

1 **AN ORDINANCE TO AMEND CHAPTER 99, SECTIONS 99-5, 99-6, 99-7,**
2 **99-23, 99-24, 99-26, AND 99-30, AND CHAPTER 115 SECTIONS 115-4, 115-**
3 **25, 115-193, 115-220 AND 115-221 REGARDING CERTAIN DRAINAGE**
4 **FEATURES, WETLAND AND WATER RESOURCES AND THE BUFFERS**
5 **THERE TO.**

6
7 WHEREAS, Pursuant to the provisions of Title 9, Chapters 68 and 69 of the
8 Delaware Code, the Sussex County Government has the power and authority to
9 regulate the use of land and to adopt a Comprehensive Land Use Plan; and

10 WHEREAS, Pursuant to Chapters 99 and 115 of the Code of Sussex County, the
11 Sussex County Government has undertaken to regulate the use of land; and

12 WHEREAS, the existing Section 115-193 of the Code of Sussex County currently
13 regulates the use of land adjacent to certain wetlands and water bodies; and

14 WHEREAS, the existing Section 115-193 of the Code of Sussex County is in need
15 of improvement regarding its interpretation, application and protection of Resources;
16 and

17 WHEREAS, certain Resources are in need of substantial enhancements to ensure
18 that Sussex County’s drainage network is improved now and maintained in the
19 future; and

20 WHEREAS, the 2019 Sussex County Comprehensive Plan contemplates the review
21 and improvement of the protection of wetlands and waterways in Sussex County;
22 and

23 WHEREAS, Goal 4.3 and Objective 4.3.1 of the Future Land Use Element of the
24 2019 Sussex County Comprehensive Plan states that Sussex County should
25 “Consider strategies for preserving environmental areas from development and the
26 protection of wetlands and waterways”, and this Ordinance carries out that
27 Objective; and

28 WHEREAS, Goal 4.6 and Strategy 4.6.2 of the Future Land Use Element of the 2019
29 Sussex County Comprehensive Plan states that Sussex County should “Recognize
30 the Inland Bays, their tributaries and other waterbodies as valuable open space areas
31 of ecological importance”, and this Ordinance carries out that Strategy; and

32 WHEREAS, Goal 5.1 of the Conservation Element of the 2019 Sussex County
33 Comprehensive Plan states that Sussex County should “Encourage development
34 practices and regulations that support natural resource protection”, and this
35 Ordinance carries out that Goal; and

36 WHEREAS, Strategy 5.1.2.2 of the Conservation Element of the 2019 Sussex
37 County Comprehensive Plan states that Sussex County should “Review appropriate
38 sections of Sussex County’s zoning and subdivision codes to determine if
39 amendments are needed that will better help protect groundwater, waterways,
40 sensitive habitat areas and other critical natural lands in Sussex County”, and this
41 Ordinance carries out that Strategy; and

42 WHEREAS, Goal 5.3 of the Conservation Element of the 2019 Sussex County
43 Comprehensive Plan calls for the protection of the natural functions and quality of
44 the County’s surface waters, groundwater, wetlands and floodplains, and as part of
45 that Goal, the Plan includes Strategies 5.3.1.1, 5.3.1.2 and 5.3.1.6, which
46 respectively state that Sussex County should “Consider developing a program for
47 wetlands and waterways protection”, “Identify an appropriate range of wetlands
48 buffer distances based upon location and context”, and “Recognize the Inland Bays,
49 their tributaries and other waterbodies as valuable open space areas of ecological
50 and economic importance”, and this Ordinance carries out these Goals and
51 Strategies; and

52 WHEREAS, in adopting this Ordinance, it is the intent of Sussex County Council to
53 balance the protection of land equity with the protection of the Resources defined in
54 the Ordinance and their associated functions; and

55 WHEREAS, in adopting this Ordinance, it is the intent of Sussex County to establish
56 a framework under which future property owners and Owners Associations will
57 maintain the Resources, Resource Buffers, the properties they are on or adjacent to,
58 and the systems that they are a part of in the future and to ensure the ongoing positive
59 conveyance of drainage features; and

60 WHEREAS, it has been determined that this Ordinance promotes and protects the
61 health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex
62 County.

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NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

66 **Section 1. The Code of Sussex County, Chapter 99, Article I, §99-5**
67 **“Definitions,” is hereby amended by inserting the italicized and underlined**
68 **language alphabetically:**

69

70 **§99-5 Definitions.**

71 For purposes of this Chapter, certain terms and words are hereby defined:

72

73 . . .

74

75 **EPHEMERAL STREAMS**

76 *A feature that carries only runoff in direct response to precipitation with water*
77 *flowing only during and shortly after large precipitation events. An Ephemeral*
78 *Stream may or may not have a well-defined channel, its aquatic bed is always above*
79 *the water table during a year of normal rainfall, and runoff is its primary source of*
80 *water. An Ephemeral Stream typically lacks the biological, hydrological, and*
81 *physical characteristics commonly associated with the continuous or intermittent*
82 *conveyance of water.*

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84 . . .

85

86 **INTERMITTENT STREAMS**

87 *A well-defined channel that contains flowing water for only part of the year, typically*
88 *during winter and spring when the aquatic bed is below the water table, connecting*
89 *otherwise isolated Non-Tidal Wetlands to downstream Tidal/Perennial*
90 *Waters/Streams. The flow may be heavily supplemented by runoff. An Intermittent*
91 *Stream often lacks the biological and hydrological characteristics commonly*
92 *associated with the continuous conveyance of water.*

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96 **MAJOR SUBDIVISION**

97 *Any* subdivision of land *creating six or more new Lots* [involving a proposed new
98 street or the extension of an existing street].

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102 **MINOR SUBDIVISION**

103 Any subdivision creating five or less Lots [fronting on an existing street and not
104 involving any new street] and not adversely affecting the development of the
105 remainder of the parcel or adjoining property and not in conflict with any provisions
106 or portion of the County Comprehensive Plan, Official Map, Zoning Ordinance, or
107 this chapter. Only one such subdivision shall be approved per year per parcel. The
108 maximum number of lots created in the minor subdivision process shall not exceed
109 four plus one for each 10 acres of original parcel size.

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111 . . .

112

113 **NON-TIDAL WETLANDS**

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115 Non-Tidal Wetlands are those wetlands, not classified by this Chapter as Tidal
116 Wetlands, which lie contiguous or abutting to Tidal Waters, Tidal Wetlands,
117 Perennial Streams or those Intermittent Streams providing a surface water
118 connection between adjacent Wetlands. Non-Tidal Wetlands also include those
119 Wetlands only separated from otherwise contiguous or abutting Wetlands by
120 constructed dikes, barriers, culverts, natural river berms and beach dunes.

