

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.

63
64 **NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**
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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:

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73 . . .

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75 **EPHEMERAL STREAMS**

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

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86 **INTERMITTENT STREAMS**

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

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97 **MAJOR SUBDIVISION**

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

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103 **MINOR SUBDIVISION**

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

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114 **NON-TIDAL WETLANDS**

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

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126 **ORDINARY HIGH WATER MARK DELINEATION**

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

133 terrestrial vegetation, the presence of litter and debris, or other similar physical
134 characteristics indicating the frequent presence of flowing water.

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136 . . .

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

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

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145 . . .
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147 **RESOURCE BUFFER - WETLANDS AND WATERS**

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

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

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163 . . .

164 165 **RESOURCES**

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

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171 . . .

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173 **TAX DITCH**

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

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

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

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190 **TIDAL WETLANDS**

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

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195 . . .

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197 **WATER DEPENDENT ACTIVITIES**

198 Activities that are approved through federal and state permit programs that meet the
199 definition of water dependent activities included in those programs. Water-

200 dependent uses are uses that can only be conducted on, in, over, or adjacent to the
201 water; each involves, as an integral part of the use, direct access to and use of the
202 water. Examples include marinas, boat ramps/launches, docks, piers, water intakes,
203 aquatic habitat restoration, and similar uses.

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205 . . .

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207 **WATER RELATED ACTIVITIES**

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

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212 . . .

213
214 **WETLANDS**

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

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

230
231 **§99-6 General Requirements and Restrictions.**

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

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

246

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

250

251 **§99-7 Preliminary Conference.**

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

268

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

272 **§99-23 Information to Be Shown.**

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

275 . . .

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

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

281 *(2)All existing (i.e., at the time of application) natural forest, managed forest and*
282 *non-forest meadow within the future Resource Buffer shall be identified.*

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

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

285 *(5)Calculations supporting Resource Buffer enhancement calculations and*
286 *corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-*
287 *193F).*

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

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

295 *(8)Any walking trails, including the method of construction and the materials*
296 *used to establish the trails.*

297

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

301 **§99-24 Supporting Statements**

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

304 . . .

305 *G. A Resource and Resource Buffer Management Plan that describes measures*
306 *for managing the Resource and Resource Buffer(s) required pursuant to Chapter*
307 *115, Article XXV, Section 115-193 on the site. The Resource and Resource Buffer*
308 *Management Plan shall be included as part of the recorded declaration for the*
309 *subdivision.*

310

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

314 **§99-26 Information to Be Shown.**

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

317 . . .

318 *(21)The location of all Resource Buffers.*

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

323 *(b) All existing (i.e., at the time of application) native forest **and areas to be***
324 ***reforested non-forests meadow** within the future Resource Buffer shall be identified.*

325 *(d) The area limits of the required Resource Buffer.*

326 *(e)Calculations supporting Resource Buffer width averaging (§115-193B).*

327 (f) Calculations supporting Resource Buffer enhancement calculations and
328 corresponding Forested and/or Landscaped Buffer reductions, if applicable (§155-
329 193F).

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

335 (h) A statement incorporating the Resource and Resource Management and
336 Maintenance Plan by reference.

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

339 (22) Any walking trails, including method of construction and the materials used to
340 establish the trails.

341 . . .

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

345

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

349 **§99-30 Plans.**

350

351 Plans, profiles and specifications for the required improvements shall be prepared
352 by the subdivider and submitted for approval by the appropriate public authorities
353 prior to construction. No construction shall commence prior to the issuance of a
354 notice to proceed by the County Engineer or his or her designee for the required
355 improvements. All plans, profiles and specifications approved by the County
356 Engineer or his or her designee with the issuance of a notice to proceed shall remain
357 valid or, if substantial construction is not actively and continuously underway, they
358 shall expire upon the expiration of the final site plan. Prior to the issuance of a notice
359 to proceed, the County Engineer may require the owner and/or his designee to

360 execute an agreement addressing the required improvements. The plans and profiles
361 submitted for all new construction shall include the following:

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363 . . .

