Council to offset expenses for our Annual Rehoboth Concert Band Fundraiser to be held on Sunday, March 20, 2022 at 3 pm. To maintain our operating budget we must plan many fundraisers. We have received support from many civic and community organizations over the years and we are most grateful.

The support from the County will enable us to continue to provide the high quality services that benefits our members and the community. We hope that we can count on you to help us.

Expenses include design and printing of ads in our local newspapers, music, ticket and program printing and rental

fees, which include, sound and lighting tech, custodial, set up and security.

We greatly appreciate Sussex County for your support in the past. This fundraiser will help ensure that we can continue to provide the social activities, programs, trips and services that our members depend on and enjoy. The past two years have been very challenging, however we were able to meet the need of the senior population.

Religious Components N/A

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

Description Church Rental

Amount 500.00

Description Sound and Lighting Tech

Amount 75.00

Description Custodian

Amount 75.00

Description Set Up

Amount 75.00

Description Security

Amount 75.00

| | |
|--|-----------------------------|
| Description | Adverstisement |
| Amount | 500.00 |
| Description | Programs and Tickets |
| Amount | 250.00 |
| Description | Music |
| Amount | 250.00 |
| TOTAL EXPENDITURES | 1,800.00 |
| TOTAL DEFICIT FOR PROJECT OR ORGANIZATION | -1,800.00 |
| Name of Organization | Cape Henlopen Senior Center |
| Applicant/Authorized Official | Linda Bonville |
| Date | 03/02/2022 |
| Affidavit Acknowledgement | Yes |

Mark as Spam in D3 Forms. Please do not mark as spam in your email client, as it will result in you no longer receiving D3 Forms notifications. Feel free to email info@d3forms.com with any questions.

Green.

OK 3.7.22

Council Grant Form

Legal Name of Agency/Organization

H.O. Brittingham Elementary Robotics Club

Project Name

VexIQ World Competition in Dallas, TX

Federal Tax ID

516000279

Non-Profit

Yes

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

No

Organization's Mission

To foster a love of STEM concepts in our elementary level students.

Dear Community Member,
H.O. Brittingham Elementary School is proud to announce that their Robotics Club has had a very successful year and recently earned accolades at Bots at the Beach 2022 - VexIQ Delmarva Regional Championships. The driving and programming skills of two elementary level teams from H.O.B and one middle school school team, comprised of former H.O.B. students, have earned a bid to the Vex IQ World Championships in Dallas, Texas this May. As an extracurricular after-school club, it does not have a district allocated operating budget. Therefore, in order to make it possible for the students to represent the Delmarva region at the Vex IQ World Championships, we are hoping for your support. Your tax-deductible donation can help defray the costs of attending the event and provide these ten (10) students with a memorable experience that we

hope will inspire them to continue with a passion for engineering and continue to challenge themselves to think and problem solve creatively.

Thank you for supporting the H.O.B. Vikings Robotics Club!

For more information, please contact:

Mark Morey at mark.morey@cape.k12.de.us or (302)684-8522.

Donations can be made payable to: CHSD Memo: HOB Robotics

| | |
|---|--|
| Address | 402 Mulberry Street |
| Address 2 | |
| City | Milton |
| State | School |
| Zip Code | 19968 |
| Contact Person | Mark Morey |
| Contact Title | 5th Grade Teacher & Robotics Coach |
| Contact Phone Number | 3023819833 |
| Contact Email Address | Mark.Morey@cape.k12.de.us |
| Total Funding Request | 2500 |
| Has your organization received other grant funds from Sussex | No |

**County Government
in the last year?**

**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
does the Council
grant represent?** 25

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

**Program Category
Other**

**Primary Beneficiary
Category** Youth

**Beneficiary Category
Other**

**Approximately the
total number of
Sussex County
Beneficiaries served,
or expected to be
served, annually by
this program** 45

Scope

H.O. Brittingham Elementary School and Mariner Middle School have an after school program focused on robotics. This program uses the engineering design process where students have to design, build, test, modify, and program a robot to accomplish a certain task. These 2 clubs competed against other schools from around the state and won the Delmarva Regional Championships. As such they have earned the right to compete against other teams from around the world in May 2022 in Dallas, TX. Since we are an after school club we do not get any aid from the Cape Henlopen School District and have to do all fund raising on our own.

Religious Components

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

0.00

Description

Team Registrations

Amount

3,600.00

Description

Airfare

Amount

3,250.00

Description

Hotel Rooms

Amount

13,000.00

Description

Local Transportation

Amount 1,000.00

Description Food

Amount 500.00

Description

Amount

Description

Amount

Description

Amount

TOTAL EXPENDITURES 21,350.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -21,350.00

Name of Organization H.O. Brittingham Elementary Robotics Club

**Applicant/Authorized
Official** Mark Morey

Date 03/07/2022

**Affidavit
Acknowledgement** Yes

Mark as Spam in D3 Forms. Please do not mark as spam in your email client, as it will result in you no longer receiving D3 Forms notifications. Feel free to email info@d3forms.com with any questions.



**SUSSEX COUNTY GOVERNMENT
GRANT APPLICATION**

SECTION 1 APPLICANT INFORMATION

ORGANIZATION NAME: Friends of the Georgetown Public Library Inc

PROJECT NAME: Annual 5K Race

FEDERAL TAX ID: 51-0403103 ✓ NON-PROFIT: YES NO

DOES YOUR ORGANIZATION OR ITS PARENT ORGANIZATION HAVE A RELIGIOUS AFFILIATION?

YES NO *IF YES, FILL OUT SECTION 3B.

ORGANIZATION'S MISSION: To promote the functions and services of the library, and to receive and encourage financial support for the library.

ADDRESS: 123 West Pine Street

Georgetown DE 19947
(CITY) (STATE) (ZIP)

CONTACT PERSON: Ivan D. Neal

TITLE: Board Member/5K Committee Chairperson

PHONE: 302.519.1928 EMAIL: ivan.neal@mchsi.com

TOTAL FUNDING REQUEST: \$500.00

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

If YES, how much was received in the last 12 months? \$500.00

If you are asking for funding for building or building improvements, do you own the building in which the funding will be used for? YES NO

Are you seeking other sources of funding other than Sussex County Council? YES NO

If YES, approximately what percentage of the project's funding does the Council grant represent? 5-10 %

SECTION 2: PROGRAM DESCRIPTION

PROGRAM CATEGORY (choose all that apply)

- | | | |
|--|---|--------------------------------------|
| <input type="checkbox"/> Fair Housing | <input type="checkbox"/> Health and Human Services | <input type="checkbox"/> Cultural |
| <input type="checkbox"/> Infrastructure ¹ | <input checked="" type="checkbox"/> Other Programs and Operations | <input type="checkbox"/> Educational |

BENEFICIARY CATEGORY

- | | | |
|---|--|-----------------------------------|
| <input type="checkbox"/> Disability & Special Needs | <input type="checkbox"/> Victims of Domestic Violence | <input type="checkbox"/> Homeless |
| <input type="checkbox"/> Elderly Persons | <input type="checkbox"/> Low to Moderate Income ² | <input type="checkbox"/> Youth |
| <input type="checkbox"/> Minority | <input checked="" type="checkbox"/> Other Residents of Sussex County | |

BENEFICIARY NUMBER

Approximately the total number of Sussex County Beneficiaries served annually by this program:

50,000

SECTION 3: PROGRAM SCOPE

- A. Briefly describe the program for which funds are being requested. The narrative should include the need or problem to be addressed in relation to the population to be served or the area to benefit.

This request is made on behalf of The Friends of the Georgetown Public Library.

Our mission is to raise money in an effort to help finance the Georgetown Public Library's budget. In the past, "The Friends" have allocated funds for the Library's e-book collection, tablets with educational testing (SAT prep, Math, Learning a foreign language, Brain games, etc) and toys for the children's area.

Throughout the year "The Friends" group hosts events to raise funding that goes directly to the Georgetown Library. The events include a 5K Race/1 Mile Walk through Georgetown, and dinner auction, two book sales, etc.

All members of the community, but especially residents of Sussex County benefit from the many services the Georgetown Public Library offers. One of the greatest opportunities to residents is the use of computers and internet access to those residents who do not have internet service (or slow internet service) in their homes.

One hundred percent (100%) of this grant will be used to supplement Library programs operating costs.

B. IF RELIGIOUS AFFILIATION WAS CONFIRMED ABOVE IN SECTION 1, PLEASE FILL OUT THE FOLLOWING SECTION. IF RELIGIOUS AFFILIATION WAS NOT CHECKED IN SECTION 1, THIS SECTION MAY BE LEFT BLANK.

A faith-based nonprofit organization is eligible to receive and apply for a grant on the same basis as other nonprofit organizations, with respect to programs which are eligible. In the selection of grantees, the County will not discriminate for or against an organization on the basis of the organization's religious characterization or affiliation. However, certain requests to utilize funding for programs with religious purposes may not be eligible due to constitutional principles of the United States and/or the State of Delaware.

Briefly describe the components of the program that involve religious purposes and the components that involve secular purposes, or non-religious purposes. If both non-religious and religious purposes are involved in the program, this narrative must include the specific actions that will be implemented in order to ensure that the funding is solely used for non-religious purposes and will not be used to advance or inhibit religious or faith-based activities.

After the awarded funds have been made, receipts of the non-religious purchases shall be submitted in accordance with Section 5 below before funds will be disbursed.

SECTION 4: BUDGET

| | |
|--|--------------------|
| REVENUE | |
| Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) | |
| TOTAL REVENUES | |
| EXPENDITURES | |
| Please enter the total projected budget for the project (not entire organization expense if not applicable to request). Example of expenditure items: PERSONNEL-one lump sum that would include benefits, OPERATING COSTS-supplies, equipment, rent/lease, insurance, printing telephone, CONSTRUCTION/ACQUISITION-acquisition, development, rehab hard cost, physical inspections, architectural engineering, permits and fees, insurance, appraisal. (Put amounts in as a negative) | Operating Expenses |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| | |
| TOTAL EXPENDITURES | \$ 0.00 |
| TOTAL DEFICIT FOR PROJECT OR ORGANIZATION | \$ 0.00 |

SECTION 5: STATEMENT OF ASSURANCES

If this grant application is awarded funding, the Friends of the Georgetown Public Library agrees that:
(Name of Organization)

- 1) For non-religious organizations, all expenditures must have adequate documentation and must be expended within one (1) year of receipt of award funds. The funding awarded to the organization must be used in substantial conformity with the anticipated expenditures set forth in the submitted application. All accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.
- 2) For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before the funding is released.
- 3) No person, on the basis of race, color, or national origin, should be excluded from participation in, be denied the benefit of, or be otherwise subjected to discrimination under the program or activity funded in whole or in part by these Grant funds.

SECTION 5- STATEMENT OF ASSURANCES (continued)

- 4) All information and statements in this application are accurate and complete to the best of my information and belief.
- 5) All funding will benefit only Sussex County residents.
- 6) All documents submitted by the applicant are defined as public documents and available for review under the Freedom of Information Act of the State of Delaware.
- 7) All funding will be used exclusively for secular purposes, i.e., non-religious purposes and shall not be used to advance or inhibit religious purposes.
- 8) **In the event that the awarded funding is used in violation of the requirements of this grant, the awarded funding shall be reimbursed to Sussex County within a timeframe designated by Sussex County by written notice.**

Ivan D. Neal

Applicant/Authorized Official Signature

February 25, 2022

Date

Salrina L. Neal

Witness Signature

February 25, 2022

Date

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

Mail: Sussex County Government
Attention: Gina Jennings
PO Box 589
Georgetown, DE 19947

SUSSEX COUNTY COUNCIL NON-PROFIT GRANT PROGRAM
GUIDELINES FOR SUBMITTAL AND AFFIDAVIT OF UNDERSTANDING

The Sussex County Council makes available a limited amount of funding to non-profit organizations that serve the citizens of Sussex County. Each application for funding shall be evaluated by Sussex County administrative staff and shall be subject to final approval from Sussex County Council.

In the attached application, each organization must outline its intended uses for the awarded funding and provide a detailed breakdown of the expenses and costs for such uses. Any funding awarded to the organization must be used in substantial conformity with anticipated expenditures of the submitted application.

All expenditures must have adequate documentation and must be expended within one (1) year of award of funds.

For non-religious organizations, all accounting records and supporting documentation shall be available for inspection by Sussex County within thirty (30) days after the organization's expenditure of the awarded funding, or within one year after the receipt of the awarded funds, whichever first occurs.

For religious organizations, all accounting records and supporting documentation shall be provided for inspection by Sussex County after the award has been made by County Council but before funding is released. Grant is relinquished if supporting documentation is not provided within one year of County Council award.

Certain programs are not eligible for funding pursuant to United States Constitution and State of Delaware Constitution. Those constitutional principles prohibit the use of funding to advance or inhibit religious activities. By signing below, the organization acknowledges that the funding shall be used exclusively for secular purposes, i.e., non-religious purposes and shall not be used to advance or inhibit religious activities.

In the event that such funding is used in violation of the requirements and assurances contained in this grant application, the awarded funding shall be reimbursed to Sussex County within a timeframe designated by Sussex County by written notice.

I acknowledge and represent on behalf of the applicant organization that I have read and understand the above statements.

Applicant/Authorized Official Signature

Witness Signature

Board Member

Title

February 25, 2022

Date

Council Grant Form

| | |
|---|---|
| Legal Name of Agency/Organization | Mariner Middle School Business Professionals of America (Cape Henlopen School District) |
| Project Name | Business Professionals of America National Leadership Conference |
| Federal Tax ID | 51-6000279 |
| 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 Business Professionals of America, Mariner Middle School Chapter, will develop and empower student leaders to discover their passion and change the world by creating unmatched opportunities in learning, professional growth and service. |
| Address | Mariner Middle School (CHSD) |
| Address 2 | 16391 Harbeson Road |
| City | Milton |
| State | DE |
| Zip Code | 19968 |
| Contact Person | Dr. Daniel Shockley |

Contact Title Advisor

Contact Phone Number 302-684-8516

Contact Email Address danielh.shockley@cape.k12.de.us

Total Funding Request \$2500

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 does the Council grant represent? 16

Program Category (choose all that apply) Educational

Program Category Other

Primary Beneficiary Category Youth

Beneficiary Category Other

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program 400

Scope Business Professionals of America is the country's premier CTSO (Career and Technical Student Organization) for students pursuing careers in business management, information technology, finance, office administration, health administration and other related career fields. To that end, the Mariner Middle School middle-level chapter focuses on both developing and empowering student leaders to discover their passion and change the world by creating unmatched opportunities in learning, professional growth and service. Part of this process is participation in the annual State of Delaware State Leadership Conference, hosted by Delaware Department of Education. During this time, students compete in various individual and/or team events that reflect both their talents and ability to apply various business skills/strategies to real-world scenario. Individuals who place among the top in the state are invited to attend the National Leadership Conference where they can learn from industry experts as well as compete for national titles.

2021-22 is a rebuilding year for Mariner Business Professionals, as COVID resulted in decrease in competing members. That said, 16 students chose to attend the State Leadership Conference. Of these individuals, eight earned both awards and state titles in their respective event(s). As a

result, they have been invited to attend the 2022 National Leadership Conference in Dallas, Texas (May 3-8, 2022), where they will take part in workshops and competitions aimed at furthering their knowledge, skills, and leadership strengths. Unfortunately, attendance comes with a cost. As a chapter, our finances come through grants, fundraisers, etc.... At this time, we do not have the monies necessary to send our eight qualifiers to the NLC.

Religious Components No religious affiliation.

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

Description Registration

Amount 750.00

Description Certiport Certifications

Amount 160.00

Description Breakout Sessions

Amount 3,200.00

Description Travel

Amount 4,000.00

Description Hotel Accommodations

Amount 6,000.00

Description

Amount 0.00

Description

Amount

Description

Amount

TOTAL EXPENDITURES 14,110.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -13,610.00

Name of Organization Mariner Middle School Business Professionals of America

**Applicant/Authorized
Official** Daniel

Date 03/11/2022

**Affidavit
Acknowledgement** Yes

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Green.
OK 3.15.

Council Grant Form

Legal Name of Agency/Organization ~~Woodbridge Youth Football Association~~
Pop Warner Little Scholars Inc

Project Name 2022 Season

Federal Tax ID 51-0348574 OK ✓

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 mission of Woodbridge Youth Football Organization (formerly known as Woodbridge Pop Warner) is to provide the fundamentals of football and cheer for the youth in our community. To encourage and develop our youth to strive for personal, educational, and athletic excellence and become well-disciplined student-athletes both on the field and in the community.