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124 **ORDINARY HIGH WATER MARK DELINEATION**

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126 The boundary of Perennial Non-Tidal Rivers or Streams, Intermittent Streams or
127 Ephemeral Streams shall be defined by the Ordinary High Water Mark. Ordinary
128 High Water Mark means the line on a shore or bank established by the fluctuations
129 of water and indicated by physical characteristics such as a clear, natural line
130 impressed on the bank, shelving, changes in the character of soil, destruction of
131 terrestrial vegetation, the presence of litter and debris, or other similar physical
132 characteristics indicating the frequent presence of flowing water.

133

134 . . .

135 PERENNIAL NON-TIDAL RIVERS AND STREAMS

136 A well-defined channel that contains flowing water year-round during a year of
 137 normal rainfall with the aquatic bed located below the water table for most of the
 138 year and which is not subject to tidal influence. Groundwater is the primary source
 139 of water for a Perennial Stream, but it also carries runoff. A Perennial Stream
 140 exhibits the typical biological, hydrological, and physical characteristics commonly
 141 associated with the continuous conveyance of water.

142

143 . . .

144

145 RESOURCE BUFFER - WETLANDS AND WATERS

146 A managed area between residential land uses and Resources that is not
 147 subdividable once established, with the exception of a subdivision boundary
 148 resulting from an approved phase. Resource Buffers function to:

- 149 • Protect the Resources and their associated functions.
- 150 • Improve/protect water quality via sediment filtration, reduce impact of
 151 nutrient loading on Resources, moderate water temperature, and enhance
 152 infiltration and stabilization of channel banks.
- 153 • Provide wildlife habitat via nesting, breeding, and feeding opportunities;
 154 provide sanctuary/refuge during high water events; protect critical water's
 155 edge habitat; and protect rare, threatened, and endangered species associated
 156 with each Resource and its upland edge.
- 157 • Enhance and/or maintain the flood plain storage functionality via reduction
 158 of flood conveyance velocities as well as dissipation of stormwater discharge
 159 energy.

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161 . . .

162

163 RESOURCES

164 Those Wetlands and waters to be provided with a Resource Buffer due to their
 165 importance to Sussex County. These Resources include Tidal Waters, Tidal
 166 Wetlands, Non-Tidal Wetlands, Perennial Streams, and those Intermittent Streams
 167 providing a surface water connection between Wetlands.

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169 . . .

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171 **TAX DITCH**

172

173 A Tax Ditch is a drainage channel or conveyance and the corresponding right-of-
174 way established and/or formed in accordance with Title 7, Chapter 41 of the
175 Delaware Code, and approved by a “ditch order” entered by the Superior Court of
176 the State of Delaware and County of Sussex.

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178 . . .

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180 **TIDAL WATERS (MEAN HIGH-WATER LINE)**

181 Those waters occurring below the mean high-water line of any tidal water body,
182 tidal stream, or tidal marsh, which is defined as the average height of all the high-
183 tide water recorded over a nineteen-year period as defined by the National Oceanic
184 and Atmospheric Administration tidal datum.

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186 . . .

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188 **TIDAL WETLANDS**

189 Areas under the jurisdiction of Title 7, Chapter 66 of the Delaware Code, as
190 regulated and mapped by the Department of Natural Resources and Environmental
191 Control.

192

193 . . .

194

195 **WATER DEPENDENT ACTIVITIES**

196 Activities that are approved through federal and state permit programs that meet the
197 definition of water dependent activities included in those programs. Water-
198 dependent uses are uses that can only be conducted on, in, over, or adjacent to the
199 water; each involves, as an integral part of the use, direct access to and use of the
200 water. Examples include marinas, boat ramps/launches, docks, piers, water intakes,
201 aquatic habitat restoration, and similar uses.

202

203 . . .

204

205 **WATER RELATED ACTIVITIES**

206 Water Related Activities are those considered ancillary to and supporting permitted
207 Water Dependent Activities completed on adjacent uplands. Examples include utility
208 connections, limited points of access, loading/unloading areas, and similar uses.

209

210 . . .

211

212 **WETLANDS**

213 Wetlands are areas that are inundated or saturated by surface or groundwater at a
214 frequency and duration sufficient to support, and that under normal circumstances
215 do support, a prevalence of vegetation typically adapted for life in saturated soil
216 conditions. Agricultural land consisting of "Prior Converted Croplands" as defined
217 by the National Food Security Act Manual (August 1988), are not wetlands. The
218 procedure for delineating the boundary of all wetlands, except for Tidal Wetlands
219 as defined by this ordinance, shall be the methodology provided in the Corps of
220 Engineers Wetland Delineation Manual (January 1987) and the Regional
221 Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and
222 Gulf Coastal Plain Region (November 2010).

223

224 **Section 2. The Code of Sussex County, Chapter 99, Article I, §99-6 “General**
225 **Requirements and Restrictions”, is hereby amended by deleting the language**
226 **in brackets and inserting the italicized and underlined language in existing**
227 **subsection J. and as a new subsection K. thereof as follows:**

228

229 **§99-6 General Requirements and Restrictions.**

230

231 . . .

232

233 J. A forested and/or landscape buffer, as defined in § 99-5, Subsections A
234 through J must be depicted on the preliminary and final plot plans for each major
235 subdivision of lands [into four or more lots] and must be established in accordance
236 with all the requirements of the definition of "forested and/or landscaped buffer
237 strip," Subsections A through J in § 99-5.

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241 K. Resources and Resource Buffers, as defined in § 99-5 must be depicted on the
242 preliminary and final plot plans for each major subdivision of lands and must
243 comply with the requirements of §115-193.

244
245 **Section 3. The Code of Sussex County, Chapter 99, Article II, §99-7**
246 **“Preliminary Conference”, is hereby amended by deleting the language in**
247 **brackets in subsection C. thereof as follows:**

248
249 **§99-7 Preliminary Conference.**

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251 . . .

252
253 C. If the Director determines that the proposed subdivision represents a minor
254 subdivision of a parcel, existing as of the effective date of this amended provision,
255 on a street other than a major arterial roadway, and if the Director determines that
256 review by the Commission is not necessary or desirable, he may waive the
257 requirement of preparing a preliminary plat and may authorize the preparation of a
258 record plat for purposes of recordation. He may, however, request review assistance
259 from other concerned agencies prior to authorizing preparation of the plat. Lots in
260 any minor subdivision plat approved by the Director, without review by the
261 Commission, shall have a minimum area of 3/4 of an acre and a minimum width of
262 150 feet and shall utilize entrances as approved by the Delaware Department of
263 Transportation. [Such a minor subdivision shall be limited to four lots per parcel, as
264 well as one additional lot for each 10 acres of parcel size, with a maximum of four
265 subdivided lots approved for recordation per calendar year.]

266
267 **Section 4. The Code of Sussex County, Chapter 99, Article IV, §99-23**
268 **“Information to Be Shown”, is hereby amended by inserting the italicized and**
269 **underlined language as a new subsection T. thereof:**

270 **§99-23 Information to Be Shown.**

271 The preliminary plat shall be drawn in a clear and legible manner and shall show the
272 following information”

273 . . .

