



NEW CASTLE COUNTY COUNCIL LAND USE COMMITTEE MEETING

Co-Chair: David Tackett, Eleventh District
Co-Chair: Janet Kilpatrick, Third District

December 3, 2024
3:00 PM

VIRTUAL ZOOM WEBINAR MEETING** &
LOUIS L. REDDING CITY/COUNTY BUILDING
1ST FLOOR COUNCIL CHAMBERS
800 N. FRENCH STREET, WILMINGTON, DE 19801

REVISED AGENDA

A. Meeting Call to Order

B. Approval of Minutes

C. Review/Discussion of Resolution(s)

R24- : PLAN OF STANTON CHRISTIANA INDUSTRIAL DEVELOPMENT; WHITE CLAY HUNDRED; WEST SIDE OF THE TERMINUS OF STANTON CHRISTIANA ROAD, SOUTHEAST OF INTERSTATE 95; MAJOR LAND DEVELOPMENT PLAN THAT PROPOSES A 442,530 SQUARE FOOT WAREHOUSE WITH ASSOCIATED IMPROVEMENTS; BP ZONING; [APPLICATION NO. 2022-0039](#); COUNCIL DISTRICT 1
Prime Sponsor(s): Mr. Toole

D. Review/Discussion of Ordinance(s)

°24-033: COMPREHENSIVE REZONING - TO REVISE THE NEW CASTLE COUNTY ZONING MAPS IN COUNTY COUNCIL DISTRICT 2 REGARDING THE FOLLOWING TAX PARCELS: BRANDYWINE HUNDRED: 06-040.00-002 (0 CONCORD PIKE OFF, WOODLAWN TRUSTEES), 06-077.00-274 (0 CONCORD PIKE OFF, FIRST UNITARIAN CHURCH), 06-127.00-001 (742 ALAPOCAS DR, E I DUPONT DENEMOURS), 26-014.10-006 (1600 N PARK DR, ABESSINIO STADIUM)
Prime Sponsor(s): Ms. Durham

°24-034: COMPREHENSIVE REZONING - TO REVISE THE NEW CASTLE COUNTY ZONING MAPS IN COUNTY COUNCIL DISTRICT 2 AND COUNTY COUNCIL DISTRICT 4 REGARDING THE FOLLOWING TAX PARCELS: CHRISTIANA HUNDRED: 07-030.20-015 (0 NEW BRIDGE RD)
Prime Sponsor(s): Ms. Durham, Mr. Hollins

°24-083: COMPREHENSIVE REZONING -TO REVISE THE NEW CASTLE COUNTY ZONING MAPS IN COUNTY COUNCIL DISTRICT 6 REGARDING THE FOLLOWING TAX PARCELS: APPOQUINIMINK HUNDRED: 14-010.00-002 (0 MIDDLETOWN WARWICK RD), 14-010.00-003 (0 STRAWBERRY LN), 14-010.00-009 (0 MIDDLETOWN WARWICK RD), 14-010.00-010 (1422 MIDDLETOWN WARWICK RD), 14-010.00-015 (0 STRAWBERRY LN), 14-010.00-016

(1352 MIDDLETOWN WARWICK RD), 14-010.00-017 (1330 MIDDLETOWN WARWICK RD, STARDEL INC), 14-010.00-018 (1280 MIDDLETOWN WARWICK RD), 14-010.00-026 (301 STRAWBERRY LN), 14-010.00-028 (0 MIDDLETOWN WARWICK RD, STARDEL INC), 14-010.00-032 (1416 MIDDLETOWN WARWICK RD, SHAHAN SUBDIVISION); PENCADER HUNDRED: 11-058.00-009 (4 TROOPERS WAY, SUMMIT AVIATION); ST GEORGES HUNDRED: 11-058.00-009 (4 TROOPERS WAY, SUMMIT AVIATION)

Prime Sponsor(s): Mr. Carter

°24-138: TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 ("UNIFIED DEVELOPMENT CODE" OR "UDC"), ARTICLE 3 ("USE REGULATIONS"), AND ARTICLE 33 ("DEFINITIONS"), REGARDING MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, AND RETAIL MARIJUANA STORES

Prime Sponsor(s): Mr. Tackett, Ms. Kilpatrick

°24-161: AMENDING NEW CASTLE COUNTY CODE CHAPTER 6, ARTICLE 10 RELATING TO THE INTERNATIONAL ENERGY CONSERVATION CODE

Prime Sponsor(s): Ms. Durham

SUBSTITUTE NO. 1 TO °24-008: (STATUS: TABLED) TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 ("UNIFIED DEVELOPMENT CODE"), ARTICLE 14 ("IMPACT FEES") REGARDING ADJUSTMENTS TO IMPACT FEES

Prime Sponsor(s): Ms. Durham, Mr. Carter, Mr. Toole

Co-sponsor(s): Mr. Cartier, Mr. Smiley

E. Presentations

Kristie Arlotta, Sustainability Coordinator, will give an update on the [NCC Sustainability Plan](#).

Comprehensive Rezoning Take 2 Process—Next Steps

F. Other

G. Public Comment

H. Adjournment

REVISED AGENDA POSTED: November 26, 2024

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*The revised agenda and agenda were posted (7) seven days in advance of the scheduled meeting in compliance with 29 *Del. C.* Section 10004(e)(2). The meeting may go into Executive Session to address issues that arise at the time of the meeting. The revised agenda added Ordinance 24-161, which was inadvertently left off the agenda.

**Under Title 29, Section 10006A of *Delaware Code*, New Castle County Council is holding this meeting as a

telephone and video conference, utilizing  Webinar. In addition, this meeting is open to the public in Council Chambers (800 N. French Street, Wilmington, DE 19801). The link to join the meeting via computer, smart device, or smart phone is : <https://zoom.us/j/377322142> You may also call into the meeting (audio) using the following call in numbers: 1-312-626-6799 or +1-646-558-8656 or +1-346-248-7799 or +1-669-900-9128 or +1-253-215-8782 or +1-301-715-8592. Then enter the Webinar ID: 377 322 142. If you do not have a good connection with one, please try the others. Additional information regarding phone functionality during the meeting is available at: <https://support.zoom.us/hc/en-us/articles/360029527911-Live-Training-Webinars>

Meeting materials, including a meeting agenda, legislation to be addressed during the meeting, and other materials related to the meeting are electronically accessible at <https://www.nccde.org/2351/Agendas-and-Minutes>. Members of the public joining the meeting may be provided an opportunity to make comments in real time. A comment period will be administered by a moderator to ensure everyone may have an opportunity to comment.

If permitted to comment, you will not be able to speak until called upon by the moderator. For those appearing virtually, there are functions in the program that allow you to do this. Please see the link in the previous paragraph.

Prime Sponsor(s): Mr. Toole
Requested by: Department of Land Use
Date of introduction: December 10, 2024

RESOLUTION NO. 24-

PLAN OF STANTON CHRISTIANA INDUSTRIAL DEVELOPMENT; WHITE CLAY HUNDRED; WEST SIDE OF THE TERMINUS OF STANTON CHRISTIANA ROAD, SOUTHEAST OF INTERSTATE 95; MAJOR LAND DEVELOPMENT PLAN THAT PROPOSES A 442,530 SQUARE FOOT WAREHOUSE WITH ASSOCIATED IMPROVEMENTS; BP ZONING; APPLICATION NO. 2022-0039; COUNCIL DISTRICT 1

NOW, THEREFORE, BE IT RESOLVED, by and for the County Council of New Castle County that County Council hereby approves the following major land development plan, Plan of Stanton Christiane Industrial Development (Application No. 2022-0039-S) as heretofore approved by the Land Use Department, and the President of County Council is hereby authorized to endorse her approval upon the following plan.

**PLAN OF STANTON CHRISTIANA
INDUSTRIAL DEVELOPMENT
White Clay Creek Hundred**

Adopted by County Council of
New Castle County on:

Monique Williams-Johns
President of County Council
of New Castle County

SYNOPSIS: Same as title

FISCAL IMPACT: This will have no immediately discernible fiscal impact on the county but, if the parcel is developed in accordance with this record plan, there may be one or more fiscal effects on New Castle County government including, but not limited to, an increase in the assessed value of the property with the resultant increase in taxes collectible thereon and an increased demand for County services.

MEMORANDUM

To: Council President
Members of County Council
Council to Council
Clerk of County Council

From: Charuni Patibanda

Re: Application No. 2022-0039
Stanton Christiana Industrial Development
Record Major Land Development Plan

Date: November 20, 2024

Enclosed for Council's review and consideration of approval are paper prints of the above-referenced plan. The Department has determined that this proposal complies with all applicable requirements of the New Castle County Code.

A suggested title, synopsis, and fiscal note are attached.

cc: Matthew Meyer, County Executive
Vanessa Phillips, Chief Administrative Officer
Brian Boyle, Senior Policy Director

Plan of Stanton Christiana Industrial Development; White Clay Hundred; West side of the terminus of Stanton Christiana Road, southeast of Interstate 95; Major Land Development Plan that proposes a 442,530 SF warehouse with associated improvements; BP zoning.

Synopsis: Same as title

Fiscal Note: This will have no immediately discernible fiscal impact on the county but, if the parcel is developed in accordance with this record plan, there may be one or more fiscal effects on New Castle County government including, but not limited to, an increase in the assessed value of the property with the resultant increase in taxes collectible thereon and an increased demand for County services.

GENERAL NOTES:

- PROPOSED IMPROVEMENTS ARE FOR THE DEVELOPMENT LOT ONLY.
- THE BOUNDARY AND TOPOGRAPHIC INFORMATION DEPICTED ON THIS PLAN IS FROM TOPOGRAPHIC SURVEY PERFORMED BY LANDMARK SCIENCE & ENGINEERING, LAST UPDATED 11/03/2021.
- FLOODPLAINS EXIST ON THIS SITE PER FLOODPLAIN LOWR STUDY FOR CHRISTIANA TOWN CENTER (DATED JULY 2008) AND FLOOD STUDY FOR BRANCH OF EAGLE RUN AT PROMENADE AT CHRISTIANA (DATED DECEMBER 2007 AND AMENDED 2007 AND AMENDED 2011).
- ACCORDING TO DATA COMPILED BY DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL, 2006, THIS SITE DOES NOT LIE WITHIN A CRITICAL NATURAL AREA.
- ACCORDING TO THE SURVEY FILE, THERE ARE WATERCOURSES OR WATERCOURSES LOCATED ON THE SITE.
- IN ACCORDANCE WITH TOPOGRAPHY PROVIDED ON THE SURVEY, THE EXISTING DRAINAGE PATTERN/RUNOFF FLOWS BOTH SOUTHWEST AND SOUTHEAST OFFSHORE TOWARDS TRIBUTARIES THAT DRAIN TO CHRISTIANA RUN.
- ACCORDING TO THE DRAINAGE AND STORMWATER PROGRAM, GS MAPPING, THE SOILS LOCATED ON THE SITE INCLUDE FALLSINGTON LOAMS, 0 TO 2 PERCENT SLOPES, NORTHERN COASTAL PLAIN, NASSAWANGO SILT LOAM, 2 TO 5 PERCENT SLOPES, ZESKIA SANDY LOAM, FREQUENTLY FLOODED, AND URBAN LAND.
- A WETLAND INVESTIGATION HAS BEEN CONDUCTED BY WATERSHED E.C.C., LLC, JAMES C. MCCULLLEY IV, PWS ON AUGUST 3RD AND 7TH, 2021. THE WETLAND Delineation - INDUSTRIAL RENTAL PROPERTY NEWARK - NWPR WAS PREPARED IN AUGUST 2021 BY WATERSHED E.C.C., LLC. WETLANDS WERE LOCATED ON-SITE AND PROPOSED DISTURBANCES ARE LISTED IN THE PROTECTED RESOURCE SUMMARY TABLE. THE Delineation OF JURISDICTIONAL WETLANDS IS BASED ON THE NAVIGABLE WATER PROTECTION RULE (NWPR) WHICH BECAME EFFECTIVE JUNE 22, 2020. THE NWPR CODifies THE DEFINITION OF WATERS OF THE UNITED STATES (WOTUS) INCLUDING JURISDICTIONAL WETLANDS, SECTION 404 OF THE CLEAN WATER ACT, THE NWPR AND WOTUS WERE USED AS A BASIS FOR DETERMINING THE Delineation OF THE JURISDICTIONAL WETLANDS. THE PROJECT WILL DISTURB 0.51 ACRES OF NON-JURISDICTIONAL WETLANDS AND 0.04 ACRES OF JURISDICTIONAL WETLANDS.
- ARMY CORP PERMIT # 2021-01135-85 FOR THE PROPOSED PROJECT, THE PURPOSE OF OBTAINING ARMY CORP PERMIT WAS TO ALLOW FOR THE CONSTRUCTION OF THE DRIVEWAY ACCESS OVER THE EXISTING WETLANDS.
- NO DEBRIS IS TO BE BURIED ON THIS SITE.
- ALL FIRE LANES, FIRE HYDRANTS, AND FIRE DEPARTMENT CONNECTIONS SHALL BE MARKED AND MAINTAINED IN ACCORDANCE WITH THE STATE OF DELAWARE FIRE PROTECTION REGULATIONS.
- UNLESS OTHERWISE SPECIFIED ON THE PLAN, SIDEWALKS SHALL BE INSTALLED IN THE LOCATIONS SHOWN ON THIS PLAN PRIOR TO THE ISSUANCE OF A CERTIFICATE OF OCCUPANCY. SIDEWALKS SHALL BE FIVE (5) FEET IN WIDTH AND CONSTRUCTED OF PORTLAND CEMENT CONCRETE.
- ALL IMPROVEMENTS REQUIRED BY THIS PLAN AND THE NEW CASTLE COUNTY CODE SHALL BE SUBJECT TO THE LAND DEVELOPMENT IMPROVEMENT AGREEMENT (LDA), AND THE PERFORMANCE GUARANTEE INCORPORATED THEREIN. THE LDA IS RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS IN AND FOR NEW CASTLE COUNTY, AS INSTRUMENT NO. 2022-0292-004161.
- ALL COMMON FACILITIES, INCLUDING BUT NOT LIMITED TO PAVED AREAS, SIDEWALKS, CURBING, LANDSCAPING, OPEN SPACE, STORMWATER MANAGEMENT AREAS AND/OR DRAINAGE FACILITIES SHALL BE KEPT IN GOOD REPAIR AND MAINTAINED IN A SAFE AND SANITARY CONDITION IN ACCORDANCE WITH THE NEW CASTLE COUNTY UNIFIED DEVELOPMENT CODE.
- ALL ENTRANCES SHALL CONFORM TO THE STATE OF DELAWARE, DEPARTMENT OF TRANSPORTATION (DELDOT) AND WILL BE SUBJECT TO THEIR APPROVAL.
- SHRUBBERY, PLANTINGS, SIGNS AND/OR OTHER VISUAL BARRIERS THAT COULD OBSTRUCT THE SIGHT DISTANCE OF A DRIVER PREPARING TO ENTER THE ROADWAY ARE PROHIBITED WITHIN THE DEFINED DEPARTURE SIGHT TRIANGLE AREA ESTABLISHED ON THIS PLAN. IF THE ESTABLISHED DEPARTURE SIGHT TRIANGLE AREA IS OUTSIDE THE RIGHT-OF-WAY OR PROJECTS ONTO AN ADJACENT PROPERTY OWNERS LAND, A SIGHT EASEMENT SHALL BE ESTABLISHED AND RECORDED WITH ALL AFFECTED PROPERTY OWNERS AND THE NEW CASTLE COUNTY DEPARTMENT OF PUBLIC WORKS TO MAINTAIN THE REQUIRED SIGHT DISTANCE.
- ANY AREA DESIGNATED FOR PROTECTION AS A NATURAL RESOURCE PURSUANT TO CHAPTER 40, ARTICLE 10 OF THE NEW CASTLE COUNTY UNIFIED DEVELOPMENT CODE IS HEREBY PROTECTED BY A CONSERVATION EASEMENT THAT SHALL RUN IN PERPETUITY FOR THE BENEFIT OF NEW CASTLE COUNTY. ANY AREA ON THIS PLAN DESIGNATED AS A CONSERVATION EASEMENT SHALL REMAIN IN ITS NATURAL STATE, EXCLUSIVE OF ANY REFORESTATION REQUIRED BY THE COUNTY CODE.
- NO DEED RESTRICTIONS ARE EXISTING OR PROPOSED FOR THIS PROJECT.
- NEW CASTLE COUNTY HAS THE RIGHT OF ACCESS TO THE SITE FOR THE PURPOSES OF OPERATING, MAINTAINING, AND REPAIRING THE SANITARY SEWER LINES CONTAINED WITHIN THE SEWER EASEMENTS SHOWN ON THIS PLAN.
- DRAINAGE, EROSION AND SEDIMENT CONTROL, AND STORMWATER SHALL BE PROVIDED IN ACCORDANCE WITH THE NEW CASTLE COUNTY DRAINAGE CODE.
- NO LANDSCAPING SHALL BE ALLOWED WITHIN RIGHT-OF-WAY UNLESS THE PLANS ARE COMPLIANT WITH SECTION 3.7 OF THE DEVELOPMENT CORPORATION MANUAL.
- THE OWNER SHALL BE REQUIRED TO FURNISH AND PLACE RIGHT-OF-WAY MONUMENTS IN ACCORDANCE WITH DELDOTS DEVELOPMENT CORPORATION MANUAL.
- THE OWNER/DEVELOPER SHALL PAY, TO NEW CASTLE COUNTY, FUNDS FOR LONG TERM STORMWATER MAINTENANCE AND INSPECTION FUND PURSUANT TO UDC § 40.27.240 OF THE COUNTY CODE. THE FUNDS SHALL BE USED FOR THE COSTS ASSOCIATED WITH INSPECTIONS, AN AMOUNT OF \$20,000 SHALL BE FUNDED PRIOR TO RECEIVING THE FIRST CERTIFICATE OF OCCUPANCY. THE DEPARTMENT OF LAND USE SHALL WITHHOLD THE ISSUANCE OF ANY CERTIFICATE OF OCCUPANCY UNTIL SATISFACTORY FINANCIAL PROOF THAT THE FUNDS HAVE BEEN PAID TO NEW CASTLE COUNTY IS FURNISHED IN ACCORDANCE WITH THE REQUIREMENTS.
- ADA ACCESSIBLE RAMP AND CROSSWALKS SHALL BE PROVIDED WHERE ACCESSIBLE ROUTES ARE INTENDED TO OR CROSS PARKING LOTS, VEHICULAR AND BUS STOPS, AND BUS STOPS.
- THIS PLAN SUPERSEDES, IN PART, THE PLAN OF THE MARKETPLACE AT CHRISTIANA DATED 1/2/2013 AND RECORDED ON 3/24/2013 IN THE RECORDER OF DEEDS IN AND FOR NEW CASTLE COUNTY, STATE OF DELAWARE, INSTRUMENT NO. 20130327-0019408.
- NO WAYERS ARE AND STORMWATER MANAGEMENT FACILITIES INCLUDING, BUT NOT LIMITED TO, STORMWATER CONVEYANCE SYSTEMS, BASINS, AND ALL COMPONENTS THEREOF, IDENTIFIED ON THE PLAN AND ALL WATERCOURSES FOR THE PURPOSE OF INSPECTING, EVALUATING AND MAINTAINING THE STORMWATER MANAGEMENT FACILITIES AND WATERCOURSES. THE EASEMENT SHALL EXTEND 15' FROM THE OUTER EDGES OF EACH SUCH STORMWATER MANAGEMENT FACILITY. A GENERAL ACCESS EASEMENT IS HEREBY CREATED OVER AND ACROSS THE PROPERTY SHOWN ON THIS PLAN GRANTING NEW CASTLE COUNTY, ITS AGENTS AND ASSIGNS THE RIGHT, PRIVILEGE AND AUTHORITY TO ENTER UPON AND TRAVEL ACROSS THE PROPERTY TO EACH STORMWATER MANAGEMENT FACILITY. THE EASEMENTS HERIN CREATED SHALL BE FOR PEDESTRIAN, VEHICULAR AND EQUIPMENT USE. IF NEW CASTLE COUNTY, ITS AGENTS OR ASSIGNS DETERMINES THAT MAINTENANCE IS REQUIRED TO A STORMWATER MANAGEMENT FACILITY, NEW CASTLE COUNTY SHALL PROVIDE NOTICE OF THE REQUIRED MAINTENANCE AND THE TIME FRAME IN WHICH SUCH MAINTENANCE SHALL BE COMPLETED TO THE PROPERTY OWNER OR RESPONSIBLE PARTY. NO NOTICE SHALL BE REQUIRED WHERE NEW CASTLE COUNTY PERFORMS MAINTENANCE WHERE THERE IS IMMINENT THREAT TO LIFE, HEALTH OR PROPERTY. IN THE EVENT NEW CASTLE COUNTY ELECTS TO MAINTAIN THE STORMWATER MANAGEMENT FACILITY, ALL EXPENSES SHALL BE ASSESSED AGAINST AND SEVERALLY AGAINST THE OWNERS OF THE PROPERTY SHOWN ON THIS PLAN.
- UNLESS OTHERWISE DESCRIBED BY METES AND BOUNDS, OR BY MATHEMATICAL REFERENCE TO A PROPERTY LINE, A 20' WIDE PERMANENT EASEMENT, 20' ON EACH SIDE OF THE CENTERLINE OF THE PIPE, SHALL BE CREATED WHERE A SANITARY SEWER OR STORM SEWER IS DESIGNATED FOR PUBLIC USE IN UNPAVED AREAS AND IS OUTSIDE OF A DEDICATED PUBLIC ROW. A 20' WIDE PERMANENT EASEMENT, 10' ON EACH SIDE OF THE CENTERLINE OF THE PIPE, SHALL BE CREATED WHERE A SANITARY SEWER OR STORM SEWER PIPE IS DESIGNATED FOR PUBLIC USE IN PRIVATELY MAINTAINED PAVED AREAS, SUCH AS PARKING LOTS, PRIVATE STREETS OR DRIVEWAYS. IF THE CONSTRUCTED HORIZONTAL SEWER MAIN LOCATION DEVIATES BY MORE THAN 2.5' FROM THE DESIGN LOCATION, THE PROJECT MAY BE SUBJECT TO A RESUBDIVISION PLAN OR PIPE LOCATION AS DETERMINED BY THE DEPARTMENT OF PUBLIC WORKS.
- A TRAFFIC OPERATIONAL ANALYSIS (TOA), DATED 02/28/2023, WAS DONE FOR THIS PLAN BY TPO. DELDOT REVIEWED THE TOA, PROVIDING COMMENTS AND RECOMMENDATIONS IN A LETTER DATED 10/02/2023.
- THE DEVELOPER SHALL IMPROVE THE STATE-MAINTAINED ROAD ON WHICH THEIR FRONT (STANTON CHRISTIANA ROAD), WITHIN THE LIMITS OF THEIR FRONTAGE, TO MEET DELDOTS STANDARDS FOR THEIR FUNCTIONAL CLASSIFICATION AS FOUND IN SECTION 1.1 OF THE DEVELOPMENT COORDINATION MANUAL AND ELSEWHERE THEREIN. THE IMPROVEMENTS SHALL INCLUDE BOTH DIRECTIONS OF TRAVEL, REGARDLESS OF WHETHER THE DEVELOPER'S LANDS ARE ON ONE OR BOTH SIDES OF THE ROAD. FRONTAGE IS DEFINED IN SECTION 1.1 OF THE DEVELOPMENT COORDINATION MANUAL, WHICH STATES "THIS LENGTH INCLUDES THE LENGTH OF ROADWAY PERPENDICULAR TO LINES CREATED BY THE PROJECTION OF THE OUTSIDE PARCEL CORNERS TO THE ROADWAY." QUESTIONS ON OR APPEALS OF THIS REQUIREMENT SHOULD BE DIRECTED TO THE DELDOT SUBDIVISION REVIEW COORDINATOR IN WHOSE AREA THE DEVELOPMENT IS LOCATED.
- THE DEVELOPER SHOULD CONSTRUCT THE FULL-MOVEMENT SITE ACCESS ON STANTON CHRISTIANA ROAD. TURN LANES ARE NOT REQUIRED AT THE PROPOSED SITE ACCESS ONTO STANTON CHRISTIANA ROAD. A SOUTHBOUND RIGHT TURN LANE IS NOT WARRANTED BASED ON DELDOTS AUXILIARY LANE WORKSHEET. ON THE NORTHBOUND APPROACH, DELDOTS AUXILIARY LANE WORKSHEET INDICATES THAT A 75-FOOT LEFT TURN LANE SHOULD BE PROVIDED, HOWEVER, A LEFT-TURN LANE IS NOT REQUIRED AS THIS IS THE LAST DRIVEWAY BEFORE THE NORTHERN TERMINUS OF STANTON CHRISTIANA ROAD.
- THE DEVELOPER SHOULD ENTER INTO AN AGREEMENT WITH DELDOT TO CONTRIBUTE TO THE TRAFFIC SIGNAL REVOLVING FUND (TSRF) FOR A FUTURE SIGNAL AT THE INTERSECTION OF STANTON CHRISTIANA ROAD AND EAGLE RUN ROAD. THE TSRF CONTRIBUTION IS \$19,414.00.
- THE DEVELOPER SHOULD COORDINATE WITH DELDOTS SUBDIVISION AND TRAFFIC SECTIONS TO IMPLEMENT EDUCATIONAL AND ROUTE SIGNAGE TO INFORM DRIVERS ABOUT PREFERRED/PROPOSED TRUCK ROUTES LEADING TO REGIONAL ROUTES, SUCH AS INTERSTATE 95, DELAWARE ROUTE 1, AND DELAWARE ROUTE 273. THIS EFFORT IS INTENDED, IN PART, TO RESTRICT OR AT LEAST DISCOURAGE TRUCKS FROM USING DELAWARE ROUTE 7 (NORTH OLD BALTIMORE PIKE) THROUGH THE VILLAGE OF CHRISTIANA.
- THE DEVELOPER SHOULD COORDINATE WITH DELDOTS TRAFFIC SECTION REGARDING THE NEED FOR AND ACCOMMODATION OF OVERNIGHT PARKING FOR TRUCKS. IF NEEDED, WITH BUSINESS AT 205 STANTON CHRISTIANA ROAD, SUCH THAT A PARKING PLAN AGREEABLE TO ALL PARTIES CAN BE ESTABLISHED. TO THE EXTENT FEASIBLE, DELDOT DESIRES THAT TRUCKS WITH BUSINESS AT THIS FACILITY NOT ADD TO EXISTING OFF-SITE OVERNIGHT TRUCK PARKING DEMAND IN THE AREA.
- THE FOLLOWING BICYCLE, PEDESTRIAN, AND TRANSIT IMPROVEMENTS SHOULD BE INCLUDED:
 - UTILITY COVERS SHOULD BE MADE FLUSH WITH THE PAVEMENT.
 - A MINIMUM 15-FOOT WIDE PERMANENT EASEMENT FROM THE EDGE OF THE RIGHT-OF-WAY SHOULD BE DEDICATED TO DELDOT WITHIN THE SITE FRONTAGE ALONG STANTON CHRISTIANA ROAD, WITHIN THE EASEMENT, A MINIMUM OF A 5-FOOT WIDE SIDEWALK THAT MEETS CURRENT ASHITO AND ADA STANDARDS SHOULD BE CONSTRUCTED AND SHOULD HAVE A MINIMUM OF A FIVE-FOOT BUFFER FROM THE ROADWAY. AT THE PROPERTY BOUNDARIES, THE SIDEWALK SHOULD CONNECT TO THE ADJACENT PROPERTY OR TO THE SHOULDER IN ACCORDANCE WITH DELDOTS SHARED-USE PATH AND/OR SIDEWALK TERMINATION REFERENCE GUIDE DATED AUGUST 1, 2018. THE DEVELOPER SHALL COORDINATE WITH DELDOTS DEVELOPMENT COORDINATION SECTION THROUGH THE PLAN REVIEW PROCESS TO DETERMINE THE DETAILS OF THE SIDEWALK DESIGN AND CONNECTIONS/TERMINATIONS AT OR BEFORE BOTH BOUNDARIES OF THE PROPERTY.
 - ADA COMPLIANT CURB RAMPS AND CROSSWALKS SHOULD BE PROVIDED AT ALL PEDESTRIAN CROSSINGS, INCLUDING ALL SITE ENTRANCES. TYPE 3 CURB RAMPS ARE DISCOURAGED.
 - INTERNAL SIDEWALKS FOR PEDESTRIAN SAFETY AND TO PROMOTE WALKING AS A VIABLE TRANSPORTATION ALTERNATIVE SHOULD BE CONSTRUCTED WITHIN THE DEVELOPMENT. THESE SIDEWALKS SHOULD EACH BE A MINIMUM OF FIVE-FEET WIDE WITH A MINIMUM OF A FIVE-FOOT BUFFER FROM THE ROADWAY AND SHOULD MEET CURRENT ASHITO AND ADA STANDARDS. INTERNAL SIDEWALKS IN THE DEVELOPMENT SHOULD CONNECT TO THE SIDEWALKS ALONG STANTON CHRISTIANA ROAD.
- THE BOARD OF ADJUSTMENT APPLICATION NUMBER IS 2022-0354-A. THE BOARD OF ADJUSTMENT DECISION DATE WAS SEPTEMBER 14, 2023. THE PROJECT WENT IN FRONT OF THE BOARD OF ADJUSTMENT FOR THE APPROVAL TO DISTURB 46% OF THE NON-JURISDICTIONAL MAN-MADE WETLANDS AND TO DISTURB 2% OF THE RIPARIAN BUFFER AREA.
- THE RPATAC APPLICATION NUMBER IS 2022-0475. THE RPATAC DECISION DATE WAS FEBRUARY 22, 2023 AND MAY 24, 2023. THIS PROJECT WENT IN FRONT OF RPATAC FOR A RECOMMENDATION TO FILL 0.86 ACRES OF NON-JURISDICTIONAL MAN-MADE WETLANDS AND DISTURB 0.10 ACRES OF RIPARIAN BUFFER AREA.
- ACCORDING TO NEW CASTLE COUNTY WATER RESOURCE PROTECTION AREA MAP 1, DATED 1987 AND LAST REVISED MARCH 2022, THIS SITE IS NOT WITHIN WATER RESOURCE PROTECTION AREA (WRPA).

PLAN DATA:	
1. APPLICATION NUMBER:	2022-0039
2. TAX PARCEL NUMBER:	0902400002
3. SITE ADDRESS:	205 STANTON CHRISTIANA RD NEWARK, DE 19702
4. ADDRESSES & LEGAL OWNERS	PARCEL 0902400002 - INDUSTRIAL RENT INC C/O ISAAC BUDOVITCH 1100 LOVERING AVE, #520 WILMINGTON, DE 19806 EXISTING: 1 PROPOSED: 1
5. NUMBER OF LOTS:	PROPOSED: 1
6. EXISTING ZONING:	PARCEL 0902400002 - BP (BUSINESS PARK)
7. BENCHMARK:	IRON PIN AND CAP N=611401.0876 E=588842.3171 EL=59.65 (NAVD88)
8. DATUM:	HORIZONTAL: NAD 83 VERTICAL: NAVD 88
9. SITE ACREAGE - EXISTING:	0902400002 - 43.52 ACRES
PROPOSED:	0902400002 - 343.52 ACRES
10. MONUMENTS - EXISTING:	CONCRETE MONUMENTS FOUND 0 IRON PINS FOUND 9
PROPOSED:	CONCRETE MONUMENTS 0 IRON PINS 9
11. FIRE HYDRANTS - EXISTING:	0
PROPOSED:	7
12. AREA CALCULATION:	DEVELOPMENT LOT (343.52 AC) PROPOSED (AC) BUILDINGS: 442,530 S.F. - 210.16 ACRES (23.3%) OTHER IMPROVEMENTS: 442,260 S.F. - 210.81 ACRES (24.4%) OPEN SPACE: 999,833 S.F. - 227.75 ACRES (52.3%)
13. PARKING:	PARKING REQUIRED: WAREHOUSE: 5 PARKING SPACES+ 0.5 SPACE/1,000 S.F. 3 * (422,260 S.F./1,000 S.F.)+ 0.5 = 226 SPACES OFFICE: 3.5 SPACES/1,000 S.F. 3.5 * (10,270 S.F./1,000 S.F.)+ 36 SPACES (INC. 8 ADA SPACES) TOTAL REQUIRED = 226+36=262 SPACES PARKING PROVIDED: 266 PARKING SPACES (INCLUDING 8 ADA SPACES WITH A VARIAN ACCESSIBLE SPACES) FUTURE PARKING PROVIDED: 92 PARKING SPACES
BICYCLE SPACES:	REQUIRED: 1 PER 10 PARKING SPACES, MAX. 20 SPACES = 358/10 = 36 SPACES PROVIDED: 20 BICYCLE SPACES
14. WATER SUPPLY:	IS BY ARTESIAN WATER COMPANY AND IS SUBJECT TO THE APPROVAL OF THE DELAWARE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL AND THE DELAWARE DEPARTMENT OF HEALTH.
15. SANITARY SEWER:	IS BY NEW CASTLE COUNTY. SEWERAGE IS SUBJECT TO THE APPROVAL OF THE NEW CASTLE COUNTY DEPARTMENT OF PUBLIC WORKS. AT THE TIME OF APPROVAL OF THIS PLAN, SEWER CAPACITY EXISTED TO ACCOMMODATE THE ANTICIPATED FLOWS GENERATED BY THIS ADDITIONAL DEVELOPMENT. NEW CASTLE COUNTY HAS COMMITTED TO PROVIDE SEWER SERVICE IN ACCORDANCE WITH THE LAND DEVELOPMENT IMPROVEMENT AGREEMENT FOR THE DEVELOPMENT. THE OWNER OF THE PROPERTY, HIS SUCCESSORS OR ASSIGNS SHALL BE RESPONSIBLE FOR EXTENDING SEWER SERVICE TO EACH LOT SHOWN OR CREATED BY THIS PLAN.
16. FRONTAGE ROAD CLASSIFICATION:	STANTON CHRISTIANA ROAD MAJOR COLLECTOR POSTED SPEED LIMIT: 35 MPH

CERTIFICATION OF OWNERSHIP

I, Alan Budovitch HEREBY CERTIFY THAT I AM THE OWNER OF THE PROPERTY [205 STANTON CHRISTIANA ROAD] WHICH IS SUBJECT OF THIS PLAN AND THAT THE LAND USE ACTION PROPOSED BY THIS PLAN IS MADE AT MY DIRECTION AND THAT I AUTHORIZE THIS PLAN TO BE RECORDED IN ACCORDANCE WITH THE REGULATIONS OF THE NEW CASTLE COUNTY UNIFIED DEVELOPMENT CODE.

ALAN BUDOVITCH
INDUSTRIAL RENTALS, INC.

CERTIFICATION OF PLAN APPROVAL

APPROVED _____ DATE _____ BY _____ GENERAL MANAGER
FOR DEPARTMENT OF LAND USE OF NEW CASTLE COUNTY.
APPROVED _____ DATE _____ BY _____ COUNCIL PRESIDENT
FOR COUNTY COUNCIL OF NEW CASTLE COUNTY

CERTIFICATION OF PLAN ACCURACY

I, Jose Lopez HEREBY CERTIFY THAT I AM A REGISTERED PROFESSIONAL ENGINEER WITH A BACKGROUND IN CIVIL ENGINEERING IN THE STATE OF DELAWARE AND THAT ALL OF THE INFORMATION ON THIS PLAN IS TRUE AND CORRECT TO THE ACCURACY REQUIRED BY ACCEPTED SURVEYING STANDARDS AND PRACTICES AND BY THE NEW CASTLE COUNTY UNIFIED DEVELOPMENT CODE.
Jose Lopez
JOSE LOPEZ, P.E.
REGISTERED ENGINEER WITH A BACKGROUND
IN CIVIL ENGINEER IN THE STATE OF DELAWARE
DATE: 11/11/2024

APPLICATION NO. 20220039
RECORD MAJOR LAND DEVELOPMENT PLAN
FOR
STANTON CHRISTIANA INDUSTRIAL DEVELOPMENT
WHITE CLAY CREEK HUNDRED - NEW CASTLE COUNTY, DELAWARE
TAX PARCEL # 09-024.00-002

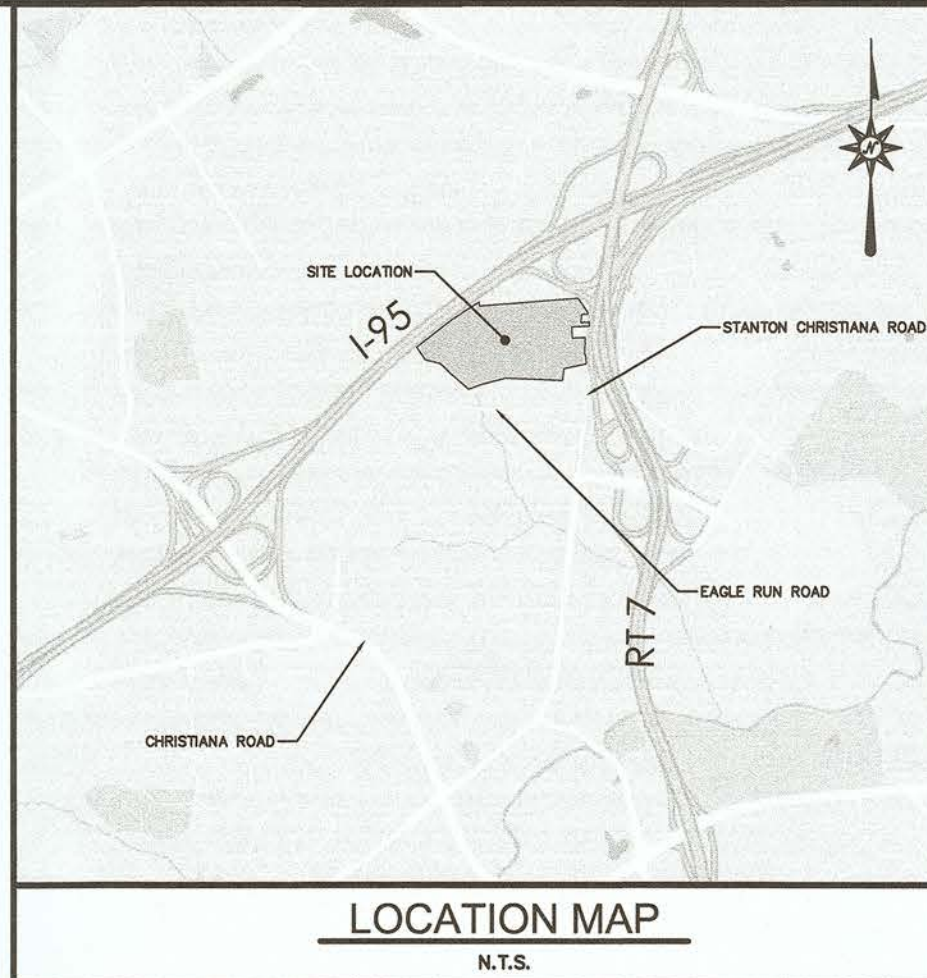
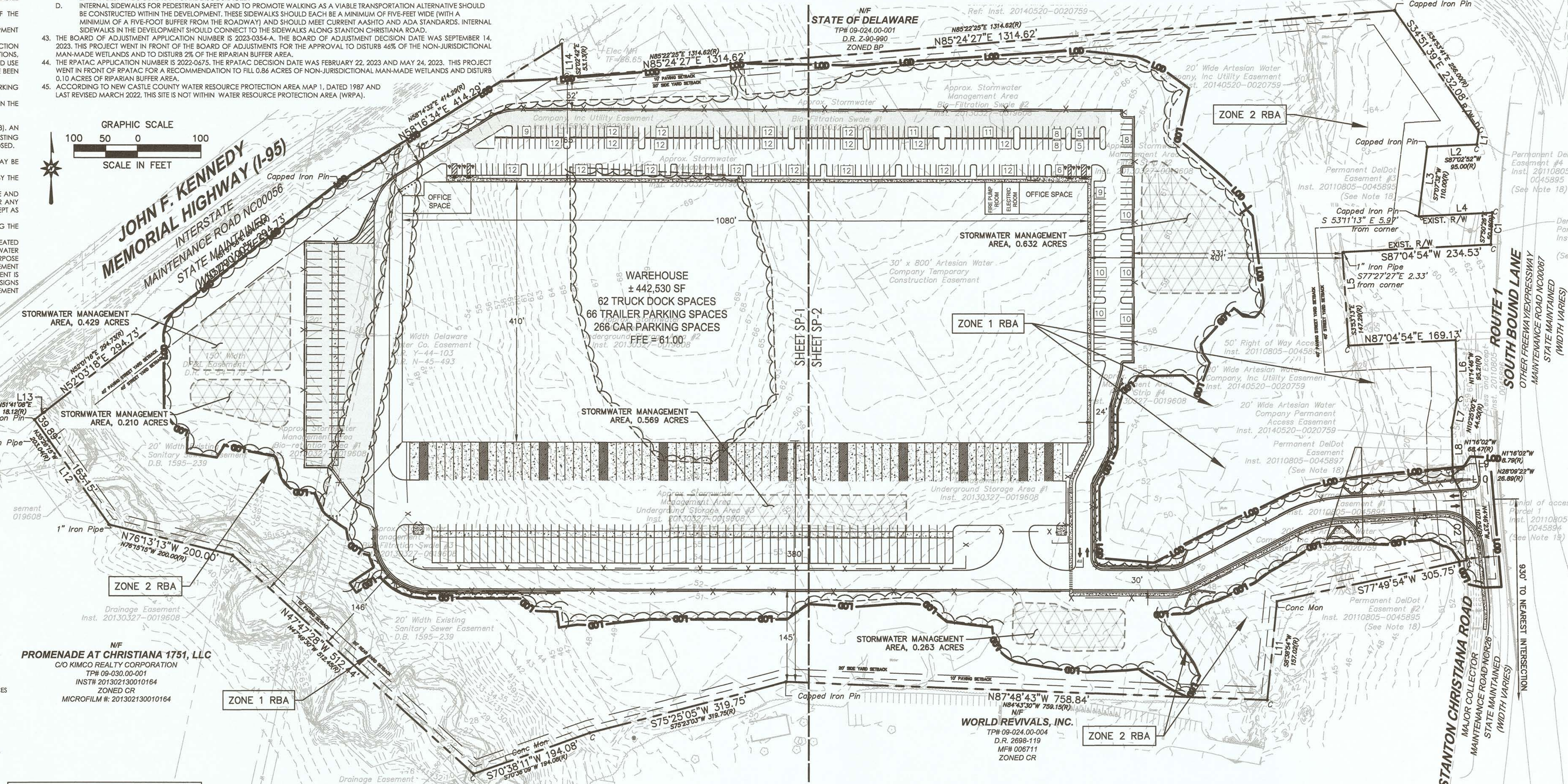


TABLE 40.04.110 C. DISTRICT AND BULK STANDARDS	
STORAGE AND COMMENTS	
BP (BUSINESS PARK)	
EXTERIOR STORAGE	NOTES
PERCENT OF LOT AREA REQUIRED	* FOR BUILDINGS OVER 50 FEET, SEE SECTION 40.04.110 C
5	

TABLE 40.04.110 A. DISTRICT AND BULK STANDARDS	
LOT AND BUILDING STANDARDS	
BP (BUSINESS PARK)	
DISTRICT STANDARDS	
ZONING DISTRICT & DEVELOPMENT TYPE	MINIMUM
INDUSTRIAL	0.30 N/A N/A 0.40 0.57 P 25 ACRES

TABLE 40.04.110 B. DISTRICT AND BULK STANDARDS	
LOT AND BUILDING STANDARDS	
BP (BUSINESS PARK)	
MINIMUM	
LOT AREA	LOT WIDTH (FEET)
5 ACRES	150
STREET YARD (FEET)	SIDE YARD (FEET)
40	20
REAR YARD (FEET)	PAVING STREET YARD/OTHER YARD (FEET)
20	40 / 10
UNIT MIX (X)	BUILDING HEIGHT (FEET)
N/A	50 / 140'



LEGEND

PROPERTY LINE	FLOOD PLAIN
LIMIT OF DISTURBANCE	SURFACE/SUBSURFACE STORMWATER SYSTEM
BUILDING SETBACK LINE	RIP RAP PAD
PARKING SETBACK LINE	RETAINING WALL
TREE OUT LIMIT	GUIDE RAIL
CURB	CHAIN LINK FENCE
FUTURE CURB	FUTURE DEVELOPMENT
HEAVY DUTY CONCRETE	PHASE LINE
FUTURE HEAVY DUTY CONCRETE	CALCULATED POINT (MONUMENT TO BE SET)
CONCRETE SIDEWALK	PROPERTY MONUMENT (AS DESCRIBED)
RIPIARIAN BUFFER	
WETLAND	

TABLE 40.05.420 TOTAL PROTECTED LAND			
BP (BUSINESS PARK)			
NATURAL RESOURCE	RESOURCE PROTECTION RATIO	TOTAL AREA (ACRES)	PERCENT PROPOSED DISTURBANCE
FLOOD PLAINS	1.0	0.24	0%
JURISDICTIONAL WETLANDS	1.0	2.08	2%
NON-JURISDICTIONAL WETLANDS	1.0	1.87	27%
RIPIARIAN BUFFER	1.0	6.56	2%
STEEP SLOPES (>25%)	1	0.11	0%
STEEP SLOPES (15-25%)	0.25	0.19	47%
FOREST TIER 2	0.40	3.93	9%
FOREST TIER 3	0.10	34.91	69%

