



AGENDA
BOARD OF SUPERVISORS MEETING
October 24, 2023 @ 7:00 p.m.
23818 Shortly Road, Georgetown, DE

- I. Call to Order
- II. Agenda Modifications
- III. Approval of Agenda
- IV. Approval of Minutes of Last Meeting
- V. Recognition of Visitors
- VI. Correspondence
- VII. Reports
 - District Account's Report – Dan Lee (P2)
 - Equipment Program Manager's Report – Stephen Gissy (P6)
 - District Conservationist's Report – Ziggy Savage (P7)
 - Sediment & Stormwater Manager's Report – Jessica Watson (P10)
 - DNREC Conservation Program's Report – Tyler Brown (P11)
 - DACD Executive Director's Report – Jen Nelson (P13)
 - Agricultural Program Report – Debbie Absher (P14)
 - District Coordinator's Report – David Baird (P15)
- VIII. Items Requiring Board Action
 - 1) Cost Share Payments
 - a. Large Animal Mortality
 - b. Oyster Aquaculture
 - c. Special Project
 - 2) SCD Building Expansion Proposal
 - 3) Baston Branch TD Petition for Amendment
- IX. Adjournment

Pursuant to 29 Del. C. § 10004 (e) (2), the Agenda items as listed may not be considered in sequence. This Agenda is subject to change to include additional items, including Executive Sessions, which arise at the time of the meeting.

Sussex Conservation District
Cash Report
September 2023

<i>Fulton Bank - Checking</i>	
Bank Balance Per Statement	\$675,066.44
Add: Deposits in Transit	\$0.00
Less: Outstanding Checks	(\$65,340.69)
Balance in G/L - End of Month	\$609,725.75
<i>Fulton Bank - Payroll</i>	
Beginning G/L Balance	\$0.00
Add: Cash Receipts	\$194,645.25
Less: Cash Disbursements	(\$194,645.25)
Ending G/L Balance	\$0.00
<i>Citizens Bank - Checking</i>	
Beginning G/L Balance	\$1,931,176.26
Add: Cash Receipts	\$0.00
Less: Cash Disbursements	\$0.00
Ending G/L Balance	\$1,931,176.26
<i>Citizens Bank - Money Market</i>	
Beginning G/L Balance	\$2,260,199.99
Add: Cash Receipts	\$27,242.53
Less: Cash Disbursements	\$0.00
Ending G/L Balance	\$2,287,442.52
<i>Fulton Bank - Merchant</i>	
Beginning G/L Balance	\$25,330.51
Add: Cash Receipts	\$1,500.00
Less: Cash Disbursements	(\$25,068.54)
Ending G/L Balance	\$1,761.97
<i>Artisans Bank - Certificate of Deposit - 11/01/23</i>	\$250,361.23
<i>Bank of Delmarva - Certificate of Deposit - 2/28/24</i>	\$249,679.56
<i>County Bank - Certificate of Deposit - 01/28/24</i>	\$248,715.47
<i>Community Bank - Certificate of Deposit - 06/12/24</i>	\$248,959.00
<i>Del-One - Certificate of Deposit - 4/19/24</i>	\$490,443.27
<i>Hebron Savings Bank - Certificate of Deposit - 04/04/24</i>	\$249,138.13
<i>Fulton ICS MM Accounts</i>	\$901,255.42
<i>WTC Investments</i>	\$3,531,617.17
<i>Petty Cash</i>	\$170.30
<i>Total All Bank Accounts</i>	\$11,000,446.05

Sussex Conservation District
Cash Report
September 2023

2023	UNRESTRICTED FUNDS			
	Sussex Conservation District Funds		<u>\$3,498,034.18</u>	\$3,498,034.18
	RESTRICTED FUNDS			
	Stormwater Management Funds	restricted	\$4,263,191.37	
	Stormwater Cash Bonds Held	Liability	\$1,928,726.26	
	Cost Share Funding	deferred	\$712,842.11	
	3921 Funding	deferred	\$254,260.09	
	Sussex County Drainage Funding	deferred	\$63,543.39	
	Stormwater Management Funds	deferred	\$7,500.00	
	Prothonotary Items	deferred	\$7,270.00	
	Various projects - 3	deferred	<u>\$265,078.65</u>	
				\$7,502,411.87
	TOTAL AVAILABLE FUNDS ALL ACCOUNTS @ MONTH END			<u>\$11,000,446.05</u>
2022	UNRESTRICTED FUNDS			
	Sussex Conservation District Funds		<u>\$2,484,146.69</u>	\$2,484,146.69
	RESTRICTED FUNDS			
	Stormwater Management Funds	restricted	\$3,659,560.48	
	Stormwater Cash Bonds Held	Liability	\$1,928,726.26	
	Cost Share Funding	deferred	\$968,882.53	
	3921 Funding	deferred	\$111,861.57	
	Sussex County Drainage Funding	deferred	\$42,591.52	
	Stormwater Management Funds	deferred	\$7,500.00	
	Prothonotary Items	deferred	\$5,315.00	
	Various projects	deferred	<u>\$341,100.00</u>	
				\$7,065,537.36
	TOTAL AVAILABLE FUNDS ALL ACCOUNTS @ MONTH END			<u>\$9,549,684.05</u>
2021	TOTAL AVAILABLE FUNDS ALL ACCOUNTS @ MONTH END		\$	8,610,206.44
2020	TOTAL AVAILABLE FUNDS ALL ACCOUNTS @ MONTH END		\$	7,448,415.76
2019	TOTAL AVAILABLE FUNDS ALL ACCOUNTS @ MONTH END		\$	8,924,025.67
2018	TOTAL AVAILABLE FUNDS ALL ACCOUNTS @ MONTH END		\$	8,982,342.75
2017	TOTAL AVAILABLE FUNDS ALL ACCOUNTS @ MONTH END		\$	9,457,933.97

Sussex Conservation District WTC Investments September 30, 2023	
	Amount
Current Value - 09/30/2023	\$ 3,531,617.17
Value - 12/31/2022	3,330,200.73
2023 Gain (Loss)	201,416.44
2023 Return on Investments	6.05%

Lifetime (9 years) WTC Investments Net Gain (Loss) As of September 30, 2023	
	Amount
Current Value - 09/30/2023	\$ 3,531,617.17
Principal Invested	3,000,000.00
Lifetime Gain (Loss)	\$ 531,617.17
Average Annual Return (9 years)	1.97%

	Lifetime Return	Lifetime Gain (Loss)
(WTC Monthly Fees)	-8.30%	(248,884.72)
Investment Gain (Loss)	26.02%	780,501.89
Lifetime Gain (Loss)	17.72%	531,617.17

Over the past month, the equipment program has completed various projects. Work is wrapped up on the RC&D project in Frankford, and guys have started on the Greenwood 'H' Street project, replacing some failed pipes within the town and adding some perforated pipe to alleviate erosion and trash build-up within the Cart Branch tax Ditch. Weed wiping continues for various tax ditches until we have had a couple of hard frosts. Other multiple projects on tax ditches that are non-crop related have started, as well as different private work throughout Sussex and Kent County. Doug Sapp is retiring at the end of October, and we have hired his replacement, Adam Lovenguth, who comes to us from the County.

Total Estimates for 2023: 254

Total Estimates for September: 14

Recently Completed Projects:

- Town of Frankford- Drainage Improvements- WIP
- Union Cemetery- Grading
- Seward Circle- Basin Installation
- SPI Pharma- Pond Cleanouts
- City of Dover- Woodbrook Pond Cleanout
- Refuge- Mowing
- Mifflin tax ditch- Dip Out
- Koeppel Robinson Tax Ditch- Debris Removal
- L&W Tax Ditch- Debris Removal
- Young Patterson Tax Ditch- Debris Removal
- Carrol- Invasive Species Treatment
- Oakwood Rd- Valve Installation
- Eli Walls- Debris Removal
- Warren Tax Ditch- Clearing

Recently started or Projects starting soon:

- Greenwood H Street- Drainage Improvements-WIP
- St Johnstown Tax Ditch- Dipout- WIP
- Vanderwende- Private Mowing
- St Georges Tax Ditch- Pipe Installation
- Soft Beach Circle- Drainage Improvements
- Denton Manor- David Rd- Catch Basins and Pipe Installation
- DE Coastal Airpark- Mowing
- Weed Wiping- Various Tax Ditches
- Mowing- Various Tax Ditches

EQIP

- NRCS is working on program guidance for FY-24
- Funding level is \$6.5M.
- We are accepting applications for FY-24

EQIP/CIC

- These are 5-year contracts. Applications are being accepted.

