

Schaap, Kristin A (DeIDOT)

From: Rosebrooks, Beth (DeIDOT)
Sent: Thursday, March 07, 2019 8:01 AM
To: McCleary, Robert (DeIDOT)
Subject: FW: JMER Frederica property
Attachments: 0572_001.pdf; DOTS Comments --- K-252 K-253.pdf

Good Morning Rob,

I wanted to provide you with what we talked about yesterday in reference to the Frederica property sold to John Paradee. Below is the e-mail recently sent to him and attached are the comments from DOTS from when the parcels were routed through.

As I stated on the phone, comments were consistent across the Department regarding the D/A as well as the Archeological Declaration of Restrictions. All was going well until the deed was written. For some reason, it was prepared by Mr. Paradee's office and not ours and then approved by Bob Cunningham and ok'd by Ken before I got to look it over or have our Paralegal look it over. Not that we would have caught it and I don't want to sound like I am placing blame on anyone but... everything happened much too fast. The original request started with the Secretary and her involvement continued throughout the process specifically to get it done as quickly as possible. Mr. Paradee was relentless with phone calls and e-mails to everyone to the point of annoyance to everyone including the Secretary. My opinion is that once we got to the point that the deed was written it was a complete sigh of relief. I apologize for the oversight, but as you can see, Ken Feaster and I will be working to complete a corrective deed to remedy the situation.

Would you like this to go in my weekly report?

Beth

****Please be aware, as of 1/26/2019 my e-mail address is beth.rosebrooks@delaware.gov ****
Please change your records accordingly. Thank you.

*Beth Rosebrooks, Land Services Manager
DeIDOT/DOTS/ROW
P.O. Box 778
800 Bay Road
Dover, DE 19903
302-760-2757*

From: Feaster, Ken (DeIDOT)
Sent: Wednesday, March 06, 2019 9:23 AM
To: John W. Paradee
Cc: Rosebrooks, Beth (DeIDOT)
Subject: JMER Frederica property

John: As you know, a portion of the Frederica property purchased by JMER Properties, LLC is an archeological site subject to a recorded Declaration of Covenants, Conditions and Restrictions (the "CCR"). It has come to our attention that the archeological site is being tread upon by construction equipment. It is imperative that the site be undisturbed as required by the CCR that run with the land, a copy of which is attached here. To that end, please take all steps necessary to insure that the site is not further disturbed or used for any purpose whatsoever.

It has also come to our attention that the archeological site was inadvertently included with the conveyance to JMER Properties, LLC. The CCR requires the site to be held in perpetuity by DeIDOT and may not be conveyed or occupied. To

that end, this is DeIDOT's formal request for that portion of the property to be conveyed back to DeIDOT in order to comply with the CCR.

Please respond at your earliest convenience in order to ensure that the CCR is followed and to ensure that the site remains protected. Thank you.

Ken Feaster

Kenneth S. Feaster, Jr., Esq.
Deputy Attorney General for DeIDOT
Department of Transportation
800 South Bay Road
Dover, DE 19901
(302) 760-2158 (Dover office)
(302) 326-4474 (Bear office)
Ken.Feaster@delaware.gov

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Accepted for Filing in:
Kent County
Doc# 206669
On: Mar 29, 2012 at 01:25P

Tax Parcel Number: 5-08-141.00-01-02.00-000

Prepared By/Return To:
DelDOT Real Estate Section
P.O. Box 778
Dover, DE 19903

STATE OF DELAWARE

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

Archeological Site 7K-F-201

THIS DECLARATION, is made as of this 29th day of MARCH, 2012 by the **DELAWARE DEPARTMENT OF TRANSPORTATION (DELDOT)** at the request of the **DELAWARE STATE HISTORIC PRESERVATION OFFICER (SHPO)**

This site consists of 0.1033 acre of land located in Kent County, Delaware derived from Tax Parcel No. 5-08-141.00-01-02.00-000. The site contains an intact Native American component dating from approximately 5,000 through 1,000 years ago, and it is a potentially National Register eligible cultural resource.

