

# Sussex County Council Public/Media Packet

MEETING: April 2, 2019

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### **COUNTY COUNCIL**

MICHAEL H. VINCENT, PRESIDENT IRWIN G. BURTON III, VICE PRESIDENT DOUGLAS B. HUDSON JOHN L. RIELEY SAMUEL R. WILSON JR.





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### **SUSSEX COUNTY COUNCIL**

### A G E N D A

### **APRIL 2, 2019**

### 10:00 A.M.

\*\*AMENDED on March 29, 2019 at 9:15 A.M.1

### Call to Order

**Approval of Agenda** 

**Approval of Minutes** 

**Reading of Correspondence** 

**Public Comments** 

**Presentation by Sussex County Police Chiefs Association** 

### **Todd Lawson, County Administrator**

- 1. Proclamation National Service Recognition Day
- 2. Proclamation Fair Housing Month
- 3. Update on the Buffers and Wetlands Working Group
- \*\* 4. Legislative Update
  - 5. Administrator's Report



### 10:30 a.m. Public Hearing

### Conditional Use No. 2158 filed on behalf of Millsboro Solar, LLC

"AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 91.304 ACRES, MORE OR LESS" (lying on the north side of Nine Foot Road, approximately 0.27 mile west of Gum Tree Road, and on the south side of Nine Foot Road, approximately 0.2 mile west of Gum Tree Road) (Tax I.D. No. 233-15.00-57.01 & 57.02) (911 Address: None Available).

### **Gina Jennings, Finance Director**

1. Discussion and Possible Introduction of a Proposed Ordinance entitled "AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$2,000,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE WINDING CREEK VILLAGE WATER DISTRICT PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH"

### Hans Medlarz, County Engineer

- 1. Winding Creek Village Water District Area
  - A. Approval of Delaware drinking water SRF funding offer and issuance of associated borrowing ordinance
- 2. Messick Development Streetlighting District
  - A. Authorization to post for Public Hearing
- 3. George Miles & Buhr Western Sussex Base Agreement
  - A. Amendment 2 Heritage Shores Inflow Study

### John Ashman, Director of Utility Planning

- 1. Infrastructure Use Agreements
  - A. Swann Cove, Phase 9 / Swann Family Limited Partnership
  - B. Outer Banks / Edge Marine LLC
  - C. Residence Inn Marriott / Colonial Oaks Hotel II, LLC

### **Grant Requests**

- 1. Delaware Symphony Association for the Delaware Symphony Orchestra Concert Series
- 2. Mid-Atlantic Symphony Orchestra Society for the Mid-Atlantic Symphony Orchestra Concert Series

### **Introduction of Proposed Zoning Ordinances**

### **Council Members' Comments**

### Adjourn

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Sussex County Council meetings can be monitored on the internet at www.sussexcountyde.gov.

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In accordance with 29 <u>Del.C.</u> §10004(e)(2), this Agenda was posted on March 26, 2019 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.

####

<sup>&</sup>lt;sup>1</sup> Per 29 Del. C. § 10004 (e) (5) and Attorney General Opinion No. 13-IB02, this agenda was amended to address a matter which arose after the initial posting of the agenda, but before the start of the Council meeting.

### SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, MARCH 26, 2019

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, March 26, 2019, at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

President Michael H. Vincent Irwin G. Burton III **Vice President** Councilman Douglas B. Hudson John L. Rielev Councilman Samuel R. Wilson Jr. Councilman

Todd F. Lawson **County Administrator Finance Director** Gina A. Jennings 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 146 19 **Approve** Agenda

A Motion was made by Mr. Burton, seconded by Mr. Rieley, to approve the

Agenda, as posted.

**Motion Adopted:** 5 Yeas.

**Vote by Roll Call:** Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

Minutes The minutes of March 19, 2019 were approved by consent.

Correspondence Correspondence

SUSSEX COUNTY 4-H, GEORGETOWN, DELAWARE

**RE:** Letter in appreciation of grant.

CAPE HENLOPEN CENTER. SENIOR REHOBOTH BEACH.

DELAWARE.

**RE:** Letter in appreciation of grant.

**Public Comments**  **Public Comments** 

Jim Martin commented on the affordable housing crisis and the pilot construction of a tiny home village.

Paul Reiger commented on Board of Adjustment matters.

### Public Comments (continued)

Patricia Cookson commented on the struggles and needs of the homeless.

Cathy Martin commented on the affordable housing crisis and the rights of the homeless.

Mary Ann Clayton commented on the importance of and the need for CHEER's Meals on Wheels program.

Greg Lake commented on the affordable housing crisis and opportunities for the homeless.

Dan Kramer commented on the availability of affordable housing and on CHEER's Meals on Wheels program.

Robert Viscount commented on land use matters and Council's discussion with representatives of DelDOT at the March 19, 2019 Council meeting. Mr. Viscount submitted written comments.

### Administrator's Report

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

### 1. Delaware State Police Activity Report

The Delaware State Police year-to-date activity report for February 2019 is attached listing the number of violent crime and property crime arrests, as well as total traffic charges and corresponding arrests. In addition, DUI and total vehicle crashes investigated are listed. In total, there were 191 troopers assigned to Sussex County for the month of February.

### 2. Projects Receiving Substantial Completion

Per the attached Engineering Department Fact Sheets, the following projects have received Substantial Completion: Bay Forest Club – Phase 5.2 (Construction Record), effective March 18<sup>th</sup>; Bishop's Landing (formerly Dove Landing) – Phase 1A, effective March 21<sup>st</sup>; and Bishop's Landing (formerly Dove Landing) – Phases 1B and 1C, effective March 21<sup>st</sup>.

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

### Quarterly Pension Update

Mrs. Jennings presented the quarterly pension update (as of June 30, 2018) and she reported on the meeting of the Pension Committee on February 21, 2019.

Mrs. Jennings reported on the Actuary's Experience Study, which is performed every five years to review the assumptions in the annual actuarial report. Mrs. Jennings also presented the performance results of the Pension and OPEB Funds.

### Quarterly Pension Update (continued)

Michael Shone of Marquette Associates, the County's Pension Investment Consultant, was present to discuss the market environment and to respond to questions relating to the economy, labor market, equity market, the quarterly performances of the Pension and OPEB Plans, and strategies for the Plans.

Mrs. Jennings presented the Committee's recommendation to change some of the assumptions used during the County's Annual Actuary Pension and OPEB Reports.

# M 147 19 Pension and OPEB Annual Actuarial Studies/ Change Assumptions

A Motion was made by Mr. Rieley, seconded by Mr. Wilson, that the Sussex County Council, based on the recommendation of the Pension Committee and Cheiron, the County's Actuary, change the following assumptions used during the Pension and OPEB annual actuarial studies, where applicable:

- 1. update the Mortality Improvement Scale to MP-2018;
- 2. update the retirement assumption for paramedics and dispatchers;
- 3. update the termination assumption to a service-based table;
- 4. change the marriage assumption to 65 percent of all members assumed to be married;
- 5. change the COLA assumption to 1 percent;
- 6. change the salary scale assumption to be service based; and
- 7. change the discount rate to 7 percent.

**Motion Adopted:** 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

Delaware Coastal Airport & Business Park Property Maintenance RFP Hans Medlarz, County Engineer, presented a recommendation to award the 2019 Delaware Coastal Airport & Business Park Property Maintenance RFP. Mr. Medlarz reported that the Engineering Department solicited, for a third time, proposals for annual site maintenance at the Delaware Coastal Airport and Business Park. For this bid solicitation, six proposals were received and the Engineering Department recommends the award of Base Bid 1 to Jakor Enterprises, LLC in the five (5) year accumulative amount of \$275,175.00, Base Bid 2 to Monkeys in Trees, LLC in the five (5) year accumulative amount of \$45,750.00, and to reject the only proposal received for Base Bids 3 and 4 upon the request of the bidder. The Sussex Conservation District indicated their interest to step in at or below the amount bid. The Engineering Department recommends award to the District for Calendar Year 2019 exclusively in an amount not to exceed \$6,800.00.

### M 148 19 Award RFP

A Motion was made by Mr. Hudson, seconded by Mr. Rieley, based upon the recommendation of the Sussex County Engineering Department, that the 2019 Delaware Coastal Airport and Business Park Property M 148 19 Award Delaware Coastal Airport and Business Maintenance RFP, Base Bid 1, be awarded to Jakor Enterprises, LLC in the low bid of \$275,175.00 and Base Bid 2 to be awarded to Monkeys in Trees, LLC for their low bid of \$45,750.00, both being a five-year contract award with each year renewal based on performance; in addition, the Engineering Department recommends rejection of Base Bid 3 and Base Bid 4 and in place, award both bids to the Sussex Conservation District in an amount not to exceed \$6,800.00 for Calendar Year 2019.

Park

**Motion Adopted:** 5 Yeas.

**Property Mainte-**

nance RFP Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea; (continued) Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

(commutation)

**GHD Base** 

Engineering Hans Medlarz, County Engineer, presented Amendment No. 17 to the Contract GHD, Inc. Base Contract for professional engineering services for the design of a new sanitary sewer force main which will allow Pump Station No. 204 to flow to the City of Rehoboth's treatment plant.

M 149 19 Approve Amendment 17 to the Base Engineering A Motion was made by Mr. Burton, seconded by Mr. Wilson, based upon the recommendation of the Sussex County Engineering Department, that Amendment No. 17 to the Base Engineering Contract with GHD, Inc. be approved in the amount not to exceed \$195,047.96, for design and bidding services for the Pumping Station Interconnect Diversion, as part of the Rehoboth WWTF Capital Improvements Upgrade, Phase 2.

Contract with GHD

**Motion Adopted:** 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

Request to Post Notices/ Tanager Woods Annexation John Ashman, Director of Utility Planning, presented a request to post notices for the Tanager Woods Annexation of the Sussex County Unified Sanitary Sewer District (West Rehoboth Area). The annexation was requested by Solutions IPEM on behalf of their clients, Bryton Homes of Delaware, LLC, for Parcels 234-6.00-58.00 & 85.00; to connect the project to existing infrastructure installed by the County. An Infrastructure Use Agreement will be required. The expansion will consist of 56.46 acres, more or less. The property owner(s) will be responsible for System Connection Charges of \$6,360.00 per EDU based on current rates. A tentative date for a Public Hearing is April 30, 2019.

M 150 19 Authorize Posting of Notices/ Tanager Woods A Motion was made by Mr. Wilson, seconded by Mr. Burton, that the Engineering Department is authorized to prepare and post notices for the Tanager Woods Expansion of the Sussex County Unified Sanitary Sewer District to include Parcels 234-6.00-58.00 & 85.00 located along Robinsonville Road, as presented.

M 150 19 (continued)

**Motion Adopted:** 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

Old Business/ Subdivision Appeal/ Streams Edge Subdivision #2018-8 Under Old Business, the Council considered the Subdivision Appeal presented on February 19, 2019. The appeal was filed by Streams Edge on the Planning and Zoning Commission's decision to deny its preliminary plan for a subdivision known as Streams Edge Subdivision #2018-8.

On February 19, 2019, Tim Willard, Attorney, presented on behalf of Streams Edge, the Applicant. Mr. Willard presented the Applicant's argument that the Commission's decision was not the result of an orderly and logical review of the evidence and involved the improper interpretation and application of the Chapter 99 requirements. Mr. Willard stated that the primary grounds for the appeal rests in the accuracy asserted in the Motion to deny and in the Commission's disregard for DNREC's conclusions, recommendations and statutory oversight. Mr. Willard asked that the Commission's decision be reversed because the Applicant has met the statutory requirements with the proposed conditions.

On February 19, 2019, Vince Robertson, Legal Counsel for Sussex County Planning and Zoning, stated that the Commission's denial was based on the project's location being a brownfield. He stated that the question before Council is whether the record supports the Commission's denial and whether it is in accordance with Chapter 99. He also stated that, based on the record, he is confident that the Council will find that the Commission's decision was based on an orderly and logical review of the evidence. Mr. Robertson presented an overview of what is on the record and what supports the Commission's decision for denial.

Mr. Burton read the following prepared statement:

On February 19, 2019, Council heard the appeal of Streams Edge Subdivision #2018-8 from the Planning and Zoning Commission's denial of its subdivision application. Sussex County Zoning Code §99-39B states that the appeal to Council "shall be an appeal on the record of the hearing before the [Planning and Zoning] Commission." Therefore, Council's decision must be only based on the evidence which is already in the record. No new evidence was allowed for consideration.

### **Standard of Review**

**Council must determine whether:** 

(1) the Commission properly applied and interpreted the applicable sections of Chapter 99; and

Old Business/ Subdivision Appeal/ Streams Edge Subdivision #2018-8 (continued) (2) the Commission's findings were the result of an orderly and logical review of the evidence and the applicable provisions of Chapter 99.

### **Findings**

After careful review of the record, including documentation and testimony, I find that the Planning and Zoning Commission properly applied and interpreted the applicable sections of Chapter 99. I also find that the Commission's decision to deny this application "was the result of an orderly and logical review of the evidence and involved the proper interpretation and application of [Chapter 99]."

The Planning and Zoning Commission held a public hearing on this application on July 26, 2018.

Prior to the hearing, the Commission was provided a notebook of materials in support of the application.

The Applicant presented its case. Then the opposition presented its case.

Based on the materials provided, along with the Applicant's presentation and testimony before the Planning and Zoning Commission, the Commission raised many questions, to wit:

- a. It had general concerns that it is a "health, safety and welfare issue for Sussex County."
- b. The Commission questioned whether a Brownfield site within a subdivision was compatible.
- c. In 2009, there was a prior subdivision approval of the site. However, the contaminated area at that time was disclosed as being only .28 acre and which is currently approximately 6 acres. That is an increase from 1.3% of the site to 28% of the site a significant difference in total area which is now over 1/4 of the entire site.
- d. The Site Plan the Applicant provided to the Commission contained many inconsistencies, including incorrect lot numbers.
- e. The Site Plan the Applicant provided showed extensive vegetation on the contaminated area which contradicted DNREC's directive that no trees be planted there.
- f. Applicant's environmental consultant testified that the trees depicted on the Site Plan would have to be removed.
- g. There are inconsistencies in the volume of contaminated soils that need to be removed ranging from 396 to 1,027 cubic yards of material. There were also estimates that the contaminated soils would fill from 18-20 dump truck loads according to testimony and 33 dump truck loads according to the Duffield Report.
- h. The Commission questioned why the contaminated soil could not be removed from the site thereby removing the risk to the residential neighborhood. The Applicant responded, "Cost, cost, cost is one reason."

Old Business/ Subdivision Appeal/ Streams Edge Subdivision #2018-8 (continued)

- i. Applicant was told that no landfill in Delaware would accept the contaminated material. However, Applicant could remove and haul it to another state's landfill but has chosen not to because of the financial burden.
- j. The Commission questioned whether it would be appropriate for the contaminated material to remain in a residential subdivision when no Delaware landfill would accept the contaminated material.
- k. The testimony showed that the Applicant was going to create its own landfill on the site by removing the soils from various "hot spots" and relocating them to the proposed "open space" in the development but provided no information on how to do it. This would require extensive soil removal of an unknown quantity.
- 1. When the Commission questioned how the contaminated area was going to be covered, the Applicant stated that it had not been designed yet. Moreover, the Duffield Report submitted by the Applicant confirmed that this remedy "will not alter the volume or toxicity of the substances of environmental concern."
- m. There was testimony that residents could play basketball or tennis on the area once it has been capped. However, it is not yet known who will own the area which means it may not be part of the HOA. In addition, DNREC's Long Term Plan may prevent this use as well as it would limit uses to "solely non-residential type uses permitted within Commercial, Manufacturing or Industrial Districts" which is totally inconsistent with a residential subdivision and none of these uses are even permitted in AR-1 land.
- n. The Commission questioned if the HOA became the owner of the contaminated area, whether the HOA should be saddled with ongoing remediation, monitoring and maintenance of a toxic landfill site. This does not promote the health, safety and welfare of the future residents of this development and Sussex County.
- o. If another party owns the contaminated area, it would not even be part of the subdivision and should not count towards the density.
- p. The 2018 Amended Proposed Plan stated that:
  - (1) the "Deep soil concentrations of arsenic was reported above DNREC-SIRS screening levels and the resulting risk exceeds the DNREC-SIRS level of acceptable risk to future residential use."
  - (2) "Groundwater samples collected during the 2015 investigation and beyond, reported concentrations of total chromium, hexavalent chromium, iron, manganese, and cobalt which pose an unacceptable risk to potential residential and commercial use."
  - (3) "A supplemental remedial investigation of OU-1 in 2017 also identified elevated concentrations of hexavalent chromium in shallow and deep soil as well as the groundwater. The risk posed by concentrations of hazardous chemicals reported in OU-1 exceeds an acceptable risk to potential residential use."
- q. Applicant's own report, as approved by DNREC, concludes that, "The cap would preclude casual contact or ingestion of soils by site occupants or trespassers/recreators, but would not necessarily be

Old Business/ Subdivision Appeal/ Streams Edge Subdivision #2018-8 (continued)

- appropriate in a residential setting, due to the requirements for maintenance and necessary restrictions regarding excavations in the capped area." Even when capped, the area is incompatible with residential development and, even though the Applicant would classify it as "open space", it could never really be used as open space.
- r. Section 99-16 of the Sussex County Subdivision Code states that land unsuitable for development because of features "which will be reasonably harmful to the safety, health and general welfare of the present or future inhabitants of the subdivision...shall not be subdivided or developed" unless adequate methods are formulated and approved to solve the problems created by the conditions. The contaminated soils are dangerous to both residential and recreational use, and containing them within the open space is not a reasonable solution that protects the future inhabitants for these reasons:
  - 1. The size of the contaminated area is uncertain;
  - 2. The volume of the contaminants is uncertain;
  - 3. The nature of the contaminants;
  - 4. The proposed remedy is uncertain and, by Applicant's own admission, has not been fully designed;
  - 5. Keeping the contaminated soils on site is not consistent with residential or recreational uses;
  - 6. DNREC will not even accept these contaminated soils at Delaware landfills which professional and licensed regulators operate and maintain;
  - 7. Knowing that DNREC won't accept it, the Applicant's solution is to shift the burden of maintaining the contaminated area to a future HOA;
  - 8. In its June 6, 2018 letter, DNREC stated that all of its assumptions "assume that the remediation is successful" in the first place an assumption that Sussex County should not risk.
  - 9. The Applicant will not haul it to an out-of-state landfill because it is cost prohibitive."

