

Wilmington, Delaware
October 18, 2018

#4586

Sponsor:

Council
Member
Turner

WHEREAS, pursuant to Wilmington Charter Section 8-205, the City may sell or exchange any real estate belonging to the City or grant any license, easement, right-of-way, or other interest over or in such real estate with authority by general ordinance and later resolution from Council to do so; and

WHEREAS, City Code Section 2-626 provides that the Department of Public Works shall have the authority to grant licenses, easements, and/or rights-of-way as shall be necessary for the construction, installation, maintenance, repair, operation, and inspection of utilities, subject to the approval of City Council by resolution; and

WHEREAS, on June 4, 2015, City Council passed a resolution approving a construction and utility easement agreement (the "Agreement") between the City and New Castle County (the "County") that provided the County with certain construction and utility easements over and across that certain portion of City-owned land known as Bringhurst Woods Park, having an address of 0 Washington Boulevard, Wilmington, Delaware (being Tax Parcel ID No. 06-122.00-017), in connection with the County's construction, operation, and maintenance of a new sanitary sewer line across said land (the "Project"); and

WHEREAS, the County ran into certain rock in the construction of the sanitary sewer line, which necessitates an alteration to certain easements contained in the Agreement; and

WHEREAS, the parties desire to enter into a new construction and utility easement agreement that enables the County to circumvent the rock and complete the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF WILMINGTON that the Council hereby authorizes and approves the granting of certain construction and utility easements over and across that certain portion of land known as Bringhurst Woods Park, having an address of 0 Washington Boulevard, Wilmington, Delaware (being Tax Parcel ID No. 06-122.00-017), in accordance with the "Construction and Utility Easement Agreement" between the City of Wilmington and New Castle County, a copy of which, in substantial form, is attached hereto as Exhibit "A" and incorporated herein.

BE IT FURTHER RESOLVED that the Council authorizes the Department of Public Works to execute any and all documents necessary to effectuate the granting of such construction and utility easements in connection with New Castle County's construction, operation, and maintenance of a new sanitary sewer line over and across Bringhurst Woods Park.

Passed by City Council,

ATTEST: _____
City Clerk

SYNOPSIS: This Resolution authorizes the Department of Public Works to grant New Castle County certain construction and utility easements in connection with New Castle County's construction, operation, and maintenance of a new sanitary sewer line across 0 Washington Boulevard, commonly known as Bringhurst Woods Park.

W0102401

EXHIBIT A

Tax Parcel No.: 06-122.00-017

Prepared by:/Return to:

Aysha L. Gregory, Esquire
New Castle County Law Department
87 Reads Way
New Castle County, DE 19720

CONSTRUCTION AND UTILITY EASEMENT AGREEMENT

THIS CONSTRUCTION AND UTILITY EASEMENT AGREEMENT (the "Agreement") is made this ____ day of _____, 2018 by and between the CITY OF WILMINGTON, a municipal corporation of the State of Delaware ("City") and NEW CASTLE COUNTY, a county of the State of Delaware ("County").

RECITALS

WHEREAS, the City is the owner of a certain parcel of land having an address of 0 Washington Boulevard, Wilmington, Delaware, being Tax Parcel No. 06-122.00-017, which is more particularly bounded and described in a deed recorded in the Office of the Recorder of Deeds for New Castle County in Deed Record M, Volume 40, Page 249 (the "Property");

WHEREAS, in order to replace the existing Bringhurst Interceptor sanitary sewer line and/or construct a new sanitary sewer line across the Property and other lands adjacent thereto to serve the North Hills Sewage Pumping Station (the "Project"), as stated in Instrument No. 20150727-0037407 and incorporated herein;

WHEREAS, upon the County's request, the City agrees to grant the requisite permanent sanitary sewer easements for the Project across the areas more particularly depicted on Exhibit "A" consisting of County Plat Numbers 6-5239 hereto ("New Utility Easements");

WHEREAS, upon the County's request, the City has also agreed to grant to the County and their respective agents, contractors, representatives, licensees and invitees (collectively, the "Authorized Entrants") temporary construction easements necessary for the construction of the Project across certain areas of the Property more particularly depicted on Exhibit "A" hereto known as "Temporary Construction Easements";