Address 2973 Craft Rd

Address 2

City Bridgeville

State Delaware

Zip Code 19933

Contact Person Amber Vanderwende-Campbell ✓

Contact Title Treasurer

Contact Phone Number 13026040452

Contact Email Address woodbridgeayf@gmail.com

Total Funding Request \$6,000

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? 2000

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) Other

Program Category Other Youth Athletics

Primary Beneficiary Category Youth

Beneficiary Category Other

Approximately the total number of Sussex County Beneficiaries served, or expected to be served, annually by this program 125

Scope This year, we are offering a Spring & Fall Football season for our youth! In the past year, we have purchased 20 new helmets, 30 new shoulder pads, 135 new uniforms, and a lot of other necessities such as league t-shirts, water, snacks & sanitizing needs for our youth teams. Currently, we need to purchase 80 more new helmets, and have about 100 of our old helmets that need to be sent away to be reconditioned. We appreciate any help towards these costs that the county would be willing to help out with!

Religious Components

Please enter the current support your organization receives for this project (not entire organization revenue if not applicable to request) 2,225.00

Description New Equipment

Amount 10,960.00

Description Equipment Reconditing

Amount 4,000.00

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

Description

Amount

TOTAL EXPENDITURES 14,960.00

**TOTAL DEFICIT FOR
PROJECT OR
ORGANIZATION** -12,735.00

Name of Organization Woodbridge Pop Warner Little Scholars

Applicant/Authorized Official Amber Vanderwende-Campbell

Date 03/12/2022

Affidavit Yes

Acknowledgement

Mark as Spam in D3 Forms. Please do not mark as spam in your email client, as it will result in you no longer receiving D3 Forms notifications. Feel free to email info@d3forms.com with any questions.

To Be Introduced: 03/22/22

Council District 5: Mr. Rieley
Tax I.D. No.: 235-30.00-94.00
911 Address: 18672 Harbeson Road, Harbeson

ORDINANCE NO. ____

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND MR MEDIUM RESIDENTIAL DISTRICT TO AN MR MEDIUM RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 4.54 ACRES, MORE OR LESS

WHEREAS, on the 7th day of March 2022, a zoning application, denominated Change of Zone No. 1978 was filed on behalf of Warren Munroe and David Rohrbaugh; and

WHEREAS, on the ____ day of _____ 2022, 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. 1978 be _____; and

WHEREAS, on the ____ day of _____ 2022, 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 [Agricultural Residential District/Medium Residential District] and adding in lieu thereof the designation Medium Residential District as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Broadkill Hundred, Sussex County, Delaware, and lying on the west side of Harbeson Road (Rt. 5) approximately 450 feet south of Lewes Georgetown Highway (Rt. 9) and being more particularly described in the attached legal description prepared by Pennoni Associates, said parcel containing 4.54 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.

To Be Introduced: 03/22/22

Council District 1: Mr. Vincent
Tax I.D. No.: 231-21.00-21.00
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE EXPANSION OF CU 1741 (ORDINANCE 2021) FOR THE EXPANSION OF A BORROW PIT TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NANTICOKE HUNDRED, SUSSEX COUNTY, CONTAINING 62.204 ACRES, MORE OR LESS

WHEREAS, on the 24th day of June 2021, a conditional use application, denominated Conditional Use No. 2294 was filed on behalf of Horsey Family, LLC; and

WHEREAS, on the ____ day of _____ 2022, 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. 2294 be _____; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2294 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Nanticoke Hundred, Sussex County, Delaware, and lying on east side of Asbury Road (S.C.R. 446) approximately 0.35 mile south of County Seat Highway (Rt. 9), and being more particularly described in the attached legal description prepared by Davis, Bowen & Friedel, Inc., said parcel containing 62.204 acres, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

To Be Introduced: 03/22/22

Council District 5: Mr. Rieley
Tax I.D. No.: 235-30.00-94.00
911 Address: 18672 Harbeson Road, Harbeson

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN MR MEDIUM-DENSITY RESIDENTIAL DISTRICT FOR MULTI-FAMILY DWELLINGS (24 UNITS) TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROADKILL HUNDRED, SUSSEX COUNTY, CONTAINING 4.54 ACRES, MORE OR LESS

WHEREAS, on the 6th day of July 2021, a conditional use application, denominated Conditional Use No. 2299 was filed on behalf of Warren Munroe and David Rohrbaugh; and

WHEREAS, on the ____ day of _____ 2022, 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. 2299 be _____; and

WHEREAS, on the ____ day of _____ 2022, 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 V, Subsection 115-31, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2299 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Broadkill Hundred, Sussex County, Delaware, and lying on the west side of Harbeson Road (Route 5) approximately 475 feet south of Lewes Georgetown Highway (Route 9) and being more particularly described in the attached legal description prepared by Pennoni Associates Inc. said parcel containing 4.54 acres, more or less.

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

To Be Introduced: 03/22/22

Council District Mr. Schaeffer
Tax I.D. No. 234-17.00-170.00 (p/o)
911 Address: N/A

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A WASTEWATER RECLAMATION TREATMENT FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 26.05 ACRES, MORE OR LESS

WHEREAS, on the 17th of December 2021, a conditional use application, denominated Conditional Use No. 2340 was filed on behalf of Inland Bays Preservation Company, LLC Attn: Robert Tunnell; and

WHEREAS, on the ____ day of _____ 2022, 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. 2340 be _____; and

WHEREAS, on the ____ day of _____ 2022, 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 115, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2340 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 Indian River Hundred, Sussex County, Delaware, and lying on the northeast side of Banks Road (S.C.R. 298), approximately 400 feet northwest of Green Road (S.C.R. 298A), and being more particularly described in the attached legal description prepared by Solutions Integrated Planning Engineering & Management, LLC, said parcel containing 26.05 acres, more or less

This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.

ORDINANCE NO. _____

AN ORDINANCE TO AMEND THE FUTURE LAND USE MAP OF THE COMPREHENSIVE PLAN IN RELATION TO TAX PARCEL NO. 235-13.00-94.00.

WHEREAS, on May 21st, 2021, the Sussex County Planning and Zoning Office received an application for a Comprehensive Plan Amendment Request to amend the Future Land Use Map element of the Comprehensive Plan to change the Area designation of a portion of Sussex County Parcel No. 235-30.00-94.00 from a Low Density Area to an Existing Development Area.

WHEREAS, the Parcel comprises 4.54 acres of land, lying and being within Broadkill Hundred, and located on the west side of Harbeson road (Route 5) approximately 475 feet south of Lewes Georgetown Highway (Route 9). 911 Address: 18672 Harbeson Road, Harbeson. (“The Property”)

WHEREAS, The Property is designated as being within both the Low-Density Area and Existing Development Area as set forth in the Future Land Use Map identified as Figure 4.5-1 in the 2018 Comprehensive Plan for Sussex County.

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

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Future Land Use Map identified as Figure 4.5-1 of the Sussex County Comprehensive Plan is hereby amended to change a portion of the parcel currently classified as Low-Density Area designation of Sussex County Parcel No. 235-30.00-94.00 from the Low-Density Area to the Existing Development Area. The portion of Sussex County Parcel No. 235-30.00-94.00 so changed is identified in Exhibit A, attached hereto and incorporated herein.

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

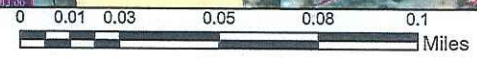
Exhibit A : Potential
Comprehensive Plan Amendment



Sussex County



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus, DigitalGlobe, GeoEye, IGN, and the GIS User Community, Sussex County, Delaware



JAMIE WHITEHOUSE, AICP
DIRECTOR OF PLANNING & ZONING
(302) 855-7878 T
(302) 854-5079 F
jamie.whitehouse@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: March 16, 2022

RE: County Council Report for C/U 2288 filed on behalf of Broom Solar Partners, LLC.

The Planning and Zoning Department received an application (C/U 2288 filed on behalf of Broom Solar Partners, LLC) for a Conditional Use for parcel 533-5.00-47.00 for a solar farm. The property is located within the Agricultural Residential (AR-1) Zoning District and is located on the north side of Frankford School Road (SCR 92) approximately 0.55 mile west of Pyle Center Road (SCR 20). The parcel size is 72.00 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on February 10, 2022. At the meeting of March 10, 2022, the Planning & Zoning Commission recommended approval of the application subject to 5 reasons stated and subject to 7 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meetings of February 10, 2022 and March 10, 2022.

Minutes of the February 10, 2022 Planning & Zoning Commission Meeting

C/U 2288 Broom Solar Partners

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for a solar farm to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 72.00 acres, more or less. The property is lying on the north side of Frankford School Road (S.C.R. 92) approximately 0.55 mile west of Pyle Center Road (S.C.R. 20). 911 Address: N/A. Tax Parcel: 533-5.00-47.00



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

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's Conceptual Site Plan, a copy of the Applicant's Executive Summary, a copy of the staff analysis, a copy of the deed, a letter from Sussex County Engineering Department Utility Planning Division, a copy of the DelDOT Service Level Evaluation Response, zero comments, and zero mail returns.

The Commission found that Mr. Jeff Machiran with EDF Renewables spoke on behalf of the Application, Broom Solar Partners; that also present were Mr. Dave Shapley, from Delaware Electric Cooperative and Mr. Chad Kayser, Environmental Consultant with TRC and Mr. Yannick Tamm with EDF; that the Broom Solar project is the second EDF project which is developing within Delaware Electric service territory, in conjunction with Delaware Electric and Old Dominion Electric Cooperative (ODEC); that Distributed Generation projects generate electricity directly to homes and businesses via local electrical distribution lines compared to larger centralized powerplants; that centralized powerplants push power onto high voltage transmission lines which carry electricity hundreds to thousands of miles away; that a key benefit of distributed generation projects like Broom Solar is they generate electricity in the communities where the power is consumed; that this reduces the need for long transmission lines and other costly infrastructure; that providing clean, renewable power close to the end user, they improve the resiliency of the local distribution grid and deliver the power at a all-end lower cost to the user; that another benefit to distributed generation projects is the smaller footprint of the projects; that this means a smaller impact; that Broom Solar will occupy tens of acres versus hundreds or even thousands of acres; that Broom Solar Partners, LLC, which is a wholly-owned entity of EDF Renewables Distributed Scale Power, is the Applicant of the project on behalf of the property owner, Wilgus Family Revocable Trust; that the proposed location is on one parcel of land, which runs along Frankford School Rd in Frankford, Delaware; that the project area is currently an agricultural field with no existing structures; that the anticipated project will be less than 35-acres; that the capacity to the proposed project is three megawatts of alternating current; that this is considered a relatively small project; that the project is sized to meet the local distribution system; that this type of project is referred to as distributed generation because it is connecting to the distribution grid as opposed to the electrical transmission system; that the point of interconnection will be at Delaware Electric's existing electric line, running along Frankford School Rd.; that this will end at the Omar substation, which is 1.5-mile away; that the equipment will consist of racking systems, which are mounted on support posts, panels which are installed on top of the racking systems, an inverter/transformer skid, interconnection equipment, which are typical utility poles and a small weather station; that there is a stream which runs to the south eastern portion of the project; that the stream will be avoided with a minimum 100-ft. setback; that there is a tax ditch to the northern corner of the property, which will be avoid as well; that there is an access drive running through the center of the property; that at the end of the access drive there is a turn around for fire trucks and emergency personnel; that the State Fire Marshal has reviewed and provided comment to the preliminary plan; that the proposed design is based on the State Fire Marshal's comments; that there is proposed fencing surrounding the array; that they are not proposing any grading onsite; that the project is set back 800-ft. from the eastern side of the site; that from the western portion the project is located 1,200-ft. from the road; that to date, EDF's Environmental Consultant, TRC, conducted a field reconnaissance, wetland delineation, and a habitat assessment to identify potential environmental and land use impacts on the project; that they did identify one perennial stream and 14 agricultural ditches; that all of these areas will be avoided and appropriately buffered with setbacks; that there were no threatened or

endangered species observed on the site; that there is low potential of onsite occurrence due to the history of land cultivation; that there were no cultural or historic resources previously identified onsite; that stormwater runoff will be tightly controlled in accordance with State and local regulations; that there are no impact to drainage patterns anticipated due to the ability of the arrays to conform to the existing topography, as well as the gaps between panels and space between arrays allow infiltration into the grounds surface; that the project will obtain all necessary permits required by local, State and Federal agencies; that siting for the project began with Delaware Electric in 2020; that interconnection studies, site diligence and project and civil engineering began around the same time; that they then initiated the permitting process; that EDF is committed to community engagement; that EDF reached out directly to neighbors by mailings; that EDF held a community event at the site on January 26, 2022 and January 27, 2022, in advance to the formal notices received from the County; that this year EDF will begin finalizing engineering, procuring of equipment and construction of the project, if approved; that construction is anticipated to take approximately five months; that the first month would consist of site preparation, installing the access road and fencing; that about two months would be required for the installation of the posts and racking; that approximately two more months are required for the installation of the modules, wiring and conduit, that next they install the remaining electrical equipment, including inverters and transformers; that a month would be required for the final system testing and commissioning; that by the beginning of 2023 the project could begin commercial operation; that EDF Renewables has over 35 years of experience in the United States developing wind, solar and storage projects; that they have developed over 16,000 megawatts of renewable energy projects; that they current operate over 11,000 megawatts; that EDF is one of the largest owners and operators of renewable energy in the country and EDF is well equipped to handle this type of project due to their experience and expertise.

The Commission found that Mr. Shapley, Vice President for Delaware Electric Coop, spoke on behalf of the Application; that the Coop is a non-profit organization owned by the members it serves; that they are very supportive of their local community; that Delaware Electric purchased power from Old Dominion Electric Cooperative (ODEC); that ODEC is a non-profit, wholesale generation transmission cooperative which operates for the benefit of its members who are the owners; ODEC serves 11 member distribution cooperatives in Virginia, Maryland and Delaware; that Delaware Electric Coop (DEC) service 108,000 members within Kent and Sussex County, Delaware; that the Broom Solar Project will provide 100% of its output directly to homes and business within the County and surrounding areas; that the project was specifically designed to offset DEC's customer load in the area; that this will reduce the need for costly transmission upgrades; that the proposed Broom Solar site is proposed to connect to existing distribution infrastructure to avoid the need for a new substation; that the Broom Solar project will save DEC members about \$51,000 per year in power costs; that combined with the solar project in Greenwood, DEC members will save about \$136,000 per year; that solar panels are constructed of silicon semiconductors, much like a computer chip; that when the sunlight hits the semiconductor material, it creates a charge, which is a direct current; that the direct current is converted to an alternating current through converters so it can be fed into the distribution grid for use in homes and business; that solar creates clean, renewable electricity without the use of water, creating emissions or producing waste products; that its low visual profile and quiet operations makes for a great neighbor; that solar projects place no demand on County infrastructure or services such as roads, water, sewer, emergency services or schools; that construction consist of

minimal grading and disturbance; that the solar projects are built using drive steel posts to support the solar panels versus concrete or other foundations and this allows the land to return to its previous agricultural use at the end of the project.

Ms. Wingate questioned the location of the proposed fencing; that she questioned if there is a plan in place to remove the equipment in the event the project is no longer needed and questioned what noise the project would create.

Mr. Machiran stated the fencing is proposed around the entire perimeter of the project; that the proposed fencing will be 7-ft. agricultural fixed knot fencing; that in the agreement with the property owner it is stated, should the project no longer be needed, EDF would handle the removing of all equipment where it would then be recycled leaving the property back to agricultural land; that the only noise the project would create would be a slight hum when the panel retracts to the sun; that the 24 inverters, the size of a small duffle bag, will create an occasional slight hum; that the inverters will be centralized in the field and the neighbors will not be able to hear the panels or inverters.

Ms. Stevenson questioned if EDF was part of the Power Generation Module (PGM) Grid System.

Mr. Shapley stated the proposed project will not fall back on the transmission system, therefore it will not fall into a PGM queue, making the project exempt from the PGM.

The Commission found there was no one present in the room or by teleconference who wished to speak in support or opposition to the Application.

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

In relation to Application C/U 2288 Broom Solar Partners. Motion by Ms. Wingate, to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 5-0.

Draft Minutes of the March 10, 2022 Planning & Zoning Commission Meeting

The Commission discussed this Application which has been deferred since February 10, 2022.

Ms. Wingate moved that the Commission recommend approval of C/U 2288 Broom Solar Partners, LLC for a solar field in an AR-1 District based upon the record made at the public hearing and for the following reasons:

1. The proposed facility is a public utility use under the Sussex County Zoning Code, and it meets the purposes of a Conditional Use in that it is of a public or semi-public character that is essential and desirable for the general convenience and welfare of Sussex County residents.
2. The proposed facility promotes Goal 7.3 of the Sussex County Comprehensive Plan which encourages the use of renewable energy options such as solar farms.
3. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighboring or adjacent properties.
4. The proposed solar generation facility will not result in any noticeable increase in traffic on adjacent and neighboring roadways. There are no regular employees at the site, only periodic

- visits for inspections, maintenance, or repair of the solar panels.
5. No significant noise, dust or odor will be generated by the facility.
 6. This recommendation is subject to the following conditions:
 - A. No storage facilities shall be constructed on the site.
 - B. Lighting on the facility shall only consist of perimeter lighting needed for security purposes. All lighting shall be downward screened so that it does not shine on neighboring properties or roadways.
 - C. One unlighted sign, not to exceed 32 square feet in size, shall be permitted.
 - D. The site shall be secured by fencing with a gate with a "Knox Box" or similar device to accommodate emergency access by the local fire company or other emergency responders. The fence line shall be shown on the Final Site Plan.
 - E. Any transformers or similar equipment shall be centrally located on the site away from any nearby residential uses.
 - F. All of the grounds, including the area outside of the fence, shall be maintained so that they do not become overgrown.
 - G. The Final Site Plan 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 for C/U 2288 Broom Solar Partners for the reasons and conditions stated in the motion. Motion carried 5-0.

