

**SUBSTITUTE NO. 1 TO
ORDINANCE NO. 03-045
AS AMENDED BY AMENDMENT #2**

TO REVISE CHAPTER 40 OF THE NEW CASTLE COUNTY CODE (ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE - UDC) REGARDING ARTICLE 4 (“DISTRICT INTENSITY AND BULK STANDARDS”), ARTICLE 10 (“ENVIRONMENTAL STANDARDS”), ARTICLE 20 (“SUBDIVISION AND LAND DEVELOPMENT DESIGN PRINCIPLES”), ARTICLE 22 (“DRAINAGE, UTILITIES, SEPTIC SYSTEMS, PARKING, LOADING, AND LIGHTING”), ARTICLE 23 (“LANDSCAPING, TREES AND EROSION”), ARTICLE 27 (“MAINTENANCE CORPORATIONS, OPEN SPACE, AND COMMON FACILITIES”), ARTICLE 31 (“PROCEDURES AND ADMINISTRATION”), AND ARTICLE 33 (“DEFINITIONS”)

WHEREAS, the New Castle County Department of Land Use has identified and is concerned about adverse environmental, community and economic impacts to New Castle County particularly from land development; and

WHEREAS, the Unified Development Code requires investigation of the utilization of conservation methods; and

WHEREAS, the New Castle County Department of Land Use has determined that conservation design methods are the most effective means to address adverse impacts by: preserving natural resources and wildlife habitat in open space corridors that may be linked together, simulating the natural hydrology (water balance) after development, and by incorporating unique natural, scenic and historic features into the subdivision plan; and

WHEREAS, open space areas must be deliberately configured and landscaped to accomplish the aforementioned goals; and

WHEREAS, a Conservation Design Subdivision is the most conducive development option to implement conservation site design by allowing flexibility in lot size, configuration, and unit type which promotes environmentally prudent subdivision design enhancing natural resources and open space linkages, alternative stormwater management techniques, and promotes sound hydrologic practices; and

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

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

Section 1. Chapter 40 of the *New Castle County Code* is hereby revised by the addition of the underlined text and the deletion of the text contained within brackets as set forth in “**Exhibit A**” attached hereto, and made a part hereof as if fully set forth herein.

Section 2. Consistent with Comprehensive Development Plan. New Castle County Council finds that the provisions of this Ordinance are consistent with the spirit and intent of the New Castle County Comprehensive Development Plan.

Section 3. Inconsistent Ordinances and Resolutions Repealed. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the *New Castle County Code*.

Section 4. Severability. The provisions of this ordinance shall be severable. If any provision of this ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this ordinance shall remain valid, unless the court finds that the valid provisions of this ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void one; or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council’s intent. If any provision of this ordinance or any zoning map or portion thereof is found to be unconstitutional or void all applicable former ordinances, resolutions, zoning maps or portions thereof shall become applicable and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

Section 5. Effective Date. This ordinance shall become effective immediately upon its adoption by County Council and approved by the County Executive.

Approved on:

Adopted by County Council of
New Castle County on: 7/8/03

County Executive

President of County Council
New Castle County

SYNOPSIS: *An individual synopsis is provided for each revision contained in Exhibit A, attached hereto.*

FISCAL NOTE: *This ordinance will have no discernable fiscal impact.*

EXHIBIT A

Sec. 40.04.110. District and bulk standards.

This Section contains the basic district standards applicable to all uses. Table 40.04.110 contains intensity, lot, bulk and exterior storage standards. These standards may be modified by the Department pursuant to Article 26.

A. *Minimum open space ratio....*

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E. *Exceptions....*

1. *Projections into required yards....*

....

7. *Lot width/street frontage exceptions.* The Department may authorize the reduction or elimination of the minimum lot width/street frontage requirements in order to achieve conservation design objectives when the applicant demonstrates that such requirements could be met but the modified design helps reduce impervious cover and surface water runoff and/or provides additional natural resource protection.

F. *Street yard build-to line....*

SYNOPSIS: This amendment is intended to provide the potential for flexibility in lot width and street frontage to accomplish the objectives of conservation design. Specifically, this section will allow the Department to reduce the need for cul-de-sacs under certain conditions where shared drives and flag lot configurations meet conservation design objectives intended to reduce impervious cover and surface water runoff and/or provide additional natural resource protection.

Table 40.04.110 A. DISTRICT AND BULK STANDARDS							
District Standards							
Zoning District & Development Type	Min. OSR/LSR	Density		Floor Area Ratio		Utilities (on-site, public)	Minimum Site Area
		Max. Gross	Max Net	Max. Gross	Max Net		
Suburban (S)							
Farmstead	0.00	0.02	0.02	na.	na.	OS	50 ac.
Single-family	0.15	0.67	0.80	na.	na.	P*	1 ac. <u>to less than 50 ac.</u> **
<u>Single-family, conservation design</u>	<u>0.50*</u>	<u>0.67</u>	<u>1.34</u>	<u>na.</u>	<u>na.</u>	<u>P**</u>	<u>5 ac.</u>
Age restricted single-family, see Division 40.07.700	0.15	0.80	0.95	na.	na.	P*	1 ac. <u>to less than 50 ac.</u> **
Open space subdivision - option 1	0.30	1.09	1.70	na.	na.	P	10 ac. <u>to less than 50 ac.*</u>
<u>Open space subdivision - option 1, conservation design</u>	<u>0.50*</u>	<u>1.09</u>	<u>2.38</u>	<u>na.</u>	<u>na.</u>	<u>P</u>	<u>10 ac.</u>

Table 40.04.110 B. DISTRICT AND BULK STANDARDS							
Lot, and Building Standards							
Minimum							Maximum
Lot Area	Lot Width (feet)	Street Yard (feet)	Side Yard (feet)	Rear Yard (feet)	Paving street yard/ other yard (feet)	Unit Mix (%)	Building Height (feet)
Suburban (S)							
50 ac.	600	50	50	50	na.	na.	50
1 ac.	150	40	12	40	na.	na.	40
<u>20,000</u>	<u>100</u>	<u>40</u>	<u>10</u>	<u>40</u>	<u>na.</u>	<u>na.</u>	<u>40</u>
1 ac.	150	40	12	40	na.	na.	40
20,000 sf.	100	40	10	40	na.	na.	40
<u>15,000</u>	<u>80</u>	<u>25</u>	<u>10</u>	<u>40</u>	<u>na.</u>	<u>na.</u>	<u>40</u>

Table 40.04.110 C. DISTRICT AND BULK STANDARDS	
Storage and Comments	
Exterior Storage	Notes
Percent of Lot Area	
Suburban (S)	
na.	
na.	* Division 40.22.300 ** <u>Maximum site area allowed for sites utilizing this option. Project site shall have been a legally existing tax parcel prior to August 1, 2003</u>
na.	* Division 40.10.387 ** <u>Division 40.22.300</u>
na.	* Division 40.22.300 ** <u>Maximum site area allowed for sites utilizing this option. Project site shall have been a legally existing tax parcel prior to August 1, 2003</u>
na.	* <u>Maximum site area allowed for sites utilizing this option. Project site shall have been a legally existing tax parcel prior to August 1, 2003</u>
na.	* Division 40.10.387

Table 40.04.110 A. DISTRICT AND BULK STANDARDS							
District Standards							
Zoning District & Development Type	Min. OSR/LSR	Density		Floor Area Ratio		Utilities (on-site, public)	Minimum Site Area
		Max. Gross	Max Net	Max. Gross	Max Net		
Open space subdivision - option 2	$\frac{0.50^*}{[0.35]}$	1.25	$\frac{2.54}{[1.95]}$	na.	na.	P	10 ac.
Age restricted open space subdivision, see Division 40.07.700	$\frac{0.50^*}{[0.35]}$	1.30	$\frac{2.60}{[2.03]}$	na.	na.	P	10 ac.
Open space planned	$\frac{0.50^{**}}{--}$	1.30	5.20	na.	na.	P	50 ac.
Age restricted open space planned, see Division 40.07.700	0.50	1.56	6.24	na.	na.	P	50 ac.

Table 40.04.110 B. DISTRICT AND BULK STANDARDS							
Lot, and Building Standards							
Minimum							Maximum
Lot Area	Lot Width (feet)	Street Yard (feet)	Side Yard (feet)	Rear Yard (feet)	Paving street yard/ other yard (feet)	Unit Mix (%)	Building Height (feet)
$\frac{6,500}{\text{to}} \frac{15,000}{\text{sf.}}$	<u>60</u>	<u>25</u>	<u>6</u>	<u>25</u>	na.	<u>30</u>	<u>40</u>
$\frac{\text{over}}{15,000 \text{ sf.}}$	<u>80</u> [100]	<u>25</u> [40]	10	40	na.	na.	40
$\frac{10,000}{[20,000] \text{ sf.}}$	<u>60</u> [100]	<u>25</u> [40]	<u>6</u> [10]	<u>25</u> [40]	na.	na.	40
See Table 40.04.112							
See Table 40.04.112							

Table 40.04.110 C. DISTRICT AND BULK STANDARDS	
Storage and Comments	
Exterior Storage	Notes
Percent of Lot Area	
na.	* Division 40.10.387
na.	* Division 40.10.387
na.	* Division 40.10.387
na.	* A minimum of twenty-five (25) percent of the base site area must be unrestrained by floodplain or wetland. As a result, the actual required open space may exceed the site protected land or minimum required open space calculations in Table 40.05.421. ** Division 40.10.387
na.	

SYNOPSIS: This table is modified to restrict the use of the current Single-Family, Open Space Option 1 and Age Restricted Open Space development options to parcels under 50 acres and to increase the open space in single-family and open space subdivisions to fifty (50) percent for parcels over 50 acres and to provide flexibility in lot sizes in order to enable densities to remain neutral as before the amendment.

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Sec. 40.04.111. Landscape and illumination standards.

Bufferyard, landscaping standards and lighting standards are provided in Table 40.04.111.

Table 40.04.111 A. USE AND LOT STANDARDS						
Zoning District & Development Type	Landscaping Plant Units per (See Division 40.23.100)			Bufferyard Opacity Standards		
	Lot	Acre Open Space	Parking Spaces	Adjoining Streets		
				Arterial	Collector	Minor
Suburban (S)						
Farmstead	- *	na.	na.	-	-	-
Single-family	2/du *	4	None	0.4	0.3	0
Open space subdivision, option 1 and 2	1/du *	4	None			
Open space planned	1/du *	5	1/16			
Hamlet	1/du *	6	1/12			
Village	1/du *	6	1/12			
Institutional residential	5/ac.	4	1/16			
Other permitted uses	5/ac.	4	1/16			

Table 40.04.111 B. USE AND LOT STANDARDS																
Bufferyard Opacity Standards (See Section 40.23.140)																
Adjoining District or Use (1) (No bufferyard shall be required where like zoning district and like developments <u>options</u> are adjacent)																
SR	SE NC 2a	S	NC 40 - 10	ST	TN	MM	NC 6.5 or less*	ON	OR	CN	CR	BP	I	HI	EX	
Suburban (S)																
-	-	-	-													
	0.2	-	-													
		0.2	0.2													
	0.3	0.3														
0.3			0.2	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.2	0.2	-
	-	-														
	0.2	0.2														
	0.3	0.3														

Table 40.04.111 C. USE AND LOT STANDARDS			
Street Tree Spacing (feet)	Max. Illumination/Height		Notes
	Illumination	Height	
	C=Cutoff fc=foot-candles S=Semi-Cutoff	C=Cutoff ft=feet S=Semi-Cutoff	*NC6.5 or less includes NC5, NCap, NCga, NCth, NCsd, NCmm, and NCpud
Suburban (S)			
40	C = 4 fc S = 2 fc	C = 20 ft. S = 20 ft.	* Lot landscape credit may be applied within subdivisions with at least 50% open space for plantings found in 40.23.121a and for alternative Stormwater Management techniques as approved by the County.