EQIP/IRA (Inflation Reduction Act)

- Funds are targeted towards Climate Smart Ag. Practices. The categories are Soil Health, Nitrogen Mgt., Livestock Partnership, Grazing & Pasture, Agroforestry, Forest and Upland Wildlife habitat, Energy, and Wetlands. The funding level for FY-24 is \$10.3M.

AMA/RMA

- Unsure of this program's funding level, but I expect it to remain at past levels of approximately \$92K - \$100K.
- Accepting applications for FY-24

CSP/IRA

- Like EQIP/IRA, but it is for participants that sign up through CSP for the same targeted Climate Smart Ag. Practice categories.
- We are accepting applications for FY-24.

CSP

- NRCS is currently reviewing existing contracts for calendar year adjustments and payments.
- Contract modifications are taking place for current participants who involuntarily lost land.
- We are accepting applications for FY-24. We are also working with producers who wish to renew expiring contracts.
- Efforts are being made to enhance the program to make it more attractive to landowners and participants. The minimum contract payment has been increased from \$1,500 to \$4,000.

ACT NOW

- This means no longer waiting for all applications to be reviewed and preapproved in a ranking pool. Applications eligible through ACT NOW will be processed in the order received. Selections will be made every week beginning November 13, 2023. These eligible applications will be preapproved as funds are available. Applications for the identified ACT NOW ranking pools must be immediately assessed and ranked within ten business days of receiving the application.

- Eligibility requirements are the same as our EQIP program.
- Eligible programs include AMA (High Tunnel), EQIP (CPAs, DIAs, and CEMAS), and EQIP-IRA (Cropland, Energy, and Forestry).
- Nov. 3 – Dec. 15, sign-up period. Jan. 5, submitted to S.O. for obligation. Jan. 12 obligations completed for FY-24.
- Eligible practice table below.

AMA High Tunnel	
<u>Practice Code</u>	<u>Practice Name</u>
317	Composting Facility
325	High Tunnel System
340	Cover Crop
367	Roofs and Covers
430	Irrigation Pipeline
436	Irrigation Reservoir
441	Irrigation System, Microirrigation
449	Irrigation Water Management
484	Mulching
533	Pumping Plant
558	Roof Runoff Structure
642	Water Well

EQIP IRA Cropland	
<u>Practice Code</u>	<u>Practice Name</u>
216	Soil Health Testing
336	Soil Carbon Amendment
340	Cover Crop

EQIP IRA Forestry	
<u>Practice Code</u>	<u>Practice Name</u>
612	Tree and Shrub Establishment
490	Tree and Site Establishment

EQIP IRA ENERGY	
<u>Practice Code</u>	<u>Practice Name</u>
374	Energy Efficient Agricultural Operation
670	Energy Efficient Lighting System
672	Energy Efficient Building Envelope

WRE

- We are accepting applications for FY-24.
- Field staff are directing participants to Elena Stewart (Program Manager) and Emily Palmer (Program Coordinator) for the specific details of the program.

1. Inspections and Site Visits

- **Conservation Practice Installation and Completion Inspections:**

Reed and Korey continue working with landowners and contractors to complete project installation/inspections for prior-year contracts.

2. Surveys/Designs

- Reed and Korey are starting surveys and designs for FY-24 projects.

3. Other Business

- Planners continue reviewing prior year management practice records for payment and reporting progress.
- Reviews/management of current contracts are taking place to ensure contract compliance.
- We will have our Farm Bill/EQIP program roll-out training on October 19 at the Dover S.O. conference room.
- There are a variety of jobs being advertised for Delaware NRCS positions. District Conservationist and Soil Conservationist (Dover/ New Castle F.O.), Program Specialist, Resource Conservationist, and Outreach Coordinator (Dover S.O.).
- Reed Carter, technician for Sussex, is accepting a position as the civil engineering technician at the Dover S.O.
- Sussex F.O. will be backfilling the position.

Detailed Plan Review/Approval:

Staff continue to process plan submittals, pre-app/engineering meetings, and technical support. Staff reviewed 34 plans and approved 18 for the month. Staff also had eight pre-application meetings.

Standard Plan Review/Approval: 3 Total

- 7 Non-Residential
- 1 Agriculture
- 4 Minor Linear

As-Built Plan Review:

Staff reviewed three as-built surveys.

Inspection: - 270 Inspections

Field staff continue to be busy in the field. New projects continue to contact us for pre-construction meetings. Pre-construction meetings – 6

Maintenance Inspection – 74

Closed-out stormwater projects are inspected, and reports that provide routine/preventive maintenance information are generated. The goal is to ensure the continued function of the stormwater facility.

Buddy Griffith provides compliance inspection on single-family lot construction. He works with builders on the requirements under the Residential Standard Plan (silt fence and stone construction entrances). He and Faith work together on home construction complaints and contacting non-compliant builders.

Drainage/Construction Complaints: - 17**Other News:**

- Sept 21 – County Meeting
- Sept. 26 – DNREC Delegated Agency Meeting
- Nov. 9th – Stormwater Workshop followed by TEDI Native Tree Giveaway.

Program Updates and News

District Operations

- All District Agreements have been processed, including the 3921 Funds, Supplemental Tax Ditch Funds, Conservation Cost Share, RC&D, and Cover Crops. The Districts should have received all Purchase Orders by now; let us know if you haven't received any. Please submit invoices for 3921, supplemental TD, and Conservation Cost Share.

Tax Ditch and Drainage Programs

- Staff are working on processing environmental permit needs for tax ditch maintenance work from cost share sign-up. Ensure Karyssa Gortz receives project scopes to determine and process permit needs.
- Staff are working on getting an e-newsletter out to the tax ditch officers. Mike Case has contacted District staff for updates on the "District-Corner".

Staffing Updates

- Public Ditch Program Manager II – Interviews complete; the offer will be extended soon.

Item Requiring Sussex Conservation District Board Action:

- Acceptance of Petition for Amendment to the Batson Branch Tax Ditch & Request Deposit from Petitioner - Summary included in the packet.

Sediment & Stormwater Program

- The 2023 Certified Construction Reviewer (CCR) Recertification training has been scheduled for October 4 & 11 from 8 am – 12 noon. CCRs who are due for recertification but have not received registration information, please get in touch with the program at DNREC.Stormwater@delaware.gov.
- The Sediment and Stormwater Program – Expedited Review Pilot. Two projects have been selected to follow an expedited review tract in Sussex County and one in Kent County. A second project is being sought for the Kent County region. Of the selected projects, the review process has not begun and is waiting for the applicants to schedule project application meetings.

Staffing Updates

- Sediment and Stormwater Program Manager II – Ashley Barnett has accepted the position and will start on October 23rd. Ashley is currently a scientist with NPS; she will slowly transition into the position and will provide support for both programs until the NPS scientist position is filled.

Nonpoint Source

- The NPS Program received the remaining FY23 NPS Section 319 grant funds from EPA at the end of September. An FY24 grant partial award from the EPA is also being processed.
- **Staffing Updates:** Ashley Barnett, Environmental Scientist III, has accepted a promotional opportunity to be the Program Manager II for the Sediment and Stormwater Program within the Division. Ben Coverdale is actively working on posting the ES III position with HR.

Chesapeake Implementation Programs

- The Chesapeake Implementation Program (ChIP) has recently finished submitting the Quality Assurance Project Plans (QAPPs) for NonPoint Source and Point Source Best Management Practices carried out by partners working within Delaware’s Chesapeake Bay Watershed.
- ChIP is wrapping up final grant agreements for all the Conservation District Cover Crop Cost Share Programs for the last RFP period. All purchase orders should be cut before the end of this month if not done already.
- ChIP staff will begin contacting Delaware Chesapeake Bay partners for 2023 annual Progress reporting starting in mid-September. Since there have been some staffing changes, this will allow more time to collect and organize data while we train new staff.