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Engineering
Environmental
Land Surveying

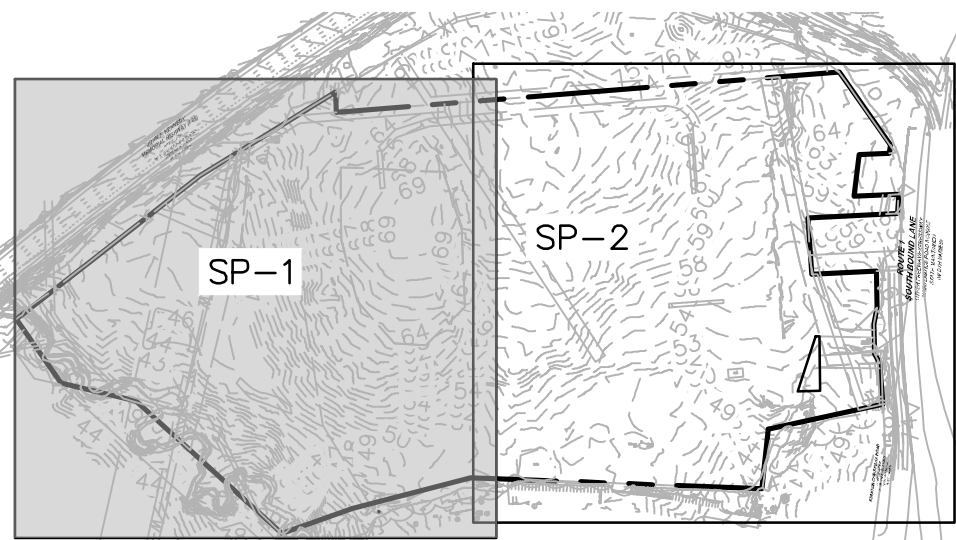
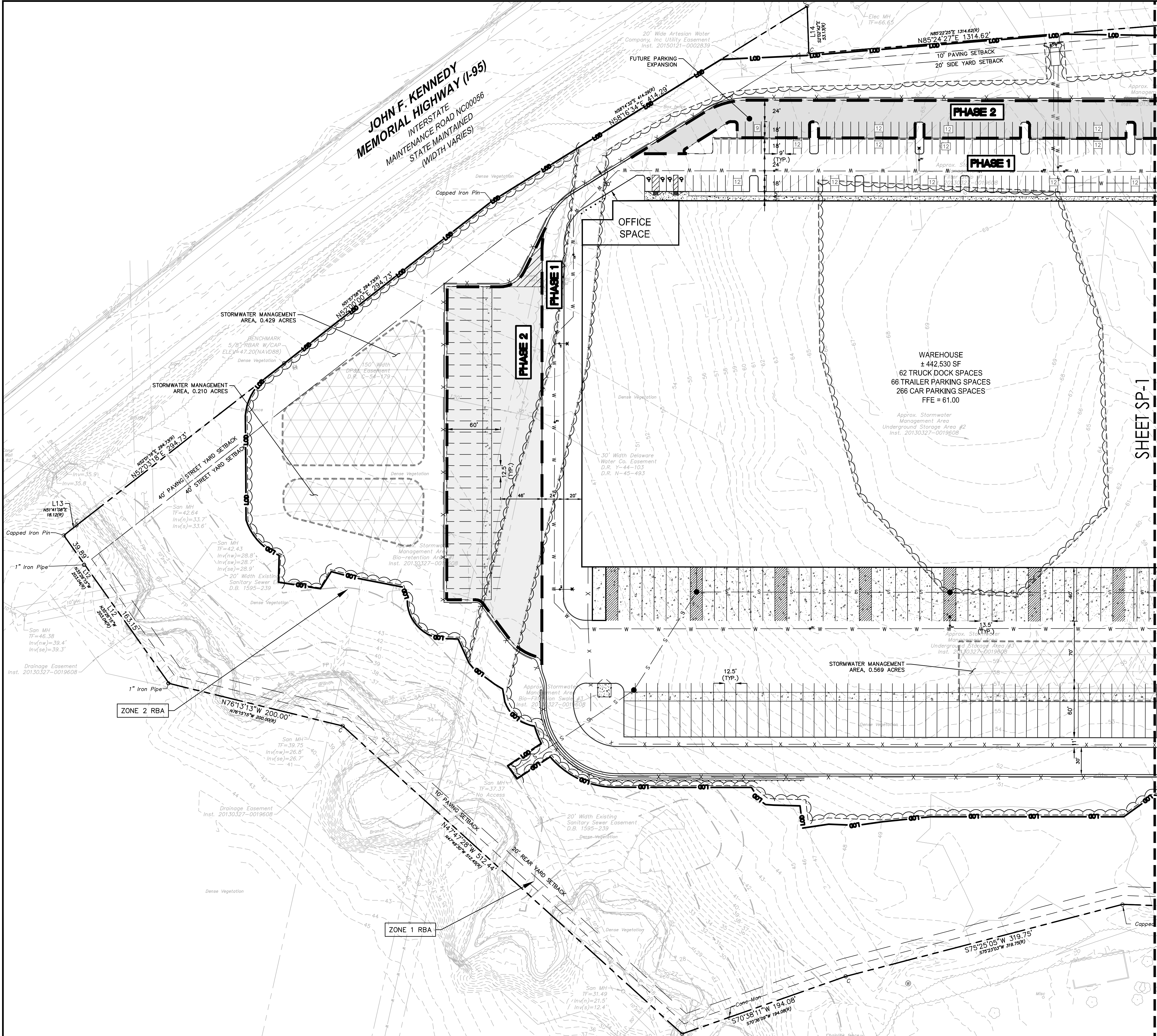
1100 First Avenue, Suite 104
King of Prussia, PA 19406
(610) 337-3630
(610) 337-3642 Fax

Professional Engineer
No. 16666
DELAWARE
NATIONAL ENGINEER

RECORD MAJOR LAND DEVELOPMENT
STANTON CHRISTIANA INDUSTRIAL DEVELOPMENT
205 STANTON CHRISTIANA ROAD
CHRISTIANA RIVER WATERSHED, NEW CASTLE HUNDRED
NEW CASTLE COUNTY, NEWARK, DELAWARE

Desc.
RESPONSE TO COMMENT
02/20/2024
03/29/2024
08/19/2024
09/11/2024
11/06/2024

REVISIONS
No. 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134 135 136 137 138 139 140 141 142 143 144 145 146 147 148 149 150 151 152 153 154 155 156 157 158 159 160 161 162 163 164 165 166 167 168 169 170 171 172 173 174 175 176 177 178 179 180 181 182 183 184 185 186 187 188 189 190 191 192 193 194 195 196 197 198 199 200 201 202 203 204 205 206 207 208 209 210 211 212 213 214 215 216 217 218 219 220 221 222 223 224 225 226 227 228 229 230 231 232 233 234 235 236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265 266 267 268 269 270 271 272 273 274 275 276 277 278 279 280 281 282 283 284 285 286 287 288 289 290 291 292 293 294 295 296 297 298 299 300 301 302 303 304 305 306 307 308 309 310 311 312 313 314 315 316 317 318 319 320 321 322 323 324 325 326 327 328 329 330 331 332 333 334 335 336 337 338 339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355 356 357 358 359 360 361 362 363 364 365 366 367 368 369 370 371 372 373 374 375 376 377 378 379 380 381 382 383 384 385 386 387 388 389 390 391 392 393 394 395 396 397 398 399 400 401 402 403 404 405 406 407 408 409 410 411 412 413 414 415 416 417 418 419 420 421 422 423 424 425 426 427 428 429 430 431 432 433 434 435 436 437 438 439 440 441 442 443 444 445 446 447 448 449 450 451 452 453 454 455 456 457 458 459 460 461 462 463 464 465 466 467 468 469 470 471 472 473 474 475 476 477 478 479 480 481 482 483 484 485 486 487 488 489 490 491 492 493 494 495 496 497 498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513 514 515 516 517 518 519 520 521 522 523 524 525 526 527 528 529 530 531 532 533 534 535 536 537 538 539 540 541 542 543 544 545 546 547 548 549 550 551 552 553 554 555 556 557 558 559 560 561 562 563 564 565 566 567 568 569 570 571 572 573 574 575 576 577 578 579 580 581 582 583 584 585 586 587 588 589 590 591 592 593 594 595 596 597 598 599 600 601 602 603 604 605 606 607 608 609 610 611 612 613 614 615 616 617 618 619 620 621 622 623 624 625 626 627 628 629 630 631 632 633 634 635 636 637 638 639 640 641 642 643 644 645 646 647 648 649 650 651 652 653 654 655 656 657 658 659 660 661 662 663 664 665 666 667 668 669 670 671 672 673 674 675 676 677 678 679 680 681 682 683 684 685 686 687 688 689 690 691 692 693 694 695 696 697 698 699 700 701 702 703 704 705 706 707 708 709 710 711 712 713 714 715 716 717 718 719 720 721 722 723 724 725 726 727 728 729 730 731 732 733 734 735 736 737 738 739 740 741 742 743 744 745 746 747 748 749 750 751 752 753 754 755 756 757 758 759 760 761 762 763 764 765 766 767 768 769 770 771 772 773 774 775 776 777 778 779 780 781 782 783 784 785 786 787 788 789 790 791 792 793 794 795 796 797 798 799 800 801 802 803 804 805 806 807 808 809 810 811 812 813 814 815 816 817 818 819 820 821 822 823 824 825 826 827 828 829 830 831 832 833 834 835 836 837 838 839 840 841 842 843 844 845 846 847 848 849 850 851 852 853 854 855 856 857 858 859 860 861 862 863 864 865 866 867 868 869 870 871 872 873 874 875 876 877 878 879 880 881 882 883 884 885 886 887 888 889 890 891 892 893 894 895 896 897 898 899 900 901 902 903 904 905 906 907 908 909 910 911 912 913 914 915 916 917 918 919 920 921 922 923 924 925 926 927 928 929 930 931 932 933 934 935 936 937 938 939 940 941 942 943 944 945 946 947 948 949 950 951 952 953 954 955 956 957 958 959 960 961 962 963 964 965 966 967 968 969 970 971 972 973 974 975 976 977 978 979 980 981 982 983 984 985 986 987 988 989 990 991 992 993 994 995 996 997 998 999 1000 1001 1002 1003 1004 1005 1006 1007 1008 1009 1010 1011 1012 1013 1014 1015 1016 1017 1018 1019 1020 1021 1022 1023 1024 1025 1026 1027 1028 1029 1030 1031 1032 1033 1034 1035 1036 1037 1



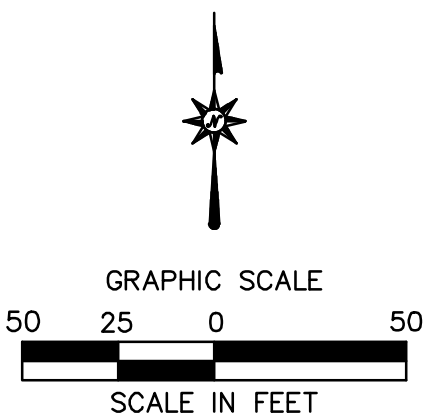
KEY MAP

LEGEND

PROPERTY LINE	---
LIMIT OF DISTURBANCE	---
BUILDING SETBACK LINE	---
PARKING SETBACK LINE	---
TREE CUT LIMIT	---
CURB	---
FUTURE CURB	---
HEAVY DUTY CONCRETE	---
FUTURE HEAVY DUTY CONCRETE	---
CONCRETE SIDEWALK	---
RIPARIAN BUFFER	---
WETLAND	---
FLOOD PLAIN	---
SURFACE/SUBSURFACE STORMWATER SYSTEM	---
RIP RAP PAD	---
RETAINING WALL	---
GUIDE RAIL	---
CHAIN LINK FENCE	---
FUTURE DEVELOPMENT	---
PHASE LINE	---
CALCULATED POINT (MONUMENT TO BE SET)	---
PROPERTY MONUMENT (AS DESCRIBED)	---
ELECTRIC LINE	---
ELECTRIC/TELECOMMUNICATIONS LINE	---
GAS LINE	---
WATER LINE	---
SANITARY SEWER LINE	---
HYDRANT	---
SANITARY SEWER MANHOLE	---
WATER VALVE	---
RIPARIAN BUFFER	---
WETLAND	---
FLOOD PLAIN	---
STREAM BANK EDGE	---
SANITARY SEWER FLOW	---
PROPOSED STORM DRAIN	---
CATCH BASIN	---
STORM DRAIN MANHOLE	---
FLARED END SECTION	---
HEADWALL	---
SUBSURFACE STORMWATER SYSTEM	---

Curve #	Length	Radius	Delta	Chord Length	Chord Direction
C1	50.22	3437.00	0°50'14"	50.22	S02°31'42"W
C2	108.13	3491.37	1°46'28"	108.12	S04°38'55"E

Line #	Direction	Length (ft)
L1	S 08°34'21" W	20.71
L2	S 87°04'54" W	78.22
L3	S 07°09'34" W	110.00
L4	N 87°04'54" E	116.27
L5	S 03°51'11" E	147.29
L6	S 01°07'14" E	94.59
L7	S 10°32'34" W	44.50
L8	S 01°08'29" E	69.50
L9	S 01°08'34" E	7.76
L10	S 28°01'49" E	26.89
L11	S 05°36'47" W	156.09
L12	N 35°24'13" W	203.04
L13	N 51°43'09" E	18.12
L14	S 02°00'40" E	53.13



RECORD MAJOR LAND DEVELOPMENT
STANTON CHRISTIANA INDUSTRIAL DEVELOPMENT
205 STANTON CHRISTIANA ROAD
CHRISTIANA RIVER WATERSHED, NEW CASTLE HUNDRED
NEW CASTLE COUNTY, NEWARK, DELAWARE

REVISIONS

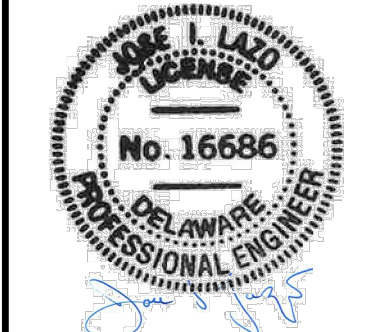
No.	Date	Desc.
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2	05/29/2024	RESPONSE TO COMMENT
3	08/15/2024	RESPONSE TO COMMENT
4	09/11/2024	RESPONSE TO COMMENT
5	11/04/2024	RESPONSE TO COMMENT

Designed: E.A.E.
Drawn: E.A.E.
Reviewed: A.J.B.
Scale: 1" = 50'
Project No.: 2100695
Date: 12/01/2023
CAD File: RC210069501
Title: SITE PLAN 1
Sheet No.: SP-1
Application No.: 20220039

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Engineering
Environmental
Land Surveying

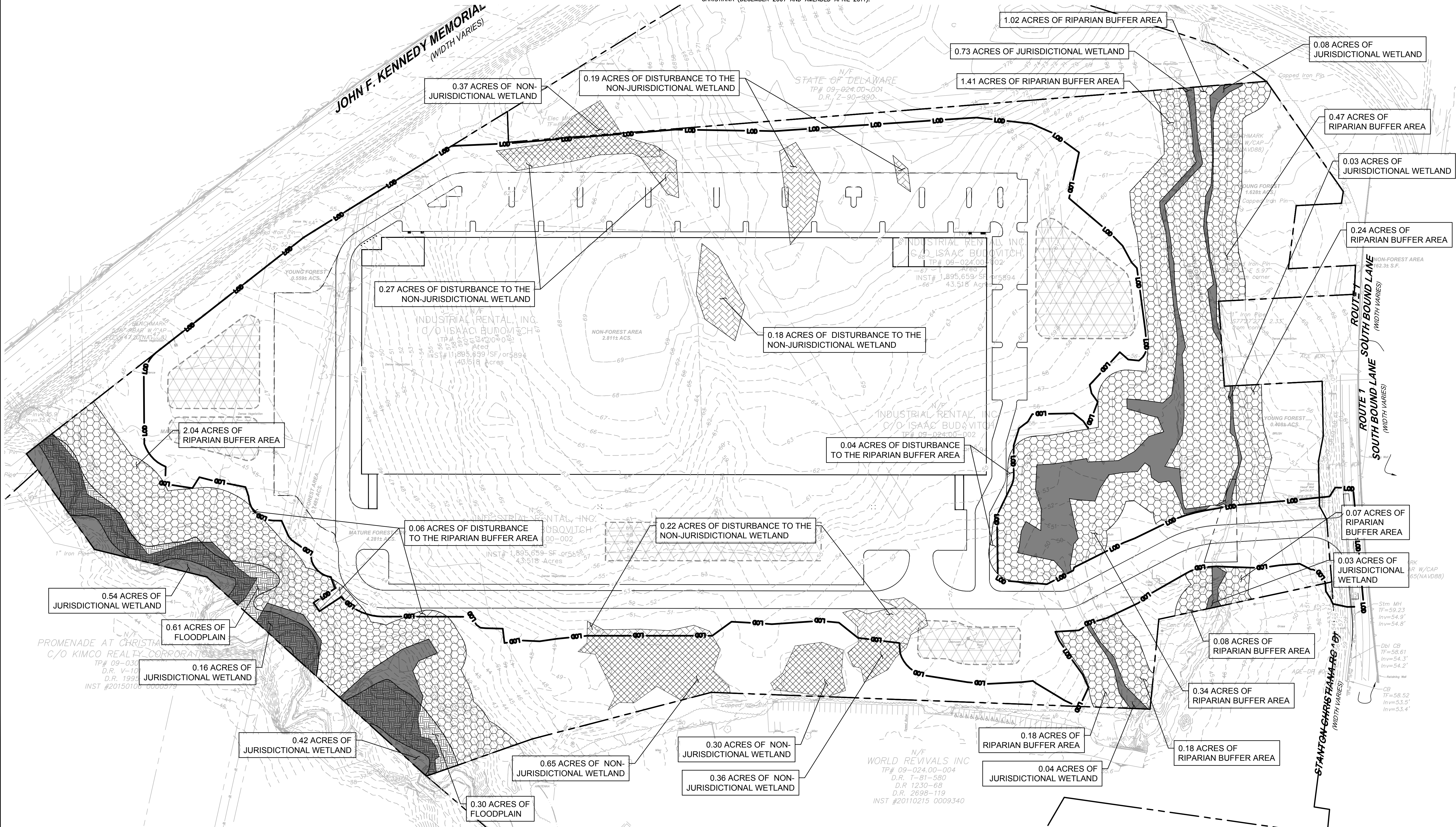
BL Companies

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(610) 337-3630
(610) 337-3642 Fax



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NOTE:
1. FOR CLARITY PURPOSES FOREST TIER 2 AND FOREST TIER 3 ARE SHOWN ON EXH-2.

RESOURCE CALCULATIONS

PROTECTED RESOURCE	TOTAL AREA (ACRE)	DISTURBED AREA (ACRE)	PROTECTED AREA (ACRE)	PROTECTION RATIO REQUIRED*	PROTECTION RATIO PROVIDED
FLOOD PLAINS	0.24	0.00	0.24	1.00	1.00
JURISDICTIONAL WETLANDS	2.08	0.04	2.04	1.00**	0.98
NON-JURISDICTIONAL WETLANDS	1.87	0.51	1.36	1.00***	0.73
RIPIARIAN BUFFER	6.56	0.10	6.46	1.00	0.98
STEEP SLOPES (>25%)	0.11	0.00	0.11	1.00	1.00
STEEP SLOPES (15-25%)	0.19	0.09	0.10	0.25	0.53
FOREST TIER 2	3.93	0.35	3.58	0.40	0.91
FOREST TIER 3	34.91	24.23	10.68	0.10	0.31
TOTAL PROTECTED RESOURCE LAND	49.89	25.32	24.57		

*PER NEW CASTLE COUNTY UNIFIED DEVELOPMENT CODE SECTION 40.05.420
**PER NEW CASTLE COUNTY UNIFIED DEVELOPMENT CODE SECTION 40.10.120A
***PER NEW CASTLE COUNTY UNIFIED DEVELOPMENT CODE SECTION 40.10.120B
****FLOOD PLAIN PER FLOODPLAIN LOMR STUDY FOR CHRISTIANA TOWN CENTER (JULY 2008) AND FLOOD STUDY FOR BRANCH OF EAGLE RUN AT PROMENADA AT CHRISTIANA (DECEMBER 2007 AND AMENDED APRIL 2011).

LEGEND

---	PROPERTY LINE
[Pattern]	FLOOD PLAIN
[Pattern]	JURISDICTIONAL WETLAND
[Pattern]	PRESERVED NON-JURISDICTIONAL WETLANDS
[Pattern]	PRESERVED RIPIARIAN BUFFER
[Pattern]	IMPACTED NON-JURISDICTIONAL WETLANDS
[Pattern]	IMPACTED RIPIARIAN BUFFER
---	RIPIARIAN BUFFER LIMIT
---	WETLAND LIMIT
---	FLOODPLAIN LINE
---	STREAM BANK EDGE

Revised By: 11/17/2024, ADMIN, C:\USERS\ADMIN\Documents\Projects\2022060901\2022060901.dwg, 11/17/2024, ADMIN, C:\USERS\ADMIN\Documents\Projects\2022060901\2022060901.dwg

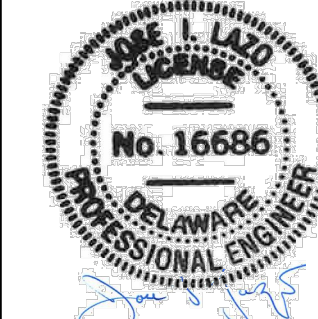
REVISIONS	Date	Desc.
1	02/20/2024	RESPONSE TO COMMENT
2	03/29/2024	RESPONSE TO COMMENT
3	08/15/2024	RESPONSE TO COMMENT
4	09/11/2024	RESPONSE TO COMMENT
5	11/04/2024	RESPONSE TO COMMENT

Designed
Drawn
Reviewed
Scale
Project No.
Date
CAD File:
Title
Resource Protection Plan-Part 1

Sheet No.

EXH-1
APPLICATION NO. 20220039

RECORD MAJOR LAND DEVELOPMENT
STANTON CHRISTIANA INDUSTRIAL DEVELOPMENT
205 STANTON CHRISTIANA ROAD
CHRISTIANA RIVER WATERSHED, NEW CASTLE HUNDRED
NEW CASTLE COUNTY, NEWARK, DELAWARE



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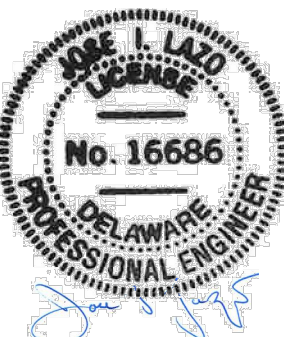
PROTECTED RESOURCE	TOTAL AREA (ACRE)	DISTURBED AREA (ACRE)	PROTECTED AREA (ACRE)	PROTECTION RATIO REQUIRED*	PROTECTION RATIO PROVIDED
FLOOD PLAINS	0.24	0.00	0.24	1.00	1.00
JURISDICTIONAL WETLANDS	2.08	0.04	2.04	1.00**	0.98
NON-JURISDICTIONAL WETLANDS	1.87	0.51	1.36	1.00***	0.73
RIPARIAN BUFFER	6.56	0.10	6.46	1.00	0.98
STEEP SLOPES (>25%)	0.11	0.00	0.11	1.00	1.00
STEEP SLOPES (15-25%)	0.19	0.09	0.10	0.25	0.53
FOREST TIER 2	3.93	0.35	3.58	0.40	0.91
FOREST TIER 3	34.91	24.23	10.68	0.10	0.31
TOTAL PROTECTED RESOURCE LAND	49.89	25.32	24.57		

LEGEND

-
- PROPERTY LINE
- PRESERVED FOREST TIER 2
- PRESERVED FOREST TIER 3
- IMPACTED FOREST TIER 2
- IMPACTED FOREST TIER 3
- RIPARIAN BUFFER LIMIT
- WETLAND LIMIT
- FLOODPLAIN LINE
- STREAM BANK EDGE



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RECORD MAJOR LAND DEVELOPMENT
STANTON CHRISTIANA INDUSTRIAL DEVELOPMENT
 205 STANTON CHRISTIANA ROAD
 CHRISTIANA RIVER WATERSHED, NEW CASTLE HUNDRED
 NEW CASTLE COUNTY, NEWARK, DELAWARE

REVISIONS		
No.	Date	Desc.
1	02/20/2024	RESPONSE TO COMMENT
2	04/22/2024	RESPONSE TO COMMENT
3	05/29/2024	RESPONSE TO COMMENT
4	08/15/2024	RESPONSE TO COMMENT
5	09/11/2024	RESPONSE TO COMMENT
6	09/25/2024	RESPONSE TO COMMENT
7	11/06/2024	RESPONSE TO COMMENT

Designed	
Drawn	
Reviewed	
Scale	
Project No.	210069
Date	

CAD File:
RC210069502

RESOURCE PROTECTION PLAN-PART 2

Sheet No _____

EXH-2

APPLICATION NO. 2022003

Prime Sponsor(s): Ms. Durham
Requested by: Land Use
Date of introduction: March 12, 2024

ORDINANCE NO. 24-033

**COMPREHENSIVE REZONING - TO REVISE THE NEW CASTLE COUNTY ZONING
MAPS IN COUNTY COUNCIL DISTRICT 2 REGARDING THE FOLLOWING TAX
PARCELS: BRANDYWINE HUNDRED: 06-040.00-002 (0 CONCORD PIKE OFF,
WOODLAWN TRUSTEES), 06-077.00-274 (0 CONCORD PIKE OFF, FIRST
UNITARIAN CHURCH), 06-127.00-001 (742 ALAPOCAS DR, E I DUPONT
DENEMOURS), 26-014.10-006 (1600 N PARK DR, ABESSINIO STADIUM)**

1 **WHEREAS**, County Council adopted Substitute No. 2 to Ordinance No. 22-024 as
2 amended by Floor Amendment No. 1 ("New Castle County Comprehensive Plan" or "the
3 Plan"), on July 26, 2022, and the County Executive approved the Ordinance on August
4 4, 2022; and

5
6 **WHEREAS**, the Future Land Use Element and Map Series of the New Castle
7 County Comprehensive Plan designates proposed future general distribution, location
8 and extent of the uses of land consistent with goals, policies and measurable objectives
9 enumerated in the Plan; and

10
11 **WHEREAS**, the New Castle County Comprehensive Plan guides and encourages
12 sustainable economic development sensitive to the context of neighboring residential
13 developments; and

14
15 **WHEREAS**, the New Castle County Comprehensive Plan guides and encourages
16 preservation efforts to best protect important ecological habitats; and

17
18 **WHEREAS**, 9 *Del. C. § 2660* requires New Castle County to amend its official
19 zoning map within eighteen months of the date of adoption of a revision to the county
20 comprehensive plan "to rezone all lands in accordance with the uses and intensities of
21 uses provided for in the future land use element for the County"; and

22
23 **WHEREAS**, Ordinance No. 23-083 was introduced on June 13, 2023, to amend
24 the official zoning map in accordance with the uses and intensities of uses provided for in
25 the future land use element of the New Castle County Comprehensive Plan; and

26
27 **WHEREAS**, the County can foster more informed participation by the public,
28 including increased opportunities for review, by amending the zoning map in smaller
29 portions, such as by Councilmanic District; and

30 **WHEREAS**, this County-initiated rezoning is intended to guide and control future
31 growth consistent with the spirit and intent of the Comprehensive Development Plan as
32 provided by State law; and

33 **WHEREAS**, County Council has determined that the amendments to the zoning
34 map substantially advance, and are reasonably and rationally related to, legitimate
35 government interests (i.e., promoting the health, safety, morals, convenience, order,
36 prosperity and/or welfare of the present and future inhabitants of this State).
37

38 **NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**
39

40 Section 1. The Zoning Maps of Brandywine Hundred and Christiana Hundred, are
41 hereby amended by changing the zoning classification of the land shown on attached
42 Exhibit "A", Maps 1-4 dated February 29, 2024, as set forth therein.
43

44 Section 2. This Ordinance shall become effective immediately upon passage by
45 New Castle County Council and approval of the County Executive, or as otherwise
46 provided in 9 *Del. C.* § 1156.

Adopted by County Council of
New Castle County on:

Karen Hartley-Nagle
President of County Council
of New Castle County

Approved on:

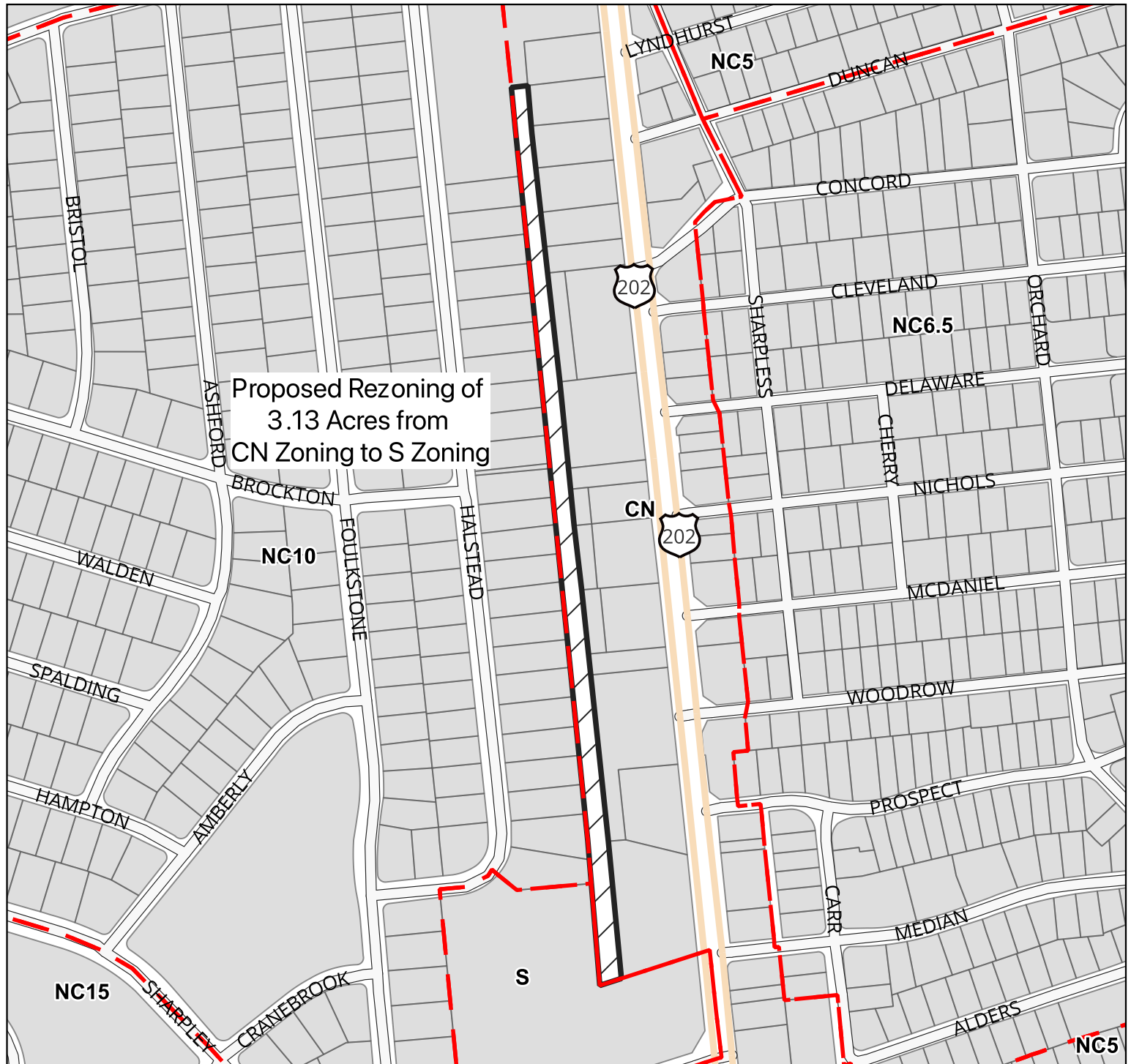
Matthew Meyers
County Executive
New Castle County

SYNOPSIS: Same as Title.

FISCAL IMPACT: There is no discernible fiscal impact with the adoption of this ordinance.

APPLICANT: NEW CASTLE COUNTY
PROPOSED REZONING: CN ZONING TO S ZONING

APPLICATION NO. 2024-0133-Z
TAX PARCEL NO: 06-077.00-274



HUNDRED: BRANDYWINE
NEW CASTLE COUNTY, DELAWARE

Scale: 1:4775
Prepared by: Matthew Rogers

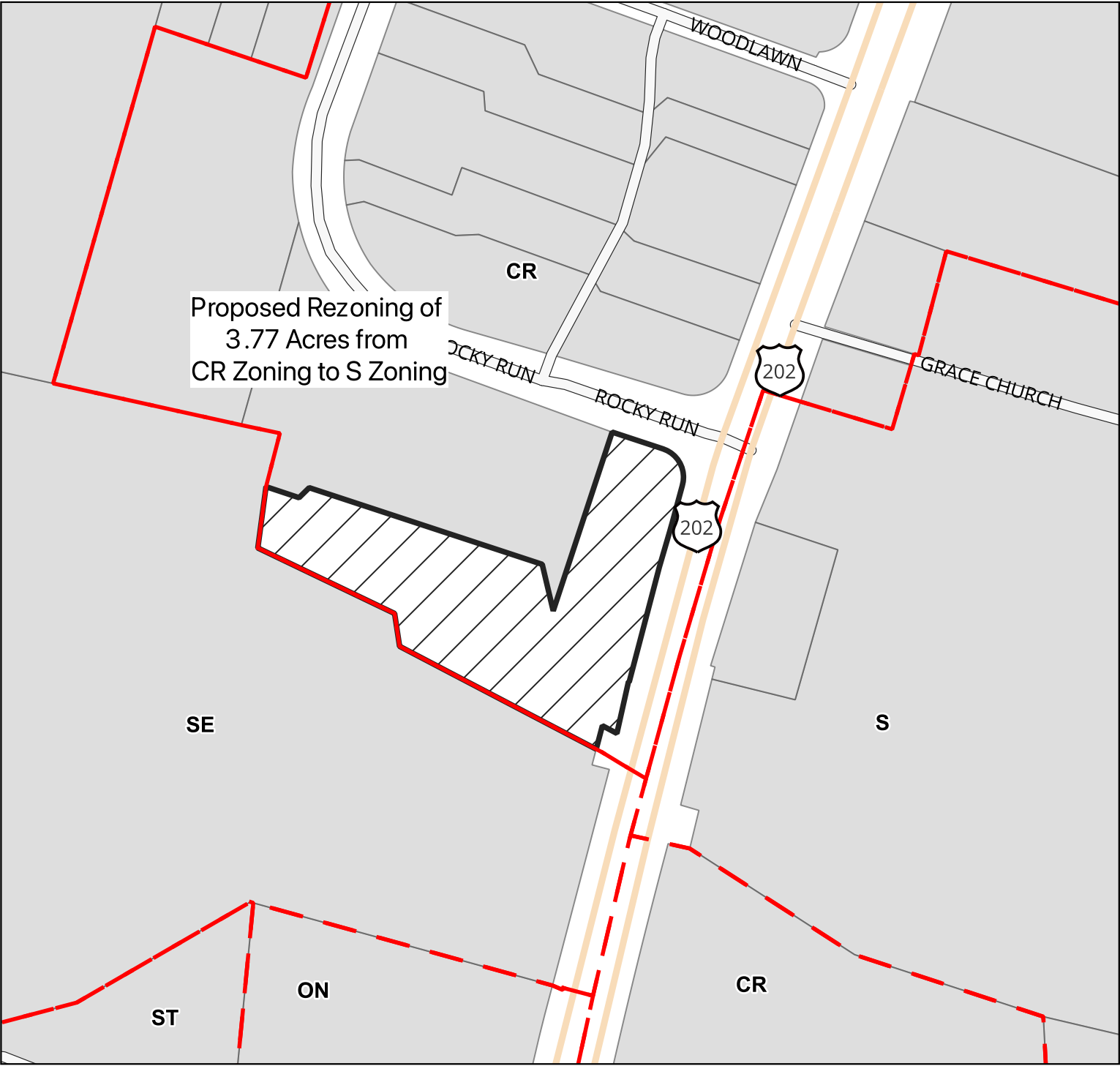
Date: 2/29/2024



PERMANENT ORDINANCE NO. 24-033
Date Adopted by County Council:
Date Approved by County Executive:

APPLICANT: NEW CASTLE COUNTY
PROPOSED REZONING: CR ZONING TO S ZONING

APPLICATION NO. 2024-0133-Z
TAX PARCEL NO: 06-040.00-002



HUNDRED: BRANDYWINE
NEW CASTLE COUNTY, DELAWARE

Scale: 1:2835
Prepared by: Matthew Rogers

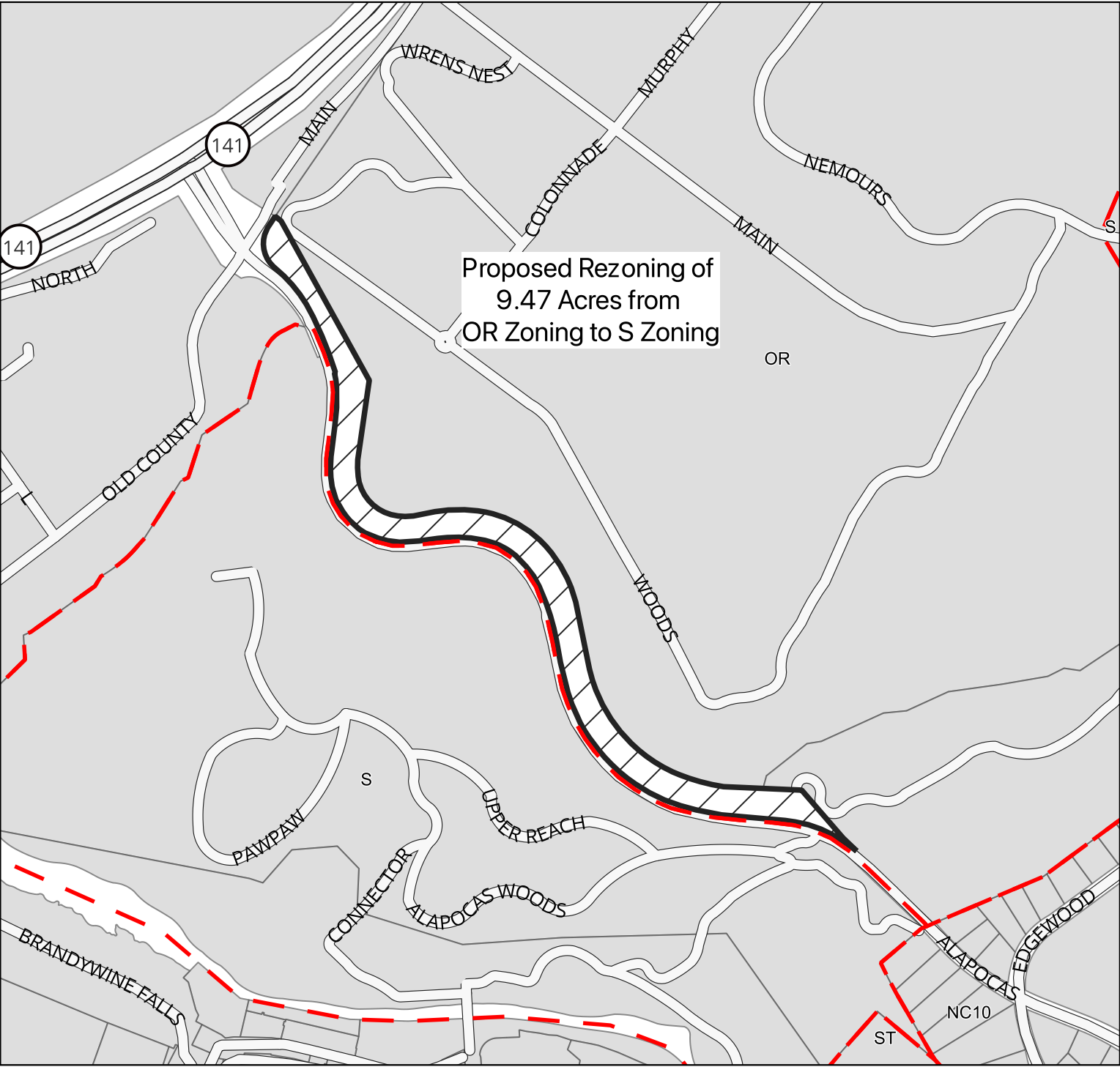
Date: 2/29/2024



PERMANENT ORDINANCE NO. 24-033
Date Adopted by County Council:
Date Approved by County Executive:

APPLICANT: NEW CASTLE COUNTY
PROPOSED REZONING: OR ZONING TO S ZONING

APPLICATION NO. 2024-0133-Z
TAX PARCEL NO: 06-127.00-001



HUNDRED: BRANDYWINE
NEW CASTLE COUNTY, DELAWARE

Scale: 1:6786
Prepared by: Matthew Rogers

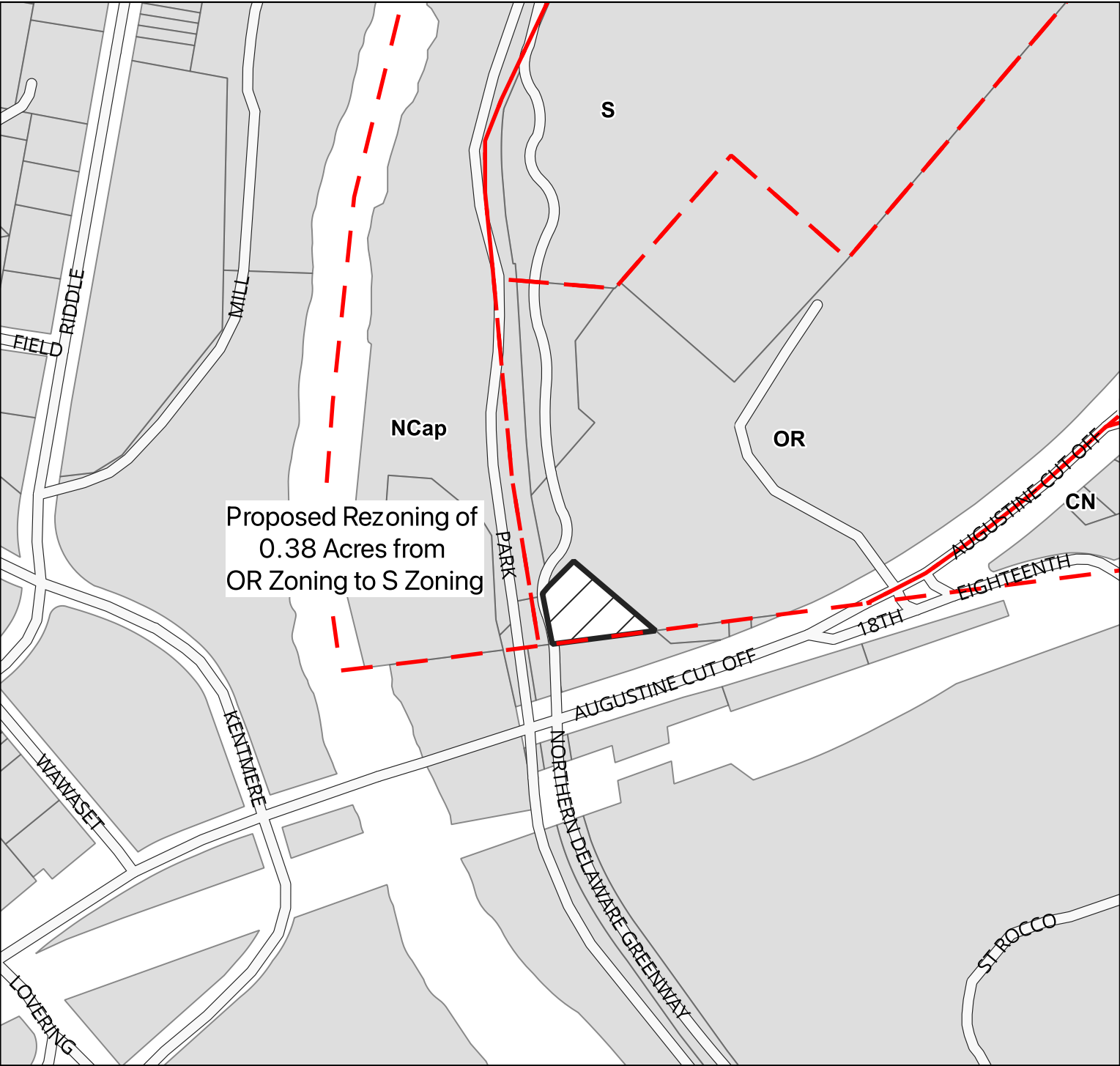
Date: 2/29/2024



PERMANENT ORDINANCE NO. 24-
Date Adopted by County Council:
Date Approved by County Executive:

APPLICANT: NEW CASTLE COUNTY
PROPOSED REZONING: OR ZONING TO S ZONING

APPLICATION NO. 2024-0133-Z
TAX PARCEL NO: 26-014.10-006



HUNDRED: BRANDYWINE
NEW CASTLE COUNTY, DELAWARE

Scale: 1:3024
Prepared by: Matthew Rogers

Date: 2/29/2024



PERMANENT ORDINANCE NO. 24-033
Date Adopted by County Council:
Date Approved by County Executive:

Prime Sponsor(s): Ms. Durham, Mr. Hollins
Requested by: Land Use
Date of introduction: March 12, 2024

ORDINANCE NO. 24-034

**COMPREHENSIVE REZONING - TO REVISE THE NEW CASTLE COUNTY ZONING
MAPS IN COUNTY COUNCIL DISTRICT 2 AND COUNTY COUNCIL DISTRICT 4
REGARDING THE FOLLOWING TAX PARCELS: CHRISTIANA HUNDRED:
07-030.20-015 (0 NEW BRIDGE RD)**

1 **WHEREAS**, County Council adopted Substitute No. 2 to Ordinance No. 22-024 as
2 amended by Floor Amendment No. 1 ("New Castle County Comprehensive Plan" or "the
3 Plan"), on July 26, 2022, and the County Executive approved the Ordinance on August
4 4, 2022; and

5
6 **WHEREAS**, the Future Land Use Element and Map Series of the New Castle
7 County Comprehensive Plan designates proposed future general distribution, location
8 and extent of the uses of land consistent with goals, policies and measurable objectives
9 enumerated in the Plan; and

10
11 **WHEREAS**, the New Castle County Comprehensive Plan guides and encourages
12 sustainable economic development sensitive to the context of neighboring residential
13 developments; and

14
15 **WHEREAS**, the New Castle County Comprehensive Plan guides and encourages
16 preservation efforts to best protect important ecological habitats; and

17
18 **WHEREAS**, 9 *Del. C.* § 2660 requires New Castle County to amend its official
19 zoning map within eighteen months of the date of adoption of a revision to the county
20 comprehensive plan "to rezone all lands in accordance with the uses and intensities of
21 uses provided for in the future land use element for the County"; and

22
23 **WHEREAS**, Ordinance No. 23-083 was introduced on June 13, 2023, to amend
24 the official zoning map in accordance with the uses and intensities of uses provided for in
25 the future land use element of the New Castle County Comprehensive Plan; and

26
27 **WHEREAS**, the County can foster more informed participation by the public,
28 including increased opportunities for review, by amending the zoning map in smaller
29 portions, such as by Councilmanic District; and

30
31 **WHEREAS**, this County-initiated rezoning is intended to guide and control future
32 growth consistent with the spirit and intent of the Comprehensive Development Plan as
33 provided by State law; and

34 **WHEREAS**, County Council has determined that the amendments to the zoning
35 map substantially advance, and are reasonably and rationally related to, legitimate
36 government interests (i.e., promoting the health, safety, morals, convenience, order,
37 prosperity and/or welfare of the present and future inhabitants of this State).
38

39 **NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**
40

41 Section 1. The Zoning Maps of Brandywine Hundred and Christiana Hundred, are
42 hereby amended by changing the zoning classification of the land shown on attached
43 Exhibit "A", Maps 1 dated February 29, 2024, as set forth therein.
44

45 Section 2. This Ordinance shall become effective immediately upon passage by
46 New Castle County Council and approval of the County Executive, or as otherwise
47 provided in 9 *Del. C.* § 1156.