1) In the event a proposed use adjoins another municipality, the bufferyard requirement shall be equal to the same opacity required as the most similar New Castle County Zoning District

SYNOPSIS: This table is modified to establish a 0.2 opacity bufferyard in open space subdivisions in the Suburban zoning district abutting other uses in S and NC40-10 districts which typically involve larger lots or lower density developments.

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Sec. 40.04.230. Reserved. [Required open space.]

[Open space is required in all residential developments to serve the following functional needs: outdoor recreation, play space, trail space, residential attractiveness, scenic landscape and vista conservation, the protection of natural and sensitive site features, stormwater detention, and scenic and land use buffers. In designating areas for open space or landscaped surfaces as part of the subdivision or land development plan, the following criteria and standards shall be adhered to by the applicant:]

- [A. All private open space, once transferred according to the provisions of Article 27, shall be held by the maintenance organization in perpetuity for use and enjoyment by the residents of the development site. Adequate restrictions regarding the transferability of the land must be noted on the record plan and the maintenance declaration.]
- [B. All public open space, once transferred according to the provisions of Article 27, shall be held by the County, nonprofit organization, federal, state or other public agency. Public open space shall be available for use and enjoyment by all County residents.]
- [C. An existing principal dwelling unit and a maximum of one (1) existing tenant house, where such structures are deemed historically and/or architecturally significant by the Department, may be included within open space area.]
- [D. Except for recreation activities, open space shall be substantially free of structures and paved areas.]
- [E. Open space designated for recreation may contain parking areas and access drives accessory to the open space and other such complementary structures and improvements that are necessary and appropriate for the benefit of the residents utilizing the land for recreation purposes. Such land shall be distributed through the development to best serve the residents. Where the development is in phases, the Department may require each phase to have adequate open space.]
- [F. In subdivisions of thirty (30) dwelling units or more, an area or areas of useable open space shall be provided at a rate of one (1) acre per one hundred (100) dwellings units. Usable open space shall be centrally located, highly visible, and unconstrained by floodway areas, critical natural areas, wetlands or excessively forested areas. Additionally, the area shall be graded in such a manner to render it usable for active recreation purposes and shall not have slopes greater than five (5) percent. This provision does not require open space in addition to the requirements of this Chapter, but provides that a portion of the required open space shall be designed in such a way to render it usable for active recreation purposes.]

- [G. Open space shall be interconnected with open areas or greenways on abutting parcels wherever possible, including provisions for pedestrian pathways for general public use, to create linked pathway systems within the County, where appropriate.]
- [H. Open space may be used for stormwater detention, surface drainage, and water quality enhancement.]
- [I. All areas required to be protected as resources in Articles 5, 10, and 15 shall be designated open space for such purposes and shall meet all requirements of this Code.]

SYNOPSIS: This code requirements for open space contained in this section has been relocated and incorporated in part in Section 40.20.225. Open space should be treated as a qualitative analysis.

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Sec. 40.10.210. Uses in required open space.

Table 40.10.210 lists uses that may be permitted in open space when required elsewhere in this Chapter. The uses listed are narrower subsets of the use categories listed in Table 40.03.110. In so doing, a closer match of the permitted uses to the resources' tolerance is provided. Any use not listed shall be considered prohibited.

**Table 40.10.210
USES IN REQUIRED OPEN SPACE ****

Y = Permitted N = Prohibited L = Limited Use S = Special Use I = Environmental Impact Assessment Report, (See Section 40.10.410)															
Use	[General Open Space*]	Natural Resource Area Open Space ***	Community Area Open Space **	Flood-way	Flood-plain	Wetland	Riparian Buffer		Drainage -ways	Cockeyville Formation	Sinkhole	Wellhead / Recharge Areas	Steep Slopes	Forests	Historic
							Zone 1	Zone 2							
Agricultural															
Apiaries	[Y]	I	N	N	N	N	Y	Y	Y	Y	Y	Y	Y	Y	Y
Clearing	[L]	L	L	L	N	N	N	N	L	L	N	L	I	N	L
Game farms/fish hatcheries	[Y]	I	Y	I	I	I	N	I	I	N	N	N	N	N	N
Field crops	[Y]	I	Y	N	Y	N	N	N	Y	Y	N	Y	N	N	Y
Orchards	[Y]	I	Y	N	Y	N	N	Y	Y	Y	Y	Y	Y	N	Y
Pasture	[Y]	I	Y	Y	Y	N	N	Y	N	Y	N	N	Y	N	Y
Stables	[Y]	[I] N	Y	N	N	N	N	N	N	Y	N	N	N	I	Y
Nursery	[Y]	[I] N	Y	N	L	N	N	L	Y	Y	N	Y	Y	N	Y
Recreation and Amusement: Outdoor Recreation															
Ball fields	[Y]	[L] N	Y	N	Y	N	N	N	Y	Y	N	Y	N	N	N
Day camps	[N]	[L] N	L	N	L	N	N	L	Y	Y	N	L	N	L	L
Fishing areas	[Y]	[L] N	N	Y	Y	Y	Y	Y	Y	L	L	L	L	L	L
Hunting areas	[L]	[L] N	N	L	L	L	L	L	L	L	L	L	L	L	L
Golf course/ driving ranges	[Y]	N	N	N	L	L	N	L	Y	Y	L	Y	L	L	Y
Natural area	[Y]	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Nature center	[Y]	[I] N	Y	N	N	N	N	N	Y	Y	N	Y	Y	Y	Y
Picnic area/ playground	[Y]	[L] N	Y	N	L	N	N	L	Y	Y	N	Y	Y	Y	Y
Pools/courts	[Y]	[L] N	Y	N	L	N	N	N	Y	Y	N	Y	N	N	Y

**Table 40.10.210
USES IN REQUIRED OPEN SPACE ****

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							Zone 1	Zone 2							
Shooting and archery ranges	[L]	[L] <u>N</u>	<u>N</u>	L	L	N	N	L	L	L	L	L	N	N	N
Trails	[Y]	<u>Y</u>	<u>Y</u>	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
Water dependent use	[N]	[L] <u>N</u>	<u>N</u>	L	L	L	L	L	Y	N	N	N	N	N	N
Industrial Uses: Utilities, Community/Region															
Public[/private] roads	[Y]	<u>I</u>	<u>N</u>	I	I	N	I	I	Y	Y	N	L	L	L	N
<u>Private roads</u>		<u>I</u>	<u>N</u>	<u>I</u>	<u>I</u>	<u>N</u>	<u>I</u>	<u>I</u>	<u>Y</u>	<u>Y</u>	<u>N</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>N</u>
Parking lots	[L]	<u>I</u>	<u>L</u>	N	N	N	N	N	L	L	N	L	N	N	L
Essential access	[Y]	I	I	I	I	I	I	I	L	L	N	S	S	L	N
Sewer/water/ utilities	[Y]	<u>Y</u>	<u>Y</u>	L	L	L	L	L	Y	Y	N	S	S	L	Y
Land application of treated effluent	[Y]	<u>I</u>	<u>N</u>	N	N	I	N	Y	N	N	N	I	N	Y	Y
Sewage & water treatment plants/pumping stations/dams	[N]	<u>N</u>	<u>N</u>	I	I	N	I	I	N	N	N	N	N	N	N
[Detention/retention basins]	[Y]			[N]	[L]	[N]	[N]	[L]	[Y]	[L]	[N]	[L]	[N]	[N]	[L]
<u>Stormwater management practices</u>		<u>Y</u>	<u>Y</u>	<u>N</u>	<u>I</u>	<u>N</u>	<u>N</u>	<u>Y</u>	<u>Y</u>	<u>I</u>	<u>N</u>	<u>I</u>	<u>N</u>	<u>Y</u>	<u>Y</u>
Temporary Uses															
Public interest event	[Y]	[Y] <u>N</u>	<u>Y</u>	N	N	N	N	N	Y	Y	N	Y	N	N	Y
Special event	[Y]	[Y] <u>N</u>	<u>Y</u>	N	N	N	N	N	Y	Y	N	Y	N	N	Y

**Table 40.10.210
USES IN REQUIRED OPEN SPACE ****

Y = Permitted N = Prohibited L = Limited Use S = Special Use I = Environmental Impact Assessment Report, (See Section 40.10.410)															
Use	[General Open Space*]	<u>Natural Resource Area Open Space</u> ***	<u>Community Area Open Space</u> ***	Flood-way	Flood-plain	Wetland	Riparian Buffer		Drainage -ways	Cockeysville Formation	Sinkhole	Wellhead / Recharge Areas	Steep Slopes	Forests	Historic
							Zone 1	Zone 2							
<p>* Subdivisions less than fifty (50) acres will utilize the community area open space criteria. [General open space is that land required by Table 40.04.110 A. as min. OSR/LSR and not containing any specific natural resource.]</p> <p>** For resource standards for limited uses, refer to Division 40.10.300 and Division 40.10.400.</p> <p>*** Permitted uses for natural resource area open space and community area open space not containing any specific natural resources. If the protection standards differ, between natural resource area open space and/or community area open space and specific resource categories, the stricter of the two (2) will govern.</p>															

SYNOPSIS: This table represents the land use activities which are permitted or prohibited within open space and the various protected resources. The table is modified to include two additional types of open space (natural resource area and community area). Two new uses were also added to the Table (private roads and stormwater management practices). The first creates a separate category for private roads while the second deletes the detention/retention use and replaces it with a category that more broadly reflects stormwater management practices available (particularly those associated with conservation design practices).

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Division 40.10.300. Additional resource standards.

The following Sections set forth additional standards that protect natural resources or permit mitigation. For all protected resources, stormwater outfalls shall be permitted, provided that the discharge velocity from the terminal end of the pipe or the associated energy dissipation practice does not exceed two (2) feet per second (fps) for the two (2) year frequency storm event. Green technology stormwater best management practices methods shall be used to convert concentrated flow to uniform, shallow sheet flow, filter sediments, and control erosion.

SYNOPSIS: The proposed change makes this requirement applicable to all protected resources in place just Riparian Buffer Areas.

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Sec. 40.10.387. Resource Protection Area Technical Advisory Committee (RPATAC).

A. The purposes and duties of the RPATAC are to:

1. Provide technical support and recommendations to the Department concerning the technical definition and criteria of any resource protection area or level as depicted in Table 40.10.010. [on the three (3) map series designated in this Chapter.]
2. Advise the Department when it is determined that [performance] environmental standards contained in Article 10 of this Chapter should be amended.
3. Provide technical support and recommendations to the Department, Board of Adjustment and Planning Board concerning any application.
4. [Advise the Department when it is determined that this Chapter should be amended.] Provide technical support, review and recommendations on all variance applications concerning the reduction of the required OSR for major residential land developments depicted in Table 40.04.110.
5. Upon the request of the Department, RPATAC shall provide recommendations regarding application of the standards to rezoning, subdivision, and land development submissions relative to any issue involving a protected resource.
6. Assist the Department as requested.

SYNOPSIS: The proposed changes expand the role of RPATAC to provide technical support and recommendations to the Department on reduction of required OSR for major residential land developments and for relief from the resource protection standards contained within Article 10.

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Sec. 40.10.405. Natural resource area and community area open space.

All uses indicated as “limited” within natural resource area and/or community area open space shall be permitted pursuant to Department approval. The Department shall consider the appropriateness of the proposed use within the context of the proposed plan, its open space management plan and/or the principles of conservation design.

SYNOPSIS: This captures those uses annotated within the proposed natural resource area and/or community area, which may be permissible as “limited” use only. Through the proposed pre-exploratory sketch plan conference, the Department may determine specific cases in which these “limited” use would be permissible.

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Sec. 40.10.410. Environmental impact assessment report.