NOW THEREFORE, the parties hereto, intending to be legally bound hereby, and for other good and valuable consideration, the receipt of which is hereby acknowledged, agree as follows:

1. Utility Easement. The City hereby gives, grants and conveys to the County, its lessees, successors and assigns, a perpetual non-exclusive easement over, under, upon and across certain portions of the Property as specifically depicted in Exhibit "A"

attached hereto and incorporated by reference herein (the "Easement Area"), to construct, install, operate, maintain, repair, replace, add to, relocate, and remove sanitary sewer lines and related facilities, including the necessary underground accessories and appurtenances. The County shall have the right to trim, cut, remove, and keep clear any and all trees, limbs, undergrowth, and other obstructions, including structures and improvements of all kinds located within or upon the Easement Area, that may, in any way, now or hereafter, in the reasonable opinion of the County, endanger or in any way interfere with the proper construction or reconstruction, use, operation, safety, access or maintenance of the County's sanitary sewer lines. The City shall not place, plant, erect, or construct any manner of tree, shrub, bush, fence, structure or other man-made improvement, excluding pavement, within the Easement Area.

2. Temporary Construction Easement. The City does hereby grant unto the County and their Authorized Entrants a right of ingress and egress to and over additional portions of the Property, as specifically depicted in Exhibit "A" attached hereto and incorporated herein, for temporary construction access for the purpose of installing, designing, constructing and operating the Project ("Construction Easement Area"). The Construction easement shall terminate upon the completion of the Project.

3. Access. The City hereby grants and conveys to the County a right of ingress and egress to and over the Property, as may be reasonably required for the limited purpose of exercising the easement rights granted herein.

4. Reservation of Rights. The City expressly retains for itself, as well as for its successors and assigns, full rights to the use of the Easement Area for any lawful purposes that does not interfere with, or impede the use and enjoyment of, the utility easement granted to the County herein, including by way of example but not limitation, the right to utilize the Easement Area for continued ingress, egress and regress, the placement of overhead or underground utilities, and the impervious paving or other surfacing or re-surfacing of the Easement Area. Grantor agrees that it shall not place any permanent structure on the Easement Area.

5. Ownership Covenant. The City covenants that it is seized of and has the right to convey the foregoing easement rights and privileges; and agrees that the County shall have quiet and peaceable possession, use and enjoyment of the aforesaid easement rights and privileges.

6. Restoration of Easement Area. The County shall restore the Easement Area and any areas outside the Easement Area inadvertently affected by any activities conducted by the County related to the County's use of the Easement Area to their pre-construction condition promptly following any work done by the County in the Easement Area. The obligation of the County to restore any areas disturbed outside the Easement Area shall not be construed as granting the County any right to disturb such area.

7. No Third Party Beneficiaries. Notwithstanding anything contained in this Agreement to the contrary, this Agreement is solely for the benefit of the parties hereto, their successors and assigns, and shall not benefit any third party or create or operate to

create, either expressly or impliedly any rights, title or interests hereunder in favor of any third party.

8. Indemnification. To the extent permitted by applicable law and without waiving any rights under Delaware statutory or common law, including but not limited to 10 Del.C. 4010 et. seq. the County shall indemnify and hold the City safe and harmless from and against any and all loss, costs, damages, claims, actions or liability on account of the death of, or injury to, any person or persons, or the damage to, or destruction of, any property on the Easement Area arising from or growing out of the exercise of the rights herein granted to the County and its employees, invitees or licensees, unless such death, injury, damage or destruction is caused in whole by the fault or negligence of the City. This section shall survive any subsequent termination of this Agreement.

9. Notices. All notices, requests and other communications under this Agreement shall be in writing and shall be sent prepaid by (i) certified registered mail, return receipt requested, (ii) overnight courier of national or regional recognition (such as UPS or Federal Express) or (iii) personal delivery or courier:

(a) If intended for the City:

Commissioner of Public Works
City/County Building
800 French Street, 6th Floor
Wilmington, DE 19801

(b) If intended for the County:

General Manager
New Castle County Department of Public Works
187-A Old Churchmans Road
New Castle, DE 19720

10. Miscellaneous.

(a) If any provision of this Agreement, or the application thereof to any person or circumstances, shall be held invalid or unenforceable, the remainder of this Agreement, or the application of such provision to any other persons or circumstances, shall not be affected thereby.