Staffing Updates

- Joe Schell and George Doumit started this month as Planner IVs with the Chesapeake Implementation Program. Joe and George will assist with Data Management and GIS applications.

Spotlight

- On September 14, the Nonpoint Source Program, EPA 319 Program officers, and the Chesapeake Bay Implementation Program attended a site visit to Delaware Wild Lands to satisfy a 319 Grant program requirement. The group toured a 319 grant-funded 17-acre reforestation in the Appoquinimink watershed, a water control structure, and an agricultural field that is being converted to wildlife habitat.



- **NRCS Agreement Update-** DACD has signed a contribution agreement with NRCS for FY24. The agreement supports technical assistance to farmers and funding for outreach for soil health and NRCS programs. The total agreement is funded at \$753,250 for the next year and requires \$251,083 in matching funds or in-kind contributions from the districts.
- **2024 NACD Technical Assistance Grants-** NACD received funding requests over available funds. While NACD has funded each state’s first/second/third highest-ranked applications 100% in past years, this year, they opted to support all of the applications at 75% of the requested funding levels.
- **2024 DACD Annual Meeting-** As we plan the logistics for a DACD Annual Meeting in January 2024, we seek to confirm a slate of nominees for DACD’s Executive Board and supervisor training needs.
- **Association of Conservation Executive Directors Conference** was held October 1-4 in Franklin, TN. As always, the meeting was an excellent opportunity to network with other state association executive directors and learn how other states promote conservation and partnerships. Here are a few highlights from our roundtable discussion to spotlight innovative projects:
 - Kentucky has ten counties assembled a “Youth Board” to involve students in their conservation districts. These boards meet at their schools and have a budget to work with, and the students also volunteer to help set up at state meetings and other events.
 - Iowa worked with a contractor to assist their districts with updating their 5-year plans.
 - North Carolina features their Farm Family of the Year on a billboard in their county. They got a sponsor for this project, also featured on the billboard.
 - Michigan shared its “Legislative Tour Template.”
 - I shared Maryland’s online “Orientation Training” for conservation planners, which supplements AgLearn and OJT and can be accessed online before the new employee can access NRCS systems. See online at <https://conservationtraining.info/>
- **Delaware Envirothon-** We are working on a new sponsor brochure for corporate and agency sponsors, separate from the letter for individual sponsors and the brochure for team advisors. We aim to have a final copy available to distribute within the month.

Important Dates:

<i>DATE</i>	<i>EVENT</i>
<i>Feb 6 - 7, 2024</i>	Delmarva Soil Summit
<i>Feb 10 – 14, 2024</i>	NACD Annual Meeting in San Diego, CA

Grants

- SCD billed or will bill the following grants \$256,262.35 this quarter:

April - June 2023	Purpose	Agreement Award	Amount Invoiced
DNREC -NPS Conservation Planners	Planner Salaries	\$ 336,586.00	\$ 74,886.35
DNREC CBRAP II	Technical Assistance	\$ 493,540.00	\$ 37,500.00
NRCS - Contribution Agreement - DACD	Program Support & CC	\$ 489,250.00	\$ 40,775.00
NRCS - Contribution Agreement - 2018 Competitive	Technical Assistance	\$ 285,850.00	\$ 6,612.00
NRCS - Contribution Agreement - 2019 Competitive	Technical Assistance	\$ 285,350.00	\$ 61,427.00
NRCS - Contribution Agreement - 2020 Competitive	Technical Assistance	\$ 152,355.00	\$ -
NRCS - RCPP DE Bay & Inland Bays Cover Crops	Technical Assistance	\$ 199,520.00	\$ 2,117.00
NACD TA	Technical Assistance	\$ 131,780.00	\$ 32,945.00
		\$ 2,374,231.00	\$ 256,262.35

- Quarterly performance, financial reports, and billings have been compiled and submitted for the NRCS and NACD agreements.
- SCD received approval from NRCS for all the extensions requested on our agreements. The Agreement for the RCPP Project – Protecting the Delaware Bay and Inland Bays with Cover Crops and Coastal Migration agreement was approved.
- SCD also received an amendment to the NRCS Cooperative Agreement for Soil Health and Outreach. This amendment added another \$67,000 to promote ACEP- ALE/WRE, climate-smart practices, and the Black Duck Program. These funds will be used for a workshop, outreach, and additional airtime for the TV commercials running on the local TV stations. This \$67,000 is in addition to the \$130,000 amendment reported in September.
- SCD received the following purchase orders and agreements:
 - CBIG – Delmarva Soil Summit - \$49,500
 - NPS – Ag BMPs (cover crops) - \$100,000

Cost-Share

- The early planting deadline for cover crops was October 1, with written certification due by October 6. Planners are in the process of inspecting the cover crops for program compliance.

Soil Health

- Planning continues with the Delmarva Soil Summit scheduled for February 6-7, 2024, at the Wicomico Youth & Civic Center in Salisbury. Mark your calendars! Requests for sponsors and exhibitors will be going out soon.
- The Soil Health Committee met to begin planning our winter soil health series that will take place in December and January. Stay tuned for more information.

Miscellaneous

- Now that the NRCS – DACD Contribution Agreement is finalized, we will begin advertising for a conservation technician who is part of the agreement.

Delaware Nutrient Management Commission

Earlier this week, I appeared before the DNMC to thank them for their partnership on the DDA Cover Crop Program, which provides over \$2.9 million, 64% of total funding, for the SCD Cover Crop Program. This funding allows SCD to expand its cost-share funding for other conservation practices such as wetland creation, habitat establishment, and the Inland Bays Aquaculture Program, to name a few. The Commission was also impressed with the cover crop commercials SCD produced and our other outreach efforts to increase participation. Overall, it was a productive presentation and conversation.

Town of Greenwood/Cart Branch Tax Ditch Flooding

SCD has continued to be engaged with Town officials and the Tax Ditch Managers regarding the flooding issues experienced in Greenwood during the heavy rains experienced earlier in the year. First, SCD is implementing an RC&D project within the Town limits designed to improve drainage conditions in the Town. Second, Wes Allen has continued to meet with the Town, Tax Ditch Managers, and residents. Earlier this month, he attended a public meeting hosted by the Town on this issue, where he was able to address most of the concerns raised by the attendees. Finally, two potential projects have been identified within the Town (one upstream and one downstream) that are being evaluated for potential capacity benefits for the Tax Ditch and water quality benefits for the watershed.

Future Planning for the District

The District's future was front and center during a strategic planning session where 13 District employees came together to provide input on District priorities as we move into 2024 and beyond. Items discussed included the changing landscapes in Sussex County from agricultural to suburban areas east of 113, changing expectations from our cooperators, and how the District positions itself to meet the needs of the County in the coming years. All participants found this a worthwhile session, and final recommendations will be presented to the Board of Supervisors for final consideration.

Meeting with Sec. Garvin

The quarterly meeting between the Districts and Sec. Garvin and DNREC Leadership were held on Tuesday, Oct. 10. Key topics on the agenda include maintaining consistent funding for FY25 in Conservation Cost Share, Tax Ditch Funding, and Conservation Planner funding. The timing of this meeting is critical as state agencies are currently developing their initial budget requests to OMB during this time of year.

Preliminary State Budget Requests for FY25

DACD's budgetary priorities were discussed during our call earlier this week with DNREC's Leadership. Priority areas include Conservation Cost Share, Tax Ditch Cost Share, Cover Crop Costs Share, RC&D Projects, and the State Match for Nutrient Management Planners. We hope DNREC will include these priorities as part of their submission to OMB and hopefully into the Governor's Recommended Budget that will be presented to the General Assembly in January.

Stormwater Expedited Plan Review

SCD's first expedited plan review as part of the pilot program is underway. Our contractor, Verdantas, has completed the review and has discussed it with SCD staff. It will now be returned to the applicant to address the comments. Early indications are that Verdantas completed a thorough review and was aligned with our staff on most issues. We will continue to monitor the activity throughout the remainder of the review process.