274 T. The location of all Water and Wetland Resources and their Resource Buffers.

275 (1) The boundary and type of any Non-Tidal/Tidal Wetland or water resources
276 (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will
277 be shown per methods identified in the definitions of Wetlands and Ordinary High
278 Water Line Delineation.

279 (2) All existing (i.e., at the time of application) native forest and non-forest
280 meadow within the future Resource Buffer shall be identified.

281 (3) The area limits of the required Resource Buffers.

282 (4) Calculations supporting Resource Buffer width averaging (§115-193B).

283 (5) Calculations supporting Resource Buffer enhancement calculations and
284 corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-
285 193F).

286 (6) Proposed access easement layout for access to Resource Buffers and the
287 adjacent Resources with a note that such access easements are “public access
288 easements for maintenance purposes”. For purposes of this requirement, “public”
289 shall mean, and be limited to, those parties requiring access for maintenance
290 purposes.

291 (7) A reference by title, author and date, to the “Drainage Assessment Report”
292 required by Section 115-193.F.2.

293

294 **Section 5. The Code of Sussex County, Chapter 99, Article IV, §99-24**
295 **“Supporting Statements”, is hereby amended by inserting the italicized and**
296 **underlined language as a new subsection G thereof:**

297 **§99-24 Supporting Statements**

298 The preliminary plat shall be accompanied by the following written and signed
299 statements in support of the subdivision's application for tentative approval:

300 . . .

301 G. A Resource and Resource Buffer Management Plan that describes measures
302 for managing the Resource and Resource Buffer(s) required pursuant to Chapter

303 115, Article XXV, Section 115-193 on the site. The Resource and Resource Buffer
304 Management Plan shall be included as part of the recorded declaration for the
305 subdivision.

306

307 **Section 6. The Code of Sussex County, Chapter 99, Article V, §99-26,**
308 **“Information to Be Shown”, is hereby amended by inserting the italicized and**
309 **underlined language as a new subsection A.(21) and C thereof:**

310 **§99-26 Information to Be Shown.**

311 A. The final plat shall be legibly and accurately drawn and show the following
312 information:

313 . . .

314 (21) The location of all Resource Buffers.

315 (a) The boundary and type of any Non-Tidal/Tidal Wetland or water resources
316 (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will
317 be shown per methods identified in the definitions of Wetlands and Ordinary High
318 Water Line Delineation.

319 (b) All existing (i.e., at the time of application) native forest and non-forest
320 meadow within the future Resource Buffer shall be identified.

321 (c) The area limits of the required Resource Buffer.

322 (d) Calculations supporting Resource Buffer width averaging (§115-193B).

323 (e) Calculations supporting Resource Buffer enhancement calculations and
324 corresponding Forested and/or Landscaped Buffer reductions, if applicable (§155-
325 193F).

326 (f) Proposed access easement layout for access to Resource Buffers and the
327 adjacent Resources with a note that such access easements are “public access
328 easements for maintenance purposes”. For purposes of this requirement, “public”
329 shall mean, and be limited to, those parties requiring access for maintenance
330 purposes.

331 (g) A statement incorporating the Resource and Resource Management and
332 Maintenance Plan by reference.

333 (h) A reference by title, author and date, to the “Drainage Assessment Report”
334 required by Section 115-193.F.2.

335 . . .

336 C. An AutoCAD drawing file containing all items required in Section A above
337 shall be submitted in electronic format. The data shall be referenced in NAD 1983
338 StatePlane Delaware FIPS 0700 (U.S. Feet) Projected Coordinate System.

339

340 **Section 7. The Code of Sussex County, Chapter 99, Article VI, §99-30, “Plans”,**
341 **is hereby amended by inserting the italicized and underlined language as a new**
342 **subsection J. and K. thereof:**

343 **§99-30 Plans.**

344

345 Plans, profiles and specifications for the required improvements shall be prepared
346 by the subdivider and submitted for approval by the appropriate public authorities
347 prior to construction. No construction shall commence prior to the issuance of a
348 notice to proceed by the County Engineer or his or her designee for the required
349 improvements. All plans, profiles and specifications approved by the County
350 Engineer or his or her designee with the issuance of a notice to proceed shall remain
351 valid or, if substantial construction is not actively and continuously underway, they
352 shall expire upon the expiration of the final site plan. Prior to the issuance of a notice
353 to proceed, the County Engineer may require the owner and/or his designee to
354 execute an agreement addressing the required improvements. The plans and profiles
355 submitted for all new construction shall include the following:

356

357 . . .

358

359 J. Resources and Resource Buffers.

360

361 K. Proposed access easement layout with a note that such access easements are
362 “public access easements for maintenance purposes”. For purposes of this
363 requirement, “public” shall mean, and be limited to, those parties requiring access
364 for maintenance purposes.

365

366 **Section 8. The Code of Sussex County, Chapter 115, Article I, §115-4**
367 **“Definitions and Word Usage,” is hereby amended by inserting the italicized**
368 **and underlined language alphabetically in Subsection B thereof:**

369
370 **§115-4 Definitions and Word Usage.**

371
372

373
374 B. General definitions. For the purpose of this chapter, certain terms and words
375 are hereby defined as follows:

376
377

378
379 **EPHEMERAL STREAMS**

380 *A feature that carries only runoff in direct response to precipitation with water*
381 *flowing only during and shortly after large precipitation events. An Ephemeral*
382 *Stream may or may not have a well-defined channel, its aquatic bed is always above*
383 *the water table during a year of normal rainfall, and runoff is its primary source of*
384 *water. An Ephemeral Stream typically lacks the biological, hydrological, and*
385 *physical characteristics commonly associated with the continuous or intermittent*
386 *conveyance of water.*

387
388 . . .

389
390 **INTERMITTENT STREAMS**

391 *A well-defined channel that contains flowing water for only part of the year, typically*
392 *during winter and spring when the aquatic bed is below the water table, connecting*
393 *otherwise isolated Non-tidal Wetlands to downstream Tidal/Perennial*
394 *Waters/Streams. The flow may be heavily supplemented by runoff. An Intermittent*
395 *Stream often lacks the biological and hydrological characteristics commonly*
396 *associated with the continuous conveyance of water.*

397
398 . . .

399 **NON-TIDAL WETLANDS**

400 Non-Tidal Wetlands are those Wetlands, not classified by this Chapter as Tidal
 401 Wetlands, which lie contiguous or abutting to Tidal Waters, Tidal Wetlands,
 402 Perennial Streams or those Intermittent Streams providing a surface water
 403 connection between adjacent Wetlands. Non-Tidal Wetlands also include those
 404 Wetlands only separated from otherwise contiguous or abutting Wetlands by
 405 constructed dikes, barriers, culverts, natural river berms and beach dunes.

406

407 . . .