(b) The paragraph headings in this Agreement are for convenience only, shall in no way define or limit the scope or content of this Agreement, and shall not be considered in any construction or interpretation of this Agreement or any part thereof.

(c) This Agreement shall be binding upon the City and its successors and assigns in title, and inure to the benefit of the County and its employees, successors, assigns, independent contractors and agents, and shall be deemed to run with the land.

(d) This Agreement shall be governed and construed in accordance with the laws of the State of Delaware.

(e) The County shall abide by all laws and regulations whatsoever in effect which govern the use and operation of sanitary sewer lines in New Castle County. In the event the County fails to comply with any such rule or regulation, the City shall be afforded all rights and remedies available at law, including, but not limited to, termination of this Agreement.

(f) This Agreement constitutes the entire agreement between the parties, and any prior understanding or representation of any kind preceding the date of this Agreement shall not be binding on either party except to the extent incorporated in this Agreement.

(g) This Agreement may not be modified, changed, or supplemented, nor may any of the obligations and rights be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing and then only to the extent set forth in such instrument.

(h) This Agreement may be executed in one or more counterparts, and all counterpart-signed documents shall be deemed to be an original and one (1) instrument.

(i) This Agreement shall be recorded in the office of the Recorder of Deeds for New Castle County, Delaware.

[signature page follows]

IN WITNESS WHEREOF, the parties executed this Agreement under seal on the date first above written.

CITY OF WILMINGTON

Witness

By: _____ (SEAL)
Kelly A. Williams
Commissioner
Department of Public Works

State of Delaware)
) ss.
County of New Castle)

On this __ day of _____, 2018, there did appear before me, a Notary Public for the State and County aforesaid, _____, the Commissioner of the Department of Public Works for the City of Wilmington, who did execute the foregoing Utility Easement Agreement on behalf of the City of Wilmington.

Notary Public

NEW CASTLE COUNTY

Witness

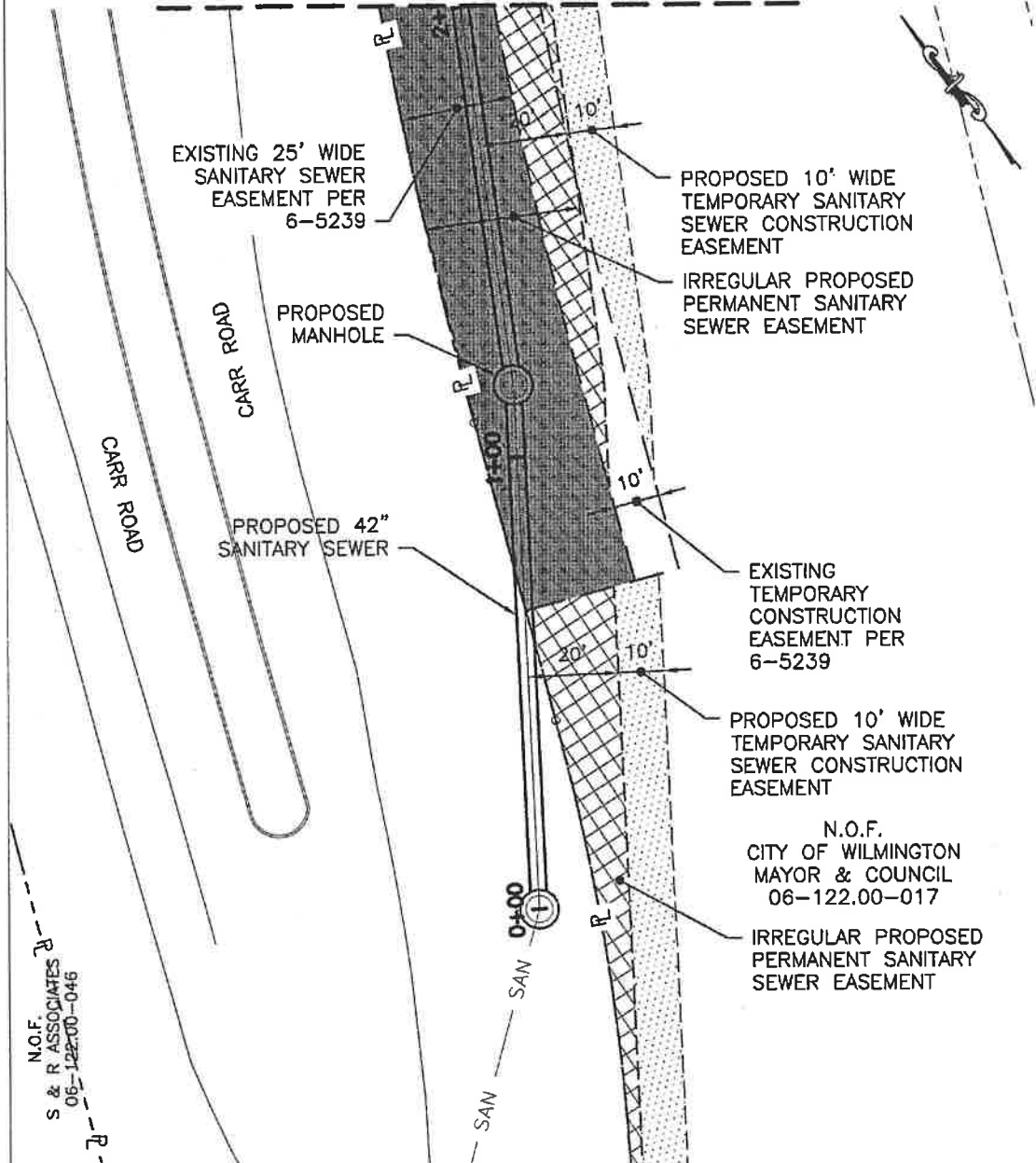
By: _____ (SEAL)
Tracy Z. Surles
General Manager
Department of Public Works