M 151 19
Affirm the
Decision of
the Planning
and Zoning
Commission
on Streams
Edge
Subdivision
Application
#2018-8

A Motion was made by Mr. Burton, seconded by Mr. Hudson, that the Council affirms the Commission's decision to deny this application (Subdivision #2018-8 – Streams Edge Subdivision) because the decision of the Commission "was the result of an orderly and logical review of the evidence and involved the proper interpretation and application of [Chapter 99]", and regarding the statement entered into the record on this date, it is affirmed that the subparts [of the statement read into the record by Mr. Burton] are numbered a through r, with subpart p having 3 parts (1 through 3) and subpart r having 9 parts (1 through 9)].

**Motion Adopted:** 5 Yeas.

M 151 19 (continued)

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

Old Business/ CU 2162 Under Old Business, the Council considered Conditional Use No. 2162 filed on behalf of Yellow Metal, LLC.

The Planning and Zoning Commission held a Public Hearing on this application on January 10, 2019 at which time action was deferred. On January 24, 2019, the Commission deferred action again. On February 14, 2019, the Commission recommended approval with the following conditions:

- A. The use shall be limited to a paving construction business with an office and the storage of equipment associated with that use.
- B. There shall be a 50-foot buffer around the site. The existing woodlands and vegetation shall not be disturbed in these buffer areas.
- C. According to information presented during the hearing, there are wetlands on this site. The Final Site Plan shall contain a wetlands delineation, and there shall be a 50-foot vegetated buffer from all wetland areas. The existing trees and vegetation shall not be disturbed in these buffer areas.
- D. There shall not be any outside storage of paint, seal coating or other liquid materials associated with the use.
- E. No retail sales shall occur from the site.
- F. No vehicle or equipment repairs shall occur outside.
- G. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
- H. All dumpsters on the site are to be located near the interior of the property and they must be screened from the view of neighboring properties and roadways.
- I. The Applicant shall comply with all DelDOT requirements for entrance and roadway improvements.
- J. The hours of operation shall be Monday through Saturday from 5:30 a.m. until 6:30 p.m. No deliveries to or from the site shall occur before 7:00 a.m.
- K. One lighted sign shall be permitted on the site. It shall be no larger than 32 square feet per side.
- L. All vehicle parking and large equipment storage areas shall be clearly shown on the Final Site Plan and clearly marked on the site itself. All vehicles, including the Applicant's vehicle and employees' vehicles, must only be parked within the designated areas.
- M. No outside burning of any materials shall occur on the site.
- N. No materials such as asphalt, stone, or millings shall be permanently stored on the site.
- O. No junked, in-operable or untitled vehicles shall be located on the site.
- P. The Applicant has stated that there will be milling operations proposed for the site. Any milling operations that occur shall be subject to the following additional conditions:

Old Business/ CU 2162 (continued)

- 1. The Applicant shall only mill asphalt materials that are the result of its own roadwork and paving operations. No materials shall be accepted for milling from any third parties.
- 2. No milling of trees, stumps, mulch or materials other than the Applicant's own asphalt materials shall occur on the site.
- 3. Milling shall only occur between 3:00 p.m. and 6:00 p.m. Monday through Friday. No milling operations shall occur on Saturday or Sunday.
- 4. Milling operations shall only occur in the central area of the site, as far away from the property boundaries as possible.
- 5. No more than 50 tons (approximately two (2) dump truck loads) shall be milled and stored on the site any one time. These materials shall be located on a concrete pad which is no longer than 50 by 100 feet in size. The concrete pad shall be clearly shown on the Final Site Plan.
- 6. The pile of millings shall not be higher than 10 feet.
- Q. Failure to comply with any of these conditions shall be grounds for the termination of the Conditional Use approval.
- R. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

The Sussex County Council held a Public Hearing on this application on February 5, 2019 at which time it was reported that the public record would remain open for five days following the issuance of the Planning and Zoning Commission's recommendation (for written public comments only).

Janelle Cornwell, Planning and Zoning Director, reported that Sussex County Council closed the record on March 12, 2019.

Mr. Burton commented on the Proposed Ordinance and suggested amendments to the conditions proposed by the Planning and Zoning Commission.

M 152 19 Amend Conditions/ CU 2162 A Motion was made by Mr. Burton, seconded by Mr. Hudson, to add an additional Condition Q to the conditions recommended by the Planning and Zoning Commission and the remainder of the conditions be re-lettered; the new Condition Q shall state: "No more than 25 acres of this property shall be used as part of the permitted Conditional Use. On the Final Site Plan, the Applicant shall designate the area excluded from this Conditional Use by establishing a line that runs parallel with the Route 9 right-of-way. The Final Site Plan shall show that no activities permitted by this Conditional Use shall occur on this property to the north of this line. In addition, there shall be markings installed along this line to confirm its location on the site itself."

**Motion Adopted:** 5 Yeas.

M 152 19 (continued)

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

M 153 19 Amend Conditions/ CU 2162 A Motion was made by Mr. Burton, seconded by Mr. Hudson, to amend Condition N recommended by the Planning and Zoning Commission to state: "No materials such as asphalt or stone shall be permanently stored or stockpiled on the site. These materials needed for current jobs may remain on the site but they shall only be located in the area that is currently zoned C-1."

Motion Adopted: 3 Yeas, 2 Nays.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Nay;

Mr. Wilson, Nay; Mr. Burton, Yea;

Mr. Vincent, Yea

M 154 19 Amend Conditions/ CU 2162 A Motion was made by Mr. Burton, seconded by Mr. Hudson, to amend Condition P-4 of the conditions recommended by the Planning and Zoning Commission to state: "Milling operations shall only occur in the area of land that is currently zoned C-1 and is as far away from the boundaries of the property as possible."

**Motion Adopted:** 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

M 155 19 Amend Conditions/ CU 2162 A Motion was made by Mr. Burton, seconded by Mr. Hudson, to amend Condition D of the conditions recommended by the Planning and Zoning Commission to add a sentence to state that "All storage of paints, seal coating, or other liquid materials shall occur within the area that is currently zoned C-1."

**Motion Adopted:** 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

M 156 19 Amend Conditions/ CU 2162 A Motion was made by Mr. Burton, seconded by Mr. Hudson, to amend Condition P-5 of the conditions recommended by the Planning and Zoning Commission to state "No more than 50 tons (approximately two (2) dump truck loads) shall be milled and located on the site at any one time. These materials shall be located on an asphalt pad which is no larger than 50 feet by 100 feet in size. The asphalt pad shall be clearly shown on the Final Site Plan. No milling shall be permanently stored on the site."

M 156 19 (continued)

**Motion Adopted:** 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

M 157 19 Amend Conditions/ CU 2162 A Motion was made by Mr. Burton, seconded by Mr. Hudson, to amend Condition B of the conditions recommended by the Planning and Zoning Commission to add a sentence to state that "This buffer shall not be required for the C-1 portion of the site."

**Motion Adopted:** 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

M 158 19 Amend Conditions/ CU 2162 A Motion was made by Mr. Burton, seconded by Mr. Hudson, to add a new Condition R (replacing the previous one and the remainder of the conditions be re-lettered) to state that: "Only uses that shall be permitted on the area of the property that is not C-1 are office uses and the parking and storage of equipment and vehicles; all other uses shall occur within the area of this property that currently has C-1 zoning."

**Motion Adopted:** 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

M 159 19 Adopt Ordinance No. 2641/ CU 2162 A Motion was made by Mr. Burton, seconded by Mr. Hudson, to Adopt Ordinance No. 2641 entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND C-1 GENERAL COMMERCIAL DISTRICT FOR A PAVING CONSTRUCTION BUSINESS WITH AN OFFICE AND EQUIPMENT STORAGE TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 39.630 ACRES, MORE OR LESS" (Conditional Use No. 2162) filed on behalf of Yellow Metal, LLC, with the following conditions, as amended:

- A. The use shall be limited to a paving construction business with an office and the storage of equipment associated with that use.
- B. There shall be a 50-foot buffer around the site. The existing woodlands and vegetation shall not be disturbed in these buffer areas. This buffer shall not be required for the C-1 portion of the site.
- C. According to information presented during the hearing, there are wetlands on this site. The Final Site Plan shall contain a wetlands delineation, and there shall be a 50-foot vegetated buffer from all

M 159 19 Adopt Ordinance No. 2641/ CU 2162 (continued)

- wetland areas. The existing trees and vegetation shall not be disturbed in these buffer areas.
- D. There shall not be any outside storage of paints, seal coating, or other liquid materials associated with the use. All storage of paints, seal coating or other liquid materials shall occur within the area that is currently zoned C-1.
- E. No retail sales shall occur from the site.
- F. No vehicle or equipment repairs shall occur outside.
- G. All lighting on the site shall be downward screened so that it does not shine on neighboring properties or roadways.
- H. All dumpsters on the site are to be located near the interior of the property and they must be screened from the view of neighboring properties and roadways.
- I. The Applicant shall comply with all DelDOT requirements for entrance and roadway improvements.
- J. The hours of operation shall be Monday through Saturday from 5:30 a.m. until 6:30 p.m. No deliveries to or from the site shall occur before 7:00 a.m.
- K. One lighted sign shall be permitted on the site. It shall be no larger than 32 square feet per side.
- L. All vehicle parking and large equipment storage areas shall be clearly shown on the Final Site Plan and clearly marked on the site itself. All vehicles, including the Applicant's vehicle and employees' vehicles, must only be parked within the designated areas.
- M. No outside burning of any materials shall occur on the site.
- N. No materials such as asphalt or stone shall be permanently stored or stockpiled on the site. These materials needed for current jobs may remain on the site but they shall only be located in the area that is currently zoned C-1.
- O. No junked, in-operable or untitled vehicles shall be located on the site.
- P. The Applicant has stated that there will be milling operations proposed for the site. Any milling operations that occur shall be subject to the following additional conditions:
  - 1. The Applicant shall only mill asphalt materials that are the result of its own roadwork and paving operations. No materials shall be accepted for milling from any third parties.
  - 2. No milling of trees, stumps, mulch or materials other than the Applicant's own asphalt materials shall occur on the site.
  - 3. Milling shall only occur between 3:00 p.m. and 6:00 p.m. Monday through Friday. No milling operations shall occur on Saturday or Sunday.
  - 4. Milling operations shall only occur in the area of land that is currently zoned C-1 and is as far away from the boundaries of the property as possible.
  - 5. No more than 50 tons (approximately two (2) dump truck loads) shall be milled and located on the site at any one time. These materials shall be located on an asphalt pad which is no larger than 50 feet by 100 feet in size. The asphalt pad shall be clearly shown on the Final Site Plan. No milling shall be permanently

M 159 19 Adopt Ordinance No. 2641/ CU 2162 (continued) stored on the site.

- 6. The pile of millings shall not be higher than 10 feet.
- Q. No more than 25 acres of this property shall be used as part of the permitted Conditional Use. On the Final Site Plan, the Applicant shall designate the area excluded from this Conditional Use by establishing a line that runs parallel with the Route 9 right-of-way. The Final Site Plan shall show that no activities permitted by this Conditional Use shall occur on this property to the north of this line. In addition, there shall be markings installed along this line to confirm its location on the site itself.
- R. Only uses that shall be permitted on the area of the property that is not C-1 are office uses and the parking and storage of equipment and vehicles; all other uses shall occur within the area of this property that currently has C-1 zoning.
- S. Failure to comply with any of these conditions shall be grounds for the termination of the Conditional Use approval.
- T. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

**Motion Adopted:** 5 Yeas.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

Old Business/ CU 2157 Under Old Business, the Council considered Conditional Use No. 2157 filed on behalf of Country Lawncare & Maintenance, LLC (c/o Gerald and Stephania Dougherty).

The Planning and Zoning Commission held a Public Hearing on this application on January 24, 2019 at which time action was deferred. On February 28, the Commission's Motion to approve the application failed for the lack of 3 votes (Motion was 2-2).

The Sussex County Council held a Public Hearing on this application on February 19, 2019 at which time the public record remained open for the recommendation of the Planning and Zoning Commission and thereafter, for five calendar days for the submission of written comments only. The public record closed on March 12, 2019.

Mr.. Burton commented on the Proposed Ordinance and stated his reasons for denial of the application, referencing covenants and deed restrictions.

M 160 19 Adopt Proposed Ordinance/ CU 2157 A Motion was made by Mr. Burton, seconded by Mr. Hudson, to Adopt the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A LANDSCAPING BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 4.26

M 160 19 (continued) ACRES, MORE OR LESS" (Conditional Use No. 2157) filed on behalf of Country Lawn Care & Maintenance, LLC (c/o Gerald and Stephania Dougherty).

DENIED

**Motion Denied:** 4 Navs, 1 Absent.

**Vote by Roll Call:** Mr. Hudson, Nay; Mr. Rieley, Nay;

Mr. Wilson, Absent; Mr. Burton, Nay;

Mr. Vincent, Nav

(Mr. Wilson left the meeting during the discussion on Conditional Use No.

2157.)

Grant

Mrs. Jennings presented a grant request for the Council's consideration. Request

M 161 19 Councilmanic Grant

A Motion was made by Mr. Rieley, seconded by Mr. Hudson, to give \$2,500.00 (\$1,750.00 from Mr. Rieley's Councilmanic Grant Account and \$750.00 from Mr. Hudson's Councilmanic Grant Account) to the John M.

Clayton Elementary School for mentoring programs.

Motion Approved: 4 Yeas, 1 Absent.

**Vote by Roll Call:** Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Wilson, Absent; Mr. Burton, Yea;

Mr. Vincent, Yea

of Proposed **Zoning Ordinances** 

Introduction Mr. Hudson introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AGRICULTURAL RESIDENTIAL **DISTRICT** AR-1 **FOR** CONVENIENCE STORE WITH FUELING STATION TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN INDIAN RIVER HUNDRED, SUSSEX COUNTY, CONTAINING 3.51 ACRES, MORE OR LESS" (Conditional Use No. 2176) filed on behalf of KH Sussex, LLC (Tax I.D. No. 234-11.00-56.02 (portion of), 56.03, 56.06, and 56.09) (911 Address: None Available).

> Mr. Vincent introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A WELDING AND FABRICATION BUSINESS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BROAD CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 1.605 ACRES, MORE OR LESS" (Conditional Use No. 2178) filed on behalf of Steven and Carrie Coleman (Tax I.D. No. 232-19.00-30.00) (911 Address: 14716 Laurel Road, Laurel).

The Proposed Ordinances will be advertised for Public Hearing.

M 162 19 Recess At 12:15 p.m., a Motion was made by Mr. Burton, seconded by Mr.

Hudson, to recess.

Motion Approved: 4 Yeas, 1 Absent.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Yea;

Mr. Wilson, Absent; Mr. Burton, Yea;

Mr. Vincent, Yea

Sussex Conservation District Luncheon The Council attended a luncheon and discussion with the Sussex Conservation District at the CHEER Center in Georgetown. Topics discussed were tax ditch cost share program, agricultural conservation, cover crop program, stormwater bonds and plans, and drainage cost share program. The Sussex Conservation submitted funding requests for FY 2019.