364
365 J.Resources and Resource Buffers.

366
367 K. Proposed access easement layout with a note that such access easements are
368 “public access easements for maintenance purposes”. For purposes of this
369 requirement, “public” shall mean, and be limited to, those parties requiring access
370 for maintenance purposes.

371
372 **Section 8. The Code of Sussex County, Chapter 115, Article I, §115-4**
373 **“Definitions and Word Usage,” is hereby amended by inserting the italicized**
374 **and underlined language alphabetically in Subsection B thereof:**

375
376 **§115-4 Definitions and Word Usage.**

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

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385 **EPHEMERAL STREAMS**

386 A feature, excluding laterals draining agricultural fields, that carries only runoff in
387 direct response to precipitation with water flowing only during and shortly after
388 large precipitation events. An Ephemeral Stream may or may not have a well-defined
389 channel, its aquatic bed is always above the water table during a year of normal
390 rainfall, and runoff is its primary source of water. An Ephemeral Stream typically
391 lacks the biological, hydrological, and physical characteristics commonly
392 associated with the continuous or intermittent conveyance of water.

393
394 . . .

395

396 **INTERMITTENT STREAMS**

397 A well-defined channel, excluding laterals draining agricultural fields, that contains
398 flowing water for only part of the year, typically during winter and spring when the
399 aquatic bed is below the water table, connecting otherwise isolated Non-tidal
400 Wetlands to downstream Tidal/Perennial Waters/Streams. The flow may be heavily
401 supplemented by runoff. An Intermittent Stream often lacks the biological and
402 hydrological characteristics commonly associated with the continuous conveyance
403 of water.

404
405 . . .

406 **NON-TIDAL WETLANDS**

407 Non-Tidal Wetlands are those Wetlands, not classified by this Chapter as Tidal
408 Wetlands, which lie contiguous or abutting to Tidal Waters, Tidal Wetlands,
409 Perennial Streams or those Intermittent Streams providing a surface water
410 connection between adjacent Wetlands and ultimately downstream navigable
411 waters. Non-Tidal Wetlands also include those Wetlands only separated from
412 otherwise contiguous or abutting Wetlands by constructed dikes, barriers, culverts,
413 natural river berms and beach dunes.

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417 **ORDINARY HIGH WATER MARK DELINEATION**

418
419 The boundary of Perennial Non-Tidal Rivers or Streams, Intermittent Streams or
420 Ephemeral Streams shall be defined by the Ordinary High Water Mark. Ordinary
421 High Water Mark means the line on a shore or bank established by the fluctuations
422 of water and indicated by physical characteristics such as a clear, natural line
423 impressed on the bank, shelving, changes in the character of soil, destruction of
424 terrestrial vegetation, the presence of litter and debris, or other similar physical
425 characteristics indicating the frequent presence of flowing water.

426
427 . . .

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

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

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438 **RESOURCE BUFFER - WETLANDS AND WATERS**

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

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

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454 . . .
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456 **RESOURCES**

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

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462 . . .
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464 **TAX DITCH**

465

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

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471 . . .

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

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

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481 **TIDAL WETLANDS**

482 Areas under the jurisdiction of Title 7, Chapter 66 of the Delaware Code, as
483 regulated and mapped by the Department of Natural Resources and Environmental
484 Control.

485

486 . . .

487

488 **WATER DEPENDENT ACTIVITIES**

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

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496 . . .

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498 **WATER RELATED ACTIVITIES**

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

502 . . .