NRCS Announces ACT NOW to Fund EQIP and AMA Applications

ACT NOW is a new approach being undertaken by NRCS to significantly reduce the time it takes to apply for and receive a contract for funding through its EQIP (Environmental Quality Incentives Program) and AMA (Agricultural Management Assistance) Programs. With over \$16.5 million in EQIP funding available this year in Delaware, it is also hoped that this will be an attractive incentive to prospective applicants. The application period will run from November 3 to December 15, 2023, with contracts finalized by January. It should be noted that the ACT NOW funding is limited to certain practices within the programs.

Crabs and Conservation

On October 12, SCD held its annual crabs and conservation event to bring together many of our cooperators, tax ditch managers, legislators, and partner agency staff to show appreciation for their support of SCD activities over the year. While the good weather kept many farmers away, we had over 75 in attendance. Thanks to everyone who helped with the planning and preparation and those in attendance.

SCD Recognized as a Public Service Entity for Federal Student Loans

SCD recently received notice that it has been recognized as a Public Service Entity, allowing its employees to qualify for forgiveness for a portion of federal student loan debt. This is an existing program put in place by Congress and the Department of Education. However, SCD is now recognized as a public sector qualifying employer. A special thanks goes out to Holly Givens for her efforts on this matter.

Upcoming Events:

- The next board meeting will be held Tuesday, November 28, at 6 p.m., at 23818 Shortly Road, Georgetown, DE.
- Cooperator's Dinner will be held on Tuesday, December 5, at 6:30 p.m. at the Bridgeville Fire House.
- NACD Annual Meeting will be held Feb. 10 through Feb. 14, 2024, in San Diego, CA. Early Registration ends December 22, 2023. Please let Holly Givens or me know if you wish to attend.

BACKGROUND:

Cost-Share payment for Large Animal Mortality to John Kohout.

August

Total Cost	\$5,000	Cows	12
SCD Cost	\$5,000	Horses	3
SCD Admin	\$1,080		

RECOMMENDATION:

Approve cost-share for payment for Animal Mortality.

MOTION:

Moved by _____ and seconded by _____, to approve cost-share payment to John Kohout.
Motion _____.

BACKGROUND:

Received the following requests for Oyster Aquaculture Cost-Share Assistance:

Name	No of Oysters	Amount
Mark Casey - Delaware Cultured Seafood, Inc.	150,000	\$ 7,500
Jordan Nally - Nancy James Oyster Queen, LLC	150,000	\$ 7,500
Subtotal	300,000	\$ 15,000

RECOMMENDATION:

Approve Oyster Aquaculture Cost-Share applications as presented.

MOTION:

Moved by _____ and seconded by _____ to approve the oyster aquaculture cost share applications. Motion _____.

BACKGROUND:

This wildlife pond habitat improvement was identified through coast migration planning. The scope of the work includes the following:

- Fall herbicide application to control phragmites in and around the pond.
- Selective mechanical brush management of other vegetation growing around the pond.
- Leaving beneficial trees and large shrubs that support wildlife.

RECOMMENDATION:

Approve Cost-share payment to Ann Hobbs for a wildlife pond habitat improvement on Dirickson Creek Road in Frankford, DE.

Total cost = \$715.00

Cost share = \$536.25

Landowner portion = \$178.75

MOTION:

Moved by _____ and seconded by _____ to approve a cost share payment to Ann Hobbs for a wildlife pond habitat improvement for \$536.25. Motion _____.

BACKGROUND:

As part of the ongoing discussion about future office space for the SCD Ag Program, a proposal was requested from Beacon Engineering for services related to site plan design, related activities, and associated approvals at the Shortly Rd. Site. The proposal is included for your review. This activity and expense have been anticipated, and \$50,000 was included in the current budget for this activity. The current proposal from Beacon Engineering totals \$68,900.00. While this amount exceeds the current budget, we plan to include additional funding for the SCD Facility Expansion Proposal in the District's 2024 budget.

RECOMMENDATION:

Accept the proposal as presented by Beacon Engineering for site plan design, related activities, and associated approvals for additional office space to the District Office on Shortly Rd.

MOTION:

Moved by _____, seconded by _____, to accept Proposal 2023-27 from Beacon Engineering dated October 10, 2023, as presented. Motion _____.



Transmitted via Email: david.baird@sussexconservation.org

October 10, 2023

Sussex Conservation District
23818 Shortly Road
Georgetown, Delaware 19947

Attn: Mr. David W. Baird
District Coordinator

Re: Professional Engineering Services
Cashar W. Evans Conservation Center Expansion
Tax Map 135-23.00-5.00
Georgetown Hundred
Sussex County, Delaware
Proposal No. 2023-27

Dear David:

Pursuant to your request, Beacon Engineering, LLC (BEACON) is pleased to provide a proposal for site engineering services for developing site, grading, and construction plans for roads, parking, water, sewer, stormwater management, and a highway entrance for a new, 5,000 SF building which would further expand the Cashar W. Evans Conservation Center in Sussex County. This proposal reflects development of the property known as Tax Map 135-23.00-5.00, consisting of approximately 27.34 acres which is located within the unincorporated area of Sussex County. The anticipated development area and the subject of this proposal is assumed to occupy approximately 1.6 acres. The property is zoned AR-1 (Agriculture Residential). The property is currently developed to support the Sussex Conservation District stormwater and heavy equipment division. It is anticipated that the proposed building would house the agricultural division and other related support uses. The site is bordered by undeveloped woodland and State of Delaware facilities to the north and west zoned AR-1, agricultural and undeveloped woodland zoned AR-1 to the south, and Shortly Road to the east.

The purpose of this proposal would be to prepare the following site development plans to support your intention to permit and construct the proposed facility expansion. The construction drawings and details will be grouped into the following general work functions:

1. Site Plans
2. Grading Plans consisting of detailed grading associated with roads and parking areas
3. Road Plans and Profiles for the service road(s)
4. Highway Entrance Plans consisting of maintaining the 3 existing full movement entrances

5. Sediment & Stormwater Management Plans, including plans and profiles for expansion of the recently constructed stormwater collection system
6. Fire Marshal Site Plan

Assumptions

1. Topographic, boundary, and As-Built surveys that were prepared for the previous facility expansion will be provided in AutoCAD format for Beacon's use to develop the aforementioned plans.
2. The portion of the property is located in upland areas. Though this area is mapped as being in the 100-year flood plain, site fills that were placed during the previous facility expansion are believed to have raised the ground elevation above the 100-year flood plain. A LOMA/LOMR will be processed by others.
3. Stormwater is anticipated to be managed through an existing extended detention stormwater management pond which was constructed during the previous facility expansion with an outfall to Alms House Ditch. Though the prior stormwater management facility design calculations included significant impervious area to support this expansion, the anticipated limit of disturbance exceeds the 1.0 acre threshold criteria which makes this project ineligible for seeking a non-residential standard plan approval. Therefore, this proposal is prepared assuming that a detailed 3-Step Sediment & Stormwater plan must be submitted to DNREC to seek approval. Beacon intends to review this matter with DNREC at the project application meeting. In the event that DNREC agrees that a non-residential standard plan is appropriate, task 5 will be revisited to offer a reduction in scope and fee.
4. The proposed development is not located within an excellent recharge or wellhead protection area.
5. Plans will be prepared on D-size sheets (24" x 36").
6. Sewer service will be provided via the existing septic system.
7. Water service will be provided via the existing on site well.
8. DelDOT improvements will be limited to repaving of the central entrance, if needed, for site circulation. Two design deviations approved by DelDOT during the due diligence phase eliminated the requirement for right turn lanes.
9. DelDOT concurs with the entrance arrangement and geometry detailed on Concept Plan B, dated August 22, 2022.