Adopted by County Council of
New Castle County on:

Karen Hartley-Nagle
President of County Council
of New Castle County

Approved on:

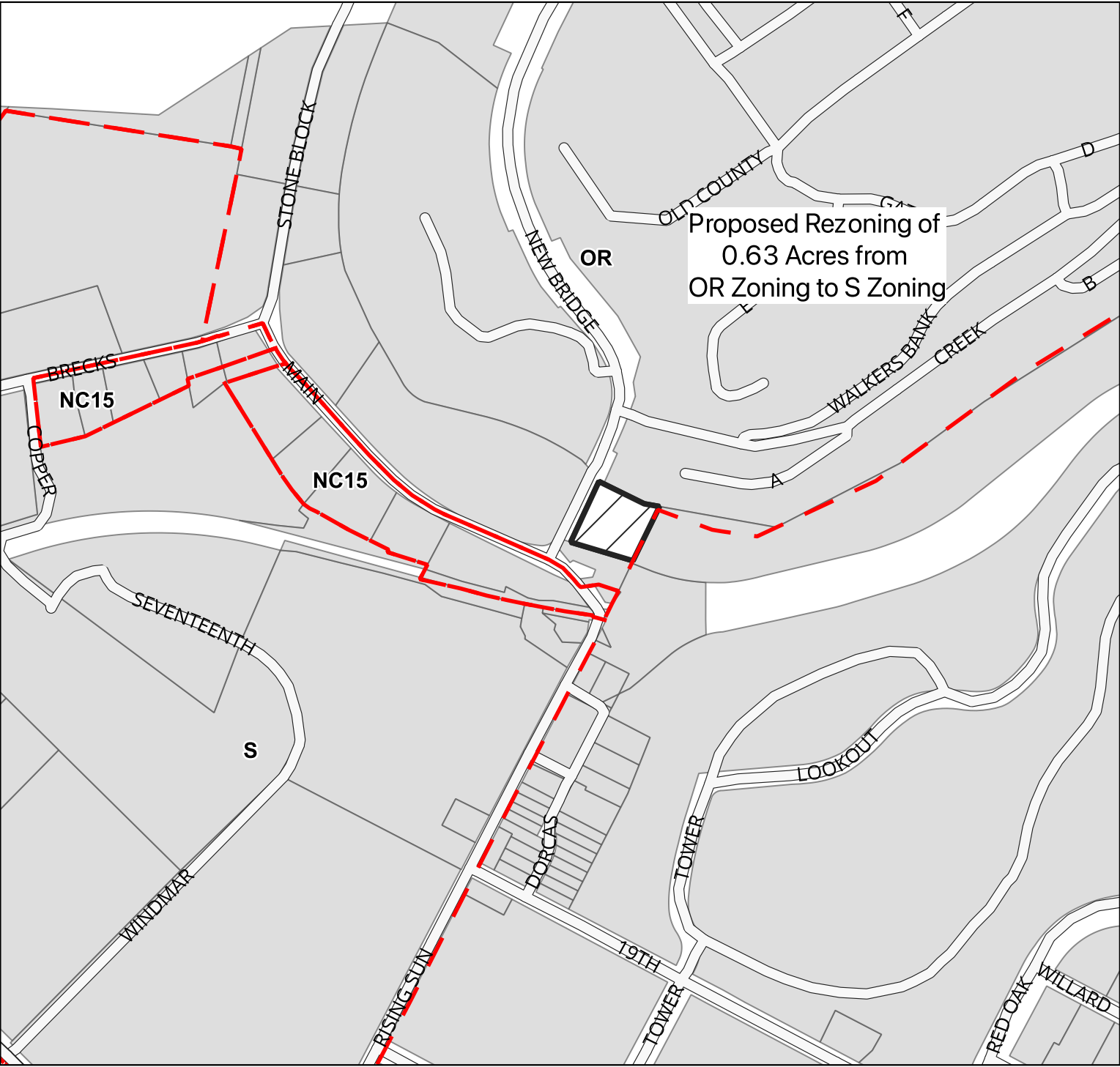
Matthew Meyer
County Executive
New Castle County

SYNOPSIS: Same as title.

FISCAL IMPACT: There is no discernible fiscal impact with the adoption of this ordinance.

APPLICANT: NEW CASTLE COUNTY
PROPOSED REZONING: OR ZONING TO S ZONING

APPLICATION NO. 2024-0135-Z
TAX PARCEL NO: 07-030.20-015



HUNDRED: CHRISTIANA
NEW CASTLE COUNTY, DELAWARE

Scale: 1:4408
Prepared by: Matthew Rogers

Date: 2/29/2024



PERMANENT ORDINANCE NO. 24-034
Date Adopted by County Council:
Date Approved by County Executive:

Prime Sponsor(s): Mr. Carter
Requested by: Land Use
Date of introduction: May 28, 2024

ORDINANCE NO. 24-083

COMPREHENSIVE REZONING -TO REVISE THE NEW CASTLE COUNTY ZONING MAPS IN COUNTY COUNCIL DISTRICT 6 REGARDING THE FOLLOWING TAX PARCELS: APPOQUINIMINK HUNDRED: 14-010.00-002 (0 MIDDLETOWN WARWICK RD), 14-010.00-003 (0 STRAWBERRY LN), 14-010.00-009 (0 MIDDLETOWN WARWICK RD), 14-010.00-010 (1422 MIDDLETOWN WARWICK RD), 14-010.00-015 (0 STRAWBERRY LN), 14-010.00-016 (1352 MIDDLETOWN WARWICK RD), 14-010.00-017 (1330 MIDDLETOWN WARWICK RD, STARDEL INC), 14-010.00-018 (1280 MIDDLETOWN WARWICK RD), 14-010.00-026 (301 STRAWBERRY LN), 14-010.00-028 (0 MIDDLETOWN WARWICK RD, STARDEL INC), 14-010.00-032 (1416 MIDDLETOWN WARWICK RD, SHAHAN SUBDIVISION); PENCADER HUNDRED: 11-058.00-009 (4 TROOPERS WAY, SUMMIT AVIATION); ST GEORGES HUNDRED: 11-058.00-009 (4 TROOPERS WAY, SUMMIT AVIATION)

1 **WHEREAS**, County Council adopted Substitute No. 2 to Ordinance No. 22-024 as
2 amended by Floor Amendment No. 1 (“New Castle County Comprehensive Plan” or “the
3 Plan”), on July 26, 2022, and the County Executive approved the Ordinance on August
4 4, 2022; and

5
6 **WHEREAS**, the Future Land Use Element and Map Series of the New Castle
7 County Comprehensive Plan designates proposed future general distribution, location
8 and extent of the uses of land consistent with goals, policies and measurable objectives
9 enumerated in the Plan; and

10
11 **WHEREAS**, the New Castle County Comprehensive Plan guides and encourages
12 sustainable economic development sensitive to the context of neighboring residential
13 developments; and

14
15 **WHEREAS**, the New Castle County Comprehensive Plan guides and encourages
16 preservation efforts to best protect important ecological habitats; and

17
18 **WHEREAS**, 9 *Del. C. § 2660* requires New Castle County to amend its official
19 zoning map within eighteen months of the date of adoption of a revision to the county
20 comprehensive plan “to rezone all lands in accordance with the uses and intensities of
21 uses provided for i the future land use element for the County”; and

22
23 **WHEREAS**, Ordinance No. 23-083 was introduced on June 13, 2023, to amend
24 the official zoning map in accordance with the uses and intensities of uses provided for in
25 the future land use element of the New Castle County Comprehensive Plan; and

26 **WHEREAS**, the County can foster more informed participation by the public,
27 including increased opportunities for review, by amending the zoning map in smaller
28 portions, such as by Councilmanic District; and
29

30 **WHEREAS**, this County-initiated rezoning is intended to guide and control future
31 growth consistent with the spirit and intent of the Comprehensive Development Plan as
32 provided by State law; and

33 **WHEREAS**, County Council has determined that the amendments to the zoning
34 map substantially advance, and are reasonably and rationally related to, legitimate
35 government interests (i.e., promoting the health, safety, morals, convenience, order,
36 prosperity and/or welfare of the present and future inhabitants of this State).
37

38 **NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**
39

40 Section 1. The Zoning Maps of Appoquinimink Hundred, Pencader Hundred, and
41 St Georges Hundred, are hereby amended by changing the zoning classification of the
42 land shown on attached Exhibit "A", Maps 1-2 dated 4/17/2024, as set forth therein.
43

44 Section 2. This Ordinance shall become effective immediately upon passage by
45 New Castle County Council and approval of the County Executive, or as otherwise
46 provided in 9 *Del. C.* § 1156.

Adopted by County Council of
New Castle County on:

Karen Hartley-Nagle
President of County Council
of New Castle County

Approved on:

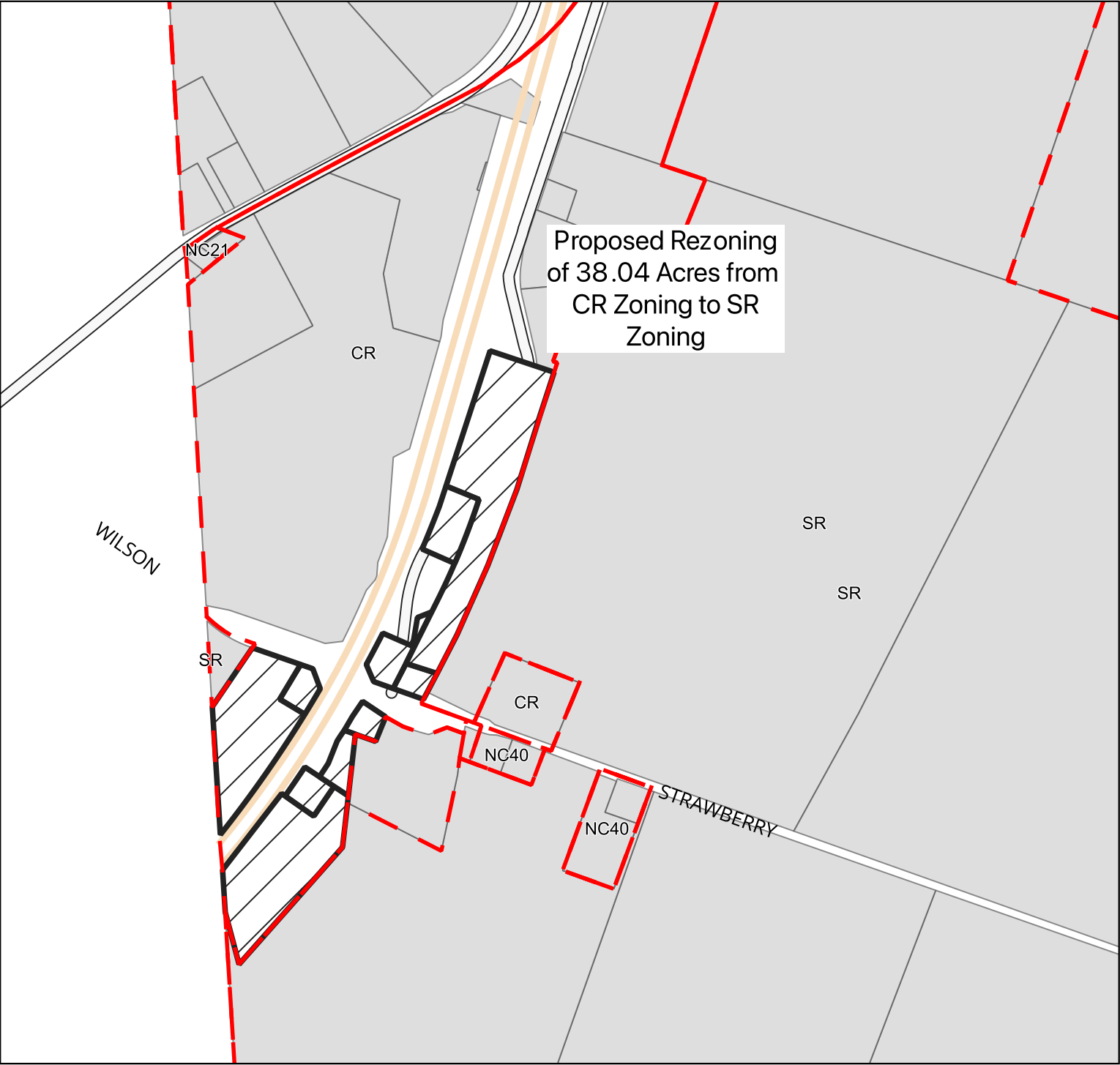
Matthew Meyer
County Executive
New Castle County

SYNOPSIS: Same as title.

FISCAL IMPACT: There is no discernible fiscal impact with the adoption of this legislation.

APPLICANT: NEW CASTLE COUNTY
PROPOSED REZONING: CR ZONING TO SR ZONING

APPLICATION NO. 2024-0231-Z
TAX PARCEL NO: 14-010.00-002, 14-010.00-003,
14-010.00-009,14-010.00-010,14-010.00-015, 14-010.00-016,
14-010.00-017,14-010.00-018,14-010.00-026, 14-010.00-028,
14-010.00-032



HUNDRED: APPOQUINIMINK
NEW CASTLE COUNTY, DELAWARE

Scale: 1:10126
Prepared by: Matthew Rogers

Date: 4/17/2024



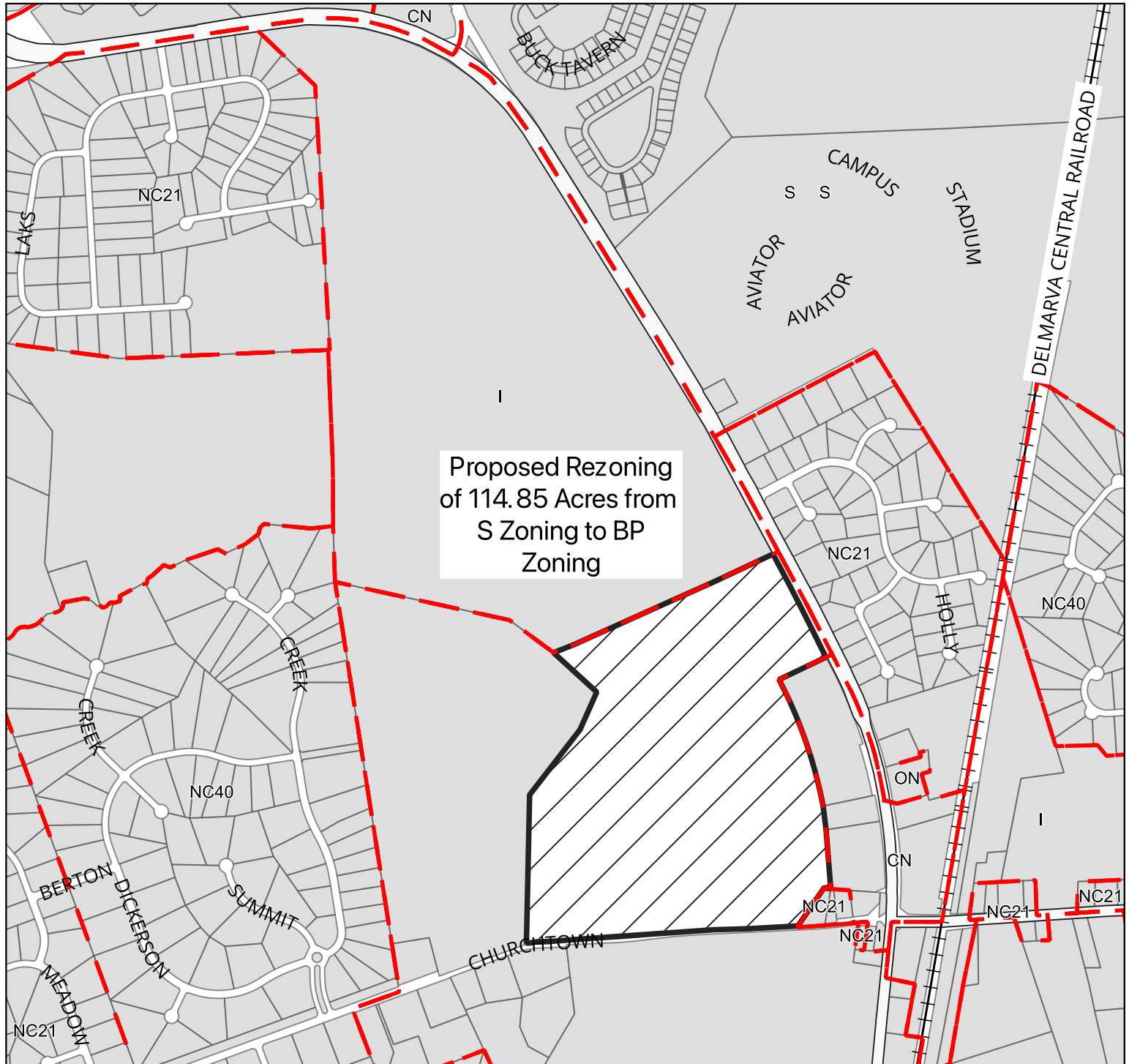
PERMANENT ORDINANCE NO. 24-083
Date Adopted by County Council:
Date Approved by County Executive:

PROPERTY MAP

EXHIBIT A: MAP 2
ZONING ORDINANCE AS INTRODUCED

APPLICANT: NEW CASTLE COUNTY
PROPOSED REZONING: S ZONING TO BP ZONING

APPLICATION NO. 2024-0231-Z
TAX PARCEL NO: 11-058.00-009



HUNDRED: PENCADER AND ST GEORGES
NEW CASTLE COUNTY, DELAWARE

Scale: 1:12776
Prepared by: Matthew Rogers

Date: 4/17/2024



PERMANENT ORDINANCE NO. 24-083
Date Adopted by County Council:
Date Approved by County Executive:

Prime Sponsor(s): Mr. Tackett
Ms. Kilpatrick
Requested by: Land Use
Date of introduction: September 17, 2024

ORDINANCE NO. 24-138

TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40 (“UNIFIED DEVELOPMENT CODE” OR “UDC”), ARTICLE 3 (“USE REGULATIONS”), AND ARTICLE 33 (“DEFINITIONS”), REGARDING MARIJUANA CULTIVATION FACILITIES, MARIJUANA PRODUCT MANUFACTURING FACILITIES, AND RETAIL MARIJUANA STORES

1 **WHEREAS**, the State of Delaware adopted the Delaware Marijuana Control Act
2 on April 27, 2023; and
3

4 **WHEREAS**, the Delaware Marijuana Control Act does not permit New Castle
5 County to prohibit the operation of marijuana cultivation facilities, marijuana product
6 manufacturing facilities, marijuana testing facilities, or retail marijuana stores through
7 the enactment of an ordinance or through an initiated or referred measure; and
8

9 **WHEREAS**, the Delaware Marijuana Control Act permits New Castle County to
10 enact ordinances or regulations that do not conflict with Title 4, Chapter 13 of the
11 *Delaware Code*, or with regulations enacted by the State of Delaware’s Marijuana
12 Commissioner, governing the time, place, manner, and number of marijuana
13 establishment operations; and
14

15 **WHEREAS**, the Unified Development Code does not presently regulate the
16 operation of marijuana cultivation facilities, marijuana product manufacturing facilities,
17 marijuana testing facilities, or retail marijuana stores; and
18

19 **WHEREAS**, the New Castle County Comprehensive Plan guides development
20 and redevelopment to be sensitive to the context of neighboring residential
21 development; and
22

23 **WHEREAS**, the County recognizes the importance of updating its development
24 regulations to be consistent with *Delaware Code*, and the New Castle County
25 Comprehensive Plan; and
26

27 **WHEREAS**, County Council has determined that the provisions of this Ordinance
28 substantially advance, and are reasonably and rationally related to, legitimate
29 government interests (i.e., promoting the health, safety, morals, convenience, order,
30 prosperity and/or welfare of the present and future inhabitants of this State).
31

32 **NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**

33 **Section 1.** *New Castle County Code* Chapter 40 (Unified Development Code or
34 “UDC”), Article 3 (“Use Regulations”), Division 40.03.110 (“Use table”), is hereby
35 amended by adding the material that is underscored, as set forth below:

Table 40.03.110A. General Use Table									Table 40.03.110B. General Use Table							Table 40.03.110C. General Use Table	
Zoning District (Urban and Suburban-Transition Character) Y=permitted, N=prohibited, L=limited review, S=special use review, A=accessory									Zoning District (Suburban and Special Character)							Additional Standards (all districts)	
Land Use	TN*	ST	MM	ON	OR	CR	BP	I	CN	S***	SE	NC**	HI	EX	SR	Parking	Limited & Special Use Standards
Commercial									Commercial							Commercial	
Adaptive reuse, historic building ...	L	L	L	L	L	L	L	L	L	L	L	L	L	L	L	Table 40.03.522	Section 40.15.240
Shopping center	N	N	N	N	N	Y	N	N	Y	N	N	N	N	N	N	Table 40.03.522	—
Vehicular sales, rental and service	N	N	N	N	N	Y	N	N	N	N	N	N	N	N	N	Table 40.03.522	—
<u>Retail marijuana store</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>L</u>	<u>N</u>	<u>L*</u>	<u>S</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>N</u>	<u>Table 40.03.522</u>	<u>Section 40.03.341</u> <u>*Site must have been established and operational as a medical marijuana dispensary before July 1, 2024</u>

37 **Section 2. New Castle County Code Chapter 40** (Unified Development Code or
38 "UDC"), Article 3 ("Use Regulations"), Division 40.03.300 ("Additional limited and special
39 use standards"), is hereby amended by adding the material that is underscored, as set
40 forth below:

41
42 **Sec. 40.03.333. Light Industry uses in OR, and CR zoning districts.**
43

44 A. Light Industry uses as defined in Section 40.33.270.D are considered Limited
45 Uses in the OR zoning district, except that the following uses require a special use
46 permit:

47
48 Marijuana cultivation facility (NAICS 111419, NAICS 424590)
49 Construction of buildings (NAICS 236)...
50

51 **Sec. 40.03.341. Retail marijuana store.**
52
53

54 A. Except for sites licensed by the State of Delaware and operating as medical
55 marijuana dispensaries (NAICS 459991) before July 1, 2024, under the Medical
56 Marijuana Act, as part of a complete submission, the property owner shall provide the
57 Department with a copy of a document (available from the Department) that has been
58 recorded in the New Castle County Office of the Recorder of Deeds certifying that no
59 portion of the proposed retail marijuana store building and signage is located within:
60

- 61 1. One mile of an existing retail marijuana store as verified by the State of
62 Delaware.
63
64 2. One thousand (1,000) feet of any parcel with a substance abuse treatment facility
65 as verified by the State of Delaware.
66
67 3. One thousand (1,000) feet of any parcel with an established day care center,
68 school (NAICS 6111), college (NAICS 6112, 6113), place of worship (NAICS
69 813110), governmental parkland, governmental office building, or library.
70

71 B. When a retail marijuana store is in a mall or shopping center, internal customer
72 access should be provided.
73

74 C. A retail marijuana store cannot serve as a home use (Section 40.33.221)

Section 3. New Castle County Code Chapter 40 (Unified Development Code or “UDC”), Article 33 (“Definitions”), Division 40.33.200 (“Use definitions”), is hereby amended by adding the material that is underscored, as set forth below.

Sec. 40.33.210. Agricultural uses.

A. *Agriculture.* These uses include crop production and animal production (NAICS 111 and 112), excluding marijuana grown under cover (NAICS 111419). These uses also include any other agricultural use recognized by Delaware law.

B. *Clearing...*

Sec. 40.33.240. Commercial uses.

A. *Adult uses...*

K. *Restaurants.* (NAICS 722, 722320, 531120)...

L. *Retail marijuana store.* This use includes entities licensed by the State of Delaware to purchase marijuana from marijuana cultivation facilities; to purchase marijuana and marijuana products from marijuana product manufacturing facilities; and to sell marijuana and marijuana products to consumers. (NAICS 459991)

[L]M. *Office.* Office uses include...

[M]N. *Craft alcohol production establishment ("CAPE")...*

[N]O. *Brewery-pub...*

[O]P. *Shopping center...*

[P]Q. *Vehicular sales, rental and service...*

Sec. 40.33.270. Industrial uses.

A. *Compost operations (NAICS 325314)...*

D. *Light industry.* This category is designed to accommodate limited intensity levels of manufacturing and assembly activities, storage, warehousing, services, associated offices and similar uses. This includes the following uses:

Marijuana cultivation facility. Entities licensed by the State of Delaware to cultivate, prepare, and package marijuana and sell marijuana to retail marijuana stores, to marijuana product manufacturing facilities, and to other marijuana cultivation facilities, but not to consumers. A marijuana cultivation facility may not produce

marijuana concentrates, tinctures, extracts, or other marijuana products. (NAICS 111419, NAICS 424590)

Construction of buildings (NAICS 236)...

Division 40.33.300. General definitions.

Governmental body. ...

Governmental parkland. Land that is owned, developed, or controlled by Municipal, County, State, and Federal governments for outdoor passive or active recreational uses excluding open space recorded on a plan as a development's open space.

Grade. ...

Section 4. Consistent with Comprehensive Development Plan. New Castle County Council finds that the provisions of this Ordinance are consistent with the spirit and intent of the New Castle County Comprehensive Development Plan.

Section 5. Inconsistent Ordinances and Resolutions Repealed. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the *New Castle County Code*.

Section 6. Severability. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions, without the unconstitutional or void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with the County Council's intent. If any provision of this Ordinance or any zoning map or portion thereof is found to be unconstitutional or void, all applicable former ordinances, resolutions, zoning maps or portions thereof shall become applicable and shall be considered as continuations thereof as not as new enactments regardless if severability is possible.

Section 7. Effective Date. This Ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive or as otherwise provided in 9 *Del. C.* § 1156 .

Adopted by County Council of
New Castle County on:

Karen Hartley Nagle
President of County Council
of New Castle County

Approved on:

Matthew Meyer
County Executive
New Castle County

SYNOPSIS: The following is a summary of the revisions contained in this ordinance broken down by *New Castle County Code* Division or Section number.

Table 40.03.110. This amendment permits retail marijuana stores in the Commercial Neighborhood (CN) district as a Special Use and in the Commercial Regional (CR) and Industrial (I) district as a Limited Use pursuant to the standards in Section 40.03.340. Retail marijuana stores are also allowed on sites licensed by the State of Delaware as a medical marijuana dispensary (NAICS 459991) before July 1, 2024.

Sec. 40.03.333. This amendment establishes that a marijuana cultivation facility is a Special Use in the OR zoning district.

Sec. 40.03.341. This amendment establishes Limited and Special Use standards for retail marijuana stores. Prior to approving any land use application for a retail marijuana store use the applicant must provide written notice to all landowners within 1,000 feet of the proposed retail marijuana store use and written certification the use will meet the separation distances for existing uses.

Sec. 40.33.210. This amendment provides that marijuana grown under cover (NAICS 111419) is not considered an agricultural use unless recognized as an agricultural use by Delaware Law.

Sec. 40.33.240. This amendment defines retail marijuana stores consistent with Delaware State Code.

Sect. 40.33.270. This amendment defines marijuana cultivation facilities as a Light Industrial use consistent with Delaware State Code.



Department of Land Use

**DEPARTMENT OF LAND USE
RECOMMENDATION REPORT**

Ordinance No. 24-138

Application No. 2024-0482-T

**Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, and Retail
Marijuana Stores**

November 19, 2024

Sponsor: Councilman Tackett & Councilwoman Kilpatrick

Description: To Amend New Castle County Code Chapter 40 (also known as the Unified Development Code or "UDC) Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, And Retail Marijuana Stores

EXECUTIVE SUMMARY

While the Delaware Marijuana Control Act of 2023 requires that counties allow retail marijuana stores to establish, it permits them to regulate their operation and location. The Department of Land Use extensively researched literature and best practices adopted in cities and counties in states that have adopted regulations for retail marijuana sales, including California, Colorado, Washington, and Oregon. Additionally, the Department worked with the Delaware Office of the Commissioner of Marijuana, as well as representatives from Newark and Wilmington, to ensure that the recommended provisions in Ordinance 24-138 are consistent with regulations set by State Code and the Commissioner, and sensitive to our municipal neighbors. Ordinance 24-138 complies with the requirements of Delaware State Code, while providing tested protections for sensitive uses such as schools, daycare centers, places of worship, and parks.

The Department of Land Use has considered the Standards for Text Amendment in Section 40.31.420 of the *New Castle County Code* and comments received from other agencies and the public. Based on this analysis, the Department recommends **APPROVAL** of Ordinance No. 24-138.

DESCRIPTION

Ordinance 24-138 (Application 2024-0482-T) is an amendment to the UDC to provide standards for marijuana cultivation facilities, marijuana product manufacturing facilities, and retail marijuana stores. It proposes to allow retail marijuana stores as a Limited Use in the Commercial Regional and Industrial (only for existing medical marijuana facilities) zoning districts and as a Special Use in the Commercial Neighborhood District provided that (excluding existing medical

marijuana facilities) that the prescribed buffers between retail marijuana stores and sensitive uses are met.

BACKGROUND

Delaware Medical Marijuana Act (2011)

On May 13, 2011, the State of Delaware legalized medical marijuana (compassion centers). The legislation established standards for compassion centers and cultivation. Additionally, the legislation allowed local governments to regulate:

...the time, place, and manner of registered compassion center operations and registered safety compliance facilities, provided that no local government may prohibit registered compassion center operation altogether, either expressly or through the enactment of ordinances or regulations which make registered compassion center and registered safety compliance facility operation unreasonably impracticable in the jurisdiction.

To abide by the requirements of the *Delaware Medical Marijuana Act*, New Castle County classified cultivation facilities as light industrial uses, and compassion centers as commercial retail and service uses. Since these uses were not specifically defined in the UDC, these determinations were made in accordance with Division 40.33.200 which states:

...Any use not specifically listed in Table 40.03.110 and defined in this Article is expressly prohibited, unless the interpretation is that the use is similar to a permitted use....

As a use required to be permitted by State Code, the Department interpreted compassion centers and cultivation facilities accordingly.

Delaware Marijuana Control Act (2023)

On April 27, 2023, the State of Delaware adopted the Delaware Marijuana Control Act legalizing retail marijuana operations in the state. The legislation established standards for retail marijuana stores. Additionally, the legislation allowed municipalities to:

...prohibit the operation of marijuana cultivation facilities, marijuana product manufacturing facilities, marijuana testing facilities, or retail marijuana stores through the enactment of an ordinance or through an initiated or referred measure.

Although not permitted to prohibit retail marijuana stores, Counties may:

... enact ordinances or regulations that are not in conflict with this chapter or in conflict with regulations enacted by the Commissioner, governing the time, place, manner, and number of marijuana establishment operations...

If the County does not adopt specific regulations pertaining to retail marijuana stores, they would be considered commercial, retail and service uses.

Ordinance 24-138: Marijuana Cultivation Facilities, Marijuana Product Manufacturing Facilities, And Retail Marijuana Stores

In order to understand the requirements of the *Delaware Marijuana Control Act*, the Department of Land Use researched relevant literature and national best practices. Additionally, the Department met and worked with the Marijuana Commissioner, and representatives from the Cities of Newark and Wilmington during the drafting of Ordinance 24-138.

Ordinance 24-138 proposes several important changes to the UDC in order to comply with Delaware State Code, while providing protections to sensitive uses. These include:

1. Defining marijuana cultivation facilities (industrial) and retail marijuana stores (commercial) consistent with the definitions in State Code
2. Establishing retail marijuana stores as a Limited Use in the Commercial Regional and Industrial (only for existing medical marijuana facilities) zoning districts and as a Special Use in the Commercial Neighborhood District provided that (excluding existing medical marijuana facilities):
 - a. They are no closer than 1 mile from an existing retail marijuana store.
 - b. They are no closer than 1,000 feet from any parcel with a(n):
 - Substance abuse treatment facility as verified by the State of Delaware.
 - Day care center
 - School
 - College
 - Place of worship
 - Governmental parkland
 - Governmental office building
 - Library
 - b. When a retail marijuana store is in a mall or shopping center, internal customer access should be provided.
 - c. A retail marijuana store cannot serve as a home use

PLUS REVIEW (Preliminary Land Use Service)

The PLUS Report, dated October 22, 2024, offered no comments from State agencies.

Planning Board Public Hearing – November 6, 2024

Charuni Patibanda, general Manager for the Department of Land Use presented Ordinance 24-138 at the November 6th New Castle County Department of Land Use and Planning Board public

hearing. During her presentation, she discussed the recommended amendments to the UDC and rationale for the ordinance.

Planning Board members had several inquiries and comments in response to the presentation. Ms. Peterson inquired about how a retail marijuana store would function in a facility like the Christiana Mall. Ms. Patibanda responded that the buffering distances would be measured from the property line. Ms. Visvardis asked if there was a path for existing medical marijuana facilities to convert to retail marijuana stores. Ms. Patibanda affirmed that Ordinance 24-138 permits existing medical marijuana facilities to establish a retail marijuana store provided that they receive a license from the State. Mr. Cantrell inquired about the differences between the process for establishing a medical marijuana facility and a retail marijuana store. Ms. Patibanda and Matthew Rogers, Planner for New Castle County explained the interpretations with respect to cultivation and medical marijuana facilities (compassion centers) and the recommended regulations in Ordinance 24-138. Mr. Cantrell also inquired about the provisions to include internal access if a retail marijuana store is in a mall. Ms. Patibanda explained that the intent is to encourage access, if possible, internally as opposed to just external to the mall.

Public Comment

There were no public comments at the public hearing. Additionally, the Department received no written comments while the record was open.

Analysis

While the Delaware Marijuana Control Act of 2023 requires that counties allow retail marijuana stores, it does permit regulations regarding their operation and location. The Department of Land Use did extensive research of literature and best practices adopted in cities and counties in states that have adopted regulations for retail marijuana sales including California, Colorado, Washington, and Oregon. Additionally, we worked with the Delaware Office of the Commissioner of Marijuana, as well representatives from Newark and Wilmington to make sure that the recommended provisions in Ordinance 24-138 are consistent with regulations set by State Code and the Commissioner, and are sensitive to our municipal neighbors. Ordinance 24-138 complies with the requirements of Delaware State Code, while providing tested protections for sensitive uses such as schools, daycare centers, places of worship, and parks.

Standards of Review

Pursuant to Section 40.31.420 of the New Castle County Code, in determining whether a text amendment shall be recommended or approved, all of the following factors shall be considered:

A. Implementation of a new portion of the Comprehensive Development Plan.

N/A

B. Implementation and achievement of the Comprehensive Plan's goals and objectives.

N/A

C. Consistency with the provisions of this Chapter and the standards for similar uses.

Ordinance 24-138 permits retail marijuana stores, with protections for sensitive uses including Substance abuse treatment facilities, day care centers, schools, college places of worship, governmental parkland, governmental office buildings, and libraries as Limited and Special Uses. The standards and protections are consistent with those of other uses in the UDC.

D. Necessity to respond to State and/or Federal legislation.

The Delaware Marijuana Control Act of 2023 requires that counties allow retail marijuana stores. That said the legislation also permits counties to regulate their operation and location. Absent specific standards, retail marijuana stores would be considered commercial retail uses, without the important protections for sensitive uses proposed by Ordinance 24-138.

E. Flexibility in meeting the objectives of this Chapter.

N/A

F. Changes to conditions, interpretations, and/or clarifications to existing language for new uses.

N/A

G. Consideration of specific problems found in this Chapter.

N/A

DEPARTMENT OF LAND USE RECOMMENDATION

The Department of Land Use has considered the Standards for Text Amendment in Section 40.31.420 of the *New Castle County Code* and comments received from other agencies and the public. Based on this analysis, the Department recommends **APPROVAL** of Ordinance No. 24-138.

PLANNING BOARD RECOMMENDATION

At a business meeting held on November 19, 2024, the Planning Board considered the recommendation provided by the Department of Land use as well as comments from outside agencies and the public.

On a motion made by Mr. Snowden and seconded by Mr. Cantrell, the Board voted to recommend **APPROVAL** of Ordinance 24-138 as recommended by the Department of Land Use.

The motion was adopted by a vote of 6-1-0-2 (In Favor: Cahill-Krout, Cantrell, , Drake, Peterson, Snowden, Visvardis; In Opposition: Cochran; None; Abstention: None; Absent:, Daigle, Gray).

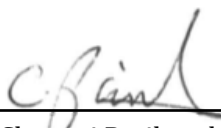
Prior to the vote the following discussion occurred:

Matthew Rogers read the Department of Land Use recommendation into the record.

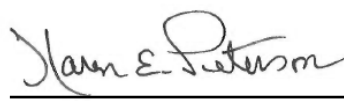
Ruth Visvardis inquired about the rationale for requiring retail marijuana stores to be 1 mile from other retail marijuana stores and only 1,000 feet from sensitive uses. Charuni Patibanda, General Manager for the Department of Land Use, explained that the mile distance, and that the intent is to prevent the over concentration of stores. Ms. Visvardis asked if other business have that type of limitation. Mr. Rogers explained that liquor stores have the same distancing requirement in State Code. Mr. Rogers further explained that distancing between retail marijuana stores and sensitive uses is intended to provide protection without being exclusionary. Ms. Patibanda further explained that the state is going to issue 30 permits for retail marijuana sales, and that New Castle County is likely to get about 18 of those permits. She further explained that the primary intent for the buffering requirements is to provide protection for children. Mr. Rogers explained that as far as distancing that 1,000 feet is about the distance of the depth of 10 NC5 (Neighborhood Conservation) lots. Ms. Peterson inquired about the status of retail marijuana sales in the City of Wilmington. Ms. Patibanda stated that to her understanding it was tabled at a committee while determining the appropriate buffer distances. She further reiterated that the Department had met with the City of Wilmington while drafting Ordinance 24-138 and is willing to continue to work with them moving forward. Ms. Peterson asked as to the status of other incorporated areas regarding retail marijuana sales. Ms. Patibanda explained that that unlike the counties, municipalities can opt out of permitting retail marijuana stores, and that both Middletown and New Castle had opted out of permitting retail marijuana sales, while the City of Newark is looking towards very restrictive provisions (potentially permitting 1 store). Mr. Cantrell asked about conversion permits for existing medical marijuana stores (compassion centers). Ms. Patibanda explained that it is most likely that compassion centers will continue to function as medical marijuana facilities while having the opportunity to include recreational sales. Ms. Cahill-Krout inquired about cultivation as a limited use in the OR and BP districts. Mr. Rogers explained the existing percentage and size limitations permitted within those districts for Light Industrial uses (10% of the building or 10% of the office park, whichever is more restrictive).

STATUTORY GUIDELINES

In the phraseology of 9 Delaware Code Section 2603 (a), the Department of Land Use finds that this text amendment would promote the convenience, order, and welfare of the present and future inhabitants of this state.


11/25/2024

Charuni Patibanda date
General Manager
Department of Land Use


11/25/2024

Karen Peterson date
Chair
Planning Board

ORDINANCE NO. 24-161

**TO AMEND NEW CASTLE COUNTY CODE CHAPTER 6 (“BUILDING CODE”),
ARTICLE 10 (“ENERGY CONSERVATION CODE”)
RELATING TO THE INTERNATIONAL ENERGY CONSERVATION CODE**

1 **WHEREAS**, New Castle County recognizes the importance of and connection with
2 building and maintaining high quality homes and neighborhoods, preserving the
3 environment and ecological protection, and creating a high quality of life; and
4

5 **WHEREAS**, New Castle County similarly recognizes the mutual benefits to the
6 environment and to owners of energy efficient housing and commercial buildings; and
7

8 **WHEREAS**, related to the above, Delaware law (16 *Del. C.* Section 7602)
9 mandates that by the end of 2025, *new residential* building construction in Delaware must
10 be “zero net energy *capable*,” and

11 **WHEREAS**, Delaware law also mandates that by the end of 2030, *new commercial*
12 building construction in Delaware must be “zero net energy *capable*,” and

13 **WHEREAS**, a “zero net energy” home or building is a residence or commercial
14 building that, through the use of energy efficient construction, lighting, appliances, and
15 renewable energy generation, results in zero net energy consumption; and

16 **WHEREAS**, in addition, the State of Delaware has enacted laws providing for
17 county and municipal enforcement of electric vehicle infrastructure requirements, which
18 also apply to the construction of multi-family residential dwellings for which an application
19 for final site plan approval is submitted on or after January 1, 2025; and

20 **WHEREAS**, adoption of certain appendices (or portions thereof) to the
21 International Energy Conservation Code, 2021 Edition, (with amendments thereto), which
22 establishes residential and commercial “zero net energy *capable*” provisions, will
23 encourage and foster compliance with the State mandate and will afford greater time for
24 builders and the industry to prepare for and adhere to the approaching effective date for
25 the new regulations; and

26 **WHEREAS**, New Castle County Council finds that the provisions of this Ordinance
27 are rationally and reasonably related to and substantially advance the County’s goal of
28 protecting and preserving legitimate government interests, including the protection and
29 preservation of the public health, safety, welfare, and quality of life of New Castle County
30 and its residents.

31 **NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**

32
33 Section 1. *New Castle County Code* Chapter 6 (“Building Code”), Article 10
34 (“Energy Conservation Code”), Section 6.10.002 (“Amendments to the Statewide Energy
35 Conservation Code”) is hereby amended to reflect the following underscored material
36 which is added, and the material with strikethroughs which is deleted.