PLANNING & ZONING COMMISSION

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



Sussex County

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JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: February 10th, 2022

Application: CU 2288 Broom Solar Partners, LLC

Applicant: EDF Renewables Distributed Solution, Inc.
251 Little Falls Drive
Wilmington, DE 19808

Owner: Wilgus Family Revocable Trust
34108 Wilgus Cemetery Road
Frankford, DE 19945

Site Location: Lying on the north side of Frankford School Road (S.C.R. 92)
approximately 0.55 miles west of Pyle Center Road (S.C.R. 382)

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

Proposed Zoning: Agricultural Residential (AR-1) Zoning District

Comprehensive Land
Use Plan Reference: Coastal Area

Councilmanic
District: Mr. Rieley

School District: Indian River School District

Fire District: Roxanna Fire Department

Sewer: N/A

Water: N/A

Site Area: 72.00 acres +/-

Tax Map ID.: 533-5.00-47.00



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Memorandum

To: Sussex County Planning Commission Members
From: Elliott Young, Planner I
CC: Vince Robertson, Assistant County Attorney, and applicant
Date: February 3rd, 2021
RE: Staff Analysis for CU 2288 Broom Solar Partners

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2288 Broom Solar Partners to be reviewed during the February 10th, 2022, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel 533-5.00-47.00 to allow for a Conditional Use of land in an Agricultural Residential (AR-1) Zoning District for a solar farm. The parcel is located on the north side of Frankford School Road. (S.C.R. 92) in Roxana, Delaware. The size of the property is approximately 72.00 acres +/-.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework for how land is to be developed. As part of the Comprehensive Plan a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the property has the land use designation of Coastal Area.

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

The property is zoned AR-1 (Agricultural Residential Zoning District). The adjoining and surrounding properties located to the north, east, and west are all zoned AR-1 (Agricultural Residential Zoning District).

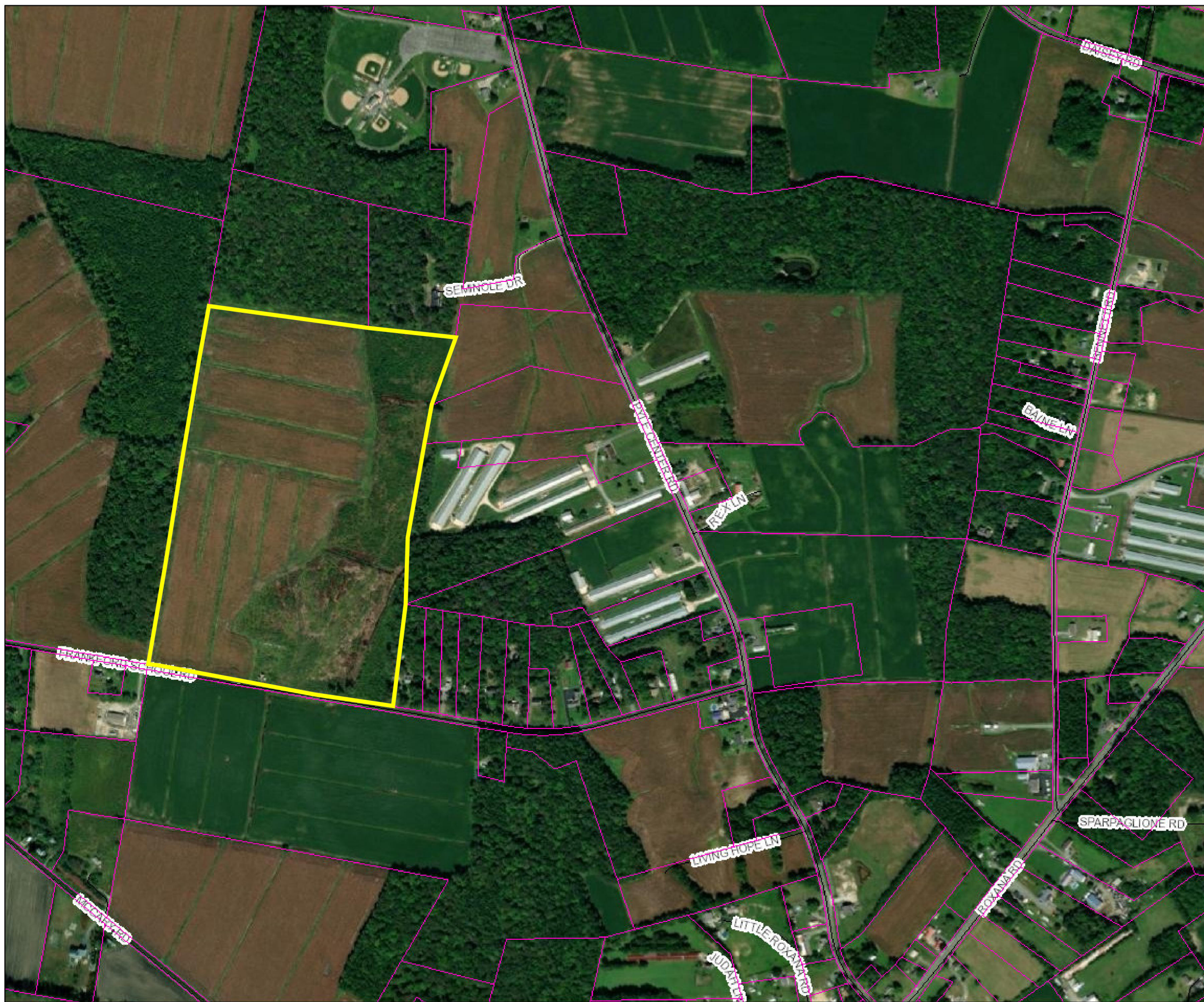
Since 2000, there have been two (2) Conditional Use approvals within a .25-mile radius of the application site. The Conditional Use applications were CU 1468 approved by County Council on 12/10/2002 and CU 2256 approved by County Council on 8/31/2021.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional Use to allow for a solar farm, could be considered as being consistent with the land use, area zoning and surrounding uses.





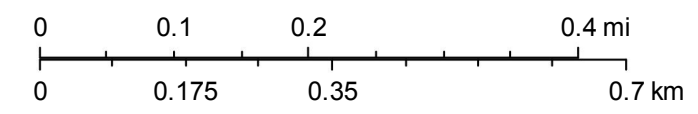
Sussex County

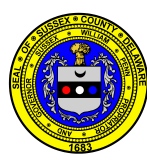


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|------------------------|----------------------------|
| PIN: | 533-5.00-47.00 |
| Owner Name | WILGUS ROBERT E JR TTEE |
| Book | 4459 |
| Mailing Address | 34108 WILGUS CEMETERY |
| City | FRANKFORD |
| State | DE |
| Description | N SIDE RD ROXANA TO |
| Description 2 | FRANKFORD 72 ACRES |
| Description 3 | FX |
| Land Code | |

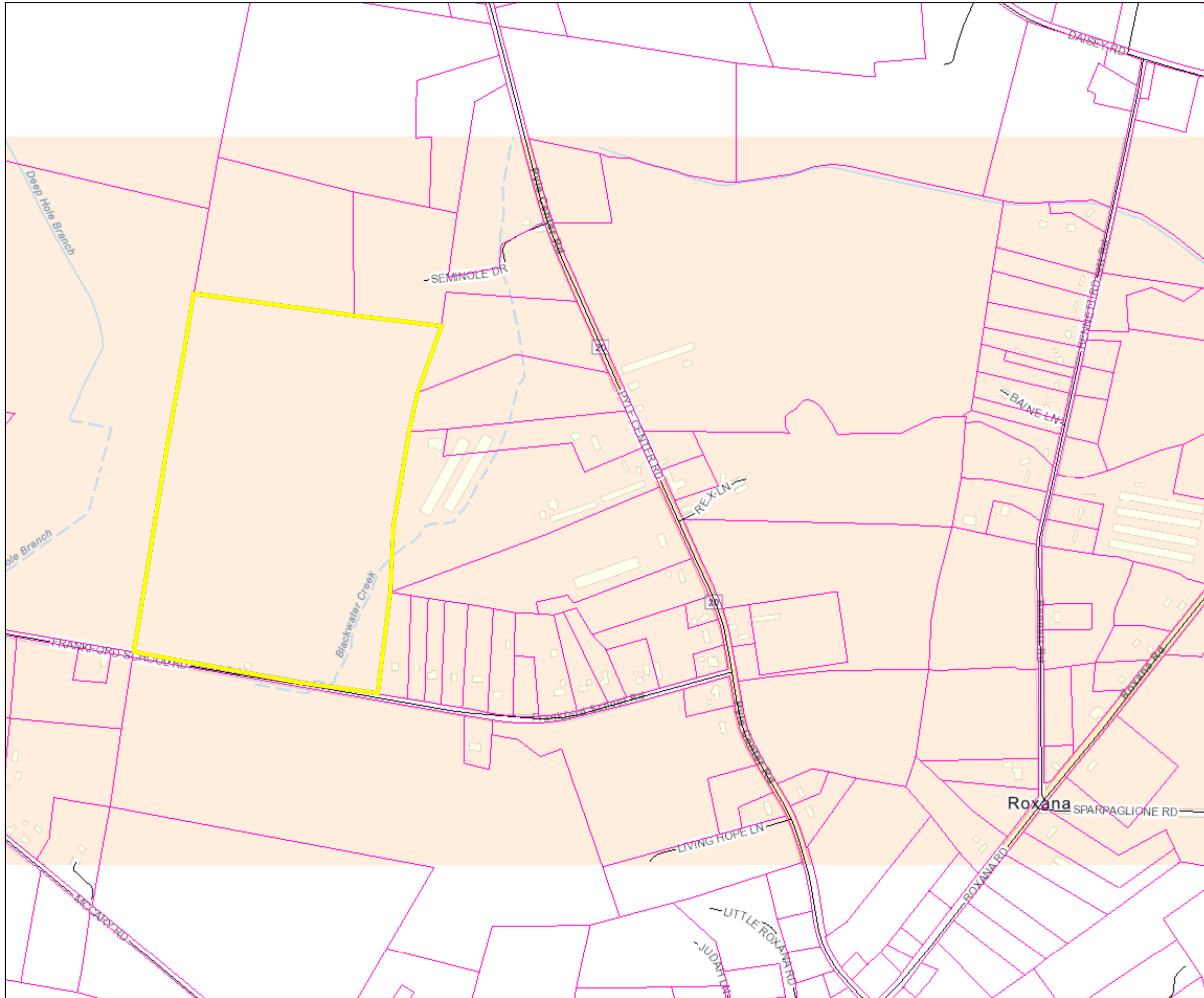
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- Tax Parcels
- Streets
- County Boundaries
- Flood Zones 2018**
- 0.2 PCT ANNUAL CHANCE FLOOD HAZARD
- A
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- OPEN WATER
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Sussex County



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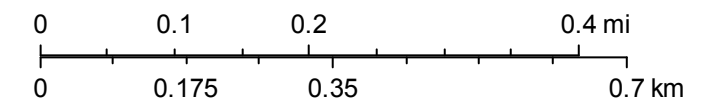
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- Tax Parcels
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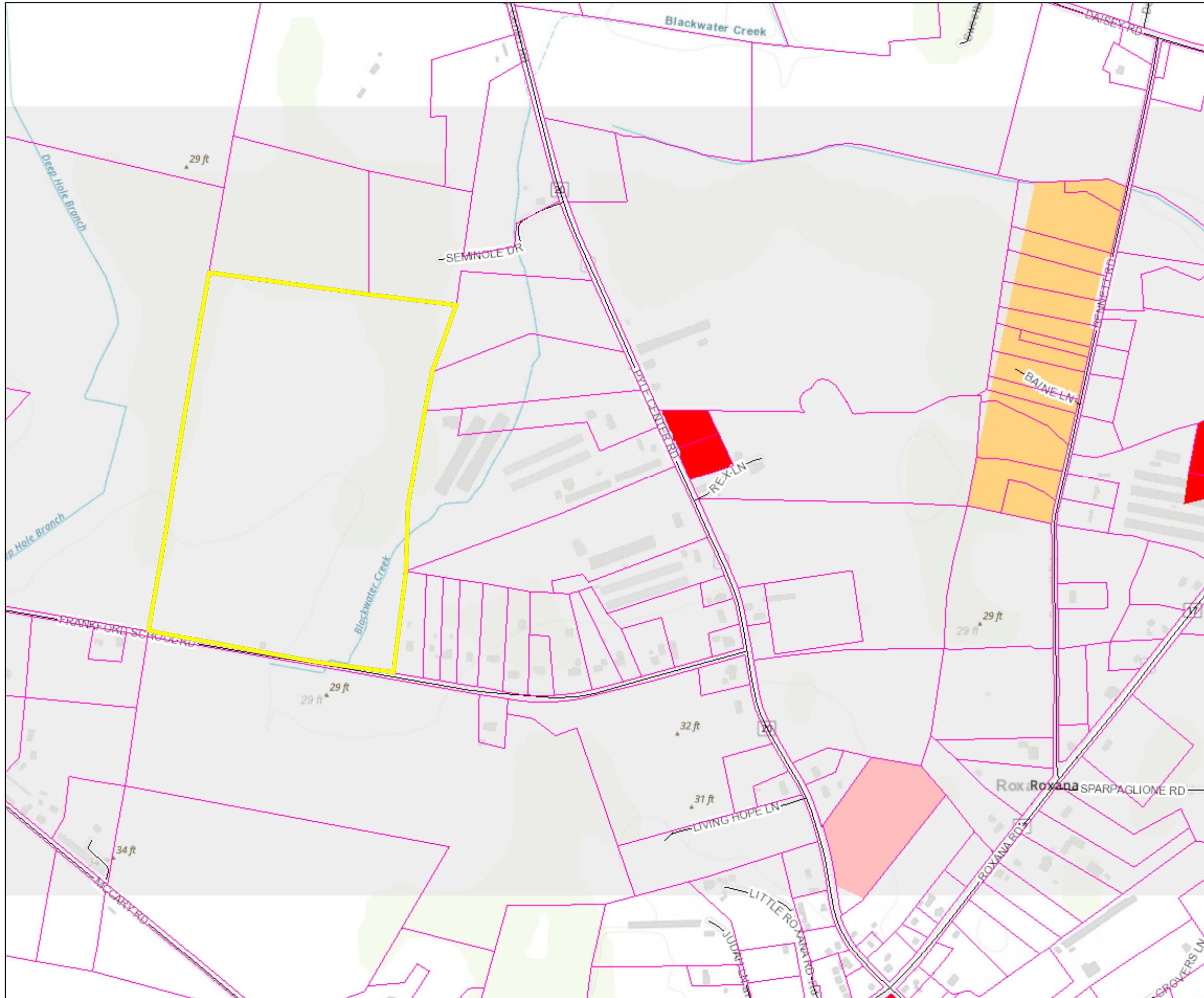
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Sussex County



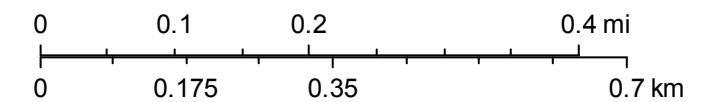
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| Description 3 | FX |
| Land Code | |

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- polygonLayer**

 - Override 1
- Tax Parcels
- Streets

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Introduced 07/13/21

**Council District 5 - Rieley
Tax I.D. No. 533-5.00-47.00
911 Address: None Available**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR FARM TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 72.00 ACRES, MORE OR LESS

WHEREAS, on the 1st day of June 2021, a conditional use application, denominated Conditional Use No. 2288 was filed on behalf of Broom Solar Partners, LLC; and

WHEREAS, on the ____ day of _____ 2021, 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. 2288 be _____; and

WHEREAS, on the ____ day of _____ 2021, 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 115, Subsections 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2288 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the north side of Frankford School Road (S.C.R 92) approximately 0.55 mile west of Pyle Center Road (Route 20), and being more particularly described in the attached legal description prepared by Tomasetti Law, LLC, said parcel containing 72.00 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
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Sussex County

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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: March 16, 2022

RE: County Council Report for C/U 2284 filed on behalf of Eastern Shore Natural Gas Company.