408

409 **ORDINARY HIGH WATER MARK DELINEATION**

410

411 The boundary of Perennial Non-Tidal Rivers or Streams, Intermittent Streams or
 412 Ephemeral Streams shall be defined by the Ordinary High Water Mark. Ordinary
 413 High Water Mark means the line on a shore or bank established by the fluctuations
 414 of water and indicated by physical characteristics such as a clear, natural line
 415 impressed on the bank, shelving, changes in the character of soil, destruction of
 416 terrestrial vegetation, the presence of litter and debris, or other similar physical
 417 characteristics indicating the frequent presence of flowing water.

418

419 . . .

420 **PERENNIAL NON-TIDAL RIVERS AND STREAMS**

421 A well-defined channel that contains flowing water year-round during a year of
 422 normal rainfall with the aquatic bed located below the water table for most of the
 423 year and which is not subject to tidal influence. Groundwater is the primary source
 424 of water for a perennial stream, but it also carries runoff. A Perennial Stream
 425 exhibits the typical biological, hydrological, and physical characteristics commonly
 426 associated with the continuous conveyance of water.

427

428 . . .

429

430 **RESOURCE BUFFER - WETLANDS AND WATERS**

431 A managed area between residential land uses and Resources that is not
 432 subdividable once established, with the exception of a subdivision boundary
 433 resulting from an approved phase. Resource Buffers function to:

- 434 • Protect the Resources and their associated functions.
 435 • Improve/protect water quality via sediment filtration, reduce impact of
 436 nutrient loading on Resources, moderate water temperature, and enhance
 437 infiltration and stabilization of channel banks.
 438 • Provide wildlife habitat via nesting, breeding, and feeding opportunities;
 439 provide sanctuary/refuge during high water events; protect critical water's
 440 edge habitat; and protect rare, threatened, and endangered species associated
 441 with each Resource and its upland edge.
 442 • Enhance and/or maintain the flood plain storage functionality via reduction
 443 of flood conveyance velocities as well as dissipation of stormwater discharge
 444 energy.

445

446 . . .

447

448 **RESOURCES**

449 Those wetlands and waters to be provided with a Resource Buffer due to their
 450 importance to Sussex County. These Resources include Tidal Waters, Tidal
 451 Wetlands, Non-Tidal Wetlands, Perennial Streams, and those Intermittent Streams
 452 providing a surface water connection between Wetlands.

453

454 . . .

455

456 **TAX DITCH**

457

458 A Tax Ditch is a drainage channel or conveyance and the corresponding right-of-
 459 way established and/or formed in accordance with Title 7, Chapter 41 of the
 460 Delaware Code, and approved by a "ditch order" entered by the Superior Court of
 461 the State of Delaware and County of Sussex.

462

463 . . .

464

465 **TIDAL WATERS (MEAN HIGH-WATER LINE)**

466 Those waters occurring below the mean high-water line of any tidal water body,
 467 tidal stream, or tidal marsh, which is defined as the average height of all the high-
 468 tide water recorded over a nineteen-year period as defined by the National Oceanic
 469 and Atmospheric Administration tidal datum.

470

471 . . .

472

473 **TIDAL WETLANDS**

474 Areas under the jurisdiction of Title 7, Chapter 66 of the Delaware Code, as
 475 regulated and mapped by the Department of Natural Resources and Environmental
 476 Control.

477

478 . . .

479

480 **WATER DEPENDENT ACTIVITIES**

481 Activities that are approved through federal and state permit programs that meet the
 482 definition of water dependent activities included in those programs. Water-
 483 dependent uses are uses that can only be conducted on, in, over, or adjacent to the
 484 water; each involves, as an integral part of the use, direct access to and use of the
 485 water. Examples include marinas, boat ramps/launches, docks, piers, water intakes,
 486 aquatic habitat restoration, and similar uses.

487

488 . . .

489

490 **WATER RELATED ACTIVITIES**

491 Water Related Activities are those considered ancillary to and supporting permitted
 492 Water Dependent Activities completed on adjacent uplands. Examples include utility
 493 connections, limited points of access, loading/unloading areas, and similar uses.

494 . . .

495 **WETLANDS**

496 Wetlands are areas that are inundated or saturated by surface or groundwater at a
 497 frequency and duration sufficient to support, and that under normal circumstances
 498 do support, a prevalence of vegetation typically adapted for life in saturated soil
 499 conditions. Agricultural land consisting of "Prior Converted Croplands" as defined
 500 by the National Food Security Act Manual (August 1988), are not wetlands. The
 501 procedure for delineating the boundary of all wetlands, except for Tidal Wetlands
 502 as defined by this ordinance, shall be the methodology provided in the Corps of
 503 Engineers Wetland Delineation Manual (January 1987) and the Regional

504 Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and
505 Gulf Coastal Plain Region (November 2010).

506 **Section 9. The Code of Sussex County, Chapter 115, Article IV, §115-25**
507 **“Height, Area and Bulk Requirements,” is hereby amended by deleting the**
508 **language in brackets and inserting the italicized and underlined language in**
509 **Subsection F(3)(a)[4] thereof:**

510

511 **§115-25** Height, Area and Bulk

512

513 F. Review procedures for cluster development

514

515 . . .

516

517 (3) The Planning & Zoning Commission shall determine that the following
518 requirements are met before approving any preliminary plan and such
519 application shall be reviewed on an expedited basis.

520

521 (a) The cluster development sketch plan and the preliminary plan of
522 the cluster subdivision provides for a total environment and design
523 which are superior, [and] *in* the reasonable judgment of the Planning
524 Commission, to that which would be allowed under the regulations for
525 the standard option. For the purposes of this subsection a proposed
526 cluster subdivision which provides for a total environment and design
527 which are superior to that allowed under the standard option
528 subdivision is one which, in the reasonable judgment of the Planning
529 Commission meets all of the following criteria:

530

531 . . .

532

533 [4] [A minimum of 25 feet of permanent setback must be
534 maintained around the outer boundaries of all wetlands, except
535 for tidal waters, tidal tributary streams and tidal wetlands and
536 from the ordinary high water line of perennial nontidal rivers and
537 nontidal streams as provided for in §115-193B under Ordinance
538 No. 774 where a fifty-foot permanent setback is required. No
539 buildings or paving shall be placed within these setbacks.] *The*

540 *preliminary plan shall comply with the requirements of §115-*
541 *193.*

542
543 **Section 10. The Code of Sussex County, Chapter 115, Article XXV, §115-193**
544 **“Buffer Zones for Wetlands and Tidal and Nonperennial Waters,” is hereby**
545 **amended by amending the Title thereof to state “Resource Protection” and**
546 **deleting the language in brackets and inserting the italicized and underlined**
547 **language:**

548
549 **§115-193 [Buffer Zones for Wetlands and Tidal and Nonperennial Waters]**
550 ***Resource Protection***

551
552 [A.

553 Definitions. As used in this section, the following terms shall have the meanings
554 indicated:

555 **BUFFER ZONE**

556 An existing naturally vegetated area or an area purposely established in
557 vegetation which shall not be cultivated in order to protect aquatic, wetlands,
558 shoreline and upland environments from man-made encroachment and
559 disturbances. The "buffer zone" shall be maintained in natural vegetation, but
560 may include planted vegetation where necessary to protect, stabilize or
561 enhance the area.