Scope of Services

Task 1: Concept Site Plan Revisions: BEACON would consider revisions of the aforementioned Concept Plan B to improve site circulation required for vehicles pulling trailers and possible relocation of the proposed building that was discussed at the September 14th coordination meeting. This work would result in preparation of 1 updated concept site plan to verify site access and site circulation, building location and setbacks for review and comment. During this phase of work, we will complete a preliminary evaluation of stormwater management requirements. The Stormwater Assessment Study and Report, which is the first step of the 3-Step Stormwater Management review permit process, will be completed in this task. The concept site plan we develop would be used to prepare construction documents.

Attend 1 Client review meeting at your office. Attend 1 review meeting with the DNREC to discuss the Stormwater Assessment Study and Report to seek confirmation of the required pathway to approval. Because more than 1 year has passed since the pre-submittal meeting was conducted with DelDOT, this task also includes attendance at 1 pre-submittal meeting with DelDOT to affirm the previously proposed entrance permitting requirements remain valid.

Task 2: Site and Grading Plans: Prepare 1 site and grading plan at a scale of 1" = 30' for the proposed improvements. These plans will include detailed grading with contours and spot elevations; the surface planimetrics of all proposed improvements such as roads, parking, amenities, location of water and sewer service connections, and landscaping areas; building restriction lines and any easements; and construction base lines and dimensions to be used to assist the Surveyor with construction stakeout. Site related details will also be provided. These plans will form the basis for sediment and stormwater management, road, DelDOT site/record and construction/entrance, Fire Marshal, and other plans that will be prepared for this project.

Task 3: Road Plans and Profiles: Prepare road construction plans and profiles for internal roads.

Task 4: DelDOT Site/Record and Construction/Entrance Plans: Prepare a site/record plan and a construction/entrance plan for submission to DelDOT Planning Division to seek a Letter of No Objection. Entrance plans, entrance grading plans, signage and striping plans, and 18 cross sections along the property frontage on Shortly Road will be provided. It is assumed that the 3 existing entrance locations and geometries detailed on Concept Plan B remain in harmony with prior consent provided by DelDOT Planning. It is expected that the site ADT would be less than 500 to reduce the potential for a traffic study. This task also includes reconstruction of the central entrance, if required.

Task 5: Sediment & Stormwater Management Plans: Prepare detailed stormwater management design drawings, including both quantity and quality treatment in the existing extended detention wet pond and associated details and profiles. Participate in the DNREC District 3-Step Plan Review process: Step 1 – Stormwater Assessment Study and Report will be completed in Task 1. Step 2 – Preliminary Stormwater Management Plan, and Step 3 – Final Stormwater Management Plan will be completed in this task. Based on the plans that were approved for the most recent facility expansion, we anticipate combining Step 2 and Step 3 in 1 submission.

Prepare design drawings and details for the onsite storm drainage system via an extended detention wet stormwater management pond. Plans and profiles of the pipe systems and conveyance swales, where applicable, will also be provided. It is our understanding that an open section parking area with perimeter swales and cross road culverts is the desired method of collecting stormwater runoff.

Prepare erosion & sediment control plans using the site and grading plans. Also included is the development of DNREC Standard and project specific notes and details.

If DNREC agrees to processing this application as a non-residential standard plan, this task scope of work and fee will be revised to support that reduced level of effort.

Task 6: Fire Marshal Site Plan: Prepare Fire Marshal site plan and incorporate all Fire Marshal required notes. Plan shall also note the locations of the nearest fire hydrants, if applicable, building Fire Department connections, and fire lanes.

Task 7: Permits and Approvals: BEACON proposes to support the Owner with the following agencies to seek construction permits and authorizations to complete the proposed development. Note that BEACON shall submit on behalf of the Owner with 1 original plus the number of copies required by each agency to complete the plan review and approval process. Owner shall be responsible for payment of all review fees. BEACON shall process up to 1 round of agency comments to support the Owner with review and obtaining final approvals.

- a. Sussex County Planning & Zoning – Submission of a preliminary and final site plan to seek an administrative site plan approval.
- b. DNREC Sediment & Stormwater Program – Sediment & Stormwater Plan Approval. Also included is preparation of the DNREC Notice of Intent (NOI) form to obtain a construction NPDES Permit.
- c. DelDOT – LONOR Site/Record Plan and Construction/Entrance Plan Approval
- d. Delaware State Fire Marshal – Fire Marshal Site Plan Approval

Task 8: Out-of-Scope/Additional Services: Additional and out-of-scope services/tasks may be requested by you from time to time as circumstances dictate. Such services will be provided at our Hourly rates as indicated in the attached General Terms & Conditions. Examples of out-of-scope services include, but are not limited to, plan revisions not budgeted for, meetings, teleconferences, miscellaneous liaison, emails, etc. other than as identified/budgeted for in the proposal. These costs shall not count against the scope of services estimated or lump sum fees. Please note, “after-hours” services will be billed at the after-hours rate. Hourly rates are evaluated annually in January and may be subject to change.

Exclusions

All services not specifically described within this proposal were not anticipated at the time of its writing and are therefore not included within the indicated Scope or Fee. The following is a list of

related services that BEACON would be pleased to subcontract, should the need arise. Note that BEACON will not initiate any additional services without your written authorization.

1. Topographic and Boundary surveys, Easement surveys, Record Plats, As-Built surveys, or property descriptions
2. Application, review, or advertising fees
3. Geotechnical services
4. Traffic studies
5. Floodplain study, processing LOMA, LOMR, elevation certificates or the like
6. Wetland and stream jurisdictional determination and permitting by the U.S. Army Corps of Engineers and/or DNREC (assumed to be not required)
7. Structural engineering
8. Architectural design
9. Color renderings, preparation of special plans or exhibits unless otherwise specified herein
10. Providing expert witness testimony or attendance at Public Hearings
11. Development of landscape, hardscape, lot matrix, and/or amenity plans (BEACON assumes this will be contracted separately after the site plan has been approved.)
12. Utility locator services
13. Cost estimating
14. Bidding support
15. Construction Phase services
16. Stormwater Management certifications
17. Drinking water certifications

Fees & Payments

BEACON proposes to complete the described Scope of Services for the following lump sum or estimated fee:

<u>Scope of Service Task</u>	<u>Fee Type</u>	<u>Fee</u>
1. Concept Site Plan Revisions	Estimated	\$7,500
2. Site & Grading Plans	Lump Sum	\$12,500
3. Road Plan & Profile	Lump Sum	\$5,000
4. DelDOT Site/Record & Construction/Entrance Plans	Lump Sum	\$18,750
5. Sediment & Stormwater Management Plans	Lump Sum	\$13,250
6. Fire Marshal Site Plan	Lump Sum	\$2,400
7. Permits and Approvals	Estimated	\$9,500
8. Out-of-Scope/Additional Services	T&M	Open
Total Lump Sum & Estimated Fee*		\$68,900

* - Total Fee excludes As-Builts & Certifications and Reimbursable Expenses.

**Total Fee excludes reimbursable expenses (e.g. mileage, large and small format prints/reproduction, postage, shipping, etc.) and reimbursable disbursements (e.g. vendor's, subconsultant's, agency fees, etc.) which are direct project-specific costs incurred by BEACON on

Proposal No. 2023-27: Mr. David Baird
Cashar W. Evans Conservation Center Expansion
October 10, 2023
Page 6 of 7

Client's behalf. As indicated in our General Terms & Conditions, reimbursable expenses would be billed at cost, and reimbursable disbursements would be billed at cost plus 15%.

For budgetary purposes, we estimate reimbursable expenses to be in the range of \$3,500. (Please note, the estimated fee can vary depending on the magnitude of agency comments and the number of required drawings in the construction plan set.)

Basis for Payment

Invoices shall be rendered on a periodic basis, not less than monthly, for work completed to date. Payment shall be due to BEACON upon receipt. Should payment not be received within 20 days of the invoice date, all work could be suspended. No written or verbal work product will be provided if your account is not kept current. Client shall be responsible for paying BEACON in full for all services provided regardless of whether the project is financed, approved, or constructed.

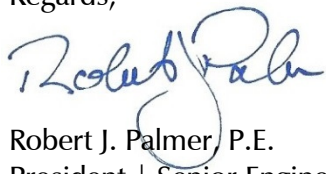
Proprietary Notice and Acceptance

This proposal is the property of and is proprietary to Beacon Engineering, LLC and shall not be reproduced (used except for evaluation purposes), or disclosed without written permission from BEACON.