The Planning and Zoning Department received an application (C/U 2284 filed on behalf of Eastern Shore Natural Gas Company) for a Conditional Use for parcel 131-10.00-99.00 for the expansion of CU 889 (Ordinance No. 536) for Public Utilities or Public Service Uses to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County. The property is located within the Agricultural Residential (AR-1) Zoning District and is located at 17019, 17025, 17035 & 17041 Black Cherry Drive, Bridgeville. The parcel size is 29.98 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on February 10, 2022. At the meeting of March 10, 2022, the Planning & Zoning Commission recommended approval of the application subject to 8 reasons stated and subject to 4 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meetings of February 10, 2022 and March 10, 2022.

Minutes of the February 10, 2022 Planning & Zoning Commission Meeting

C/U 2284 Eastern Shore Natural Gas Company

An Ordinance to grant a Conditional Use of land in an AR-1 Agricultural Residential District for the expansion of C/U 889 (Ordinance No. 536) for public utilities or public services uses to be located on a certain parcel of land lying and being in Northwest Fork Hundred, Sussex County, containing 29.98 acres, more or less. The property being a landlocked parcel accessed off



Emma Jane Lane, approximately 0.33 mile south of E. Newton Road (S.C.R. 584). 911 Address: 17019, 17025, 17035 & 17041 Black Cherry Drive, Bridgeville. Tax Parcel: 131-10.00-99.00

Mr. Whitehouse advised the Commission that submitted into the record is a copy of the Applicant's Site Plan, a copy of the staff analysis, a letter from Sussex County Engineering Department Utility Planning Division, a copy of the Applicant's submittal letter, the property deed, the DelDOT Service Level Evaluation Response, a copy of Ordinance 536 (C/U 889) from September 27, 1988, one mail return, zero letters in support and 28 letters in opposition, with some appearing as duplicates.

Mr. Robertson recused himself from this Application and left Chambers.

The Commission found Mr. Mark Parker, Engineer Manager for Eastern Shore Natural Gas Company, spoke on behalf of the Application; that Eastern Shore Gas has safely and reliably served the natural gas transportation needs on the Delmarva Peninsula since 1959; that they serve all of Delaware; that they support Chesapeake Utilities as the local distribution company in Sussex County, along with industrial users and energy producers; that currently they maintain almost 600-miles of transmission main pipeline in operation; that they have three compressor station sites; that two station sites are located in Delaware, one in Delaware City and the other site located in Bridgeville; that they have another site located in PA; that the subject compressor station has operated at the subject location since 1988; that the compressor ensures adequate natural gas is transported throughout the region; that the location of the subject compressor station is approximately eight acres; that the area was previously granted a Conditional Use (C/U 889) in 1988 upon the stations original construction; that Wheatley Elementary School was in place at that time; that there was infrastructure in the area, including railroad and the industrial facilities located to the north; that they have been good neighbors, living harmoniously under the granted Conditional Use since 1988; that the parcel is wholly-owned and held by Eastern Shore Natural Gas; that the property is farmed at times by a tenant farmer; that they do understand the facility does serve as a utility; that there is a solar farm located on the northwest corner; that the compressor stations units are contained within two separate buildings; that the current Application request is to allow the current station to become a meter regulator station or also known as a receipt point for natural gas; that the existing compressor station facility is comprised of stone cover, two compressor unit buildings, several small axillary structures, a control room, a stormwater facility, above grade piping and ancillary equipment; that for all the facilities contained, they provide ancillary tenant farming to benefit the area at the time; that the interconnect project will develop approximately four acres of land; that the area is primarily stone; that there is presence of above grade piping, consisting of four, six and eight inch piping; which is proposed to be approximately five to eight feet above grade; that there would be three offload points; that at each of these locations, a truck would enter the facility and hook up to the offload points; that at any one time there could be three trucks offloading; that a trailer would offload, as they near the end of offload period, another trailer would be brought in; that the offload period takes about four hours; that a third location is shown in the case a trailer should be left behind for any reason; that they have worked closely with the Delaware Department of Transportation to provide understanding of how the trucks would move on and off the site; that the offload points could see up to six trailers per day; that the number of trailers per day will depend upon the receipt frequency; that the number of trailers cannot be any greater than six trailers, but could be less at times; that the site could see 18 trailers deliver; that this would equal to 36

total trips; that 36 total trips does not warrant a Traffic Impact Study (TIS); that the trips did warrant the need to look at the intersection of Emma Jane Lane and East Newton Rd.; that in working with DelDOT it was decided a design deviation was appropriate; that two to three trips are proposed during peak hours; that trailers may access the site from the west or the east of East Newton Road, depending on the location the gas is coming from; that the proposed shippers have not yet been determined; that through the design deviation process, which was granted by DelDOT, there were no intersection improvement required at the intersection of Emma Jane Lane and East Newton Road; that the types of trucks proposed are WB55 or WB65 trailers, which are the standard over-the-road 18-wheeler; that with the development of Miller Metals and the existing industrial facilities on Emma Jane Lane, the deviation was granted; that at the facility gas is offloaded, metered and regulated; that the gas is heated, which is required when gas pressures are dropped quickly; that the gas is not treated, processed and never evacuated to atmosphere, unless there was a pressure situation; that pressure situations can take place at any normal meter and regulator station throughout the state; that throughout the region, at a compressor station, there are always safety precautions; that the gas onsite is never treated or handled other than direct injection into the pipeline system; that if the gas should not meet the tariff standard on arrival, the valve is shut and the truck is sent away; that injection into the system is meant to indicate the lower explosive limit and the upper explosive limit; that it is meant to be more pungent than it needs to be, to ensure people are aware of its presence; that there is no actual discharge of natural gas with intent to atmosphere; that the trucks and the piping seen are approximately 800-ft. to the nearest residence; that even though they did receive siting authority with Federal Energy Regulatory Commission, they still took into account community considerations; that there is a residential community located to the southeast of the site; that the closest residence to the far eastern edge of the property is 800-ft. away; that there is a stone yard and a six foot security fence; that the fence is alarmed; that the alarm is manned by a 24/7 operation out of Dover, who also has cameras and access to ensure safety onsite; that due to the offload, there will be an operator onsite, contained within a closing gate; that they take security very seriously; that the stormwater facility has been placed to the eastern side of the facility; that the stormwater management is a partial infiltration facility; that it does contain a small spill-away in the over lands to the south, as it cannot infiltrate all of the volumetric water required; that the spill-away is not impactful to any residence, school, commercial or industrial users; that the proposed facility and the trucks would be located 1,300-ft. away from the school and almost 1,100-ft from the playground of the school; that through the Pipeline and Hazardous Material Safety Administration (PHMSA) and the regulations of the United States Department of Transportation (DOT), they look closely at what potential impact radiuses would be; that when looking at the largest pipe on the site, which is a 10-in. pipe, at a maximum allowable operating pressure of 800-lbs., the impact radius is 200-ft.; that they have positioned the facility, in case something catastrophic did occur within the fenced area, nothing would leave the property limits; that they work very closely with the State Fire Marshal and local fire departments; that there is always an operator on the site at all times, as well as the 24/7 manned operation in Dover; that they have never had a catastrophic event, but the fire departments do know how to handle such an event; that south of the stoned area there is an eight inch main, which runs to the south and leads to the interconnect of four pre-existing lines; that the four lines run out to Rt. 13; that there is a six-inch and ten-inch discharge line which comes out of the existing compressor station; that they propose to tie into both the six-inch and ten-inch lines to naturally feed their gas line systems; that the gas does not go into the compressor station; that the gas is directly injected, at tariff level rates, into the existing mains; that

this will serve points south of Sussex County; that there is no process or process piping; that the project is like any other meter regulator station, with the exception this station will accept gas through a virtual pipeline, via truck, rather than a pipeline; that the pipes are generally five to six feet off the ground; that there are one to two elements located in the southwest corner which are eight feet off the ground; that this area is called an up and over; that this allows people to egress quickly without the need to climb over or duck piping; that this area is located 1,000-ft. from any concerning area; that they do have a natural vegetated buffer which does separate the eastern subdivision and the facility; that to the south there is natural vegetation which will not shield the facility from Phillis Wheatley Elementary School, however the distance is so great, it does shield the existing compressor station; that they hold approvals from Sussex Conservation District, United States Fish & Wildlife Service, Delaware State Historic Preservation (SHPO), the Species Conservation and Research Program (SCRIP) of the Delaware Department of Natural Resources (DNREC); that they have prepared their general package to be submitted to the Federal Energy Regulatory Commission (FERC); that they are currently waiting for their local and State approvals; that once they receive approvals and a viable shipper is obtained, they will submit their Application with the Federal Government; that although they have siting authority, they yield towards obtaining all necessary approvals before taking any risks; that the proposed development will not have a substantial impact on physical, economic or social development in the area; that they have selected the proposed location to develop as it minimized the potential for negative environmental or community impacts; that the minimum buffer and facilities are proposed; that the proposed project is smaller in scale compared to the Bridgeville compressor station; that they believe the project fits the character of the site activity which is currently under use; that with the commercial and industrial facilities located on Emma Jane Lane and Miller Metals to the north, the project is in line with the general land use of the area; that there is access to trucking Rt. 404 and the Conditional Use request is for industrial use to be granted for the entire parcel.

Mr. Hopkins questioned if the site operation currently trucked gas to the site and distribute the gas, what a virtual pipeline is and asked if the request was to supplement the gas by truck due to inability to receive enough gas through the pipelines and questioned if the 200-ft. of potential impact radius was the maximum radius.

Ms. Stevenson questioned the location the trucks will be arriving from, if the railroad would be utilized, what hours the trucks would be running, if it proposed to place a new compressor on-site or use an existing compressor and she questioned if the proposed request was related to the biogas facility in Seaford.

Ms. Wingate questioned if Eastern Shore Natural Gas is currently performing the proposed process at any other location or facility

Mr. Parker stated they do not currently bring gas to the site by truck; that everything onsite is subgrade; that the natural gas pipelines come in, then head to the compressor units, which are located within the existing buildings; that the gas is typically compressed for 500-lbs. to 800-lbs., which helps transport the compressed gas, allowing the gas to move through the pipeline to the west and east; that they serve Cambridge and Easton; that in the proposed plan, there are three offload points; that the proposed use could be opportunistic for them during peak seasons; that the proposed use would allow them to

bring in compressed natural gas liquefied or renewable natural gases; that they would truck in the gas, to bring those opportunities to the site, rather than attempting to bring the gas down from an interconnect in PA; that a virtual pipeline is also known as a truck; that by supplementing the gas by a truck does create opportunities for them; that they do currently receive gas through the pipeline underground and the request is to supplement the gas additionally by truck; that the impact radius for a ten-inch pipe, at 800-lbs. of pressure, is 196-ft.; that if a person was outside of the impact radius, there would still be some type of percussion but the person would not be located within the blast radius; that the shippers have not yet been determined, therefore the location in which the trucks will arrive is currently unknown; that they found no advantage by rail, as the gas would still be required to off the rail, on load to a truck and off load again at the site; that they are proposing to use Marlin Natural Gas Services, which is part of Chesapeake Utilities Corporation which is where Eastern Shore Natural Gas falls under as a business unit; that it will be their truckers, their known system, and their operator qualified technicians using equipment; that due to not knowing who the shippers will be and their locations, the exact hours the trucks would run is unknown; that hours would mainly be through the daytime, but they are not excluding evenings and night deliveries; that peak hour movements are 7:00 am until 9:00 am and 4:00 pm until 6:00 pm; that DelDOT has not placed a condition on when the trucks can and cannot go; that the trucks would be considered part of the normal flow of traffic; that they are proposing zero to three trucks in a peak hour movement; that this equals to three trucks over a 120-minute window; that there is an existing compressor onsite; that the proposed project, and the request to expand the Conditional Use, will not involve a new compressor; that the proposed project will strictly be injected into the existing pipeline; that the gas is decompressed and comes off the trucks at high pressure, allowing the gas to be directly injected; that the proposed project is not related to the biogas facility in Seaford, that should the biogas facility open in Seaford, they could be a potential receipt point for them; that the proposed project is not based around the biogas facility in Seaford; that they have investigated a location at their existing Hollymount meter and regulator facility, but they have not taken any steps to inject at the location; that Marlin Natural Gas has the history of transporting the gas by truck and they have had no issues in the past.

The Commission found Ms. Maria Payan, on behalf of Sussex Health & Environmental Network, Mr. Greg Layton, on behalf of Delaware Food & Water Watch, with concerns on traffic, the vagueness and lack of details submitted in the Application as to who the chosen drivers will be, the truck route of the drivers, how trucks will park in the bays, the process in the offloading of gas, the lack of a detailed emergency plan, the safety and potential negative impacts of the children and employees of the school, the percussion zone radius, the compatibility of the project to the Comprehensive Plan and the potential to create a climate catastrophe created by carbon-based fuel, environmental racism and a Traffic Impact Study and PLUS review should be required with an active FERC application.

Ms. Stevenson questioned if there could be an emergency plan set in place with the school be submitted for the Commission to review; that she mentioned her concern of when the trucks would be driving past the school and questioned how it could be avoided.

Mr. Parker stated he will have to check with the safety department to inquire if there is already a plan in place with the existing operating compressor station at the site and they are willing to initiate a safety plan if there is not an existing plan; that they do not anticipate the trucks to drive past the

school; that they assumed with DelDOT, the trucks would arrive from the eastern side, mainly from Rt. 13; that DelDOT requested they look at the more heavily trafficked areas; that there was a Traffic Impact Study performed with Miller Metals; that they did look at traffic through that previous TIS lens; that despite being unsure if they will arrive from Rt. 404 or Rt. 13, they looked at the more concentrated area, and found the safety concerns, timing issues and trips generated were not of concern; that it would keep the trucks completely away from Wheatley Elementary; that they did not propose any access off the western side, off of Black Cherry Lane; that all the trucks would come in from Rt. 404; that this keeps them out of residential areas, away from the elementary school, from crossing the railroad tracks; that they utilized the existing roadway corridor to be mindful of safety; that it is no different than a gas truck delivering to a Exxon or Wawa; that the trucks they use are properly valved; that the trucks have shut down components; that the truck drivers are operator qualified; that they are employees of Eastern Shore Natural Gas; that they are willing to place a condition not permitting the trucks to drive pass the school; that the only circumstance it could happen is if a trailer were to get lost; that their goal route is to have the trailers access Emma Jane Lane off of East Newton Rd.; that FERC takes jurisdiction when it comes to environmental and social justice issues; that they also regulate noise and siting authority; that for FERC to grant them the Certificate of Public Convenience (CPCN), which they refer to as a CP Filing, FERC uses the screening justice tool to review applications; that when they made the application to FERC for the Bridgeville compressor station in 2015-2016, the justice tools items were reviewed and analyzed by FERC; that they have made an application with FERC under a Prior Notice Filing to add a compressor unit inside an existing structure; that they are not expanding a facility; that they are placing a unit inside an existing building which was large enough to handle the unit; that this is under a docket with the Federal Energy Regulatory Commission; that the proposed facility is allowing them more opportunities to move adequate gas through their pipelines; that both components play a factor toward their shippers needs; that when they file for the CPCN for the proposed interconnect facility, FERC will address noise and environmental and social justice issues in their dissertation within their research report; that they take the comments seriously and comments made are addressed; that they are attempting to utilize the existing property; that they are trying to avoid taking a lateral through new areas off of Rt. 13 to another property, while potentially disturbing other areas; that they are requesting to make best use of the proposed property; that the reason the project is limited to 18 trucks daily is based off of 6,000 dekatherm (dth) daily for the total inlet capacity; that this is based upon the meters and piping onsite; that a number of 18 trucks would meet the maximum capability of the system; that the only way to allow for more trucks, would be to expand the facility further; that expanding is not their proposal at this time; that when they make an application with FERC for the CPCN, they are required to notify properties within a one mile radius of the Application; that if a public hearing is required, FERC will provide the opportunity.

Chairman Wheatley stated with a Conditional Use request the Commission has the authority to recommend approval, recommend denial or recommend approval with imposed stipulations and wanted to confirm Mr. Parker was aware what he has stated into record could become Conditionals of Approval.

Mr. Hopkins stated the proposed area is where he grew up; that he feels the perception of the public is similar to downtown Millsboro where there are multiple trucks attempting to get out onto Rt. 113;

that this is not the case for the proposed Application; that the trucks have Rt. 404 bypass, around Bridgeville, which enters into East Newton Rd.; that there are many more trucks, turning off, heading into Bridgeville; that the proposed trucks are not going into Bridgeville; that trucks are heading to Perdue's feed mill and the potato mill; that the proposed trucks will only be driving a bit further than those locations to turn into the proposed site; that the only reason a truck driver would make a left-hand turn out of the site, would be in the circumstance of an accident and he wanted to make sure everyone had the proper perspective.