NOW THEREFORE, DelDOT declares that the site shall be held in perpetuity and not be sold, subdivided, transferred, leased, occupied and shall be used subject to the covenants, restrictions, conditions, charges, assessments, and obligations hereinafter set forth in this Declaration; and

- (A) **WHEREAS**, DelDOT developed transportation improvements for the SR 1 a State maintained project located in Kent County, Delaware identified as State Project 22-120-02.
- (B) As part of its transportation improvement approval process, DelDOT requires review and authorization in consultation with (SHPO) on those parts of archeological sites which remain preserved in place, and which are eligible for listing in the National Register of Historic Places and are located within existing state rights of way.
- (C) As part of the Section 106 archeological process SHPO determined that DelDOT must provide archeological site preservation in place, for archeological sites along the project.
- (D) DelDOT in consultation with SHPO identified the 7K-F-201 a State of Delaware owned property, hereinafter referred to as the Property, as an approved archeological preservation in place site: County Tax Parcel No. 5-08-141.00-01-02.00. Contract Parcel No. 202, Deed Record 4689-0023, Identified on Exhibit A and B.
- (E) DOT and SHPO approved the use of said Property conditioned that the State of Delaware, place upon the property, this further Declaration.

NOW THEREFORE, DelDOT in consultation with SHPO declares that the site shall be held in perpetuity and not be sold, subdivided, transferred, leased, occupied and shall be used subject to the covenants, restrictions, conditions, charges, assessments, and obligations hereinafter set forth in this Declaration.

- (1) **Purpose:** It is the purpose of this Declaration to assure that the site will be maintained and retained forever in its natural, preserved in place condition, with restricted cutting of vegetation, and no site disturbance within the archeological site. No use of the site will be permitted that will impair or interfere with the operation of the site as a preserved archeological site.
- (2) **Restrictions on Use:** In order to accomplish, safeguard, and promote the purposes of this Declaration, DelDOT in consultation with SHPO hereby declares and covenants that the following restrictions are hereby imposed and shall apply forever to the use of the site.
 - (a) No signs, billboards or outdoor advertising structures shall be placed or maintained on the site, except for a reasonable number of signs, determined by the DOT for resource protection, safety, boundary identification, management, interpretation of the preserved in place archeological site and for such other purpose.
 - (b) Except for the work permitted by the DOT in consultation with the SHPO, no party shall perform on its own or grant permission to any other party to perform any work related to excavation, or ground disturbance on the site.
 - (c) No building, structure, improvement, or facility shall be constructed on or above ground on the site.
 - (d) No dumping, depositing, abandoning, discharging, or releasing of any gaseous, liquid, solid, or hazardous waste, substances, materials of whatever nature on, in, over or under the site or into surface or ground water of the site shall occur, except as permitted and required by law.
 - (e) No dredged, excavated, or fill material such as loam, peat, gravel, soil, rock, sand, or other material shall be deposited or placed on site and nor shall there be made any man made change in the general topography of the site beyond that made prior to the effective date of this Declaration.
 - (f) There shall be no excavation or removal of loam, peat, gravel, soil, rock, sand, or similar material, nor any change in general topography of the site except for activities associated with typical utility work and for the following rights hereby reserved as described in Paragraph 3 below. Any necessary utility work must first be reviewed and approved by the DOT in consultation with the SHPO. Any archeological testing or excavations, which may be necessary as a result of utility work, must also be reviewed and approved by the DOT in consultation with the SHPO.

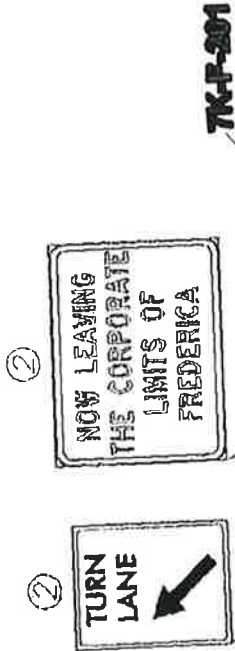
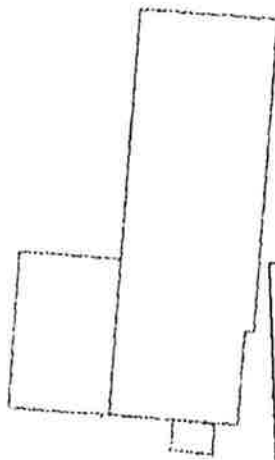
- (3) **Permitted Uses:** DelDOT hereby declares and covenants that the following uses are hereby permitted on the site, subject to the limitations contained and shall apply forever to the use and enjoyment of the site.
- (a) DelDOT shall permit the natural succession of vegetation and animals.
- (4) **Reserved Rights:** DelDOT reserves to itself, its personal representatives, successors and assigns, all rights accruing from ownership of the site, including the right to engage in or permit or invite others to engage in all legal uses of the site that are not expressly prohibited herein and are not inconsistent with the purposes of this Declaration. DelDOT retains all responsibilities, costs, and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the site as a preserved in place archeological site. DelDOT shall not be responsible for damages to or liability arising from its ownership to the extent that site is damaged or changed due to causes beyond DelDOT's control.
- (5) **Enforcement Rights:** Any and all of the provisions herein contained shall be enforceable by DelDOT, its successors and assigns. In the event that there is a violation of the terms and conditions of this Declaration, the enforcing party may seek any and all remedies at law or in equity. Any reasonable cost incurred by a party in enforcing the terms of this Declaration against any violator, including costs of suit and attorney's fees, and any reasonable cost of restoration necessitated by the violation of the terms of this Declaration shall be borne by the violator. Nothing herein contained shall be construed to entitle any party to bring an action against any other party for injury or change to the site resulting from causes beyond that party's control, including without limitation, to fire, flood or storm or any acts not authorized by DelDOT or any third party.
- (6) **Duration:** The parties agree that this Declaration shall remain with the land in perpetuity and binding upon all subsequent owners of the property, administrators, successors and assigns.
- (7) **Authority:** The parties hereto have the legal right, power and authority to enter into this Declaration and perform all of its obligations hereunder, and the execution of this Declaration by the parties has been fully authorized by all requisite action.