37 ...
38 **ARTICLE 10. ENERGY CONSERVATION CODE**

39 **Sec. 6.10.001. - Enforcement of the Statewide Energy Conservation Code.**

40 Pursuant to 16 *Del. C.* ch. 76, the Department of Land Use shall enforce the most
41 recent version of the International Energy Conservation Code published by the
42 International Code Council as ~~determined~~ and adopted by the Delaware Energy Office,
43 or its successor, subject to amendments authorized under State law. ~~The effective date~~
44 ~~of each version of the Statewide Energy Conservation Code is to be published in the~~
45 ~~Appendix to this Chapter.~~

46
47 **Sec. 6.10.002. - Amendments to the Statewide Energy Conservation Code.**

48
49 ~~The following sections of the International Energy Conservation Code, 2018 Edition,~~
50 ~~(IECC) are revised as follows. Note: Although the IECC does not identify sections with~~
51 ~~the designations that follow, to avoid any confusion, commercial provisions are provided~~
52 ~~with a "C" designation and residential provisions are provided with an "R" designation.~~

53
54 The International Energy Conservation Code, 2018 Edition (the “IECC”), previously
55 approved by New Castle County subject to certain amendments as reflected in *New*
56 *Castle County Code*, is further amended as follows with underlines to indicate additions
57 and strikethroughs to indicate deletions.

58
59 *Note:* To avoid any confusion, commercial provisions are provided with a “C” designation,
60 and residential provisions are provided with an “R” designation.

61
62 **IECC – COMMERCIAL PROVISIONS...**

63
64 **CHAPTER 2. DEFINITIONS...**

65
66 **SECTION C202 GENERAL DEFINITIONS**

67
68 *Section C202, General Definitions, IECC 2018 Edition, is amended as follows by the*
69 *deletion, as indicated by strikethroughs, of the current definitions which appear in County*
70 *Code Sec. 6.10.002, and the addition, as indicated by underlines below, of the below*
71 *referenced Definitions which are treated as underlined and incorporated herein by*
72 *reference.*

73
74 ~~***ELECTRIC VEHICLE (EV).** An automotive-type vehicle for on-road use, such as*~~
75 ~~*passenger automobiles, buses, trucks, vans, neighborhood electric vehicles,*~~
76 ~~*electric motorcycles, and the like, primarily powered by an electric motor that draws*~~

current from a rechargeable storage battery, a fuel cell, a photovoltaic array, or another source of electric current. Plug-in hybrid electric vehicles are electric vehicles having a second source of motive power. Off-road, self-propelled electric mobile equipment, such as industrial trucks, hoists, lifts, transports, golf carts, airline ground support equipment, tractors, boats and the like, are not considered electric vehicles.

ELECTRIC VEHICLE SUPPLY EQUIPMENT (EVSE). The conductors, including the ungrounded, grounded, and equipment grounding conductors and the electric vehicle connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of transferring energy between the premises wiring and the electric vehicle.

ELECTRIC VEHICLE SUPPLY EQUIPMENT SPACE (EVSE Space). A designated parking space with dedicated electric vehicle supply equipment, installed as required under the currently adopted electrical code in the State of Delaware, and capable of charging an electric vehicle located within five (5) feet of the parking space.

EV-CAPABLE PARKING SPACE. A designated parking space that can be converted to an *EVSE Space* and is subject to the following requirements, unless otherwise required under the currently adopted electrical code in the State of Delaware:

1. The conduit shall be continuous between a junction box or receptacle located within five (5) feet of the parking space and an electrical panel serving the area of the parking space. The junction box or receptacle must be conspicuously marked and identified as "For electric vehicle charging."
2. The conduit shall be sized and rated to accommodate a branch circuit of sufficient size to the future electrical charging facility.
3. The electrical panel shall reserve sufficient dedicated physical space for the breaker required to supply the future electrical charging facility and shall be identified as "For electric vehicle charging."

The Definitions set forth at 16 Del. C. Section 8002, and any subsequent successor regulations thereto, are treated as underlined and incorporated herein by reference.

CHAPTER 4. [CE] COMMERCIAL ENERGY EFFICIENCY.

...
SECTION C401, *GENERAL* is amended by the deletion of the language with *strikethroughs* and the addition of the underlined language that follows.

...
Section C401.2 Application. Commercial buildings shall comply with the requirements of APPENDIX CA — SOLAR-READY ZONE — COMMERCIAL 16 Del. C. Section 7605 ("Solar Ready Zone – Commercial"), and one of the following:

1. The requirements of ANSI/ASHRAE/IESNA 90.1.;
2. The requirements of Sections C402 through C405 and C408. In addition,

commercial buildings shall comply with Section C406 and tenant spaces shall comply with Section C406.1.1.; or

3. The requirements of Sections C402.5, C403.2, C403.3 through C403.3.2, C403.4 through C403.4.2.3, C403.5.5, C403.7, C403.8.1 through C403.8.4, C403.10.1 through C403.10.3, C403.11, C403.12, C404, C405, C407 and C408. The building energy cost shall be equal to or less than 85 percent of the standard reference design building.

...

~~C401.3.1 Residential occupancies. Parking facilities serving Group R-2 occupancies shall comply with Section C401.3.1.1.~~

~~C401.3.1.1. Parking spaces provided. For all Group R-2 occupancies, ten percent (10%) of the total available designated parking spaces must be EV-capable parking spaces. The calculations for the required number of spaces must be rounded up to the nearest whole number. There shall be a minimum of two EV-capable parking spaces, one of which shall be designated as a handicap accessible parking space. All handicapped accessible parking spaces must be in accordance with *The Americans with Disabilities Act*, as shall all EV charging stations when present.~~

~~C401.3.2 Construction documents. Construction documents must indicate the location of all proposed electric vehicle parking spaces.~~

...

The language that presently appears in New Castle County Code Ch. 6, Article 10 (APPENDIX CA - SOLAR-READY ZONE - COMMERCIAL) is deleted pursuant to the following strikethroughs and substituted in place thereof is the underlined language below making reference to the provisions of 16 Del. C. Section 7605, which are treated as underlined and incorporated herein by reference.

~~APPENDIX CA SOLAR-READY ZONE - COMMERCIAL~~

~~APPENDIX CA SOLAR-READY ZONE - COMMERCIAL is hereby adopted with certain modifications, where applicable, as reflected in the form below.~~

~~SECTION CA101 SCOPE~~

~~CA101.1 General.~~

~~These provisions shall be applicable for new construction of commercial buildings in New Castle County for which a building permit request has been submitted to the Department of Land Use on or after January 1, 2023 and which have a foundation footprint of 50,000 square feet or more.~~

~~SECTION CA102 GENERAL DEFINITION~~

~~**SOLAR-READY ZONE.** A section or sections of the roof or building overhang designated and reserved for the future installation of a solar photovoltaic or solar thermal system.~~

~~SECTION CA103 SOLAR-READY ZONE~~

~~CA103.1 General.~~

~~A solar-ready zone shall be located on the roof of buildings that have low-sloped roofs.~~

Solar-ready zones shall comply with Sections CA103.2 through CA103.8.

Exceptions:

1. A building with a permanently installed, on-site renewable energy system or where a vegetative "green" roof is proposed, installed and maintained for 60 percent or more of total rooftop area.
2. A building where the licensed design professional certifies that the incident solar radiation available to the building is not suitable for a solar-ready zone due to significant shade (shaded more than 70 percent of daylight hours).
3. A building where the licensed design professional certifies that the solar zone area required by Section CA103.3 cannot be met because of extensive rooftop equipment, skylights, vegetative roof areas or other obstructions.

CA103.2 Construction document requirements for a solar-ready zone.

Construction documents shall indicate the solar-ready zone. The presence of a solar-ready zone does not relieve the requirement for a roof structural evaluation before a future installation of a solar photovoltaic or solar thermal system.

CA103.3 Solar-ready zone area.

The total solar-ready zone area shall be not less than 40 percent of the roof area calculated as the horizontally projected gross roof area less the area covered by skylights, occupied roof decks, vegetative roof areas, and mandatory access or set back areas. The solar-ready zone shall be a single area or smaller, separated sub-zone areas. Each sub-zone shall be not less than 5 feet (1524 mm) in width in the narrowest dimension.

CA103.4 Obstructions.

Solar-ready zones shall be free from obstructions, including pipes, vents, ducts, HVAC equipment, skylights, and roof-mounted equipment. Solar-ready zones may be relocated to allow future installation of roof equipment as long as the 40 percent minimum allocation is maintained.

CA103.5 Roof loads and documentation.

A collateral dead load of not less than 5 pounds per square foot (5 psf) (24.41 kg/m²) shall be included in the gravity and lateral design calculations for the solar-ready zone. The structural design loads for roof dead load and roof live load shall be indicated on the construction documents.

CA103.6 Interconnection pathway.

Construction documents shall indicate pathways for future routing of conduit, raceway or piping from the solar-ready zone to the reserved space for electrical service panel or service hot water system.

CA103.7 Electrical service reserved space.

The main electrical service panel shall have a reserved space labeled "For Future Solar Electric," or, if a licensed design professional certifies that additional or alternate space is needed for the placement of equipment necessary for the installation of a solar electric system, space shall be reserved either on the interior or exterior wall proximate to the main electrical service panel or on a prepared exterior pad site in close proximity to the electrical service panel. Any such space shall be labeled "For Future Solar Electric" in a conspicuous manner.

CA103.8 Construction documentation certificate.

A permanent certificate, indicating the solar-ready zone and other requirements of this

section, shall be posted near the electrical distribution panel, water heater, or other conspicuous location by the builder or registered design professional.

SOLAR-READY ZONE - COMMERCIAL

A Solar-Ready Zone established in a new commercial building with a foundation footprint of 50,000 sq. ft. or more shall be consistent with 16 Del. C. Section 7605 ("Solar-Ready Zone – Commercial").

Additionally, IECC 2018 Edition, Chapter 4, Commercial Energy Efficiency is amended by the addition, as indicated by the following underlined language, of IECC 2021 Edition, Appendix CC: Zero Energy Commercial Building Provisions, Table CC103.1, Climate Zone 4A which is hereby adopted and incorporated herein.

APPENDIX CC ZERO ENERGY COMMERCIAL BUILDING PROVISIONS

TABLE CC103.1

ENERGY UTILIZATION INTENSITY FOR BUILDING TYPES AND CLIMATES **(kBtu/ft²- yr)**

<u>BUILDING AREA TYPE</u>	<u>...</u> <u>4A</u>	
<u>Healthcare/hospital (I-2)</u>		<u>116</u>
<u>Hotel/motel (R-1)</u>		<u>69</u>
<u>Multiple-family (R-2)</u>		<u>45</u>
<u>Office (B)</u>		<u>28</u>
<u>Restaurant (A-2)</u>		<u>483</u>
<u>Retail (M)</u>		<u>48</u>
<u>School (E)</u>		<u>39</u>
<u>Warehouse (S)</u>		<u>17</u>
<u>All others</u>		<u>54</u>

...

IECC – RESIDENTIAL PROVISIONS...

CHAPTER 2. DEFINITIONS...

SECTION R202 GENERAL DEFINITIONS...

Section R202, General Definitions, IECC 2018 Edition is amended by deletion, as indicated by strikethroughs, of the current Definitions that appear in County Code Sec. 6.10.002, and the addition of the below referenced Definitions which are treated as underlined and incorporated herein by reference.

~~***ELECTRIC VEHICLE (EV).** An automotive-type vehicle for on-road use, such as passenger automobiles, buses, trucks, vans, neighborhood electric vehicles, electric motorcycles, and the like, primarily powered by an electric motor that draws current from a rechargeable storage battery, a fuel cell, a photovoltaic array, or another source of electric current. Plug-in hybrid electric vehicles are electric vehicles having a second source of motive power. Off-road, self-propelled electric mobile equipment, such as industrial trucks, hoists, lifts, transports, golf carts, airline ground support equipment, tractors, boats and the like, are not considered electric vehicles.*~~

~~***ELECTRIC VEHICLE SUPPLY EQUIPMENT (EVSE).** The conductors, including the ungrounded, grounded, and equipment grounding conductors and the electric vehicle connectors, attachment plugs, and all other fittings, devices, power outlets, or apparatus installed specifically for the purpose of transferring energy between the premises wiring and the electric vehicle.*~~

~~***ELECTRIC VEHICLE SUPPLY EQUIPMENT SPACE (EVSE Space).** A designated parking space with dedicated electric vehicle supply equipment, installed as required under the currently adopted electrical code in the State of Delaware, and capable of charging an electric vehicle located within five (5) feet of the parking space.*~~

~~***EV-CAPABLE PARKING SPACE.** A designated parking space that can be converted to an *EVSE Space* and is subject to the following requirements, unless otherwise required under the currently adopted electrical code in the State of Delaware:*~~

- ~~*1. The conduit shall be continuous between a junction box or receptacle located within five (5) feet of the parking space and an electrical panel serving the area of the parking space. The junction box or receptacle must be conspicuously marked and identified as "For electric vehicle charging."*~~
- ~~*2. The conduit shall be sized and rated to accommodate a branch circuit of sufficient size to the future electrical charging facility.*~~
- ~~*3. The electrical panel shall reserve sufficient dedicated physical space for the breaker required to supply the future electrical charging facility and shall be identified as "For electric vehicle charging."*~~

~~*The Definitions set forth at 16 Del. C. Section 8002, and any subsequent successor regulations thereto, are treated as underlined and incorporated herein by reference.*~~

CHAPTER 4. RESIDENTIAL ENERGY EFFICIENCY...

~~*Section R401, General, IECC 2018 Edition is amended by deletion, as indicated by the following strikethroughs, of the existing language that appears in County Code Sec. 6.10.002:*~~

~~*...*~~

~~***R401.5. Building and Parking Requirements.***~~

~~***R401.5.1 Garages and off-street parking.***~~

~~***R401.5.1.1.** Where a one- or two-family dwelling or townhouse includes an attached or detached garage and the electrical panel is not located in the garage,*~~

~~the EV-capable parking space must be located in the attached or detached garage.~~
~~R401.5.1.2. Where a one- or two-family dwelling or townhouse does not include~~
~~an attached or detached garage, an EV-capable parking space must be provided~~
~~in the driveway, where applicable, or at a dedicated parking space designated for~~
~~the dwelling or townhouse, and the EV-capable parking space infrastructure must~~
~~be sealed and labeled for future use. All dedicated parking spaces shall be in~~
~~accordance with the Unified Development Code.~~

~~*R401.5.2. EV-capable parking space upgrade.*~~

~~Where a one- or two-family dwelling or townhouse is being constructed for a~~
~~specific buyer, the developer shall offer the buyer the option of upgrading the EV-~~
~~capable parking space to an EV-ready parking space and ensuring that the EV-~~
~~ready parking space provides access to discounted Plug-In Vehicle (PIV) electricity~~
~~rates, where available.~~

Section R406, Energy Rating Index Compliance Alternative, IECC 2018 Edition, is
amended at Table R406.4 as follows by the deletion, as indicated by strikethroughs, and
the addition, as indicated by underlines, of the language below.

TABLE R406.4 MAXIMUM ENERGY RATING INDEX

CLIMATE ZONE	ENERGY RATING INDEX ^a
1	57
2	57
3	57
4	62 <u>47</u>
5	61
6	61
7	58
8	58

- a. Where on-site renewable energy is included for compliance using the ERI analysis of Section R406.4, the building shall meet the mandatory requirements of Section R406.2, and the building thermal envelope shall be greater than or equal to the levels of efficiency and SHGC in Table R402.1.2 or Table R402.1.4 of the 2015 *International Energy Conservation Code*.

Section 2. This Ordinance shall become effective on July 1, 2025 for *new residential* building construction and January 1, 2028 for *new commercial* building construction, after its adoption by New Castle County Council and approval by the County Executive, and shall apply to applicable building permits issued on such dates or thereafter for the respective type of construction.

Adopted by County Council
of New Castle County on:

Monique Williams-Johns
President of County Council
of New Castle County

Approved on:

Matthew Meyer
County Executive
of New Castle County

SYNOPSIS: This Ordinance proposes to adopt certain amendments to the previously approved *International Energy Conservation Code* 2018 Edition, as amended, including adoption of certain appendices or portions thereof from the *International Energy Conservation Code* 2021 Edition.

Moreover, the Ordinance will promote compliance with the State of Delaware’s mandate that by year end 2025 *new residential* building construction and by year end 2030 *new commercial* building construction in Delaware are “zero net energy capable.” The Ordinance also updates language in *New Castle County Code* relating to electric vehicles and solar energy, consistent with State law.

FISCAL NOTE: There is no discernible fiscal impact.

Prime Sponsor(s): Ms. Durham, Mr. Carter,
Mr. Toole
Co-Sponsors: Mr. Cartier, Mr. Smiley
Date of introduction: January 23, 2024

SUBSTITUTE NO. 1 TO ORDINANCE NO. 24-008

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40 (“UNIFIED
DEVELOPMENT CODE”), ARTICLE 14 (“IMPACT FEES”) REGARDING
ADJUSTMENTS TO IMPACT FEES**

1 **WHEREAS**, New Castle County imposes impact fees to pay for a portion of
2 additional public services needed as the result of new development for which the County
3 would bear the additional or increased costs; and
4

5 **WHEREAS**, impact fees, when accurately maintained, can be an effective tool for
6 ensuring adequate infrastructure to accommodate growth where and when it is
7 anticipated; and
8

9 **WHEREAS**, the impact fees raise funds to pay for increased cost of services and
10 infrastructure projects for parks and special facilities, libraries, county facilities, EMS, fire
11 and rescue, and law enforcement; and
12

13 **WHEREAS**, except for fire and rescue, impact fees for the above services have
14 not been adjusted for more than 20 years (since 1999), meanwhile there have been
15 significant increases in the costs of construction during this timeframe; and
16

17 **WHEREAS**, New Castle County has established a goal of preserving a minimum
18 of 30% of its acreage as protected open space by 2030, and assessing an open space
19 impact fee would be a key component to providing the funding to meet that goal and offset
20 the loss of greenfields as development occurs, and
21

22 **WHEREAS**, the NCC2050 Comprehensive Plan states, “in alignment with
23 recommendations from the Housing Advisory Board evaluate possible adjustments to
24 Impact Fees, such as an exemption/waiver for developers of low to very low-income
25 housing in exchange for covenants that run with the land to continue affordability for 30
26 years and accept all sources of income for rental unit developments,” and
27

28 **WHEREAS**, the NCC2050 Comprehensive Plan calls for ensuring the current fees
29 are commensurate with the true costs of providing services and facilities, and for the
30 study, implementation and enactment of adjustments to impact fees to ensure
31 sustainability of community infrastructure and services over time; and
32

33 **WHEREAS**, County Council has determined that the provisions of this Ordinance
34 substantially advance and are reasonably and rationally related to legitimate
35 government interests, including, but not limited to, promoting the public health, safety,
36 welfare, and quality of life of the present and future inhabitants of New Castle County.

37
38 **NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**
39

40 Section 1. *New Castle County Code* Chapter 40 (“Unified Development Code”),
41 Article 14 (“Impact Fees”), Section 40.14.230 is hereby amended by adding the material
42 that is underscored and deleting the material with strikethroughs, as set forth below.
43

44 **Sec. 40.14.230. - Other necessary adjustments.**
45

- 46 A. All costs in the impact fee calculations are given in current dollars with no assumed
47 inflation rate over time. Necessary cost adjustments will be made as part of the
48 periodic evaluation and corresponding update of impact fees which shall occur
49 annually as of February 1, 2028 and be adjusted utilizing the Engineering News-
50 Record Construction Cost Index (ENR CCI), published each January providing
51 data for the previous year.
52

53 Following enactment of this ordinance, the next adjustments shall be proposed to
54 County Council by the Department by no later than July 1, 2025 using one of the
55 methods proposed in the Development Impact Fee Study conducted by the Rossi
56 Group and Century Engineering (published June 13, 2023), and utilizing the
57 cumulative ENR CCI for the period back to the most recent prior fee update. This
58 next round of adjustments to each fee may be phased in as long as 100% of the
59 ENR CCI change since the most recent prior fee update is captured in full by no
60 later than February 1, 2028.
61

- 62 B. As of August 1, 2024 the following are exempt from impact fees:
63

- 64
 - any dwelling unit built as a Moderately Priced Dwelling Unit (MPDU) as
identified in Division 40.07.500
 - any dwelling unit built by an IRS 501(c)(3) nonprofit organization for the
intent and purpose of providing low or moderate priced housing
 - any qualified units built using the IRS Low Income Housing Tax Credit (IRS
Section 42) or participating in the Delaware State Housing
Authority/Cinnaire’s Catalyst Fund.
70

- 71 C. In addition, the Department shall:
72

- 73 1. Study the potentially higher costs of providing services in Delaware State
Strategy Levels 3 and 4 and propose to County Council an impact fee structure
74 reflecting this by no later than July 1, 2025, to take effect February 1, 2026.
75
76 2. Guided by the recommendations in the Development Impact Fee Study
conducted by the Rossi Group and Century Engineering (published June 13,
77 2023), and with advice from the County Open Space Advisory Board and input
78 from other stakeholders, propose to County Council an open space impact fee
79 by no later than July 1, 2025, to take effect February 1, 2026.
80

81 D. Impact fees ~~will~~ are to be adjusted for inflation in construction costs as reflected in
82 the Engineering News Record (ENR CCI) index and upon approval by New Castle
83 County Council. Any impact fee based in part upon land cost shall be reviewed
84 and adjusted annually ~~periodically~~ by the Departments of Land Use and Finance
85 and adjusted to account for any significant change in the cost of land upon approval
86 of County Council.
87

88 Section 2. This Ordinance shall become effective upon its adoption by County
89 Council and approval by the County Executive, or as otherwise provided in 9 *Del. C.* §
90 1156.

Adopted by County Council of
New Castle County on:

Karen Hartley-Nagle
President of County Council
of New Castle County

Approved on:

Matthew Meyer
County Executive
of New Castle County

SYNOPSIS: This Ordinance amends *New Castle County Code* Section 40.14.230 to, among other things, provide for review and necessary adjustments to impact fees at least every 5 years.

Substitute No. 1 amends the original proposed ordinance by: (1) clarifying that updates to the impact fees will occur annually, by February 1, pursuant to the Engineering News-Record Construction Cost Index; (2) requiring that the Land Use Department propose updates on fees to County Council by no later than 7/1/25, utilizing one of the methods outlined in the impact fee study produced by the Rossi Group and Century Engineering in 2023; (3) creating several new subsections, requiring that any dwelling unit built as a MPDU and any nonprofit organization is exempt from impact fees; and (4) the Department is to study the potentially higher costs of providing services in Levels 3 and 4 and to propose an impact fee structure that reflects this as well as propose an open space impact fee by no later than 7/1/25.

FISCAL NOTE: There is no discernible negative fiscal impact with the adoption of this Ordinance.

Prime Sponsor(s): Ms. Durham, Mr. Carter
Mr. Toole
Co-sponsor(s): Mr. Cartier, Mr. Smiley
Date of introduction: January 23, 2024

ORDINANCE NO. 24-008

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40 (“UNIFIED
DEVELOPMENT CODE”), ARTICLE 14 (“IMPACT FEES”) REGARDING
ADJUSTMENTS TO IMPACT FEES**

1 **WHEREAS**, New Castle County imposes impact fees to pay for a portion of
2 additional public services needed as the result of new development for which the County
3 would bear the additional or increased costs; and
4

5 **WHEREAS**, impact fees, when accurately maintained, can be an effective tool for
6 ensuring adequate infrastructure to accommodate growth where and when it is
7 anticipated; and
8

9 **WHEREAS**, the impact fees raise funds to pay for services such as parks, libraries,
10 EMS, and law enforcement; and
11

12 **WHEREAS**, impact fees for the above services and others have not been adjusted
13 for more than 20 years (since 1999), meanwhile there have been significant increases in
14 the costs of construction during this timeframe; and
15

16 **WHEREAS**, County Council has determined that the provisions of this Ordinance
17 substantially advance and are reasonably and rationally related to legitimate
18 government interests, including, but not limited to, promoting the public health, safety,
19 welfare, and quality of life of the present and future inhabitants of New Castle County.
20

21 **NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:**
22

23 Section 1. *New Castle County Code* Chapter 40 (“Unified Development Code”),
24 Article 14 (“Impact Fees”), Section 40.14.230 is hereby amended by adding the material
25 that is underscored and deleting the material that is stricken, as set forth below.
26

27 **Sec. 40.14.230. - Other necessary adjustments.**
28

29 All costs in the impact fee calculations are given in current dollars with no assumed
30 inflation rate over time. Necessary cost adjustments will be made as part of the periodic
31 evaluation and corresponding update of impact fees which shall occur at least once every
32 5 years, with the next adjustment being effectuated no later than January 1, 2025.

33 Impact fees ~~will~~ are to be adjusted for inflation in construction costs as reflected in
34 the Engineering News Record (ENR) index and upon approval by New Castle County
35 Council. Any impact fee based in part upon land cost also shall be reviewed and adjusted
36 at least once every five years ~~periodically~~ by the Departments of Land Use and Finance
37 and adjusted to account for any significant change in the cost of land upon approval of
38 County Council.

39
40 Section 2. This Ordinance shall become effective upon its adoption by County
41 Council and approval by the County Executive, or as otherwise provided in 9 *Del. C.* §
42 1156.

Adopted by County Council of
New Castle County on:

Karen Hartley-Nagle
President of County Council
of New Castle County

Approved on:

Matthew Meyer
County Executive
of New Castle County

SYNOPSIS: This Ordinance amends *New Castle County Code*, Section 40.14.230 to provide for review and necessary adjustments to impact fees at least every 5 years.

FISCAL NOTE: There is no discernible fiscal impact with the adoption of this Ordinance.

**DEPARTMENT OF LAND USE
RECOMMENDATION REPORT**

**Ordinance No. 24-008
Application No. 2024-0062-T
Impact Fees**

May 21, 2024

Sponsor: Councilwoman Dee Durham (District 2), Councilman David Carter
(Council District 6)

Description: To amend New Castle County Code, Section 40.14.230 to provide for review and necessary adjustments to impact fees at least every five years.

EXECUTIVE SUMMARY

Ordinance 24-008 (Application 2024-0062-T) proposes changes to Section 40.14.230 of the New Castle County Code to require the County's impact fees be regularly adjusted every five years in order to account for inflation in construction costs which are reflected in the Engineering News Record (ENR) index. The proposed ordinance follows the completion of a *2023 Development Impact Fee Study* that was undertaken by the County and completed in June of 2023. As currently written, the adjustment of impact fees would be required to occur by January 1, 2025.

The Department of Land Use concurs that the County's impact fees should be evaluated regularly and acknowledges the bearing the collection of impact fees has on the County's infrastructure. Based on the recommendations from the *2023 Development Impact Fee Study*, the Department believes a comprehensive look at Article 14 ("Impact Fees") and Section 40.14.110 ("Impact Fee Methodology") in consultation with the Department of Finance to ensure that specific changes to the impact fee structure are based on a rational nexus and do not result in arbitrary increases.

The Department of Land Use recommends **DENIAL** of Ordinance 24-008 (Application 2024-0062-T) as written to allow for further evaluation and implementation of an updated impact fee methodology and structure.

DESCRIPTION

Ordinance 24-008 proposes revisions to Section 40.14.203 of the New Castle County Code to require the County's impact fees be regularly adjusted every five years in order to account for inflation and construction costs reflected in the Engineering News Record (ENR) index, with the first adjustment beginning by January 1, 2025.

BACKGROUND

The collection of impact fees in New Castle County began with the adoption of the Unified Development Code in 1997. Since the adoption of the UDC, the County has consistently considered changes and updates to the structure / methodology of impact fees to account for development and changing economies.

1998 New Castle County Impact Fee Study

Between 1997 and June of 1998, New Castle County conducted an impact fee study with Tischler & Associates. The study recommended both a methodology and fee structure for new development in the county that the legal standards established by the U.S. Supreme Court in *Nollan v. California Coastal Commission* (483 U.S. 825, 1987)¹ and *Dolan v. City of Tigard* (512 U.S. 687, 1994).² For an impact fee to be legal it must meet two standards; (1) there must be a “*rationale nexus*”³ between the imposition of the fee and the achievement of a legitimate public purpose, and (2) the amount of the fee must be “*roughly proportionate*”⁴ to the impact of the proposed development.

The report recommended three specific methodologies to determine impact fees; (1) plan based, (2) incremental expansion, and (3) buy-in approach. The plan-based approach was proposed for libraries, because they have specific capital improvement plans. The incremental expansion method was recommended for parks, public facilities and equipment, EMS, fire/rescue and law enforcement, and are derived by comparing the current level of service (LOS) to what is projected to be needed to expand or provide additional facilities, to accommodate new development.⁵ The buy-in approach was recommended for parks under the rationale that new development is paying for its share of the useful life and remaining capacity of existing facilities.

Ordinance 97-172 Unified Development Code

On December 31, 1997, New Castle County adopted the Unified Development Code (UDC) (Ordinance 97-172). Among the many changes brought by the UDC was the enactment of the first impact fee structure in Article 14. Since the Impact Fee Study (1998), was still in production, the updated UDC only included specific fees related to providing sewer service to the Southern Service Area. Fees for this were based on the *Wastewater Needs Evaluation and Plan for Southern New Castle County (1992)* and *Southern New Castle County Land Use Study (1996)* as well as the *1996 New Castle County Comprehensive Development Plan*.

Ordinance 98-130 Impact Fees on New Development

¹Nollan v. California Coastal Commission 483 U.S. 825 (1987):

<https://supreme.justia.com/cases/federal/us/483/825/>

² Dolan v. City of Tigard 512 U.S. 687, (1994): <https://supreme.justia.com/cases/federal/us/512/374/>

³ Established by Nollan v. California Coastal Commission 483 U.S. 825 (1987)

⁴ Established by Dolan v. City of Tigard 512 U.S. 687 (1994)

⁵ The County cannot use the funds for maintenance or replacement of existing facilities.

With the Impact fee study complete in June of 1998, Ordinance 98-130 was adopted on January 12, 1999. Ordinance 98-130 revised the UDC to include the methodology and fee structure in the 1998 study. Services that received impact fees included:

- Libraries
- Fire
- Emergency Medical Services (EMS)
- Police
- Parks & Special Facilities
- Sewers
- County Facilities
- Schools

Most of the fee values and services receiving impact fees have remained largely consistent since the adoption of Ordinance 98-130

Ordinance 99-042 Impact Fees and Schools

Ordinance 99-042 was adopted on June 22, 1999, removing the impact fees related to school capacity, in favor of relying on certification by the school district that adequate capacity exists in the school district to support development.

Ordinance 06-042

Ordinance 06-042 was adopted on July 25, 2006, shifting the method for recovering sewer service expansion from an impact fee to a capital recovery fee.

2006 Fire Impact Fee Study and Ordinance 06-047

New Castle County conducted an update to the 1998 Impact Fee Study with TischlerBise (formerly Tischler & Associates) to revise fees collected, to support expanded fire services that were needed to accommodate the increased development trends. The study was commenced in 2005 and was completed on January 26, 2006. The recommended changes from the study were adopted on August 22, 2006.

2009 Impact Fee Study and the Great Recession

New Castle County initiated a comprehensive update to the 1998 Impact Fee Study with TischlerBise to update fees collected and to support expanded fire services needed to accommodate the increased development trends in 2009. A draft of the study was completed on December 28, 2009. The study was never finalized and recommendations from the draft study were not pursued due in part to concerns related to the Great Recession and the effect increasing fees would have on the housing market.

2023 Development Impact Fee Study

Following the New Castle County Audit Report (May 2020), which recommended the County consider reviewing current impact fee amounts, the Rossi Group and Century Engineering were contracted to look at best practices. The *2023 Development Impact Fee Study* proposed that the County consider specific changes to the impact fee structure based on best practices by the American Planning Association, neighboring jurisdictions, and nation-wide trends. Based on this analysis, the study includes six key recommendations:

1. Utilization of the Delaware State Strategies Map to assess a surcharge impact fee to cover additional costs associated with developments in Levels 3 and 4.
2. Expansion of the uses included in the Impact Fee Table (Table 40.15.210)⁶.
3. Incentivizing low-income housing through the potential exemption or reduction of impact fees for Moderately Price Dwelling Units (MPDU's).
4. Graduated fee increases based on the ENR CCI, whether it be annual indexing adjustments or phased increases over time.
5. Creation of an impact fee for open space.
6. Consideration of impact fees for certain redevelopment proposals that may require additional services.

The *2023 Development Impact Fee Study* recommendations were obtained via an online survey presented at a public workshop held on December 13, 2022. Some recommendations were more favored than others and were considered as part of the final report.

While there were several recommendations in the memorandums that made up the report, it is important to note that the report did not evaluate the necessary data to assure that changes in fees were “roughly proportionate” to the impact from the development:

... Thorough documentation of the current practices along with best practices and case studies will allow the County and its residents to determine needs and opportunities to refine impact fees to align with the County's long-range plans and achieve a sustainable source of revenue.⁷

It is for this reason that the report recommends additional research be conducted. Ensuring that any proposed change in fees meets the legal tests established by the U.S. Supreme Court is an essential next step in the process to determine appropriate impact fees. Additionally, it is important for the County to evaluate how an increase would be consistent with the methodologies set by County Code.

⁶ [Impact Fee Table](#)

⁷ 2023 Development Impact Fee Study, Memo 1, Page 5 of 5

PLUS REVIEW

The PLUS Report dated March 27, 2024, contains comments from State agencies. The Office of State Planning and Coordination (OSPC) commended the County for proposing to review impact fees every five years to ensure they align with development costs. There were no additional comments from other State agencies.

PLANNING BOARD PUBLIC HEARING – May 7, 2024

Councilman Carter presented Ordinance 24-008 at the May 7, 2024, joint New Castle County Department of Land Use and Planning Board Public Hearing. During his presentation, he discussed the history of impact fees in New Castle County as well as the scope and intent of the ordinance.

Chairwoman Peterson asked Councilman Carter if there was a definition for “significant change.” Councilman Carter stated that he will need to confer with Counsel to Council. Mr. Snowden voiced concerns regarding the time that fees have remained constant and asked if the intent was to increase fees all at once. Councilman Carter stated that while the ordinance does not directly address this, he believes that County Council would be most comfortable with an incremental increase. He further remarked that he would prefer to not use the tax stabilization fund for capital projects such as the Boyd’s Corner EMS station. Mr. Cantrell referenced the requirement that impact fees be adjusted for inflation, and asked if the intent was that the fees would be adjusted annually. Councilman Carter stated that the fees would be required to be adjusted every five years, however it could occur more frequently if something drastic happened. Mr. Cantrell asked about the mechanism for adjusting the fees after an event such as the COVID 19 pandemic. Councilman Carter stated that in such a circumstance he would hope that any shortfall would be funded by the tax stabilization fund.

Antoni Sekowski, Assistant Land Use Manager for the Department of Land Use made a brief presentation expressing the Department’s concerns with Ordinance 24-008. He discussed the background of the *2023 Development Impact Fee Study*, as well as key recommendations of the report. He stated that while the Department concurs that updating impact fees every five years is warranted, Ordinance 24-008 is as drafted, premature because the Department has not had adequate time to evaluate how to best implement recommendations from the study. Specific concerns are that the study does not determine which fees should be modified, what new fees should be included, and the impacts on affordable housing. He further discussed specific concerns regarding recommendations in the study and the additional research (as noted in the study) needed to best address their implementation. He reiterated the Department’s support for increasing fees at regular intervals, however voiced concern that a flat increase in fees may have unintended consequences and may not have a rationale nexus between the fee and improvement.

Chairwoman Peterson asked if the Department knew if Kent and Sussex Counties had a similar fee structure. Mr. Sekowski stated that from his understanding their structure was significantly more limited. Ms. Drake expressed concern about the potential time that it would take to conduct the recommended research, considering the amount of time since the

last increase in impact fees. Mr. Sekowski discussed the Department's current efforts to address recommendations of the study, including having an expert evaluate Area Median Income requirements for affordable housing. He also discussed proposed changes in Ordinance 24-054 on how impact fees would be addressed in redevelopment.

Charuni Patibanda, General Manager for the Department of Land Use, remarked that the Department is not looking to hold up the process in pursuit of perfection, but wants to make sure that affordable housing in New Castle County is not adversely impacted. She acknowledged Councilman Carter's comments but stressed the importance of a balanced approach in order to minimize impacts to affordable housing.

Councilwoman Durham stated that the American Planning Association calls for a review of impact fees every two years, and that she had requested an ordinance from the Department to increase fees consistent with the recommendations of the study. She further remarked that the Open Space Advisory Board supports the ordinance and that the Chair of the Board intends to submit a letter of support. Councilwoman Durham indicated that there are a number of ways that fees could be phased in, and in what is to be included and that affordable housing could be exempted. She stated that it is disingenuous for the Department to state that they need to study, since they have a study.

Public Comment

During the public comment period three residents spoke in favor of the ordinance: (1) Dale Swain, (representing the Facebook group RADAR), (2) RJ Miles (CCOBH), and (3) Robin Glaiser (Delaware Nature Society). Mr. Swain expressed support for the ordinance, and concern that the fees had not been adjusted in twenty-five years. He also stated that a lot of the concerns that Land Use has addressed could be added to the bill. Mr. Miles expressed support for the ordinance, stating the importance of having proposed development equitably contribute to the infrastructure demands that will be created. He mentioned traffic impacts from the Incyte development as an example. Ms. Glaiser voiced support for the ordinance specifically with respect to the acquisition and preservation of open space land.

Rebuttal

Councilman Carter committed to work as closely as possible with the Department of Land Use but has no intention of slowing down. He remarked that he does not feel that the increase in impact fees will significantly affect affordable housing since they can be spread out over a thirty-year mortgage.

Written Public Comment

The Department received letters of support for Ordinance 24-008 from the following agencies / individuals, which are enclosed with this report.

Delaware Nature Society (Mark Nardone)
Kristina Brandis (Middletown resident)
Joshua Fischer (MOT resident)
Amanda Fischer (MOT resident)
Andy Olenderski (Middletown resident)

ANALYSIS

As noted in the purpose statement of Article 14 (Impact Fees), the intent behind the collection of impact fees is to addresses facilities and services that New Castle County provides, which are impacted by population growth and new development. Article 14 (Impact Fees) of the UDC includes a detailed methodology, determination of the cost of service, and Impact Fee Table that provide detailed instruction to the County regarding the collection of impact fees and the subsequent administration of funds. Understanding the changes and expected growth trends in New Castle County, the County acknowledged the need for updates to the fee structure through the most recently completed impact study.

Following the completion of the *2023 Development Impact Fee Study*, Ordinance 24-008 was introduced by its sponsors in the spirit of the study. Ordinance 24-008 proposes to require impact fees be updated once every five years, with a deadline for the first date being January 1, 2025. Based on best practices and the recommendations of the *2023 Development Impact Fee Study*, the Department agrees that the five-year time period is an appropriate update cycle. The requirement that the next adjustment be conducted by January 1, 2025, does not provide the County sufficient time to perform the research recommended by the study to implement recommendations in a manner consistent with legal requirements for impact fees. The Department of Land Use prefers to take a comprehensive look at Article 14 and make changes that would not be arbitrary, noting that changes to the impact fees will have a significant impact on the County.

2023 Development Impact Fee Study Recommendation	Department Comment
Utilizing State Strategies Map <i>Implementation of a surcharge for development in Investment Levels 3 and 4.</i>	Additional research needed and coordination with the OSPC
Expanding the list of uses in the Impact Fee Table	Need to understand the actual costs vs. forecasted increases for existing impact fees to ensure there is a rational nexus
	The Department would like to more narrowly define the list of uses and assess their impacts.
	Additional research needed
Strategic incentives for low-income housing.	Consideration of a sliding scale relative to home prices and Area Median Income (AMI)
	Department is currently working with an expert to determine appropriate AMI levels with respect to MPDU locations, results will be shared with DHSA and Community Services.
	Additional research & outreach needed.
Graduated Fee increase	Additional study is needed to assess a phased approach for increasing fees over a period of multiple years.
Creation of an Open Space Impact Fee	Article 14 already has a Parks and Special Facilities impact fee
	Recommend further consultation with the Open Space Advisory Committee should a fee be proposed / adopted.
	Public feedback during the <i>2023 Development Impact Fee Study</i> indicated that this should be included within existing categories
Change / Use of Redevelopment Impact Fees	Concern about disincentivizing redevelopment of underutilized properties. The Comprehensive Plan encourages the redevelopment of underutilized sites.

As directed by the US Supreme Court in *Nollan v. California Coastal Commission* (483 U.S. 825, 1987)⁸ and *Dolan v. City of Tigard* (512 U.S. 687, 1994),⁹ when government enacts an exaction (such as the collection of impact fees), it is essential that it provides both a “rational nexus” as well as fees that are “roughly proportionate” to the impact created by the development. The *2023 Development Impact Fee Study* provided recommendations for further analysis into areas where additional impact fees might be appropriate, as well as potential ways to avoid longer periods between updates. It did not perform the analysis at the depth required to ensure that proposed changes would meet the *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*.

Impact fees must be based on an accurate inventory of existing capital inventory and what increase in capital is needed to support future development needs. Because impact fees must be specifically based on the impact that new development creates, the fees cannot be used for replacement capital, only for new/additional improvements. Any proposed increase needs to be based on a thorough understanding of capital needs for existing residents, as well as on formally approved population, household and job projections adopted by the Delaware Population Consortium. The 1998, 2006 (Fire Impact Fees), and 2009 studies were completed with a thorough knowledge of both existing capital and projected needs. The *2023 Development Impact Fee Study* provides valuable and important recommendations for consideration, but as the study stated, requires additional research.

Specifically, one area that needs additional evaluation is the tying of future increases in impact fees to the Construction Cost Index. While this may be an adequate measure for approximating capital costs associated with *construction*, it would fail to address important capital expenses that are not associated with construction. For example, while there are construction related capital expenses for the volunteer fire services, the vast majority of requests for reimbursement that the Department receives are for new, non-replacement equipment such as computers, fire hoses, fire trucks, radios, and other non-construction related expenses. Because there is no nexus between the cost of non-construction capital expenses and construction costs, relying on the Construction Cost Index for future increases in impact fees would be ill-suited to account for non-construction related needs. Another point of concern, regarding the Construction Cost Index approach is that it relies on population and households continuing to increase. According to the Delaware Population Consortium’s demographic trends and projections, households and overall population in New Castle County will likely peak in the next decade and a half. After that, both will likely decline.

The Department concurs with the sponsors that impact fees do need to be updated every five-years. However, the Department disagrees with the requirement that fees be adjusted by January 1, 2025, as research has not yet been completed that would assure that any increase

⁸Nollan v. California Coastal Commission 483 U.S. 825 (1987):

<https://supreme.justia.com/cases/federal/us/483/825/>

⁹ Dolan v. City of Tigard 512 U.S. 687, (1994): <https://supreme.justia.com/cases/federal/us/512/374/>

would be “roughly proportionate” to impacts from new development. Impact fees are not and cannot be punitive measures to have new development pay for services for existing communities. Impact fees can *only* be used to pay for the expansion of services and capital development to accommodate the proposed new development. The Department is committed to completing a study to evaluate impact fees based on the methodology established in the UDC in accordance with the recommendations made in the *2023 Development Impact Fee Study*.

Standards of Review

Pursuant to **Section 40.31.420 of the New Castle County Code**, in determining whether a text amendment shall be recommended or approved, all of the following factors shall be considered:

A. *Implementation of a new portion of the Comprehensive Development Plan.*

N/A

B. *Implementation and achievement of the Comprehensive Plan’s goals and objectives.*

Goal 17 of the Comprehensive Plan calls on the County to conduct a study of impact fees and other economic cost-benefit analysis to ensure sustainability of community infrastructure and services over time, with a commitment to commence the study by 2022. Furthermore, Strategy 17.4.2 calls for the County to ensure emergency and police services, capacity and funding are available as population grows by re-evaluating impact fees to ensure that monies levied from new development adequately address the impact of increased demand for fire, police and EMS expansion and service.

The *2023 Development Impact Fee Study* is the first step in meeting the goals and strategies of the Comprehensive Plan, not the end result. Additional research needs to be conducted, as recommended by the study, to responsibly and legally determine appropriate changes to the impact fees collected associated with new development.

C. *Consistency with the provisions of this Chapter and the standards for similar uses.*

N/A

D. *Necessity to respond to State and/or Federal legislation.*

N/A

E. *Flexibility in meeting the objectives of this Chapter.*

N/A

F. Changes to conditions, interpretations, and/or clarifications to existing language for new uses.

N/A

G. Consideration of specific problems found in this Chapter.

Ordinance 24-008 seeks to address the eighteen-year time lapse since the last update to the impact fees collected by the County. The Ordinance requires that fees be adjusted over regular, five-year periods, while further requiring that fees be adjusted by January 1, 2025. The Department agrees with setting a required interval for updating fees but disagrees with the requirement that fees be adjusted by January 1, 2025, as the recommended research has not been conducted that would assure that any increase would be “roughly proportionate” to impact from development.

DEPARTMENT OF LAND USE RECOMMENDATION

Based on the analysis above and the Standards included in **Section 40.31.420 of the New Castle County Code**, the Department of Land Use recommends **DENIAL** of Ordinance 24-008 (Application 2024-0062-T) as written to allow for further evaluation and implementation of an updated impact fee methodology and structure.

PLANNING BOARD RECOMMENDATION

At a business meeting held on May 21, 2024, the Planning Board considered the recommendation provided by the Department of Land use as well as comments from outside agencies and the public. The Planning Board voted on a motion by Mr. Snowden and seconded by Ms. Gray, to recommend **DENIAL** of Ordinance No. 24-008 (Application 2024-0062-T) based on the recommendation and rationale made by the Department of Land Use. The motion was adopted by a vote of 7-0-0-2 (In Favor: Peterson, Cahill-Krout, Cantrell, Drake, Gray, Snowden, Visvardis; In Opposition: None; Abstention: None; Absent: Cochran, Daigle).