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

In relation to Application C/U 2284 Eastern Shore Natural Gas Company. Motion by Mr. Hopkins, to defer action for further consideration, seconded by Ms. Stevenson, and carried unanimously. Motion carried 5-0.

Draft Minutes of the March 10, 2022 Planning & Zoning Commission Meeting

The Commission discussed this Application which has been deferred since February 10, 2022.

Mr. Hopkins moved the Commission recommend approval of C/U 2284 Eastern Shore Natural Gas Company for an expansion of Conditional Use No. 889 approved as Ordinance No. 536 for public utilities or public service based on the record made during the public hearing and for the following reasons:

1. This is the expansion of an existing natural gas facility within property that is owned by the Applicant. The original conditional use was approved by Sussex County Council on September 27, 1988, as Ordinance No. 536, and the property has been used as a natural gas facility ever since.
2. There are other conditional uses in the vicinity. These include Conditional Use #1955, which allowed the State of Delaware and DelDOT to operate a maintenance yard. This limited expansion of an existing conditional use in this location is appropriate.
3. This limited expansion will permit a point of connection into the Applicant's existing gas line infrastructure. It will allow renewable natural gas, compressed natural gas, or liquified gas to be introduced into the existing pipeline system.
4. The proposed use will have minimal above-ground facilities. These new facilities will be smaller in comparison to the existing facilities on the site.
5. No wetlands, waterbodies or other sensitive resources are located on the site, and it will not require any water or sewer connections.
6. The limited expansion will not have a detrimental impact upon the physical, economic or social environment of the area.
7. This Conditional Use to allow the limited expansion of the existing natural gas facility on this site promotes the convenience, order, prosperity and welfare of residents and businesses of Sussex County by providing improvements to natural gas infrastructure within an existing natural gas facility.
8. Fire protection will be provided by the Bridgeville Volunteer Fire Department, which is located approximately one-half mile from this site.
9. This recommendation is subject to the following conditions:

- A. The area of this use shall be fenced with a locked access gate. A “knox box” or similar means of access shall be established on the site for use by emergency responders.
- B. The site shall be marked with signage identifying the owner of the facility and emergency contact information.
- C. The use shall comply with all Federal and State requirements governing the use.
- D. The Final Site Plan shall be subject to review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Stevenson, seconded by Ms. Wingate and carried unanimously to recommend approval of C/U 2284 Eastern Shore Natural Gas Company for the reasons and conditions stated in the motion. Motion carried 5-0.

PLANNING & ZONING COMMISSION

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



Sussex County

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JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: February 10th, 2022

Application: CU 2284 Eastern Shore Natural Gas

Applicant: Eastern Shore Natural Gas (Attn: Mark Parker)
500 Energy Lane Suite 200
Dover, DE 19901

Owner: Eastern Shore Natural Gas (Attn: Mark Parker)
500 Energy Lane Suite 200
Dover, DE 19901

Site Location: 17035 Black Cherry Drive, Bridgeville. The property being a landlocked parcel accessed off Emma Jane Lane, approximately 0.33 mile south of E. Newton Road (S.C.R. 584).

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

Proposed Use: Expansion of C/U 889 (Ordinance No. 536) for Public Utilities or Public Services Uses

Comprehensive Land Use Plan Reference: Industrial

Councilmanic District: Mr. Vincent

School District: Woodbridge School District

Fire District: Bridgeville Fire Department

Sewer: N/A

Water: N/A

Site Area: 27.98 acres +/-

Tax Map ID.: 131-10.00-99.00



JAMIE WHITEHOUSE, AICP MRTPI
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Sussex County

DELAWARE
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Memorandum

To: Sussex County Planning Commission Members
From: Ms. Lauren DeVore, Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: February 3, 2022
RE: Staff Analysis for CU 2284 Eastern Shore Natural Gas Company

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2284 Eastern Shore Natural Gas Company to be reviewed during the February 10, 2022, Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel: 131-10.00-99.00 for an expansion of Conditional Use No. 889 (Ordinance No. 536) for public utilities or public services uses to be located at 17019, 17025, 17035 and 17041 Black Cherry Drive in Bridgeville, Delaware. The property is a landlocked parcel accessed off Emma Jane Lane, approximately 0.33 mile south of E. Newton Road (S.C.R. 584). The parcel consists of 29.98 acres +/-.

It should be noted that the previous Conditional Use (Conditional Use No. 889) was filed on behalf of the Chesapeake Utilities Corporation for a public utility pumping (compressor) and regulator station to be located on a 7.99 acre +/- parcel of land. The Conditional Use was approved by the Sussex County Council on Tuesday, September 27, 1988, and the change was adopted through Ordinance No. 536.

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 "Industrial Area." The parcels to the north, east and west also have a Future Land Use Map designation of "Industrial Area." The parcels to the south contain the Future Land Use Map designation of "Developing Area" and "Municipalities." The parcels shown within the "Municipalities" designation are located within the incorporated town limits of the Town of Bridgeville.

As outlined within the 2018 Sussex County Comprehensive Plan, Industrial Areas are lands devoted to concentrations of larger industrial uses including heavier industry, light industry, warehousing, and flex space. Appropriate development in these areas could take the form of conventional industrial parks or planned business parks with a unified design that incorporate a combination of light industry and other business uses. Large, more intensive stand-alone industrial uses should also be directed to these areas (Sussex County Comprehensive Plan, 4-17).

The subject property is zoned Agricultural Residential (AR-1). All surrounding properties to the north, south, west and a portion of the properties eastern of the subject site are also zoned

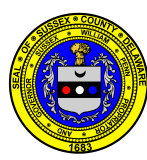


Agricultural Residential (AR-1). Several parcels adjacent to and located on the eastern side of the subject site as zoned General Commercial (C-1), along N. Main Street, which serves as a major thoroughfare from Route 13 (Sussex Highway) into the Town of Bridgeville.

There are approximately five (5) parcels on the eastern side of the property on the opposite side of N. Main Street which are zoned Business Research (B-3).

Since 1970, there have been three (3) Conditional Use applications within less than a 0.25-mile radius of the application site. The first application was Conditional Use No. 1955 for the State of Delaware (DelDOT) to allow for a DelDOT Maintenance Yard to be permitted within an Agricultural Residential (AR-1) Zoning District. This application was approved by the Sussex County Council on Tuesday, February 19, 2013, and this change was adopted through Ordinance No. 2294. The second application was Conditional Use No. 1762 T.S. Smith & Sons Farm, Inc. to allow for a retail farmers market and petting zoo in the Agricultural Residential (AR-1) Zoning District. This application was approved by the Sussex County Council on Tuesday, January 27, 2009, and this change was adopted through Ordinance No. 2027. The third application was Conditional Use No. 889 Chesapeake Utilities Corporation for purposes of allowing a public utility pumping (compressor) and regulator station consisting of 7.99 acres in an Agricultural Residential (AR-1) Zoning District. This application was approved by the Sussex County Council on Tuesday, September 27, 1988, and adopted through Ordinance No. 536.

Based on the analysis of the land use, surrounding zoning and uses, the Conditional use to allow for the expansion of Conditional Use No. 889 (Ordinance No. 536) for public utilities or public services uses in this location, subject to considerations of scale and impact, could be considered as being consistent with the land use, area zoning and surrounding uses.



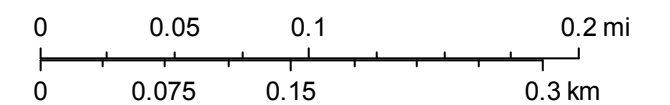
Sussex County



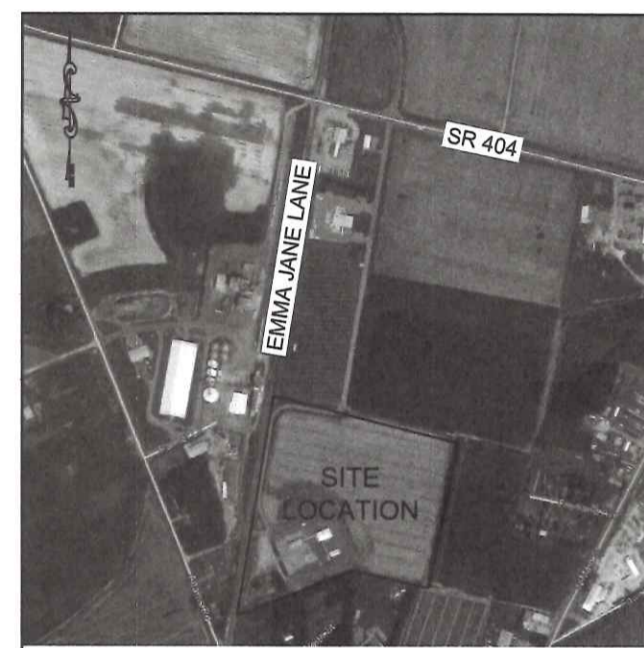
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|------------------------|---------------------------------|
| PIN: | 131-10.00-99.00 |
| Owner Name | EASTERN SHORE NATURAL GAS CO |
| Book | 1798 |
| Mailing Address | PO BOX 1769 |
| City | DOVER |
| State | DE |
| Description | E/PENN CENTRAL |
| Description 2 | 250'N/RT 583 |
| Description 3 | N/A |
| Land Code | |

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- Override 1
- Tax Parcels
- Streets
- County Boundaries
- DOE School Districts

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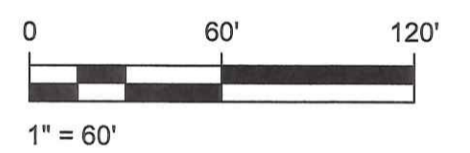


LOCATION MAP



Google Earth Not To Scale

SCALE



Mark C. Parker
 MARK C. PARKER, P.E.
 ENGINEERING MANAGER
 EASTERN SHORE NATURAL GAS/OWNER

Andrew C. Putnam
 ANDREW C. PUTNAM P.L.S.
 DELAWARE LIC. NO. 696

ISSUE/REVISION

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PROJECT NUMBER
 60645227

SHEET TITLE

PROPERTY SITE PLAN

SHEET NUMBER

VO-1

SURVEY NOTES

1. THIS PLAN IS A SITE PLAN SHOWING EXISTING AND PROPOSED FEATURES TO PROVIDE INFORMATION FOR CONDITIONAL USE APPROVAL.
2. THIS PLAN HAS BEEN PREPARED WITHOUT BENEFIT OF A TITLE REPORT AND THERE MAY BE EASEMENTS OR CONDITIONS AFFECTING TITLE THAT ARE NOT SHOWN ON THIS PLAN BUT WOULD BE SHOWN WITH INFORMATION FROM A VALID TITLE REPORT.
3. EXISTING CONDITIONS SHOWN ON THIS ARE FROM FIELD SURVEY IN MARCH 2021. THE UTILITIES SHOWN ON THIS PLAN ARE TAKEN FROM A FIELD SURVEY BY AECOM IN JUNE OF 2020 AND THE UTILITY FEATURES SHOWN ARE ON THE SURFACE AND WHAT WAS VISIBLE FROM THE SURFACE ONLY. AS SUCH AECOM CANNOT GUARANTEE THE LOCATION AND DEPTH OF UNDERGROUND UTILITIES OR STRUCTURES. A DELAWARE ONE CALL MUST BE DONE PRIOR TO ANY EXCAVATION OR SITE WORK.
4. DUE TO THE SITE CONDITIONS AND USE OF THE SUBJECT PREMISES SOME FEATURES MAY NOT BE LOCATED OR SHOWN HEREON.
5. THE FIELD SURVEY IS BASED ON THE DELAWARE STATE PLANE COORDINATE SYSTEM, NAD83, ELEVATIONS SHOWN ON THIS PLAN ARE BASED ON NAVD88.
6. THE ORIGINAL OF THIS DRAWING IS THE PROPERTY OF AECOM. UNAUTHORIZED ALTERATIONS, OR ADDITIONS, TO THIS PLAN BEARING THE LICENSED PROFESSIONAL'S SEAL IS ILLEGAL.
7. NO WETLANDS WERE DELINEATED ON THIS PROPERTY.
8. THIS PLAN IS ONLY VALID WHEN THE PROFESSIONAL'S SIGNATURE AND SEAL IS SHOWN.

GENERAL NOTES

1. THE PURPOSE OF THIS PLAN IS TO PRESENT EXISTING CONDITIONS AND PROPOSED IMPROVEMENT TO TAX PARCEL NUMBER 131-10.00-99.00 IN CONFORMANCE WITH THE SUSSEX COUNTY CONDITIONAL USE REQUEST FOR ZONE AGRICULTURAL/RESIDENTIAL 1 (AR-1) TO ALLOW FOR PUBLIC UTILITIES OR PUBLIC SERVICES USE. THIS PROPERTY WILL BE USED FOR UTILITIES WITH ONLY OCCASIONAL EMPLOYEE VISITATION.
2. THIS PROJECT IS NOT LOCATED WITHIN THE 100 YEAR FEMA FLOOD PLAIN, AS SHOWN ON FEMA FIRM MAP PANEL #100050015K REVISED MARCH 16, 2015. A FLOOD STUDY AND/OR FLOODPLAIN DELINEATION IS NOT REQUIRED.
3. NO DEBRIS SHALL BE BURIED ONSITE.
4. STORMWATER MANAGEMENT, DRAINAGE AND SEDIMENT AND EROSION CONTROL SHALL BE IN COMPLIANCE WITH THE DELAWARE SEDIMENT & STORMWATER REGULATIONS, THE SUSSEX COUNTY CODE AND POND CODE 378.
5. THIS PLAN DOES NOT INTEND TO CREATE ANY PUBLIC RIGHTS-OF-WAY.
6. THIS PLAN DOES NOT INTEND TO MODIFY THE EXISTING WATER SUPPLY.
7. THIS PLAN DOES NOT INTEND TO MODIFY THE EXISTING SEWER.
8. THIS PROJECT DOES NOT PROPOSE ANY DISTURBANCE WITHIN JURISDICTIONAL WETLANDS OR WATERWAYS. ON NOVEMBER 18, 2020, AECOM CONDUCTED A WETLAND AND WATERCOURSE DELINEATION OF THE SITE, NO WETLANDS OR WATERBODIES WERE IDENTIFIED DURING THE SURVEY.
9. ON AUGUST 13, 2015 SUSSEX COUNTY PLANNING COMMISSION APPROVED THE ABILITY TO EXPAND CONDITIONAL USE (CU, 889) FROM THE AREA ORIGINALLY APPROVED ON SEPTEMBER 8, 1988.
10. ALL FIRE LANES, FIRE HYDRANTS AND FIRE DEPARTMENT CONNECTIONS SHALL BE MARKED IN ACCORDANCE WITH THE DELAWARE STATE FIRE PREVENTION REGULATIONS.