Signature page to follow.

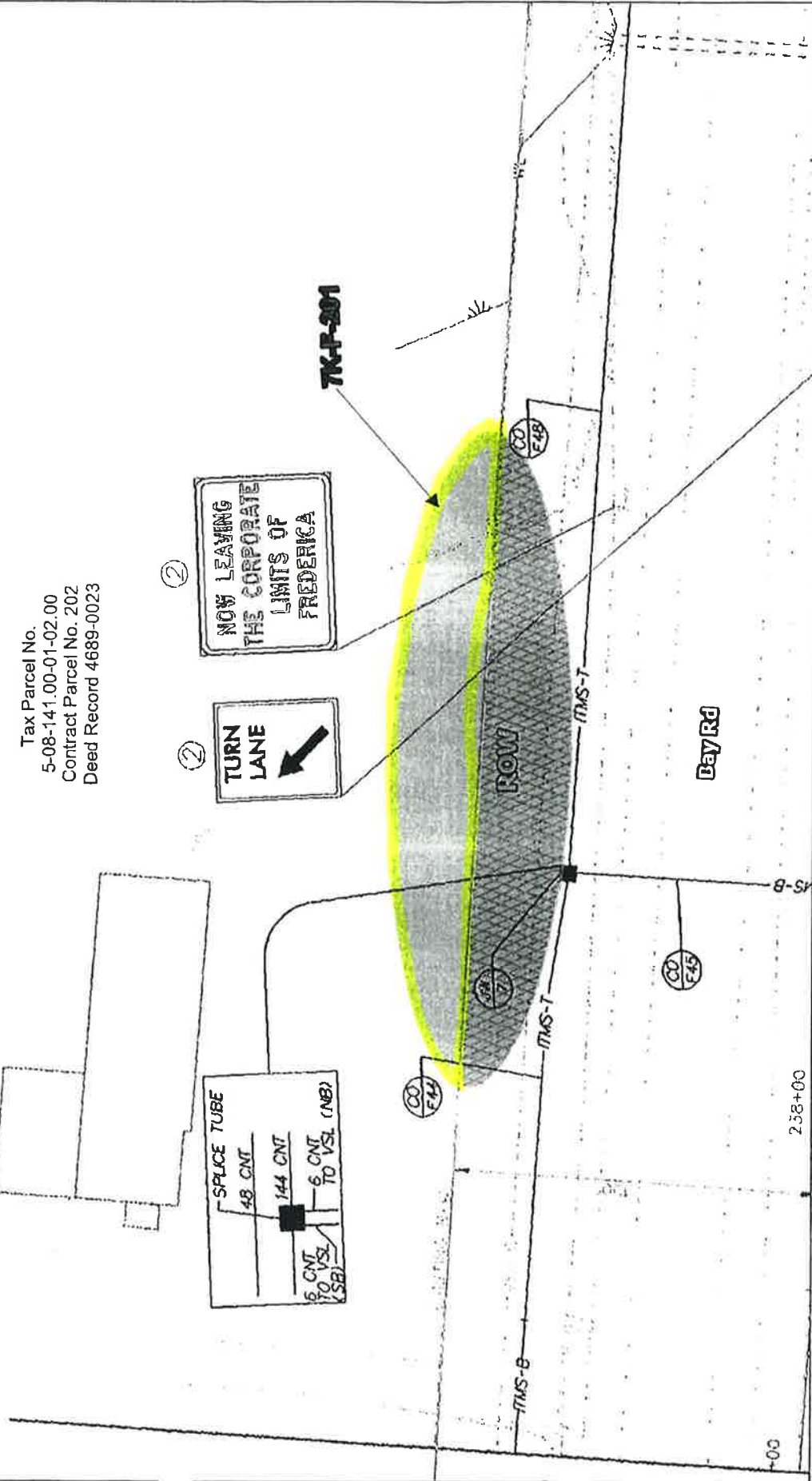
Grantee's Address:

Delaware Department of Transportation
Real Estate Services
P.O. Box 778
Dover, DE 19903

Tax Parcel No.
 5-08-141.00-01-02.00
 Contract Parcel No. 202
 Deed Record 4689-0023



7K-F-201



- 7K-F-201
- Portion of 7K-F-201 located within DeIDOT Right-of-Way
- DeIDOT Right-of-Way



Exhibit A
 Design Plan Map
 Showing Site Location

COMMENTS

SUBJECT: Routing Requesting of:
State Owned Lands ... Kent County
Project 25-129-01, SR-1 Corridor Preservation Program
K-252
Parcel No. MD-00-141.00-01-08.00
4487 Bay Road, Frederica
K-253
Parcel No. MD-08-141.00-01-02.00
4615 Bay Road, Frederica

Support: ✓

Object: _____

Comments:

Contingent upon retaining the denial of
access along SR-1 and preservation of
the archeology site. See staff notes
attached.

Robert B. McCleary
Signature

8/2/18
Date

Chief Engineer
Title

Please return by **Monday, August 13, 2018**

to: Robby L. Brown
Right-of-Way Agent

Kent County
K-253 and K-252 Request for Disposal

Mark Luszc: I'll mostly defer to Mike Simmons on this one since it's in the middle of one of his projects. My only comment is that we should not be referring to frontage on US 113. The road is SR 1. It was US 113 in the past but that designation was removed, I believe in the early 2000s. So at most, it should be referred to as "formally US 113" as it likely referred to as "US 113" in older records.

Mike Simmons: My only comment or concern is to further reiterate that NO ACCESS TO SR 1 will be permitted.

John Caruano: There are no concerns with disposing of parcel K-252. (additional detail below)

For parcel K-253, the protective covenant that was filed in March of 2012, does apply to the portion of the parcel that is marked on the attached figure. Thus, before the parcel is disposed of, this portion will need to be surveyed, parceled out and fenced off to prevent developer access before disposition.

Along the northern and western borders of the properties, there is a stream corridor. This stream would be regulated by the US Army Corps of Engineers under the Section 404 of the Clean Water Act and by DNREC under Subaqueous Lands. The wooded stream corridor may be supporting wetlands immediately adjacent to the channel. If access is desired from the west from Frederica Road by crossing the stream corridor, the developer should make certain that the action can receive the needed regulatory approvals. Any work within wetlands on the property will likely require a USACE Section 404 permit and thus still require Section 106 review and potential archaeology. Given the location and known prehistoric sites in the area (including the protected site), there is a high potential for prehistoric archaeology resources. Further, there is a potential for prehistoric burials which would fall under the state's Unmarked Human Remains Act.

These comments are based on the understanding that both parcels were purchased with state funds before the South Frederica GSI project. If this is incorrect and they were purchased with federal funds, both parcels will need to be cleared for archaeology and Section 106 as stipulated in the MOA for the project.

Jeff Leonard: I spoke with Chris Geiger from Tetra Tech. He reviewed DNREC's database of Potentially Contaminated Sites and DNREC's Underground Storage Tank Branch's Leaking Underground Storage Tank (LUST) site map. There was nothing found on either of the properties that would be considered as hazardous waste sites, UST sites, active LUST sites, or hazardous or solid waste sites. There are no known environmental impacts associated with the properties that would preclude DelDOT from proceeding with the transaction of the properties in question.

Eric Cimo: I have no objection to this request to dispose of these parcels. There are utilities evident along the frontage of the properties. I believe they are all within the ROW of R 1 but we need to make sure any utility easements transfer if they exist. Let me know if there are questions or if you need anything else.