562
563 **MEAN HIGH-WATER LINE OF TIDAL WATER**

564 The average height of all the high-tide water recorded over a nineteen-year
565 period as defined by the National Oceanic and Atmospheric Administration
566 tidal datum.

567 **PERENNIAL NONTIDAL RIVERS AND STREAMS**

568 Any body of water which continuously flows during a year and which is not
569 subject to tidal influence.

570 **TIDAL TRIBUTARY STREAM**

571 A stream under tidal influence, either connecting fresh or salt water.

572 **TIDAL WETLANDS**

573 Areas under the jurisdiction of Title 7, Chapter 66, of the Delaware Code, as
574 the chapter appears as of the date of the adoption of this Article, as regulated
575 and mapped by the Department of Natural Resources and Environmental
576 Control.

577 WETLANDS

578 A private or state wetland as defined by the Delaware Department of Natural
579 Resources and Environmental Control regulations and maps as promulgated
580 pursuant to Chapter 66, Title 7, of the Delaware Code, as the chapter appears
581 upon the date of the adoption of this Article.

582 B. A fifty-foot buffer zone is hereby established landward from the mean high
583 water line of tidal waters, tidal tributary streams and tidal wetlands and from the
584 ordinary high water line of perennial nontidal rivers and nontidal streams in Sussex
585 County.

586 C. Excluded from buffer zone designation are farm ponds, tax ditches and other
587 man-made bodies of water where these waters are not located on or within perennial
588 streams. A buffer zone shall not be required for agricultural drainage ditches if the
589 adjacent agricultural land is the subject of a conservation farm plan established with
590 the Sussex Conservation District.

591 D. Excluded from buffer zone regulations are facilities necessarily associated
592 with water-dependent facilities (maritime, recreational, educational or fisheries
593 activities that cannot exist outside of the buffer by reason of the intrinsic nature of
594 their operation) and the installation, repair or maintenance of any stormwater
595 management facility, sanitary sewer system, culvert, bridge, public utility, street,
596 drainage facility, pond, recreational amenity, pier, bulkhead, boat ramp, waterway
597 improvement project or erosion-stabilization project that has received the joint
598 approval of the County Engineering Department and the appropriate federal, state
599 and local agencies. An existing public storm-drain system may be extended in order
600 to complete an unenclosed gap or correct a drainage problem, subject to receiving
601 the approval of the County Engineering Department and the appropriate federal,
602 state and local agencies.

603 E. Grandfathering provision. The following types of land uses may be developed
604 notwithstanding the provisions of this section:

605 (1) Existing improvements and construction as of the date of the approval
606 of this section may continue. Alterations or expansions which shall be
607 attached to a preexisting structure built on nonconforming land, pursuant to
608 this section, will not be permitted unless proven that such improvement is

609 constructed at an equal distance or landward of the preexisting structure which
610 is most proximate to the wetland area and a variance is granted as provided
611 below.

612 (2) Subdivision plats and site plans approved and of record in the office of
613 the Director of Planning and Zoning or in the office of the Recorder of Deeds
614 in and for Sussex County prior to the adoption of this section, originally
615 adopted July 19, 1988, or approved and similarly of record as of the effective
616 date of this amendment, adopted July 2, 1991, may be developed as of record
617 and shall be subject to setbacks or buffer restrictions established for the use
618 when originally approved. Any previously approved and similarly recorded
619 subdivision plats and site plans, if approved prior to the original date of this
620 section on July 19, 1988, or prior to this amendment, adopted July 2, 1991,
621 may be amended if it is determined by the Planning and Zoning Commission
622 that the amended plan represents an equal or less intrusive use on the buffer
623 area or setback area.

624 F. Variances to the provisions of this section will be considered by the Board of
625 Adjustment under the following conditions:

626 (1) That findings are made by the Board of Adjustment which demonstrate
627 that special conditions or circumstances exist that are peculiar to the land or
628 structure within the county and that a literal enforcement of provisions within
629 the buffer zone as designated by this section would result in unwarranted
630 hardship.

631 (2) That the variance request is not based upon conditions or circumstances
632 which are the result of actions by the applicant, nor does the request arise from
633 any condition relating to land or building use, either permitted or
634 nonconforming, on any neighboring property.

635 (3) That the granting of a variance will not adversely affect water quality
636 or adversely impact fish, wildlife or plant habitat within the designated buffer
637 zones and in waters adjacent to buffer zones. Variances will be in harmony
638 with the general spirit and intent of the section and any subsequent
639 regulations.

640 (4) That applications for a variance will be made, in writing, to the Board
641 of Adjustment, with a copy to the County Administrator.

642 (3) Any land upon which development has progressed to the point of
643 pouring of a foundation or the installation of structural improvements as of

644 the date of the approval of this section shall be permitted to be developed,
645 provided that there shall be no further encroachment upon the buffer zone, as
646 required in Subsection E(1) above.]

647

648 A. Resource Buffer Widths.

649

650 1. Resource Buffer Widths shall be established in accordance with Table
651 1, with Zone A being closest to the Resource.

652

653 2. Resource Buffers are not required landward/adjacent to those portions
654 of Resources to be filled or developed with a valid U. S. Army Corps of
655 Engineers or Delaware Department of Natural Resources and
656 Environmental Control permit.

657

658 3. No Resource Buffer shall overlay a Tax Ditch or Tax Ditch Right of
659 Way. If a proposed development contains a Tax Ditch, with a right-of-
660 way of less than the total Resource Buffer Width, then that area of the
661 Resource Buffer outside of the right-of-way shall be designated as Zone
662 B.

663

664

<u>Table 1: Resource Buffer Widths</u>			
<u>Resource Type</u> <u>(See Definitions, §115-4B)</u>	<u>Full Buffer</u> <u>Width (ft)</u>	<u>Zone A (ft)</u>	<u>Zone B (ft)</u>
<u>Tidal Waters</u>	<u>100</u>	<u>50</u>	<u>50</u>
<u>Tidal Wetlands</u>	<u>100</u>	<u>50</u>	<u>50</u>
<u>Perennial Non-tidal Rivers and Streams</u>	<u>50</u>	<u>25</u>	<u>25</u>
<u>Non-tidal Wetlands</u>	<u>30</u>	<u>15</u>	<u>15</u>
<u>Intermittent Streams</u>	<u>30</u>	<u>15</u>	<u>15</u>
<u>Ephemeral Streams</u>	<u>0</u>	<u>0</u>	<u>0</u>

665

666 B. Resource Buffer Width Averaging.

667

668 1. Resource Buffer width averaging may be utilized to adjust the required
 669 Zone B Resource Buffer width thereby allowing flexibility for the
 670 proposed development, so long as the overall square footage of the
 671 Zone B Resource Buffer is maintained.