M 163 19 Adjourn At 1:15 p.m., a Motion was made by Mr. Burton, seconded by Mr. Wilson, to adjourn.

Motion Approved: 4 Yeas, 1 Absent.

Vote by Roll Call: Mr. Hudson, Yea; Mr. Rieley, Absent;

Mr. Wilson, Yea; Mr. Burton, Yea;

Mr. Vincent, Yea

Respectfully submitted,

Robin A. Griffith Clerk of the Council

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



Professionalism

**Community** 

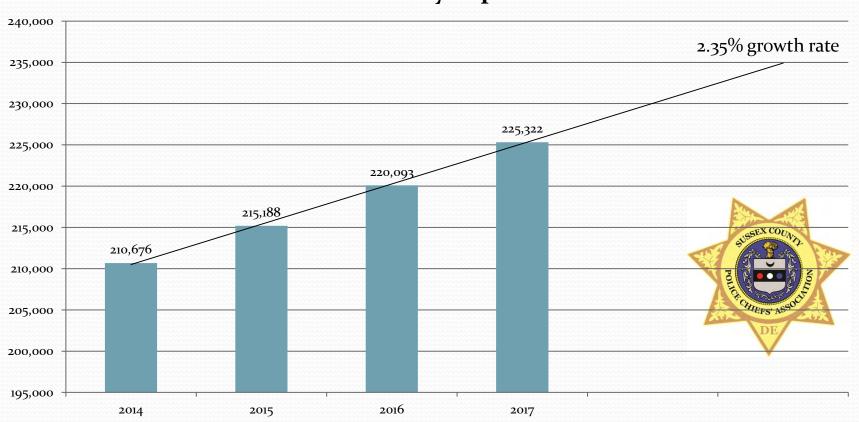
**Integrity** 

**Transparency** 

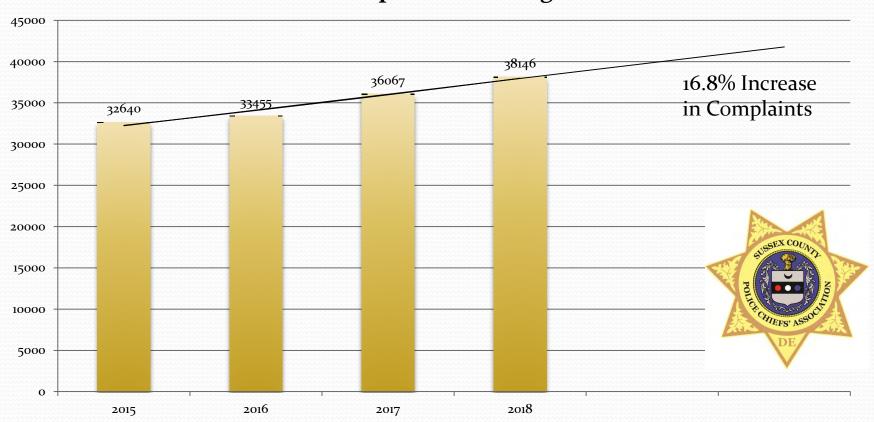
- 1. 20 municipal police agencies
- 2. 183 Police Officers
- 3. Serve 75,000 residents
- 4. Complex Investigations
  - Domestic Violence
  - Cyber
  - Fraud
- 5. Increased Traffic Volume
- 6. Opiate crisis
- 7. Homelessness
- 8. Mental Health

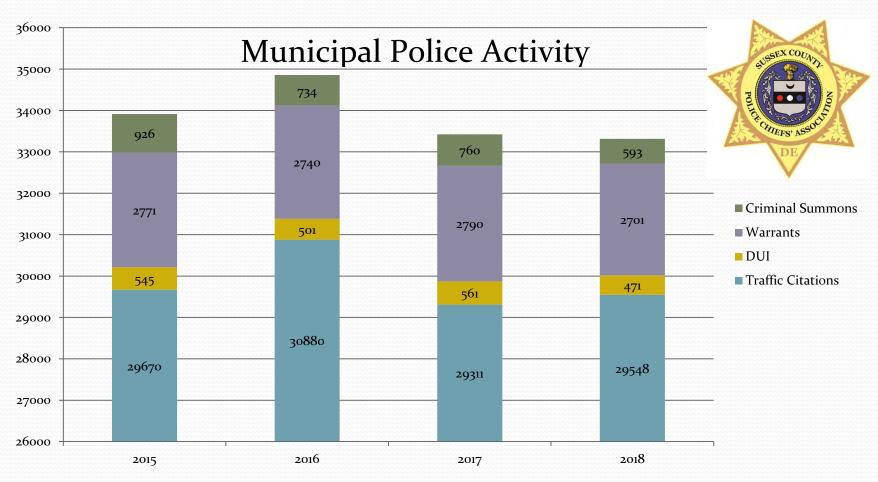


### **Sussex County Population**



### **Total Complaints Investigated**

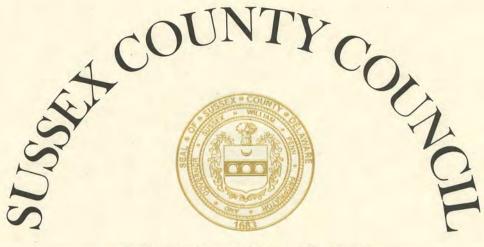




### We are:

- committed to providing <u>professional police</u> <u>services</u>
- > dedicated to solving *community issues*
- ≻your *Local Police*.





### **PROCLAMATION**

## PROCLAIMING APRIL 2, 2019, AS NATIONAL SERVICE RECOGNITION DAY IN SUSSEX COUNTY

WHEREAS, service to others is a hallmark of the American character and central to how we meet our challenges; and

WHEREAS, the nation's counties are increasingly turning to national service and volunteerism as a cost-effective strategy to meet their needs; and

WHEREAS, AmeriCorps and Senior Corps participants address the most pressing challenges facing our communities; they educate students for 21<sup>st</sup> century jobs, fight the opioid epidemic, respond to natural disasters, and support veterans and military families; and

WHEREAS, national service expands economic opportunity by creating more sustainable, resilient communities and providing education, career skills, and leadership abilities for those who serve; and

WHEREAS, AmeriCorps and Senior Corps participants serve in more than 50,000 locations across the country, including Sussex County, Delaware, bolstering the civic, neighborhood, and faith-based organizations that are so vital to our country's economic and social well-being; and

WHEREAS, national service participants increase the impact of the organizations they serve, both through their direct service and by managing millions of additional volunteers; and

WHEREAS, national service represents a unique public-private partnership that invests in community solutions and leverages non-federal resources to strengthen community impact and increase the return on taxpayer dollars; and

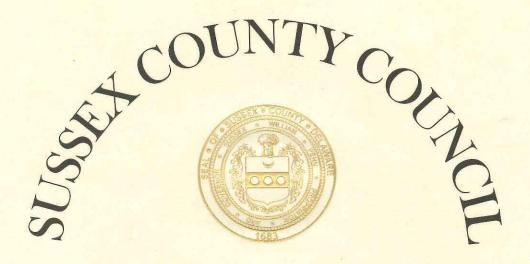
WHEREAS, national service participants demonstrate commitment, dedication, and patriotism by making an intensive commitment to service, a commitment that remains with them in their future endeavors; and

WHEREAS, the Corporation for National and Community Service shares a priority with local leaders nationwide to engage citizens, improve lives, and strengthen communities; and is joining with the National League of Cities, the National Association of Counties, Cities of Service, and local leaders across the country for National Service Recognition Day on April 2, 2019;

NOW, THEREFORE, BE IT RESOLVED that the Sussex County Council hereby proclaims April 2, 2019, as National Service Recognition Day, and encourages residents to recognize the positive impact of national service in Sussex County, to thank those who serve, and to find ways to give back to their communities.



Michael H. Vincent, President



### **PROCLAMATION**

# PROCLAIMING THE MONTH OF APRIL AS "FAIR HOUSING MONTH" IN SUSSEX COUNTY

WHEREAS, April 2019 marks the 51st anniversary of the passage of the U.S. Fair Housing Law, Title VIII of the Civil Rights Act of 1968, as amended, which enunciates a national policy of Fair Housing without regard to race, color, religion, national origin, sex, familial status or handicap, and encourages fair housing opportunities for all citizens; and

WHEREAS, the Sussex County Council is committed to highlight the Fair Housing Law, Title VIII of the Civil Rights Act of 1968, by continuing to address discrimination in our community, to affirmatively further fair housing, to support programs that will educate the public about the right to equal housing opportunities, and to plan partnership efforts with other organizations to help assure every American of their right to fair housing;

NOW, THEREFORE, BE IT RESOLVED that the Sussex County Council proclaims April 2019 as "Fair Housing Month", beginning a year-long commemoration of the U.S. Fair Housing Law in Sussex County, and urges all citizens to wholeheartedly recognize this celebration throughout the year.



Michael H. Vincent, President

### TODD F. LAWSON COUNTY ADMINISTRATOR

(302) 855-7742 T (302) 855-7749 F tlawson@sussexcountyde.gov





### **Memorandum**

TO: Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Douglas B. Hudson The Honorable John L. Rieley The Honorable Samuel R. Wilson Jr.

FROM: Todd F. Lawson

**County Administrator** 

RE: BUFFERS AND WETLANDS WORKING GROUP

DATE: March 29, 2019

During Tuesday's meeting, we are scheduled to discuss the progress of the County's Buffers and Wetlands Working Group.

Thus far, the Working Group has met three times: February  $13^{th}$ , March  $6^{th}$ , and March  $20^{th}$ . We are scheduled to meet again on Wednesday, April  $3^{rd}$ .

The focus of the Working Group has been on the definitions that reference buffers, wetlands, and other resources in County Code. The group has updated existing terms and added new terms. A copy of the working document for definitions is attached.

The next step for the Working Group is to discuss how best to develop standards to protect these resources.

Please let me know if you have any questions.

Attachment



### Sussex County Buffers & Wetlands Working Group Definitions Discussion February 13 March 20, 2019

### § 115-193 Buffer zones for wetlands and tidal and perennial nontidal waters.

[Added 7-19-1988 by Ord. No. 521]

#### <u>A.</u>

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

### **BUFFER ZONE**

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

A managed area between land uses, natural resources, or other features.

### **EPHEMERAL STREAM**

A feature that carries only runoff in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table during a year of normal rainfall, and runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.

### INTERMITTENT STREAMS

A well-defined channel that contains flowing water for only part of the year, typically during winter and spring when the aquatic bed is below the water table.

**Commented [TFL1]:** Discussed and updated during 3/20 meeting.

Commented [TFL2]: Added during 3/20 meeting.

Commented [TFL3]: Added during 3/20 meeting.

### Sussex County Buffers & Wetlands Working Group Definitions Discussion February 13March 20, 2019

The flow may be heavily supplemented by runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.

### TIDAL WATERS (MEAN HIGH-WATER LINE) OF TIDAL WATER

The mean high-water line of any tidal water body, tidal stream, or tidal marsh. The average height of all the high-tide water recorded over a nineteen-year period as defined by the National Oceanic and Atmospheric Administration tidal datum.

PERENNIAL NONTIDAL RIVERS AND STREAMS

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

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

#### TIDAL TRIBUTARY STREAM

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

### **TIDAL WETLANDS**

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

Commented [TFL4]: Discussed and edited on 2/13

Commented [SER5]: To discuss internally on 3/29 call

Commented [TFL6]: Discussed and edited on 3/6

Commented [SER7]: Removed at 2/13 meeting.

Commented [TFL8]: Discussed and edited on 2/13.

### Sussex County Buffers & Wetlands Working Group Definitions Discussion February 13March 20, 2019

#### **NON-TIDAL WETLANDS**

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

Those areas inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions and that are not Sussex County-defined Tidal Wetlands.

#### B.

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

[Amended 7-2-1991 by Ord. No. 774]

#### C.

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

### <u>D.</u>

Excluded from buffer zone regulations are facilities necessarily associated with water-dependent facilities (maritime, recreational, educational or fisheries activities that cannot exist outside of the buffer by reason of the intrinsic nature of their operation) and the installation, repair or maintenance of any stormwater management facility, sanitary sewer system, culvert, bridge, public utility, street, drainage facility, pond, recreational amenity, pier, bulkhead, boat ramp, waterway improvement project or erosion-stabilization project that has received the joint approval of the County Engineering Department and the

Commented [TFL9]: Added during 3/20 meeting.

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### Sussex County Buffers & Wetlands Working Group Definitions Discussion February 13 March 20, 2019

appropriate federal, state and local agencies. An existing public storm-drain system may be extended in order to complete an unenclosed gap or correct a drainage problem, subject to receiving the approval of the County Engineering Department and the appropriate federal, state and local agencies.

### <u>E.</u>

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

#### **(1)**

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

### **(2)**

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

[Amended 7-2-1991 by Ord. No. 774]

### (3)

Any land upon which development has progressed to the point of pouring of a foundation or the installation of structural improvements as of the date of the approval of this section

### Sussex County Buffers & Wetlands Working Group Definitions Discussion February 13 March 20, 2019

shall be permitted to be developed, provided that there shall be no further encroachment upon the buffer zone, as required in Subsection  $\mathbf{E}(1)$  above.

#### <u>F.</u>

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

### <u>(1)</u>

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

### **(2)**

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

### (3)

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

#### <u>(4)</u>

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

JANELLE M. CORNWELL, AICP
PLANNING & ZONING DIRECTOR
(302) 855-7878 T
(302) 854-5079 F
janelle.cornwell@sussexcountyde.gov



# Sussex County DELAWARE sussexcountyde.gov

### <u>Memorandum</u>

To: Sussex County Council Members

From: Janelle Cornwell, AICP, Planning & Zoning Director

CC: Everett Moore, County Attorney

Date: March 5, 2019

RE: County Council Report for CU 2158 Millsboro Solar, LLC

The Planning and Zoning Department received an application (CU 2158 Millsboro Solar, LLC) to allow for a Conditional Use to allow for a solar array facility for parcels 233-15.00-57.01 & 57.02 to be located on Nine Foot Rd. The Planning and Zoning Commission held a public hearing on February 14, 2019. The following are the draft minutes for the Conditional Use from the Planning and Zoning Commission meetings.

Ms. Cornwell advised the Commission that submitted into the record were a staff analysis, exhibit booklet, Site Plan, comments from the Sussex Conservation District, Sussex County Engineering Department of Utility Planning Division, and results from the DelDOT Service Level Evaluation response indicating that a Traffic Impact Study ("TIS") was not required.

The Commission found that Ms. Linda Nwadike, Engineer with SunEnergy 1, LLC, Ms. Carla Rickards and Andrew Willey, owners of property were present on behalf of the application; that Ms. Nwadike stated SunEnergy is one of the top five solar developers in the United States; that this is a proposed six-megawatt project; that the land is zoned AR-1 (Agricultural Residential District); that SunEnergy would lease the farm land; that a fence and landscape buffers would be provided along the roads; that they are proposing a landscaping buffer and that, for every 100 linear feet, there would be 12 evergreen trees, 10 shrubs with additional ornamental grass; that they have talked to the adjacent land owners in regards to the proposed solar array facility; that the late Mr. Rickards wanted utility scale solar for this land and has passed away since starting on this project; that Mr. Rickards' family would like to continue with the project; that the closest solar panel would be 200-feet from the house and 500-feet from adjacent house that is not owned by the land owner; that the property is located in a low-density area; that the property is located in the State Spending Strategies Level 4; that DelDOT did not require a Traffic Impact Study (TIS); that this would be there first project in Delaware; that there is two solar facilities in the area and one was approved one year ago; that SunEnergy tries to hire local constructors for the project; that there would be no water and sewer on the site; that there would be no noise after construction is completed; that the construction would take approximately five months; that only a few people would visit the site after the construction is completed; that Mr. Willey stated he is Mr. Rickards' grandson; that Mr. Rickards was pro-solar, and pro clean energy and the family would like to proceed with his wishes; that Ms. Nwadike stated the panels have a warranty of 25 years; that after 25 years the energy efficiency of the panels lowers due to degradation but would



still work at up to 80%; that SunEnergy would monitor the panels from the headquarters from a scanner system and would have a local person would check on the panels if there are any issues; that SunEnergy would be working with Delmarva Power; and that it would take five years for the system to return and pay for itself.

The Commission found that no one spoke in favor of to the application.

The Commission found that Ms. Adrienne Miller and Mr. Bryan Miller spoke in opposition to the application; that Ms. Miller and Mr. Miller stated they are adjoining neighbors and that Ms. Nwadike had not spoken to them about the project; that they have concerns with the look of the fence and/or tree line; that they had concerns with their property value; that they have concerns with the potential medical impacts from electromagnetic radiation and that Mrs. Miller has had previous health issues; that they had purchased their property a little over two years ago; that they wanted to live in a rural area; that there is some negatives to the project such as noise, appearance of the panels instead of vegetation; and that they do not want to see solar panels.