If a proposed use requires an environmental impact assessment report, the applicant shall have such a report certified by a professional engineer, geologist or other certified professional in the applicable environmental discipline. Mitigation cannot be used where the conflict can be avoided or minimized. The report shall contain the following criteria, given in order of preference:

- A. *Site character.* The report shall identify all potential on-site sensitive environmental concerns.
- B. *Avoidance.* Alternative sites or routes shall be identified that would not damage the resource or result in less resource damage. Reasons shall be provided explaining why using these sites is impossible or infeasible versus that proposed.
- C. *Minimization.* The applicant shall demonstrate that the plan minimizes the impact of the activity, route, or use on the resource. The applicant shall also demonstrate that the areas impacted shall be the lowest quality and result in the least damage to the resource.
- D. *Mitigation.* A mitigation plan shall be submitted indicating mitigation activities. On-site replacement is the most acceptable form of mitigation. However, mitigation can include restoration and enhancement after the use is abandoned. Mitigation by replacement on another site shall be at a ratio of two to one (2:1). Mitigation may also include enhancement; this ratio shall be four to one (4:1). See Table 40.10.350B.
- E. *Conservation design.* Any activity proposed within natural resource area open space shall also demonstrate how the principles of conservation design will be effected, how they will be advanced, and how the proposed activity will be addressed in the natural resource area open space management plan.

SYNOPSIS: The proposed change addresses the addition of natural resource area open space into Table 40.10.210 in the context of conservation design along with additional standards for the requirement of environmental assessment report for uses listed in the table.

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Sec. 40.10.427. Roads, parking lots and utilities.

- A. *All resource areas.* Protected resources shall not be disturbed with roadways, parking lots or utility lines. The applicant must demonstrate no possible alternative to crossing the resource exists and the route selected must be the least disruptive.

- [B. *Riparian buffer areas.* Stormwater outfall shall be permitted, provided that the discharge velocity from the terminal end of the pipe or the associated energy dissipation practice does not exceed two (2) feet per second (fps) for the two (2) year frequency storm event. In addition, best management practices methods shall be used to convert concentrated flow to uniform, shallow sheet flow, filter sediments, and control erosion.]

SYNOPSIS: The proposed change moves this requirement to the beginning of this Section to make applicable to all protected resource areas.

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Sec. 40.20.225. Required open space.

- A. Open space shall be required in all major residential developments. Ownership of open space shall be transferred to a maintenance organization or governmental body pursuant to the provisions contained in Article 27. Open space shall not be further developed and shall serve one (1) or more of the following functional needs:
 - 1. Protection and preservation of natural resources and sensitive site features;
 - 2. Provision of active and passive recreation areas;
 - 3. Greenways and trail corridors;
 - 4. Wildlife habitats and migration corridors;
 - 5. Stormwater management;
 - 6. Preservation of historical and cultural resources;
 - 7. Agricultural uses;
 - 8. Viewshed and vista preservation, and;

9. Bufferyards and landscaped areas.

Uses permitted by Table 40.10.210 of this Chapter may be allowed when they compliment and enhance the above functional needs.

B. All major residential subdivisions shall contain open space designated as community area open space. In designating community area open space or landscaped surfaces as part of a subdivision or land development plan, the following criteria and standards shall be adhered to by the applicant:

1. Open space shall be separate parcels of land exclusive of streets and residential lots.
2. An existing principal dwelling unit and a maximum of one (1) existing out building, where such structures are deemed historically and/or architecturally significant by the Department, may be included within open space area.
3. Except for recreation activities, open space shall be substantially free of structures and paved areas.
4. Open space designated for recreation may contain parking areas and access drives accessory to the open space and other such complementary structures and improvements that are necessary and appropriate for the benefit of the residents utilizing the land for recreation purposes. Such land shall be distributed through the development to best serve the residents. Where the development is in phases, the Department may require each phase to have adequate open space.
5. In subdivisions of thirty (30) dwelling units or more, an area or areas of useable open space shall be provided at a rate of one (1) acre per one hundred (100) dwellings units. Usable open space shall be centrally located, highly visible, and unconstrained by floodway areas, critical natural areas, wetlands or excessively forested areas. Additionally, the area shall be graded in such a manner to render it usable for active recreation purposes and shall not have slopes greater than five (5) percent. This provision does not require community area open space in addition to the requirements of this Chapter, but provides that a portion of the required open space shall be designed in such a way to render it usable for active recreation purposes.
6. Open space shall be interconnected with open areas or greenways on abutting parcels wherever possible and may provide provisions for pedestrian pathways for general public use, to create linked pathway systems within the County, where appropriate.
7. Open space may be used for stormwater management.

8. A landscape plan/open space management plan specifying the landscaping/open space management requirements shall be required for all subdivisions involving the creation of community area open space.
9. In subdivisions involving fifty (50) acres or more, designated open space shall be classified as natural resource area open space in addition to community area open space. Within these subdivisions both types of open space will be included on separate parcels and adhere to the following additional open space design standards:
 - a. Natural resource area open space shall generally be large tracts of contiguous land including protected resources.
 - b. Community area open space shall be smaller open space parcels not necessarily contiguous to the natural resource areas. Community area open space shall provide a benefit to residents of the subject subdivision and provide recreational opportunities .
 - c. The configuration and arrangement of all open space shall emphasize interconnectivity within the subdivision and with adjoining public or private open spaces. Narrow or fragmented small open spaces shall be avoided unless necessary for a practical function.
 - d. Natural resource area open space shall be contiguous to the greatest extent practicable within the subject subdivision and shall maximize the area in width to provide habitat linkages, enhance environmental resources and serve stormwater management functions. Fragmented natural resource area open space should be minimized to the greatest extent practicable to meet these standards.
 - e. The requirements of Section 40.20.225 (B) shall be met. However, in cases where community area open space cannot satisfy the requirements of Section 40.20.225 (B) (5), the substitution of passive recreational activities within natural resource open space areas shall be reviewed by the Department. Only those passive recreational uses permitted in Table 40.10.210 shall be considered for approval.
 - f. All areas required to be protected as resources per Table 40.10.010 shall be designated as natural resource area open space except when isolated resources exist and as approved by the Department.

g. A natural resource area management plan shall be submitted to the Department for review and approval prior to the recordation of all major residential subdivisions involving the creation of natural resource area open space.

10. In multi-family developments, the open space acreage requirements and design standards shall be provided except that the open space will be part of the developed parcel.

SYNOPSIS: The current section of 40.04.230 has been moved to Article 20. In addition, new subsections “9” and “10” have been added to the original language and functional needs identified.

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Division 40.22.200. Grading and drainage.

Sec. 40.22.210. Storm drainage.

All stormwater management, grading, and related installations shall be provided in accordance with Chapter 12 of the New Castle County Code, the State of Delaware Sediment and Stormwater Regulations (see 7 *Del. C.* ch. 40), and the following:

A. The applicant shall utilize green technology stormwater best management practices (GTBMP) to the maximum extent feasible as part of the overall conservation design approach. [*Conservation design methods.* The applicant shall investigate the utilization of conservation design methods. Before other alternatives are considered, the applicant shall demonstrate to the Department that conservation design methods are not feasible on the site.]

1. Application of green technology stormwater best management practices (GTBMP) – The applicant shall utilize the most effective low impact stormwater drainage practices to address stormwater conveyance and stormwater management objectives as required in Chapter 12 of the County Code. GTBMP are those practices that incorporate the following:

a. Stormwater runoff management via surface water dispersion, volume reduction and discharge at multiple points to:

i. Maximize infiltration potential. Applicants shall utilize the natural capacity of the soils to capture and infiltrate runoff from impervious surfaces.

ii. Maximize filtration potential. Applicants shall utilize the soil profile as well as existing and enhanced vegetation to improve the quality of the stormwater runoff.

iii. Maintain non-erosive velocities of stormwater runoff. Applicants shall maintain post-development stormwater flow velocities to an intensity that does not adversely impact natural resources identified in Article 10 of this Chapter.

b. Utilization of strategies that disconnect long reaches of stormwater flowing over impervious areas, including:

i. Addition of landscaped corridors to receive runoff.

ii. Grading longer hydraulic flow paths through pervious conveyance facilities.

c. Implementation of GTBMP at the source of the contributing runoff that mimic or improve the predevelopment hydrologic water balance on the project site.

d. Utilization of other practices or techniques approved by the Department.

[B. *Permanent pool ponds.* In residential, commercial, and industrial developments greater than four (4) acres, unless a conservation design method is utilized, permanent pool ponds shall be incorporated into stormwater management design as the method for quantity and quality control of stormwater runoff wherever practicable.]

[1. The permanent pool pond shall be designed in such a way that it enhances the character of the development site. The design must meet the landscape requirements of any landscape or open space plan and the provisions of this Chapter.]

[2. The Department shall determine whether an alternative design in lieu of a permanent pool pond is permissible.]

[C] B. New or improved drainage conveyance systems shall be designed and constructed to require economical maintenance. Improvements to watercourses in existing developments shall be designed and constructed to retain the character of the surrounding area as much as practicable. Adequate rights-of-way shall be provided for access for construction and maintenance thereafter.

[D] C. If a conflict arises between this Section and a State law, the State law requirement shall prevail if it is more restrictive.




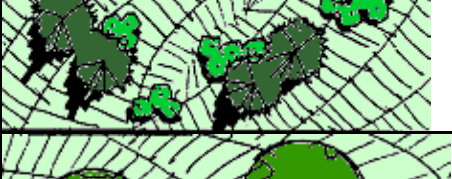

SYNOPSIS: This Section further incorporates conservation design. A new section “A” was added to 40.22.210 to encourage more environmentally friendly stormwater practices (e.g., Green Technology) and maximize the use of conservation resources.

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Sec. 40.23.110. Standard plant units.

Each plant unit alternative in Table 40.23.110 is generally interchangeable with the standard plant unit. The developer may use any one (1) or a combination of alternatives. However, some alternatives are preferred given certain objectives. For example, Alternative Unit D is best suited for the interior of parking lots or other places where clear, low-level views are desired or fences exist. Where yearround screening is required, Alternative Unit B or C is preferred. In some cases, this Chapter may specify a specific plant unit, or an alternative plant unit may be required during land development or site plan review.

Table 40.23.110
PLANT UNIT ALTERNATIVES

<i>Plant Unit Alternative</i>	<i>Quantity, Size & Type of Plants Required</i>	<i>Illustration</i>
STANDARD PLANT UNIT	1 Canopy tree*** 2 1-1/2" to 2" caliper understory 13 1-1/2' to 3' high shrubs****	
ALTERNATIVE UNIT A*	1 Canopy tree*** 1 1-1/2" to 2" caliper understory 1 5' to 6' high evergreen tree 11 1-1/2' to 3' high shrubs****	
ALTERNATIVE UNIT B*	2 1-1/2" to 2" caliper understory 3 5' to 6' high evergreen tree 7 1-1/2' to 3' high shrubs****	
ALTERNATIVE UNIT C*	4 5' to 6' high evergreen tree 15 1-1/2' to 3' high shrubs****	
ALTERNATIVE UNIT D**	2 canopy tree*** 3 1-1/2' to 3' high shrubs****	

* Preferred for year-round screen.

** May be required where visibility is required for safe automobile operation.

*** Whenever Canopy Trees are required in any one of the plan alternatives, the following minimum percentages for each size group shall be required: 60% - 2" to 2-1/2" caliper; 20% - over 2-1/2" caliper

**** The Department may permit approved herbaceous vegetation in lieu of required shrubs in those areas subject to approved conservation design practices.

SYNOPSIS: This amendment permits the use of herbaceous vegetation in lieu of required shrubs when green technology stormwater best management practices are used to manage stormwater.

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Sec. 40.23.120. On-lot landscaping.