672

673 2. Criteria for utilizing Resource Buffer width averaging:

674 (a) Resource Buffer width averaging is not available for Zone A.

675 (b) The overall square footage of Zone B Resource Buffer must be
 676 achieved within the boundaries of the proposed development unless a
 677 Resource Buffer Option permitted under subsection G is utilized.

678 (c) Resource Buffer width averaging may be used on all of the Zone
 679 B Resource Buffers within the boundaries of the proposed development.

680 (d) Zone B Resource Buffer averaging shall not be expanded more
 681 than double the width of Zone B Resource Buffer as referenced in
 682 Section 115-193A.

683 (e) The overall square footage of Zone B Resource Buffer must be
 684 calculated based upon the entire length of the Resource borderline that
 685 is located within the boundaries of the proposed development.

687 C. Permitted Activities.

688 Activities in Zone A and B shall be “Permitted” or “Not Permitted” as set forth in
 689 the following Table. Uses not specifically identified shall be prohibited, unless the
 690 contrary is clear from the context of the Table, as determined by the Commission.
 691

<u>Table 2: Resource Buffer Activities by Zone</u>		
<u>ACTIVITY</u>	<u>ZONE A</u>	<u>ZONE B</u>
<u>1. Impacts to resource buffers resulting from State and/or Federally permitted disturbances to Resources (wetlands/waters) such as maintenance of Resources and Resource Buffers, utilities, roads, bridges, docks, piers, boat ramps, bulkheads, shoreline stabilization, and resources authorized to be filled or disturbed for development.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>2. Water-related facilities and ancillary uses required to support water-dependent projects approved by a federal or state permit, including but not limited to: marinas, wharfs, community docking facilities, boat ramps, and canoe/kayak launches.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>3. Repair or maintenance of existing infrastructure or utilities, including roads, bridges, culverts, water lines, and sanitary sewer lines.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>4. Temporary impacts resulting from installation of utilities by trenching</u>	<u>PERMITTED</u>	<u>PERMITTED</u>

<u>Table 2: Resource Buffer Activities by Zone</u>		
<u>ACTIVITY</u>	<u>ZONE A</u>	<u>ZONE B</u>
<i>methods which are part of State or Federally approved utility installation projects or the installation of utilities by directional boring methods.</i>		
<u>5. Stormwater Management conveyances as approved by the Sussex Conservation District.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>6. Tax Ditch Maintenance as approved by DNREC Drainage Program.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>7. Maintenance or repair of drainage conveyances not within a Tax Ditch Right of Way as approved by the Sussex County Engineering Department or Sussex Conservation District.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>8. Structural crossings of Resources such as bridges or boardwalks which may not require a State or Federal permit.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>9. Maintenance or modification to previously existing structures and improvements within existing footprint.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>10. State or Federally approved wetland restoration, creation, and enhancement projects.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>11. State or Federally approved flood plain restoration, or Resource restoration projects involving the maintenance, repair, restoration, creation, or enhancement of Resources and their Resource Buffers.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>12. Soil Erosion and Sediment Control measures as approved by Sussex Conservation District.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>13. Forest Management Activities conducted under the guidance and direction of a Licensed Forester,</u>	<u>PERMITTED</u>	<u>PERMITTED</u>

<u>Table 2: Resource Buffer Activities by Zone</u>		
<u>ACTIVITY</u>	<u>ZONE A</u>	<u>ZONE B</u>
<u>Arborist, Landscape Architect, or Qualified Resource Buffer Professional.</u>		
<u>14. Invasive Species Control (plant, insect, animal) conducted in accordance with State and Federal law.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>15. Planting/establishment of non-invasive native species (as listed by DNREC).</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>16. Installation, repair, maintenance, and removal of wells (potable, monitoring, injection as approved by state/federal agencies).</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>17. Walking Trails approved by a State and/or Federal Permit where any associated impervious area runoff is managed under a Sussex Conservation District permit.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>18. Extended Detention dry and wet stormwater management ponds.</u>	<u>NOT PERMITTED</u>	<u>PERMITTED</u>
<u>19. Removal of any dead, dying, damaged, or unstable live tree from a Resource or Resource Buffer which presents an imminent danger to property or public safety.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>20. Stormwater Management Water Quality BMPs as approved by the Sussex Conservation District.</u>	<u>PERMITTED</u> <u>(Limited to 10% of Total square footage of Zone A in a proposed development)</u>	<u>PERMITTED</u>
<u>21. Sewage disposal facilities.</u>	<u>NOT PERMITTED</u>	<u>NOT PERMITTED</u>
<u>22. Storage of hazardous materials and siting of industrial sites, landfills, or junkyards.</u>	<u>NOT PERMITTED</u>	<u>NOT PERMITTED</u>

<u>Table 2: Resource Buffer Activities by Zone</u>		
<u>ACTIVITY</u>	<u>ZONE A</u>	<u>ZONE B</u>
<u>23. Swimming pools, community clubhouses, and all Non-Water-Dependent or Non-Water Related improvements not specifically permitted under this section.</u>	<u>NOT PERMITTED</u>	<u>NOT PERMITTED</u>

692

693 **D. Resource Buffer Standards.**

694

695 1. All existing (i.e., at the time of application) conditions, including the
696 vegetative land features, and the proposed conditions within the proposed
697 Resource Buffer shall be identified on the Preliminary Site Plan.

698

699 2. If a proposed development contains a Resource, then the associated Resource
700 Buffer shall conform with the following criteria based on vegetative features
701 existing at the time of Preliminary Site plan Submission:

702 (a) Established native forests and non-forest meadows predominated by
703 non-invasive species shall be retained.

704

705 (i) Forest: Subject to §115-193C, all existing trees and understory
706 constituting a proposed Resource Buffer shall be preserved and
707 maintained in their natural state. “Selective Cutting” (Subsection E)
708 activities may be implemented. Invasive species may be removed from the
709 Resource Buffer.

710

711 (ii) Non-forest Meadow: Subject to §115-193C, all existing meadows
712 constituting a proposed non-forested Resource Buffer that are composed
713 of herbaceous and shrub species shall be preserved and maintained in
714 their natural state. Non-forest meadow may also include old field areas
715 with a mixture of herbaceous vegetation, shrubs and trees transitioning to
716 a forested condition through natural succession. Invasive species may be
717 removed from the Resource Buffer.

718

719 (b) Grazed pasture, managed turf, active cropland or areas of bare earth
 720 not stabilized with vegetative cover shall be re- established as native forest or
 721 non-forest meadow prior to determination of substantial completion of the
 722 proposed development phase where that “unstabilized” area is located by
 723 planting of non-invasive species or through the process of natural succession
 724 augmented with invasive species control.

725 E. Selective Cutting.

726

727 1. “Selective Cutting” is defined as the removal or limbing of trees greater than
 728 three inches in diameter at breast height which does not change the area of
 729 the overall forest canopy by the concentrated removal of trees in a specific
 730 location. “Selective Cutting” also permits the removal or brushing of forest
 731 understory. Disruption of a contiguous forest canopy for a width greater
 732 than thirty feet shall not occur and does not meet the definition of “Selective
 733 Cutting”. “Selective Cutting” does not include stump removal.