The Commission found that Ms. Nwadike stated that the only noise would be during the construction; that after construction there would be a humming noise from the transformers which are located on the interior of the site; that they would be willing to add more landscaping; that the panels do not have emissions or radiation; that the panels are made with sand and glass and it is not toxic: and that some people have sheep that graze in the area and eat the grass; that the panels are regulated by the Environmental Protection Agency.

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

Motion by Ms. Wingate, seconded by Mr. Hopkins and carried unanimously to defer action for further consideration. Motion carried 5-0.

At their meeting on February 28, 2019, the Planning Commission discussed the application which has been deferred since February 14, 2019.

Ms. Wingate moved the Commission recommend approval of Conditional Use 2158 for Millsboro Solar, LLC for a solar array farm 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. With the conditions imposed in this recommendation, the proposed use will not have any adverse impact on the neighboring or adjacent properties.
- 3. 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.
- 4. No noise. Dust or odor will be generated by the facility.
- 5. 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' to accommodate emergency access by the local fire company or other emergency responders.
- E. There shall be a vegetated buffer between the boundary of the conditional use area and the perimeter fence to screen the use from the view of neighboring properties. This buffer shall be at least 30-feet wide, with at least 12 evergreen trees and 10 shrubs per 100 linear feet. This buffer shall be located along Nine Foot Road, Fox Run and the northeast border of the site between Nine Foot Road and Fox Run.
- F. Any transformers or similar equipment shall be centrally located on the site away from all nearby residential uses.
- G. All grounds, including the area outside of the fence, shall be maintained so that they do not become overgrown.
- H. The Final Site Plan shall be subject to the review and approval of the Sussex County Planning and Zoning Commission.

Ms. Wingate seconded by Ms. Stevenson and carried unanimously to forward this application to the Sussex County Council with a recommendation that the application be approved for the reasons and conditions stated in the motion. Motion carried 5-0.

#### **PLANNING & ZONING**

JANELLE M. CORNWELL, AICP DIRECTOR (302) 855-7878 T

(302) 854-5079 F





# Memorandum

To: Sussex County Planning Commission Members

From: Janelle Cornwell, AICP, Planning & Zoning Director CC: Vince Robertson, Assistant County Attorney and applicant

Date: February 10, 2019

RE: Staff Analysis for CU 2158 Millsboro Solar, LLC

This memo is to provide background and analysis for the Planning Commission to consider as a part of application CU 2158 Millsboro Solar, LLC to be reviewed during the February 14, 2019 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 parcels 233-15.00-57.01 & 57.02 to allow for solar array facility to be located on Nine Foot Rd. The size of the properties is 91.304 ac. +/-.

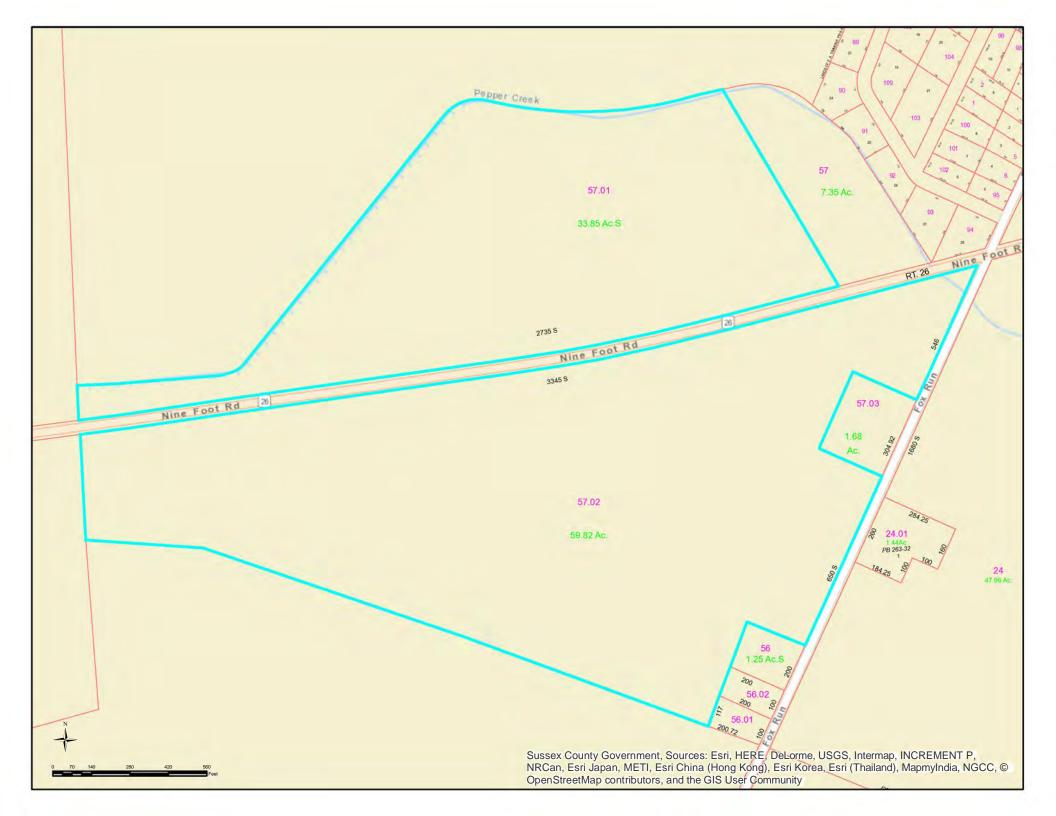
The 2008 Sussex County Comprehensive Plan Update (Comprehensive Plan) provides a framework of how land is to be developed. As part of the Comprehensive Plan a Future Land Use Map is included to help determine how land should be zoned to ensure responsible development. The Future Land Use map indicates that the properties have the land use designation Low Density Area.

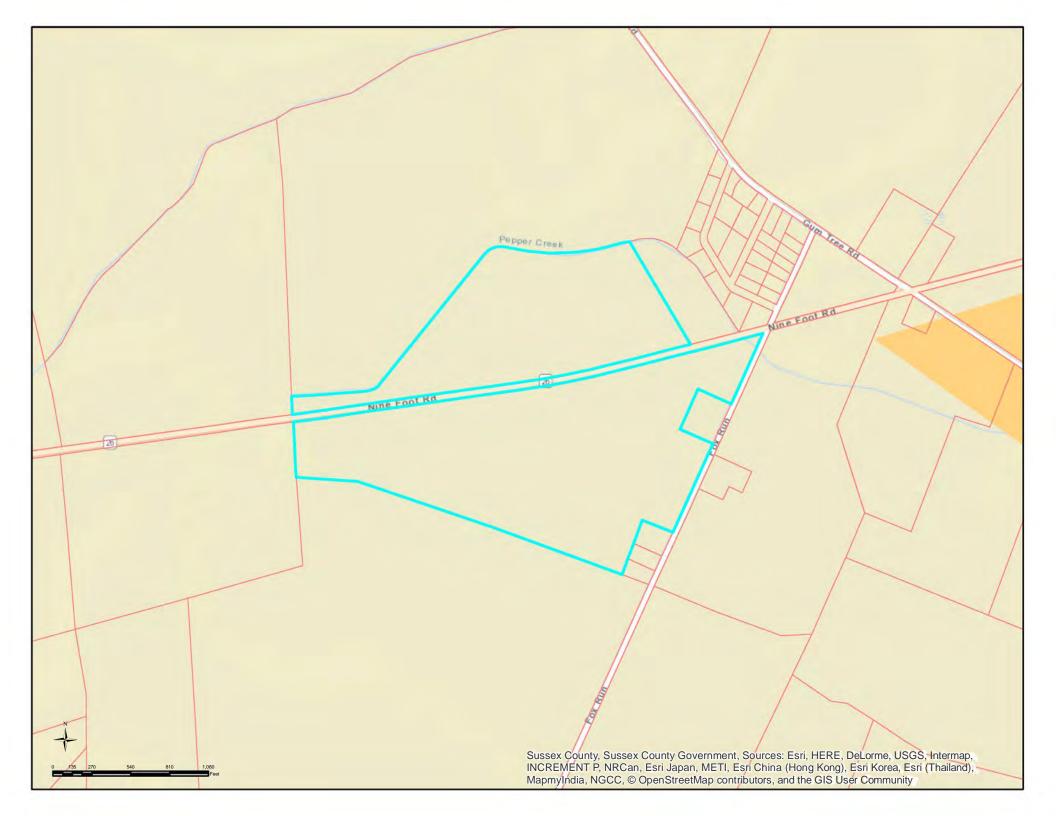
The surrounding land use to the north, south, east and west is Low Density Area. The Low Density Areas land use designation recognizes that a business development should be largely confined to businesses that address the needs of single family residences and agriculture. It should also permit industrial uses that support or depend on agricultural uses. The focus of retail and office should provide convenience goods and services to nearby residents and should be limited in their location, size and hours of operation. The use as auto repair and gasoline sales, should be avoided in these areas.

The property is zoned AR-1 (Agricultural Residential District). The properties to the north, south, east and west are zoned AR-1 (Agricultural Residential District). Further to the east are parcels zoned GR (General Residential District). There is a Conditional Uses in the area (CU 1799 compost facility).

Based on the analysis of the land use, surrounding zoning and uses, the Conditional Use for a solar array facility could be considered consistent with the land use, area zoning and uses.









#### **Introduced 11/13/18**

Council District No. 5 – Arlett Tax I.D. No. 233-15.00-57.01 & 57.02

911 Address: N/A

#### ORDINANCE NO. \_\_\_

AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR A SOLAR ARRAY FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 91.304 ACRES, MORE OR LESS

WHEREAS, on the 3rd day of October 2018, a conditional use application, denominated Conditional Use No. 2158, was filed on behalf of Millsboro Solar, LLC; and WHEREAS, on the \_\_\_\_\_ day of \_\_\_\_\_\_ 2019, 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. 2158 be \_\_\_\_\_\_; and WHEREAS, on the \_\_\_\_ day of \_\_\_\_\_\_ 2019, 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. 2158 as it applies to the property hereinafter described.

Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Dagsboro Hundred, Sussex County, Delaware, and lying on the north side of Nine Foot Road, approximately 0.27 mile west of Gum Tree Road, and on the south side of Nine Foot Road, approximately 0.2 mile west of Gum Tree Road, and being more particularly described in the attached legal description prepared by Smith O'Donnell Feinberg & Berl, LLP, and D. Stephen Parsons, P.A., said parcel containing 91.304 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.

#### **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 (302) 855-7799 FAX





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HANS M. MEDLARZ, P.E. COUNTY ENGINEER

## Memorandum

TO: Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Samuel R. Wilson, Jr.

The Honorable John L. Rieley The Honorable Douglas B. Hudson

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

Gina A. Jennings, MPA, MBA, Finance Director

DATE: April 2, 2019

RE: Winding Creek Village Water District Area

Approval of Delaware Drinking Water SRF Funding Offer &

<u>Issuance of Associated Borrowing Ordinance</u>

In 2015, the Engineering Department received petitions in favor of submitting the question of organizing a water district to referendum. On February 13, 2016, a public hearing was held. Prior to the proposed referendum date, 190 certified affidavits from residents of the Winding Creek Village community, representing over 50% of the parcels, in opposition to a community wide water district were received. In response, County Council moved to discontinue steps towards creation of a community wide water district.

Residents affected by ongoing water quality issue formed a committee known as the Independent Owner Water Committee (IOWC). The IOWC sent out a survey to the community and based on the results, targeted a specific area to solicit new petitions. Ultimately, the IOWC submitted 142 notarized petitions in favor of submitting the question of organizing an <u>optimized</u> water district to referendum.

On September 14, 2017, the voters of the optimized Winding Creek Village Water District Area approved the creation of said water district. On October 3, 2017, County Council officially created the Winding Creek Water District under Resolution No. R 028 17.

In March of 2017, the Finance & Engineering Departments filed an overall funding application for the Herring Creek sewer project including all of the Winding Creek Village subdivision for approximately \$20,500,000 with USDA/Rural Development, Rural Utility Service which has been fully funded and accepted by County Council. Previously, County Council approved WRA



Associates, Inc.'s professional services amendments for the design and permitting in the Herring Creek Sewer District Area expansion.

In January of 2018, the Engineering Department submitted a notice of intent to the State for supplemental funding associated with the proposed water district, which made it in the 2018 Intended Use Plan. On June 13, 2018, the Finance and Engineering Departments followed up by filing a funding application with the Delaware Drinking Water SRF for \$2,000,000 for the Winding Creek Village Water District Area. The request was approved by the Water Infrastructure Advisory Council and an offer has been extended to the County.

The Finance and Engineering Departments recommend accepting the funding offer and issuance of the associated ordinance authorizing up to \$2,000,000 of general obligation bonds of Sussex County in connection with design, construction and equipping of the project, with the expectation that up to \$1,000,000 of principal forgiveness will be applied in order to reduce the principal amount upon completion.

ORDINANCE NO.	
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# AN ORDINANCE AUTHORIZING THE ISSUANCE OF UP TO \$2,000,000 OF GENERAL OBLIGATION BONDS OF SUSSEX COUNTY IN CONNECTION WITH THE WINDING CREEK VILLAGE WATER DISTRICT PROJECT AND AUTHORIZING ALL NECESSARY ACTIONS IN CONNECTION THEREWITH

WHEREAS, pursuant to Title 9, <u>Delaware Code</u>, 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, <u>Delaware Code</u>, Chapters 65 and 67, the County has authorized the design, construction and equipping of the Winding Creek Village Water District Project, consisting of the (a) installation of a water main from the existing Tidewater Utilities Meadows Pump District to a master meter at the entrance to the Winding Creek Village Subdivision (the "Subdivision"), and (b) construction of a distribution system throughout the Subdivision, along with the installation of relevant valves and fire hydrants (collectively, the "Project");

WHEREAS, pursuant to Title 9, <u>Delaware Code</u>, 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. <u>Amount and Purpose of the Bonds</u>. Acting pursuant to Title 9, <u>Delaware Code</u>, Chapters 65 and 67, Sussex County shall issue its negotiable general obligations in the maximum aggregate principal amount not to exceed \$2,000,000 (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 \$1,000,000 of principal forgiveness will be applied in order to reduce the principal amount of the Bonds outstanding to \$1,000,000 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. <u>Security for the Bonds</u>. 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, <u>Delaware Code</u> Section 8002 (c). Pursuant to Title 9, <u>Delaware Code</u>, 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, <u>Delaware Code</u>, 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. <u>Terms of the Bonds</u>. 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. <u>Sale of the Bonds</u>. 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 Drinking Water State Revolving Fund (acting by and through the Delaware Department of Health and Social Services) (or any successor agency).

Section 5. <u>Details of the Bonds</u>. 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. <u>Debt Limit</u>. 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. <u>Further Action</u>. 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. <u>Effective Date</u>. 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 <u>Delaware Code</u>, as amended.

Attest:	SUSSEX COUNTY, DELAWARE
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 \$2,000,000 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 Winding Creek Village Water District Project, consisting of the (a) installation of a water main from the existing Tidewater Utilities Meadows Pump District to a master meter at the entrance to the Winding Creek Village Subdivision (the "Subdivision"), and (b) construction of a distribution system throughout the Subdivision, along with the installation of relevant valves and fire hydrants (collectively, the "Project"), with the expectation that up to \$1,000,000 of principal forgiveness will be applied in order to reduce the principal amount of the Bonds outstanding to \$1,000,000 upon Project completion.

#### **ENGINEERING DEPARTMENT**

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HANS M. MEDLARZ, P.E. COUNTY ENGINEER

#### Memorandum

TO: Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Samuel R. Wilson, Jr.

The Honorable John L. Rieley
The Honorable Douglas B. Hudson

FROM: Hans Medlarz, County Engineer

RE: Messick Development Streetlight District Creation

Authorization to Post for Public Hearing

DATE: April 2, 2019

The Engineering Department received petitions from forty-six percent of the residentially improved properties within the Messick Development in favor of establishing a Sussex County Street Lighting District.

The Code requires the Department to estimate the costs and assessments for the requested additions. After consultation with the Delaware Electric Cooperative, we believe the assessment to be at the lower end of \$65 - \$70 per year, per assessable property.

Assessment of the expansion properties would cover the installation of LED streetlights on existing as well as newly added wooden poles, as well as, the maintenance, and operation of the streetlights, and County administrative costs to oversee the program.

The next step in the process is for Council to authorize the Department to advertise for a public hearing. After consideration of statements made at the public hearing, the County Council may revise the boundary limits for the lighting service district or adopt a resolution establishing the date and place of an election.