ZONING

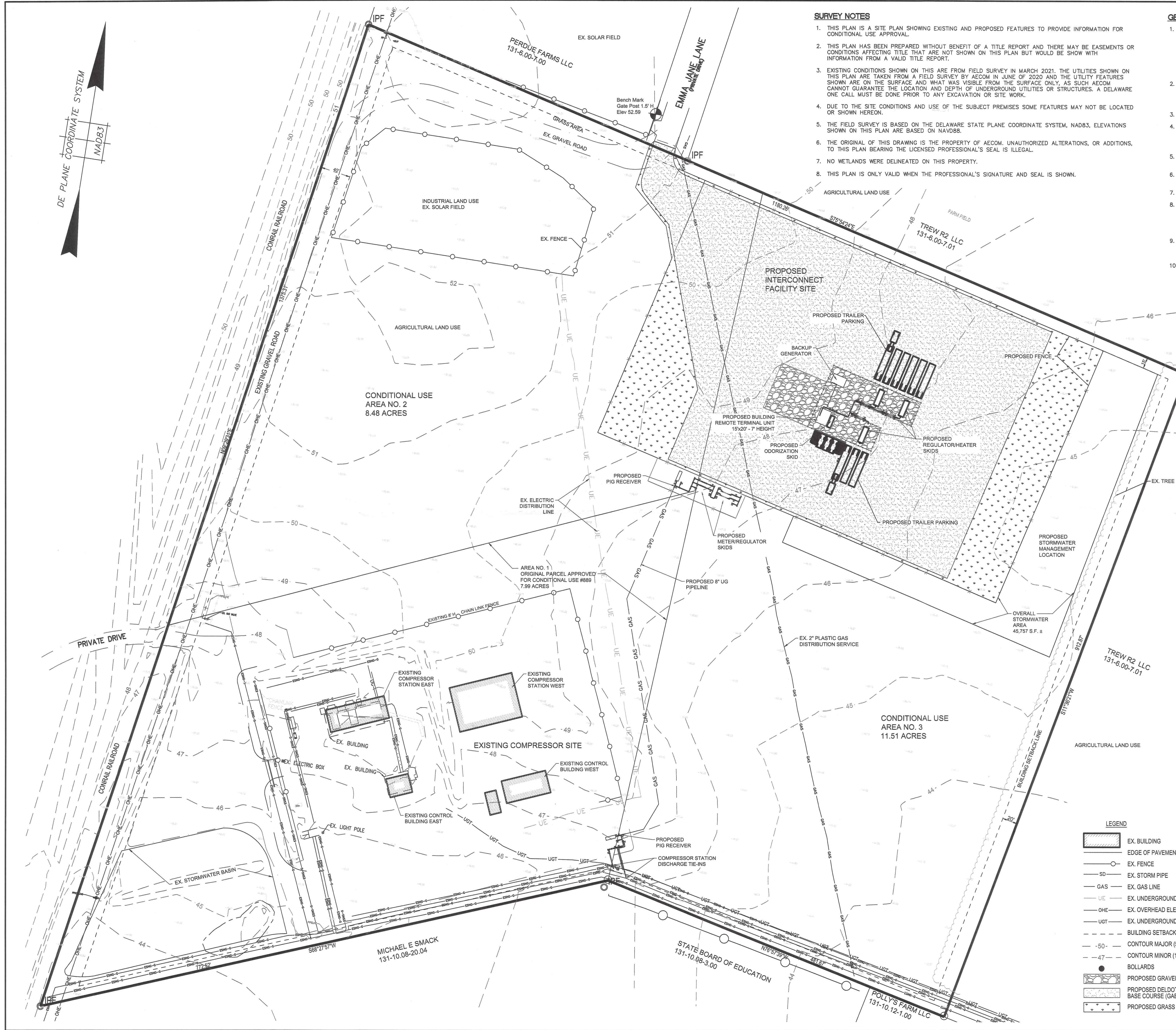
- PROPERTY ZONED AR-1 (AGRICULTURAL/RESIDENTIAL)
 BULK REQUIREMENTS
 1. MIN. LOT AREA = 20,000 S.F.
 2. MAX. BLDG HT. = 42'
 3. MIN. LOT WIDTH = 100'
 4. MIN. LOT DEPTH = 100'
 5. MIN. FRONT YARD = 40'
 6. MIN. SIDE YARD = 15'
 7. MIN. REAR YARD = 20'

SITE DATA

1. SITE ADDRESS: 17035 BLACK CHERRY DRIVE BRIDGEVILLE DE 19933
2. OWNER: EASTERN SHORE NATURAL GAS 500 ENERGY LANE, SUITE 200 DOVER DE 19901 P: (302) 213-7270 F: (302) 450-1616
3. TAX PARCEL: 131-10.00-99.00
4. PARCEL AREA: 27,983 ACRES
 EXISTING NO. 1: 7.99 ACRES
 PROPOSED NO. 2: 8.48 ACRES
 PROPOSED NO. 3: 11.51 ACRES
5. DATE OF SURVEY: MARCH 2021
6. NO WETLANDS ON SITE
7. SITE NOT WITHIN 100 YEAR FLOODPLAIN
8. WATER: NONE PROPOSED
9. SEWER: NONE PROPOSED
10. PROJECT BENCHMARK: GATE POST 1.5' H
 BM: N:275437.27 E:603403.51 ELEV:52.59
11. TOTAL AREA TO BE DISTURBED: 11.11 ACRES
12. CONDITIONAL USE AREA REQUESTED: 19.99 ACRES
13. EXISTING BUILDING AREA: 9,784 S.F.
14. EXISTING LOADING SPACES: 1
15. PROPOSED LOADING SPACES: 9
16. EXISTING PARKING SPACES: 0
17. PROPOSED PARKING SPACES: 36 S.F.
18. PROPOSED BUILDING AREA: 36 S.F.
19. PROPOSED BUILDING HEIGHT: 7'

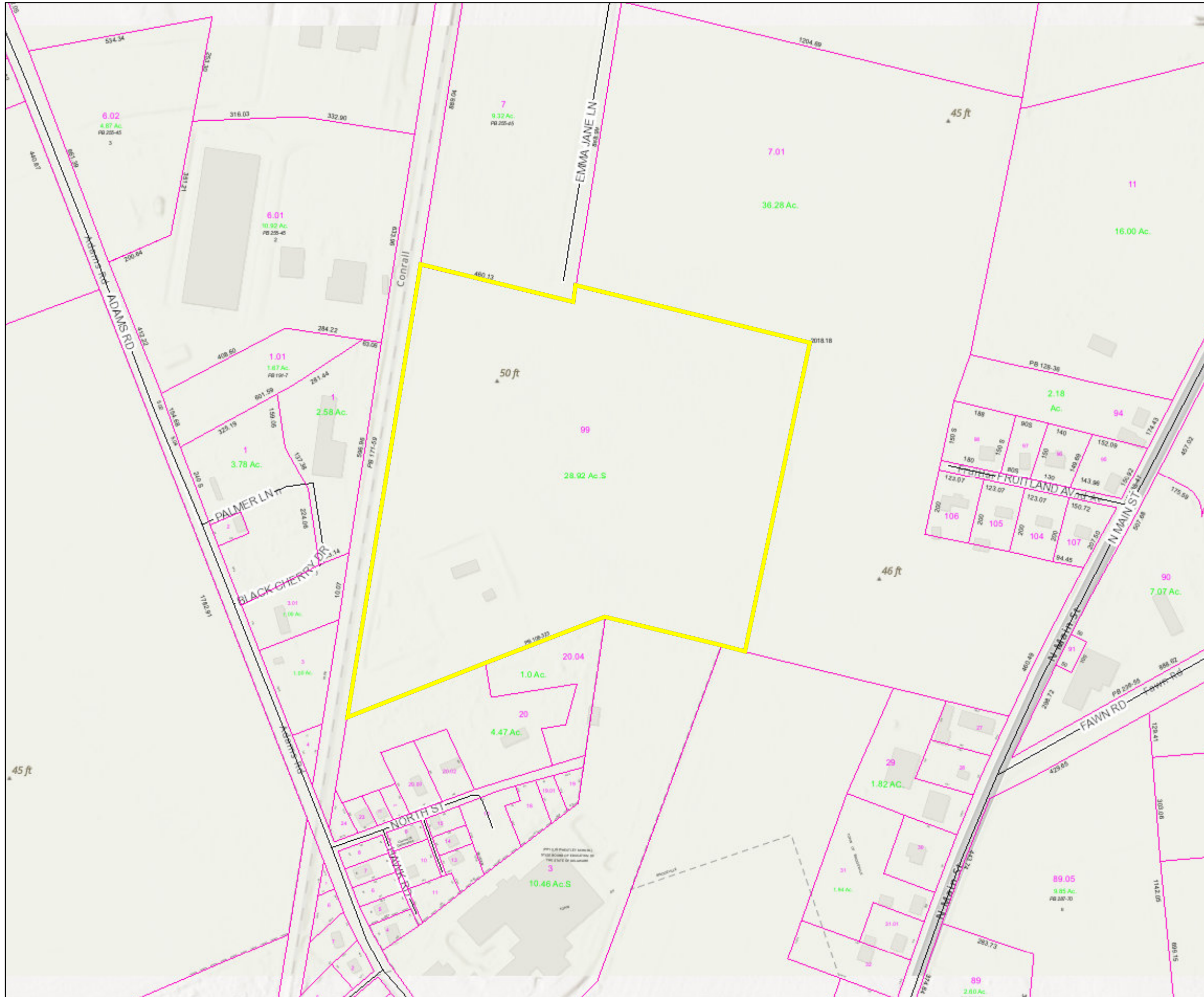
LEGEND

- | | | | |
|--|---|--|-------------------------|
| | EX. BUILDING | | PROPERTY LINE |
| | EDGE OF PAVEMENT | | SITE BENCHMARK |
| | EX. FENCE | | CATCH BASIN (RECTANGLE) |
| | EX. STORM PIPE | | SANITARY MANHOLE |
| | EX. GAS LINE | | ELECTRIC BOX |
| | EX. UNDERGROUND ELECTRIC | | SIGN (SINGLE POST) |
| | EX. OVERHEAD ELECTRIC | | LIGHT POLE |
| | EX. UNDERGROUND TELECOMMUNICATION | | SPOT ELEVATION |
| | BUILDING SETBACK LINE | | PROPOSED FENCE |
| | CONTOUR MAJOR (5' INTERVAL) | | EX. TREELINE |
| | CONTOUR MINOR (1' INTERVAL) | | |
| | BOLLARDS | | |
| | PROPOSED GRAVEL AREA | | |
| | PROPOSED DELDOT GRADED AGGREGATE BASE COURSE (GABC) | | |
| | PROPOSED GRASS AREA | | |





Sussex County



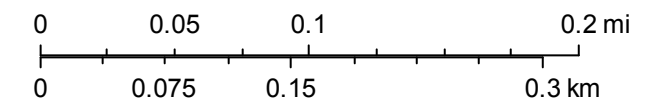
| | | |
|------------------------|-----------------|-------|
| PIN: | 131-10.00-99.00 | |
| Owner Name | EASTERN | SHORE |
| | NATURAL GAS CO | |
| Book | 1798 | |
| Mailing Address | PO BOX 1769 | |
| City | DOVER | |
| State | DE | |
| Description | E/PENN CENTRAL | |
| Description 2 | 250'N/RT 583 | |
| Description 3 | N/A | |
| Land Code | | |

- polygonLayer**

 - Override 1
- polygonLayer**

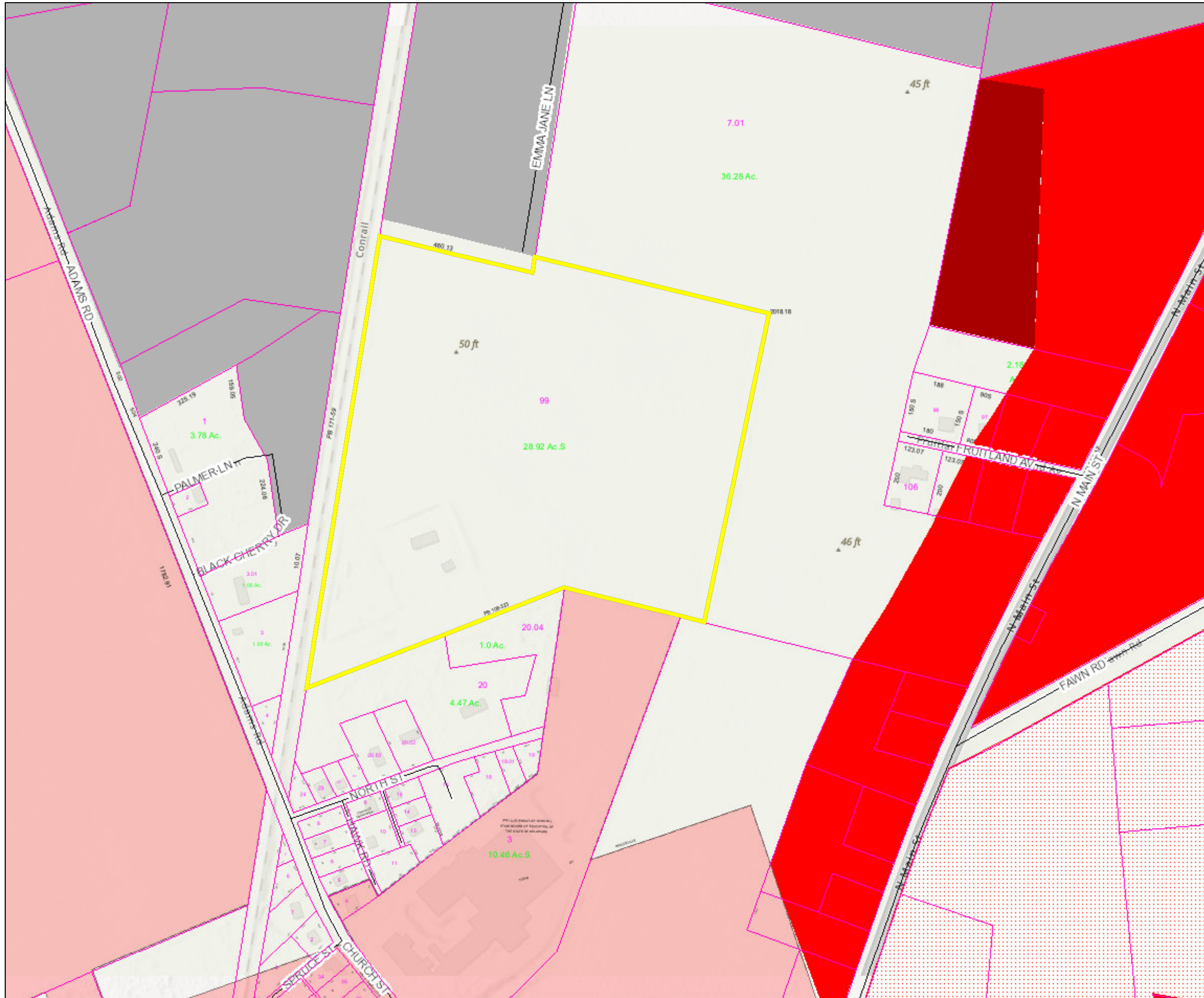
 - Override 1
 - Tax Parcels
 - Streets
 - County Boundaries
 - DOE School Districts

1:4,514





Sussex County



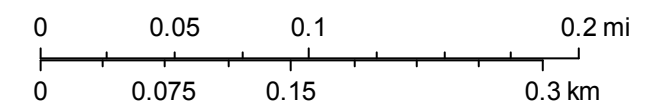
| | |
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| Land Code | |

- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
- Tax Parcels
- Streets

1:4,514



Introduced 06/15/21

**Council District 1 - Vincent
Tax I.D. No. 131-10.00-99.00
911 Address: 17019, 17025, 17035 & 17041 Black Cherry Drive, Bridgeville**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR THE EXPANSION OF CU 889 (ORDINANCE NO. 536) FOR PUBLIC UTILITIES OR PUBLIC SERVICES USES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN NORTHWEST FORK HUNDRED, SUSSEX COUNTY, CONTAINING 29.98 ACRES, MORE OR LESS

WHEREAS, on the 18th day of May 2021, a conditional use application, denominated Conditional Use No. 2284 was filed on behalf of Eastern Shore Natural Gas Company; and

WHEREAS, on the ____ day of _____ 2021, 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. 2284 be _____; and

WHEREAS, on the ____ day of _____ 2021, 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 115, Subsections 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2284 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Northwest Fork Hundred, Sussex County, Delaware, a landlocked parcel accessed off Emma Jane Lane approximately .33 mile south of E Newton Rd (S.C.R 584), and being more particularly described in the attached legal description prepared by Newton, Wilson, Halbrook and Bayard Professional Services, said parcel containing 29.98 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
(302) 854-5079 F
jamie.whitehouse@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: March 16, 2022

RE: County Council Report for C/U 2305 filed on behalf of Barnhill Preserve of Delaware, LLC

The Planning and Zoning Department received an application (C/U 2305 filed on behalf of Barnhill Preserve of Delaware, LLC) for a Conditional Use for parcel 134-15.00-124.00 for a zoological park. The property is located within the Agricultural Residential (AR-1) Zoning District and is located at 34215 Peppers Corner Road, Frankford. The parcel size is 7.4 acres +/-.

The Planning & Zoning Commission held a Public Hearing on the application on February 10, 2022. At the meeting of March 10, 2022, the Planning & Zoning Commission recommended approval of the application subject to 7 reasons stated and subject to 14 recommended conditions as outlined within the motion (copied below).

Below are the minutes from the Planning & Zoning Commission meetings of February 10, 2022 and March 10, 2022.

Minutes of the February 10, 2022 Planning & Zoning Commission Meeting

C/U 2305 Barnhill Preserve of Delaware, LLC

An Ordinance to grant a Conditional Use of land in an AR-1 (Agricultural Residential District) for a zoological park to be located on a certain parcel of land lying and being in Baltimore Hundred, Sussex County, containing 7.24 acres, more or less. The property is lying on the northeast side of Peppers Corner Road (S.C.R. 365), approximately 0.61 mile southeast of Roxanna Road (Route 17). 911 Address: 34215 Peppers Corner Road, Frankford. Tax Parcel 134-15.00-124.00

Mr. Whitehouse advised the Commission that submitted into the record is the staff analysis, the Applicant's Preliminary Site Plan, DelDOT's Service Level Evaluation Response, a letter from Sussex



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

County Engineering Department Utility Planning Division, the property deed, zero mail returns, and written responses in opposition, with the responses received after the publishing of the paperless packet were circulated to the Commission.