Prior to the vote the following discussion occurred:

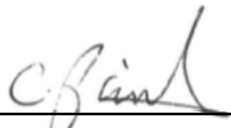
Elizabeth Hatch, Planner for the Department of Land Use read the Department of Land Use recommendation into the record. Charuni Patibanda, General Manager for the Department of Land Use, commented that the Department recognizes the need for an update to the impact fee provisions to the UDC, and that it doesn't oppose the intent of the ordinance, however the research necessary to ensure that the increase in impact fees meet legal requirements. She further committed to further work on updating impact fees, while acknowledging the importance of addressing affordable housing and other initiatives currently underway.

Robert Snowden remarked that the difficulty is the 2025 deadline to update the impact fees, and asked if putting it off a year make the ordinance work. Ms. Patibanda, stated that the additional year would help, but the that the scope of the ordinance was too limited to address other concerns identified by the Department. She further expressed the importance of an update to the impact fee provision appropriately taking into consideration the impacts to affordable housing. Karen Peterson remarked about the challenges in setting an implementation date within the first year of a new administration. Neil Cantrell, asked the Department to further explain the potential impacts of increasing impact fees on affordable housing. Ms. Patibanda explained that since impact fees are assessed per housing unit at a set rate, regardless of the sales price for the home (there is no sliding scale). She further stated that the cost gets passed on to the purchaser. Mr. Cantrell asked if the Department sees the increased cost being passed on to the purchaser dollar for dollar. Ms. Patibanda stated that depending on the market sometimes fees are passed on dollar for dollar, sometimes at a higher rate, and at other times the fee is just absorbed into the cost of the house. Mr. Cantrell, asked if updating fees would result in doubling the fees. Ms. Patibanda stated that in some instances, if the 18 year gap was immediately closed it would result in doubling the fees or more. Antoni Sekowski, Assistant Land Use Manager for the Department of Land Use, explained that the Rossi Group report estimated that t increase would be closer to 75%. Mr. Cantrell inquired about ways to mitigate the potential adverse impacts of the ordinance being adopted as written. Ms. Patibanda remarked that the ordinance does not provide for the ability, to address the Department's concerns, and that any effort should be more comprehensive in nature. Mr. Cantrell then asked about the time that it would take to complete a more comprehensive effort. Ms. Patibanda remarked about the complexity of the process and the difficulty in providing an accurate time frame. Matthew Rogers, Planner for the Department of Land Use explained the three different methods for evaluating impact fees within the UDC. He further explained the importance of having accurate and update inventory for Fire, EMS and other services, since impact fees can only legally be used on capital expansions to support new development, and that the funds cannot be allocated to the replacement of existing inventory. Mr. Rogers further explained that the TischlerBise studies that were the basis to establish the impact fee provisions in the UDC had substantially greater depth and detail to ensure that the fees met the legal standards than the Rossi Group report. He further expressed the importance providing the detail and research that TischlerBise conducted in previous studies. Mr. Cantrell asked when the Rossi Group study was submitted to the Department. Mr. Rogers stated the Department received the report in June of 2023. Mr. Cantrell remarked that it isn't possible to complete a holistic effort by January of 2025. Mr. Rogers agreed and expanded on some of the challenges to the recommendations in the reports, specifically using the construction index, where much of the funded capital improvements are not related to construction at all (fire hoses, computers and tablets). Ms. Patibanda, remarked that while completing a comprehensive study within 6 months is not possible that the Department will begin the effort. Leah Gray asked if there was a way to exempt to some extent affordable housing from impact fees. Ms. Patibanda stated that creating a balance between affordable housing and impact fees would be part of the needed research, noting that 55 and older communities have exemptions. She further remarked about the importance that changes to impacts stand up

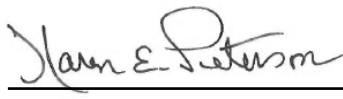
to legal challenge. Ruth Visvardis asked if the intent is to exempt affordable housing from the increase in fees or impact fees as a whole. Ms. Patibanda stated that the level of exemption had not been determined. Ms. Patibanda then discussed the potential moral hazard abating fees, thereby potentially reducing services in areas where affordable housing is constructed. She further remarked about the fact that impact fees are refunded is not used within a specific time period. Mr. Rogers expanded on this by discussing the streamlined approach to administering fire impact fees that the Department developed. Mr. Rogers also discussed how some impact fees are permitted in the UDC to defrayed to fund the preservation of a historic resource on a site. Mary Jacobson, Attorney for the Planning Board, inquired if there was a budgetary need to conduct the impact fee study. Ms. Patibanda and Mr. Sekowski explained that the study was a recommendation made by an audit to the Finance Department, not from a specific budgetary need. Ms. Jacobson remarked that at times working on administering impact fees, that there is at times a surplus, making an automatic increase questionable. Ms. Jacobson also questioned if the increases in the report were based on a need analysis. Mr. Sekowski confirmed that there was no need based analysis performed, noting that the current fee structure is need based. Ms. Jacobson stressed the importance of a rational nexus for increasing fees. Mr. Cantrell inquired about the degree that services south of the C&D Canal would be impacted if fees are not increased. Ms. Patibanda stated that services will be provided and explained that impact fees are a small portion of the funding to bring services to an area. Mr. Snowden, remarked that there is a lot of work to evaluate and implement an increase in impact fees, while acknowledging that there is a desire for immediacy. He asked if it was possible to implement an arbitrary 35% increase in impact fees until an adequate study was complete was a possibility. Ms. Patibanda, stated that such an increase would conflict with the legal standards established in *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*. Ms. Gray inquired about funding sources outside of impact fees for fire services. Ms. Patibanda said she'd reach out to the Department of Finance for additional information. Ms. Jacobson discussed the fact that fire companies receive funding from the State, and that there is an ongoing study to reevaluate their funding levels. Ms. Peterson, further expanded on the level of funding that fire companies receive from the State. Mr. Snowden asked about the potential risk for legal challenge should the ordinance pass, and impact fees be increased uniformly. Ms. Patibanda stated that there is a potential risk that could come to fruition from a developer at the time of pulling a building permit.

STATUTORY GUIDELINES

In the phraseology of 9 Delaware Code, Section 2603(a), the Department finds that this text amendment **would not** promote the convenience, order, and welfare of the present and future inhabitants of this state.



Charuni Patibanda 06/11/24
General Manager date
Department of Land Use



Karen Peterson 06/11/24
Chair date
Planning Board



STATE OF DELAWARE
OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF STATE PLANNING COORDINATION

March 27, 2024

Councilperson Dee Durham
c/o Elizabeth Hatch
Department of Land Use
New Castle County
Government Center
87 Reads Way
New Castle, DE 19720

RE: PLUS review – 2024-02-08; New Castle County Ordinance on Impact Fees

Dear Ms. Durham,

Thank you for meeting with State agency planners on February 28, 2024 to discuss the proposed ordinance to update the Unified Development Code. According to the application, the County is proposing to amend the New Castle County Code Section 40.14.230 to provide for review and necessary adjustments to impact fee at least every 5 years.

The Office of State Planning Coordination acknowledges the work that has been put into this ordinance. The comments below reflect only issues that are the responsibility of the agencies that were represented at the meeting.

Office of State Planning Coordination – Contact Samantha Bulkilvish 302-739-3090

- OSPC commends the County for proposing to review impact fees every 5 years to ensure the fees are in line with development costs. We have no objections to the ordinance as submitted.

Department of Transportation – Contact Stephen Bayer 302-760-4834

- DelDOT has no comments on the proposed ordinance.

Department of Natural Resources and Environmental Control – Contact Beth Krumrine
302-735-3480

Disclaimer Clause: Staff from the Delaware Department of Natural Resources and Environmental Control (DNREC) reviewed the project submitted for PLUS review. The absence of comments does not indicate that there are not additional constraints, nor does it indicate DNREC support of a project, code or ordinance.

- DNREC reviewers have no comments or concerns at this time.

Delaware Emergency Management Agency – Contact Phillip Cane 302-659-2325

- DEMA has no comments or objections on the proposed ordinance as this is not our area of expertise.

State Historic Preservation Office – Contact Carlton Hall 736-7400

- The Delaware SHPO has no objections.

Delaware State Fire Marshall's Office – Contact Duane Fox 302-739-4394

- The DE State Fire Marshal's Office has no objection to the impact fee ordinance changes.

Once the ordinance is voted on by Planning and Zoning and/or County Council, please forward a copy of the decision regarding the amendment to this office for our files. Thank you for the opportunity to review this amendment. If you have any questions, please contact me at 302-739-3090.

Sincerely,



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



NEW CASTLE COUNTY, DE

DEVELOPMENT IMPACT FEE STUDY FINAL REPORT

June 13, 2023



I. Executive Summary

Delaware Code Title 29, Chapter 91, Section 9124 gives county governments the authority to charge impact fees for services for which the County will bear increased costs associated with development. The County must strike a balance between keeping the fees low while also providing a source of revenue for capital improvements.

New Castle County impact fees are addressed in Article 14 of the New Castle County Unified Development Code (UDC). In particular, § 40.14.010 outlines the services for which the County may require new development to provide impact fees, § 40.14.210 outlines the impact fee amounts by service and different development categories, and § 40.14.260 states how impact fee funds should be administered.

New Castle County UDC § 40.14 states “All costs in the impact fee calculations are given in current dollars with no assumed inflation rate over time. Necessary cost adjustments will be made as part of the periodic evaluation and update of impact fees. Impact fees will be adjusted for inflation in construction costs as reflected in the Engineering News Record (ENR) index and upon approval by County Council ...” However, New Castle County received an audit in May 2020 which found that the only impact fees adjusted since 1999 have been the fire & rescue impact fees. County Council adopted legislation in August 2006 raising these fees based upon another study performed by TischlerBise earlier in 2006. “Thus, the impact fees for Parks, Libraries, County Facilities, EMS, and Law Enforcement have not been adjusted for over 20 years – while, undoubtedly, there have been increases in the costs of construction over that timeframe.”

Rossi Group was contracted by New Castle County to assist in conducting a development impact fee study and updating current regulations. Over the course of several months, Rossi Group worked with the County and its residents to review the current fee schedule and determine the needs and opportunities to apply best/recommended practices to achieve sustainable, just, and fair public finance in line with the County’s long-range plans (e.g., Comprehensive Development Plan, Southern New Castle County Master Plan). This included obtaining feedback during a public workshop and an online survey.

A series of memos were developed to document the process. A summary of each memo is provided below, and memos are attached to this summary:

Memo #1: Summary of Current Practices

Memo #1 provides a summary of the May 2020 audit and presents recommendations to be included in the study of development impact fees as proposed in the County’s Draft Comprehensive Plan updates, currently underway. Recommendations include:

- Study and consider different funding strategies, such as impact fees, for the preservation and acquisition of county owned open space and easements. This was further reinforced by New Castle County Council passing Resolution No. 21-160 that “urges the Administration to include the creation of an impact fee to fund preservation in its 2021 Impact Fee Report and to otherwise pursue a permanent funding mechanism for preservation if the preservation impact fee is not legally or otherwise feasible.”
- Study/adjust impact fees and conduct economic cost-benefit analysis of other policies associated with financing infrastructure and service, to address issues such as ongoing parks and open space maintenance needs that cut across multiple departments.
- In alignment with recommendations from the Housing Advisory Board evaluate possible adjustments to Impact Fees, such as an exemption/waiver for developers of low to very low-income housing in exchange for covenants that run with the land to continue affordability for 30 years and accept all sources of income for rental unit developments. Importantly, the study will need to weigh the benefit of expected impacts from this type of policy change relative to the loss of fees.

- Consider establishing sliding scale for moderately priced dwelling unit (MPDU) requirements, which should factor access to transit and nonmotorized transportation modes.
- Ensure emergency and police services capacity and funding is available as population grows by re-evaluating impact fee to ensure the monies levied from new development adequately address the impact of increased demand for fire, EMS and police expansion and service.
- Consider adjustments to impact fees based on housing unit size as opposed to a flat per unit basis to incentivize smaller, more affordable units.

This memo further details New Castle County's current regulations (Castle County UDC Chapter 40, Article 14 (40.14)) and summarizes FY 2021 impact fee account balances with total revenues and expenditures.

Memo #2: Summary of Best Practices

Memo #2 presents best practices as recommended by the American Planning Association as well as case studies for current practices by regional communities in support for New Castle County's Impact Fee Study. The case studies include jurisdictions from Delaware, New Jersey, Pennsylvania, Maryland, and Florida. This memo also provided a summary impact fees or exemptions to be considered during the impact fee study: 1) green infrastructure; 2) land preservation/agriculture land preservation; 3) affordable housing; and 4) administration and reassessments.

Take aways from analysis of the best practices included:

- Local examples: New Castle County's impact fee program compares most favorably with the more comprehensive and modern impact fee programs found in Anne Arundel County, Maryland and Seminole County, Florida.
- Indexing benchmark: Construction Cost Index (CCI) from the Engineering News-Record (ENR) is the recommended benchmark comparison for impact fee increases with annual reviews.
- Annual increases: The easiest and most straightforward method to address fee increases is to adopt the annual increase in code using the CCI. Mandating annual increases by code eliminates political influences on the fees. A limit of 4 or 5% per year could be adopted so that in periods of high inflation, fee increases are somewhat mitigated.
- Needs based assessments: Periodic reviews should assess needs for each area of impact based on the County's capital improvement plan for each geographic area. As growth levels change for each area, the fees could be adjusted based on needs.
- Impact fee credits: Many jurisdictions allow for credits if the applicant builds facilities or donates real estate for the construction of facilities.
- Affordable housing provisions: Most jurisdictions provide for a reduction or elimination of impact fees for affordable housing initiatives. A wide of alternatives are possible but factors such as replacing the reduced revenue, income levels, number of units eligible, reducing/waiving only some portions of the impact fees should be considered.
- Fee rates are often tied to a proposed use.
- Sustainability of impact fees to keep taxes low: Impact fees will continue to provide the County with dedicated revenue below the canal for the foreseeable future to help fund projects. Revenue for the area above the canal for parks and libraries is fairly limited.
- Open space: An open space impact fee seems reasonable in the update of the code to help fund land acquisition and preservation.

Memo #3: Special Topics Reviewed

Memo #3 builds on the data collected in the prior memos to present recommendations for New Castle County to consider in their assessment of current regulations and the development of any subsequent updates. These initial recommendations include: 1) an assessment of the ability to apply a sliding scale to the impact fees based on the *Delaware Strategies for State Policies and Spending* (2020) and taking into account the five established investment levels; 2) expanding the list of uses in the Impact Fee Table; 3) developing strategies for incentivizing low-income housing; 4) implementing graduated impact fee increases; 5) creating an Open Space fee; and 6) revision of use/redevelopment charges.

Memo #4: Final Recommendations

A public workshop was held December 12, 2022 to present the findings of Memos 1 through 3 and solicit feedback from interested stakeholders. Attendees could view the presentation virtually or in-person. Approximately 25 individuals attended in person and 45 attendees signed in online.

Data from the workshop was used to finalize recommendations to prioritize proposed changes to the existing code. The following final recommendations will be presented to New Castle County Council's Finance Committee for further consideration:

1. **Utilizing Delaware's State Strategies:** New Castle County to implement a surcharge to cover the additional costs associated with development in Levels 3 and 4; New Castle County will work with OSPC and conduct additional research to determine the actual cost of providing services to these areas and will modify proposed percentages accordingly.
2. **Expanding the List of Uses in the Impact Fee Table:** New Castle County to add new categories to the impact fee table (Multi-use Residential, Institutional Uses, Commercial Lodging, Restaurants).
3. **Strategies for Incentivizing Low-Income Housing:** New Castle County should establish a sliding scale system based on the home price relative to the AMI.
 - >120% of AMI => 75%
 - 100 – 120% => 50%
 - 80 – 100% => 25%
 - <80% => No fee assessed
4. **Graduated Fee Increases/ENR Recommendations:** New Castle County should consider increasing their current Impact Fees in a phased approach of 10% per year for 3 years, then annually adjust the fee for ENR CCI.
5. **Open Space Fee Creation:** New Castle County should further explore the option of an additional impact fee category to fund Open Space. This would align with the County's goal for dedicated Open Space funding.
6. **Change of Use/Redevelopment Charges:** New Castle County will continue to work with developers to determine if the waiver on impact fees is a deciding factor in redevelopment and/or brownfield development. New Castle County should also consult with the Public Works Department and Emergency Services to determine actual costs of increased services from redevelopment cases.

MEMO #1: SUMMARY OF CURRENT PRACTICES

Date: August 2, 2022
To: Antoni Sekowski, Acting Assistant Land Use Manager, New Castle County
From: Savannah Edwards, AICP Candidate; Associate Planner; Rossi Group
CC: Marc Coté, PE, AICP; Director of Planning and Engineering; Rossi Group

Re: New Castle County Impact Fee Study
Memo #1 – Summary of Current Practices

New Castle County received an Audit Report dated May 20, 2020. The results informed the need for further study of New Castle County Unified Development Code (UDC) Chapter 40, Article 14 (40.14); which indicates, “All costs in the impact fee calculations are given in current dollars with no assumed inflation rate over time. Necessary cost adjustments will be made as part of the periodic evaluation and update of impact fees. Impact fees will be adjusted for inflation in construction costs as reflected in the Engineering News Record (ENR) index and upon approval by County Council ...” Since 1999, however, the only impact fees which have been adjusted have been the fire & rescue impact fees. County Council adopted legislation in August 2006 raising these fees based upon another study performed by TischlerBise earlier in 2006. Thus, the impact fees for Parks, Libraries, County Facilities, EMS, and Law Enforcement have not been adjusted for over 20 years – while, undoubtedly, there have been increases in the costs of construction over that timeframe.”

Rossi Group is supporting New Castle County’s study of its development impact fee to assess and update current regulations. In support for New Castle County’s development impact fee study, the following memo presents New Castle County’s current regulations, fee amounts and processes. Concurrently, the County is completing its 10-year comprehensive development plan updates. Based on review of the Draft Comprehensive Plan the following recommendations should be considered as part of this study:

- Study and consider different funding strategies, such as impact fees, for the preservation and acquisition of county owned open space and easements. This was further reinforced by New Castle County Council passing Resolution No. 21-160 that “urges the Administration to include the creation of an impact fee to fund preservation in its 2021 Impact Fee Report and to otherwise pursue a permanent funding mechanism for preservation if the preservation impact fee is not legally or otherwise feasible.”
- Study/adjust impact fees and conduct economic cost-benefit analysis of other policies associated with financing infrastructure and service, to address issues such as ongoing parks and open space maintenance needs that cut across multiple departments.
- In alignment with recommendations from the Housing Advisory Board evaluate possible adjustments to Impact Fees, such as an exemption/waiver for developers of low to very low-income housing in exchange for covenants that run with the land to continue affordability for 30 years and accept all sources of income for rental unit developments. Importantly, the study will need to weigh the benefit of expected impacts from this type of policy change relative to the loss of fees.
 - Consider establishing sliding scale for moderately priced dwelling unit (MPDU) requirements, which should factor access to transit and nonmotorized transportation modes.
- Ensure emergency and police services capacity and funding is available as population grows by re-evaluating impact fee to ensure the monies levied from new development adequately address the impact of increased

demand for fire, EMS and police expansion and service.

- Consider adjustments to impact fees based on housing unit size as opposed to a flat per unit basis to incentivize smaller, more affordable units.

I. SUMMARY OF NEW CASTLE COUNTY UDC CHAPTER 40, ARTICLE 14 (40.14)

Delaware Code Title 29, Chapter 91, Section 9124 gives the County Government the authority to charge impact fees for services for which the County will bear increased costs of development. Pursuant to State Code, New Castle County adopted UDC 40.14 in 1997. The code defines impact fees as one (1) time payments on new use development to ensure that the development contributes adequate funds to enable the County to provide necessary services and facilities in a timely manner and at established levels of service. New Castle County currently requires that new residential use development provide impact fees for libraries, fire and rescue, emergency medical services, law enforcement, parks and special facilities, and county facilities. All other uses shall pay impact fees for fire and rescue, law enforcement, emergency medical services (EMS), and county facilities.

With the adoption of 40.14 the County determined impact fees that would be proportionate and reasonable related to the capital facility service demands of a new development. Impact fees for libraries were determined using a plan-based methodology, a method best suited for public facilities that have specific capital improvement plans. Impact fees for parks, public facilities and equipment, EMS, fire/rescue, and law enforcement are derived mainly from the incremental expansion method which would allow the use impact fee revenue to expand or provide additional facilities, as needed to accommodate new development. Parks impact fees also used the buy-in approach to calculate fees, where new development would pay for its share of the useful life and remaining capacity of existing facilities.

The impact fees also considered and established potential credits for new developments. The first, a future revenue credit avoids double payment for capital facilities through both one (1) time impact fees and ongoing revenues that may fund system improvements. The second type of credit is a site-specific credit for system improvements that have been included in the impact fee calculations. Project improvements normally required as part of the development approval process are not eligible for credits against impact fees. When building or expanding a nonresidential building, the first 1,000 square feet are exempt from the assessment of impact fees. For all impact fees, the Department shall waive the applicant's responsibility to pay said fees for redevelopment or Brownfields. As a condition of such waiver, the Department may require that an alternative funding source be identified to pay the applicable impact fee.

The Code defined impact fees in current (last amended, 2006) dollars with no assumed inflation rate over time. The Code indicated that cost adjustments would be made as part of a periodic evaluation. Impact fees would be adjusted for inflation in construction costs as reflected in the Engineering News Record (ENR) index and upon approval by New Castle County Council. Any impact fee based in part upon land cost shall be reviewed periodically by the Departments of Land Use and Finance and adjusted to account for any significant change in the cost of land upon approval of County Council. Though the Code was amended several times following its initial adoption, New Castle County has not updated its code or related fees since 2006. Current impact fees, as detailed in Table 40.14.210 are presented in **Table 1**. For comparison, **Table 1** also presents impact fee amounts if they had been reviewed and adjusted in accordance with the ENR Index as recommended in the Code as well as impact fee amounts adjusted in accordance with the Consumer Price Index (CPI).

Table 1: Impact Fees (Dollars)

Service	Parks & Special Facilities			Libraries			County Facilities			EMS			Fire and Rescue			Law Enforcement			Total		
	Code ¹	ENR Index ²	CPI Index ³	Code ¹	ENR Index ²	CPI Index ³	Code ¹	ENR Index ²	CPI Index ³	Code ¹	ENR Index ²	CPI Index ³	Code ¹	ENR Index ²	CPI Index ³	Code ¹	ENR Index ²	CPI Index ³	Code ¹	ENR Index ²	CPI Index ³
RESIDENTIAL Per Housing Unit																					
Single-family detached	\$328	\$574	\$492	\$138	\$242	\$207	\$112	\$196	\$168	\$7	\$12.25	\$10.50	\$510	\$893	\$765	\$62	\$109	\$93	\$1157	\$2,025	\$1,736
Single-family attached	\$304	\$532	\$456	\$129	\$226	\$194	\$105	\$184	\$158	\$6	\$10.50	\$9.00	\$442	\$774	\$663	\$58	\$102	\$87	\$1044	\$1,827	\$1,566
All other housing ⁴	\$225	\$394	\$338	\$95	\$166	\$143	\$77	\$135	\$116	\$5	\$8.75	\$7.50	\$317	\$555	\$476	\$43	\$75	\$65	\$762	\$1,334	\$1,143
NONRESIDENTIAL Per 1,000 Square Feet of Floor Area⁵																					
Commercial/shopping center (less than 60,000 sf. GFA)	NA	NA	NA	NA	NA	NA	\$127	\$222	\$191	\$8	\$14.00	\$12.00	\$210	\$368	\$315	\$42	\$74	\$63	\$387	\$677	\$581
Commercial/shopping center (60,000 sf. to 200,000 sf. GFA)	NA	NA	NA	NA	NA	NA	\$95	\$166	\$143	\$6	\$10.50	\$9.00	\$163	\$285	\$245	\$33	\$58	\$50	\$297	\$520	\$446
Commercial/shopping center (greater than 200,000 sf. GFA)	NA	NA	NA	NA	NA	NA	\$76	\$133	\$114	\$5	\$8.75	\$7.50	\$147	\$257	\$221	\$28	\$49	\$42	\$256	\$448	\$384
Office/institutional (less than 10,000 sf. GFA)	NA	NA	NA	NA	NA	NA	\$176	\$308	\$264	\$11	\$19.25	\$16.50	\$112	\$196	\$168	\$24	\$42	\$36	\$323	\$565	\$485
Office/institutional (10,000 sf. to 50,000 sf. GFA)	NA	NA	NA	NA	NA	NA	\$150	\$263	\$225	\$10	\$17.50	\$15.00	\$287	\$502	\$431	\$16	\$28	\$24	\$463	\$810	\$695
Office/institutional (greater than 50,000 sf. GFA)	NA	NA	NA	NA	NA	NA	\$142	\$249	\$213	\$9	\$15.75	\$13.50	\$272	\$476	\$408	\$14	\$25	\$21	\$437	\$765	\$656
Business Park	NA	NA	NA	NA	NA	NA	\$120	\$210	\$180	\$8	\$14.00	\$12.00	\$232	\$406	\$348	\$14	\$25	\$21	\$374	\$655	\$561
Light industrial	NA	NA	NA	NA	NA	NA	\$88	\$154	\$132	\$5	\$8.75	\$7.50	\$170	\$298	\$255	\$7	\$12.25	\$10.50	\$270	\$473	\$405
Warehousing	NA	NA	NA	NA	NA	NA	\$47	\$82	\$71	\$3	\$5.25	\$4.50	\$94	\$165	\$141	\$4	\$7.00	\$6.00	\$148	\$259	\$222
Manufacturing	NA	NA	NA	NA	NA	NA	\$70	\$123	\$105	\$4	\$7.00	\$6.00	\$131	\$229	\$197	\$3	\$5.25	\$4.50	\$208	\$312	\$364

1. Impact Fees according to current Code 40.14 (last amended 2006).
2. Impact Fee if adjusted in accordance with ENR Index.
3. Impact Fee if adjusted in accordance with CPI Index.
4. Due to similar square footage, small single-family units and single-wide mobile homes will be included under the "All other housing" designation.
5. When building or expanding a nonresidential building, the first 1,000 square feet are exempt from the assessment of impact fees. For all impact fees, the Department shall waive the applicant's responsibility to pay said fees for redevelopment or Brownfields. As a condition of such waiver, the Department may require that an alternative funding source be identified to pay the applicable impact fee.

Section 40.14.260 outlined the administration of impact fees. Each fee is deposited into separate interest-bearing trust funds for each impact fee types. With exceptions, outlined per the Code, impact fees collected from new development north of the C&D Canal shall only be used for services and facilities located or provided north of the canal. Impact fees collected from new development south of the C&D Canal shall only be used for services and facilities located and provided south of the C&D Canal. Within each area, the impact fees shall only be used to adequately benefit the development which is the source of the fee. Exceptions include impact fees assessed for fire/rescue and county facilities. Impact fees within a specific fire and rescue district shall only be used to adequately benefit the development which is the source of the fee regardless of whether the fee was collected north or south of the C&D Canal. Because County facilities benefit new development on a Countywide basis, County facility impact fees can be used anywhere in the County regardless of whether the fee was collected north or south of the C&D Canal.

Fees collected during any fiscal year must be expended or encumbered by contract within the ten (10) fiscal years

immediately following for parks and special facilities, libraries, county facilities, and fire/rescue or five (5) years for EMS or law enforcement impact fees. If fees are not expended or encumbered by contract, the owner of the address for which an impact fee had been paid is entitled to a refund and will be notified by the General Manager. Any person so entitled shall have six (6) months from the date of the notice within which to apply to the Department of Finance for a refund of the fees paid.

II. IMPACT FEES TO DATE

Impact Fee Account Balances for Fiscal Year 2021 are presented in **Table 2** along with total revenue and expenditures.

Table 2: Impact Fee Account Balances - FY 2021

Parks - North C & D		Parks - South C & D	
Balance 6/30/2021	\$ 35,418.26	Balance 6/30/2021	\$ 473,309.23
Revenue	\$ 123,782.16	Revenue	\$ 245,523.77
Expenditures	\$ (100,936.64)	Expenditures	\$ (328.00)
Balance 6/30/2022	\$ 58,263.78	Balance 6/30/2022	\$ 718,505.00
Libraries - North C & D		Libraries - South C & D	
Balance 6/30/2021	\$ 16,951.54	Balance 6/30/2021	\$ 204,778.06
Revenue	\$ 52,349.83	Revenue	\$ 103,334.27
Expenditures	\$ (40,267.00)	Expenditures	\$ (138.00)
Balance 6/30/2022	\$ 29,034.37	Balance 6/30/2022	\$ 307,974.33
EMS - North C & D		EMS - South C & D	
Balance 6/30/2021	\$ 1,798.36	Balance 6/30/2021	\$ 9,442.31
Revenue	\$ 16,550.54	Revenue	\$ 6,701.16
Expenditures	\$ (5,023.70)	Expenditures	\$ (7.00)
Balance 6/30/2022	\$ 13,325.20	Balance 6/30/2022	\$ 16,136.47
Law Enforcement - North C & D		Law Enforcement - South C & D	
Balance 6/30/2021	\$ 14,443.02	Balance 6/30/2021	\$ 128,293.26
Revenue	\$ 48,672.85	Revenue	\$ 48,998.98
Expenditures	\$ (30,176.20)	Expenditures	\$ (5,062.00)
Balance 6/30/2022	\$ 32,939.67	Balance 6/30/2022	\$ 172,230.24
Fire Service		County Facilities	
Balance 6/30/2021	\$ 360,298.10	Balance 6/30/2021	\$ 56,683.39
Revenue	\$ 1,048,360.68	Revenue	\$ 384,988.45
Expenditures	\$ (694,583.68)	Expenditures	\$ (220,498.93)
Balance 6/30/2022	\$ 714,075.10	Balance 6/30/2022	\$ 221,172.91

Note: Expenditures in accounts in blue were less than 50% of the total revenue.

Expenditures in accounts in blue were less than 50% of the total revenue. This may indicate that the County is saving funds towards a large capital improvement. Per code, impact fees must be expended within ten or five fiscal years from the year in which they are collected. It is unknown to Rossi Group if the County has a tracking system to confirm that

funds are being expended within the required timeframe. The balances in Law Enforcement - South C & D and EMS – South C & D have multiple years of revenue as an end of year balance, 3.5x and 2.4x respectively.

III. NEXT STEPS

In support of New Castle County's study of its development impact fees to assess and update current regulations Rossi Group will document in a second memo a summary of best practices and case studies. Thorough documentation of the current practices along with best practices and case studies will allow the County and its residents to determine needs and opportunities to refine impact fees to align with the County's long-range plans and achieve a sustainable source of revenue.

MEMO #2: SUMMARY OF BEST PRACTICES

Date: August 17, 2022
To: Antoni Sekowski, Acting Assistant Land Use Manager, New Castle County
From: Savannah Edwards, AICP; Associate Planner; Rossi Group
CC: Marc Coté, PE, AICP; Director of Planning and Engineering; Rossi Group

Re: New Castle County Impact Fee Study
Memo #2 – Summary of Best Practices

Rossi Group conducted a review of best practices in support of New Castle County's study of its development impact fees to assess and update current regulations. In support for New Castle County's Impact Fee Study, the following memo presents best practices as recommended by planning professionals as well as case studies for current practices by regional communities.

III. BEST PRACTICES AS RECOMMENDED BY THE AMERICAN PLANNING ASSOCIATION

The American Planning Association (APA) has developed several policy guides to help jurisdictions across America develop their own policies and regulations. In 1997, the APA updated its policy guide on Impact Fees after conducting a review of local practices. The following overarching standards are recommended to all jurisdictions when formulating or reassessing their own impact fee policies:

"The imposition of a fee must be rationally linked (the "rational nexus") to an impact created by a particular development and the demonstrated need for related capital improvements pursuant to a capital improvement plan and program.

Some benefit must accrue to the development as a result of the payment of a fee.

The amount of the fee must be a proportionate fair share of the costs of the improvements made necessary by the development and must not exceed the cost of the improvements.

A fee cannot be imposed to address existing deficiencies except where they are exacerbated by new development.

Funds received under such a program must be segregated from the general fund and used solely for the purposes for which the fee is established.

The fees collected must be encumbered or expended within a reasonable timeframe to ensure that needed improvements are implemented.

The fee assessed cannot exceed the cost of the improvements, and credits must be given for outside funding sources (such as federal and state grants, developer-initiated improvements for impacts related to new development, etc.) and local tax payments which fund capital improvements, for example.

The fee cannot be used to cover normal operation and maintenance or personnel costs, but must be used for capital improvements, or under some linkage programs, affordable housing, job training, childcare, etc.

The fee established for specific capital improvements should be reviewed at least every two years to

determine whether an adjustment is required, and similarly the capital improvement plan and budget should be reviewed at least every 5 to 8 years.

Provisions must be included in the ordinance to permit refunds for projects that are not constructed, since no impact will have manifested.

Impact fee payments are typically required to be made as a condition of approval of the development, either at the time the building or occupancy is issued.”

II. CASE STUDIES

A. Jurisdictions

1. Sussex County, Delaware

Sussex County, DE does not assess impact fees on properties. Funds for parks and special facilities, libraries, county facilities, EMS, Fire and Rescue, and Law Enforcement are collected via property taxes and allocated through the General Fund.

As required by § 115-25B(3) and F(3), the Council reviews fees for a density bonus (Cluster Fees) on an annual basis and revises such fees as it deems necessary. For the town centers and developing areas around Greenwood, Bridgeville, Seaford, Blades, Laurel, and Delmar, fees of \$15,000 per unit in excess of two dwelling units per acre are assessed. For the town centers and developing areas around Milford, Milton, Ellendale, Georgetown, Millsboro, Dagsboro, Frankford and Selbyville, fees of \$15,000 per unit in excess of two dwelling units per acre are assessed. For the Coastal Area, fees of \$20,000 per unit in excess of two dwelling units per acre are assessed.

Fees collected from these density bonuses are allocated to the Sussex County Land Trust (SCLT) in a pool with other funding mechanisms to preserve Open Space throughout the County. The Sussex County Land Trust (SCLT) was formed in December 2001 as a nonprofit conservation organization dedicated to protecting natural, cultural, agricultural and recreational resources through land preservation, stewardship and education for today and tomorrow. The Sussex County Council holds two seats on the SCLT Board, forming a unique public-private partnership between Sussex County Council and the SCLT. Over its 17-year history, SCLT has partnered with the Council, the state and non-profit conservation agencies on 18 different projects and has raised over \$4 million in private funds to leverage the protection of 5,784 acres of land.

2. Kent County, Delaware

Kent County, DE also does not assess impact fees on properties. Instead, Kent County passed an Adequate Public Facilities Ordinance (APFO). The provisions of the APFO are to ensure that essential public facilities (including roads, schools, emergency medical services, and water supply are distribution systems) needed to support new development meet or exceed the level of service standards established by the County at the time that a development is approved. This occurs in four ways:

- (1) The public facilities and/or related services needed to support, and off-set, the impacts of new development already exist; or
- (2) The public facilities and/or related services needed to support, and off-set, the impacts of new development are constructed in conjunction with new development; or
- (3) The new development is phased, so that the public facilities and related services deemed necessary by Kent County are available concurrently with the new development; or

- (4) The public facilities and/or services needed to support, and off-set, the impacts of new development are planned and funded for construction within two years of final plan approval.

EMS Impact Fee:

Kent County Code Article XVII 'Supplementary Regulations', §187-90 Adequate Public Facilities:

To offset the increased cost of providing emergency medical services (EMS) to an expanding County population, County Code states, an EMS impact fee shall be assessed. The level of service standard for emergency medical services is based upon aggregate average call volume to the Kent County Emergency Dispatch Center. On average, 0.07 dispatch calls per person are received by the Kent County Department of Public Safety each year. Based on the dispatch call factor of 0.07 calls per person per year, the number of calls generated by proposed residential development is determined by projecting the total population of the proposed residential development at build-out. The average number of persons per household is determined by the most recent population statistics published by the United States Census Bureau for Kent County.

The Kent County Department of Public Safety calculates the total impact fee per dwelling unit for each new residential development proposal based upon the projected number of annual dispatch calls for the proposed development multiplied by the per-capita EMS costs per the most recent reporting year. The impact fee for the proposed development is apportioned equally to each proposed dwelling unit and is paid to Kent County on a per-dwelling-unit basis prior to the issuance of a building permit.

The EMS impact fee, as stated in the code, is automatically adjusted on January 1 of each year based upon the average per-capita EMS costs derived from the most recent reporting year as determined by the Department of Public Safety. All EMS impact fee funds collected are deposited into a separate interest-earning reserve account for the purpose of funding upgrades and/or expansion of County EMS services and/or County EMS infrastructure within Kent County. Currently the Impact fee for EMS is \$66.77 payable at time of building permit that charge goes toward EMS infrastructure.

Kent County also implements an APFO School Fee based on construction cost, school district, and type of home (single family homes have a 0.6 multiplier, while Multi-Family and Manufactured Homes have a 0.2 multiplier.) Construction cost and Local Share are updated April/May timeframe each year.

The Emergency Services Assistance Fund is separate from the EMS impact fee that is collected to help support local volunteer fire companies.

Kent County Code Emergency Services Assistant Fund §37-1:

"All applications for building permits shall be subject to a surcharge of 1/4 of 1% of the proposed construction valuation as determined by the Department of Planning Services for the purpose of establishing a fund to provide financial assistance to Kent County Volunteer Fire Companies and Kent County Volunteer Ambulance and Emergency Medical Service providers that are members of the Kent County Volunteer Firemen's Association. Existing structures destroyed or demolished will not be assessed a surcharge for the reconstruction, provided that the replacement structure has the same or less square footage and occurs within 24 months of the demolition. If the square footage is greater than the original structure, the surcharge shall be assessed based upon the value of the additional square footage."

3. Salem County, New Jersey

Salem County, NJ assesses fees on new development permit approvals; however, these are administrative fees and not impact fees. As a result, a detailed summary was determined to be irrelevant to this memo.

4. Various Pennsylvania Counties

At the request of New Castle County, Rossi researched impact fees in various counties and municipalities in Pennsylvania. Impact fees are not assessed at the County level within the State. Various municipalities assess a tax for services such as streetlights, fire hydrants, transportation, etc.

5. Anne Arundel County, Maryland

Anne Arundel County, MD Code outlines impact fees (§ 17-11 Subtitle 2) for new development to accommodate service impacts on public schools, transportation, and public safety facilities. Impact fees are required to be paid for new developments and any improvements or changes of use to real property based on the net increase in service impacts. Exemptions from impact fees include facilities for assisted living programs, hospice facilities, hospitals, nursing homes, a fire station on property owned by a volunteer fire fighting company, facilities owned by or leased to Anne Arundel Community College, and residential dwelling units that the sale or rental of the units is restricted to persons with a household income not exceeding 120 percent of the area median income. The code states that each year the impact fees will be adjusted by the percent change rounded to the nearest dollar from the most recent 20-City Annual National Average Construction Cost Index from the Engineering News-Record (ENR).

Annually, the boundaries of the school impact fee districts and transportation impact districts are reviewed and amendments to the boundaries may be proposed. Every three years, the development impact fee schedule is reviewed to consider new data and changes in costs, revenues, student generation rates, trip generation rates, trip lengths and other factors. The County Executive may propose amendments to the schedule which are submitted to the Planning Advisory Board for review and public hearing.

Credits for impact fees can be provided to developers from the County or County Board of Education. Transportation impact fee credits are allowed for transportation improvements that provide transportation capacity above the requirements for road facilities. Credit for construction and conveyance of land will be deemed paid when construction is finished. School impact fee credits are provided for capital improvements to increase school capacity.

Mixed use unit fees are computed by calculating the space committed to the various land use types on the schedule. If the development includes fractional units, the fee shall be computed to the appropriate fraction. If the Planning and Zoning Officer determines there is not a comparable land use type for the development in the impact fee schedule, or that the development may have higher impacts than assumed for its land use, an independent impact analysis will be done. This will assess a school fee, transportation fee, and public safety fee separately. As used in the fee schedules in **Table 1**, "square feet" refers to the finished area for residential development, and to floor area for non-residential development.

Table 1: Anne Arundel County Impact Fees

Development Type	Roads	Schools	Public Safety	Total
Residential (By Square Foot)				
Under 500 Feet	\$1,954	\$2,954	\$132	\$5,040
500 - 999 Feet	\$3,205	\$5,435	\$214	\$8,854
1,000 - 1,499 Feet	\$4,161	\$7,453	\$279	\$11,893
1,500- 1,999 Feet	\$4,828	\$8,780	\$323	\$13,931
2,000 - 2,499 Feet	\$5,328	\$9,772	\$355	\$15,455
2,500 - 2,999 Feet	\$5,715	\$10,565	\$382	\$16,662
3,000 - 3,499 Feet	\$6,009	\$11,224	\$402	\$17,635
3,500 - 3,999 Feet	\$6,286	\$11,789	\$421	\$18,496
4,000 - 4,499 Feet	\$6,536	\$12,284	\$438	\$19,258

4,500 - 4,999 Feet	\$6,759	\$12,722	\$452	\$19,933
5,000 - 5,499 Feet	\$6,952	\$13,118	\$464	\$20,534
5,500 - 5,999 Feet	\$7,113	\$13,476	\$476	\$21,065
6,000 Feet and Over	\$7,197	\$13,644	\$481	\$21,322
Non-residential				
Amusement, recreation, and place of assembly per required parking space	\$1,375	\$0	\$54	\$1,429
Hotel/Motel room	\$6,621	\$0	\$169	\$6,790
Industrial per 1,000 Sq Ft	\$5,712	\$0	\$211	\$5,923
Mini-warehouse per 1000 Sq Ft	\$941	\$0	\$47	\$988
For profit hospital per bed	\$7,451	\$0	\$223	\$7,674
For profit nursing home per bed	\$1,658	\$0	\$182	\$1,840
Marinas per berth	\$1,739	\$0	\$62	\$1,801
Office per 1,000 sq. ft.				
Under 100,000 sq. ft.	\$9,236	\$0	\$504	\$9,740
100,000 - 199,999 sq. ft.	\$7,999	\$0	\$450	\$8,449
200,000 sq. ft. and over	\$7,122	\$0	\$413	\$7,535
Mercantile per 1,000 sq. ft.	\$9,623	\$0	\$1,284	\$10,907

Source: <https://www.aacounty.org/departments/inspections-and-permits/fees/utility-and-impact-fees/>

6. Seminole County, FL

Seminole County, Florida is located in central Florida, as of the 2020 Census it has a population of 470,856. Seminole County collects impact fees for mobility, education, fire and rescue, libraries, and water and wastewater connection.

Seminole County recently evaluated its Impact Fee Rate Schedules for Water and Wastewater connection fees, Library impact fees, and Fire impact fees. This update included coordination between County staff including Environmental Services, Leisure Services and Public Safety/Fire. The library, fire and rescue, and mobility impact fees are reviewed every four years or as directed by the Board since the update.

In June 2021, Seminole County commissioners unanimously agreed to new impact fees — in some cases increases to fees were more than seven times the existing rate.— The increases were needed to help pay for new roads, trails, library materials and fire stations as the county expects more than 100,000 new residents over the next two decades. Seminole's impact fees for roads, libraries and fire and rescue services had not been raised since the mid-1990s. School impact fees were not under review after being raised by Seminole commissioners in January 2018 **Table 2**. Commissioners also agreed to lower impact fees for residential developments that include affordable and workforce housing. The following impact fees were updated in June 2021, shown in **Table 3**. Note, a mobility fee is another name for a road impact fee. Mobility/road impact fee programs set a one-time charge assessed only against those projects creating additional impacts to the transportation system by way of new development or expanding existing development.