Therefore, the Engineering Department is now requesting Council's concurrence on holding a public hearing for the proposed Messick Development Street Lighting District with an estimated rate of \$67.50 per year, per assessable property.



#### **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 (302) 855-7799 FAX





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HANS M. MEDLARZ, P.E. COUNTY ENGINEER

## Memorandum

TO: Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Samuel R. Wilson, Jr.

The Honorable John L. Rieley The Honorable Douglas B. Hudson

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

**RE:** Western Sussex Area of the Unified District

Heritage Shores Inflow Study

George, Miles & Buhr, LLC - Amendment No. 2

DATE: April 2, 2019

The Town of Bridgeville still owns and operates a sanitary sewer system for the Bridgeville/Greenwood service area. In February 2017, the municipal councils of Bridgeville and Greenwood requested investigation of an alternate County Sewer District based scenario. Upon review of the findings, both municipal Councils requested formation of a County sewer district pursuant to Title 9 Del. Code § 6501, and on <u>August 22, 2017</u>, County Council adopted a resolution establishing the Western Sussex Area of the Unified Sewer District.

Upon the request of the Town of Bridgeville, Sussex County is now providing interim operational assistance for the treatment plant, on a reimbursement basis until all municipal sewer related assets, liabilities and legacy obligations can be transferred after discontinuation of the point discharge into the Bridgeville Branch.

On December 5, 2017, Council approved the GMB, Inc. base contract in conjunction with Amendment No.1 in the amount of \$1,302,178.00 for engineering planning, design and construction phase services in conjunction with transmission facilities to convey wastewater from the Towns of Bridgeville and Greenwood to Seaford for treatment and disposal.

As part of the design, the Engineering Department, in cooperation with GMB, reviewed potential system inflow and infiltration sources. The objective was to remove them under the proposed project, retaining as much treatment & transmission capacity as possible. A major source of the inflow is located in Heritage Shores and the Engineering Department now



requests approval of Amendment 2 for flow monitoring services within Heritage Shores, in the amount of \$25,000.00.

This is <b>E</b>	(HIE	BIT H	<b>(</b> , co	nsistir	ng o	f Tw	<i>1</i> 0 (2)	pages,
referred	to	in	and	part	of	the	Agre	ement
between	Ow	ner	and	Engin	eer	for	Profe	ssional
Services of	date	d						

# AMENDMENT TO OWNER-ENGINEER AGREEMENT Amendment No. \_\_2\_\_

The Effective Date of this Amendment is:							
Background Data							
Effective Date of Project Order: November 28, 2017							
Owner: Sussex County							
Engineer: George, Miles & Buhr, LLC							
Project: Transmission Facilities for Western Sussex Unified District							
Nature of Amendment:							
X Additional Services to be performed by Engineer							
Modifications to services of Engineer							
Modifications to responsibilities of Owner							
Modifications of payment to Engineer							
Modifications to time(s) for rendering services							
Modifications to other terms and conditions of the Agreement							
Description of Modifications:  Heritage Shores Inflow Study to include flow monitoring (5 meters for 2 months) and follow-up corrective design.							
Project Order Summary:							
Original Project Order amount: \$\frac{1,302,178.00}{0}\$  Net change for prior amendments: \$\frac{0}{25,000.00}\$  Adjusted Project Order amount: \$\frac{1,327,178.00}{1,327,178.00}\$							
Change in time for services (days or date, as applicable):							

Exhibit K – Amendment to Owner-Engineer Agreement.

EJCDC® E-500, Agreement Between Owner and Engineer for Professional Services.

The foregoing Project Order Summary is for reference only and does not alter the terms of the Agreement or the Project Order, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect.

OWNE	R:	ENGINE	ENGINEER:			
Sussex	County Council	George, Miles & Buhr, LLC				
Ву:		By:				
Print name:	Michael H. Vincent	Print name:	Judy A. Schwartz, P.E.			
Title:	President, Sussex County Council	Title:	Senior Vice President			
Date Si	gned:	Date Sig	gned:			
(SEAL)						
PREVIO	USLY APPROVED FORM					
ATTEST	:					
	oin Griffith					
Clerk of	the County					



804 Plumtry Drive · West Chester, PA 19382 · Phone: (610) 918-3857

GMB 400 High Street Seaford, DE 19973

March 13, 2019

Attn: Benjamin Hearn, E.I.T.

Graduate Engineer

Re: Flow Monitoring for Bridgeville, DE

#### Dear Ben:

Thank you for presenting another opportunity to work with you. In this proposal we are offering six flow metering stations for 3 months each, along with a logging rain gauge.

For flow monitoring, typically we break-out our pricing as follows:

- Flow meter installation: one-time charge, and includes rigorous site analysis
  - o Flow meter removal is included in this price
- Equipment rental: shown on a per-month basis
- Flow meter site maintenance: shown on monthly basis
  - o Consists of our crew visiting the site to:
    - Enter the manhole to inspect, clean and adjust the sensor
    - Download the data and analyze the current period for data quality
    - Make any adjustments necessary to improve data quality
    - Communicate with our client on each site
- Flow data reduction & presentation: shown on a per-month basis. Each period's data download from each meter is uploaded to our data analysts, who perform a QA/QC analysis on each site.

### GMB FOR BRIDGEVILLE, DE March 13, 2019 Temporary Flow Monitoring

Item #	Task Description	Quantity	Unit	Unit Cost	<b>Total Cost</b>
1	Flow Meter and Telemetry Installation	6	Installations	\$1,450.00	\$8,700.00
2	Flow Meter Maintenance	18	Meter	\$275.00	\$4,950.00
3	(6 Meters x 3 Months = 18 Meter Months)  Flow Meter Rental  (6 Meters x 3 Months = 18 Meter Months)	18	Months  Meter  Months	\$740.00	\$13,320.00
4	Data Reduction & Presentation (6 Meters x 3 Months = 18 Meter Months)	18	Data Months	\$250.00	\$4,500.00
5	Data and Website Cost (6 Meters x 3 Months = 18 Meter Months)	18	Data Months	\$85.00	\$1,530.00
6	Logging Rain Gauge (Lump sum for up to 3 Months)	1	Lump Sum	\$750.00	\$750.00
	Total of Above:				\$33,750.00

B. Flow monitoring will be performed to obtain information necessary to accurately analyze the designated area(s) for diurnal flow rate. This information may be used to analyze infiltration during high groundwater periods and/or for rainfall related inflow during wet weather periods (assumes that a rain gauge is elected); or for capacity; or for determining flows between user and biller. Flow monitoring will be conducted continuously for the designated time period as directed by the Client.

The flow monitoring will be accomplished by one of the following methods:

- 1. The use of continuous monitoring devices incorporating a velocity sensor combined With a depth sensor; or
- 2. Palmer Bowlus flumes, in conjunction with continuous depth recording (used for lower flows in smaller pipes).
- C. [option proposed] A minimum of one recording tipping bucket rainfall gauge will be installed at a central location within the study area. The rain gauge will be capable of recording rainfall data in 15-minute increments. The rainfall data will enable the correlation of metered flow rates to rainfall intensity, duration, and volume for the purpose of identifying inflow and its components.

D. Flow monitoring data reduction and review will be performed on all data obtained each flow monitoring location. The data obtained will be reduced, evaluated, and presented in report form. One (1) copy of the completed report will be submitted to the Client. This will include, for each location, tabular reports based on 5-minute or 15-minute time increments.

The tabular report will be provided and will include:

A summary of daily flow information for a selected time period. The summary presents, for each day, the minimum flow rate, peak flow rate, total daily flow, total rain, peak hourly rain, and peak 15-minute rainfall, if applicable. The summary also included the total flow volume, average daily flow, and total rainfall quantity, if applicable, for the selected time period.

Detailed flow reports of the flow rate data in 15-minute time increments will also be prepared and submitted. The detailed report will include depth of flow, velocity of flow, incremental flow rate, cumulative flow rate and recorded rainfall. The report will also include the total daily flow volume and total daily rainfall quantity, if applicable.

In addition, flow hydrographs will be prepared for each flow monitoring location, which present a plot of the recorded flow rates for a selected time period. A bar graph of rainfall recorded during the selected time period is also plotted on the hydrograph.

Further, periodically data will be posted to a secure password protected web site that will allow project personnel (both city and consultant) access to flow, rainfall and groundwater recorded data. Users then can prepare and review detailed flow reports, graphs and tables. Comparison between wet and dry periods as well as net flows per sub system calculations is also capable. Online data export format capabilities included Excel, Access, and ASCII.

#### I. CLIENT RESPONSIBILITIES

While developing this proposal, I have assumed that GMB (hereinafter referred to as the Client) or the owner would provide the following at no additional charge to Flow Assessment Services (hereinafter referred to as sub consultant):

- A. Furnish copies of the necessary plot maps of all sewers to be studied (already provided). The sewer lines and manholes should be clearly marked and labeled with a numbered reference system.
- B. Make arrangements to provide traffic control as required by local public safety authorities; FAS will provide normal traffic control with our vans and cones.
- C. Make arrangements to provide access to and exposure for entry those manholes within the study area which are buried, covered or otherwise not readily accessible.
- D. Provide free and legal access to all sites of work.
- E. Assure the prompt clearance of major blockages or obstructions in the sewer system, if any, should such clearance be required for performance of the work.

F. Provide the shutdown of certain pump stations, upon prior request, should it become necessary for the satisfactory performance of the work.

#### II. MUTUAL AGREEMENTS

- A. Sub consultant shall not be held liable to the Client if delayed or prevented from performing the work as specified herein through any cause beyond the control of Sub consultant and not caused by his own fault or negligence, including acts of God, or the public enemy, weather conditions; acts of government, including changes in state and/or federal requirements governing sewer system evaluation surveys after the effective date of this contract; fires, floods, epidemics, strikes, jurisdictional disputes, lockouts, and freight embargoes. Sub consultant shall advise the Client, in writing, of any such delays
- B. Sub consultant is an equal opportunity employer.
- C. Sub consultant agrees to carry
  - a. Commercial General Liability, Personal & ADV Injury and Products, Comp/Op AGG
  - b. Automobile Liability, Bodily Injury, Property Damage
  - c. Umbrella Liability
  - d. Workman's Compensation Insurance covering any liability of the Consultant during the course of the services performed and as described herein
    - i. A sample certificate showing Flow Assessment's standard coverage is available on request
    - ii. Any insurance coverage beyond our standard may require charges beyond our proposal
- D. The provisions of the Agreement may be revised upon written notice by either party, and the written acceptance of the revisions by both parties to this Agreement.
- E. Sub consultant shall not assign, sublet, or transfer his interest in this Agreement without the written consent of the Client.

#### III. METHOD OF PAYMENT

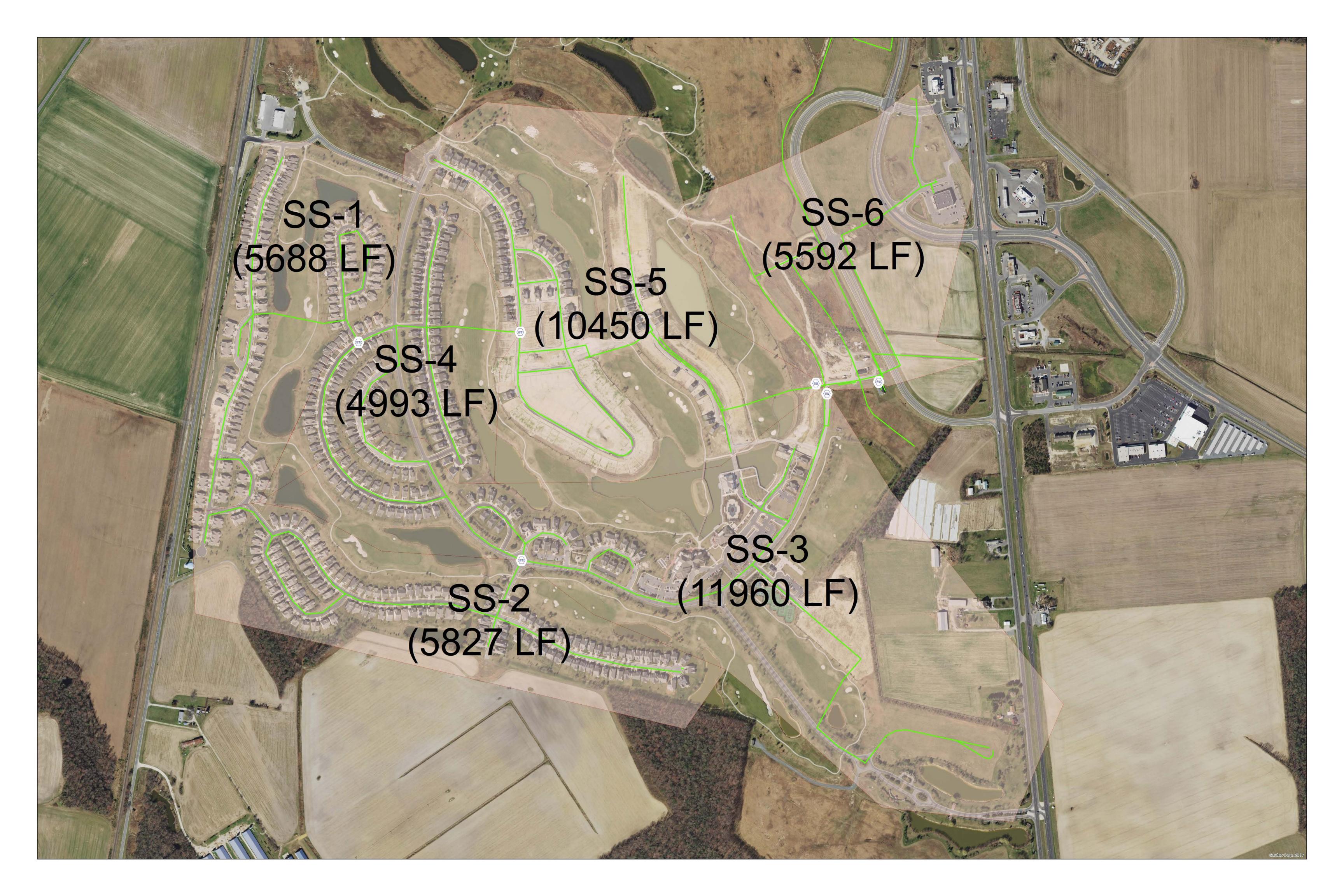
The Method of Payment for Professional Services outlined above shall be in the form of progress invoices to be submitted to the Client for the items above as the fieldwork is actually completed. Such invoices are due and payable within fourteen (14) days of Client receiving payment. If we invoice your client, different terms may apply.

Thank you for the opportunity to offer our services.

Very truly yours,

Jeff J. Cantwell

Email: jcantwell@flowassessment.com



#### **Kaycee Widen**

From: Hans Medlarz

**Sent:** Saturday, March 16, 2019 7:56 AM

**To:** Benjamin Hearn

**Cc:** Judy A. Schwartz; Jason Loar; Kaycee Widen; Dustin Rauch; Pope Greg (DNREC)

**Subject:** Re: Heritage Shores I/I Study

Hi Ben,

thank you for the concise summary. I concur that option 4 provides the best approach. Please have GMB submit an engineering services contract amendment for Council's approval. I suggest we make it NTE \$25,000 allowing for some follow-up corrective design.

I copied the Heritage Shores representative as well as DNREC to make them aware of the approach.

Regards, Hans

From: Benjamin Hearn <BHearn@gmbnet.com>

Sent: Thursday, March 14, 2019 3:29 PM

To: Hans Medlarz

**Cc:** Judy A. Schwartz; Jason Loar **Subject:** FW: Heritage Shores I/I Study

Hans,

We have received a proposal (attached) from Jeff Cantwell with Flow Assessment Services for completion of flow monitoring at Heritage Shores. Using the same approach as in Seaford, I identified 6 locations that would break up the "interceptor" line in Heritage Shores into pieces and capture the remaining area too (see attached map) for a period of three months. I have broken down different options of costs based on varying number of meters and months.

- Option 1: 6 Meters x 3 Months = \$33,750
- Option 2: 6 Meters x 2 Months = \$25,650
- Option 3: 5 Meters x 3 Months = \$28.250
  - o Combine SS-1 + SS-4 into one sewershed
- Option 4: 5 Meters x 2 Months = \$21,500
  - Combine SS-1 + SS-4 into one sewershed

Recognizing that this was not a budgeted item and we want to keep costs low, while still being able to find the source of I/I, I think we would recommend proceeding with option 4. Proceeding with Option 4, I would add a caveat that if we can identify an area with higher I/I, we could move a meter that is seeing consistent numbers, to the area with high I/I and break up the area into smaller pieces. This would add only a meter

installation cost, but give us a little more bang for the buck. Going with less meters creates more risk of missing rainfall and not capturing enough data to make a good determination of the location I/I.