734

735 2. “Selective Cutting” shall be completed under the guidance and approval of a
 736 Licensed Forester, ISA Certified Arborist, Registered Landscape Architect, or
 737 Qualified Resource Buffer Professional

738

739 F. Maintenance of Drainage Conveyances

740

741 1. All Resource Buffers identified on a Final Site Plan shall be designated as a
 742 drainage and access easement permitting access by any future owners’
 743 association, federal, state or local agency and the public, for the limited
 744 purpose of maintenance or monitoring of drainage capacity or conveyance by
 745 any future owners’ association; federal state or local agency; and the public.
 746 In addition, a corresponding easement for access into each individual
 747 Resource Buffer established on the site shall, whenever possible, be provided
 748 from a public road or street within a proposed development.

749

750 2. If a Resource Buffer abuts or contains features such as ephemeral,
 751 intermittent or perennial streams which are not part of an established Tax
 752 Ditch and which convey drainage from or through a site proposed for
 753 development, a “Drainage Assessment Report” shall be prepared by a
 754 registered Delaware Professional Engineer. As part of the pre-application
 755 process, Sussex County will determine the information to be included in the
 756 Drainage Assessment Report. At a minimum, the Drainage Assessment

757 Report shall identify the following concerning measures needed for drainage
758 conveyances:

759
760 (a) Identification of any unstable or eroding stream banks or
761 conveyance requiring stabilization or restoration measures.

762
763 (b) The location of any stream blockages such as debris jams, fallen
764 or unstable trees, beaver dams or similar impediments to conveyance.

765
766 (c) The location of any sand or gravel deposition within a channel
767 or conveyance which impedes the flow of water produced by a storm
768 having an annual probability of occurrence of 10%.

769
770 (d) A discussion of all recommended measures to remedy any
771 impediment to drainage conveyance or drainage stability.

772
773 (e) A summary of required local, state or federal permits required to
774 remedy any impediment to drainage conveyance.

775
776 (f) The easement width and a sufficient number of easements to provide
777 adequate access to the Resource for maintenance.

778
779 3. Remedies required by Sussex County as a result of the Drainage
780 Assessment Report shall be shown on the Final Site Plan.

781
782 G. Resource Buffer Options

783
784 1. A proposed development shall be permitted to utilize the following options,
785 consistent with §115-193, Section B. Resource Buffer Width Averaging, to
786 incentivize the retention of forests:

787
788 (a) When the preservation of a forest within the Resource Buffer that has
789 been in existence for at least five years prior to the date of application
790 as identified by a Licensed Forester, Arborist, Landscape Architect, or
791 Qualified Resource Buffer Professional is achieved, then a
792 corresponding area reduction of either the Resource Buffer Zone B
793 along the entire or part of that Resource; or the Forested and/or

794 Landscaped Buffer required in Chapter 99 in areas adjacent to like-
 795 zoned land is permitted.

796

797 (b) When the Preservation of a forest connected to (but not within) a
 798 Resource Buffer in excess of the requirements listed in Section 115-
 799 193.A. is achieved, then a corresponding area reduction of either non-
 800 Forest Resource Buffer Zone B on the same Resource, or Forested
 801 and/or Landscaped Buffer required in Chapter 99 in areas adjacent to
 802 like-zoned land is permitted.

803

804 (c) When the provision of Resource Buffer widths in excess of the
 805 requirements listed in Section 115-193.A. is achieved, then a
 806 corresponding area reduction of the Forested and/or Landscaped Buffer
 807 required in Chapter 99 in areas adjacent to like-zoned land is permitted.

808

809 2. A proposed development shall be permitted to utilize the following options to
 810 incentivize the retention or expansion of Resource Buffers or provide
 811 additional functional benefit of Resource Buffers:

812

813 (a) (i) When the creation of a Resource Buffer under a perpetual conservation
 814 easement for the benefit of a conservation organization approved by
 815 Sussex County on lands in the same twelve-digit hydrologic unit code as
 816 defined by the United States Geological Survey as the proposed
 817 development is achieved, then a 75 percent corresponding area
 818 reduction of the Resource Buffer Zones A and/or B on the same Resource
 819 within the proposed development is permitted.

820

821 (ii) When the creation of a Resource Buffer for forest preservation under
 822 a perpetual conservation easement for the benefit of a conservation
 823 organization approved by Sussex County on lands in the same twelve-
 824 digit hydrologic unit code as defined by the United States Geological
 825 Survey as the proposed development is achieved, then a 125 percent
 826 corresponding area reduction of the Resource Buffer Zones A and/or B
 827 on the same Resource within the proposed development is permitted.

828

829 (b) Funding, partially or entirely, an off-site restoration project under the
 830 Sussex County Clean Water Enhancement Program, subject to approval

831 of the Sussex Conservation District, with completion of the restoration
832 by Sussex County in the same twelve digit hydrologic unit code as
833 defined by the United States Geological Survey as the proposed
834 development with a corresponding Resource Buffer Zone A and/or B
835 reduction equal to the Resource Buffer area created in the off-site
836 project.

837
838 (c) (i) A proposed development with a pre-existing property boundary in the
839 center of an Intermittent or Perennial Stream that includes a perpetual
840 conservation easement for the benefit of a conservation organization
841 approved by Sussex County in the form of a Zone A Resource Buffer on
842 the opposite side of the Intermittent or Perennial Stream may receive a
843 corresponding area reduction of the Zone B Resource Buffer within the
844 proposed development.

845
846 (ii) A proposed development with a pre-existing boundary in the center
847 of an Intermittent or Perennial Stream may receive a 200 percent area
848 reduction of Zone B Resource Buffer if forest lands designated as Zone
849 A Resource Buffers are secured under a perpetual conservation
850 easement for the benefit of a conservation organization approved by
851 Sussex County on the opposite side of the Intermittent or Perennial
852 Stream along the proposed development boundary.

853
854 3. For purposes of this Subsection G., “Forest” shall mean: A vegetative
855 community dominated by trees and other woody plants covering a land area
856 of 10,000 square feet or greater. Forest includes: (1) areas that have at least
857 100 trees per acre with at least 50% of those having a two-inch or greater
858 diameter at 4.5 feet above the ground and larger, and (2) forest areas that
859 have been cut but neither stumps were removed nor the land surface regraded.

860
861
862 H. Resource and Resource Buffer Maintenance and Management.