Table 2: Seminole County Education Impact Fees

Education System Impact Fees	Fee Rate per Dwelling Unit
Residential:	
Single Family	\$9,000
Condominium, Townhomes & Duplex	\$5,000
Apartments (Multi-Family) < 850 sq. ft.	\$4,900
Apartments (Multi-Family) 851 to 1,000 sq. ft.	\$7,100

Apartments (Multi-Family) > 1,000 sq. ft.	\$8,700
Mobile Home	\$4,700

Source: <https://www.seminolecountyfl.gov/departments-services/development-services/fees-calculators/building-permit-impact-fees/county-impact-fees.stml>

Table 3: Seminole County Impact Fees

Development Type	Impact Unit	Library	Fire Rescue	Mobility		
				Rural	Suburb	Core
Residential:						
Single Family - Affordable Housing	DU	\$198	\$249	\$3,656	\$1,357	\$906
Single Family (<1,500 sq. ft.)	DU	\$351	\$440	\$5,923	\$2,198	\$1,467
Single Family (1,500 to 2,499 sq. ft.)	DU	\$395	\$497	\$7,312	\$2,714	\$1,811
Single Family (>=2,500 sq. ft.)	DU	\$443	\$557	\$9,798	\$3,636	\$2,427
Multi-Family - Affordable Housing	DU	\$148	\$183	n/a	\$916	\$576
Multi-Family (1-2 Floor)	DU	\$269	\$332	n/a	\$1,665	\$1,048
Multi-Family (3+ Floor)	DU	\$269	\$332	n/a	\$1,237	\$779
Transient, Assisted, Group:						
Mobile Home	DU	\$280	\$318	\$2,456	\$875	\$537
Congregate Care Facility	DU		\$436	\$2,518	\$906	\$570
Hotel	Room		\$397	\$4,446	\$1,644	\$1,086
Motel	Room		\$342	\$1,699	\$618	\$399
Nursing Home	1,000 sf		\$836			
Nursing Home	bed			\$593	\$299	\$210
Recreational:						
Marina	Boat berth		\$42	\$1,180	\$617	\$480
Golf Course	Hole		\$273	\$10,557	\$5,491	\$4,019
Movie Theater	Screen		\$1,688			
Racquet/Tennis Club	Court		\$416			
Health/Fitness Club	1,000 sf		\$784	\$8,100	\$4,180	\$2,975
Institutional:						
Elementary School (private)	Student		\$26	\$451	\$229	\$165
Middle/Junior High School (private)	Student		\$29	\$451	\$229	\$165
High School (private)	Student		\$29	\$451	\$229	\$165
University/Jr College (7,500 or fewer students)(private)	Student		\$33	\$451	\$229	\$165
University/Jr College (more than 7,500 students)(private)	Student		\$26	\$451	\$229	\$165
Church (non-sanctuary space for mobility fee)	1,000 sf		\$120	\$1,757	\$893	\$652
Day Care Center	1,000 sf		\$264			
Day Care Center (Child or Adult)	Student			\$405	\$209	\$131
Medical:						
Hospital	1,000 sf		\$420	\$4,048	\$2,082	\$1,713
Office:						
Office	1,000 sf		\$290	\$3,614	\$1,840	\$1,470
Medical Office (10,000 sq ft or less)	1,000 sf		\$390	\$13,431	\$6,859	\$5,614
Medical Office (greater than 10,000 sf)	1,000 sf		\$560	\$13,431	\$6,859	\$5,614
Retail:						

Retail (less than 20,000 sq ft)	1,000 sf			\$5,417	\$2,777	\$1,737
Retail (greater than or equal to 20,000 sq ft)	1,000 sf			\$7,369	\$3,819	\$2,523
Convenience Retail	1,000 sf			\$24,008	\$12,297	\$7,686
Discount Superstore, Free-Standing	1,000 sf		\$534	Calculated based on size (see above)		
Retail/Shopping Center	1,000 sf		\$491	Calculated based on size (see above)		
New/Used Auto Sales	1,000 sf		\$511	Calculated based on size (see above)		
Supermarket	1,000 sf		\$784	\$9,168	\$4,707	\$3,023
Pharmacy/Drug Store with & without Drive-Thru	1,000 sf		\$602	Calculated based on size (see above)		
Furniture Store	1,000 sf		\$104	Calculated based on size (see above)		
Services:						
Bank with Walk-In	1,000 sf		\$335	\$7,226	\$3,655	\$2,483
Bank with Drive-Thru	1,000 sf		\$485	\$7,226	\$3,655	\$2,483
Quality Restaurant	1,000 sf		\$1,874	\$19,548	\$10,079	\$6,817
High-Turnover (Sit-Down) Restaurant	1,000 sf		\$1,812	\$19,548	\$10,079	\$6,817
Fast Food Restaurant with Drive-Thru	1,000 sf		\$3,156	\$17,783	\$9,031	\$5,261
Coffee/Donut Shop	1,000 sf			\$9,142	\$4,643	\$2,705
Automobile Care Center	1,000 sf		\$543	\$4,415	\$2,227	\$1,603
Gas Station with Convenience Market (less than 2,000 sq ft)	Fuel pos.		\$475	\$12,605	\$6,326	\$4,223
Gas Station with Convenience Market (2,000-2,999 sq ft)	Fuel pos.		\$579	\$12,605	\$6,326	\$4,223
Gas Station with Convenience Market (3,000+ sq ft)	Fuel pos.		\$657	\$12,605	\$6,326	\$4,223
Industrial:						
General Light Industrial	1,000 sf		\$163	\$2,027	\$1,024	\$761
Manufacturing	1,000 sf		\$150	\$2,027	\$1,024	\$761
Passive Warehouse (storage)	1,000 sf		\$36	\$793	\$401	\$298
Active Warehouse (parcel hub/fulfillment center)	1,000 sf		\$36	\$3,634	\$1,837	\$1,365
Mini-Warehouse	1,000 sf		\$13	\$451	\$233	\$166
Utility	1,000 sf		\$342			

Additional details on these impact fees can be found at <https://www.seminolecountyfl.gov/departments-services/development-services/fees-calculators/building-permit-impact-fees/county-impact-fees.stml>

B. Special Topics for Consideration

1. Green Infrastructure

A report from the EPA suggests that impact fees can be an advantageous mechanism for funding green infrastructure projects because the fees collected are linked directly to the services provided, which avoids competing with other programs and needs that might be covered by general funds. However, they also point out that impact fees can be an unreliable source when development slows down. (EPA, 2014, Getting to Green: Paying for Green Infrastructure) https://www.epa.gov/sites/default/files/2015-02/documents/gi_financing_options_12-2014_4.pdf

City of Newark

The City of Newark has established a Stormwater Utility Fee that is based on impervious area on a property (**Table 4**). This captures the impact of each individual property on the stormwater system. This also provides a dedicated funding source for stormwater management that is fair in cost recovery. The City offers fee reduction opportunities to users that implement stormwater management practices that go above and beyond local ordinance requirements. They also offer stormwater grants to residential customers for rain barrels, design service support, and stormwater project cost sharing. The Stormwater User fee for each individual property will be based on the Equivalent Stormwater Unit (ESU). One ESU is equivalent to 1,620 sq. ft. of impervious area. This represents the median impervious area of all single-family residential parcels in the city. Unlike a single time impact fee, the City of Newark assesses their Stormwater Utility Fee on a monthly basis, included as a line item in City water and sewer bills.

Table 4: City of Newark Stormwater Utility Charge Estimator

Tier	Impervious Area (sq ft)	ESU* Factor	Monthly Fee**
1	0 to 1,289	0.60	\$2.12
2	1,290 to 1,950	1.00	\$3.54
3	1,951 to 2,610	1.30	\$4.61
4	2,611 or more	1.80	\$6.37

Source: <https://newarkde.gov/877/Stormwater-Utility#:~:text=The%20current%20rate%2C%20based%20on,the%20City%20is%20%243.54%2FESU.>

*Equivalent Stormwater Unit

** Monthly fee as of January 1, 2019

Non-Residential parcels are assigned stormwater run-off factor based on use as shown in **Table 5**. Then their fee is calculated by multiplying the stormwater runoff factor by the parcel's total area.

Table 5: City of Newark Non-Residential Stormwater Runoff Factors

Stormwater Class	Description	Runoff Factor
COM	Commercial	0.95
GOV	Government	0.95
IND	Industrial	0.90
INS	Institutional	0.90
MFA	Multi-family Apartments	0.75
PAR	Parks and Cemeteries	0.25
PAV	Paved Surfaces	0.95
PKG	Parking	0.95
REC	Recreational Areas/Playgrounds	0.35
UTI	Utilities	0.90
VAC	Vacant	0.30

Source: <https://newarkde.gov/DocumentCenter/View/9452/SW-Utility-First-Reading---Non-Residential-FAQ?bidId=>

Non-residential users have an opportunity to reduce their monthly stormwater fee by up to 25% through two types of credits. Quality credit is based on the capture and infiltration of runoff. If the technical criteria is met, a maximum 15% reduction in the stormwater fee is possible. The Quantity Credit is for reductions in peak stormwater discharge rates. If the technical criteria is met, a maximum 10% reduction in the stormwater fee is possible. Credit applications can be submitted through an online application that calls for as-built drawings by a certified engineer, site map or plan, drainage area information, pre-development and post-development calculations, routing calculations, a maintenance

plan and schedule, and \$150 application fee.

2. Land Preservation/Agricultural Land Preservation

Preserving open space is important for a variety of reasons and collecting impact fees allows a community to mitigate the effects of development on open space by investing in acquiring or improving existing open space.

City of Chicago

The City of Chicago, IL operates an Open Space Impact Fee program that allocates fees applied to new residential developments to pay for land acquisition and park improvements in each of Chicago's 77 community areas. Fees range from \$313 to \$1,253 depending on the size of the dwelling units (**Table 6**). These fees were determined by a formula that factors in the open space need due to the size of the new development, the open space cost of \$12 per square foot, and the thirty percent developers share of the cost. Units that count as affordable housing are charged a flat nominal fee. Credits are provided for certain projects that include open space on site. Expenditures require City Council approval and are allocated within the community where the funds were generated. The funds are not used for ongoing maintenance or for playground replacement. Fees are processed through an Open Space Impact Fee worksheet that requires approval from the Department of Buildings or DPD staff.

Table 6: City of Chicago Open Space Impact Fee

Dwelling Unit Size	Fee per Unit
Up to 799 sf	\$313.00
800 to 1,599 sf	\$626.00
1,600 sf to 2,999 sf	\$940.00
3,000 sf and up	\$1,253.00
Affordable Housing	\$100.00

Source: https://www.chicago.gov/city/en/depts/dcd/supp_info/open

Martin County, FL

In 2016, Martin County, FL established a Conservation/Open Space impact fee that is assessed on residential properties, hotels/motels and RV parks. The total amount of fees for those properties are included in **Table 7**.

Table 7: Martin County Conservation Impact Fees

Development Type	Conservation/Open Space
Residential:	
800 SF & under	\$540
801 to 1,100	\$579
1,101 to 2,300	\$661
2,301 & over	\$755
Non-Residential	
Hotel/ Motel Room	\$654
RV Park per Lot	\$491

Source: <https://www.martin.fl.us/resources/impact-fee-schedule-pdf>

American Farmland Trust

"Spurred by post-war sprawl that consumed farmland at an alarming rate, and recognizing that farmers and environmentalists seldom recognized their overlapping interests, American Farmland Trust (AFT) was founded to put agriculture on a different track. AFT pioneered use of various land conservation tools, previously used to preserve wilderness or create parks, to now protect working farmland; and AFT brought together two divergent communities—farmers and environmentalists—to catalyze transformational public policy that has dramatically reduced soil erosion

and improved water quality and soil health. This in turn has laid the groundwork for farming to play its most important environmental role yet, helping combat climate change” (<https://farmland.org/>).

Agricultural easements are a well-established tool that enable landowners to protect their property in perpetuity. Easements are flexible instruments that are designed to align with the landowner’s individual conservation goals. Agricultural easements limit non-agricultural development on valuable farmland while allowing the continued productive agricultural use of the land. Impact fees, grants, and donations, like in the case of the Sussex County Land Trust, can be used to pool funds together to outright purchase property or establish easements on agricultural land.

The Delaware Nature Conservancy

The Nature Conservancy has worked with the University of Delaware’s Water Resources Center and other partners to develop the Brandywine-Christina Revolving Water Fund (the “Water Fund”). This work is part of the Delaware River Watershed initiative. A water fund is a finance and governance mechanism to invest in conservation practices designed to secure freshwater resources, both in terms of water quality and quantity. The Brandywine-Christina watershed is comprised of the Brandywine, Red Clay and White Clay Creeks, and the Christina River. Collectively the watershed provides over 100 million gallons of drinking water per day to over half a million people in Delaware and Pennsylvania. However, the majority of the creeks and streams are now unsafe for drinking due to legacy pollutants, nutrient and sediment overloads, and urban runoff. The Water Fund increases the pace, scale and efficiency of water-quality conservation in the Brandywine-Christina watershed (<https://www.nature.org/en-us/about-us/where-we-work/united-states/delaware/stories-in-delaware/brandywine-christina-revolving-water-fund/>).

This conservation financing mechanism is the first of its kind in the Country. Unlike a typical impact fee that would need to expend funds on an annual basis, a program structure like this would allow the County flexibility. This would allow for conservation planning, or the acquisition of Open Space, tied directly to County-wide benefits as they arise.

The Delaware Nature Conservancy should be consulted as a partner when implementing any open-space master plan, to help identify the most ecologically beneficial properties. (<https://www.nature.org/en-us/about-us/where-we-work/united-states/delaware/>).

3. Affordable Housing

In areas with high fees and/or a large number of special assessment districts, the cumulative cost can erode the financial viability of affordable housing projects. Local jurisdictions can encourage the development of new affordable housing by reducing or waiving these fees for qualifying projects. Although fees are waived, developers still receive the services supported by the fee and/or must secure the associated permits or approvals. This incentive is likely to have the greatest impact in jurisdictions with a robust level of construction activity, or where new development is anticipated) and where impact and permitting fees are relatively high.

There are a variety of ways that cities can make fee waivers and reductions available to developers of qualifying projects. Typically, developers need to submit an application for the waiver or reduction to the planning or housing and community development department, along with documentation proving their intention to comply with eligibility requirements. Once the application has been approved for a qualifying project, the benefit is provided.

In some cities, such as Portland, OR, a specified set of fees may be waived by city staff, while waivers of larger fees must be approved by the City Council. Instead of providing as-of-right waivers, it is also possible for local jurisdictions to consider waivers on a case-by-case basis. However, this approach may be administratively burdensome for the jurisdiction, and makes the development process and associated costs less transparent and predictable for

developers, who need a clear picture of development costs to develop an accurate project budget.

Rather than reducing or waiving fees, some local jurisdictions allow payment on a deferred basis. The short-term construction loans available at the start of the development process carry relatively high interest rates compared with longer-term permanent financing. Deferred fee payments allow developers to make payments after securing long-term, lower-cost financing, while the jurisdiction still collects the expected revenue and avoids budget shortfalls in other areas. Regulations will need to specify when payment of deferred fees is required (e.g., when permanent financing is secured, when a certificate of occupancy is issued, etc.), as well as any penalties associated with failure to deliver the affordable units within the promised timeframe.

Cities, towns and counties should establish clear criteria for eligibility for fee reductions or waivers. Program guidelines should specify the income level(s) that must be served to qualify for this incentive, as well as any minimum threshold(s) for the share of units in the development that must meet affordability requirements. Guidelines should also specify whether there are any requirements for how long the units must remain affordable.

Cities, towns and counties will also need to specify whether fee waivers or reductions are available in all geographic areas within the jurisdiction or only in specified zones.

Revenue from impact fees and other fees assessed during the permitting process is used to address community needs—including infrastructure expansion, administrative functions associated with the fee, or other projects that are planned or underway. Waivers or reductions in fee revenue could undermine the ability to cover these costs if other revenue sources are not readily available. Cities, towns and counties that wish to offer fee waivers or reductions should consider careful monitoring of the program, especially in early years of operation, to ensure there are no unintended negative effects on other programs or the city's ability to meet growing demand on public services.

The SMART housing program in Austin, TX provides a variety of incentives for private developers who create and preserve housing for low- and moderate households and for persons with disabilities. Projects that set aside units as affordable to homeowners and renters earning no more than 80 percent of the median family income (120 percent for owner-occupied units located in certain areas) are eligible for full or partial waivers of 29 separate fees. Fee reductions range from 25 percent for developments where 10 percent of units meet affordability requirements to 100 percent for developments where 40 percent of units meet affordability requirements.

In Anne Arundel County affordable housing is exempt from impact fees. Residential dwelling units, provided that the sale or rental of the units is restricted to persons with a household income not exceeding 120 percent of the area median income, adjusted by household size, or units that were constructed under a program that requires homebuyers to participate in the initial construction or rehabilitation of the units they are also exempt from impact fees. The residential dwelling unit must be constructed by or under a program sponsored by an entity exempt from taxation at least three years prior.

4. Administration and Reassessments

Federal Highway Administration suggests that impact fees be reviewed and updated at least every three to five years, as most jurisdictions require with some updating every year.

As detailed in APA's summary of Best Practices, it is recommended that fees should be reviewed at least every two years to determine whether an adjustment is required, and similarly the capital improvement plan and budget should be reviewed at least every 5 to 8 years.

IV. TAKE AWAYS

1. Local examples – a review of nearby local jurisdictions did not yield a useful comparison to New Castle County's Impact Fees Schedule. More comprehensive and modern impact fee programs were found in Anne Arundel County, Maryland and Seminole County, Florida. These two counties outlined the impact fees in a clear straightforward process. In many jurisdictions, funds for parks and special facilities, libraries, county facilities, EMS, fire and rescue, and law enforcement are collected via property taxes. New Castle County's impact fee compares favorably with other jurisdictions in terms of comprehensiveness and best practices
2. Indexing Benchmark – it is recommended that Construction Cost Index(CCI) from the Engineering News-Record (ENR), as outlined in current code, continue to be the benchmark comparison for impact fee increases with annual reviews.
3. Annual increases – in APA's summary of Best Practices, it is recommended that fees should be reviewed at least every two years to determine whether an adjustment is required. It is recommended that a more formal review of increases occur in a timely manner. The easiest and most straightforward method to address fee increases is to adopt the annual increase in code using the CCI. Increases in fees are always a sensitive subject politically and no one wants to vote in favor of increasing fees every year at a County Council meeting. Mandating the annual increases by code eliminates political influences on the fees. Transportation Improvement District fees are reviewed and new rates are set every February 1st. A cap could also be instituted as part of the code so that fees do not increase by more than X% per year based on what Council approves in the code. A limit of 4 or 5% per year could be adopted so that in periods of high inflation, fee increases are somewhat mitigated.
4. Needs Based Assessments – in addition to the fees being reviewed annually, periodic reviews should include needs for each area of impact based on the County's capital improvement plan for each geographic area. As the level of growth changes for each area, the fees could change based on the needs as planned by the County for each area to provide services in each area of impact.
5. Impact Fee Credits – many jurisdictions allow for credits if the applicant builds facilities or donates real estate for the construction of facilities. Providing credits allows for greater flexibility in working with larger developments. Providing a parcel for a new library would be a credit to offset the library portion of the impact fee.
6. Affordable housing provisions – most jurisdictions provide for a reduction or elimination of impact fees for affordable housing initiatives. A wide range of alternatives are possible but factors such as replacing the reduced revenue, income levels, number of units eligible, reducing/waiving only some portions of the impact fees will have to be thoroughly discussed. Other incentives such as density bonuses help provide incentives for developers to provide affordability but further stress the areas of impact.
7. Fee rate is tied to the proposed use – jurisdictions have different rates based on the type of residential and non-residential uses. Seminole County has the most comprehensive list of uses to determine different rates.

8. Sustainability of impact fees carrying the load to keep taxes low – growth is projected to be much higher in the area below the canal. Impact fees will continue to provide the County with dedicated revenue below the canal for the foreseeable future to help fund projects. Revenue for the area above the canal for parks and libraries is fairly limited.
9. Open Space – many jurisdictions have provisions for requiring open space and also have impact fees related to open space that are fairly significant in relation to the total fee. An open space impact fee seems reasonable in the update of the code to help fund land acquisition and preservation.

MEMO #3: SPECIAL TOPICS REVIEWED

Date: November 2, 2022
To: Antoni Sekowski, Acting Assistant Land Use Manager, New Castle County
From: Savannah Edwards, AICP; Associate Planner; Rossi Group
CC: Marc Coté, PE, AICP; Director of Planning and Engineering; Rossi Group

Re: New Castle County Impact Fee Study
Memo #3 – Special Topics Reviewed

After presenting Memos #1 and #2 regarding current practices and best practices in support of New Castle County (NCC)'s study of development impact fees. Rossi Group prepared the following memo presenting recommendations for NCC to consider in their assessment of current regulations and the development of any updates to those.

I. UTILIZING DELAWARE'S STATE STRATEGIES

A. Background

The project team was asked to assess the ability to apply a sliding scale to the impact fees based on the *Delaware Strategies for State Spending and Policy* (2020). In 1999, the State of Delaware created a framework that guides decision makers on the most desirable pattern of land use within the state, the major circulation patterns, and the general locations of major public and private works and facilities. These Strategies identify the State's goals and policies for land use, infrastructure investment, and other priorities as developed by the Cabinet Committee on State Planning Issues. Associated with these Strategies is a map depicting the Investment Levels described in the document. The maps are based on data collected from a variety of state and local agencies. Both the document and associated maps are a culmination of extensive coordination with local governments, citizens, and state agencies to determine what areas are most prepared for growth and where the state can make the most cost-effective investments in roads, schools, and other public facilities and services.

These Strategies acknowledge the fact that it is more expensive to provide necessary services the further you get away from the core developed areas. The goals of the program are:

- Goal 1: Direct investment and future development to existing communities, urban concentrations, and growth areas.
- Goal 2: Protect farmlands and critical natural resource areas.
- Goal 3: Improve housing quality, variety, and affordability for all income levels.
- Goal 4: Ensure objective measurement of long-term community effects of land-use policies and infrastructure investments.
- Goal 5: Streamline regulatory processes and provide flexible incentives and disincentives to encourage development in desired areas.
- Goal 6: Encourage redevelopment and improve the livability of existing communities and urban areas and guide new employment into underused commercial and industrial sites.
- Goal 7: Provide high-quality employment opportunities for citizens with various skill levels to retain and attract a diverse economic base.
- Goal 8: Protect the state's water supplies, open spaces, farmlands, and communities by encouraging revitalization of existing water and wastewater systems and the construction of new systems.
- Goal 9: Promote mobility for people and goods through a balanced system of transportation options.
- Goal 10: Improve access to educational opportunities, health care, and human services for all Delawareans.

- Goal 11: Coordinate public policy planning and decisions among the state, counties, and municipalities.

There are five investment levels including levels 1, 2, 3, 4, and Out-of-Play areas, as described below and mapped in **Figure 22**.

Investment Level 1 Areas are often municipalities, towns, or urban/urbanizing places in counties. Density is generally higher than in the surrounding areas. There are a variety of transportation opportunities available. Buildings may have mixed uses, such as a business on the first floor and apartments above. As the State Strategies describes, “these areas would be a prime location for designating “pre-permitted areas” to help steer development where the local government and citizens are most prepared to accept it.”

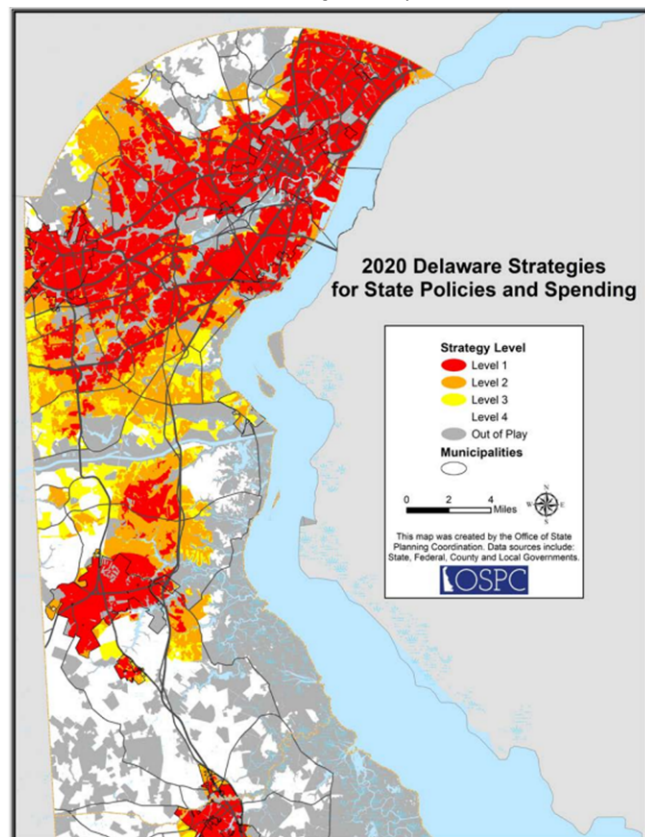
Investment Level 2 areas can be composed of less developed areas within municipalities, rapidly growing areas in the counties that have or will have public water and wastewater services and utilities, areas that are generally adjacent to or near Investment Level 1 Areas. “Like the Level 1 Areas, Level 2 Areas would be a prime location for designating “pre-permitted areas”” ([2020 Delaware Strategies for State Policies and Spending](#).)

Investment Level 3 Areas generally fall into two categories. The first category covers lands that are in the long-term growth plans of counties or municipalities where development is not necessary to accommodate expected population growth during this five-year planning period (or longer). In these instances, development in Investment Level 3 may be least appropriate for new growth and development in the near term. The second category includes lands that are adjacent to or intermingled with fast-growing areas within counties or municipalities that are otherwise categorized as Investment Levels 1 or 2. “Due to the limits of finite financial resources, state infrastructure spending on “hard” or “grey” infrastructure such as roads, sewer, water, and public facilities will generally be directed to Investment Level 1 and 2 Areas during this planning period. The State will consider investing in these types of infrastructure in Investment Level 3 Areas once the Investment Level 1 and 2 Areas are substantially built out, or when the infrastructure or facilities are logical extensions of existing systems and deemed appropriate to serve a particular area” ([2020 Delaware Strategies for State Policies and Spending](#).)

Investment Level 4 Areas are rural in nature and are where the bulk of the state’s open space/natural areas and agricultural industry is located. These areas contain agribusiness activities, farm complexes, and small settlements.

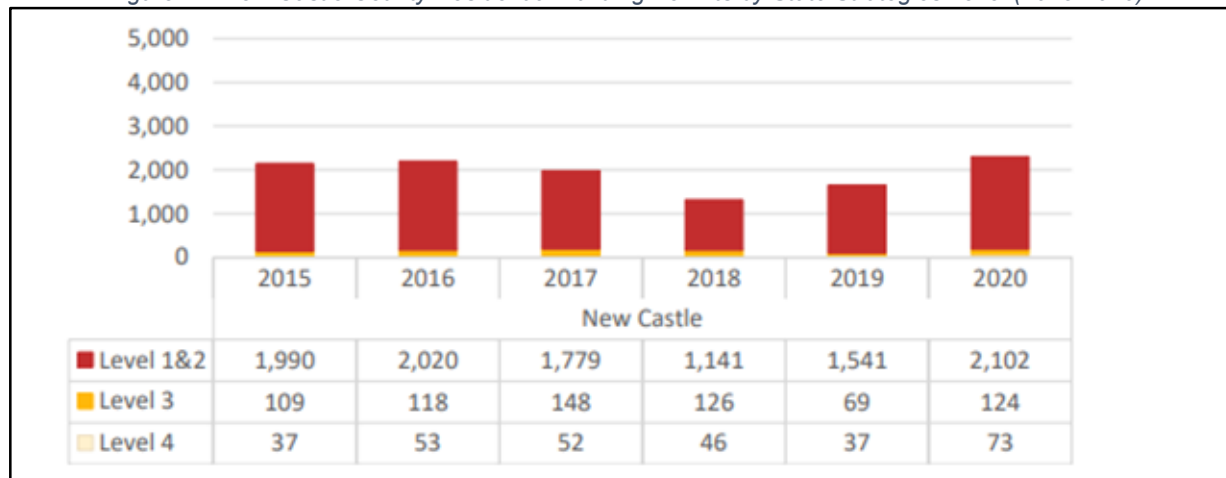
Out of Play Areas are lands which are not available for private development, include publicly owned lands, private conservation lands, lands for which serious legal and/or environmental constraints on development are identified, and lands in some form of permanent open-space protection (such agricultural preservation easements and conservation easements).

Figure 1: 2020 Delaware Strategy Level Areas



The 2021 annual report to the governor from the Office of State Planning Coordination included the number of building permits issues in each investment level (**Figure 22**).

Figure 22: New Castle County Residential Building Permits by State Strategies Level (2015-2020)



Source: Cabinet Committee on State Planning Issues, 2021 Report on State Planning Issues

B. Analysis

The building permit data trends show that the majority of building permits are issued in Levels 1 and 2. In 2020, only 8.5% of the building permits were issued in Levels 3 and 4. This trend has been consistent over the last six years. Based on the work of the Office of State Planning Coordination a nexus could be drawn between the cost of providing services in levels 3 and 4 and the cost of providing those same services in levels 1 and 2 and therefore it would be reasonable to assess a surcharged impact fee to cover those additional costs. Based on the current mapping any surcharge on impact fees within Levels 3 and 4 would mostly affect properties south of the canal.

If NCC were to utilize the State Strategies maps to assess impact fees that would be commensurate with the cost of capital investments needed to supply the services funded through those impact fees, they could either provide discounts or surcharges on impact fees. It should be noted that this is not intended to infer any incentive/disincentive for development in any specific area but to establish a nexus to the additional costs of services provided in Levels 3 and 4.

There are several ways to incorporate either discounts or surcharges based on what level the project is in according to the State Strategies mapping. Consideration needs to be given to the overall level of funding needed to support the capital investments associated with each impact fee. If discounts are provided for development in Levels 1 and 2, which is over 90% of the development, the overall revenue collected from those developments would be reduced. Any reduction in revenue would need to be assessed to ensure that the services associated with the impact fees would not be impacted.

Another way to create discounts or surcharges associated with what level a project is in according to the State Strategies mapping is to establish a baseline Level and create discounts for development above that level and surcharges for development in the lower investment levels. If there is a concern with the loss of revenue associated with discounts, then this option could just assess the surcharge above the base impact fee rates for development in areas where it is more costly to provide the services. This would account for the additional costs needed to supply services to areas outside of Levels 1 and 2.

C. Recommendations

The overall study effort is to reassess the impact fees to better correlate the fees collected with the capital costs needed to supply the services. Based on this goal the team is recommending to assess a surcharge to cover the additional costs associated with development in Levels 3 and 4. Should NCC want to cover the additional costs of providing services outside of the growth area a surcharge could be placed on any development within Level 3 and 4 areas. The initial recommendation for consideration will be a 20% surcharge for level 3 and a 40% surcharge for level 4. More research will be needed to assess the actual increase in costs for providing the service to better justify the surcharge percentage.

II. EXPANDING THE LIST OF USES IN THE IMPACT FEE TABLE

A. Background

New Castle County asked the project team to consider possible updates to the uses listed within the impact fee table. We compared NCC's permitted uses and considered the case studies included in Memo #2. The following categories are currently captured:

- Residential (per housing unit)
 - Single-family detached
 - Single-family attached
 - All other housing (small single-family units and single-wide mobile homes will be included under the "All other housing" designation)
- Nonresidential (per 1,000 SF of floor area)
 - Commercial/shopping center (less than 60,000 SF)
 - Commercial/shopping center (60,000 – 200,000SF)
 - Commercial/shopping center (greater than 200,000 SF)
 - Office/Institutional (less than 10,000 SF)
 - Office/Institutional (less than 10,000 SF)
 - Office/Institutional (less than 10,000 SF)
 - Business Park
 - Light Industrial
 - Warehousing
 - Manufacturing

Rossi Group compared NCC's current permitted uses (UDC §40.03.110) and impact fees (UDC §40.14.210) to see how closely the categories in each aligned (**Table 1**). Uses highlighted in yellow should be considered for amendments or additions. to the current Impact Fee Table and Schedule. Explanations for each of the categories are listed below.

Table 1: Permitted Use Table and Impact Fee Table Compared

Land Use	Impact Fee Category
Agricultural	
Agriculture (includes uses pursuant to Delaware Law)	N/A
Clearing	
Farmstead	

Land Use	Impact Fee Category	
Farm market		
Commercial stables		
Residential		
Single-family, detached	Single-family detached	
Open space subdivision, option 1		
Open space subdivision, option 2		
Single-family, attached	Single-family attached	
Open space planned		
Apartments		
Apartment conversions		
Commercial apartments		
Hamlet		
Village		
Group home		
Manufactured home park		All other housing*
Small single-family		All other housing*
Home Uses		
Day care, family/large family		
Home occupation		
Home business		
Cottage industry		
Institutional		
Assembly and worship	Office/institutional (less than 10,000 sf. GFA) Office/institutional (10,000 sf. to 50,000 sf. GFA) Office/institutional (greater than 50,000 sf. GFA)	
Schools		
Colleges		
Institutional, regional		
Institutional, neighborhood		
Institutional, residential (Type I)		
Institutional, residential (Type II)		
Protective care		
Public service		

Land Use	Impact Fee Category
Hospitals	
Commercial	
Adaptive reuse, historic building	
Adult uses	
Agricultural support and other rural services	
Bed and breakfast	
Commercial lodging	
Commercial retail and service	
Corporate guest house	
Craft alcohol production establishment	
Drive-in facility	
Heavy retail and service	
Light automobile service	
Mixed use	
Restaurants	
Office	
Shopping center	
Vehicular sales, rental and service	
Recreation and Amusement	
Campground	
Recreation, high intensity	
Recreation, low intensity	
Resort	
Industrial Uses	
Compost operations	
Extraction	

Land Use	Impact Fee Category
Heavy industry	Manufacturing Light industrial
Light industry	
Recycling or storage	
Utilities, maintenance facilities	
Utility, minor	
Utility, major	
Solar energy system, large-scale	
Other Uses	
Airports	N/A
Commercial communications towers	
Community recycling bins	
Exterior lighting for outdoor recreational uses	
Park and ride facility	
Parking structures	
Note: Uses highlighted in yellow should be considered for amendments or additions.	Warehousing Business park

B. Case Studies and Recommendations

After conducting a comparison of the two tables (permitted uses UDC §40.03.110 and impact fee UDC §40.14.210) there are several uses not explicitly being charged an impact fee. Within the residential impact fee category: apartments may currently be included with “all other housing” however the definition is unclear. Group homes and congregate care facilities are also not listed under the residential impact fee category. These should be charged separately on a dwelling unit basis.

Currently institutional uses are being grouped together with offices to assess impact fees. Some jurisdictions charge impact fees to schools and places of assembly as institutional uses. UDC §40.05.050 enumerates that public facilities needed to support development (including hospitals) shall be exempt from Article 14 (impact fees.) However, NCC may want to reconsider capturing impact fees from private hospitals or facilities, such as assisted care facilities. Seminole County, Florida charges impact fees on private institutional uses, New Castle County could consider a similar tactic. Moreover, a nexus can be drawn between extra need for services for some institutional uses like hospital and assisted care facilities.

Within the commercial land use category, many individual uses are assessed impact fees as office/institutional and commercial/shopping center uses. However, bed and breakfasts/commercial lodging are not assessed impacts fees and should be charged on a room basis. Transient occupancy taxes are collected on visitors to these establishments; however, these dollars do not go towards capital improvement in NCC. Restaurants are also assessed impacts fees

as retail use; however, their high-turnover rate may warrant a separate category from retail uses. Some jurisdictions break down restaurants further based on whether it is drive-thru establishment or sit-down restaurant. For example, Seminole County, Florida (referenced in Memo #2) charges \$1,874 for Fire & Rescue fees to 'Quality Restaurants', \$1,812 to 'High-Turnover (Sit-Down) Restaurants', and \$3,156 to 'Fast Food Restaurants with Drive-Thru.'

Within the recreation and amusement land use category, no uses are charged impact fees. NCC should consider assessing campgrounds and resorts impact fees. Campgrounds have evolved over recent years to include extra uses such as restaurants, bath houses, stores, and recreational facilities that have a larger impact on land and draw more users. Some individuals also stay long-term at campgrounds and/or resorts, again drawing on NCC's services.

Most industrial uses are adequately being captured by the current categories. The impact fee categories of 'warehousing' and 'business park' did not align directly with any uses listed on the permitted use table. The business park district allows office, manufacturing, light industrial, warehousing, and uses that support them. Each of these individual uses (office, manufacturing, light industrial, and warehousing) are assessed impact fee separately; therefore, New Castle County may consider omitting 'business park' from the impact fee table and charging based on the mix of individual uses instead.

III. STRATEGIES FOR INCENTIVIZING LOW-INCOME HOUSING

A. Background

<https://www.newcastlede.gov/1505/Moderately-Priced-Dwelling-Units>

Moderately Price Dwelling Units (MPDUs) are required for all residential rezonings or variance applications with density increases proposing twenty-five (25) or more dwelling units except for mixed-use developments. The program also offers a density bonus for major residential subdivisions not requiring a rezoning if a portion of the dwelling units are designated as moderately priced. Currently there are no Impact Fee reductions or exemptions for development of MPDUs. A control period is the timeframe during with a MPDU is subject to resale price controls and owner occupancy requirements. The control period is for NCC's MPDUs program is 10 years and begins on the date of sale for new or resale MPHUs. NCC is interested in methods to further incentivize providing MPDUs (<https://www.newcastlede.gov/1505/Moderately-Priced-Dwelling-Units>).

B. Case Studies and Recommendations

As detailed in Memo 2, B.3. Affordable Housing, in areas with high fees and/or a large number of special assessment districts, the cumulative cost can erode the financial viability of affordable housing projects. Local jurisdictions can encourage the development of new affordable housing through methods including:

- Flat fee
- Fee reductions
- Fee waivers based on number of units
- Complete fee exemption

Although fees are waived or reduced, developers still receive the services supported by the fee and must secure the associated permits or approvals. This incentive is likely to have the greatest impact in jurisdictions with a robust level of construction activity, or where new development is anticipated) and where impact and permitting fees are relatively high.

Memo 2 presents case studies where fee waivers and reductions are available to developers of qualifying projects. For example, Anne Arundel County, Maryland exempts Affordable Housing Units from all impact fees; however, the

residential dwelling unit must be constructed by or under a program sponsored by an entity exempt from taxation at least three years prior. Seminole County, Florida (see Memo 2, Table 3) specifies a discounted fee across the board for Affordable Housing Units. Affordable Single-family dwellings are discounted at a rate of approximately 44% to 73%, while Affordable Multi-Family Units are discounted between 24% to 45%, depending on fee type.

NCC currently provides a density bonus for major residential subdivisions not requiring a rezoning if a portion of the dwelling units are designated as moderately priced. However, providing an impact fee reduction or exemption would further reduce the cumulative cost for providing affordable housing within NCC. This could be full exemption to all impact fees applied to MPDUs. It may also be reasonable to view each impact fees assessed and determine on a fee-by-fee basis if MPDUs should be exempt from a specific fee. All fees may also be reduced by a specified percentage or amount or each impact fee may be evaluated to determine if the specified fee should be reduced by a specified percentage or amount.

IV. GRADUATED FEE INCREASES/ENR RECOMMENDATIONS

A. Background

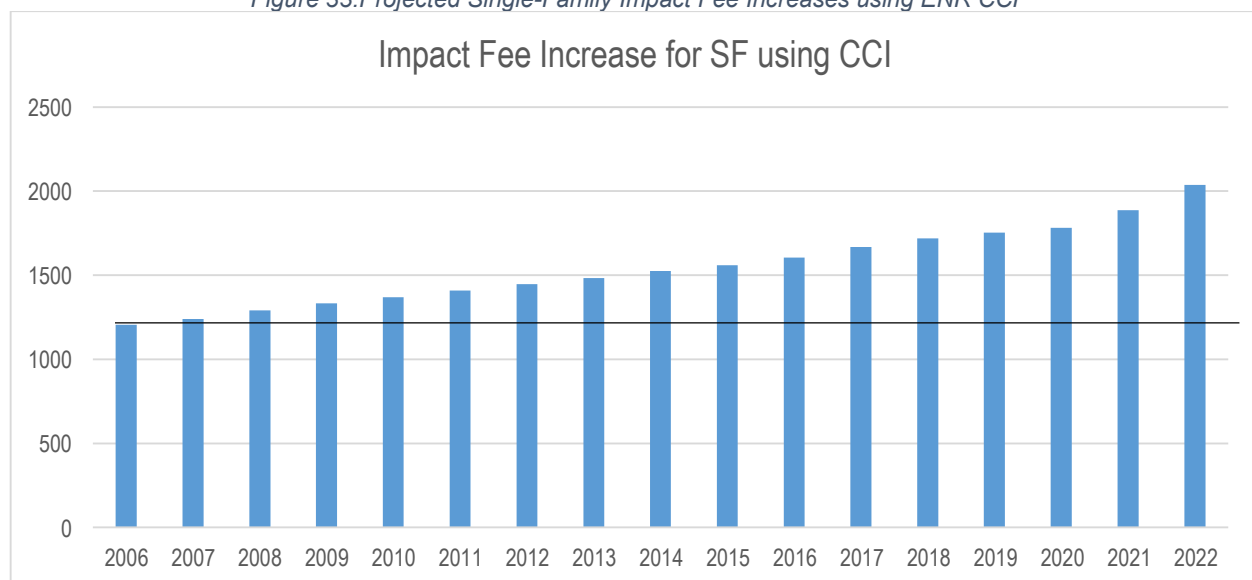
Since 1999, the only impact fees which have been adjusted have been the fire & rescue impact fees. County Council adopted legislation in August 2006 raising these fees based upon a 2006 study performed by TischlerBise. The impact fees for parks, libraries, county facilities, EMS, and law enforcement have not been adjusted for 23 years.

The UDC allows for impact fee cost adjustments as part of a periodic evaluation and update to adjust for inflation in construction costs as reflected in the Engineering News Record (ENR) Construction Cost Index (CCI). Adjustments would be subject to approval by NCC Council.

The cumulative increase for fees using the ENR CCI from 2006 to 2022 is 75%. As another base of comparison, the cumulative Consumer Price Index (CPI) increase from 2006 -2022 is 50%.

Figure 33 illustrates the increase to the impact fee for a single-family detached unit from the 2006 fee of \$1,157 to \$2,036 in 2022, if adjusted according to ENR CCI calculations. See chart below.

Figure 33: Projected Single-Family Impact Fee Increases using ENR CCI



B. Recommendations

Recommendations for adjusting the fee to make up the difference in holding the impact fees unadjusted for the last 16-23 years can be accomplished in many different scenarios based on NCC's goals and policies that are being considered. Currently the general budget is carrying the load to make up for inflation and the erosion of purchasing power of the impact fees as established in 2006. That means that existing residents of NCC are paying for and subsidizing the costs of the new infrastructure intended to be paid for with impact fees. If NCC's goal is to restore the impact fee revenues to the originally intended levels of providing revenue for infrastructure projects, gradual increases in fees while providing a provision for annual indexing would allow NCC to slowly increase fees.

Scenarios could range from:

- No increases in fees
- No increases in fees, annual indexing adjustments
- Phased in approach of 5% increases over a period of 2-5 years to slowly make up for the last 16 years, then annual indexing adjustments
- Phased in approach of 10% increases over a period of 2-5 years to slowly make up for the last 16 years, then annual indexing adjustments
- 50% increase to match the CPI cumulative total, then annual indexing adjustments
- 75% increase to match the ENR CCI cumulative total, then annual indexing adjustments

Regardless of the decision to raise fees to account for the last 16 years of no increases, it is recommended that yearly adjustments to the fees be done, as periodic evaluations are required by code, so that the fees are adjusted annually based on the ENR CCI. Most jurisdictions that have indexing do so annually to avoid having to revisit the fees every few years and keep increases in fees in small increments. This sets up an expectation that the impact fee will increase yearly to keep pace with inflation and provide for more infrastructure to be funded and constructed using the impact fees collected by new development. It is a straightforward method that is easy to communicate to the public and easier to implement. If NCC wants to establish an increase every two years, that can be accomplished by Council approving the changes every two years instead of annually. It is recommended that the adjustment be done using the cumulative CCI for the two years. The data to calculate the ENR CCI comes out in January and the new fee can be adopted by Council in the spring with an effective date of July 1 each year.

V. Open Space Fee Creation

NCC Council adopted a resolution to spend \$7.5 million dollars over 3 years, which is \$2.5 million/year to ensure consistent funding for the preservation of Open Space and Agricultural land. In our research of best practices, the City of Chicago used a formula of new development carrying 30% of the cost for open space preservation.

The City of Chicago Open Space fees range from \$313-1,253/unit based on the type of development. Affordable housing units are only charged \$100/unit.

Marin County in Florida Open Space fees range from \$540-755 based on size of the unit. A land value of \$12/sf is used for the cost of Open Space land acquisition.

Using the same formula to help provide a dedicated source of funding to provide 30% of the \$2.5 million Open Space preservation goal requires revenue from impact fees to be \$750k/year.

One policy decision that will need to be more broadly discussed is redevelopment. Redevelopment could be exempt

from the Open Space impact fee.

In New Castle County, there is an average of 2000 residential building permits/year and 4 million sf/year of non-residential development, as demonstrated in **Figure 22**.

A. Implementation

The NCC Council can then determine whether to create an open space fee, and what level of funding support for the Open Space Preservation Fund, any potential UDC changes that would be required, and an implementation schedule.

VI. CHANGE OF USE/REDEVELOPMENT CHARGES

A. Background

As part of our review on impact fees the team was asked to assess the redevelopment and brownfield development waiver that currently exists in the UDC.

As an incentive for redevelopment and brownfield development the current code provides a waiver provision for all impact fees. The current definition of redevelopment contained in the UDC is:

A process used to identify previously developed land that is now vacant, abandoned, or underutilized real property where older structures if they exist are rehabilitated or replaced.

The waiver for impact fees for redevelopment and brownfield development is one of several incentives that NCC uses to promote the reuse of existing properties that are currently underutilized. This waiver seems appropriate for redevelopment or brownfield development where the previous use and the proposed use are similar and there would be no necessary increase in the capital costs needed to supply the services funded under the impact fee, however based on the broad definition of redevelopment, there are redevelopment projects that will increase the overall need for capital investments for those services that are funded through impact fees.