Let me know your thoughts.

Thanks,

Ben



Benjamin Hearn, E.I.T.

Graduate Engineer

400 High Street | Seaford, DE | 19973

302.628.1421 | www.gmbnet.com | Find us on facebook

#### **ENGINEERING DEPARTMENT**

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# Sussex County

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HANS M. MEDLARZ, P.E. COUNTY ENGINEER

JOHN J. ASHMAN DIRECTOR OF UTILITY PLANNING

# Memorandum

TO:

Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Samuel R. Wilson, Jr. The Honorable Douglas B. Hudson The Honorable John L. Rieley

FROM:

John Ashman

Director of Utility Planning

RE:

Use of Existing Infrastructure Agreement

Swann Family Limited Partnership

File: OM 9.01

DATE:

April 2, 2019

In July of 2016, the Engineering Department gave a presentation on Sussex County's proactive wastewater infrastructure planning in the North Coastal Planning Area. The planning effort identified infrastructure needs and matched them to transmission and treatment capacity upgrades respectively. This arrangement collects financial contributions based on development built out flows for available capacity in the existing wastewater transmission infrastructure previously funded by the County while at the same time eliminating the granting of "oversizing" credits.

The Engineering Department requests approval of an agreement for the Use of Existing Infrastructure with **Swann Family Limited Partnership** for the **Swann Cove, Phase 9** project in the Fenwick Island Area. Such an arrangement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission system previously constructed by the County.

Under the proposed arrangement, **Swann Cove**, **Phase 9** project will connect to the existing County owned infrastructure. In return for utilization of said infrastructure **Swann Family Limited Partnership** will contribute **\$8,521.00** for the financial catch-up contribution of the existing infrastructure to serve **20.0** Equivalent Dwelling Units. Payment will be required prior to receiving a connection permit for the facility. System Connection Charges in place at the time of building permit request will still apply.



#### **USE OF EXISTING INFRASTRUCTURE AGREEMENT**

#### Swann Cove (Phase 9) Subdivision

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

**SWANN FAMILY LIMITED PARTNERSHIP,** the developer of a project known as Swann Cove, hereinafter called the "Developer."

#### WITNESSETH:

WHEREAS, Developer is developing a tract of land identified as Tax Map parcel 533-12.00-73.02 to be known as Swann Cove Phase 9 ("Project") and;

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

**WHEREAS**, the parcel has a connection available into the Sussex County regional infrastructure and;

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

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

- (1) Developer is proposing to utilize County's existing transmission capacity by connecting to an existing gravity collection line that will convey sewer to the County owned and operated pump station #30 where it will be pumped via force main to the County South Coastal Regional Wastewater Facility for treatment and disposal.
- (2) In exchange for permission to connect up to <u>20</u> equivalent dwelling units to County's existing system, Developer agrees to contribute <u>\$8,521.00</u> for the perpetual use of said facilities
- (3) The contribution amount in this case reimburses the County for a connection installed during a recent project that reduces the cost of infrastructure for the project.
- (4) Payment of the contribution is due at the time of execution of this agreement.
- (5) If the Project (as currently approved) is amended and County determines in its sole discretion that such amendments materially affect this Agreement, this Agreement

may be declared by County to be null and void, and any unused payments made pursuant to this Agreement shall be returned to Developer, unless the parties otherwise agree. Nothing herein shall prevent the parties from the negotiation of a new agreement with respect to the amended Project, as the parties may deem appropriate.

- (6) The contribution is to be placed in County's sewer capital fund and expended at such time when any transmission infrastructure in County's Unified Sanitary Sewer District requires upgrades or replacement.
- (7) Developer shall be responsible for payment of any and all undiscounted system connection charges in accordance with and pursuant to the requirements of the Sussex County Code for all lots, due at such time the Developer receives the sewer connection permit.
- (8) Developer shall comply in all aspects with the *Sussex County Code* and any other local, state, county, or federal laws, regulations, or policies that may be applicable and as such may be hereinafter amended.
- (9) Prior to the commencement of construction of any sanitary sewer facilities for the Project, Developer shall obtain a project construction permit from the County in accordance with and pursuant to the requirements of the Sussex County Code.
- (10) In order to allow the opportunity for a County representative to be present as the County so chooses, Developer shall send written notice to County of the date upon which connection to the County regional transmission system will be made. Developer shall follow County's written or verbal instructions in making said connection to the County sanitary sewer system.
- (11) Developer may assign this Agreement in whole or in part to any entity controlled directly or indirectly by Developer or to any third party who purchases, leases or otherwise controls any portion of Developer's property without the consent of County. Developer, and any subsequent assignees or successors shall provide County at least ten (10) days' written notice of any such assignment. Any other assignments, transfers, or conveyances with respect to this Agreement are prohibited without prior written consent of County.
- (12) To the extent permitted by law, Developer shall indemnify and hold harmless County, and its appointed and elected officials, employees, licensees, and agents for any claims, losses, liabilities, suits, or damages, including but not limited to reasonable attorneys' fees, professional engineering fees, and any other costs of litigation, arising out of Developer's negligence in connection with its performance of this Agreement, including but not limited to damage to the County's infrastructure in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.

- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is 37124 Saw Mill Lane Selbyville, Delaware 19975.

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

#### **FOR THE COUNTY:**

{Seal}	By:
	(President - Sussex County Council)
	(DATE)
ATTEST:	
Robin A. Griffith Clerk of the County Council	
	FOR SWANN FAMILY LIMITED PARTNERSHIP.
	By: James L. Swann III, Authorized Representative
	3/13/19 (DATE)



#### **ENGINEERING DEPARTMENT**

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



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HANS M. MEDLARZ, P.E. COUNTY ENGINEER

JOHN J. ASHMAN
DIRECTOR OF UTILITY PLANNING

## Memorandum

TO:

Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Samuel R. Wilson, Jr. The Honorable Douglas B. Hudson The Honorable John L. Rieley

FROM:

John Ashman

Director of Utility Planning

RE:

Use of Existing Infrastructure Agreement

Edge Marine, LLC File: OM 9.01

DATE:

April 2, 2019

In July of 2016, the Engineering Department gave a presentation on Sussex County's proactive wastewater infrastructure planning in the North Coastal Planning Area. The planning effort identified infrastructure needs and matched them to transmission and treatment capacity upgrades respectively. This arrangement collects financial contributions based on development built out flows for available capacity in the existing wastewater transmission infrastructure previously funded by the County while at the same time eliminating the granting of "oversizing" credits.

The Engineering Department requests approval of an agreement for the Use of Existing Infrastructure with Edge Marine, LLC for the Outer Banks project in the Rehoboth Beach Area. Such an arrangement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission system previously constructed by the County.

Under the proposed arrangement, **Outer Banks** project will connect to the existing County owned infrastructure. In return for utilization of said infrastructure **Edge Marine**, **LLC** will contribute **\$62,967.00** for the financial catch-up contribution of the existing infrastructure to serve **54.0** Equivalent Dwelling Units. Payment will be required prior to receiving a connection permit for the facility. System Connection Charges in place at the time of building permit request will still apply.



#### **USE OF EXISTING INFRASTRUCTURE AGREEMENT**

#### **OUTER BANKS – IUA1086**

THIS AGREEMEN	VT ("Agreement"), made this	 day of
	2019, by and between:	

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

**EDGE MARINE, LLC.** a Delaware Limited Liability Corporation and developer of a project known as **Outer Banks**, hereinafter called the "Developer."

#### WITNESSETH:

WHEREAS, Developer is developing a tract of land identified as Tax Map parcel 334-11.00-5.02 & 5.03 to be known as **Outer Banks** ("Project") and;

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

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

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

- (1) Developer is proposing to utilize County's existing collection and transmission capacity by connecting to existing regional infrastructure used by multiple pump stations.
- (2) In exchange for permission to connect up to <u>54.00</u> additional equivalent dwelling units to County's existing system and to utilize the existing capacity in said system, Developer agrees to financial catch-up contribution in the amount of <u>\$62,967.00</u> for said existing facilities.
- (3) The contribution amount in the case of multiple pump stations using an existing collection and transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) Payment of the contribution must be submitted prior to receiving a permit for the facility.
- (5) If the Project (as currently submitted) is amended and County determines in its sole discretion that such amendments materially affect this Agreement, this Agreement may be declared by County to be null and void, and any unused payments made

pursuant to this Agreement shall be returned to Developer, unless the parties otherwise agree. Nothing herein shall prevent the parties from the negotiation of a new agreement with respect to the amended Project, as the parties may deem appropriate.

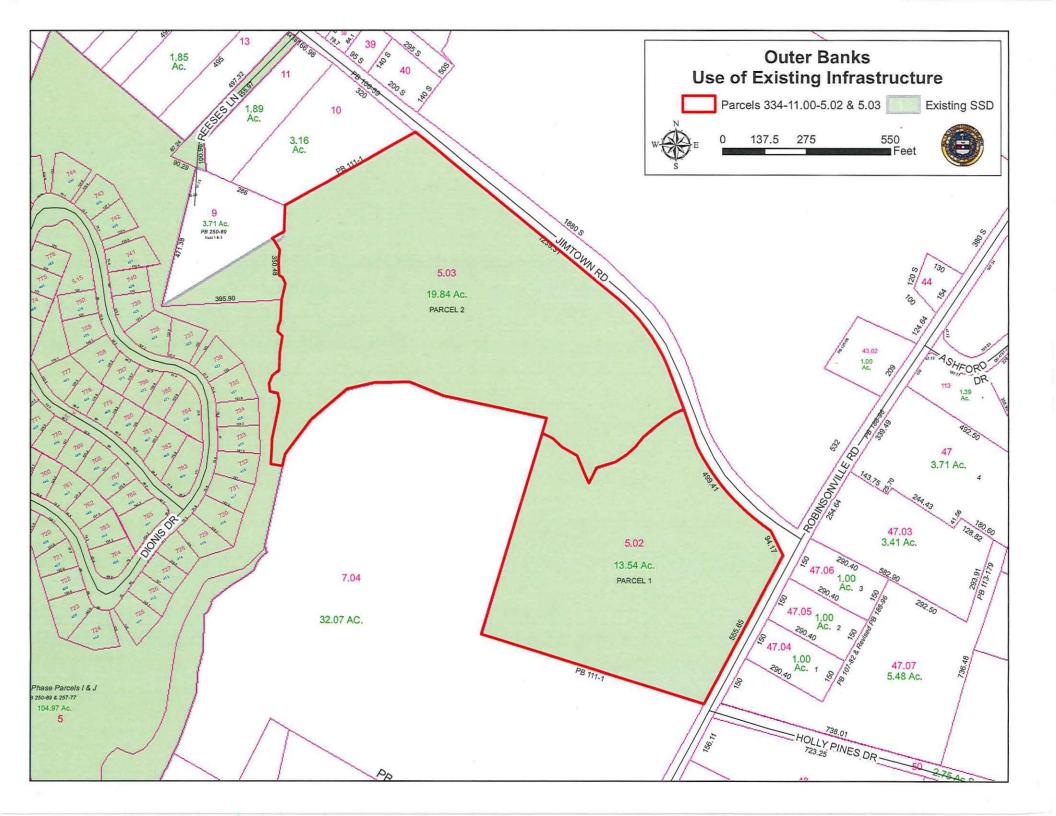
- (6) The contribution is to be placed in County's sewer capital fund and expended towards overall debt reduction or at such time when any transmission infrastructure in County's Unified Sanitary Sewer District requires capital improvements (See Chapter 110-96 of the Sussex County Code).
- (7) Developer shall be responsible for payment of any and all undiscounted system connection charges in accordance with and pursuant to the requirements of the *Sussex County Code* for all lots, due at such time the Developer receives the sewer connection permit.
- (8) Developer shall comply in all aspects with the *Sussex County Code* and any other local, state, county, or federal laws, regulations, or policies that may be applicable and as such may be hereinafter amended.
- (9) Prior to the commencement of construction of any sanitary sewer facilities for the Project, Developer shall obtain a project construction permit from the County in accordance with and pursuant to the requirements of the Sussex County Code.
- (10) In order to allow the opportunity for a County representative to be present as the County so chooses, Developer shall send written notice to County of the date upon which connection to the County regional transmission system will be made. Developer shall follow County's written or verbal instructions in making said connection to the County sanitary sewer system.
- (11) Developer may assign this Agreement in whole or in part to any entity controlled directly or indirectly by Developer or to any third party who purchases, leases or otherwise controls any portion of Developer's property without the consent of County. Developer, and any subsequent assignees or successors shall provide County at least ten (10) days' written notice of any such assignment. Any other assignments, transfers, or conveyances with respect to this Agreement are prohibited without prior written consent of County.
- (12) To the extent permitted by law, Developer shall indemnify and hold harmless County, and its appointed and elected officials, employees, licensees, and agents for any claims, losses, liabilities, suits, or damages, including but not limited to reasonable attorneys' fees, professional engineering fees, and any other costs of litigation, arising out of Developer's negligence in connection with its performance of this Agreement, including but not limited to damage to the County's infrastructure in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.

- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is P.O. Box 52 Nassau, Delaware 19969.

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

#### **FOR THE COUNTY:**

{Seal}	Deve
	By:(President - Sussex County Council)
	(DATE)
ATTEST:	
Robin A. Griffith Clerk of the County Council	
Clerk of the County Council	
	FOR EDGE MARINE, LLC
	By: Blake Thompson - Authorized Signatory
	March 4, 2019 (DATE)
WITNESS: Carol	Mordinal



#### **ENGINEERING DEPARTMENT**

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



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JOHN J. ASHMAN DIRECTOR OF UTILITY PLANNING

### Memorandum

TO:

Sussex County Council

The Honorable Michael H. Vincent, President The Honorable Irwin G. Burton III, Vice President

The Honorable Samuel R. Wilson, Jr. The Honorable Douglas B. Hudson The Honorable John L. Rieley

FROM:

John Ashman

Director of Utility Planning

RE:

Use of Existing Infrastructure Agreement

Colonial Oaks Hotel II, LLC

File: OM 9.01

DATE:

April 2, 2019

In July of 2016, the Engineering Department gave a presentation on Sussex County's proactive wastewater infrastructure planning in the North Coastal Planning Area. The planning effort identified infrastructure needs and matched them to transmission and treatment capacity upgrades respectively. This arrangement collects financial contributions based on development built out flows for available capacity in the existing wastewater transmission infrastructure previously funded by the County while at the same time eliminating the granting of "oversizing" credits.

The Engineering Department requests approval of an agreement for the Use of Existing Infrastructure with **Colonial Oaks Hotel II, LLC** for the **Residence Inn Marriott** project in the Rehoboth Beach Area. Such an arrangement does not modify the underlying land use decision in any form. However, it allows the wastewater originating from the approved project to be conveyed through the existing transmission system previously constructed by the County.

Under the proposed arrangement, **Residence Inn Marriott** project will connect to the existing County owned infrastructure. In return for utilization of said infrastructure **Colonial Oaks Hotel II, LLC** will contribute \$51,347.00 for the financial catch-up contribution of the existing infrastructure to serve **82.0** Equivalent Dwelling Units. Payment will be required prior to receiving a connection permit for the facility. System Connection Charges in place at the time of building permit request will still apply.



#### **USE OF EXISTING INFRASTRUCTURE AGREEMENT**

#### **RESIDENCE INN MARRIOTT – IUA1105**

	IS AGREEMENT ("Agreement"), made this	7+4	day of
Majol	2019, by and between:		

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

**COLONIAL OAKS HOTEL II, LLC.** a Delaware Limited Liability Corporation and developer of a project known as **Residence Inn Marriott**, hereinafter called the "Developer."

#### WITNESSETH:

WHEREAS, Developer is developing a tract of land identified as Tax Map parcel 334-12.00-57.07 to be known as **Residence Inn Marriott** ("Project") and;

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

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

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

- (1) Developer is proposing to utilize County's existing collection and transmission capacity by connecting to existing regional infrastructure used by multiple pump stations.
- (2) In exchange for permission to connect up to <u>82.00</u> additional equivalent dwelling units to County's existing system and to utilize the existing capacity in said system, Developer agrees to financial catch-up contribution in the amount of <u>\$51,347.00</u> for said existing facilities.
- (3) The contribution amount in the case of multiple pump stations using an existing collection and transmission system is based on the ratio of average flow capacity utilization of said transmission facilities.
- (4) Payment of the contribution must be submitted prior to receiving a building permit for the facility.
- (5) If the Project (as currently submitted) is amended and County determines in its sole discretion that such amendments materially affect this Agreement, this Agreement

may be declared by County to be null and void, and any unused payments made pursuant to this Agreement shall be returned to Developer, unless the parties otherwise agree. Nothing herein shall prevent the parties from the negotiation of a new agreement with respect to the amended Project, as the parties may deem appropriate.