Following your review of this proposal and the attached General Terms & Conditions, please forward the attached project Acceptance sheet which would constitute our notice to proceed.

We thank you for the opportunity and look forward to continuing our service for you!

Regards,



Robert J. Palmer P.E.
President | Senior Engineer

RJP/lmh

Enclosures – General Terms & Conditions

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ACCEPTANCE OF PROPOSAL NO. 2023-27:

The proposed description of professional services and terms is satisfactory and accepted. Authorization to proceed with the work is granted. Payment terms are understood and accepted. Invoices are due on receipt. Invoices will be emailed from ludson@beaconengineeringllc.com.

PLEASE PRINT CLEARLY

Company Name: _____

Billing Contact Name: _____

Street Address: _____

City/State/Zip: _____

Email Address: _____

Phone: _____

Authorization Name: _____

Title: _____

Signature: _____

Date: _____

If different from above, please provide actual LOCATION of project:

Street Address: _____

City/State/Zip: _____

If different from above, please provide PROJECT OWNER to be listed on all agency applications:

Property Owner: _____

Street Address: _____

City/State/Zip: _____

Phone/Email: _____

These General Terms & Conditions are an integral part of the proposal referenced above.

- 1. Remuneration: Beacon Engineering, LLC (BEACON)** shall be paid in accordance with the following policies and provisions.

Hourly Billing Rates: Except for lump sum or fixed fee agreements, the following standard hourly rates shall apply to various labor classes which may be used to complete the work scope during the course of work. Time will be billed at .25 hour increments.

Senior Engineer	\$150
Senior Engineer – Emergency Services; Public Hearings; Expert Testimony; After-Hours Services	\$175
Engineer	\$125
Senior Designer	\$95
Designer	\$80
GIS Specialist	\$95
CAD Operator	\$70
RPR Services	\$65
Administrative Services	\$50
Mileage (per mile)	\$0.655
Reimbursable Expenses	Cost
Reimbursable Disbursements	Cost + 15%

Hourly Billing Rates Increases/Changes: For projects not completed by December 31st, CLIENT agrees that hourly billing rates may increase or otherwise change in accordance with cost-of-business changes and/or other factors for that portion of work not completed. Hourly rates are evaluated annually in January and may be subject to change with or without notice.

Reimbursable Expenses: Reimbursable expenses are defined as general expenses incurred on behalf of CLIENT during the period of services and are not included in the scope of work lump sum and/or estimated fees. Reimbursable expenses are fees that include, but are not limited to, large and small format prints/reproduction, postage, shipping, etc.

Reimbursable Disbursements: Reimbursable disbursements are defined as expenses incurred on behalf of CLIENT during the period of services and are not included in the scope of work lump sum and/or estimated fees. Reimbursable disbursements are fees that include, but are not limited to, vendor's, subconsultant's, agency fees, travel expenses, etc. at the rate listed above.

Government Agency Fees: The CLIENT is solely responsible for the payment of fees imposed by agencies, including but not limited to, application fees, review fees, permit fees, recording fees, impact

fees, etc. CLIENT agrees to reimburse BEACON for fees of this kind if paid by BEACON on the CLIENT's behalf at cost plus 15%.

- 2. Acceptance Period:** Beacon Engineering, LLC (hereafter referred to as BEACON) hereby agrees that this proposal shall remain effective for a period of 30 days unless otherwise noted in the proposal.
- 3. Payment:** Invoices shall be rendered on a periodic (\pm 45-day) basis for work completed to date, and payment shall be due to BEACON upon receipt of invoice. Should payment not be received within 20 days of the invoice date, all work may be suspended, and a retainer could be required for work to progress, representing any or all of unconsumed fee, in order for work to resume. Work will not resume until the account is paid in full, including all assessed finance charges. BEACON may continue to work beyond the time during which it may have suspended work at BEACON's sole option. Such continuation of work shall not be considered a waiver of BEACON's rights hereunder. Also, BEACON may elect to withhold the final submittal of technical work product, in whole or part, and/or withhold final plans and approvals, in whole or part, if CLIENT account is in arrears for any reason. BEACON's decision to release said work product in such a circumstance shall not be considered a waiver of BEACON's rights hereunder.

Failure of CLIENT to pay invoices when due shall be cause for immediate suspension of project and ultimate termination of services at BEACON's sole discretion.

CLIENT shall be responsible for paying BEACON in full for all services provided regardless of whether the project is financed, approved, or constructed.

CLIENT shall notify BEACON of any disputed invoice item(s) within 5 working days of receipt of said disputed invoice. All other undisputed items on the invoice shall otherwise be paid in accordance with this Agreement. BEACON and CLIENT shall attempt to expeditiously resolve the disputed item(s) and CLIENT will continue to pay all other undisputed charges. During this resolution period, BEACON shall continue to perform services under this Agreement. However, if any disputed items or disputed invoices are not resolved and payment received in full within 20 days of the invoice date, all work will be stopped until the account is paid in full, including any assessed finance charges. If work is stopped, BEACON will retain all data, plans and drawings, without recourse, and BEACON reserves

the right to adjust the scope of work and overall project schedule accordingly.

Interest will accrue on delinquent and/or unpaid balances at the rate of 1.5% per month, a maximum rate of 18% per annum. Invoices remaining unpaid for more than 45 days shall be subject to referral to an attorney for appropriate action. **CLIENT** acknowledges that they shall be responsible for all costs, including attorneys' fees, interest expenses, administrative and other documented costs incurred as a result of the collection of any overdue balances payable to **BEACON**.

No written or verbal work product will be provided if CLIENT's account is not kept current.

4. **Right-of-Entry:** **CLIENT** shall provide **BEACON** and any subconsultant the right to enter from time to time, property owned by **CLIENT** and/or others in order for **BEACON** to fulfill the scope of work indicated herein.
5. **Existing Conditions:** The proposal is based on agency regulations, policies and requirements that are in effect at the time the proposal was prepared. Changes in regulations, policies, and requirements that occur after the proposal date may require re-negotiation of the scope and/or fee.

BEACON has not performed any investigations related to site, environmental, or geotechnical existing conditions. The **CLIENT** provided the required investigation reports and **BEACON** reasonably relied upon the provided information and utilized the information in the preparation of final design. **BEACON** does not guarantee the accuracy of the information provided or performed by others.
6. **Standard of Care:** **BEACON** shall use that degree of care and skill ordinarily exercised under similar conditions by reputable members of the practicing profession, at the same time and in the same or similar location. No other warranty, expressed or implied, is made or intended by the proposal for consulting services or by **BEACON** furnishing oral or written reports.
7. **Work Product of Others:** **BEACON** shall not be responsible for inaccuracies or errors in work product of others supplied by the **CLIENT** and/or other sources in conjunction with the project, including data obtained or available from public or governmental records or sources in the public domain. Work product of others includes, but is not limited to, architectural drawings, boundary and topographic surveys, computations, reports,

estimates of cost and professional opinions.

BEACON shall further not be responsible for obtaining permission of others to use their work product in completion of the project. The **CLIENT** shall be responsible for obtaining permission to use work product of others, and **BEACON** shall presume the **CLIENT** has permission to use that work product if he provides work product of others to **BEACON**.

BEACON shall not be responsible for inefficiencies and/or delays related to or caused by the inaccuracy or errors of work product of others, and/or as provided by Owner. Further, **Beacon** shall not be responsible for unanticipated costs or delays arising from the inaccessibility of electronic files of work product of others (e.g., incompatible versions of software).