State of Delaware)
) ss.
County of New Castle)

On this __ day of _____, 2018, there did appear before me, a Notary Public for the State and County aforesaid, Tracy Z. Surles, General Manager, Department of Public Works of New Castle County, who did execute the foregoing Utility Easement Agreement on behalf of said corporation.

Notary Public

Exhibit “A”



-  EXISTING TEMPORARY CONSTRUCTION EASEMENT
-  PROPOSED PERMANENT SANITARY SEWER EASEMENT
-  PROPOSED TEMPORARY CONSTRUCTION EASEMENT
-  EXISTING TEMPORARY CONSTRUCTION EASEMENT AND PROPOSED PERMANENT SANITARY SEWER EASEMENT
-  EXISTING SANITARY SEWER EASEMENT






RIGHT OF WAY PLAN
 FOR NEW CASTLE COUNTY
 ON THE LANDS OF
CITY OF WILMINGTON – MAYOR & COUNCIL
 BRANDYWINE HUNDRED
 NEW CASTLE COUNTY – DELAWARE
 BRINGHURST INTERCEPTOR PROJECT
 SHEET 1 OF 3

TAX PARCEL NO. 06-122.00-017
 SOURCE OF TITLE: BOOK M40 PAGE 249
 AREA OF PERMANENT EASEMENT = 8668 SQ. FT.
 AREA OF TEMPORARY CONSTRUCTION EASEMENT = 5157 SQ. FT.