The team looked at several other justifications to determine how they applied impact fees to redevelopment or repurposing of land and the common theme for redevelopment was to try to capture the difference between the current use the proposed use and apply a prorated portion of the impact fee. The following case studies outline how each jurisdiction applies impact fees.

B. Case Studies

1. Palm Beach County (PBC, http://www.pbcgov.com/uldc/Article13.htm#_Toc24701204)
 - With PBC's intent that new development bear a proportionate share of the cost of capital expenditures necessary to provide park, fire-rescue, library, law enforcement, public building, schools, and road capital facilities in PBC, impact fees were established representative of a fair and equitable allocation of costs, past and future payments from new development. This included credits for in-kind contributions, and municipal provision of like facilities under certain circumstances. Funds collected from impact fees shall not be used to replace existing capital facilities or to fund existing deficiencies, but only to provide for new capital facilities which are necessitated by new development.
 - Any existing land use that is expanded, replaced, or changed shall be required to pay impact fees based on the new or additional impact as a result of the expansion, replacement, or change of use. The fee payer may be eligible for credit for the existing land use pursuant to [Art. 13.A.11.A.1](#).

2. Johnstown, CO (-

https://library.municode.com/co/johnstown/codes/municipal_code?nodeId=CH17SU_ARTXIIIMFE_S17-228POFADEFE)

- Johnstown defines land development as issuance of a building permit or a connection permit for the construction, reconstruction, redevelopment or conversion of a use of land or any structural alteration, relocation or enlargement which results in an increase in the number of "service units" required, or, the extension of a use or a new use of land which results in an increase in the number of service units.
- No impact fee shall be imposed on land development for which a building permit has been issued prior to the effective date of the impact fee, except in the event of a change of use.
- Waivers are granted for the following conditions. There is a nexus between the proposed redevelopment and the increase in the need for capital improvements associated with the impact fees.
 - No impact fee shall be imposed on any new residential development which does not add a new dwelling unit (service unit).
 - No impact fee shall be imposed on any new nonresidential development which does not add square footage, unless the new nonresidential development increases the demand for capital improvements (service units) for which impact fees are being imposed.
 - Other uses. No impact fee shall be imposed on a use, development, project, structure, building, fence, sign or other activity, whether or not a building permit is required, which does not result in an increase in the demand for capital improvements (service units).

3. City of Federal Way (traffic impact fee program) -

https://www.cityoffederalway.com/sites/default/files/Documents/Department/PW/Traffic/Resources/FW%20GUIDE%20TO%20TRAFFIC%20IMPACT%20FEES_Jan2018.pdf City of Federal Way, WA (traffic impact fee program) -
https://www.cityoffederalway.com/sites/default/files/Documents/Department/PW/Traffic/Resources/FW%20GUIDE%20TO%20TRAFFIC%20IMPACT%20FEES_Jan2018.pdf)

- For a change in use of an existing building or dwelling unit, including any alteration, expansion, replacement, or new accessory building that generates new trips, the impact fee will be assessed based on the difference between the new uses and the prior use. If no impact fee was required for the prior use, the impact fee for the new use shall be reduced by an amount equal to the current impact fee rate for the prior use.

4. Alachua County - [https://growth-](https://growth-management.alachuacounty.us/formsdocs/impactfees/if_admin_manual.pdf)

[management.alachuacounty.us/formsdocs/impactfees/if_admin_manual.pdf](https://growth-management.alachuacounty.us/formsdocs/impactfees/if_admin_manual.pdf) Alachua County, FL (-
https://growth-management.alachuacounty.us/formsdocs/impactfees/if_admin_manual.pdf)

- For change of use projects the impact fee is prorated based on the change of use
- Should the change of use, redevelopment, or modification result in a net decrease in the impact, no refunds or credits for impact fees previously paid shall be made.
- If the change of land use does not require the issuance of a building permit, zoning or development order approval, then there shall be no requirement to pay an impact fee.

5. Mount Vernon, WA - [https://mountvernonwa.gov/DocumentCenter/View/9624/Impact-](https://mountvernonwa.gov/DocumentCenter/View/9624/Impact-Fees--2022?bidId=)

[Fees--2022?bidId=](https://mountvernonwa.gov/DocumentCenter/View/9624/Impact-Fees--2022?bidId=) Mount Vernon, WA -
<https://mountvernonwa.gov/DocumentCenter/View/9624/Impact-Fees--2022?bidId=>)

- Not all impact fees are assessed on redevelopment. Only those that have a nexus to the capital cost associated with the service provided

- Transportation & Fire Impact Fees apply to all new non-residential buildings, and additions to existing buildings. Transportation impact fees are also calculated for a change of use on an existing non-residential building. The number of average trips per peak p.m. hours are calculated by a traffic engineer which the city has contracted with to review all commercial projects for trip generation.

The case study jurisdictions all assess some type of impact fee for additions and redevelopment of existing buildings and structures. The jurisdiction makes the connection between assessing the impact fee and the need for the capital improvements funded by that impact fee. How this is applied varies across jurisdictions, however there is a theme of comparing the original use to the new use being considered for the project.

NCC's existing code provides many incentives for redevelopment and brownfields on non-residential uses and sites. This includes processing the plan as a minor subdivision and allowing for additional gross floor area. In some cases, this redevelopment or brownfield development may repurpose a use that was exempt from or had a minimal impact fees to a use that would have a much higher demand on the services funded under the impact fees. It would be appropriate that this type of redevelopment or brownfield development pay additional impact fees.

C. Recommendations

Should NCC determine that the current impact fee waiver for redevelopment and brownfield development is a critical decision factor for developers considering the reuse and repurpose of existing properties then it would be logical to maintain the existing waiver structure. The additional burden of increased capital costs associated with the redevelopment and brownfield development would continue to be borne by the general fund.

Should NCC determine that eliminating the waiver on impact fees for redevelopment and brownfield development would not discourage developers considering the reuse and repurpose of existing properties then it would be appropriate to assess the nexus between the impact fee and the need for that service based on the proposed development. The following is a recommended framework for how NCC might assess impact fees for redevelopment and brownfield development

- Assess a prorated impact fee for the actual change of use of the property based on the difference between the historical use and the proposed use.
- The new open space impact fee would be waived since this type of development supports infill and reuse of existing properties therefore maintaining existing open space.
- Brownfields would still be exempted

VII. NEXT STEPS

The project team will continue to work with NCC to better document the past and current relationship between impact fees and NCC capital costs.

NCC is planning a public workshop for December 2022 to present the findings of memos 1 through 3 and solicit feedback from interested stakeholders. Stakeholder and NCC feedback will be considered as the project team finalizes recommendations to prioritize proposed changes to the existing code in Memo 4. The final report (including memos 1 through 4) will be presented to NCC Council's Finance Committee for further consideration.

MEMO #4: FINAL RECOMMENDATIONS

Date: June 13, 2023
To: Antoni Sekowski, Acting Assistant Land Use Manager, New Castle County
From: Savannah Edwards, AICP; Associate Planner; Rossi Group
Heather Coons, Senior Planner; Rossi Group
CC: Marc Coté, PE, AICP; Director of Planning and Engineering; Rossi Group
Re: New Castle County Impact Fee Study
Memo #4 – Recommendations

Memos #1 and #2 summarized the current and best practices in support of New Castle County's (NCC) study of development impact fees. Memo #3 provided a series of initial recommendations, including 1) an assessment of the ability to apply a sliding scale to the impact fees based on the *Delaware Strategies for State Policies and Spending* (2020) and taking into account the five established investment levels; 2) expanding the list of uses in the Impact Fee Table; 3) developing strategies for incentivizing low-income housing; 4) implementing graduated impact fee increases; 5) creating an Open Space fee; and 6) revision of use/redevelopment charges. The analysis process resulted in the presentation of recommendations for NCC to consider in their assessment of current regulations and the development of associated updates to those regulations. A public workshop was held December 12, 2022 to present the findings of Memos 1 through 3 and solicit feedback from interested stakeholders. The following information details feedback received from the public workshop and uses this data to finalize recommendations to prioritize proposed changes to the existing code.

I. NEW CASTLE COUNTY PUBLIC WORKSHOP SUMMARY

The project team held a hybrid public workshop with New Castle County on December 12, 2022. Attendees could view the presentation virtually or in-person. Approximately 25 individuals attended in person and 45 attendees signed in online. Comments and questions brought up at the workshop include:

- Why do the fire companies have to submit inventory every year and show need in excess of 1988 inventory?
- Are businesses that have an addition installed currently not charged an impact fee? For example, the Tri-State Mall?
- Lower income housing traditionally has a great need for the types of services funded by impact fees.
- A representative from the Middletown Fire & Rescue company expressed a need for less administrative burden to secure funds.
- Redevelopment for conversion of houses to more units should be charged an impact fee.
- Where do transient occupancy fees go?
- What is the criteria for the Office of State Planning Coordination's Strategy Level classifications?

A. Interactive Workshop Feedback

The in-person session was followed with an hour-long interactive workshop where the project team fielded questions and answers and solicited feedback on proposed recommendations. The following feedback was received via the interactive activities (clarification on handwritten comments made on the display boards is provided in the bullets below each photo):




Utilizing Delaware's State Strategies

Should NCC consider assessing an impact fee surcharge to cover the additional costs associated with development in Levels 3 and 4?

Yes, assess a surcharge for development in Level 3 and 4 Areas.	No, assess the same impact fees regardless of where development occurs.	Other
<i>- West wing in SNCC needs most new services + infrastructure in SNCC!</i> <i>100% Agree!</i> <i>Agree</i>	<i>For open space & parks the same</i>	

Handwritten comments:

Yes, assess a surcharge for development in Level 3 and 4 Areas.

- West wing in SNCC needs most new services & infrastructure in SNCC.
- 100% agree.
- Agree.

No, assess the same impact fee regardless of where development occurs.

- For open space & park the same.




Residential & Institutional Uses of Impact Fees

Residential Uses

Impact fees are assessed under the use category of all other housing.

- Group homes and congregate care facilities are not listed under the residential impact fee category.

Should NCC consider charging a separate **Multi-resident Facility Use** Impact Fee based on number of dwelling unit?

Yes	No	Other
		

Institutional Uses

Impact fees are assessed under the use category of office/institutional.

- UDC §40.05.050 enumerates that public facilities needed to support development (including hospitals) shall be exempt from Article 14 (impact fees.)
- Some institutional uses may require additional services.
- Some jurisdictions charge impact fees on **private** institutional uses.

Should NCC consider charging a separate **Institutional Use** Impact Fee?

Yes	No	Other
		

No handwritten comments received.

Commercial Uses of Impact Fees

Lodging

Impact fees are assessed as commercial/shopping center uses.

Bed and breakfasts/commercial lodging are not assessed impacts fees separately. Transient occupancy taxes are collected on visitors to these establishments; however, these dollars do not go towards capital improvement in NCC.

Should NCC consider charging a separate Lodging Use Impact Fee on a room basis?

Yes	No	Other
Handwritten note: 2023 - they require services - logistic centers - Require new higher ladder trucks for fire company - Etc.		Handwritten note: 2023 - they require services - logistic centers - Require new higher ladder trucks for fire company - Etc.

Restaurants

Impact fees are assessed as commercial/shopping center uses.

- High-turnover rate may warrant a separate category.
- Some jurisdictions break down restaurants based on whether it is drive-thru establishment or sit-down restaurant.

Should NCC consider charging a separate Restaurant Impact Fee based on anticipated turnover?

Yes	No	Other
Handwritten note: 2023 - they require services - logistic centers - Require new higher ladder trucks for fire company - Etc.		

Handwritten comments:

Should NCC consider charging a separate Lodging Use Impact Fee on a room basis?

- Yes
 - o They require services.
 - o Logistic centers.
 - Require new higher ladder trucks for fire company.
 - o Etc.
- Other
 - o Should consider # of visitors.
 - Diff assessment for major hotels.

Should NCC consider charging a separate Restaurant Impact Fee based on anticipated turnover?

- Yes
 - o Drive through restaurants at peak meal hours place a large burden on traffic infrastructure.

Strategies for Incentivizing Low-Income Housing

Should NCC consider providing an affordable housing impact fee reduction or exemption on a per unit basis? This could be a full exemption to all impact fees applied to MPDUs or NCC may determine on a fee-by-fee basis if MPDUs should be exempt from a specific fee. All fees may also be reduced by a specified percentage or amount, or each impact fee may be evaluated to determine if the specified fee should be reduced by a specified percentage or amount.

Should NCC consider applying a full exemption to all impact fees to MPDUs?	Should NCC determine on a fee-by-fee basis if MPDUs should be exempt from a specific fee?	Should all impact fees to MPDUs be reduced by a specified percentage or amount?	Other
<i>Scale</i> <120% AMI => 75% 100-120% => 50% 80-100% => 25% <80% => No fee			

Handwritten comments:

Should NCC consider applying a full exemption to all impact fees to MPDUs?

- Scale
 - o <120% AMI => 75%
 - o 100-120% => 50%
 - o 80-100% => 25%
 - o <80% => No fee

Graduated Fee Increases

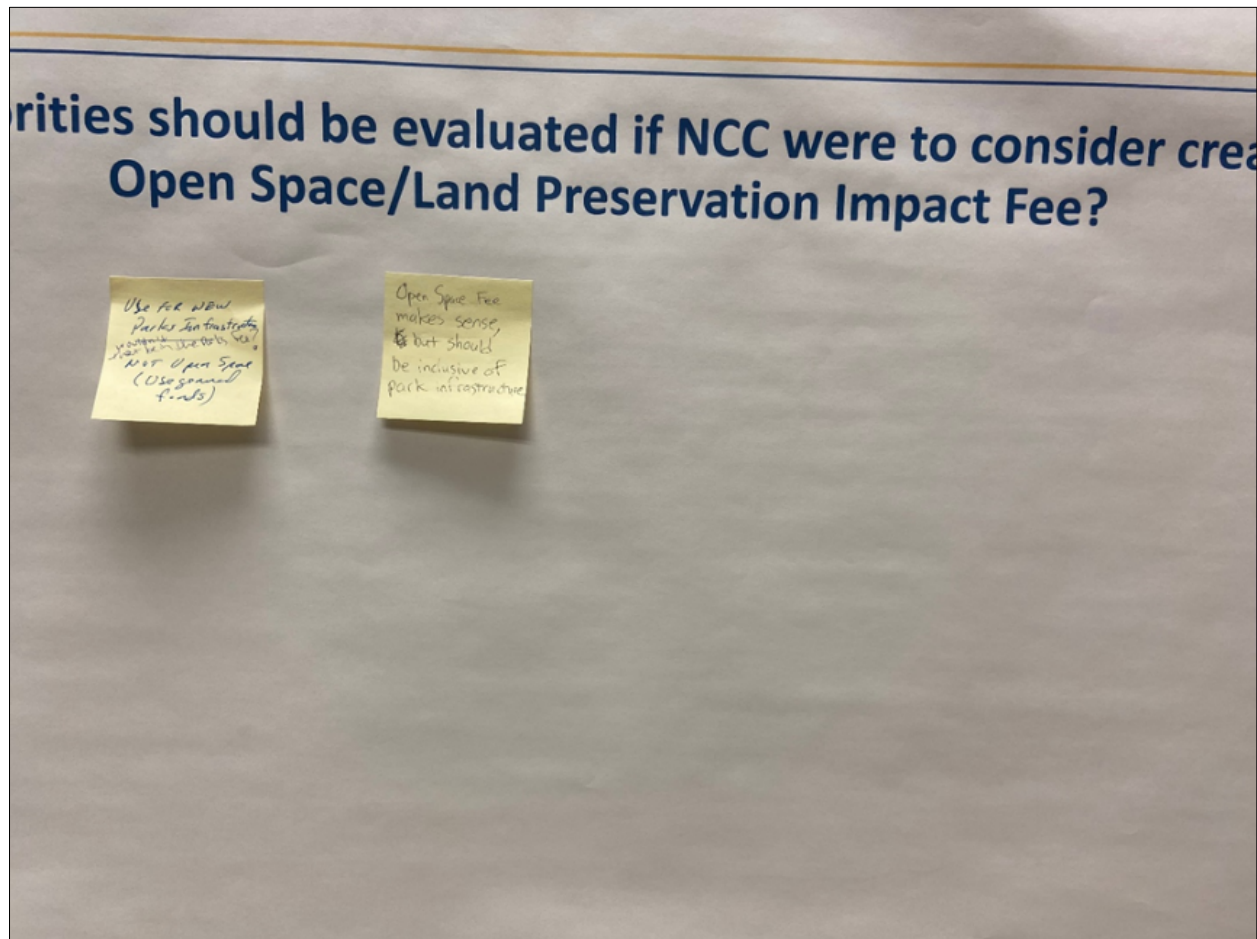
Place three stickers on your most preferred scenarios to increase Impact Fees.

- = Favorite scenario/first choice
- = Second favorite scenario/second choice
- = Third favorite scenario/third choice

No increases in fees	
No increases in fees, then annual indexing adjustments	
Phased in approach of 5% increases over a period of 2-5 years to slowly adjust for the last 16 years, then annual indexing adjustments	
Phased in approach of 10% increases over a period of 2-5 years to slowly adjust for the last 16 years, then annual indexing adjustments	
75% increase to match the ENR CCI cumulative total, then annual indexing adjustments	Yes, with scaled levels for MPDU. SNCC Development has gotten away with paying less of their fair share for ~25 years. We need infrastructure and services.

Handwritten comments:

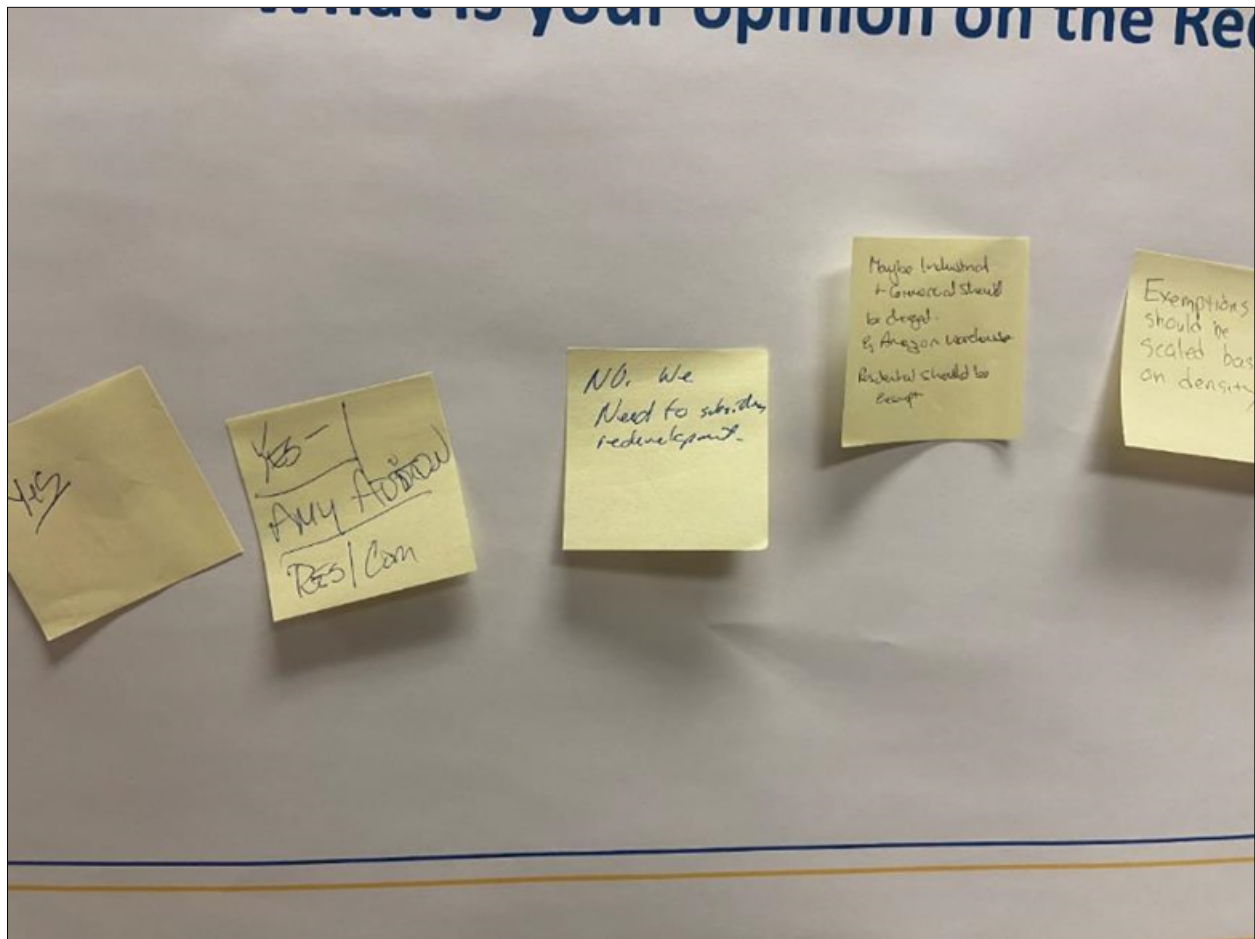
- Yes, with scaled levels for MPDU.
- SNCC Development has gotten away with paying less of their fair share for ~25 years. We need infrastructure and services.



Handwritten comments:

What priorities should be evaluated if NCC were to consider creating an Open Space/Land Preservation Impact Fee?

- Use for new Parks Infrastructure.
 - Not open space (use general funds).
- Open Space Fee makes sense, but should be inclusive of park infrastructure.



Handwritten comments:

What is your opinion on the Redevelopment Impact Fee?

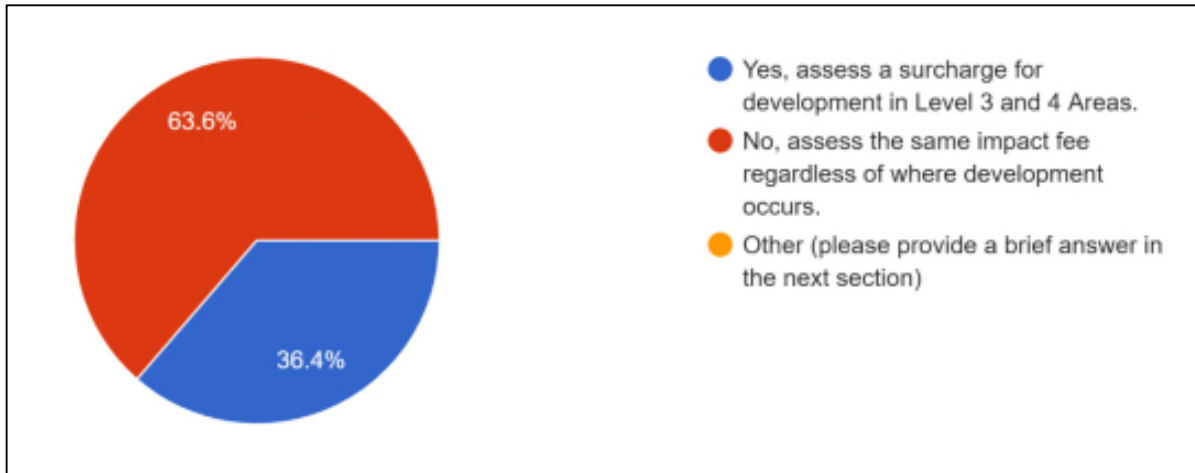
- Yes.
- Yes – any addition Res/Com.
- No, we need to subsidize redevelopment.
- Maybe Industrial and Commercial should be merged.
 - o E.g., Amazon warehouse.
- Residential should be exempt.
- Exemptions should be scaled based on density.

B. Online Survey Feedback

Online attendees were invited to share their feedback via a Google Form survey that was emailed out the morning of December 13, 2022, to anyone who had registered for the public workshop. Participants were asked to complete the survey by December 30, 2022. Participants were also prompted to review the December 12 presentation before responding, if they had not attended the live event. Eleven (11) individuals completed the survey.

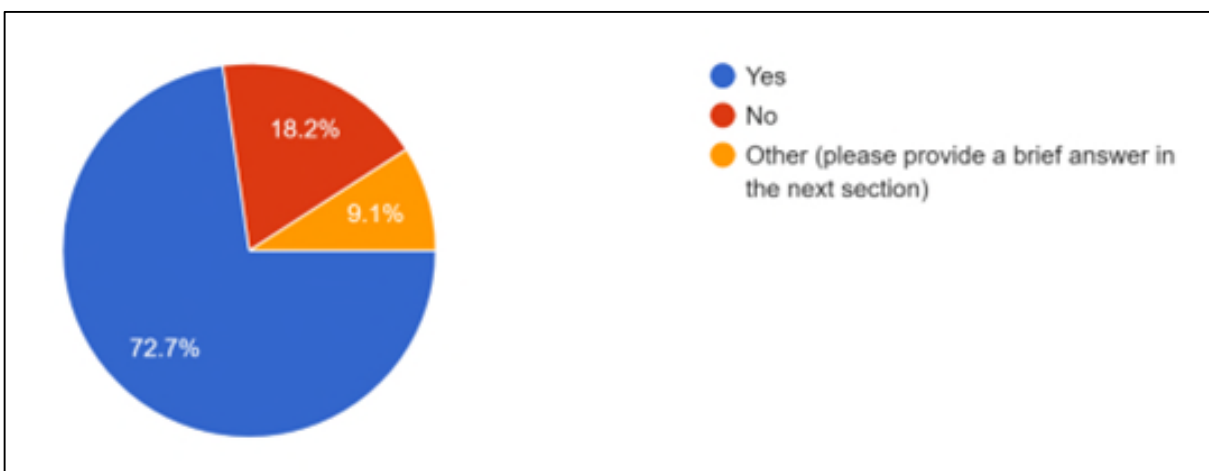
The online survey posed eleven (11) questions for respondents to consider. The first eight (8) questions allowed for a 'Yes,' 'No,' or 'Other' response. If 'Other' was chosen, respondents were provided the option to provide a short answer. The remaining three (3) questions had a more open-ended format. The following is a summary of the responses:

1. Should NCC consider assessing an impact fee surcharge to cover the additional costs associated with development in Levels 3 and 4?



"Other" responses: N/A

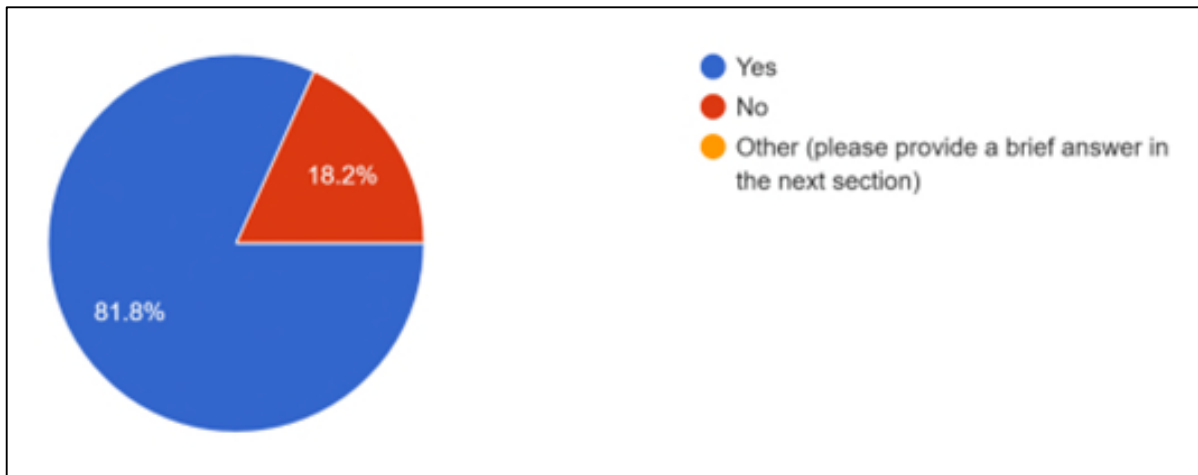
2. Should NCC consider charging a separate Multi-family Resident Facility Use Impact Fee based on number of dwelling units?



"Other" responses:

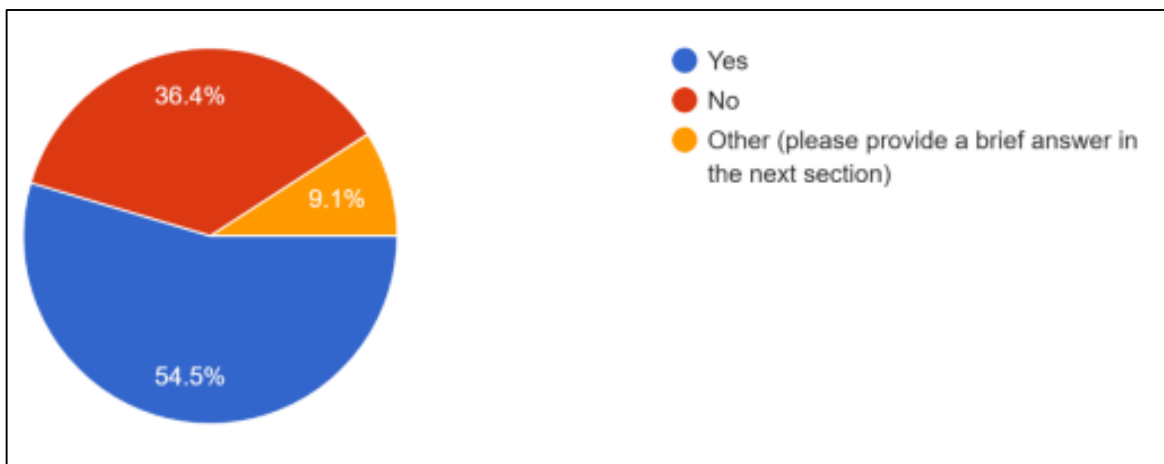
- Thought that is what is.

3. Should NCC consider charging a separate Institutional Use Impact Fee?



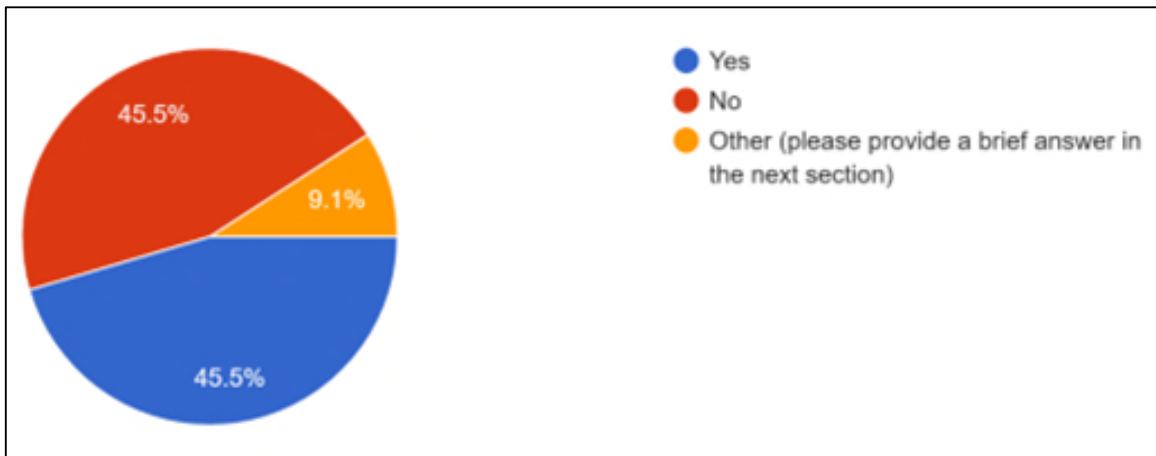
"Other" responses: N/A

4. Should NCC consider charging a separate Lodging Use Impact Fee?



"Other" responses: N/A

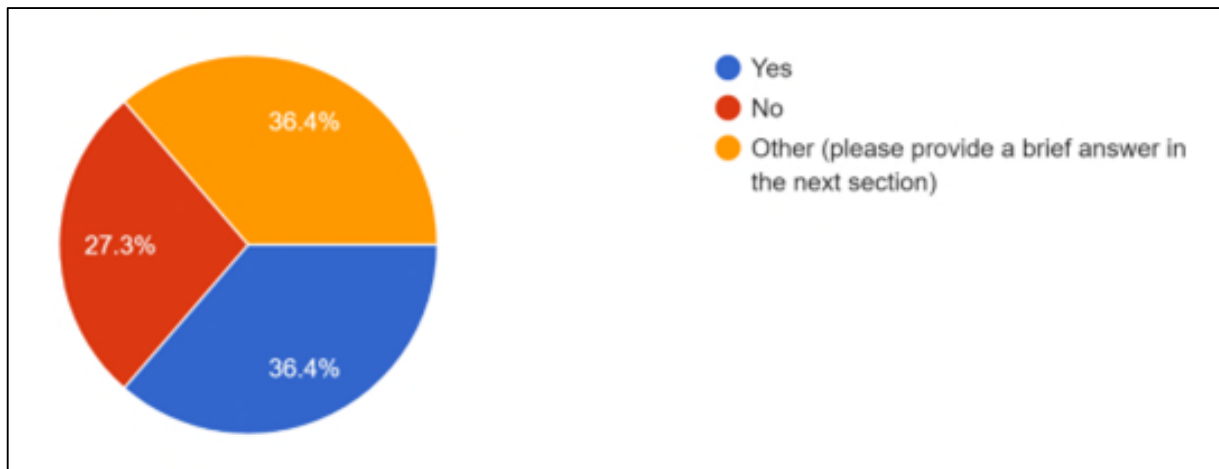
5. Should NCC consider charging a separate Restaurant Impact Fee based on anticipated customer turnover?



"Other" responses:

- No, one of the items in the presentation was the impact of trips from a restaurant, this is already handled with the DelDOT requirements.

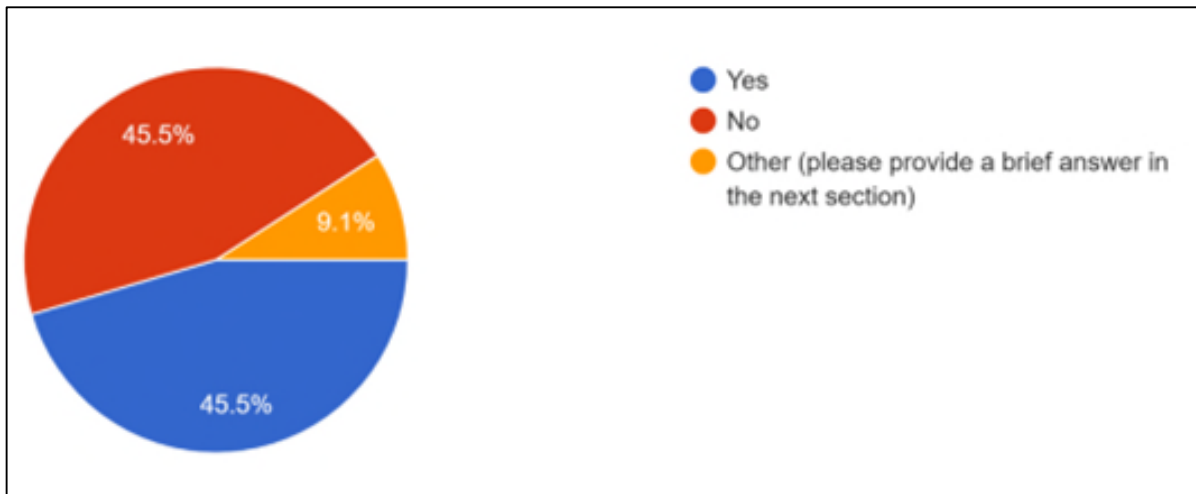
6. Should NCC consider applying a full exemption to all impact fees to Moderately Priced Dwelling Units (MPDUs)?



"Other" responses:

- Potential for a reduced amount, but not a full reduction.
- Only for truly affordable housing.
- We need to implement a scaled system of discounting based on affordability. Something like 100-120 percent of AMI at 80% fee, 80-100 percent AMI at 50 percent, and below 80 percent AMI pays no impact fee.
- Only if MPDUs have residential fire sprinklers installed.

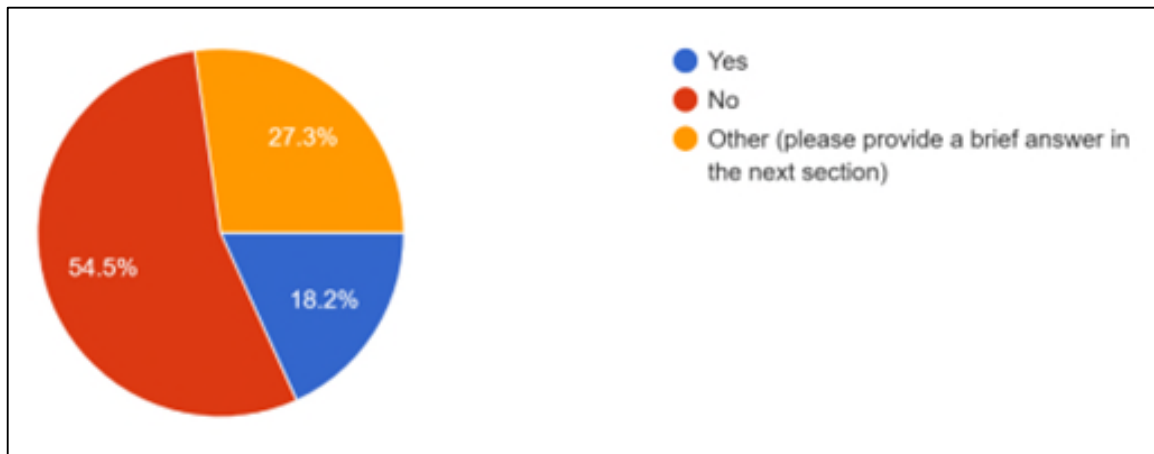
7. Should NCC determine on a fee-by-fee basis if MPDUs should be exempt from a specific fee?



"Other" responses:

- Potential for a reduced amount, but not a full reduction.

8. Should all impact fees to MPDUs be reduced by a specified percentage or amount?



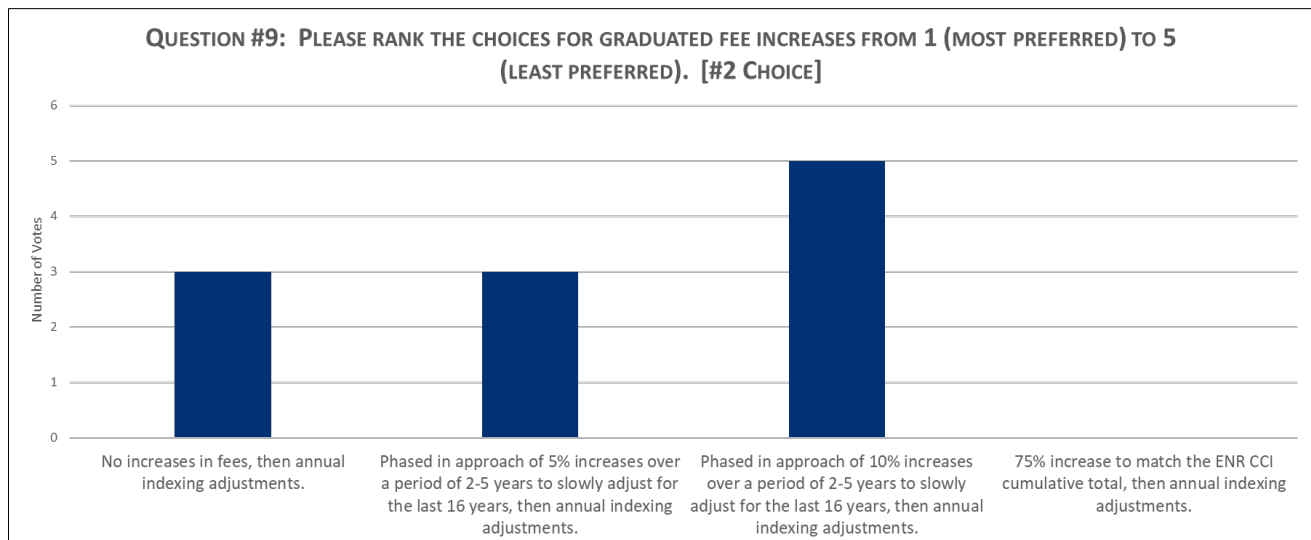
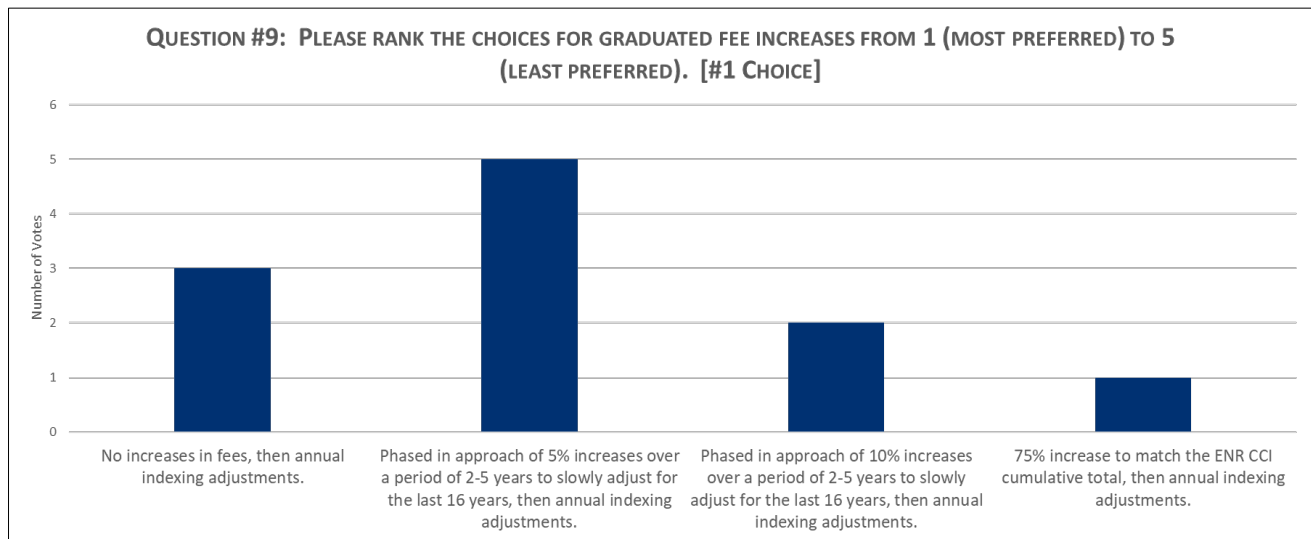
"Other" responses:

- Potential for a reduced amount, but not a full reduction.
- Impact fees to MPDUs should not apply, or should be exempt.
- If you truly want to make progress waiver the fees entirely.

9. Please rank the choices for graduated fee increases from 1 (most preferred) to 5 (least preferred.)

- No increases in fees.
- No increases in fees, then annual indexing adjustments.
- Phased in approach of 5% increases over a period of 2-5 years to slowly adjust for the last 16 years, then annual indexing adjustments.
- Phased in approach of 10% increases over a period of 2-5 years to slowly adjust for the last 16 years, then annual indexing adjustments.
- 75% increase to match the ENR CCI cumulative total, then annual indexing adjustments.

The top ranked option was “C - phased in approach of 5% increases over a period of 2-5 years to slowly adjust for the last 16 years, then annual indexing adjustments” with five individuals choosing this as their top option. “D - Phased in approach of 10% increases over a period of 2-5 years to slowly adjust for the last 16 years, then annual indexing adjustments” was the second most popular option, with five individuals ranking this as their second choice.



10. Considering a proposed new fee, what priorities should be evaluated if NCC were to consider creating an Open Space/Land Preservation Impact Fee?

Long answer responses to this question varied, there did not seem to be a clear consensus via the online survey. Some selected verbatim responses included:

- Provide land banking opportunities on projects that provide more than 50% open space and increase the base density permitted within each residential zone.
- This should not be done. These funds should be put toward park improvement and enhancement. Anyone who has a house put pressure on open space, so all should pay for open space through general property tax funds.
- no new fee for open land / preservation
- As development costs continue to surge, this is yet another example of death by a thousand cuts. The priority should be placed on maintaining and improving affordability with housing throughout New Castle County. This fee will be passed down to the consumer.

11. What is your opinion on the Redevelopment Impact Fee?

Long answer responses to this question were also mixed with some respondents in favor and others opposed. Verbatim responses included (spelling has been corrected):

- No, we should be encouraging redevelopment as infrastructure is already in place.
- There should be an exemption for all fees, other than sewer and traffic.
- Uncertain at this point.
- I do not think this should be implemented, a NCC should be incentivizing redevelopment. We need to revitalize existing developed areas that have declined as a much higher priority than continuing the development of green fields.
- If impact fees were collected initially, the redevelopment impact fee should be waived.
- all additional redevelopments should be assessed an impact fee if any structure is added to
- Due to the increased number of new developments, To avoid increasing property taxes to maintain and improve Delaware's infrastructure the impact fee is necessary.
- Counter productive.
- If the redevelopment causes a change to commercial/Office/Business park/ all residential, a fee should be charged for Law Enforcement, Fire & Rescue, and EMS due to eventual increased demand for these services.
- In favor. If a brownfield is being redeveloped, then reduce the impact fee. If developing farmland, then apply the full fee.
- Go for it!