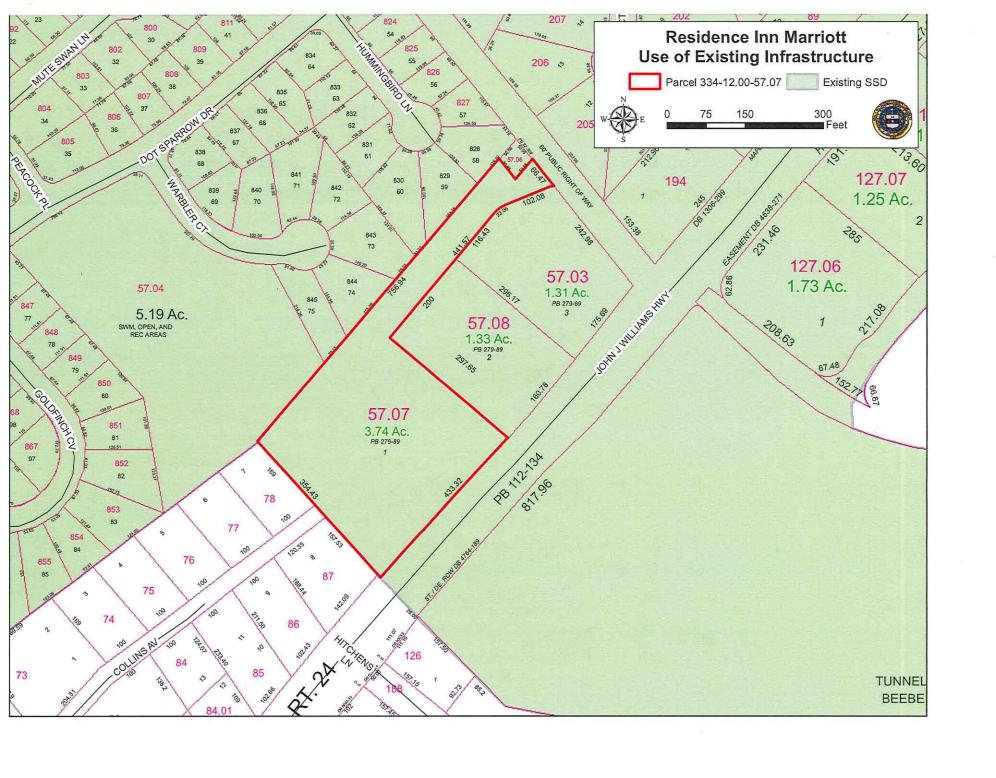
- (6) The contribution is to be placed in County's sewer capital fund and expended towards overall debt reduction or at such time when any transmission infrastructure in County's Unified Sanitary Sewer District requires capital improvements (See Chapter 110-96 of the Sussex County Code).
- (7) Developer shall be responsible for payment of any and all undiscounted system connection charges in accordance with and pursuant to the requirements of the *Sussex County Code* for all lots, due at such time the Developer receives the sewer connection permit.
- (8) Developer shall comply in all aspects with the *Sussex County Code* and any other local, state, county, or federal laws, regulations, or policies that may be applicable and as such may be hereinafter amended.
- (9) Prior to the commencement of construction of any sanitary sewer facilities for the Project, Developer shall obtain a project construction permit from the County in accordance with and pursuant to the requirements of the Sussex County Code.
- (10) In order to allow the opportunity for a County representative to be present as the County so chooses, Developer shall send written notice to County of the date upon which connection to the County regional transmission system will be made. Developer shall follow County's written or verbal instructions in making said connection to the County sanitary sewer system.
- (11) Developer may assign this Agreement in whole or in part to any entity controlled directly or indirectly by Developer or to any third party who purchases, leases or otherwise controls any portion of Developer's property without the consent of County. Developer, and any subsequent assignees or successors shall provide County at least ten (10) days' written notice of any such assignment. Any other assignments, transfers, or conveyances with respect to this Agreement are prohibited without prior written consent of County.
- (12) To the extent permitted by law, Developer shall indemnify and hold harmless County, and its appointed and elected officials, employees, licensees, and agents for any claims, losses, liabilities, suits, or damages, including but not limited to reasonable attorneys' fees, professional engineering fees, and any other costs of litigation, arising out of Developer's negligence in connection with its performance of this Agreement, including but not limited to damage to the County's infrastructure

- in making connection to County's regional transmission system. The obligations of this Paragraph shall survive the termination of this Agreement.
- (13) All the terms, covenants, and conditions of this Agreement shall in all respects be governed and construed under and pursuant to the Laws of the State of Delaware without respect to its conflict of law provisions. This Agreement may only be amended, supplemented or modified by a subsequent written agreement executed by all the parties hereto.
- (14) This Agreement and exhibits constitute the final, entire and exclusive agreement between the parties with respect to the subject matter of all matters discussed in it and supersedes all prior or contemporaneous discussions, statements, representations, warranties or agreements, whether written or oral, made in connection with the Agreement described herein.
- (15) It is mutually agreed between the parties that no review, approval, acceptance, and/or payment made under this Agreement shall be conclusive evidence of the performance of the Agreement, either wholly or in part, and that no review, approval, acceptance, and/or payment shall be construed as acceptance of defective work by County, nor in any way relieve Developer of its responsibility for the adequacy of its work.
- (16) The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach. Neither party shall be deemed to have waived any rights under this Agreement unless such waiver is expressly given in writing and signed by the waiving party. No delay or omission on the part of either party in exercising any right shall operate as a waiver of such right or any other right.
- (17) This Agreement shall be executed in duplicate, any copy of which shall be considered and construed as and for the original.
- (18) If any provision of this Agreement shall be deemed invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not render invalid or unenforceable any of the other provisions of this Agreement which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Agreement are hereby deemed to be severable.
- (19) Any notice required to be delivered to or by either party under this Agreement shall be sent by U.S. first class mail. For purposes of this provision, the address of the County is 2 The Circle, P.O. Box 589, Georgetown, Delaware, 19947, and the address of the Developer is 30045 Eagle Crest Road, Milton Delaware 19968.

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

#### **FOR THE COUNTY:**

{Seal}	By:
	By: (President - Sussex County Council)
	(DATE)
ATTEST:	
Robin A. Griffith Clerk of the County Council	
	FOR COLONIAL OAKS HOTEL II, LL
	By: (Sea Christian Hudson - Authorized Signatory
	3/7/19 (DATE)
WITNESS: (Joni L. Corerdale)	





## SUSSEX COUNTY GOVERNMENT

#### **GRANT APPLICATION**

	SECTION 1 APPLICANT	INFORMATION	Manager 1
ORGANIZATION NAME	Delaware Symphon	y Orcheatra	
PROJECT NAME:	2018-2019 Season (	Classics Series Conc	erts in Lewes
FEDERAL TAX ID:	51-6017449	NON-PROFIT	: ■ YES □ NO
DOES YOUR ORGANIZA	TION OR ITS PARENT ORGANI	ZATION HAVE A RELIGIOUS A	FFILIATION?
	☐ YES ■ NO *IF YE	S, FILL OUT SECTION 3B.	
ORGANIZATION'S MISS	ION: The Delaware Symphon through inspiring musica		enriching lives
	unough maphing musice	и охронопосо.	
	100 West 10th St	root	
ADDRESS:	Suite 1003	reet	
	Wilmington	DE	19801
	(CITY)	(STATE)	(ZIP)
CONTACT PERSON:	Alan Jordan		
TITLE:	Executive Directo	or	
PHONE:	(302) 656-7442, ext. 1001 EMA	<sub>IL:</sub> alanj@delawaresy	mphony.org
	TOTAL FUNDING REQUES	ST: \$5,000	215 115 11 11 11 11 11 11 11 11 11 11 11
Has your organization ro the last year?	eceived other grant funds from		n □YES ■NO
If YES, how much was re	ceived in the last 12 months?		
f you are asking for func ouilding in which the fun	ling for building or building im ding will be used for?	provements, do you own the	□YES □NO

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

If YES, approximately what percentage of the project's funding does the Council grant represent? 6%

YES NO

Fair Housing	OGRAM CATEGORY (choose all that ap  Health and Human Services	Cultural
Infrastructure <sup>1</sup>	Other	Educational
	BENEFICIARY CATEGORY	
Disability & Special Needs	☐ Victims of Domestic Violence	☐ Homeless
Elderly Persons	Low to Moderate Income <sup>2</sup>	Youth
■ Minority	Other	manual)
	BENEFICIARY NUMBER	

#### SECTION 31 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.

Funding is requested to support the DSO's two 2018-2019 Season Classics Series concerts at Lewes' Cape Henlopen High School Theatre on September 30, 2018, and March 24, 2019.

At the DSO's Classics Series concert in Lewes on September 15, 2017, 452 residents attended the performance, and many people who experienced our first concert in recent times in Lewes commented that the area is eager for more cultural opportunities. We realize that there are a number of other presenters in the area, but the DSO hopes to fill a void for classical large ensemble offerings, and to become a regular presence in Sussex County. That performance was followed on September 30, 2018, when 506 residents attended. Clearly, the desire and support is growing.

The DSO adopted its current strategic plan in 2016, envisioning significant geographic and programmatic expansion, including new educational outreach offerings. Developing an ongoing presence in Sussex County is a key component of that plan, as is increasing the Orchestra's statewide awareness and impact.

The Jessie Ball du Pont Fund has endorsed our plans with a \$40,000 grant to support these two performances. The first \$20,000 has already been received, but the Fund challenged the Orchestra to secure an additional \$20,000 from local sources in order to receive the second \$20,000 from the Fund. The Gallo Gives Foundation, the charitable arm of Gallo Realty, of Lewes, DE, has pledged a \$5,000 gift, and Wilmington Trust has recently pledged another \$5,000. The DSO must still raise another \$10,000, in addition to ticket revenues for the remaining March, 2019, performance. Requests are pending with several businesses and foundations as well as a number of individuals.

We are grateful for the Council's past support of the DSO (beginning nearly 30 years ago) and for its historical support of cultural activities in Sussex County. We invite you to help us achieve our challenge and support the Orchestra's efforts to reach new patrons in southern Delaware. In addition to helping to bring the DSO to Lewes twice this season, your contribution will support our Access For All initiative, which provides complimentary and steeply-discounted concert admission to members of the community with attendance barriers. These barriers can be both real (i.e., financial or transportation) and perceived (i.e., cultural or social). The DSO has identified area organizations as partners to work with in promoting the concerts and in distributing tickets to underserved populations.

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.

REVENUE  Please enter the current support your organization receives for this project  (not entire organization revenue if not applicable to request)	
TOTAL REVENUES	63,334.00
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)	
Musician Wages and Benefits	-\$ 50,750.00
Soloist Fees	-\$ 8,400.00

-\$6,660.00

-\$ 6,840.00

-\$ 5,000.00 -\$ 833.00

-\$ 79,075.00

-\$ 15,741.00

-\$ 592.00

SECTION 4: BUDGET

Concert Venue Fees and Labor

Production and Equipment Rental/Transportation

Box Office Expenses

Miscellaneous

Marketing and Promotion

TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	17

TOTAL EXPENDITURES

If this grant application is awarded funding, the <u>Delaware Symphony Orchestra</u> agrees that: (Name of Organization)

SECTION 5: STATEMENT OF ASSURANCES

- 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.
- 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.

Applicant/Authorized Official

Mitmagg

October 18, 2018

Date

October 18, 2018

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.

Alan Jordan

Executive Director

Kristin Peterson

Applicant/Authorized Official

October 18, 2018 Burton 2 21-19

Witness

Date

Title



## SUSSEX COUNTY GOVERNMENT

#### **GRANT APPLICATION**

	SECTION 1 APPLICANT	INFORMATION	
ORGANIZATION NAME:	Mid-Atlantic Sym	ohony Orchestra	a
PROJECT NAME:	2018-19 Concert		
FEDERAL TAX ID:	52-2038928	NON-PROF	TT: YES NO
DOES YOUR ORGANIZA	TION OR ITS PARENT ORGANI	ZATION HAVE A RELIGIOUS	AFFILIATION?
	YES NO *IF YES	S, FILL OUT SECTION 3B.	
ORGANIZATION'S MISS		tlantic Symphony Orchest through the power of clas	
	III tilo iilia / tiaittio iogioi	tillough the power of class	
	in the file Adamie region	through the power of clas-	ologi maolo.
	in the mid Additionegor	through the power of clas-	ologi madio.
		through the power of clas-	oldai muolo.
ADDRESS:	P.O. Box 3381	through the power of class	olda muolo.
		unough the power of clas-	olda muolo.
		MD	20601
	P.O. Box 3381		
ADDRESS:	P.O. Box 3381 Easton	MD (STATE)	20601
	P.O. Box 3381  Easton	MD (STATE)	20601

TOTAL FUNDING REQUEST: \$2,000.00	
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?	\$2,000
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?<1%

#### SECTION 2: PROGRAM DESCRIPTION PROGRAM CATEGORY (choose all that apply) ■ Cultural Fair Housing Health and Human Services Infrastructure<sup>1</sup> Educational Other BENEFICIARY CATEGORY Disability & Special Needs Victims of Domestic Violence Homeless **Elderly Persons** Youth Low to Moderate Income<sup>2</sup> Other All Ages Minority BENEFICIARY NUMBER Approximately the total number of Sussex County Beneficiaries served annually by this program: 1,500

#### **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.

The Mid-Atlantic Symphony Orchestra (MSO) is a regional company of professional musicians of the highest caliber dedicated to keeping the orchestral art form alive and active in the Mid-Atlantic region. We perform a repertoire of classical and modern compositions in venues across the area and have become an integral part of the cultural life on the Eastern Shore and in Sussex County. The MSO is the only professional orchestra presenting a season subscription series each year in this region. The MSO season includes five concerts give at each of our three venues in Ocean View, DE, and Ocean Pines and Easton, MD, plus special annual performances in Fenwick Island and Lewes. More than 1,500 people attend MSO concerts annually in Sussex County. Our audiences are most appreciate of the fact that they have a professional orchestra available locally, at a reasonable cost, so they do not have to travel to a major city to hear quality classical music.

Operating funds for the 2018-19 season, the beginning of the MSO's thrird decade of performing in the mid-Atlantic region, have brought several outstanding programs to Sussex County patrons at our regular venue at Mariner's Bethel Church in Ocean View and at Cape Henlopen High School in Lewes. We are thrilled to have performed such pieces as Beethoven's Violin Concerto, Mozart's Sinfonia Concertante, and Schubert's Symphony No. 4. The MSO welcomed such tremendous artists as Stefan Jackiw; Kurt Nikkanen, Concertmaster of New York City Ballet; and guest conductor Andrews Sill.

Each MSO concert costs upwards of \$30,000 to carry out, including costs for musicians, venue rental, rehearsal space, music rental, and advertising. The support of the community, individuals, and businesses is vital to the livelihood of the MSO, since ticket sales only account for about a third of our operating budget. In order to bring artists of the highest caliber to our region, the MSO relies upon contributions from corporate sponsors and local government agencies to help us meet our annual budget. A contribution from the Sussex County Council would help ensure that the MSO is able to meet its operating budget and continue to provide a quality arts experience to county residents of all ages. By partnering with the MSO, the Sussex County Council demonstrates its commitment to the arts, and assists the MSO in furthering our mission to "enrich life in the mid-Atlantic region through the power of classical music."

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	264,893.00
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)	
Salaries/Services	-\$ 95,193.00
Concert Costs	-\$ 138,100.00
Advertising/Marketing	-\$ 3,500.00
Fees	-\$ 3,100.00
Printing	-\$ 8,400.00
Mailing/Supplies/Phone	-\$ 4,200.00
Dues/Insurance/Reserve	-\$ 12,100.00
Technology	-\$ 2,300.00
TOTAL EXPENDITURES	-\$ 266,893.00
TOTAL DEFICIT FOR PROJECT OR ORGANIZATION	-\$ 2,000.00

#### **SECTION 5: STATEMENT OF ASSURANCES**

If this grant application is awarded funding, the  $\frac{\text{Mid-Atlantic Symphony Orchestra}}{\text{(Name of Organization)}}$  agrees that:

- 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.
- 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.