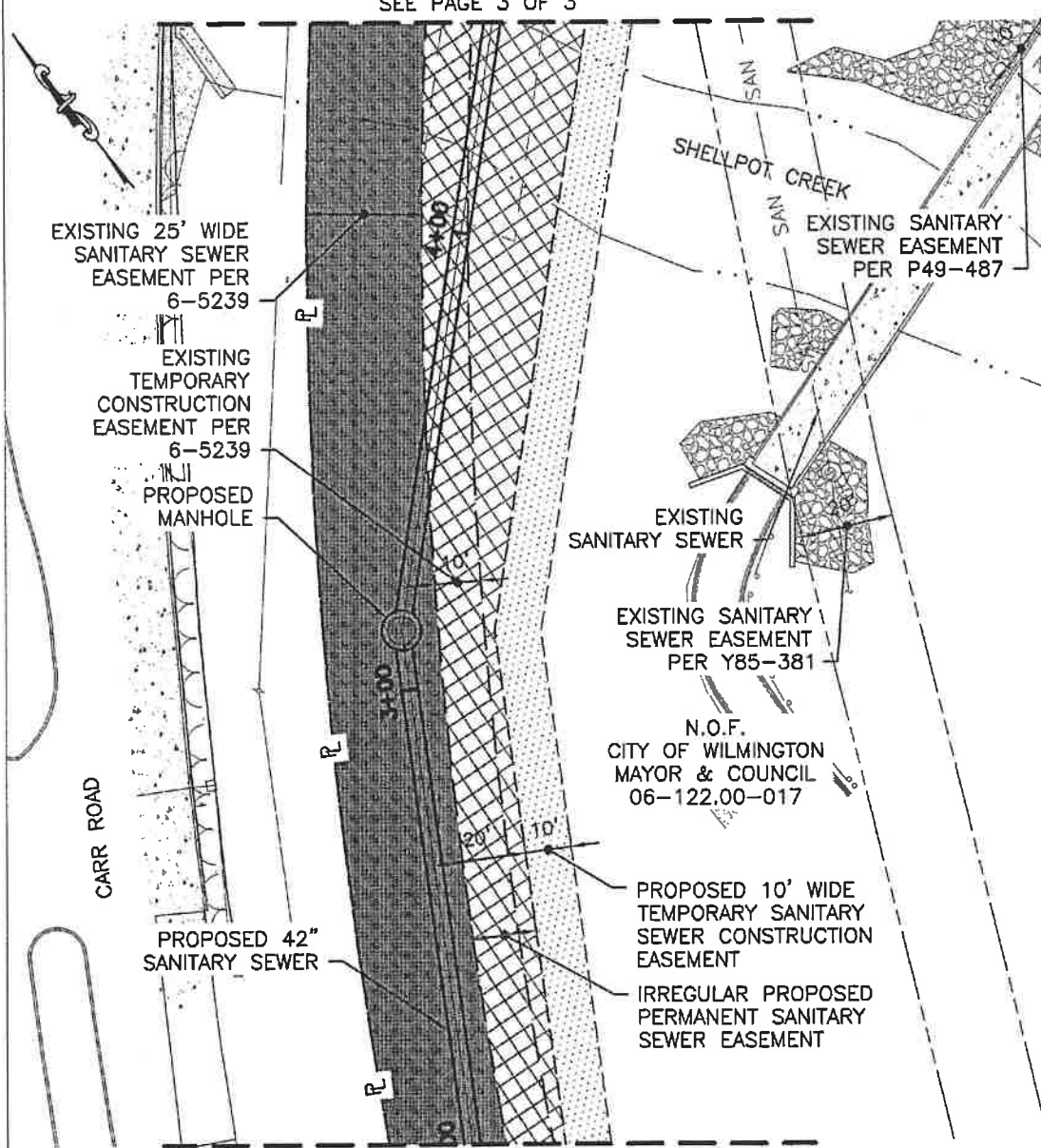
DEPARTMENT OF PUBLIC WORKS NEW CASTLE COUNTY DELAWARE	
DATE 7/11/18	APPROVED BY _____
SCALE 1"=30'	DRAWN BY <u>MMK</u>
CHECKED BY <u>HR</u>	PROFESSIONAL ENGINEER

6-5239

G:\Special Services\Engineering\Sanitary Sewer Capital Projects\Bringhurst Woods Interceptor, Phase 3\Right of Way Plans - City of Wilmington\Construction Plans\Bringhurst Phase 3 Plans_rev-7-17-18.dwg

-  EXISTING TEMPORARY CONSTRUCTION EASEMENT
-  PROPOSED PERMANENT SANITARY SEWER EASEMENT
-  PROPOSED TEMPORARY CONSTRUCTION EASEMENT
-  EXISTING TEMPORARY CONSTRUCTION EASEMENT AND PROPOSED PERMANENT SANITARY SEWER EASEMENT
-  EXISTING SANITARY SEWER EASEMENT

MATCHLINE
SEE PAGE 3 OF 3



MATCHLINE
SEE PAGE 1 OF 3






RIGHT OF WAY PLAN
FOR NEW CASTLE COUNTY
ON THE LANDS OF
CITY OF WILMINGTON – MAYOR & COUNCIL
BRANDYWINE HUNDRED
NEW CASTLE COUNTY – DELAWARE
BRINGHURST INTERCEPTOR PROJECT
SHEET 2 OF 3