The Commission found Mr. Tom Ford with Land Design, Inc, spoke on behalf of the Application; that also present was Mr. Joshua Mueller was also present; that the Application is a wildlife education center; that the owner, Mr. Mueller grew up on the property; that the land was originally owned by his parents; that they do seek a Conditional Use across the entire site; that shown on the site plan is a two phase development; that Phase 1 is straight forward on the site plan; that the Applicant is aware a site plan review will be necessary for Phase 2 prior to proceeding into development; that the property is 7.25-acres; that the property has setbacks of 40-ft. from the front, 15-ft. from the side and 20-ft. from the rear; that the property is also encumbered with tax ditch ROW buffer of 50-ft.; that guest attendance is by reservation only; that the maximum number of guests is 25 people at one time; that in Phase 1 they have proposed 20 parking spaces; that it is rare that each guest attends individually; that typically guest arrive as two to three people per vehicle; that there is an additional six spaces for employee parking; that the 20 parking spaces allow for transition of one group not quite leaving and another group arriving; that they feel they have proposed adequate parking for facility; that the site has existing features; that the existing features are the residential home of the owner, a garage, and multiple accessory structures which act as the wildlife habitats, appropriately sized paddocks for adequate movement, exercise and recreation of the wildlife; that stormwater, which is not presently engineered, will be required; that they have an outfall readily available in the tax ditch running through the property; that the Applicant will seek DelDOT entry approvals; that there was no TIS required for the Application; that there are State regulations which require a 8-ft. perimeter fence for this type of operation; that in addition to the paddocks for individual animals, which have different height criteria and openings, it is required a 8-ft. perimeter fence be placed around the access points for the wildlife; that a section of the front yard has been proposed as an area fenced off for the operation and the 8-ft. fence is see-through.

The Commission found Mr. Joshua Mueller spoke on behalf of his Application; that he is the owner of Barnhill Preserve of Delaware; that he is an eagle scout, who was born and raised in Sussex County, Delaware; that his family has owned the subject property since 1996, where he grew up; that he has always had a strong passion to work with animals; that this drove him to get his degree in wildlife ecology at LSU; that while attending college he had the opportunity to work at Barnhill Preserve, at its original location in Ethel, Louisiana, with Mr. John Ligon; that Mr. Ligon is his business partner for the Delaware location; that he felt the preserve would be a great addition to Sussex County; that growing up in the area, there were no options to attend zoos, other than the Salisbury Zoo and Brandywine Zoo, which are a far distance to travel; that there was little opportunity to learn about the wildlife around the world; that the main mission at Barnhill Preserve is to educate youth and adults about the conservation and multiple animals on the planet; that in 2020 Barnhill Preserve helped fundraise over \$75,000 for the Australian wildlife during the bush fires; that he, and three of his staff members, spent a month in Australia helping rescue, providing care and providing food to the animals; that Barnhill Preserve has raised over \$15,000 for the Costa Rican wildlife just this year; that the Barnhill Preserve mobile unit visits schools all over the Northeast; that they generally educate about 300,000 children every year; that they average education for 8,000 children per week; that they have

three crews; that each crew goes to a different state; that he currently has employee crews in Ohio and Pennsylvania; that these education programs are free for the schools; that they strive to provide everyone access to learning about the animals; that the current facility has provided the chance to educate the local community, as well as inspire people to take action in helping the animals; that some of the animals he cares for are listed as threatened or endangered in the wild; that they can offer breeding programs to help increase the population, which help prolong the species; that they worked hard to receive the highest level of licensing provided by the United States Department of Agriculture; that Barnhill Preserve is considered a Class C Exhibitor; that this license allows them to be at the same level as every zoo in the nation; that they are randomly inspected annually; that the past year they were awarded a three year inspection; that this reflects the trust they have in Barnhill to not require an inspection for three years from their last inspection in October 2021; that he worked with the State of Delaware to receive an exhibitor license; that this permits him to be able to exhibit in the State of Delaware; that he also has exhibitor licenses in Florida, Kentucky, New Jersey, Maryland and Georgia; that they do exhibit in other states, which do not require a license; that they started the zoological process for accreditation with the Zoological Association of America (ZAA); that within the Code for Delaware, Association of Zoos and Aquariums (AZA) is the requirement; that they have work with the State of Delaware and the Department of Agriculture to include ZAA as an exception, as it meets more of their specific needs and beliefs with the animals; that the animals still have a very high level of care required; that in this high level of care, they discussed the required eight foot fence; that they require the eight foot fence; that the United States Department of Agriculture (USDA) recommends it to ensure the safety of the community and animals; that animals of high risk, such as their Eurasian Lynx, are required to have roof enclosures to ensure the animal cannot escape; that their first priority is the well being of the animals; that they do have a zoological vet who visits the site monthly; that the vet performs a full inspection of every animal to ensure every animal is healthy; that they also work very closely with Dr. Michael Metzler, who provides any treatments required when their zoological vet is out of the state; that their zoological vet is available by phone 24/7 to provide assistance or instruction to Dr. Metzler; that Dr. Metzler does not have expertise in the zoological field, but does have the background and supplies to provide care to the animals; that they have a zoological nutritionist; that diets are tailored to the particular species, as well as, to the specific animal's weight, preferred foods and activity level; that they have continued to update and improve the animal enclosures to provide optimal chances of enrichment; that all of his staff have degrees in biology or have comparable experience; that 11 professionals on the team have received extensive training to ensure they are equipped to work with the animals at Barnhill Preserve; that with a combined 16 years of experience, between Mr. John Ligon and himself, they have developed protocols to make it easier and safer to care for their animals; that he has worked with Delaware regarding the Nutrient Waste Management Plan; that due to not exceeding 8,000-lbs in animals, they are not required to have a plan in place; that they chose to match the Georgetown SPCA protocols, they bag animal waste, dispose of the waste with a locally approved waste management service; that they have proposed a manure barn in the case they should exceed the 8,000-lb. requirement in the future; that they desire to already have a plan in place; that he lives on the property; that he is available 24/7 for emergencies or should his staff need assistance; that he was recently elected on the Board of Directors to Prestigious U.S. Based Nonprofit, who rescues and rehabilitate wildlife in Costa Rica; that it is his desire to continue to share his love for animals with the community; that visitors from the area, as well as visitors from out of state have benefitted from Barnhill Preserve in the short amount of time it has been open to

the public; that there have been multiple reviews of a positive experience at Barnhill Preserve; that Mr. Brian Jones is a neighbor located across the street from Barnhill Preserve; that at first Mr. Jones had reserves about the project; that after some discussion, he was able to put Mr. Jones' concerns at ease; that Mr. Jones did write a letter in support, which Mr. Mueller submitted into the record; that he has no intention to build a massive zoo; that he desires to create a more personal experience through guided and educational tours; that all groups are small, maxing at 25 guest at a time; that the tours are led by a personal guide providing education on the animals; that with their unique encounters, they provide a stronger connection for guests and assist them with daily animal enrichment; that they are developing a program to allow schools to visit the facility for field trips; that they are designing a Junior Keeper program, allowing kids to shadow the animal caretakers during the summer time; that they will continue to offer their educational presentations all over the east coast and northeast; that the animals are no more vocal than any other traditional agricultural animal; that they have been very considerate with their hours of operations; that they are open from April until Christmas, with limited hours in the colder seasons; that the first Kangaroo yoga session begins at 7:00 am and is a very quiet and peaceful event; that tours of the facility begin at 10:00 am and the last tour ending at 7:00 pm; that they did host later events in the summer, but never exceed 9:00 pm in hopes to avoid creating any light pollution or nuisance to the neighbors; that they are currently in the process of working with the Ultra Solar Group, in hopes to have the facility run off of 100% green energy and he hopes the Commission can see his passion and how much of an asset the facility is to the community.

Mr. Mueller read multiple reviews regarding his current operation at the site.

Chairman Wheatley questioned what Kangaroo Yoga is.

Ms. Wingate stated she can see the passion Mr. Mueller has for the animals; that she feels the project is a great idea; that it is a great opportunity for the children and adults; that she did make a visit to the site; that she questioned the hours of operation; that she questioned if there would be any outdoor music or other noises and she questioned if Mr. Mueller could speak to the complaint letter written regarding an animal which had escaped from the property.

Mr. Mears questioned if the need for an eight-foot fence would require a variance approval from the Board of Adjustment.

Mr. Whitehouse stated they did identify the requirement for a variance to the fence height during the pre-application stage.

Ms. Stevenson questioned if the site was considered agricultural use other than the guest visiting the site if this was the reason for the Conditional Use requirement and if parking was proposed within the front yard setback.

Mr. Whitehouse stated the use is not specifically called out as a permitted use, which required Conditional Use.

Mr. Hopkins stated he feels it is a great service to the community; that he questioned if the guest pay admission and if the proposed use is self-sustaining or if it will rely on contributions.

Mr. Mueller stated kangaroo yoga first began as an idea to help raise money for the bush fires in Australia; that they partnered up with local yoga studios, who hosted these events inside their studios; that this idea worked for a while, but became more difficult as the kangaroos became bigger; that the kangaroos became too large to do this by the summer of 2020; that they have a large paddock for the kangaroos; that they allow guest to come inside the paddock area and set up their yoga mat; that they place food bowls around the paddock to help encourage the kangaroos to be more active with the guests; that every experience is different; they have had multiple guests return for multiple sessions; that the event is good for all ages; that they do kangaroo yoga, paint night with sloths, sipping Salted Vines wine with sloths, encounter tours and otter swims, that 7:00 am is when the first yoga session begins; that they encourage guest to arrive 15 minutes early to allow for check in; that no event has ever gone past 9:00 pm; that the only outdoor music is played from a few small speakers during yoga sessions; that the music is never at high decibels as they do not wish to disturb the animals; that they work with the State of Delaware, who is aware of every animal they bring in the state; that the animal which was found off the site did not belong to Barnhill Preserve; that it was an agouti, which is a South American rodent; that agoutis are considered a delicacy for some people; that all of his animals are registered; that his hope was to do agritourism; that agritourism seemed a bit too out-of-the-box due to the hours they chose; that they do have several different options for guest to attend; that every experience, other than kangaroo yoga, begins with a animal show; that with just the purchase of an animal show, guest can build their own experience; that currently a lot of the animals are located indoors where the public cannot see the animals without the caretakers bringing the animals out; that the proposed site plan will allow guests to view more of the animals; that the proposed use will rely on the ticket prices for the guest attending; that he feels very confident Barnhill Preserve can sustain, especially with the Louisiana location; that ticket prices are a bit higher than a traditional zoo, but they are providing a unique experience; that they desired to obtain a few variances due to the nature of the property; that the parking shown in the setbacks is proposed for school buses; that there are limits to how much of the property they can use due to the tax ditch and unique shape of the property and currently they are land locked from the back property.

Ms. Wingate stated she felt if buses were coming to the property, they would most likely not need the regular parking for regular vehicles, as they are not proposing many guests at the same time.

Chairman Wheatley stated the site plan issues can be discussed and solved with Mr. Mueller's site plan professional.

Mr. Whitehouse stated Mr. Ford is exploring bridging across the tax ditch to the future expansion area.

The Commission found Ms. Barbara Pickholtz spoke by teleconference in opposition to the Application with concerns of the use of a commercial zoo in a residential area, noise, traffic, waste management, negative impacts to the environment and nearby residents, and the safety of the animals.

Ms. Stevenson stated the property is AR-1 and questioned if Mr. Mueller would be permitted to place chicken houses and hogs on the property.

Mr. Whitehouse stated chicken houses and hogs are permitted in AR-1 subject to the setbacks of the property.

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

In relation to Application C/U 2305 Barnhill Preserve of DE, LLC. Motion by Ms. Wingate, to defer action for further consideration, seconded by Mr. Mears and carried unanimously. Motion carried 5-0.

Draft Minutes of the March 10, 2022 Planning & Zoning Commission Meeting

The Commission discussed this Application which has been deferred since February 10, 2022.

Ms. Wingate moved that the Commission recommend approval of C/U 2305 Barnhill Preserve of Delaware, LLC for a Conditional Use to operate a Zoological Park in an AR-1 Zoning District based upon the record and for the following reasons:

1. The property is zoned AR-1 Agricultural Residential, which anticipates the keeping of live animals in certain situations. This use is similar to the types of uses that are expected within the AR-1 Zoning District. The Sussex County Zoning Code allows the keeping of various types of animals for personal use and larger farming operations on properties greater than five acres.
2. The property is in the Coastal Area according to the Sussex County Comprehensive Plan. The Plan does not prohibit this type of small business use in this Area.
3. The Applicant has stated that the use as a Zoological Park is intended to be educational and it will be visited by school-aged children from all over Sussex County.
4. The use, with the conditions and limitations placed upon it, will not have an adverse impact upon neighboring properties, roadways, or the community in general.
5. The use is regulated by the United States Department of Agriculture with regular inspections, and it is licensed by the State of Delaware.
6. The use will be connected to Sussex County sewer.
7. The use, as a small Zoological Park, will be a benefit to residents and visitors of Sussex County by providing a nearby location for residents, visitors, and schoolchildren to learn about the animals kept in the park without having to otherwise travel to Wilmington, Salisbury, or other out-of-state locations for such an educational experience.
8. This recommendation is subject to the following conditions:
 - A. The use shall be limited to a Zoological Park.
 - B. There shall not be any parking located within the setbacks. All parking spaces shall be shown on the Final Site Plan and clearly marked on the site itself.
 - C. One lighted sign shall be permitted. It shall not exceed 32 square feet per side.
 - D. The Zoological Park shall only be open to the public between the hours of 6:30 am until 9:00 pm.
 - E. The Applicant has stated that the Zoological Park must have 8-foot-tall fencing. This will require a variance from the Sussex County Board of Adjustment.
 - F. All lighting shall be shielded and downward screened so that it does not shine on neighboring properties or roadways.
 - G. The location of the Tax Ditch and Tax Ditch Right of Way shall be shown on the Final Site Plan. No fencing or structures shall be located within the Tax Ditch Right of Way.
 - H. The stormwater management system shall meet or exceed the requirements of the State and County. 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.

- I. The use shall comply with all DelDOT entrance and roadway improvement requirements.
- J. Any expansion of the Zoological Park into the area designated on the Preliminary Site Plan as “Area Reserved for Future Expansion” north of the Beaver Dam Canal Tax Ditch require another public hearing.
- K. All locations for the temporary storage of animal waste shall be fully enclosed and centrally located on the site. These locations and the method of enclosure shall be clearly shown on the Final Site Plan.
- L. Any outdoor entertainment and music or the use of outdoor speakers shall end at 9:00 p.m. each night. All outdoor entertainment and music or outdoor speakers shall be oriented away from the residential properties adjacent to the site.
- M. The failure to abide by any of these conditions of approval may result in the revocation of this Conditional Use.
- N. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning & Zoning Commission.

Motion by Ms. Wingate, seconded by Mr. Mears and carried unanimously to recommend approval of C/U 2305 Barnhill Preserve of DE, LLC for the reasons and conditions stated in the motion. Motion carried 5-0.

PLANNING & ZONING COMMISSION

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



Sussex County

DELAWARE
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JAMIE WHITEHOUSE, MRTPI, AICP
DIRECTOR OF PLANNING & ZONING

PLANNING AND ZONING AND COUNTY COUNCIL INFORMATION SHEET
Planning Commission Public Hearing Date: February 10th, 2022

Application: CU 2305 Barnhill Preserve of Delaware, LLC

Applicant: Barnhill Preserve of Delaware, LLC
34215 Peppers Corner Road
Frankford, DE 19945

Owner: Joshua E. Mueller
34215 Peppers Corner Road
Frankford, DE 19945

Site Location: Lying on the north east side of Peppers Corner Road (S.C.R.365)
approximately 350-feet southeast of Beaver Dam Road (S.C.R. 368)

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

Proposed Zoning: Agricultural Residential (AR-1) Zoning District

Comprehensive Land
Use Plan Reference: Coastal Area

Councilmanic
District: Mr. Rieley

School District: Indian River School District

Fire District: Millville Fire Department

Sewer: On-site septic

Water: On-site well

Site Area: 7.24 acres +/-

Tax Map ID.: 134-15.00-124.00



JAMIE WHITEHOUSE, AICP MRTPI
PLANNING & ZONING DIRECTOR
(302) 855-7878 T
(302) 854-5079 F
jamie.whitehouse@sussexcountyde.gov



Sussex County

DELAWARE
sussexcountyde.gov

Memorandum

To: Sussex County Planning Commission Members
From: Ms. Lauren DeVore, Planner III
CC: Mr. Vince Robertson, Assistant County Attorney and Applicant
Date: February 3, 2022
RE: Staff Analysis for CU 2305 Barnhill Preserve of Delaware, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2305 Barnhill Preserve of Delaware, LLC to be reviewed during the February 10, 2022 Planning Commission Meeting. This analysis should be included in the record of this application and is subject to comments and information that may be presented during the public hearing.

The request is for a Conditional Use for Tax Parcel: 134-15.00-124.00 to allow for a zoological park to be located at 34215 Peppers Corner Road in Frankford, Delaware. The property is lying on the south side of Beaver Dam Road (S.C.R. 368) and on the northeast side of Peppers Corner Road (S.C.R. 365), approximately 0.61 mile southeast of Roxana Road (Route 71). The parcel consists of 7.24 acres +/-.