In general, the on-lot landscaping shall be distributed around the lot, planted close to the buildings, or be in some combination of these planting schemes. However, front yards are particularly important to preserving community character. Certain unit types require additional planting material to be planted between front-load garages and the right-of-way as indicated in Section 40.23.121. The Department may grant a partial on-lot or open space landscape credit where planting for green technology stormwater best management practices is in excess of the planting requirements contained in Article’s 4 and 23.

SYNOPSIS: This amendment permits a partial credit where planting for conservation design stormwater management practices exceeds Article’s 4 and 23 requirements.

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Sec. 40.23.220. Replacement.

The developer shall be responsible for replacing all plants that die during a two (2) year period from the date of installation. The County may use the bond or surety to replace plants if the developer fails to perform adequately. For all required on-lot residential landscaping the developer shall convey a two (2) year warranty for replacement to the purchaser at the time of settlement for each lot/unit.

SYNOPSIS: Language has been added that provides the homeowner of each individual lot a 2 year landscape warranty for replacement of required on-lot landscaping.

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**ARTICLE 27
MAINTENANCE CORPORATIONS, OPEN SPACE,
AND COMMON FACILITIES**

Division 40.27.000. Purpose.

The provisions of this [Chapter] Article require that [common land be] all open space set aside as part of a subdivision or land development plan [for use as open space or common facilities] be transferred to and maintained by a governmental body or a maintenance organization by: [To provide for the continued quality of life for the current and future residents of New Castle County, this Article ensures the proper maintenance of open space and common facilities by:]

- A. Requiring the [owner and/or] developer to create or identify a maintenance organization as a condition of recordation of the record plan.
- B. Delineating the maintenance responsibilities for all areas designated on the record plan as open space or common facilities including, but not limited to, private streets or rights-of-way, parking areas, drainage facilities, stormwater management facilities, and active or passive recreation areas and providing that such areas shall be maintained pursuant to the terms of a maintenance declaration, landscape plan, open space management plan or natural resource management plan [executed] approved by the Department [legal owner of the property at the time of] prior to plan recordation.
- C. Requiring the transfer of ownership of the open space and common facilities to [the] a maintenance organization or governmental body [County], and defining the process by which transfer shall occur.
- D. Defining the process by which [Requiring] the transfer of control of the maintenance [organization] corporation from the [owner and/or] developer to the homeowners[, and defining the process by which the change of control] shall occur.
- E. Requiring all subdivisions and land developments constructed prior to the enactment of this Article to comply with all applicable New Castle County Code provisions pertaining to maintenance organizations, open space, and common facilities.

Division 40.27.100. Requirement for maintenance organizations.

Sec. 40.27.110. Maintenance organizations.

In subdivisions and land developments where lots or units will be sold to individual purchasers, the [owner and/or] developer of the property shall establish or identify an appropriate organization that shall be responsible for owning, maintaining and/or managing the [private] open space and common facilities [that are planned to be used or enjoyed in common by such lot or unit owners. The owner and/or developer shall remain a member of the maintenance organization only as long as the owner and/or developer owns a lot or unit. The lot or unit purchaser shall become a member of the maintenance organization by acceptance of the deed to the property].

Sec. 40.27.120. Exceptions.

A maintenance organization shall not be required under the following circumstances:

- A. The record plan contains [no common land that will be used as private open space or common facilities] only public open space that will be owned and maintained by a governmental body.

- B. The record plan contains no private open space but depicts common facilities and:
1. The Department of Law and the Department [of Land Use] agree in writing, prior to plan recordation, that a maintenance organization is not necessary;
 2. An appropriate agreement, such as an access or easement agreement, binds the lot owners and establishes obligations regarding use and maintenance of the common facilities; and
 3. Such agreement is approved by the Department of Law and the Department [of Land Use], noted on the record plan, and recorded in the Office of the Recorder of Deeds.

Sec. 40.27.130. Required organizational form.

Prior to plan recordation, the [owner and/or] developer must demonstrate [and provide proof] to the Department [of Land Use] and the Department of Law that an appropriate organization responsible for maintaining the [private] open space and common facilities [has been formed] exists. The maintenance organization shall [be established in a condominium or corporate form] consist of one (1) of the following entities.

- A. *Condominium form.* A condominium organization is permissible only if the property complies with the requirements of the Delaware Unit Property Act. In such a case, "common elements" as used in the Unit Property Act shall, in addition to its given definition, mean and refer to "[private] open space" and "common facilities" as used in this Article. The Declaration required by the Unit Property Act shall, by reference to this Article, subject the unit owners to the provisions of this Article. [For the purpose of this Article, reference to a maintenance corporation shall also include an association formed pursuant to the provisions of the Unit Property Act.]
1. A copy of the recorded Declaration as required by the Unit Property Act shall be filed with the Department [of Land Use] and the Department of Law, for their review and approval, prior to plan recordation.
 2. The plan shall reference the Declaration and state that maintenance of the [private] open space and common facilities are subject to this Article and said Declaration.

B. Third party conservancy. The County may approve a third party entity (“conservancy”) to operate as a maintenance organization upon a showing that the conservancy has the ability to maintain and manage the open space. The conservancy may be a conservation group, land trust, land management group, public/private partnership or any other type of entity as long as the conservancy’s primary purpose is preservation or conservation. The conservancy must be approved by the Department prior to plan approval. The conservancy must meet the following requirements to the Department’s satisfaction to be considered for approval as a maintenance organization.

1. The ability to fund the costs of implementing and completing a natural resource area management plan, landscape plan, and other approved plans that concern the open space;
2. The ability to fund the costs of perpetual maintenance and management of the open space.
3. The knowledge and expertise to complete, manage, and maintain the approved natural resources area management plan, landscape plan, and other approved plans that concern the open space.
4. Proof of adequate oversight mechanisms to carry out the responsibilities of open space management and maintenance.
5. Documentation of long term financial and organizational stability and of perpetual existence.
6. Assurance that at such time the organization can no longer perform its management and maintenance responsibilities, all open space shall be transferred to a party responsible for management and maintenance of the open space. The owner shall include such reverter or retransfer provisions in the deed transferring the land to the maintenance organization. Such provisions must be approved by the Department of Law before the open space is transferred.
7. Execution of documents including maintenance agreements and conservation easements acceptable to the Department and Department of Law that ensures the preservation of the open space in the condition contemplated by the record plan, natural resource area open space management plan, landscape plan, and any other applicable plan.
8. Language on the record plan and in the deed transferring the land to the maintenance organization creating restrictive covenants to ensure the availability of the open space for those whose use the open space is intended and restrictions on transferability and use.

[B] C. *Corporate form.* Unless subsection (A) or (B) above applies, the [owner and/or] developer shall form a non-stock corporation pursuant to the provisions of the Delaware General Corporation Law.

1. Prior to plan recordation, the [owner and/or] developer shall submit to the Department [of Land Use] and the Department of Law, for their review and approval, the maintenance declaration, certificate of incorporation, and bylaws as required by this Article. These forms shall conform to the model forms contained in this Article's appendix.
2. The maintenance declaration must be executed by the legal owner of the property and shall create covenants that run with the land. The declaration must be recorded by the Recorder of Deeds in and for New Castle County prior to record plan approval.
- [2] 3. The record plan shall reference the maintenance declaration, landscape plan, open space management plan, or natural resource management plan and state that maintenance of the common areas and facilities are subject to the provisions of this Article and said maintenance declaration and applicable plans.
4. At such time assessments are collected by the maintenance corporation for the maintenance of the open space, the developer shall be responsible for paying an assessment for each parcel owned.

Sec. 40.27.140. Conditions of recordation.

Prior to recordation of the plan, the [owner and/or] developer of the property shall demonstrate:

- A. The maintenance [corporation] organization has a perpetual obligation to maintain the [private] open space and common facilities.
- B. The legal owner [and/or developer] has created adequate restrictions on the record plan and in the maintenance declaration and any other document that is required by the Department concerning the transferability and use of the open space.
- C. That all lot or unit owners have a right to enjoy the private open space and common facilities, subject only to reasonable rules and regulations, and the payment of appropriate maintenance [corporation] organization fees.
- D. That the maintenance [corporation] organization has or will have the resources to discharge its maintenance obligations[, which obligations shall be established in the maintenance declaration. This may be demonstrated by showing projected membership and the resulting fees that will be generated, or by showing a legally enforceable right to assess a fee to each lot or unit].

- E. That all other provisions of this Article have been observed and that a satisfactory plan is presented demonstrating that all remaining obligations will be fully discharged.
- F. The [owner and/or] developer has provided the Department of Law and the Office of Community Governing with the addresses, telephone numbers, and names of persons serving as the maintenance corporation's board of directors.
- G. The [owner and/or] developer has provided the Department of Special Services and the Office of Community Governing with the name, address, and telephone number of the [owner's and/or] developer's representative who will be responsible for maintenance during development of the subdivision.
- H. The developer has certified by affidavit, signed by the affiant under penalty of perjury, and notarized, that all subdivisions or land developments that the developer is or has been financially associated with are in compliance with this Article and any other applicable New Castle County Code provision pertaining to maintenance organizations, open space or common facilities. The developer must disclose all prior and current land use projects in New Castle County in which any financial interest were or is presently held. This includes all projects conducted under the affiant's current business name as well as any prior construction or development business under which affiant has operated as a principal.

Sec. 40.27.150. Duty to inform home buyer.

In residential home sales, the seller of a lot, or his or her authorized agent, has an affirmative duty to inform the purchaser about maintenance corporation membership and educate the purchaser about members' responsibilities. This duty requires the seller to provide the buyer with a copy of the maintenance declaration and bylaws. A written acknowledgment stating that the seller has fulfilled his or her duty under this section shall be signed by the purchaser.

- A. *New subdivisions.* The [owner and/or] developer of a new subdivision shall maintain a record of the individual acknowledgments evidencing the fact that the purchaser of a lot within the subdivision has been provided a copy of the maintenance declaration and the bylaws.
 - 1. The seller shall obtain the purchaser's acknowledgment at or before the time of settlement. Each acknowledgment shall be presented to the Department of Land Use as a condition precedent to the issuance of each certificate of occupancy.
 - 2. A complete copy of the record of all acknowledgments shall be delivered by the [owner and/or] developer to the board of directors of the maintenance corporation and the Office of Community Governing prior to the time the homeowners assume control of the board of directors.

- B. *Existing homes.* In existing subdivisions that are encumbered with maintenance declarations, the purchaser, at or before settlement, shall sign an acknowledgment evidencing the fact that the seller has provided a copy of the maintenance declaration and the bylaws to purchaser. Proof of acknowledgment shall be forwarded by the seller to the board of directors of the maintenance corporation. If a board of directors does not exist, proof of acknowledgment shall be sent to the Office of Community Governing.

Division 40.27.200. Completion of open space and construction of common facilities.

Sec. 40.27.210. Obligations of [owner and/or] developer.

- A. All areas designated on the record plan as open space or common facilities including, but not limited to, streets or rights-of-way, parking areas, stormwater management facilities, drainage facilities, and active or passive recreation areas, shall be constructed by the [owner and/or] developer of the subdivision, and any other person or entity that constructs dwelling units within the subdivision or improves the development site. Such responsibility shall be joint and several, and allocation of responsibility shall be determined by the individual persons or entities constructing dwelling units in the subdivision and by the [owner and/or] developer.
- B. All areas designated on the record plan as open space or common facilities including, but not limited to, streets or rights-of-way, parking areas, stormwater management facilities, drainage facilities, and active or passive recreation areas, where constructed, installed, or dedicated by subdividers and shall be at no expense to the County. Construction, installation, and dedication of such open space or common facilities shall be subject to approval by the appropriate officials at the [owner and/or] developer's expense.
- C. *Natural resource area open space management plan, [O]open space management plan, landscape plan, and/or active recreation plan.* Unless waived by the Department [of Land Use], a natural resource area open space management plan, open space management plan, landscape plan and/or an active recreation plan shall be submitted for review at the time of review of the record plan for the subdivision. Where the open space or common facilities are to be developed, such development shall be completed in accordance with the appropriate plan on or before the point that building permits have been issued for seventy-five (75) percent of the lots within the subdivision. In addition, open space must be transferred by deed, as provided by this Article, to the maintenance [corporation or County] organization or governmental body, as applicable, on or before the point that building permits have been issued for seventy-five (75) percent of the lots in the subdivision. The specific content of the plan shall be established by the Department [of Land Use and the Department of Special Services] according to the requirements of this Chapter for the particular subdivision in question.