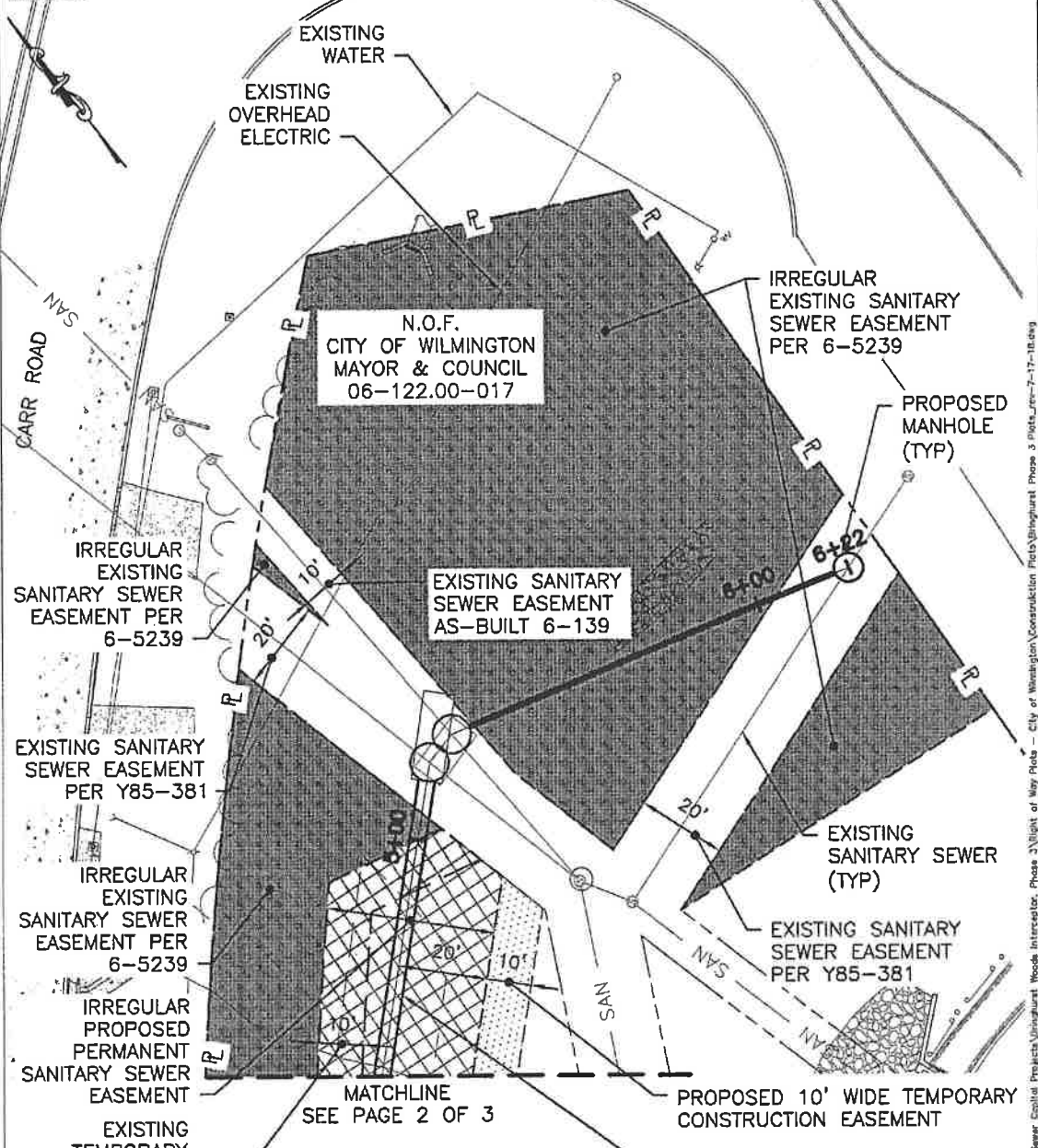
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 FOR NEW CASTLE COUNTY
 ON THE LANDS OF
CITY OF WILMINGTON - MAYOR & COUNCIL
 BRANDYWINE HUNDRED
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