Mary Low Tietz
Applicant/Authorized Official Signature

Applicant/Authorized Official Signature

Witness Signature

3/15/19

Date

3/15/19

Date

Completed application can be submitted by:

Email: gjennings@sussexcountyde.gov

Mail: Sussex County Government

Attention: Gina Jennings

PO Box 589

Georgetown, DE 19947

# 99

## 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.

Mary Lou Tietz
Applicant/Authorized Official Signature

Development Manager

Title

3/15/19

Witness Signature

Date

Rev. 02/2019

#### To Be Introduced 04/02/19

Council District No. 3 - Burton

Tax I.D. No. 334-1.00-15.00 and 334-1.00-15.03

911 Address: None Available

#### ORDINANCE NO. \_\_\_\_

AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT AND C-2 MEDIUM COMMERCIAL DISTRICT TO A HR-1 HIGH-DENSITY RESIDENTIAL DISTRICT – RESIDENTIAL PLANNED COMMUNITY FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 15.2 ACRES, MORE OR LESS

WHEREAS, on the 14th day of February 2019, a zoning application, denominated Change of Zone No. 1882, was filed on behalf of Nassau DE Acquisition Co., LLC; and WHEREAS, on the \_\_\_\_\_\_ day of \_\_\_\_\_\_\_ 2019, 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. 1882 be \_\_\_\_\_\_; and \_\_\_\_\_\_\_; and \_\_\_\_\_\_\_\_ 2019, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County has determined, based on the findings of facts, that said change of zone is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County.

#### NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. That Chapter 115, Article II, Subsection 115-7, Code of Sussex County, be amended by deleting from the Comprehensive Zoning Map of Sussex County the zoning classification of [AR-1 Agricultural Residential District] and [C-2 Medium Commercial District] and adding in lieu thereof the designation of HR-1 High-Density Residential District – Residential Planned Community) as it applies to the property hereinafter described.

#### Section 2. The subject property is described as follows:

ALL that certain tract, piece or parcel of land lying and being situate in Lewes and Rehoboth Hundred, Sussex County, Delaware, and lying on the east side of Coastal Highway (Route 1) approximately 150 feet north of Old Mill Road, and on the north side of Old Mill Road approximately 708 feet east of Coastal Highway (Route 1), and being more

particularly described in the attached legal description prepared by Hillcrest Associates, said parcel containing 15.2 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.



- 1 AN ORDINANCE TO AMEND THE CODE OF SUSSEX COUNTY,
- 2 CHAPTER 62, ARTICLE III, SECTION 62-7, CHAPTER 72, ARTICLE I,
- 3 SECTIONS 72-4 AND 72-5, CHAPTER 115, ARTICLES IV, XXV AND
- 4 TABLE 1 BY AMENDING SECTIONS 115-22, 115-25, 115-182, 115-183
- 5 AND 115-194.3 TO REPLACE ALL REFERENCES TO THE
- 6 "ENVIRONMENTALLY SENSITIVE DEVELOPMENT DISTRICT",
- 7 "ENVIRONMENTALLY SENSITIVE DEVELOPMENT DISTRICT
- 8 OVERLAY ZONE", "ESDDOZ" AND "ENVIROMENTALLY
- 9 SENSITIVE DEVELOPING AREA" WITH "COASTAL AREA".

10

- WHEREAS, Sussex County Council has adopted the **2018** Comprehensive Plan
- 12 (the "Plan"); and

13

- 14 WHEREAS, The Future Land Use Element of the Plan creates a new "Coastal
- Area" and eliminates the Environmentally Sensitive Developing Area as a land
- use area on the Future Land Use Map contained in the Plan; and

17

- WHEREAS, the Zoning Code must be updated to eliminate all references to the
- 19 Environmentally Sensitive Developing Area since that Area no longer exists in
- 20 the Plan; and

21

- 22 WHEREAS, the Zoning Code must be amended to insert "Coastal Area" where
- 23 the "Environmentally Sensitive Developing Area" was previously referenced.

24

- 25 NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY
- ORDNAINS:

2728

- 29 Section 1. The Code of Sussex County, Chapter 62, Article III, §62-7
- "Building Fees" is hereby amended by deleting the language in brackets and
- 31 inserting the italicized and underlined language:

32

33 §62-7. Building Fees.

34

- 35 The schedule of fees for permits and applications for buildings and the like shall
- 36 be as hereinafter indicated:

37

38 ...

39

I. Cluster fee [as required by § 115-25B(3) and F(3)]. The Council will review the fees for a density bonus under the terms of this act on an annual basis and revise such fees as it deems necessary.

43

- For the town centers and developing areas around Greenwood, ridgeville, Seaford, Blades, Laurel, and Delmar, \$15,000 per unit in excess of two dwelling units per acre.
- For the town centers and developing areas around Milford, Milton, Ellendale, Georgetown, Millsboro, Dagsboro, Frankford and Selbyville, \$15,000 per unit in excess of two dwelling units per acre.
- For the [environmentally sensitive developing area] <u>Coastal Area</u>, \$20,000 per unit in excess of two dwelling units per acre.

52

54

53 ...

Section 2. The Code of Sussex County, Chapter 72, Article I, §72-4 "Declaration of Public Policy" is hereby amended by deleting the language in brackets and inserting the italicized and underlined language:

58 59

§72-4. Declaration of Public Policy.

60

The Sussex County Council hereby declares it to be the public policy of the County to:

64 ..

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67

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63

E. Encourage developments in town centers, developing areas and [environmentally sensitive developing areas] *coastal areas* with 35 or more total dwelling units to include a minimum number of moderately priced units of varying sizes on public water and sewer systems.

70 ...

71

Section 3. The Code of Sussex County, Chapter 72, Article I, §72-5 "Definitions" is hereby amended by deleting the language in brackets and inserting the italicized and underlined language in the definition of "Qualifying Land":

76 77

- §72-5 Definitions
- 78 The following words and phrases have the following meanings:

79	
80	
81	
82	QUALIFYING LAND
83	All land:
84	Till land.
85	
86	
87	B. In a Town Center, Developing Area or [Environmentally Sensitive
88	Developing Area] <u>Coastal Area</u> and zoned for any type of residential
89	development to which a density provision applies or land that is designated on
90	town's comprehensive plan as lying within the town's growth and future
91	annexation area; and that
92	
93	
94	
95	Section 4. The Code of Sussex County, Chapter 115, Article IV, §115-22
96	"Conditional Uses" is hereby amended by deleting the language in brackets
97	and inserting the italicized and underlined language:
98	
99	§115-22. Conditional Uses.
100	
101	The Following uses may be permitted as conditional uses when approved in
102	accordance with the provisions of Article XXIV of this Chapter:
103	
104	
105	
106	Multifamily dwelling structures and/or town homes, subject to the provisions of
107	this chapter, when:
108	
109	A. Said multifamily dwelling structures and/or town homes, the owers
110	of which would share and own in common the surrounding grounds (which may
111	also be referred to herein collectively as "units") lie within a Town Center, a
112	Developing Area, or an [Environmentally Sensitive Developing Area] <u>Coastal</u>
113	Area as described within the Land Use Element and as shown on the Future
114	Land Use Plan of the adopted Sussex County Comprehensive Plan; and
115	
116	•••

1	1	7
1	1	8

- 119 Section 5. The Code of Sussex County, Chapter 115, Article IV, §115-25
- "Height, Area and Bulk Requirements", Note "\*\*" under subsection B.
- thereof, is hereby amended by deleting the language in brackets and
- inserting the italicized and underlined language:

123

\$115-25. Height, Area and Bulk Requirements.

125

B. Minimum lot sizes, dimensions and open space for lots using a central sewer system as defined by §115-194A:

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129 ...

130

- \*\*For lots located located in the [Environmentally Sensitive Development
- District] *Coastal Area*, the Development Districts or the Town Center Districts,
- the overlay ordinance for that district shall determine the minimum lot size.

134

- Section 6. The Code of Sussex County, Chapter 115, Article XXV, §115-182
- "Front Yards" is hereby amended by deleting the language in brackets and
- inserting the italicized and underlined language:

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- 139 **§ 115-182. Front yards.** 
  - A. On through lots, the required front yard shall be provided on each street.
- B. There shall be a front yard of at least 15 feet on the side street of a corner lot in any district.
  - C. On a street or road with existing buildings having a front yard setback that is less than that required in the district, any building may have a front yard setback that is equal to the average setback of those existing buildings located on the same side of the street or road and being with 300 feet of the building. Any vacant lot shall be calculated as having the required setback for the district. No front yard setback reduced pursuant to this subsection shall be reduced to less than five feet. The provision of this subsection shall not apply to any lot in a cluster subdivision, [ESDDOZ] *Coastal Area* cluster subdivision or residential planned community.

4

D. Open unenclosed decks, porches, platforms or steps not covered by a roof or canopy and which do not extend above the level of the first floor of the building may extend or project into the front yard not more than five feet. This provision does not apply to manufactured home parks or campgrounds.

Section 7. The Code of Sussex County, Chapter 115, Article XXV, §115-183 "Side and Rear Yards" is hereby amended by deleting the language in brackets and inserting the italicized and underlined language:

#### § 115-183. Side and rear yards.

- A. Where a building in a commercial district is subject to the height, area and bulk requirements applicable to residential development under § 115-178 of this article, the side yard requirements for residential development shall be applied only to the lowest floor (and all floors above it) which contains more than 25% of its area used for dwelling. All floors shall be subject to side yards required by these regulations for commercial buildings adjacent to residential districts.
- B. For the purpose of the side yard regulations, a group of business or industrial buildings separated by common or party walls shall be considered as one building occupying one lot.

C. Open unenclosed decks, porches, platforms or steps not covered by a roof or canopy and which do not extend above the first floor of the building may be constructed in a side or rear yard no closer than five feet from a side lot line and five feet from a rear lot line. This provision does not apply to manufactured home parks or campgrounds.

D. For any existing approved lot that is less than 10,000 square feet in size, the side yard setbacks shall be reduced to five feet and the rear yard setback shall be reduced by five feet. For any lot with side or rear setbacks reduced by operation of this § 115-183D, no structures shall extend or project closer than five feet from the lot line. The provision of this subsection shall not apply to any lot in a cluster subdivision, [ESDDOZ] *Coastal Area* cluster subdivision or residential planned community.

Section 8. The Code of Sussex County, Chapter 115, Article XXV, §115-194.3 "Environmentally Sensitive Development District Overlay Zone

	)" is hereby amended by deleting the language in brackets and he italicized and underlined language:
	3. ES-1 [Environmentally Sensitive Development verlay Zone (ESDDOZ)] <u>Coastal Area</u> .
A. Delir	neation of the zoning district.
(1)	The [Environmentally Sensitive Development District] <u>Coastal Area</u> shall include all lands designated as the "[Environmentally Sensitive Developing] <u>Coastal</u> Area" in the adopted Sussex County Comprehensive Plan dated [January 1, 2003], or as subsequently amended.
(2)	, , ,
	roadway, the overlay zone shall be deemed to include the contiguous
	property on the far side of the roadway, provided that depth of the
	[ESDDOZ] <u>Coastal Area</u> on contiguous property shall not exceed
	six hundred feet.
в. Ај	oplication process.
(1)	All rezoning, subdivision, business and industrial site plans and conditional use applications involving one or a combination of the following shall be subject to the process and performance requirements as described hereinafter:
	(a) Any residential planned community application.
	(b) Any development containing 50 or more dwelling units.
	(c) Any development containing 75,000 square feet or more of
	floor area used for commercial or industrial uses.
	(d) Any use or activity that requires a permit in the Coastal Zone.
(2)	The applicant shall submit an environmental assessment and public
	facility evaluation report and sketch plan (report) to the Director of
	Planning and Zoning, a copy of which will be forwarded to the
	Office of State Planning Coordination and members of the Technical
	Advisory Committee for review and comment. The sketch plan shall
	address the following issues for the property to be developed and,
	where appropriate to the context, for the contiguous property.
	inserting to \$ 115-194  District Ov  A. Delir  (1)

#### To Be Introduced 4/02/19

225 226		rmation submitted by the applicant shall at a minimum contain following:
227 228 229 230 231	(a)	Proposed drainage design and the effect on stormwater quality and quantity leaving the site, including methods for reducing the amount of phosphorous and nitrogen in the stormwater runoff and the control of any other pollutants such as petroleum hydrocarbons or metals.
232 233 234 235	(b)	Proposed method of providing potable and, where appropriate, irrigation water and the effect on public or private water systems and groundwater, including an estimate of average and peak demands.
236 237 238 239	(c)	Proposed means of wastewater treatment and disposal with an analysis of the effect on the quality of groundwater and surface waters, including alternative locations for on-site septic systems.
240 241	(d)	Analysis of the increase in traffic and the effect on the surrounding roadway system.
242 243	(e)	The presence of any endangered or threatened species listed on federal or state registers and proposed habitat protection areas.
244 245	(f)	The preservation and protection from loss of any tidal or nontidal wetlands on the site.
246	(g)	Provisions for open space as defined in § 115-4.
247 248	(h)	A description of provisions for public and private infrastructure.
249	(i)	Economic, recreational or other benefits.
250 251	(j)	The presence of any historic or cultural resources that are listed on the National Register of Historic Places.
252 253 254	(k)	An affirmation that the proposed application and proposed mitigation measures are in conformance with the current Sussex County Comprehensive Plan.
255 256	(I)	Actions to be taken by the applicant to mitigate the detrimental impacts identified relevant to Subsection B(2)(a) through (k)

above and the manner by which they are consistent with the Comprehensive Plan.

- (3) The Director of Planning and Zoning shall prepare (with input from the County Administrator) guidelines describing the application process and the form and content of information to be submitted by the applicant and shall review all applications, plans, assessments and other information submitted and prepare a written report summarizing his findings and the comments of state agencies and other County offices. The Planning and Zoning Commission shall make a determination as to whether adequate information has been presented for the project to proceed. A completed report shall be required prior to any preliminary plan approval for a development subject to this section. Approval of the report does not constitute final approval of the commenting agencies.
- c. Permitted uses and densities.
  - (1) Uses permitted in the [Environmentally Sensitive Development District Overlay Zone] <u>Coastal Area</u> will be those uses permitted in the underlying zoning category as established by the Sussex County Zoning Ordinance.
  - (2) Uses prohibited in the underlying zone are also prohibited in the overlay zone.
  - (3) The maximum density shall be the allowable density of the underlying zoning district for developments using a central water and wastewater collection and treatment system. "Central sewer system" means centralized treatment and disposal facilities as defined in § 115-194A. Within this Overlay District, clustering of single-family detached lots to a minimum lot size of 7,500 square feet is permitted in all residential zoning districts using a central water and sewer system. For dwelling units using on-site individual wastewater disposal systems, the allowable density shall he based on a minimum lot size of 3/4 of an acre. The applicant has the option of clustering the lots to a minimum lot size of 1/2 acre where soil conditions are suitable as determined by DNREC, provided, however, that the number of lots or dwelling units permitted shall not exceed the number permitted in the underlying district.

- 293 (4) For areas within the Conservation Zone, as currently defined in the Sussex County Zoning Ordinance, the minimum lot size and dimension requirements in the Conservation Zone shall apply.
  - D. Exemptions from the [Environmentally Sensitive Development District] <u>Coastal Area</u>. The following are exempted from the requirement of this section:
    - (1) Single-family residential lots of record as of the date of this section.
    - (2) Existing developments and developments which have filed for approval as of the date of this section.
  - E. Design consideration should be given by the applicant toward the establishment of a greenways system which utilizes schools, parks, wildlife habitat areas, river and stream corridors, wetlands, floodplains, historic sites, business parks, urban sidewalks, abandoned rail lines, roads, beach areas and vacant land. Greenways should provide benefits like safe pedestrian, bicycling and equestrian routes for recreationists and commuters; and natural wildlife corridors and biological reserves.

Section 9. The Code of Sussex County, Chapter 115, Table 1 "General Table of Height, Area and Bulk Requirements", Note 16 thereof, is hereby amended by deleting the language in brackets and inserting the italicized and underlined language:

(16) For any existing approved lot which is not located in a cluster subdivision, [ESDDOZ] <u>Coastal Area</u> or residential planned community, and consists of less than 10,000 square feet, the following setbacks shall apply: the side yard setback shall be reduced to five feet and the rear yard setback shall be reduced by five feet. For any lot with side or rear yard setbacks reduced by operation of §115-183D, no structures shall extend or project closer than five feet from the lot line. The front yard setback may be reduced to the average front yard setback of the existing buildings located on the same side of the street or road and being within 300 feet of the structure; provided, however, the front yard setback is not less than five feet. Any vacant lot within 300 feet of the structure shall be calculated as having the required setback for the district.

Section 10. Effective Date.

	To Be Introduced 4/02/19
330 331 332 333 334 335	This ordinance shall take effect upon adoption by Sussex County Council. Any pending land use applications submitted prior to the date of adoption of this Ordinance shall be reviewed as though all references to the ESDDOZ Environmentally Sensitive Developing District Overlay Zone, or Environmentally Sensitive Developing Area are to the "Coastal Area" as seferth in this Ordinance
336 337	forth in this Ordinance.