8. **Construction Phase Services:** If **CLIENT** requests **BEACON** to manage or observe work performed by other entities or to provide any other construction phase services, **CLIENT** acknowledges that **BEACON** shall not have control of or be responsible for the construction of the project, means, methods, techniques, sequences, procedures, costs, acts or omissions of **CLIENT's** Contractors, subcontractors or suppliers, nor shall **BEACON** be responsible for site safety.
9. **Opinions of Cost:** **BEACON's** opinions of probable construction costs provided in the scope of work (where applicable) shall be made on the basis of **BEACON's** best judgment as an experienced and qualified professional that is familiar with the construction industry, and is supplied solely for the general guidance of the **CLIENT**. **BEACON** provides no guarantees that proposals, cost estimates, bids or actual total project or construction costs will not vary from Contractor bids or actual costs to **CLIENT**. Should the **CLIENT** desire a greater assurance regarding opinions of probable cost, **CLIENT** reserves the right to employ an independent cost estimator.
10. **Permits/Approvals/Taxes:** **BEACON** shall assist **CLIENT** in applying for and obtaining permits and approvals normally required by law in accordance with this proposed scope of work and as further specified in the proposal. This assistance shall not extend to the preparation of research studies, special documentation or special tests required by a given permit application or approval unless specifically included in the proposal. Assistance provided shall not guarantee approval or issuance of a permit.

This proposal does not include sales taxes or other taxes that may be assessed on services rendered.

11. Record Drawings: Upon completion of the work and if required and included in the proposal, **BEACON** shall compile and deliver a set of record documents to the **CLIENT**, conforming to the construction records of the Contractor. This set of documents shall consist of the corrected plans showing the As-Built construction based upon the records as provided to **BEACON**. While the information submitted by the Contractor and incorporated by **BEACON** into the record may be assumed to be reliable, **BEACON** shall not be responsible for the accuracy or completeness of this information or for errors or omissions, which may appear in the record documents.

12. Ownership of Documents: All data, documents, plans and specifications generated from work performed under this Agreement are instruments of service and shall remain the sole property of **BEACON**, regardless of whether the project for which they are created is executed. **BEACON** grants to **CLIENT** the right to use such plans and specifications only for purposes specifically described in this proposal, which rights shall subsist as long as **CLIENT** discharges all obligations undertaken to **CLIENT** pursuant to this Agreement. In the event **CLIENT** fails to discharge all of its obligations to **BEACON** in a timely manner, the right of use may, at **BEACON**'s option, be revoked at any time without incurring any liability whatsoever for direct and/or consequential damages to **CLIENT**, anyone in privity with **BEACON** and/or anyone claiming to be a third-party beneficiary of this Agreement. The **CLIENT** shall be permitted to retain copies, including reproducible copies, of plans and specifications for information and reference in connection with the **CLIENT**'s use and occupancy. The plans and specifications shall not be used by the **CLIENT** on other projects, for additions to this project, or for completion of this project by others except by an agreement in writing which provides appropriate compensation to **BEACON**.

CLIENT, to the fullest extent permitted by law, shall release, indemnify, defend, and hold harmless **BEACON**, its officers, directors, agents, and employees from all losses, including attorney's fees, to the extent caused by or arising out of any reuse on any other project or property by **CLIENT** without **BEACON**'s written authorization and assistance. **BEACON** makes no warranties, whether expressed or implied, as to the suitability of the plans and specifications for reuse on any other project or property. Any verification of such use by the **CLIENT**

will entitle **BEACON** to additional compensation at the then current rate.

13. Reuse of Documents: Copies of documents that may be relied upon by **CLIENT** are limited to printed hard copies that are signed and sealed by **BEACON**. Files in electronic media format or text, data, graphic or other types that are furnished by **BEACON** to **CLIENT** are only for use by **CLIENT** and may not be further distributed without prior written consent by **BEACON**. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, **CLIENT** assumes all responsibility of use and/or distribution of said electronic files. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

If there is ever a discrepancy between the electronic files and the hard copies, the hard copies govern.

When transferring documents in electronic format, **BEACON** makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, computer hardware, or of a protocol differing from those in use by **BEACON** during the period of this Agreement.

Any use or reuse of original or altered files by the **CLIENT** or others without written verification by **BEACON**, or CAD adaptation for the specific purpose intended will be at the **CLIENT**'s risk and full legal responsibility. Furthermore, the **CLIENT** shall, to the fullest extent permitted by law, indemnify and hold **BEACON** harmless from any and all claims, suits, liability, demands, or costs arising out of or resulting therefrom. Any verification of such adaptation by the **CLIENT** will entitle **BEACON** to additional compensation at the then current rate.

14. Claims: In the event the **CLIENT** makes a claim or brings an action against **BEACON** for any act arising out of the performance of the service hereunder, and the **CLIENT** fails to obtain a verdict or judgment against **BEACON**, **CLIENT** shall pay all attorney fees, legal and other costs incurred by **BEACON** in defense of such claim or action.

The laws of Delaware shall govern this Agreement and any State or Federal court in Delaware shall have jurisdiction of any suit, action, or proceeding related to this Agreement.

15. Suspension/Termination of Project: If the Project is suspended or **BEACON**'s services are suspended or put on hold for any reason, for more than 30

calendar days, **BEACON** may terminate this Agreement by giving not less than 7 days advance written notice. If appropriate, **BEACON** may choose to revise this Agreement for acceptance by **CLIENT**. If such new Agreement is accepted and fully executed by both parties, this Agreement become null and void and new Agreement becomes in full force and effect.

This Agreement may be terminated by either party upon not less than 30 days advance written notice of the breach of duties that is cause for termination, should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination. Either party may terminate this Agreement if background information, conditions, or hazards are encountered that differ materially from expected background information, conditions and hazards and make **BEACON's** performance impracticable.

In the event of early termination of this Agreement by **CLIENT**, **CLIENT** shall pay **BEACON** for all services (including Additional/Out-of-Scope Services) rendered performed, or procured through such phase, including reimbursable expenses, at the rates stated in the Agreement, plus all termination expenses. Termination expenses mean additional expenses directly attributable to termination/early project closeout, plus an administrative cost of 10% of the total contract value.

- 16. Project Delays and Changes:** **BEACON** shall not be liable for delays in or failure to perform its services caused directly or indirectly by circumstances beyond **BEACON's** reasonable control, including but not limited to, acts of God, fire, flood, war, sabotage, accident, government action, including regulatory requirements, changed conditions or delays resulting from actions or inactions of **CLIENT** or third parties, site inaccessibility, or inability of others to obtain material, labor, equipment, or transportation.

CLIENT recognizes that delays relating to the processing of permit applications, the approval of permits and the review by regulatory agencies are beyond the control of **BEACON**. **BEACON** shall be given an appropriate time extension and shall be compensated for all lost profits, additional costs of labor, equipment, and other direct and indirect costs that **BEACON** incurs during any delay or interruption of services caused by circumstances beyond **BEACON's** reasonable control.

CLIENT or **BEACON** may have occasion to request changes in the services within the general scope of the Agreement, including without limitation: changes required by new or revised laws, rules, regulations, or

code requirements; new or amended orders of any public authority; the happening of force majeure events; and/or **BEACON's** encounter with conditions that are materially different than those described or represented in the information provided by **CLIENT** or stated in Proposal. In the event that scope of services revisions are required and/or recommended, **BEACON** will inform the **CLIENT** and the parties will then negotiate in good faith for a change in scope and compensation.

If after final acceptance of any plans by **CLIENT** and/or by the appropriate public agencies, any change is required or requested, the method of compensation to accomplish said change shall be agreed to in writing prior to undertaking the change or **BEACON** shall be compensated for time and materials at its then prevailing rates.

- 17. Indemnification and Limitation of Liability:** **CLIENT** and **BEACON** have discussed the risk, reward and benefits of the project and **BEACON's** total fee for services. The risks have been allocated such that the **CLIENT** agrees that, to the fullest extent permitted by law, **BEACON's** and its subconsultant's total liability to the **CLIENT** for any and all injuries, claims, losses, expenses, damages or claims expenses arising out of this Agreement from any cause or causes, shall not exceed the total fee. Such causes include, but are not limited to, design professional's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.
- 18. Insurance:** **BEACON** maintains professional liability, general liability, and worker's compensation insurance. **BEACON** will furnish a written certification of insurance to **CLIENT** upon request.
- 19. Re-Assignment/Transfer of Any Portion of This Contract:** **CLIENT** is not permitted to "assign" or "transfer" any part of this contract as it relates to any part of **BEACON's** involvement with this project to any other person or entity without prior written consent and approval by **BEACON**.