II. RECOMMENDATION DISCUSSION

As previously mentioned, Memo #3 presented draft recommendations for NCC to consider in their assessment of current regulations and the development of associated updates to those regulations. The following reiterates those suggestions and takes into consideration feedback received from the public workshop to provide final recommendations.

A. Utilizing Delaware's State Strategies

The overall study effort is to reassess the impact fees to better correlate the fees collected with the capital costs needed to supply the services. Based on this goal the team is recommending assessing a surcharge to cover the additional costs associated with development in Levels 3 and 4. The initial recommendation for consideration would be a 20% surcharge for Level 3 and a 40% surcharge for Level 4. As previously noted, prior to adoption, additional research would be needed to assess the actual increase in costs for providing the service to better justify the surcharge percentage.

The feedback received regarding the assessment of a surcharge for development in Levels 3 and 4 was generally positive; however, there were still responses to assess the same impact fee regardless of where development occurs. This feedback indicates the importance of clearly showing the nexus between increased service delivery costs in Levels 3 and 4 and any possible surcharge.

The Cabinet Committee on State Planning Issues (CCSPI), as part of the 2022 Annual Report on State Planning Issues has established a recommendation to develop new methods for calculating the long-term costs of providing state services for land-use actions that are inconsistent with State Strategies. The CCSPI agreed that this is a priority for 2023 but the effort has not begun to date. The County should coordinate with OSPC and the assigned agencies to utilize their findings in determining an appropriate surcharge in levels 3 and 4.

Final recommendation: NCC to implement a surcharge to cover the additional costs associated with development in Levels 3 and 4; NCC will work with OSPC and conduct additional research to determine the actual cost of providing services to these areas and will modify proposed percentages accordingly.

B. Expanding the List of Uses in the Impact Fee Table

As identified in Memo #3, analysis of the permitted uses (UDC §40.03.110) and impact fee (UDC §40.14.210) tables identified several uses not explicitly being charged an impact fee. The team recommended adding impact fees to multi-unit residential facilities (including group homes and congregate care facilities); private hospitals or facilities (e.g., assisted care facilities); commercial lodging/bed and breakfast establishments, restaurants (based on turnover); and campgrounds/resorts. A recommendation to further breakout "business park" use to better assess the various uses (light/heavy manufacturing, office space, etc.) separately. After discussion with the County about possible confusion, the project team chose not to pursue feedback on any business park changes.

The feedback received from the public workshop and online survey revealed generally positive responses to expanding the list of uses in the impact fee table. Respondents were more favorable towards NCC charging separate Multi-family Resident Facility and Institutional Use Impact fees compared to assessing separate fees for Lodging or Restaurant Uses; however, the overall outcome was positive.

Final Recommendation: NCC to add the following new categories to the impact fee table:

- Multi-use Residential (Apartments, Commercial Apartments, Apartment Conversions) (per unit)
- Institutional Uses (private)
- Commercial Lodging (per room)
- Restaurants
 - The County should consider whether multiple restaurant categories should be broken out to differentiate between fast-food restaurants and sit-down restaurants. Then analysis should be conducted to determine the appropriate fee level that should not be based on the number of cars

visiting the facility since this is not a transportation/mobility impact fee, but instead the number of EMS visits and impact on capital infrastructure.

C. Strategies for Incentivizing Low-Income Housing

As detailed in Memo 2, B.3. Affordable Housing, in areas with high fees and/or a large number of special assessment districts, the cumulative cost can erode the financial viability of affordable housing projects. Local jurisdictions can encourage the development of new affordable housing through methods including:

- Flat fee
- Fee reductions
- Fee waivers based on number of units
- Complete fee exemption

NCC currently provides a density bonus for major residential subdivisions not requiring a rezoning if a portion of the dwelling units are designated as moderately priced. However, providing an impact fee reduction or exemption would further reduce the cumulative cost for providing affordable housing within NCC. This could be full exemption to all impact fees applied to Moderately Price Dwelling Units (MPDUs). It may also be reasonable to view each impact fee assessed and determine on a fee-by-fee basis if MPDUs should be reduced or exempt from a specific fee. All fees may also be reduced by a specified percentage or amount, or each impact fee may be evaluated to determine if the specified fee should be reduced by a specified percentage or amount. Although fees are reduced or exempt for developers, future homeowners still receive the services supported by the fee and must secure the associated permits or approvals.

Public workshop participants and survey respondents had a general consensus of not reducing impact fees by a specific percentage or amount. Responses regarding a full exemption and reducing on a fee-by-fee basis were mixed; some were in favor of reducing the amount, but not a full exemption where others supported a complete exemption. There were two suggestions of using a sliding scale system based on affordability. This concept would use the Area Median Income (AMI) to determine the impact fee imposed on MPDUs. Comments across the board indicated that affordable housing is a concern for NCC residents.

Final recommendation: NCC should establish a sliding scale system based on the home price relative to the AMI.

- >120% of AMI => 75%
- 100 – 120% => 50%
- 80 – 100% => 25%
- <80% => No fee assessed

D. Graduated Fee Increases/ENR Recommendations

Recommendations for adjusting the fee to make up for lost buying power due to no fee adjustments for the last 16-23 years can be accomplished in many different scenarios based on NCC's goals and policies that are being considered. Currently the general budget is carrying the load to make up for inflation and the erosion of purchasing power of the impact fees as established in 2006. That means that existing residents of NCC are paying for and subsidizing the costs of the new infrastructure intended to be paid for with impact fees. If NCC's goal is to restore the impact fee revenues to the originally intended levels of providing revenue for infrastructure projects, gradual increases in fees while providing a provision for annual indexing would allow NCC to slowly increase fees.

Scenarios could range from:

- No increases in fees
- No increases in fees, annual indexing adjustments
- Phased in approach of 5% increases over a period of 2-5 years to slowly make up for the last 16 years, then annual indexing adjustments
- Phased in approach of 10% increases over a period of 2-5 years to slowly make up for the last 16 years, then annual indexing adjustments
- 50% increase to match the CPI cumulative total, then annual indexing adjustments
- 75% increase to match the ENR CCI cumulative total, then annual indexing adjustments

Regardless of the decision to raise fees to account for the last 16 years of no increases, it is recommended that yearly adjustments to the fees be done, as periodic evaluations are required by code, so that the fees are adjusted annually based on the ENR CCI. Most jurisdictions that have indexing do so annually to avoid having to revisit the fees every few years and keep increases in fees in small increments. This sets up an expectation that the impact fee will increase yearly to keep pace with inflation and provide for infrastructure to be consistently funded and constructed using the impact fees collected by new development. It is a straightforward method that is easy to communicate to the public and easier to implement. If NCC wants to establish an increase every two years, that can be accomplished by Council approving the changes every two years instead of annually. It is recommended that the adjustment be done using the cumulative CCI for the two years. The data to calculate the ENR CCI comes out in January and the new fee can be adopted by Council in the spring with an effective date of July 1 each year.

Feedback from the public workshop resulted in the majority of participants in favor of increasing fees with annual indexing adjustments; however, responses on how to approach the fee increases were evenly distributed between the phased approach of 5% over 2-5 years, phased approach of 10% over 2-5 years, and a 75% increase to match the ENR CCI cumulative.

Final recommendation: NCC should consider increasing their current Impact Fees in a phased approach of 10% per year for 3 years, then annually adjust the fee for ENR CCI.

E. Open Space Fee Creation

NCC Council adopted a resolution to spend \$7.5 million dollars over 3 years, which is \$2.5 million/year to ensure consistent funding for the preservation of Open Space and Agricultural land. In our research of best practices, the City of Chicago used a formula of new development carrying 30% of the cost for open space preservation.

The City of Chicago Open Space fees range from \$313-1,253/unit based on the type of development. Affordable housing units are only charged \$100/unit.

Marin County in Florida Open Space fees range from \$540-755 based on size of the unit. A land value of \$12/sf is used for the cost of Open Space land acquisition.

Using the same formula to help provide a dedicated source of funding to provide 30% of the \$2.5 million Open Space preservation goal requires revenue from impact fees to be \$750k/year.

The NCC Council can then determine whether to create an open space fee, and what level of funding support for the Open Space Preservation Fund, any potential UDC changes that would be required, and an implementation schedule.

Comments received on the evaluation of priorities regarding an Open Space Fee did not provide a clear consensus. Some workshop participants and survey respondents stated the Open Space Fee should be included in the Parks Fee or included in parks infrastructure for improvements. Others were against the concept all together.

Final recommendation: NCC should further explore the option of an additional impact fee category to fund Open Space. This would align with the County's goal for dedicated Open Space funding.

F. Change of Use/Redevelopment Charges

Should NCC determine that the current impact fee waiver for redevelopment and brownfield development is a critical decision factor for developers considering the reuse and repurpose of existing properties, then it would be logical to maintain the existing waiver structure. The additional burden of increased capital costs associated with the redevelopment and brownfield development would continue to be borne by the general fund.

Should NCC determine that eliminating the waiver on impact fees for redevelopment and brownfield development would not discourage developers considering the reuse and repurpose of existing properties, then it would be appropriate to assess the nexus between the impact fee and the need for that service based on the proposed development. The following is a recommended framework for how NCC might assess impact fees for redevelopment and brownfield development:

- o Assess a prorated impact fee for the actual change of use of the property based on the difference between the historical use and the proposed use.
- o Brownfields would still be exempted.

Feedback received from the public workshop on the implementation of a Redevelopment Fee were also mixed with some respondents in favor and others opposed.

Final recommendation: NCC will continue to work with developers to determine if the waiver on impact fees is a deciding factor in redevelopment and/or brownfield development. NCC should also consult with the Public Works Department and Emergency Services to determine actual costs of increased services from redevelopment cases.

III. NEXT STEPS

The final report (including memos 1 through 4) will be presented to NCC Council's Finance Committee for further consideration.

DEVELOPMENT IMPACT FEE STUDY

FINAL RECOMMENDATIONS

June 13, 2023



New Castle County Government



Presenters



Marc Coté, PE, AICP 



Drew Boyce, PE 

Agenda

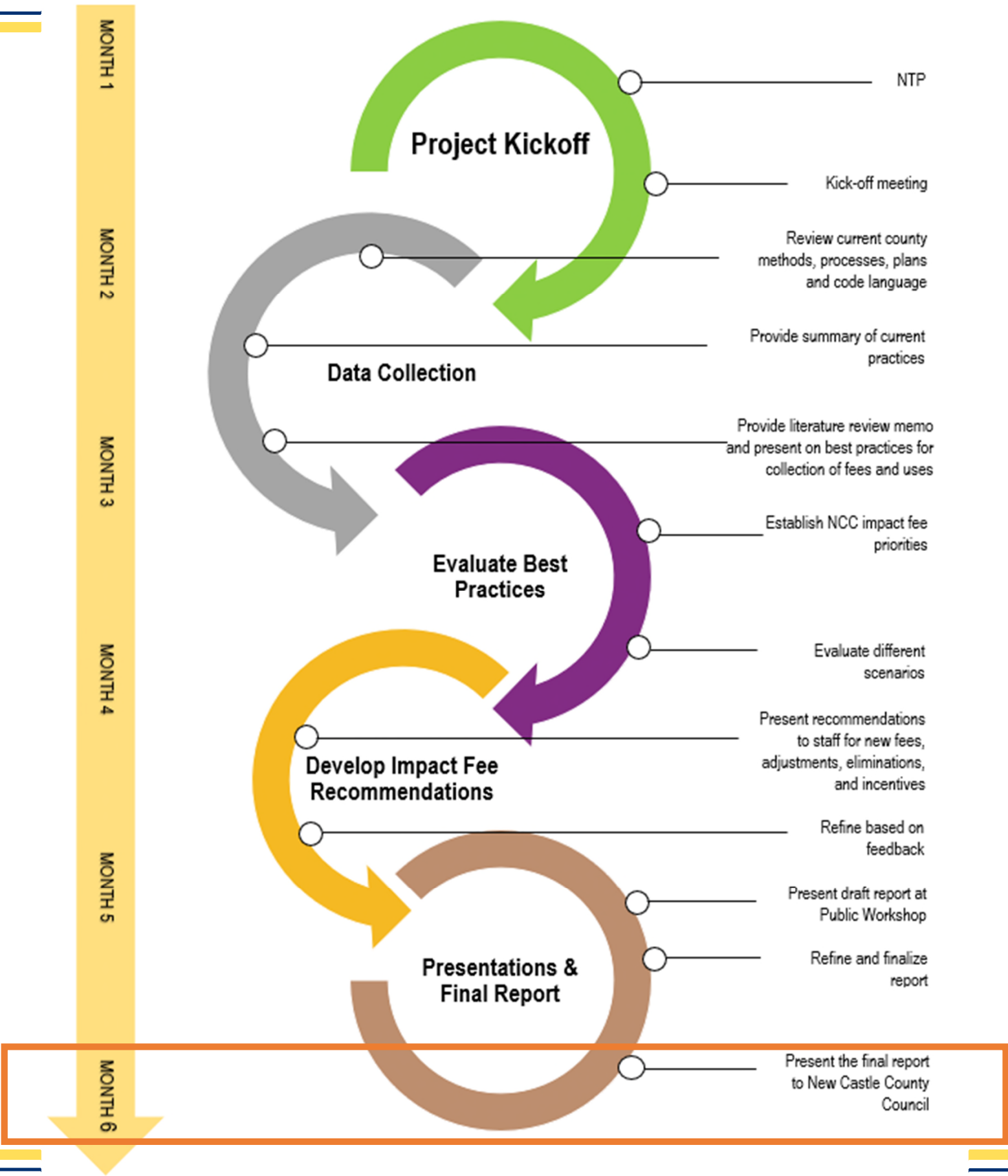
- Project Overview
 - Scope
 - Timeline
- Methodology
 - Existing Practices
 - Best Practices
- Public Feedback
- Final Recommendations

Project Overview

Project Scope

- NCC Audit Report from May 2020 recommended reviewing current fee amounts.
- Review includes recommendations that will:
 - Balance keeping the fees low while also providing a source of revenue for capital improvements.
 - Identify fee updates to ensure they are proportionate and related to the County's infrastructure and service needs.
 - Include practices to achieve sustainable, just, and fair public finance in line with the County's long-range plans.
 - Assess the need for additional impact fees and/or an updated methodology.

Project Timeline



Existing Practices >>>>>>>>>>

New Castle County Impact Fees

- Impact Fees were adopted by New Castle County in 1999.
- Finance new or expanded infrastructure and service needs for development.
- Unified Development Code (UDC) Chapter 40, Article 14 (40.14)
“Cost adjustments will be made as part of the periodic evaluation and update of impact fees. Impact fees will be **adjusted for inflation in construction costs as reflected in the Engineering News Record (ENR) index and upon approval by County Council ...**”
- The only impact fees adjusted since 1999 have been Fire & Rescue.

NCC Impact Fee Table

Service	Parks & Special Facilities	Libraries	County Facilities	EMS	Fire and Rescue	Law Enforcement	Total
Residential Per Housing Unit							
Single-family detached	\$328	\$138	\$112	\$7	\$510	\$62	\$1,157
Single-family attached	\$304	\$129	\$105	\$6	\$442	\$58	\$1,044
All other housing†	\$225	\$95	\$77	\$5	\$317	\$43	\$762
Nonresidential Per 1,000 Square Feet‡							
Commercial/shopping center (less than 60,000 sf. GFA)	na.	na.	\$127	\$8	\$210	\$42	\$387
Commercial/shopping center (60,000 sf. to 200,000 sf. GFA)	na.	na.	\$95	\$6	\$163	\$33	\$297
Commercial/shopping center (greater than 200,000 sf. GFA)	na.	na.	\$76	\$5	\$147	\$28	\$256
Office/institutional (less than 10,000 sf. GFA)	na.	na.	\$176	\$11	\$112	\$24	\$323
Office/institutional (10,000 sf. to 50,000 sf. GFA)	na.	na.	\$150	\$10	\$287	\$16	\$463
Office/institutional (greater than 50,000 sf. GFA)	na.	na.	\$142	\$9	\$272	\$14	\$437
Business park	na.	na.	\$120	\$8	\$232	\$14	\$374
Light industrial	na.	na.	\$88	\$5	\$170	\$7	\$270
Warehousing	na.	na.	\$47	\$3	\$94.	\$4	\$148
Manufacturing	na.	na.	\$70	\$4	\$131	\$3	\$208
† Due to similar square footage, small single-family units and single-wide mobile homes will be included under the "All other housing" designation.							
‡ When building or expanding a nonresidential building, the first 1,000 square feet are exempt from the assessment of impact fees. For all impact fees except sewer impact fees required by this Article, the Department shall waive the applicant's responsibility to pay said fees for redevelopment or Brownfields. As a condition of such waiver, the Department may require that an alternative funding source be identified to pay the applicable impact fee.							

Best Practices

APA Recommendations

- An Impact Fee must be rationally linked to the impact created.
- Some benefit must accrue to the development as a result of the payment of a fee.
- The amount of the fee must be a proportionate fair share of the costs of the improvements made necessary.
- A fee cannot be imposed to address existing deficiencies except where they are exacerbated by new development.
- Funds received under such a program must be segregated from the general fund and used solely for the purposes for which the fee is established.
- The fees collected must be encumbered or expended within a reasonable timeframe to ensure that needed improvements are implemented.

APA Recommendations (continued)

- The fee assessed cannot exceed the cost of the improvements, and credits must be given for outside funding sources.
- The fee cannot be used to cover normal operation and maintenance or personnel costs, but must be used for capital improvements, or under some linkage programs, affordable housing, job training, childcare, etc.
- The **fee established for specific capital improvements should be reviewed at least every two years** to determine whether an adjustment is required, and similarly the capital improvement plan and budget should be reviewed at least every 5 to 8 years.
- Provisions must be included in the ordinance to permit refunds for projects that are not constructed, since no impact will have manifested.
- Impact fee payments are typically required to be made as a condition of approval of the development, either at the time the building or occupancy is issued.

Neighboring Jurisdictions

- Sussex County, Delaware
 - Funds for parks and special facilities, libraries, county facilities, EMS, Fire and Rescue, and Law Enforcement are collected via property taxes.
 - Impact Fees are assessed to fund the preservation of Open Space.
- Kent County, Delaware
 - Uses an Adequate Public Facilities Ordinance (APFO) to fund public facility improvements (roads, schools, EMS, water supply and distribution).
- Salem County, New Jersey
 - No impact fees.
- Various Pennsylvania Counties
 - No impact fees.
 - Improvements funded through special taxes.
- Anne Arundel County, Maryland
 - Impact fees assessed to fund public schools, transportation, and public safety facilities.

Nation-wide Scan and Special Topics

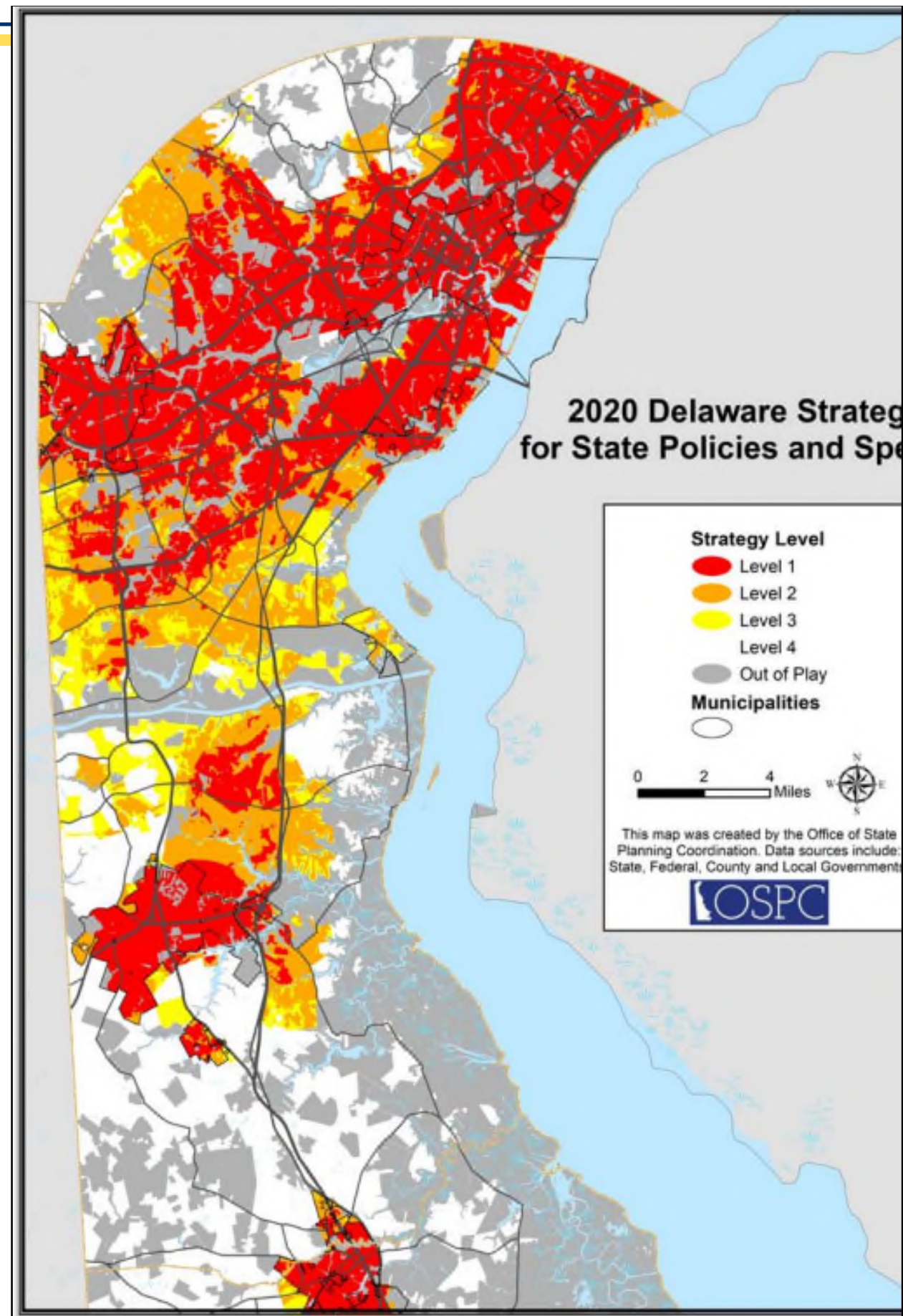
- Seminole County, Florida
- Green Infrastructure
 - City of Newark, DE
- Open Space Preservation Impact Fee
 - City of Chicago, Illinois
 - Martin County, Florida
 - Delaware Nature Conservancy
- Affordable Housing Considerations
 - Portland, Oregon
 - Austin, Texas

Recommendations

Recommendations for Consideration

1. Utilizing Delaware's State Strategies
2. Expanding the List of Uses in the Impact Fee Table
3. Strategies for Incentivizing Low-Income Housing
4. Graduated Fee Increases/ENR Recommendations
5. Open Space Impact Fee Creation
6. Redevelopment Charges

Utilizing Delaware's State Strategies



- State Strategies is a framework that guides decision makers on the most desirable pattern of land use within the state
- It is more expensive to provide necessary services the further you get from core developed areas
- Five investment levels:
 - Levels 1-4 and 'Out of Play'
- **Should NCC consider assessing a surcharge impact fee to cover the additional costs associated with development in Levels 3 and 4?**

Recommendation 1 - Feedback

- The feedback received regarding the assessment of a surcharge for development in Levels 3 and 4 was generally positive; however, there were still responses to assess the same impact fee regardless of where development occurs. This feedback indicates the importance of clearly showing the nexus between increased service delivery costs in Levels 3 and 4 and any possible surcharge.

Expanding the list of Uses in the Impact Fee Table

2

Current uses being assessed:

Residential (per housing unit)	Nonresidential (per 1,000 SF of floor area)
• Single-family detached • Single-family attached • All other housing (small single-family units and single-wide mobile homes will be included under the "All other housing" designation)	• Commercial/shopping center (less than 60,000 SF) • Commercial/shopping center (60,000 – 200,000SF) • Commercial/shopping center (greater than 200,000 SF) • Office/Institutional (less than 10,000 SF) • Office/Institutional (less than 10,000 SF) • Office/Institutional (less than 10,000 SF) • Business Park • Light Industrial • Warehousing • Manufacturing

Recommendations for Consideration

- **Should NCC consider charging a separate:**
 - **Multi-resident Facility Use Impact Fee based on number of dwelling units?**
 - **Institutional Use Impact Fee?**
 - **Lodging Use Impact Fee on a room basis?**
 - **Restaurant Impact Fee based on anticipated turnover?**

Recommendation 2 - Feedback

- The feedback received from the public workshop and online survey revealed generally positive responses to expanding the list of uses in the impact fee table. Respondents were more favorable towards NCC charging separate Multi-family Resident Facility and Institutional Use Impact fees compared to assessing separate fees for Lodging or Restaurant Uses; however, the overall outcome was positive.

Strategies for Incentivizing Low-Income Housing

3

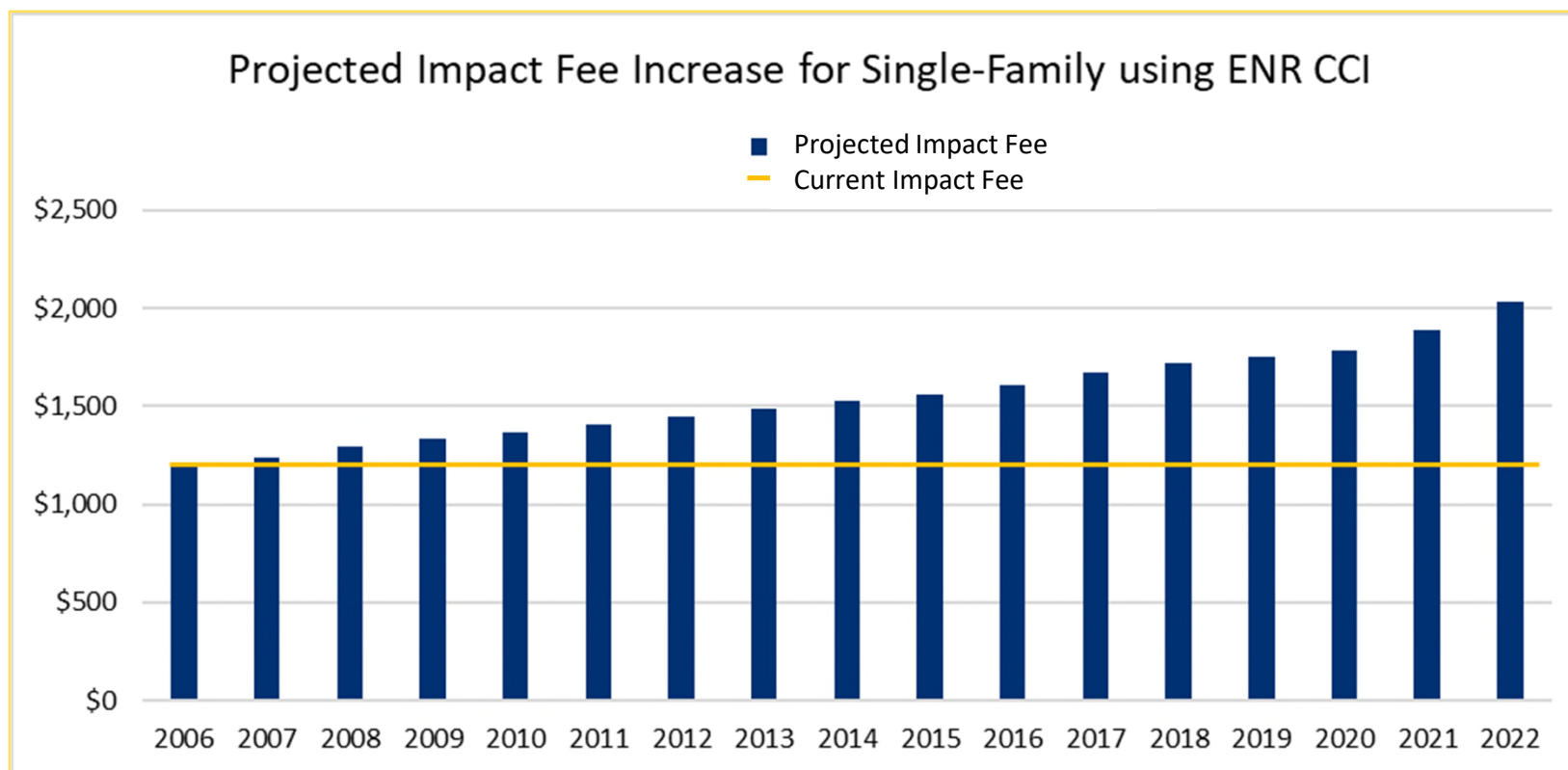
- Moderately Price Dwelling Units (MPDUs) are required for all residential rezonings or variance applications with density increases except for mixed-use developments.
- Currently there are no Impact Fee reductions or exemptions for development of MPDUs.
- NCC provides a density bonus for major residential subdivisions not requiring a rezoning if a portion of the dwelling units are MPDUs.
- Local jurisdictions can prioritize the development of new affordable housing by offering to reduce or waive impact fees for MPDUs.
- Developers still receive the services supported by the fee and must secure the associated permits or approvals.
- Providing an impact fee reduction or exemption would reduce the cumulative cost for providing affordable housing within NCC.
- **Should NCC consider applying a full exemption to all impact fees to MPDUs?**
- **Should NCC review each impact fee to determine in a fee-by-fee basis if MPDUs should be exempt from a specific fee?**
- **Should all impact fees to MPDUs be reduced by a specified percentage amount?**

Recommendation 3 - Feedback

- Public workshop participants and survey respondents had a general consensus of not reducing impact fees by a specific percentage or amount. Responses regarding a full exemption and reducing on a fee-by-fee basis were mixed; some were in favor of reducing the amount, but not a full exemption where others supported a complete exemption. There were two suggestions of using a scale-based system based on affordability. This concept would use the Area Median Income (AMI) to determine the impact fee posed on MPDUs. Comments across the board indicated that affordable housing is a concern for NCC residents, though.

Graduated Fee Increases/ENR Recommendations

- If fees increased using the ENR CCI from 2006 to 2022, increase would be 75%.
- The chart (below) illustrates the increase to the impact fee for a single-family detached unit from the 2006 cost of \$1,157 to \$2,036 in 2022, if adjusted according to ENR CCI calculations.

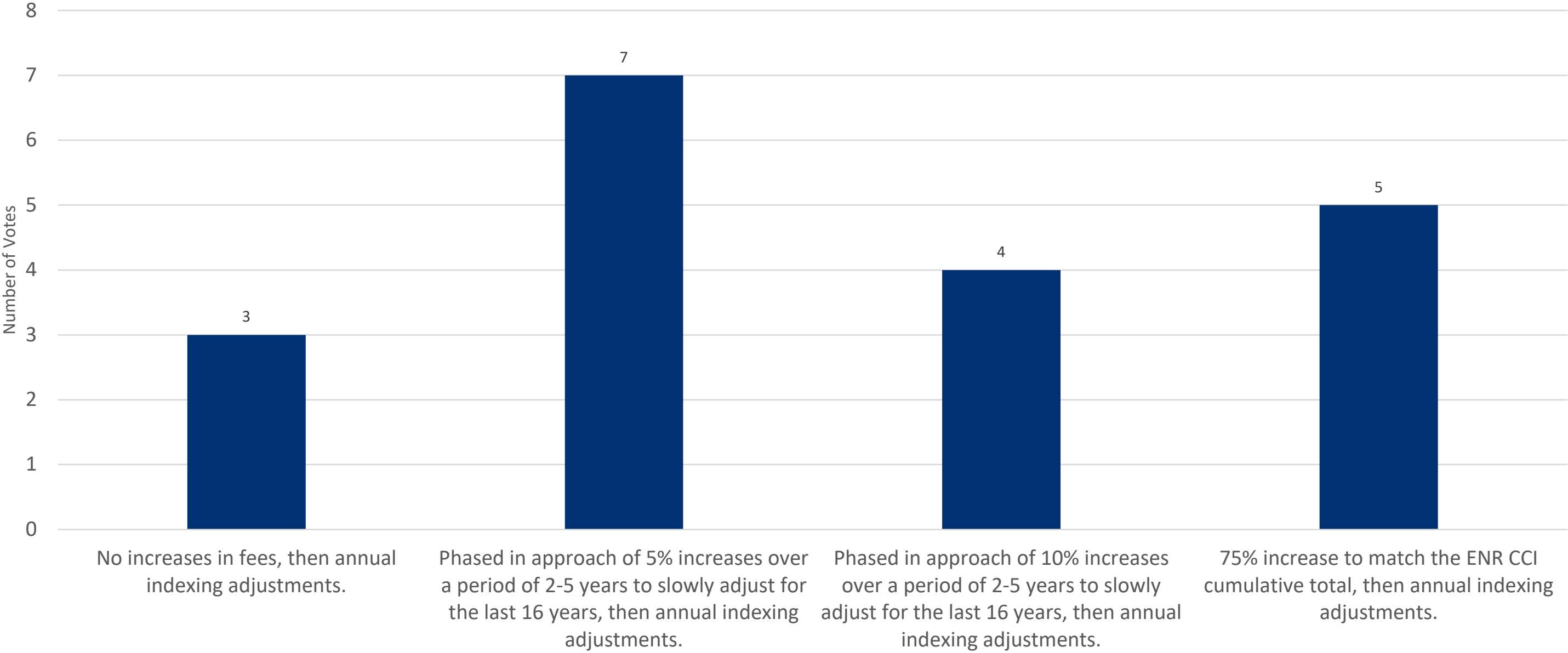


- Should NCC consider:
 - No increases in fees
 - No increases in fees, then annual indexing adjustments
 - Phased in approach of 5% increases over a period of 2-5 years, then annual indexing adjustments
 - Phased in approach of 10% increases over a period of 2-5 years, then annual indexing adjustments
 - 75% increase to match the ENR CCI cumulative total, then annual indexing adjustments

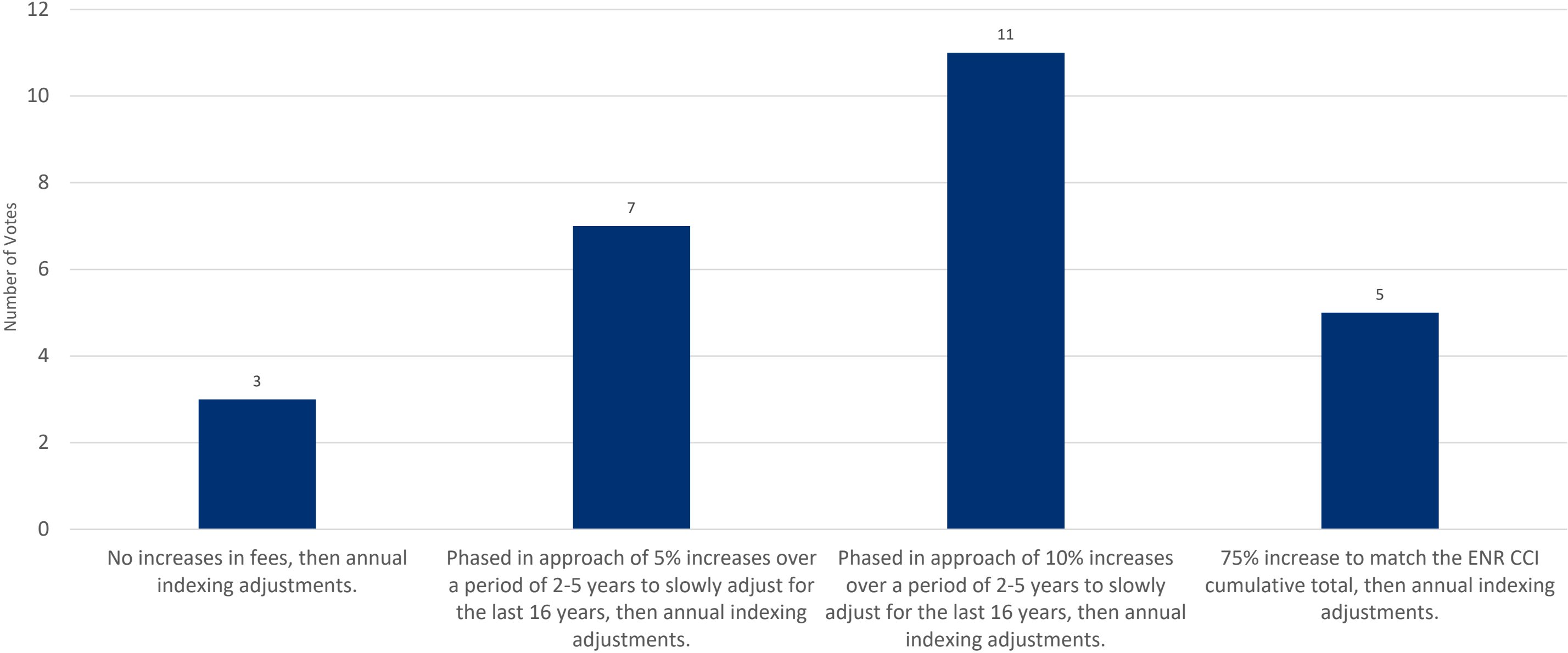
Recommendation 4 - Feedback

- Feedback from the public workshop resulted in the majority of participants in favor of increasing fees with annual indexing adjustments; however, responses on how to approach the fee increases were evenly distributed between the phased approach of 5% over 2-5 years, phased approach of 10% over 2-5 years, and a 75% increase to match the ENR CCI cumulative.

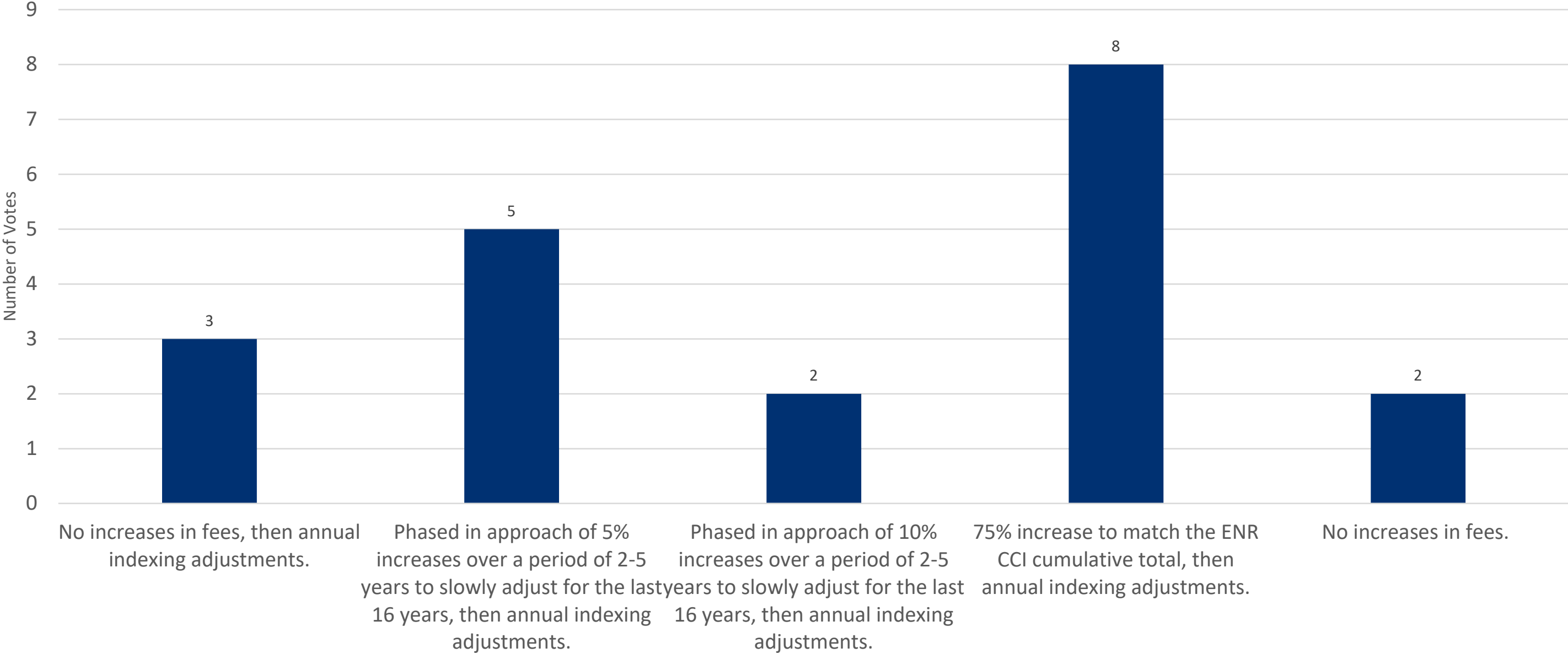
QUESTION #9: PLEASE RANK THE CHOICES FOR GRADUATED FEE INCREASES FROM 1 (MOST PREFERRED) TO 5 (LEAST PREFERRED). [#1 CHOICE]



QUESTION #9: PLEASE RANK THE CHOICES FOR GRADUATED FEE INCREASES FROM 1 (MOST PREFERRED) TO 5 (LEAST PREFERRED). [#2 CHOICE]



QUESTION #9: PLEASE RANK THE CHOICES FOR GRADUATED FEE INCREASES FROM 1 (MOST PREFERRED) TO 5 (LEAST PREFERRED). [#3 CHOICE]



Open Space Fee Creation

- In Fall 2022, NCC Council adopted a resolution to spend \$7.5 million over 3 years
 - FY 22 budget has \$1.5 million for Agriculture Land Preservation and \$1 million for Open Space Preservation
- In NCC, there is an average of 2,000 residential building permits/year and 4 million sf/year of non-residential development
- Assessing Open Space/Land Preservation Impact Fees could provide \$750,000 per year
 - 30% of each fiscal year's funding goal

Proposed Open Space Impact Fee

- **What priorities should be evaluated if NCC were to consider creating an Open Space/Land Preservation Impact Fee?**

RESIDENTIAL Per Housing Unit	Enact
Single-family detached	\$ 377
Single-family attached	\$ 350
All other housing*	\$ 255
NONRESIDENTIAL Per 1,000 Square Feet of Floor Area**	
Commercial/shopping center (less than 60,000 sf. GFA)	\$ 62
Commercial/shopping center (60,000 sf. to 200,000 sf. GFA)	\$ 48
Commercial/shopping center (greater than 200,000 sf. GFA)	\$ 41
Office/institutional (less than 10,000 sf. GFA)	\$ 52
Office/institutional (10,000 sf. to 50,000 sf. GFA)	\$ 74
Office/institutional (greater than 50,000 sf. GFA)	\$ 70
Business park	\$ 60
Light industrial	\$ 43
Warehousing	\$ 24
Manufacturing	\$ 33

Recommendation 5 - Feedback

- Comments received on the evaluation of priorities regarding an Open Space Fee did not provide a clear consensus Some workshop participants and survey respondents stated the Open Space Fee should be included in the Parks Fee or included in parks infrastructure for improvements. Others were against the concept all together.

Redevelopment

- NCC's existing code provides many incentives for redevelopment and brownfields on non-residential uses and sites.
- Including processing plans as minor subdivisions and allowing for additional gross floor area.
 - Redevelopment or brownfield development may repurpose a use that was exempt from or assessed minimal impact fees to a use that would have a much higher demand on services
- A waiver would be appropriate for redevelopment or brownfield development there would be no necessary increase in the capital costs needed to supply services
- Some redevelopment projects will increase the need for capital investments and services that are funded through impact fees.

Redevelopment (continued)

- Should NCC considering a Redevelopment Impact Fee where:
 - Assess a prorated impact fee based on the difference between the historical use and the proposed use.
 - If adopted, the new open space impact fee would be waived since this type of development supports infill and reuse of existing properties
 - Brownfields would be exempted
- **What is your opinion on the Redevelopment Impact Fee, as proposed?**

Recommendation 6 - Feedback

- Feedback received from the public workshop on the implementation of a Redevelopment Fee were also mixed with some respondents in favor and others opposed.

Final Recommendations

For Consideration by NCC Council

1. Implement a surcharge to cover the additional costs associated with development in Levels 3 and 4; NCC will conduct additional research to determine the actual cost of providing services to these areas and will modify proposed percentages accordingly.
2. Add the following new categories to the impact fee table:
 - Multi-use Residential (Apartments, Commercial Apartments, Apartment Conversions)
 - Institutional Uses (private)
 - Commercial Lodging
 - Restaurants
 - The County should consider whether multiple restaurant categories should be broken out to differentiate between fast-food restaurants and sit-down restaurants. Then analysis should be conducted to determine the appropriate fee level that should not be based on the number of cars visiting the facility since this is not a transportation/mobility impact fee, but instead the number of EMS visits and impact on capital infrastructure.

For Consideration by NCC Council

3. Establish a scale-based system based on the home price relative to the AMI.
 - >120% of AMI => 75%
 - 100 – 120% => 50%
 - 80 – 100% => 25%
 - <80% => No fee assessed
4. Consider increasing current Impact Fees in a phased approach of 10% per year for 3 years, then annually adjust the fee for ENR CCI.
5. Further explore the option of an additional impact fee category to fund Open Space as this would align with the County's goal for dedicated Open Space funding.
6. Continue to work with developers to determine if the waiver on impact fees is a deciding factor in redevelopment and/or brownfield development. NCC should also consult with the Public Works Department and Emergency Services to determine actual losses to do upzoning redevelopment cases.