Sec. 40.27.220. Required performance guarantee for open space and common facilities.

The [owner and/or] developer, prior to [the issuance of the first building permit] plan recordation, shall post a letter of credit or other financial surety acceptable to the Department [of Special Services] to serve as collateral for the costs of constructing and/or reconstructing the open space and common facilities. The letter of credit or other surety shall be posted with the Department [of Special Services] to ensure completion of the open space and any common facilities in accordance with the provisions of any applicable plan and the provisions of this Chapter.

- A. The letter of credit or other surety shall remain posted with the Department [of Special Services] until such time as the open space and common facilities have been inspected and approved.
- B. The amount of the surety shall be determined by the Department [of Special Services] and shall be in the amount of one hundred twenty (120) percent of the cost of completing the open space and common facilities[, but in no event shall the amount be less than the equivalent of one hundred (\$100.00) dollars per lot within the subdivision].
- [C. The Department of Land Use shall not issue any building permits until the Department receives written assurance from the Department of Special Services that the letter of credit or other surety has been properly submitted by the owner and/or developer.]
- [D] C. The letter of credit or other surety shall be returned to the [owner and/or] developer after the completed work has been approved by the Department [of Special Services], the warranty against defect period has expired, and all other provisions of the surety agreement have been satisfied.
- [E] D. The performance guarantee shall become part of the Development Agreement pursuant to Article 31 of this Chapter.

Division 40.27.300. Maintenance of open space and common facilities.

Sec. 40.27.310. Maintenance by developer.

- A. The [owner and/or] developer of a subdivision shall maintain the open space and common facilities and shall be responsible for the cost of such maintenance until the following conditions are satisfied:
 - 1. The open space and common facilities shown on the record plan and natural resource area open space management plan, open space management plan or landscape plan have been improved as required by this Article [and by any existing plan];

2. The open space and common facilities have been transferred to [the] a maintenance [corporation] organization or governmental body according to the provisions of this Article; and
 3. If applicable, [T]he developer has transferred control of the maintenance corporation to the homeowners; or, has followed all applicable provisions in the Article to transfer control but through no fault of developer, the residents have refused to accept control of the maintenance corporation.
- B. *Maintenance escrow*. The [owner and/or] developer shall place funds in an interest-bearing escrow account equivalent to the cost of maintaining the private open space and common facilities for a two (2) year period, as determined by the natural resource area open space management plan, open space management plan, or landscape plan [Department of Special Services according to a standard formula], but in no event shall the amount be less than the equivalent of three hundred (\$300.00) dollars per lot within the subdivision. All interest that accrues in this account shall be turned over to the maintenance corporation.
1. The funding of this account shall coincide with the real estate settlement for each lot and shall be completed on or before the issuance of seventy-five (75) percent of building permits within the subdivision. Proof that the required deposits have been made must be presented upon application for each certificate of occupancy.
 2. The [owner and/or] developer must demonstrate that the funds have been placed with an independent escrow agent who is not under the power and control of the [owner and/or] developer.
 3. The escrow agreement shall provide that the funds shall not be withdrawn by the [owner and/or] developer or any person acting on behalf of the [owner and/or] developer.
 4. At the time the homeowners assume control of the maintenance corporation and elect a board of directors, the escrow amount plus any interest shall be transferred to the maintenance corporation. Such transfer shall not occur without the approval of the Department of Law.
 5. The maintenance escrow shall become part of the development agreement pursuant to Article 31 of this Chapter.
- C. The [owner and/or] developer shall be financially responsible for the long term maintenance of the stormwater management facility.
1. *Residential stormwater management facility maintenance fund*. The developer shall pay funds to New Castle County for the purpose of residential stormwater management facility maintenance. An amount shall be determined by the

Department of Special Services according to a standard formula derived in part from the State of Delaware Stormwater Management Pond Maintenance Guidance Manual. The money shall be used for costs associated with annual inspections, long term sediment clean out, and structural repair and reconstruction of facilities located in residential subdivisions. Upon the issuance of seventy-five (75) percent of the building permits, the Department [of Land Use] shall withhold the issuance of any additional building permits until the Department is furnished with satisfactory proof that the funds have been provided to the County in accordance with the requirements of this section.

2. Any obligation to contribute to the residential stormwater management facility maintenance fund shall become part of the development agreement pursuant to Article 31 of this Chapter.

Sec. 40.27.320. Maintenance by [corporation] maintenance organization.

- A. The maintenance [corporation] organization shall not be responsible for maintaining [private] open space and common facilities until:
 1. The open space and common facilities shown on the record plan and natural resource area open space management plan, open space management plan, or landscape plan have been improved as required by this Article [and by any existing plan];
 2. The open space and common facilities have been transferred to the maintenance [corporation] organization according to the provisions of this Article; and
 3. If applicable, [T]he developer has transferred control of the maintenance corporation to the homeowners; or, has followed all applicable provisions in the Article to transfer control but through no fault of developer, the residents have refused to accept control of the maintenance corporation.
- B. When the requirements of this section have been satisfied, the [private] open space and common facilities shall thereafter be maintained and kept in good order and repair by the maintenance [corporation] organization.

Sec. 40.27.330. Failure to maintain open space or common facilities.

- A. [*Owner and/or d*]Developer. Upon failure of the [owner and/or] developer to maintain the common facilities, the County may stop issuing building permits and certificates of occupancy and[/or] enter upon the premises and complete such maintenance and repair. Upon notice of failure to maintain the common facilities, the County shall provide at least ten (10) days notice to the owner and developer of said condition. If the developer does not respond to the County's notice by correcting said condition, the Department [of Land Use] shall not issue building permits and certificates of occupancy until such condition is

corrected. At the County's discretion, if the condition is not corrected within thirty (30) days, or if immediate corrective action is necessary, the County may enter the property and correct the condition. If the condition cannot be corrected within thirty (30) days, the County may elect to extend the time limitation if correction action is commenced and pursued with due diligence within thirty (30) days. If the County enters upon the land, the cost of the work performed by the County shall be charged to the owner and[or] the developer. This cost shall be paid to the County by the owner or developer prior to the issuance of any additional building permits and certificates of occupancy or, in the Department's discretion, may be deducted from the performance surety.

B. Maintenance Organization [corporation] or condominium organization. Upon failure of the maintenance organization [corporation] or condominium organization to maintain and repair [the private] open space and common facilities as required herein, the County may, in addition to any other remedy provided in this Chapter, enter upon the premises and do such maintenance and repair, provided that at least ten (10) days notice is given to the board of directors of the maintenance organization [corporation]. In the case of a condominium organization, such notice shall be sufficient if given to the condominium council. Notice to individual residents shall not be required.

1. The cost of the work performed by the County shall be charged to the maintenance organization [corporation] or condominium organization or, at the election of the County, may be charged to the owners of the lots or units within the subdivision. In the latter case, the assessment shall be apportioned against each lot or unit in accordance with the provisions of the instruments, if any, governing their rights of use of enjoyment, or in the absence of any such provisions, the apportionment shall be by pro rata share per lot or unit.
2. When the assessment is made against the maintenance organization [corporation] or condominium organization, it shall become a lien against all of the properties owned by the maintenance organization [corporation] or condominium organization from the date when such lien is filed in the Office of the Recorder of Deeds.
3. When the assessment is made against the owners of the lots or units in the subdivision, it shall become a lien against each lot or unit from the date when such lien is filed in the Office of the Recorder of Deeds. After thirty (30) days notice to the owners, the assessment provided for herein may be collected by foreclosure of such lien, by action against the owners in question or by any other available legal means.

C. Third party conservancy. Upon failure of the conservancy to maintain the open space in accordance with the record plan, natural resource area open space management plan, open space management plan, or landscape plan, the County may enter upon the premises and complete such maintenance and repair. If immediate corrective action is necessary in the Department's judgment, the County may immediately enter upon the land and correct

the deficiencies. In all other cases, the County shall provide at least ten (10) days notice to the conservancy of said condition. If the conservancy does not respond to the County's notice by correcting said condition, the County may enter upon the property and correct the condition. If the condition cannot be corrected within the ten (10) days, the County may elect to extend the time limitation if correction action is commenced and pursued with due diligence within thirty (30) days. If the County enters upon the land to maintain the open space or perform other services, the cost of the work performed by the County shall be charged to the conservancy. The County may pursue any remedy at law or in equity to secure payment of any fees charged to the conservancy. Additionally, any monies not paid when due shall become a lien on the property and all other property in the County owned by the conservancy to the extent permitted by law.

Division 40.27.400. Transfer of ownership of open space.

Sec. 40.27.410. Condition of developed open space areas.

At the time ownership of the open space is to be transferred to a maintenance [corporation] organization or to a governmental body [the County] in accordance with the record plan, natural resource area open space management plan, open space management plan, or landscape plan, the natural and[/or] developed characteristics of that open space shall be stipulated under the terms of such [the] plan. No such transfer shall occur until the County is satisfied that such terms have been met. No applicant shall transfer title until the County[, through the Department of Special Services,] approves the condition of the open space. The open space must be in good condition so that it can be used for its intended purpose and must be in conformity with the following requirements. These requirements are not all-inclusive but are intended to describe and establish minimum levels of quality for both public and private open space. The open space shall be, at a minimum:

- A. Clean and contain no surface or buried debris.
- B. Graded to drain well and be free of standing water, except within undisturbed natural areas[, as determined by the Department of Special Services].
- C. Free of standing dead trees, limbs and branches that pose a safety hazard to open space users.
- D. Free of conditions harmful to the preservation of trees thereon, such as fill or excavation around tree root zones.
- E. Free of unnatural conditions created by the developer that may be hazardous to users of the open space within disturbed areas. The requirements of this subsection shall be satisfied by, for example, but not by way of limitation, construction of new features or safety improvements such as fences or berms to protect open space users from newly created hazards, e.g., abrupt dropoffs from sidewalks to drainage ditches, steep embankments

- F. Free of any remnants from construction material stockpiles.
- G. Free of soil compaction by construction vehicles or construction material stockpiles. All areas subject to soil compaction shall be broken up or otherwise loosened to a depth of twelve (12) inches.
- H. Revegetated, where disturbed, [with a good quality grass seed] in accordance with the natural resource area open space management plan, open space management plan or landscape plan. In cases where seeding is required, the [owner and/or] developer must provide seed and fertilizer tickets prior to the transfer of the open space. The following mixes shall be required:
1. *General use areas.* The County's general use grass mix as stated percent by weight at one hundred fifty (150) pounds per acre and containing seventy-five (75) percent SR 80200 Fescue Tall, twenty (20) percent SR 40200 Perennial Rye, five (5) percent Merit Kentucky Blue.
 2. *Wildlife use areas (undisturbed/natural areas).* The County's wildlife mix containing twenty (20) pounds per acre orchard grass, fifteen (15) pounds per acre Perennial Rye, two (2) pounds per acre White Clover, and five (5) pounds per acre Alfalfa.
 3. All seed beds shall be treated with a one-time application of lime and fertilizer at the following rates: Fertilizer, 10-10-10, one thousand (1,000) pounds per acre; lime, two (2) tons per acre.
- I. Free of all unauthorized encroachments, i.e., sheds, gardens, fences, line-defining plant material, etc.
- J. Top-soiled, where disturbed, to replicate existing undisturbed topsoil areas. Topsoil depth shall be determined at the preconstruction meeting based on test hole information. Should the topsoil depth exceed four (4) inches, then, at the developer's request, with written approval of the Department of Special Services, the excess topsoil may be used on areas of the development that have deficient amounts of topsoil.
- K. Free of any liens, taxes and charges.
- L. Improved according to the natural resource area open space management plan, open space management plan or [record] landscape plan [and record plans]. This requires that stormwater management facilities must be completed and maintained according to The Delaware Sediment and Stormwater Regulations effective January 23, 1991 and as may be revised.