863
864 1. Resource and Resource Buffer Management Plan
865 Any proposed development where Resource Buffers are required shall submit
866 a Resource and Resource Buffer Management Plan, prepared by a Qualified

867 Resource Buffer Management Professional, that describes measures for
868 maintaining or improving the Resource and the Resource Buffer(s) on the site.
869 The Resource and Resource Buffer Management Plan shall be proffered as
870 part of the Supporting Statement requirements of §99-24, or at the time of
871 Preliminary Site Plan approval for any residential conditional use. The
872 maintenance standards or management actions associated with the Resource
873 and Resource Buffer Management Plan shall be included as an obligation of
874 the owners' association in the recorded declaration for any new development.
875 The Resource and Resource Buffer Management Plan shall describe how the
876 Resource Buffer will be managed to maintain its functions and cite any
877 measures to be implemented for the enhancement of Resource Buffers or their
878 functions. It shall also include a narrative discussing the overall plan for
879 access easements sufficient for expected short- and long-term maintenance
880 and management needs.

881 2. Any Perennial or Intermittent Stream within a proposed development
882 that does not exhibit a positive conveyance (regardless of whether it is part of
883 a Tax Ditch) shall be identified by phase on the Detailed Grading Plan as
884 follows:

885 (a) If the deficient Perennial or Intermittent Stream has adjacent
886 Non-Tidal Wetlands, the applicant shall restore the conveyance
887 channel to a positive conveyance (i.e. the removal of conveyance
888 impediments) within the entire site prior to the issuance of substantial
889 completion of the final approved phase. This restoration shall be in
890 compliance with all applicable federal, state and county requirements.

891 (b) If the deficient Perennial or Intermittent Stream has no adjacent
892 Non-Tidal Wetlands, the applicant shall restore the conveyance
893 channel to a positive conveyance (i.e. the removal of conveyance
894 impediments) within the entire site prior to the issuance of substantial
895 completion of the first approved phase. This restoration shall be in
896 compliance with all applicable federal, state and county requirements.

897 I. Modifications and Exceptions.

898
899 The Planning and Zoning Commission shall be authorized, as part of the site plan
900 review process, to grant preliminary or final site plan approval with modifications
901 of, or exceptions to, the foregoing requirements upon the submission of a detailed

902 and specific written request from the applicant with supporting documentation from
903 a Qualified Wetland Resource Professional or Qualified Resource Buffer
904 Management Professional, but only upon the satisfaction of all of the following
905 conditions:

906
907 1. When the Commission finds that special conditions or circumstances
908 exist that are peculiar to the land or structure and that a literal enforcement
909 of a specific requirement of this section would result in unwarranted hardship.

910
911 2. That the modification or exception request is not based upon conditions
912 or circumstances which are the result of actions by the applicant, nor does
913 the request arise from any condition relating to land or building use, either
914 permitted or nonconforming, on any neighboring property.

915
916 3. That the granting of a modification or exception will not adversely
917 affect the functions of the Resource or its Resource Buffer as set forth in the
918 definition of that term. Waivers shall be in harmony with the general spirit
919 and intent of this section and any subsequent regulations.

920
921 4. That the basis for the modification or exception cannot be achieved
922 through Resource Buffer Width Averaging as provided by §115-193B.

923
924 5. That in no event shall there be a modification or exception to the width
925 requirements of Zone A.

926
927 The date of any modification or exception by the Commission shall be noted on the
928 final site plan.

929 J. These requirements shall only apply to subdivisions governed by Chapter 99,
930 Residential Planned Communities and uses identified in §115-219A(1) and (2).

931

932 **Section 11. The Code of Sussex County, Chapter 115, Article XXVIII, §115-220**
933 **“Preliminary Site Plan Requirements”, is hereby amended by inserting the**
934 **italicized and underlined language as a new Subsection B(17) thereof:**

935 **§115-220 Preliminary Site Plan Requirements**

936 ...

937 B. The preliminary site plan shall show the following:

938 . . .

939 (17) In the case of a proposed development with the uses identified in §115-
 940 219A(1) and (2) or Residential Planned Communities, the site plan shall include all
 941 required Resource Buffers and the following:

942 (a) The boundary and type of any Non-Tidal/Tidal Wetland or water resources
 943 (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will
 944 be shown per methods identified in the definitions of Wetlands and Ordinary High
 945 Water Line Delineation.

946 (b) All existing (i.e., at the time of application) native forest and non-forest
 947 meadow within the future Resource Buffer.

948 (c) The limits of the required Resource Buffers.

949 (d) Calculations supporting Resource Buffer width averaging (§115-193B).

950 (e) Calculations supporting Resource Buffer enhancement calculations and
 951 corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-
 952 193F).

953 (f) Proposed access easement layout for access to Resource Buffers and the
 954 adjacent Resources with a note that such access easements are “public access
 955 easements for maintenance purposes”. For purposes of this requirement, “public”
 956 shall mean, and be limited to, those parties requiring access for maintenance
 957 purposes.

958 (g) A reference by title, author and date, to the “Drainage Assessment Report”
 959 required by Section 115-193.F.2.

960

961 **Section 12. The Code of Sussex County, Chapter 115, Article XXVIII, §115-221**
 962 **“Final Site Plan Requirements”, is hereby amended by inserting the italicized**
 963 **and underlined language as a new Subsections B(19) and E. thereof:**

964 **§115-221 Final Site Plan Requirements**

965 . . .

966 B. The final site plan shall show the following:

967 (19) In the case of a proposed development with the uses identified in §115-
 968 219A(1) and (2) or Residential Planned Communities, the site plan shall include all
 969 required Resources and Resource Buffers including the following, where applicable:

970 (a) The boundary and type of any Non-Tidal/Tidal Wetland or water resources
 971 (Tidal, Perennial, Intermittent) which require a Resource Buffer. The boundary will
 972 be shown per methods identified in the definitions of Wetlands and Ordinary High
 973 Water Line Delineation.

974 (b) All existing (i.e., at the time of application) native forest and non-forest
 975 meadow within the future Resource Buffer.

976 (c) The limits of the required Resource Buffers.

977 (d) Calculations supporting Resource Buffer width averaging (§115-193B).

978 (e) Calculations supporting Resource Buffer enhancement calculations and
 979 corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-
 980 193F).

981 (f) Proposed access easement layout for access to Resource Buffers and the
 982 adjacent Resources with a note that such access easements are “public access
 983 easements for maintenance purposes”. For purposes of this requirement, “public”
 984 shall mean, and be limited to, those parties requiring access for maintenance
 985 purposes.

986 (g) A statement incorporating the Resource and Resource Management and
 987 Maintenance Plan by reference.

988 (h) A reference by title, author and date, to the “Drainage Assessment Report”
 989 required by Section 115-193.F.2.

990 . . .

991 E. An AutoCAD drawing file containing all items required in Section A above
 992 shall be submitted in electronic format. The data shall be referenced in NAD 1983
 993 StatePlane Delaware FIPS 0700 (U.S. Feet) Projected Coordinate System.

994

995 **Section13. Effective Date.**

996 This Ordinance shall take effect upon _____ (__) months from the date of adoption
997 by Sussex County Council. Provided however, that it shall not apply to any
998 completed applications on file with the Sussex County Office of Planning & Zoning.