BACKGROUND:

The DNREC Drainage Program received a Petition for Amendment to the Batson Branch Tax Ditch on September 13, 2023. The Petition is dated September 11, 2023, and was submitted by Ms. Lisa F. Hahn, Parcel #533-6.00-82.00. The Petition is for the investigation into eliminating a portion of Prong 10 of the Batson Branch Tax Ditch due to a Resource Conservation and Development (RC&D) Project completed in this area, which the requestor feels makes a portion of Prong 10 obsolete. The Petitioner attempted to eliminate this portion of the Tax Ditch via a Court Order Change (COC), but all affected landowners were not agreeable to signing the document. As a result, a Petition for Amendment is being pursued.

RECOMMENDATION:

Per § 4121 of the Tax Ditch Law, the DNREC Drainage Program recommends that the Board of Supervisors accept the Petition submitted (copy included) as it has been executed properly in the prescribed form.

In addition, in accordance with § 4120 of the Tax Ditch Law, the DNREC Drainage Program recommends the Board of Supervisors to request a deposit from the Petitioner for \$2,617.00 to cover estimated expenses to process the Petition (see attachment). It is recommended that the Petitioner be notified in writing by letter sent via Certified Mail or Certificate of Mailing with a deadline of November 30, 2023, for receipt of the deposit.

Should the deposit not be received by November 30, 2023, it is recommended that the Sussex Conservation District (SCD) return the Petition to the Petitioner and notify the DNREC Drainage Program (Melissa Hubert) to inform the Managers of the Batson Branch Tax Ditch that the Petition is closed/void. The officers may consider enforcement action for a rights-of-way (ROW) obstruction on the Petitioner's parcel.

MOTION:

Moved by _____, seconded by _____, that the Petition for Amendment to the Batson Branch Tax Ditch, dated 9/11/2023, be accepted in accordance with § 4121 of the Tax Ditch Law. Motion _____.

Moved by _____, seconded by _____, a letter be written and sent via Certified Mail/Certificate of Mailing (*choose one*) requesting a deposit for \$2,617.00 due to the Sussex Conservation District by November 30, 2023 or the Petition will be returned/void in accordance with § 4120 of the Tax Ditch Law. Motion _____.

PETITION

To the Superior Court of Sussex County through the Board of Supervisors of the Soil Conservation District of Sussex County:

Whereas the undersigned (is) (are) the owner(s) of certain lands subject to overflow or in need of water management situated in Baltimore Hundred, Sussex County, and the State of Delaware, said lands being more particularly described as follows: Sussex County parcel number 533-6.00-82.00 located on the northeast side of Zion Church Road in Frankford, Delaware which said lands drain into the Batson Branch Tax Ditch, which outlets into Dirickson Creek, and then into the Little Assawoman Bay;

Whereas the draining and the prevention of flooding of said lands, and/or the management of water for resource conservation on said lands would be a public benefit and conducive to the public health, safety, and welfare; and

Whereas, the undersigned desire that the Batson Branch Tax Ditch Order be amended under the provisions of Chapter 41, Subchapter VI, § 4189 (3), Title 7, of the Delaware Code as amended, said Tax Ditch to still be known as Batson Branch Tax Ditch as follows:

- Elimination of Prong 10 from Sta 21+04 to Sta 22+50
- Elimination of Maintenance Turnaround Rights-of-Way on Prong 10 at Sta 22+50
- Addition of Maintenance Turnaround Rights-of-Way on Prong 10 at Sta 21+04
- Reduction of Construction and Major Maintenance Rights-of-Way on Prong 10 from Sta 20+60 to Sta 21+04 on the left side looking upstream

The undersigned therefore request the Soil Conservation District of Sussex County to file the Petition as required under the above cited chapter in the office of the Prothonotary of Sussex County so that the Superior Court of said County may take the necessary steps required by law to issue an order amending Batson Branch Tax Ditch.

Dated this 11 day of September, 2023 at Frankford, Delaware.
date month year



Lisa F. Hahn

Lisa F. Hahn

ESTIMATE
BATSON BRANCH TAX DITCH
EXPENSES INCURRED DURING PROCESSING OF
PETITION FOR AMENDMENT PER DEL CODE TITLE 7, 4189 (3)
PETITION DATED: 9/11/2023

Deposit: Total deposit funds received from _____, check #____, date _____	\$ _____
Filing Fee: Prothonotary's Office - N/A, verified 11/18/22 w/Brian Clairmont, Judicial Operations Manager that due to a Civil Action Number already entered for the Tax Ditch there is no filing fee.	\$ - 0 -
Postage: Notice of Hearing & Referendum 670+/- landowners @ \$.60 = \$402.00	\$402.00
Tax Ditch Commissioner Services: Review petition request - 3 Commissioners @ \$50 each = \$150.00 Review petition request with Division Engineer 3 Commissioners @ \$50 each = \$150.00 Hold Hearing and Referendum 3 Commissioners @ \$50 each = \$150.00	\$150.00 \$150.00 \$150.00
Facility Rental: Hold Hearing & Referendum Roxana Fire Co. mtg rm capacity 64 @ \$100.00 dining hall capacity 274 @ \$1,050.00 (\$800+250security deposit)	\$1,050.00
Notice of Final Hearing - Publish in newspaper \$75.00 Postage landowners 670@60cents ea = \$402.00	\$477.00
Recorder of Deeds Filing <i>NOTE: A Legal Opinion may be needed as to if there is a Ditch Order Amendment, this also applies in some fashion. New territory since legislation to file documents with ROD in 2006/2008.</i> <i>Per Del Code Title 7, Chapter 41, §4141 – new tax ditches are to file Ditch Order & Certified List with Recorder of Deed (ROD). Plus, under subsection §4189 (2)b the requesting landowner of a change to a court order is responsible for assuring that such change is filed with the ROD. §4189(3) it's note specifically noted who is responsible for ROD filing fees. Therefore, if by this Petition the Ditch Order is Amended, documents will need to be filed with the ROD. Fees may apply which could be the responsibility of the petitioner(s). This is a request by a landowner per §4189(3) so §4189(2)b may apply regarding ROD expense.</i> ROD Sussex County Fees \$ 10.00 1 st pg \$198.00 (22 additional pages @ \$9.00 each) \$ 30.00 State Document Fee \$238.00 Estimate Total	\$238.00
TOTAL DEPOSIT REQUESTED	\$2,617.00
TOTAL EXPENSES	
BALANCE BACK TO DEPOSITORS	

***Additional expenses not included in deposit estimate will be requested from the petitioner.**



October 25, 2023

Lisa F. Hahn
P.O. Box 68
Granville, NY 12832

Dear Ms. Hahn:

At a regular meeting of the Sussex Conservation District Board of Supervisors held on October 24, 2023, a Petition in the prescribed form set forth in DE Code Title 7 Chapter 41 §4118 was accepted for further investigation into the amendment of the Ditch Order for the Batson Branch Tax Ditch in Sussex County.

The Tax Ditch Law requires that the petitioner shall deposit with the Sussex Conservation District an amount sufficient to defray the estimated costs associated with the investigation into the Petition for Amendments to the Ditch Order as outlined in DE Code Title 7 Chapter 41 § 4189(3). The Board of Supervisors determined a deposit of \$2,617.00 is required in this case.

Please note that the deposit balance remaining after expenses incurred will be repaid to the petitioner. The deposit must be a check made payable to Sussex Conservation District and mailed to 23818 Shortly Road, Georgetown, DE 19947. The deposit must be received by November 30, 2023. Should the deposit not be received by November 30, 2023, the Petition will be returned/void, and the Batson Branch Tax Ditch Managers will be informed. They may proceed with enforcing the rights-of-way obstruction on your parcel (parcel #533-6.00-82.00).

Sincerely,

Cory Whaley
Secretary

CW: mlg
pc: Melissa Hubert, DNREC Tax Ditch Program Manager II
Tyler Brown, DNREC Conservation Programs Section Administrator