Sec. 40.27.420. Condition of natural open space areas.

[Some dedicated] As determined by the natural resource management plan, open space management plan or landscape plan, open space may be intended for use as an undisturbed or natural area. Should this be the intent, the note on the record plan shall restrict the [owner and/or] developer and contractor from disturbing the area. The area shall be transferred in this "untouched" natural state with the [County] governmental body or maintenance [corporation] organization accepting the original condition. The only exception to the [owner/]developer disturbing the designated area shall be if:

- A. The open space is disturbed or artificially changed while under the ownership of the developer as provided for on the record plan.
- B. Safety precautions are undertaken along the perimeter to protect open space users and[/or] adjacent property owners, i.e., tree trimming or removal, or the erection of safety barriers.

Sec. 40.27.430. Transfer of dedicated public open space.

- A. To transfer ownership of dedicated public open space to [the County] a governmental body or maintenance organization, the applicant shall convey good title [to the County] free of all liens, taxes and charges. The cost of recordation of the public open space deed shall be borne by the [County] developer. Dedicated public open space to be conveyed [to the County] within any residential subdivision shall be conveyed not later than two (2) years after the issuance of the first certificate of occupancy for a dwelling within the subdivision or not later than the issuance of building permits for seventy-five (75) percent of the dwellings within the subdivision, whichever occurs first. For purposes of a phased or staged development, the County may apply these requirements on a section-by-section basis. No transfer shall occur, however, until the provisions of Section 40.27.410 and[/or] 40.27.420 have been satisfied.
- B. These procedures shall be followed to complete the transfer of public open space:
 - 1. The developer shall contact the Department [of Special Services], in writing, requesting to transfer ownership of the open space [to the County].

2. Within sixty (60) days of the receipt of the request, the Department [of Special Services] shall coordinate an inspection of the open space for conformance with this Article and this land transfer procedure. Notwithstanding the foregoing, if weather conditions prevent the Department [of Special Services] from inspecting the open space within the sixty (60) day period, as determined by the Department, the Department shall automatically have an additional thirty (30) days in which to make the inspection. The Department [of Special Services] will notify the developer, in writing, of any problems or nonconformance found during the inspection and will specify a time period in which to correct them.
3. When all specified problems have been corrected, the developer shall notify the Department [of Special Services] in writing of this fact. The Department [of Special Services] will coordinate a reinspection of the land as provided. If the reinspection reveals uncorrected conditions, conditions created after the first inspection, or additional conditions, they will be recorded, in writing, and sent to the developer. The developer must correct the problems and renotify the Department [of Special Services]. Any inspection after the first shall result in a reinspection fee of five hundred (\$500.00) dollars payable to New Castle County prior to any additional reinspection. At the time the Department [of Special Services] finds that the condition of the open space conforms to all plan specifications and any requirements under this Chapter, the developer and Department of Law shall be notified, in writing, that the land is acceptable for transfer.
4. The developer, or his or her attorney, shall contact the Department of Law to make arrangements for the transfer. The developer shall prepare a legal description and deed for the land. This shall be submitted to the Department [of Special Services] and the Department of Law. The developer shall also submit to the Department of Law any other documentation necessary for proper review of the transfer including a lien search from a title abstractor acceptable to the Department of Law. A certification that no liens exist on the land shall be submitted by the owner of the property to the Department of Law. Any additional forms required from the Office of the Recorder of Deeds or any other governmental office shall also be submitted to the Department of Law.
5. No lands shall be transferred [to the County] unless title is free of all taxes, liens, judgments or encumbrances and the deed is legally adequate. [When the transfer is completed, the Department of Law will forward to the Department of Special Services a copy of the recorded deed for the land.]
6. If a developer fails to fully comply with this Article, the developer shall be responsible for the maintenance of the open space until all provisions of this Article have been satisfied and the deed is recorded.

7. No transfer of land [to the County] shall be effective until the Department of Law gives written notification to the grantor that the land has been formally accepted and the deed has been recorded. If land is to be dedicated as public open space and transferred to New Castle County, written approval shall also be obtained from the General Manager of the Department of Special Services. At such time, the [County] grantee shall be responsible for the maintenance of the public open space.

[C. With the permission of the County, an owner may transfer the fee simple title to public open space, with appropriate deed restrictions or easements running in favor of the County or a conservation easement, to a private nonprofit organization, among whose purposes is to conserve open space land and/or natural resources, provided:]

- [1. The organization is acceptable to the County and is a bona fide conservation organization with a perpetual existence;]
- [2. The conveyance contains appropriate provisions for proper reverter or retransfer in the event that the organization becomes unwilling or unable to continue carrying out its functions;]
- [3. A maintenance agreement acceptable to the County is reached; and]
- [4. The conveyance contains the necessary restrictive covenants to ensure use of the public open space by the residents of the County.]

[D] C. The transfer of ownership of public open space to a [federal, state or other public agency] governmental body shall occur in accordance with the transfer procedures established by the applicable public agency.

[E] D. If a particular use is mandated by a governmental [agency] body, the open space may be transferred [to the County], provided that the developer contracts with the County to ensure the removal of the use and restoration of the open space. Any such contract shall include, and be accompanied by, a letter of credit in an amount equal to one hundred twenty (120) percent of the estimated cost of the removal of the use and restoration of the open space. The estimated cost shall be based upon a written cost proposal for the work. The proposal shall be furnished by the developer and reviewed for approval by the Department [of Land Use]. The letter of credit shall be posted in favor of the County.

Sec. 40.27.440. Transfer of private open space and common facilities.

A. To transfer ownership of required private open space to a maintenance [corporation] organization, the applicant shall convey good title, free of all liens, to the maintenance [corporation] organization. The cost of recordation shall be borne by the [applicant] developer. Required private open space to be conveyed to a maintenance [corporation] organization within any residential subdivision shall be conveyed on or before the

issuance of seventy-five (75) percent of the building permits within the subdivision, but not prior to the issuance of fifty (50) percent of the permits within the subdivision. The Department [of Land Use] shall withhold building permits for the affected subdivision in an amount equal to the final twenty-five (25) percent of the lots in order to ensure compliance with this transfer of ownership requirement. For purposes of a phased or staged development, the County may apply these requirements on a section-by-section basis. No transfer shall occur, however, until the provisions of subsection 40.27.410 have been fully satisfied.

- B. These procedures shall be followed to complete the transfer of private open space and common facilities [to the maintenance corporation].
1. The developer shall contact the Department [of Special Services] in writing, requesting to transfer ownership of the open space [to the maintenance corporation]. If the homeowners have assumed control of the maintenance corporation, the board of directors shall be notified by the developer of the request. Additionally, the developer shall supply the Department [of Special Services] with the names, addresses, and phone numbers of the homeowners serving on the maintenance corporation's board of directors.
 2. Within sixty (60) days of the receipt of the request, the Department [of Special Services] shall coordinate an inspection of the open space for conformance with this section and this land transfer procedure. Notwithstanding the foregoing, if weather conditions prevent the Department [of Special Services] from inspecting the open space within the sixty (60) day period, as determined by the Department, the Department shall automatically have an additional thirty (30) days in which to make the inspection. The Department [of Special Services] will notify the developer, in writing, of any problems or nonconformance found during the inspection and will specify a time period in which to correct them.
 3. When all specified problems have been corrected, the developer shall notify the Department [of Special Services], in writing, of this fact. The Department [of Special Services] will coordinate a reinspection of the land as provided. If the reinspection reveals uncorrected conditions, conditions created after the first inspection, or additional conditions, they will be recorded in writing, and sent to the developer. The developer must correct the problems and renotify the Department [of Special Services]. Any inspection after the first shall result in a reinspection fee of five hundred (\$500.00) dollars payable to New Castle County prior to any additional reinspection. At the time the Department [of Special Services] finds the condition of the open space conforms to all plan specifications and any requirements under this Chapter, the developer and Department of Law shall be notified in writing that the land is acceptable for transfer.

4. The developer or his or her attorney shall contact the Department of Law to make arrangements for the transfer. If the homeowners have assumed control of the maintenance corporation, the board of directors shall be also be notified by the developer. The developer shall prepare a legal description and deed for the land. This shall be submitted to the Department [of Special Services] and the Department of Law. The developer shall also submit to the Department of Law any other documentation necessary for proper review of the transfer including a lien search from a title abstractor acceptable to the Department of Law. A certification that no liens exist on the land shall be submitted by the owner of the property to the Department of Law. Any additional forms required from the Office of the Recorder of Deeds or any other governmental office shall also be submitted to the Department of Law.
 5. No lands shall be transferred to the maintenance [corporation] organization unless title is free of all taxes, liens, judgments or encumbrances and the deed is legally adequate. When the transfer is completed, the Department of Law shall record the deed and forward a copy to the developer. The developer shall forward the deed to the maintenance [corporation] organization.
 6. The developer shall make application for exemption from taxation of the private open space and common facilities to be transferred to the maintenance corporation.
- C. If a particular use is mandated by a governmental agency, the open space may be transferred to the maintenance [corporation] organization, provided that the developer contracts with the Department [of Special Services] to ensure the removal of the use and restoration of the open space. Any such contract shall include, and be accompanied by, a letter of credit in an amount equal to one hundred twenty (120) percent of the estimated cost of the removal of the use and restoration of the open space. The estimated cost shall be based upon a written cost proposal for the work. The proposal shall be furnished by the developer and reviewed for approval by the Department [of Land Use]. The letter of credit shall be posted in favor of the County.
- D. In residential subdivisions where units are transferred as condominiums within the meaning of the Unit Property Act, ownership of the open space shall not be transferred as provided herein but shall be held as provided by the condominium declaration. The open space must be completed and approved by the Department on or before the issuance of seventy-five (75) percent of the building permits within the subdivision. The developer shall be responsible for the costs of constructing and maintaining the open space until such time that it is inspected and approved by the Department.

Division 40.27.500. Transfer of control of maintenance corporation.

The transfer of control of the maintenance corporation from the developer to the homeowners is a process. The Office of Community Governing shall serve as a resource for the developer and the homeowners to ensure the process is completed correctly.

- A. Transfer of control of the board of directors from the developer to the homeowners shall be initiated by the developer prior to the issuance of seventy-five (75) percent of the building permits for the lots within the subdivision. The transfer of control however, shall not occur prior to the issuance of fifty (50) percent of the building permits of the lots within the subdivision.
- B. The developer shall provide at least thirty (30) days written notice to each homeowner of the developer's intention of transferring control of the board of directors to the residents.
 - 1. For the purposes of this section, a form letter addressed to "Homeowners in the _____ Subdivision" shall suffice as long as the envelopes are individually addressed to each homeowner.
 - 2. A copy of the notice and an affidavit from the author of the letter listing the names of the homeowners to whom the notice was sent and the address where the notice was sent must be provided to the Department of Law, the Department [of Land Use], and the Office of Community Governing.
 - 3. The Department [of Land Use] shall issue no further building permits after the issuance of seventy-five (75) percent of the building permits for the lots within the subdivision until the appropriate Departments receive a copy of the notice and affidavit.
- C. Each director serving on behalf of the [owner and/or] developer shall hold his or her office until a successor is duly elected. Each director serving on behalf of the [owner and/or] developer shall actively participate in the transfer process by calling the meeting and following the procedures for turnover delineated in the corporation's governing documents.
- D. The transfer of control must be completed prior to the issuance of ninety (90) percent of the permits within the subdivision.
 - 1. At a minimum, proof of transfer of control of the maintenance corporation shall consist of a notarized affidavit signed by the owner or principal of the organization applying for further building permits and a list of the homeowners who have assumed control of the maintenance corporation. Said affidavit shall state that control of the maintenance corporation has been fully turned over to the residential lot owners.