It should be noted that there is a tax ditch (the Beaver Dam Canal Tax Ditch) which runs through the center of the abovementioned property, of which the related tax ditch ROW is measured 50-ft from the top of bank (TOB) of the tax ditch. The tax ditch ROW was reduced to 50-ft through Court Order Change #39. It should be noted that all existing and proposed structures in relation to this proposal shall be relocated out of any tax ditch ROW.

The 2018 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan, a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map in the plan indicates that the parcel has a designation of "Coastal Area." The parcels to the north, south, west (on the opposite side of Peppers Corner Road), and east of the subject property also have the Future Land Use designation of "Coastal Area." The property to the north of the parcels on the opposite side of Beaver Dam Road (S.C.R. 367) has a Future Land Use designation of "Municipalities" as these properties are located within the incorporated town limits of the Town of Millville.

As outlined within the 2018 Sussex County Comprehensive Plan, Coastal Areas are areas that can accommodate development provided special environmental concerns are addressed. A range of housing types should be permitted in Coastal Areas, including single-family homes, townhouses, and multi-family units. Retail and office uses are appropriate but larger shopping centers and office parks should be confined to selected locations with access along arterial roads. Appropriate mixed use development should also be allowed. In doing so, careful mixtures of homes with light commercial, office and institutional uses can be appropriate to provide for convenient services and



to allow people to work close to home. Major new industrial uses are not proposed in these areas (Sussex County Comprehensive Plan, 4-15).

The subject property is zoned Agricultural Residential (AR-1). All surrounding properties to the north, south, east, and west of the subject site are also zoned Agricultural Residential (AR-1).

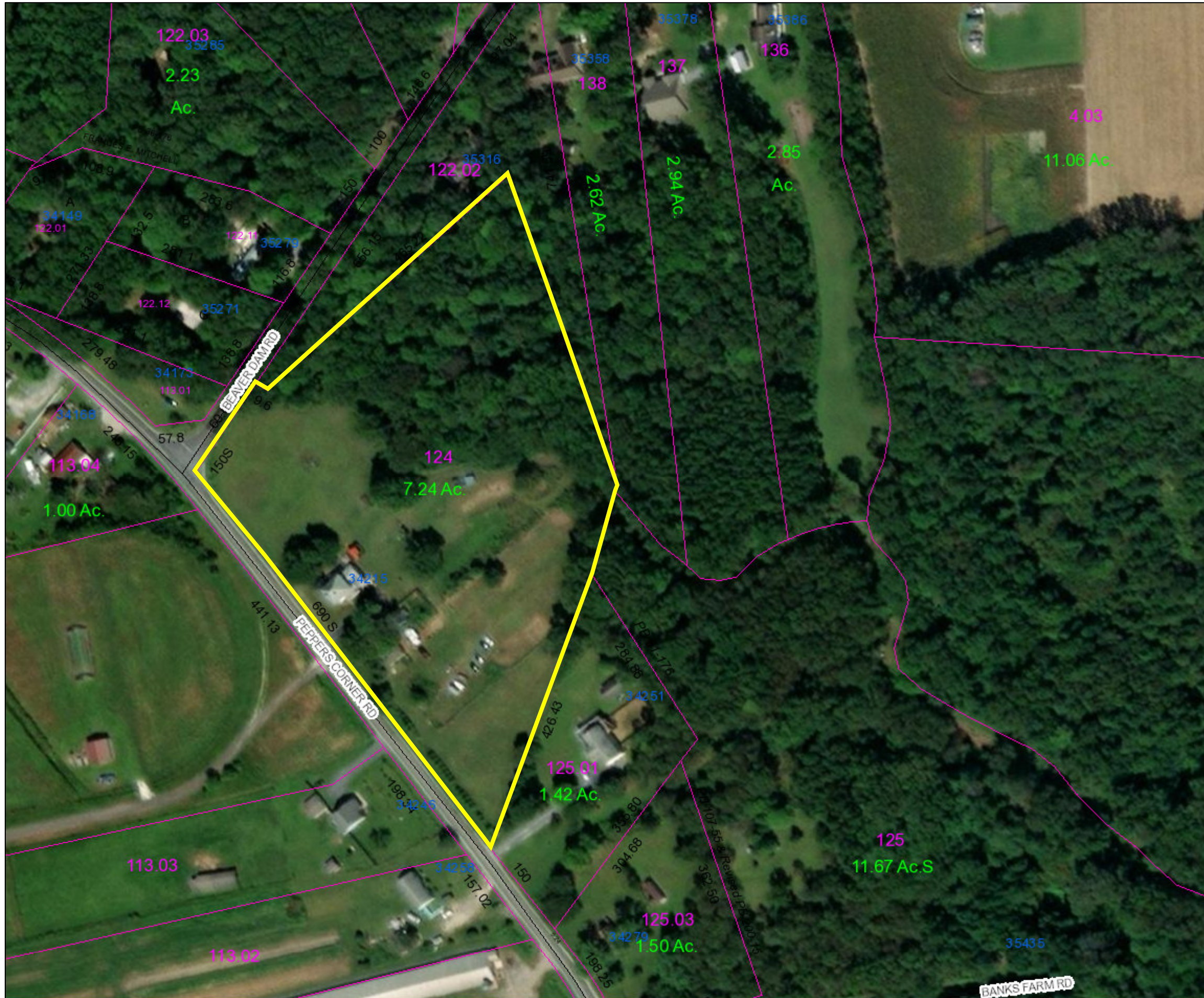
There is a single parcel to the south which encompasses the Milo's Haven (F.K.A. Lakelynn's) Residential Planned Community which is zoned General Residential – Residential Planned Community (GR-RPC).

Since 1970, there have been several Conditional Uses within the vicinity of the project site. There have been four (4) Conditional Use applications within less than a 0.25-mile radius of the application site. The first application was Conditional Use No. 1254 for Bethany Beach Kennels to allow for a pet crematory in the Agricultural Residential (AR-1) Zoning District. This application was approved by the Sussex County Council on Tuesday, December 8, 1998, and this change was adopted through Ordinance No. 1275. The second application was Conditional Use No. 825 Morris E. Justice to allow for operation of a borrow pit in the Agricultural Residential (AR-1) Zoning District. This application was denied by the Sussex County Council on Tuesday, July 23, 1985. The third application was Conditional Use No. 1896 Timothy S. Miller for purposes of allowing mulch, boat and RV storage in an Agricultural Residential (AR-1) Zoning District. This application was approved by the Sussex County Council on Tuesday, August 2, 2011, and adopted through Ordinance No. 2206. The fourth application is for Conditional Use No. 2338 Lora Collins for purposes of an after-school program in an Agricultural Residential (AR-1) Zoning District. This application is currently pending scheduling for a public hearing before the Planning and Zoning Commission.

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

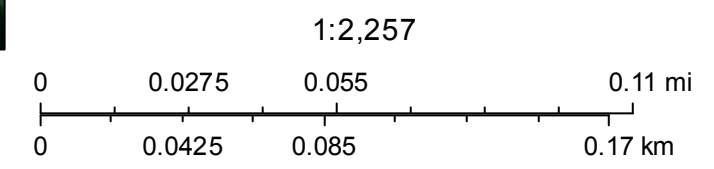


Sussex County



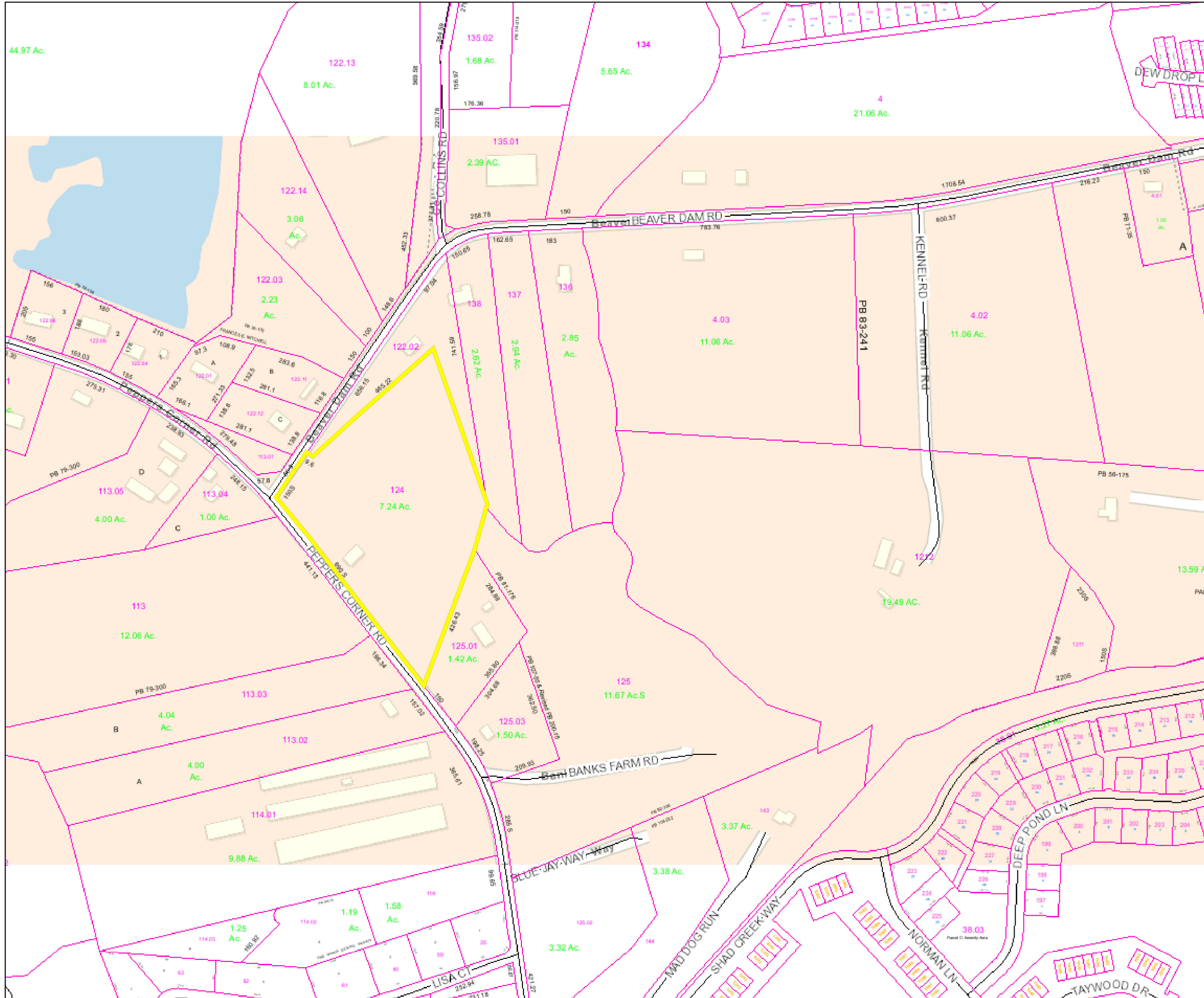
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|------------------------|----------------------|
| PIN: | 134-15.00-124.00 |
| Owner Name | MUELLER JOSHUA E |
| Book | 5051 |
| Mailing Address | 32415 PEPPERS CORNER |
| City | FRANKFORD |
| State | DE |
| Description | N/CO RD BAYARD |
| Description 2 | TO ABIES |
| Description 3 | N/A |
| Land Code | |

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





Sussex County



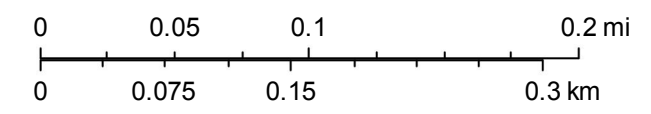
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| Description 3 | N/A |
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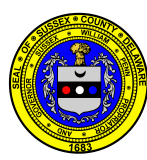
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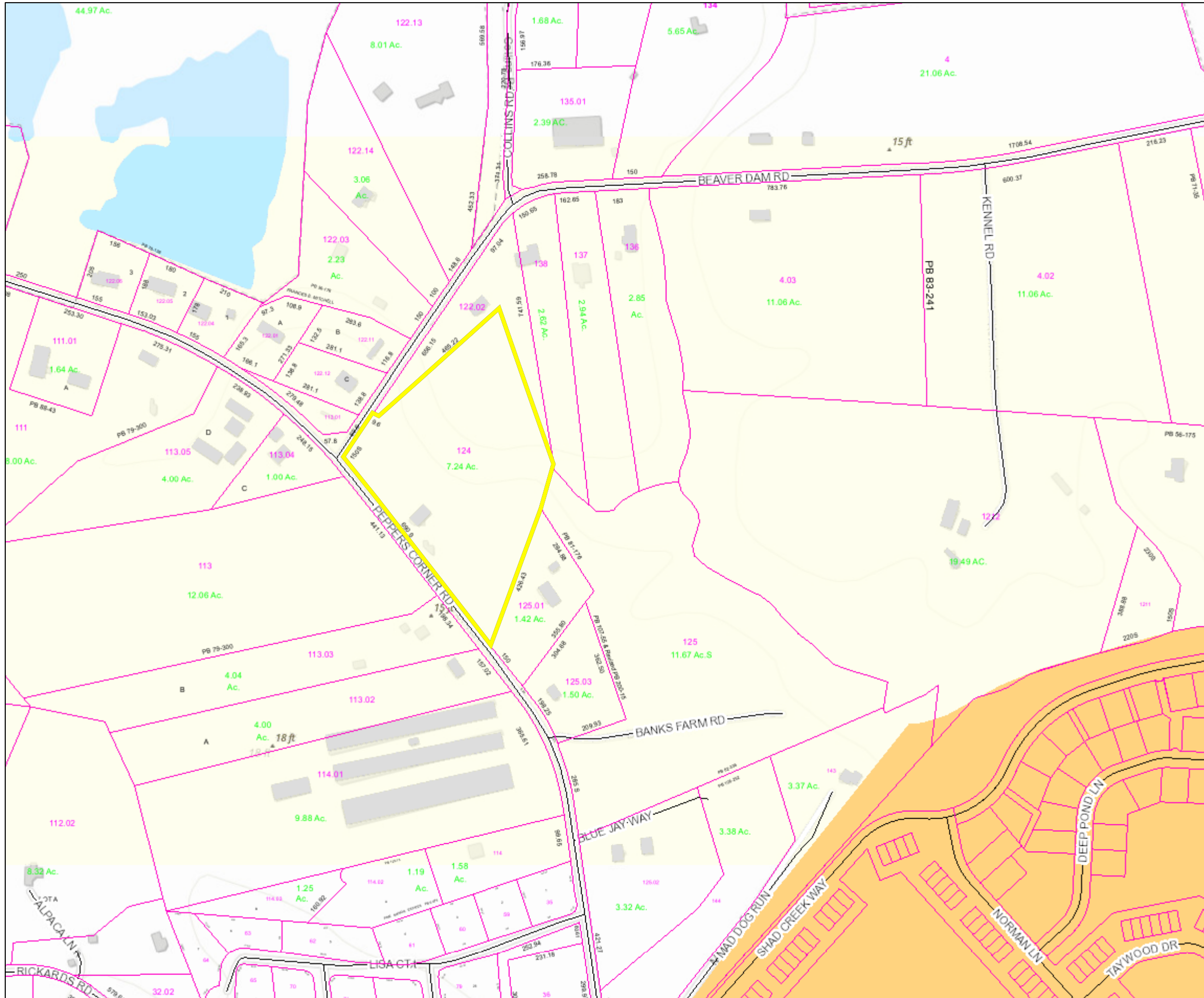
 - Override 1
 - Tax Parcels
 - Streets
 - County Boundaries

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Sussex County



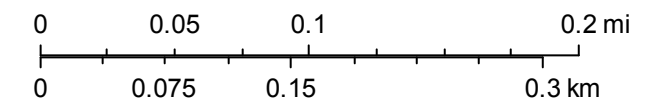
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| Description 3 | N/A |
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- polygonLayer**

 - Override 1
- polygonLayer**

 - Override 1
 - Tax Parcels
 - Streets

1:4,514



Introduced 12/07/21

**Council District 5 - Mr. Rieley
Tax I.D. No. 134-15.00-124.00
911 Address: 34215 Peppers Corner Road, Frankford**

ORDINANCE NO. ____

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A ZOOLOGICAL PARK TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 7.24 ACRES, MORE OR LESS

WHEREAS, on the 5th day of August 2021, a conditional use application, denominated Conditional Use No. 2305 was filed on behalf of Barnhill Preserve of Delaware, LLC and

WHEREAS, on the ____ day of _____ 2022, 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. 2305 be _____; and

WHEREAS, on the ____ day of _____ 2022, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 2305 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land, lying and being situate in Baltimore Hundred, Sussex County, Delaware, and lying on the northeast side of Peppers Corner Road (S.C.R. 365) approximately 0.61 mile southeast of Roxana Road (Route 17) and being more particularly described in the attached legal description prepared by Scott and Shuman, P.A., said parcel containing 7.24 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.