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December 31, 2020

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Dear Ms. Lindsey, Ms. Jordan, Mr. Walls, Ms. Haugh Campen and Ms. Sadot,

Please accept this letter as confirmation that on December 21, 2020, the City of Delaware City received a "Request for Repeal or Referendum" ("Request") related to the approval of the Final Site Plan for Fort DuPont ("Plan"). Within the Request, the parties identified themselves as a Petitioner's Committee ("Petitioners"), and are seeking a reversal of the approval of the Plan. This Plan was approved by Delaware City Council on December 2, 2020, after City Council confirmed that the Plan was in compliance with all requirements set forth in the City of Delaware City Code. Publication of the Plan approval occurred December 10, 2020.

In the Request, the Petitioners stated that they have "been established to commence referendum proceedings." In support of their position, the Petitioners cite Article XIII of the Delaware City Charter, titled "Initiative and Referendum," which states the referendum process by which the Petitioners are seeking a reversal of the approval of the plan. The first step in considering this request is to determine if Article XIII applies to the approval of the Plan. For the below reasons I have concluded that the referendum process set forth in Article XIII does not

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apply to the Plan approval; therefore, there is no basis upon which the request can proceed, and therefore, there is no action for Delaware City to take on this request.

The referendum process, set forth in Article XIII, only applies to certain “ordinances.” In this instance, the Petitioners are not seeking to take action against an ordinance, but rather the approval of a Plan, that was obtained by way of compliance with the process set forth in City of Delaware City Code Ordinances. The Plan was not approved by an ordinance, therefore, the referendum process is not applicable to this situation. The Delaware City Code specifically states: “Final site approval is an administrative action.” See City of Delaware City Code, Sec. 54-40, Article XVIII(1). City Council’s vote was to, “confirm the certification of the City Manager, and his or her designee or City representative and approve a major site plan and/or applicable agreements.” See Sec. 54-40, Article XVIII(1). In this instance, after a thorough vetting, that included public hearings before the Planning Commission and Delaware City Council, the City Engineer and I confirmed that this plan conformed with all City of Delaware City Code requirements. Therefore, pursuant to Sec. 54-40, Article XIX(3), following certification from the City Manager after an administrative review, the Plan met all City of Delaware City Code requirements, the City Council was required, by the City of Delaware City Code, to approve the Plan. See Sec. 54-40, Article XIX(3).

For the reasons set forth above, Article XIII of the City of Delaware City Code is not applicable. Therefore, the process requested by the Petitioners is not permitted under the Code and the City of Delaware City is barred from taking the action set forth in your Request.

Respectfully submitted,



William J. Rhodunda, Jr.
Acting City Solicitor

WJR,jr/mdm

cc: David Baylor, City Manager
Britney Loveland, City Secretary