2. If the transfer cannot be completed, the Department [of Land Use] may authorize the remaining permits to be issued provided the developer adequately establishes that the failure to transfer control is a result of the homeowners' refusal to assume control of the board of directors and not related to the developer's failure to comply with this Article.

Division 40.27.600. Annual registration requirement.

Sec. 40.27.610. Registration requirement.

The County may need to contact the maintenance corporation to forward the stormwater management facility annual report and to inform communities of upcoming workshops and events. Additionally, to address the concerns or questions of maintenance corporation members, the County will maintain a file containing each corporation's governing documents. To ensure this information is available, within thirty (30) days after control of the maintenance corporation is transferred to the homeowners, and within thirty (30) days after each meeting in which directors are elected, the board of directors must register with the Office of Community Governing. Registration shall include:

- A. The names, addresses, and telephone numbers of the board of directors and any officers of the maintenance corporation.
- B. Minutes of any annual or special meeting.
- C. A copy of the governing documents, including the maintenance declaration, certificate of incorporation and the bylaws. The articles of incorporation shall contain provisions requiring full membership votes on financial issues and land use matters.
- D. Any amendments to the maintenance corporation's governing documents.
- E. Proof that the maintenance corporation is operating in compliance with the provisions of the Delaware General Corporation Law.

Sec. 40.27.620. Failure to register.

Maintenance corporations not registered with the Office of Community Governing shall not be eligible for County assistance with stormwater management facility sediment clean out and replacement of structural components.

Division 40.27.700. Compliance.

The owner [and/]or developer of a subdivision, or any part thereof, at the time of recording the record plan, and any subsequent owners thereof, shall be subject to the provisions of this Article and may be compelled by any available action at law or in equity to comply therewith. Additionally, any individual, corporation, partnership, joint venture or other legal entities in

which any principal of the owner [and/]or developer, or any of his or her successors or assigns, shall become associated with shall also be subject to the denial of building permits and[/or] certificates of occupancy until violations of this Article have been corrected. Any remedy available under this Chapter shall apply to this Article.

SYNOPSIS: Many of the amendments proposed to this Article are to reflect the changes in the way New Castle County will provide for the ownership, maintenance and management of open space. These changes are necessary and closely related to the changes occurring elsewhere in the UDC with respect to conservation design techniques and green technology stormwater management practices. Maintenance organizations designed to be legally responsible for owning, maintaining and/or managing open space may include a condominium association, a third party conservancy or a maintenance corporation.

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Sec. 40.31.112. Exploratory sketch plan review/conference.

A. *Applicability.*

1. A pre-exploratory sketch plan review conference is required for all rezoning requests and major residential subdivisions. An applicant may request a pre-exploratory sketch plan review conference for all other major or minor plans at any time. Subsequent to the conference, an exploratory sketch plan with the level of detail listed in Appendix 1, Section 2 should be submitted within six (6) months to facilitate thorough Departmental review. This will result in the issuance of the exploratory sketch plan review letter upon which the timeframes of Section 40.31.390 are based. [An exploratory sketch plan review is required for all land development plans, including those proposals for which a rezoning is sought.]

2. An exploratory sketch plan review [conference] is required for all land development plans, including those proposals for which a rezoning [requests] is sought. [An applicant may request a preapplication conference exploratory sketch plan review conference for major or minor plan review. The purpose of the exploratory sketch plan review conference is to familiarize the applicant with departmental concerns and with the applicable provisions of this Chapter, as well as to permit the Department to assess the proposal and to identify any service problems or concerns. If additional studies and/or information are required for the proposed project, those studies and/or information must be provided to the Department prior to the rezoning/preliminary plan submission and the acceptance of an application. A preapplication conference may be initiated by the applicant at any time during the year and conference shall be scheduled by the Department.]

B. *Exemptions.* The Department shall have the authority to waive plan review requirements for County-initiated rezonings, administrative adjustments or rezonings not requiring a minor or major plan. The pre-exploratory sketch plan [preapplication] conference may also be waived when it is determined by the Department, after a review of the submission, that no departmental concerns exist.

C. [D.] [*Preapplication conference*] Pre-exploratory sketch plan review conference. The purpose of the pre-exploratory sketch plan review conference is to familiarize the applicant with principles of conservation design, departmental concerns and with the applicable provisions of this Chapter, as well as to permit the Department to assess the proposal and to identify any service problems or concerns in conjunction with the applicant's objectives. If additional studies and/or information are required for the proposed project, those studies and/or information must be provided to the Department prior to the rezoning/preliminary plan submission. [The Department will schedule a preapplication conference with the applicant to discuss the exploratory sketch plan submission.]

The Department shall use the pre-exploratory sketch plan review conference to also identify conservation, open space and development areas. Site design and management practices shall also be examined to determine how minimal disturbance can be achieved while maintaining a high standard of community design. Discussion points will include:

1. Greenway linkages on- and off-site (trails, biodiversity corridors, habitat areas, CNA's, etc.);
2. Interconnectivity issues (pedestrian, vehicular, mass transit, etc.) and access issues;
3. Open space linkages (parks, public and private open space and conservation areas);
4. Article 10 resource protection areas;
5. On-site, of regional scope (extending off-site), fully protected vs. partially protected resources;
6. Soil associations;
7. Farmland concentrations (agricultural districts, preservation easement purchases);
8. Existence and location of historic and cultural resources;
9. Scenic viewsheds or vistas into or out of the site (visual accents and vista points pursuant to County Scenic River and Highway Studies);

10. Natural drainage patterns (pre-development), boundaries and discharged points based on characteristics such as soils, topography, vegetation and other local watershed issues, and;

11. Development options given zoning district and resource protection objectives.

A pre-exploratory sketch plan review conference shall be scheduled by the Department or can be requested at anytime by the applicant.

D. [C.] Submission requirements.

1. All major residential subdivisions shall submit the required application materials pursuant to the provisions contained in this Section and Appendix 1, except that prior to the pre-exploratory sketch plan review conference, only the following information shall be required:

a. SLD – 1 form;

b. Site analysis plan pursuant to Appendix 1 (3) (k);

c. One or more concept plans with defined conservation, open space and development areas;

d. All adjacent recorded subdivision and development plans;

e. Sanitary sewer location and all possible tie-ins;

f. All existing adjacent transportation, pedestrian and open space inter-connections;

g. The required review fee, and;

h. All requirements of D (4) and D (5) of this Section.

2. [1.] The applicant shall submit all exploratory sketch plan application materials pursuant to the provisions contained in Appendix 1, including the applicable fee[. The submission shall include site capacity and concurrency calculations, the type of approval sought and the existing and proposed zoning district. The plan shall also describe general site and environmental conditions, the character, location, magnitude of proposed development,] and all other information required by this Chapter.

3. [2] *Traffic impact study.* For all major plans and rezonings, the applicant shall submit traffic information including:

- a. [(1) a] Approximate vehicle trips per day during the week and the weekend, and the a.m. and p.m. peak hour trips generated by the proposed development;
- b. [(2) r] Road conditions and access geometry including roadway surface, horizontal, and vertical alignment conditions associated with the access and egress location(s) to the adjoining roadway;
- c. [(3) a] Accident data within the area of influence for the last three (3) years for the roadway in which the development is proposed to have access and egress; and
- d. [(4) e] Existing peak hour level of service at intersections in the area of influence of the proposed development, if available. In order to expedite the review of this information, the applicant may, at its option, provide the foregoing information to the Department and DelDOT in advance of the scheduled preapplication conference.

4. [3.] It is the applicant's responsibility to inform the County of any known restrictions or legal impediments which would interfere with or prevent the implementation of the proposed development.

5. [4.] No application shall be processed unless proof has been provided in the form of verification from the County Division of Finance that all County taxes, school taxes and sewer service fees have been paid or are not delinquent on the land which is the subject of the application.

6. [5.] The Department will return to the applicant any incomplete submission or those submissions that do not substantially comply with all provisions of the County Code.

E. *Exploratory plan review letter.* The Department will issue a written review letter [which shall identify] that identifies any concerns relating to Chapter compliance or other factors the applicant must consider. The exploratory plan review letter shall inform the applicant of the Department's findings of plan approval, plan approval with modifications or plan denial.

1. The response shall list any other actions, environmental reports or other special studies required prior to subsequent plan submissions.

2. If applicable, the Department shall respond to the appropriateness of a rezoning request.
3. For rezonings and major plan reviews, the Department will determine if a traffic impact study is required. If a traffic impact study is required, a scoping meeting shall be scheduled pursuant to Article 11. In the event that a TIS is required, the Department shall not be required to issue comments on the exploratory sketch plan until the TIS is found to comply with Article 11. If the TIS determines that the LOS requirements of Article 11 cannot be satisfied by the applicant, the Department may defer any further review and may not accept a rezoning or preliminary plan application.
4. For major residential subdivisions, the department shall not issue a formal review letter as a result of the pre-exploratory sketch plan review conference. The Department's exploratory sketch plan review letter will be issued after the detailed exploratory sketch plan submission is made with the level of detail required by Appendix 1, Section 2. Upon issuing a formal review letter, each subsequent submission shall be submitted with an additional review fee.

F. *Subsequent submissions.* An applicant shall have twelve (12) months from the date of the exploratory plan review letter to proceed forward to the next review stage (i.e. the submission of a preliminary plan or record plan). For major plans and all rezonings, and upon completion of all studies, if any, and the exploratory sketch plan is approved, the applicant shall be entitled to file a rezoning/preliminary plan application with the Department. For minor land development plans, a record plan may be submitted if the exploratory sketch plan is approved.

For all major residential subdivisions, the applicant shall have six (6) months from the date of the pre-exploratory sketch plan review conference to submit an exploratory plan. The Department may require a new pre-exploratory sketch plan review conference if a exploratory sketch plan submission is not made within six (6) months.

SYNOPSIS: The amendments to this article establish new procedures for the review of all major residential developments throughout New Castle County, helping facilitate the implementation of the County's Conservation Design Program. The primary objective of this new procedure is to bring all interested stakeholders together early in the development review process to coordinate the development process in way that will reduce costs, eliminate the need for structured stormwater management, provide large contiguous areas of natural areas, reduce the maintenance burden of private homeowner maintenance organizations, and provide for growth in the most environmental compatible manner possible.

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Sec. 40.31.820. Land development improvement agreement (LDIA).

All improvements contemplated in minor or major land development plans as required by this Chapter for sewer, drainage and detention, as well as for other improvements such as stormwater management facilities, parking, curbing, paving, sidewalks, open space improvements, property monuments, earthwork, lighting, landscaping and bufferyards (except for replacement of on-lot residential landscaping), shall be subject to a performance guarantee. The developer's engineer shall submit an itemized cost estimate for water, sewer, storm drainage, detention, lighting, any off-site improvements, and any other improvements required by this Chapter. The designers of the landscapes, buffers, and/or other improvements shall submit cost estimates. Valid bids from contractors may be substituted for cost estimates. The Department shall review all bids, checking for consistency with similar bids or public bids to ensure they are reasonable. A surety shall be required in the amount of one hundred twenty (120) percent of the cost estimates. In the alternative, the formula as established by the Department and found in Appendix 7 may be used in lieu of cost estimates. Each surety shall be for a period of not less than two (2) years, unless a longer time is requested by the Department. The bond, letter of credit or other surety shall be executed by the applicant and a corporate surety or financial institution licensed to do business in the State. Prior to the approval of a minor or major land development plan, the LDIA must be reviewed by the County and recorded in the Office of the Recorder of Deeds.

SYNOPSIS: This proposed amendment eliminates the need for surety of on-lot landscaping and along with the amendment to Section 40.23.220 provides for the developer to replace all on-lot landscaping.

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Division 40.33.300. General definitions.

This Division contains the definition of words used in this Code.

Abandonment....

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Active stormwater infiltration practices. Designed, constructed and maintained stormwater practices that manages stormwater runoff by promoting infiltration into the ground.

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Conservation design. A series of holistic land development design goals that maximize protection of key land and environmental resources, preserve significant concentrations of open space and greenways, evaluate and maintain site hydrology, and ensure flexibility in development design to meet community needs for complimentary and aesthetically pleasing development. Conservation design encompasses the following objectives:

conservation/enhancement of natural resources, wildlife habitat, biodiversity corridors, and greenways (interconnected open space); minimization of environmental impact resulting from a change in land use (minimum disturbance, minimum maintenance); maintenance of a balanced water budget by making use of site characteristics and infiltration; incorporation of unique natural, scenic and historic site features into the configuration of the development; preservation of the integral characteristics of the site as viewed from adjoining roads; and reduction in maintenance required for stormwater management practices. Such objectives can be met on a site through an integrated development process that respects natural site conditions and attempts, to the maximum extent possible, to replicate or improve the natural hydrology of a site.

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Governmental body. Any federal, state, or local government including the departments, agencies, commissions, and instrumentalities thereof.

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Green technology stormwater best management practices (GTBMP's). GTBMP's achieve stormwater management objectives by applying the principles of filtration, infiltration and storage most often associated with natural vegetation and undisturbed soils. Green technologies stormwater GTBMP's may also be constructed using an imported soil medium and planted vegetation designed to promote the natural hydrologic process. These GTBMP's include vegetative filtration, riparian buffer plantings, bio-retention areas, vegetative flow conveyance, as well as recharge and surface storage in undisturbed natural areas.

....

Landowner. Any person, firm, partnership, corporation, or other legal entity who possesses a legal [or equitable] interest in property.

....

Maintenance corporation. [Maintenance] A nonstock corporation [shall mean and refer to a body of persons legally responsible for the maintenance of private open spaces and/or common facilities] consisting of lot or unit owners of a subdivision created for the purpose of owning and maintaining private open space and common facilities located within a residential subdivision.

....

Maintenance organization. An organization approved by New Castle County that is legally responsible for owning, maintaining, and/or managing open space. A maintenance organization may be a condominium association, a third party conservancy, or a maintenance corporation.

....

Natural resource management plan. A supplemental plan associated with residential major subdivision plans, applicable to the natural resource area open space, which shall be referenced on the record plan as being an integral part of the record plan detailing the disposition, use and maintenance for all natural resource area open spaces. The plan shall include:

- A. Executive summary. A brief description of the contents of the plan and the natural resource area open space to be managed. The ownership of natural resource area open space shall also be identified.
- B. Description of existing conditions. Narrative description of protected resources on-site, including natural and scenic resources. The discussion of natural resources shall include a list of species found on the site and the overall condition and health of the natural systems. Other resources shall be similarly discussed, including their health and condition or significance.
- C. Goals and objectives. Overall goals and objectives for managing natural resource area open space shall be established along with methods of measuring the implementation of such objectives to help in determining that the goals are met.
- D. Management measures. A description of proposed activities, budget and schedule for managing and restoring natural resource area open space pursuant to the goals and objectives identified in Subsection (C) above.
- E. Maintenance and operation plan. Identification of any annual or periodic maintenance and operation of natural resource area open space necessary to implement the management plan.

....

Open space. [Land area to be left undeveloped as part of a natural resource preservation, recreation, bufferyards, or other open space provision of this Chapter. Open space excludes areas in lots, street rights-of-way, or parking. Private open space is designed and intended for common use and the enjoyment of the residents. Public open space is designed and intended for common use and the enjoyment of the residents of New Castle County or the State.] Parcels of land within a residential subdivision, exclusive of streets and lots, generally preserved in a natural state or improved to provide common amenities for the residents of the subdivision. Open space shall be categorized as either natural resource area open space or community area open space. Open space is intended to preserve environmentally sensitive areas and protected resources, provide active and passive recreation facilities, establish greenways, provide wildlife habitats, facilitate stormwater management functions, and landscaped bufferyards. Both natural resource area open space and community area open space can be public or private and would be annotated as such on the development record plan and/or deed.

Open space, community area. One (1) of the two (2) types of open space in a residential subdivision is community area open space. In residential subdivisions with fewer than fifty (50) acres, all open space shall be considered community area open space. In subdivisions of fifty (50) acres or greater, community area open space shall be relatively smaller, isolated, and typically internal pockets of open space not necessarily contiguous with the natural resource area open space. Such open space parcels normally will provide a function benefiting the residents of the subdivision. The homeowners organization, comprised of the residents of the subdivision, will own and be responsible for community area open space. Approved improvements, conservation and long-term maintenance will be shown on the landscape plan approved for the open space.

Open space, natural resource area. One (1) of the two (2) types of open space in a residential subdivision of fifty (50) acres or greater. Natural resource area open space are those areas comprised of protected resources including but not limited to wetlands, floodplains, riparian buffer areas, forests, steep slopes, critical natural areas, and water resource protection areas, as well as other relatively large, contiguous open spaces.

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Passive stormwater infiltration practices. Utilizes existing and restored natural areas with good hydrologic soils and dense vegetative attributes for stormwater management.

....

Site analysis plan. For all major residential subdivisions, the applicant shall be required to submit a site analysis plan as the first phase of the exploratory sketch plan review process. The site analysis plan shall serve as a basis for the planning process and shall be used to determine the best areas of the site for open space preservation, land conservation and development. The site analysis plan allows both the applicant and the Department the opportunity to utilize the natural site conditions to determine how the development of each tract can be designed to minimize environmental degradation while achieving highest possible community character design standards.

Stormwater management. The [mitigation of the hydrologic impacts of lost natural runoff storage by the use of constructed storage facilities] management of stormwater runoff including quantity and quality control due to changes in land use through engineered practices that incorporates existing and/or modified land features.

- A. For water quantity control, a system of vegetative, structural, and other measures that [may] control the volume and rate of stormwater runoff [which may be] caused by land disturbing activities or activities upon the land; and
- B. For water quality control, a system of vegetative, structural, and other measures that control adverse effects on water quality that may be caused by land disturbing activities

or activities upon the land.

C. Can utilize green technology stormwater best management practices (GTBMP's).

Stormwater mitigation area corridor. An expanse of land secured for the express purpose of managing urban stormwater runoff exclusive of conventional structural stormwater management practices. These areas shall attempt to support and protect all natural resources from the detrimental effects of unmanaged urban stormwater runoff. This may be accomplished through preserving natural drainage patterns and filtering contaminants from stormwater runoff by encouraging infiltration and filtration. Open space may be used for the creation of these areas.

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Zoning regulations....

SYNOPSIS: This section establishes and modifies definitions for a variety of existing and new terms. The following new terms are related to the conservation design techniques proposed by the UDC and include “Active Stormwater Infiltration Practices”, “ Conservation Design”, “Green Technology Stormwater Best Management Practices”, Natural Resource Area Management Plan”, “Open Space Community Area”, “Open Space Natural Resource Area”, “Passive Stormwater Infiltration Practices”, “Site Analysis Plan”, and “Stormwater Mitigation Area Corridor”. Revised terms related to the new conservation design techniques include “Open Space” and “Stormwater Management”. Other terms added or revised are related to the manner in which open space will be owned, maintained and managed and include “Governmental Body”, “Landowner”, “Maintenance Corporation”, and “Maintenance Organization”.

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APPENDIX OUTLINE

Appendix 1. Application and Plan Requirements.

1. Land Development Application Submission Requirements
 - A. Exploratory Sketch Plan
 - B. Preliminary Plan/Rezoning
 - C. Record Plan
2. Land Development Plan Requirements
3. Other Reports and Applications
 - A. Floodplain Development Permit
 - B. Parking Plan
 - C. Site Plan
 - D. Wetland Report
 - E. Critical Natural Area Report
 - F. Landscape Plan Review Checklist
 - G. Deed Restriction Change Application (Maintenance Declaration)
 - H. Subdivision Appeal/Variance Application
 - I. Extractive Use Application
 - J. Level of Service (LOS) Waiver Application
 - K. Site Analysis Plan
 - L. Natural Resource Area Management Plan

Appendix 2. Fees.

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Appendix 6. Miscellaneous Items.

APPENDIX 1. APPLICATION AND PLAN REQUIREMENTS

1. Land development applications....
2. Land development plan....
3. Other reports and applications
 - A. *Floodplain development permit*....

....

K. *Site analysis plan.* For all major residential subdivisions, the applicant shall be required to submit a site analysis plan as the first phase of the exploratory sketch plan review process. The site analysis plan shall serve as a basis for the planning process and shall be used to determine the best areas of the site for open space preservation, land conservation and development. The site analysis plan allows both the applicant and the Department the opportunity to utilize the natural site conditions to determine how the development of each tract can be designed to minimize environmental degradation while achieving highest possible community character design standards. The information that shall be required on the site analysis plan includes:

1. Existing topography;
2. Pre-development drainage patterns and local watershed information;
3. All fully and partially protected resources pursuant to Article 10 of this Chapter located on and within one thousand (1,000) linear feet of the tract;
4. Soils information as shown in/on the New Castle County Soil Survey;
5. All public and private open space, conservation areas and agricultural districts within one thousand (1,000) linear feet of the tract;
6. All existing and proposed transportation access points and rights-of-way;
7. Any scenic viewsheds into and out of the site, ridgelines and historic resources;
8. Graphic scale, not to exceed one (1) inch equals two hundred (200) feet and a north arrow.

L. Natural resources area management plan.

1. Resource analysis. The following must be submitted:

a. The site analysis plan as a base map with the following additions.

i. A wetlands report/jurisdictional determination.

ii. A general description of the condition of the forest stands on site, identifying the dominant canopy, understory and herbaceous species if possible.

iii. A description of the dominant native species present.

2. Management plan. The following must be submitted:

a. A narrative description of the goals and objectives based on the findings of the resource analysis.

b. Limit of disturbance and resource protection measures.

c. Invasive species control plan describing specific practices and areas to be treated.

d. Planting details describing where and how any reforestation, meadow creation or other plantings will occur.

e. Wetland features to be created or enhanced.

f. A project time line to include a proposed long-term maintenance cycle.

g. Project cost estimate (including long-term maintenance needed to implement the plan until completion).

h. Naturally occurring non-invasive weeds are permissible within the natural resource areas.

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APPENDIX 6. MISCELLANEOUS ITEMS

1. Technical Advisory Committee.

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2. Resource Protection Area Technical Advisory Committee.

One (1) representative from each of the following:

- Chemical Industry
- Consulting Engineers' Council
- DNREC
- Delaware Geologic Survey
- The County Chamber of Commerce
- The County Department of Land Use
- The County Department of Special Services
- Water Company Representative
- University of Delaware Water Resources Agency
- Environmental Advocacy Group Representative
- Private Sector Representative
- New Castle Conservation District
- Private Sector Environmental Professional

The members shall be appointed by the County Executive for a four (4) year term. The members may be reappointed, and each member shall serve until a successor is appointed. The chairman shall be designated by the County Executive.

3. Department of Land Use Distribution of Approved Plans.

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