503 **WETLANDS**

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

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

518

519 **§115-25** Height, Area and Bulk

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521 F. Review procedures for cluster development

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

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529 (a) The cluster development sketch plan and the preliminary plan of
530 the cluster subdivision provides for a total environment and design
531 which are superior, [and] in the reasonable judgment of the Planning
532 Commission, to that which would be allowed under the regulations for
533 the standard option. For the purposes of this subsection a proposed

534 cluster subdivision which provides for a total environment and design
535 which are superior to that allowed under the standard option
536 subdivision is one which, in the reasonable judgment of the Planning
537 Commission meets all of the following criteria:

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541 [4] [A minimum of 25 feet of permanent setback must be
542 maintained around the outer boundaries of all wetlands, except
543 for tidal waters, tidal tributary streams and tidal wetlands and
544 from the ordinary high water line of perennial nontidal rivers and
545 nontidal streams as provided for in §115-193B under Ordinance
546 No. 774 where a fifty-foot permanent setback is required. No
547 buildings or paving shall be placed within these setbacks.] *The*
548 *preliminary plan shall comply with the requirements of §115-*
549 *193.*

550
551 **Section 10. The Code of Sussex County, Chapter 115, Article XXV, §115-193**
552 **“Buffer Zones for Wetlands and Tidal and Nonperennial Waters,” is hereby**
553 **amended by amending the Title thereof to state “Resource Protection” and**
554 **deleting the language in brackets and inserting the italicized and underlined**
555 **language:**

556
557 **§115-193 [Buffer Zones for Wetlands and Tidal and Nonperennial Waters]**
558 **Resource Protection**

559
560 [A.

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

563 **BUFFER ZONE**

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

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MEAN HIGH-WATER LINE OF TIDAL WATER

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

PERENNIAL NONTIDAL RIVERS AND STREAMS

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

TIDAL TRIBUTARY STREAM

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

TIDAL WETLANDS

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

WETLANDS

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

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

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

D. Excluded from buffer zone regulations are facilities necessarily associated with water-dependent facilities (maritime, recreational, educational or fisheries activities that cannot exist outside of the buffer by reason of the intrinsic nature of their operation) and the installation, repair or maintenance of any stormwater

603 management facility, sanitary sewer system, culvert, bridge, public utility, street,
604 drainage facility, pond, recreational amenity, pier, bulkhead, boat ramp, waterway
605 improvement project or erosion-stabilization project that has received the joint
606 approval of the County Engineering Department and the appropriate federal, state
607 and local agencies. An existing public storm-drain system may be extended in order
608 to complete an unenclosed gap or correct a drainage problem, subject to receiving
609 the approval of the County Engineering Department and the appropriate federal,
610 state and local agencies.

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

613 (1) Existing improvements and construction as of the date of the approval
614 of this section may continue. Alterations or expansions which shall be
615 attached to a preexisting structure built on nonconforming land, pursuant to
616 this section, will not be permitted unless proven that such improvement is
617 constructed at an equal distance or landward of the preexisting structure which
618 is most proximate to the wetland area and a variance is granted as provided
619 below.

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

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

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

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

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

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

650 (3) Any land upon which development has progressed to the point of
651 pouring of a foundation or the installation of structural improvements as of
652 the date of the approval of this section shall be permitted to be developed,
653 provided that there shall be no further encroachment upon the buffer zone, as
654 required in Subsection E(1) above.]

655

656 A. Resource Buffer Widths.

657

658 1. Resource Buffer Widths shall be established in accordance with Table
659 1, with Zone A being closest to the Resource.

660

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

665

666 3. No Resource Buffer shall overlay a Tax Ditch or Tax Ditch Right of
667 Way. If a proposed development contains a Tax Ditch, with a right-of-
668 way of less than the total Resource Buffer Width, then that area of the
669 Resource Buffer outside of the right-of-way shall be designated as Zone
670 B.

671

672

| <u>Table 1: Resource Buffer Widths</u> | | | |
|--|--------------------------------------|---------------------------|---------------------------|
| <u>Resource Type</u> <i>(See Definitions, §115-4B)</i> | <u>Full Buffer 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> |

673

674 B. Resource Buffer Width Averaging.

675

676 1. Resource Buffer width averaging may be utilized to adjust the required
 677 Zone B Resource Buffer width thereby allowing flexibility for the
 678 proposed development, so long as the overall square footage of the
 679 Zone B Resource Buffer is maintained.

680

681 2. Criteria for utilizing Resource Buffer width averaging:

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

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

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

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

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

694 (f) Resource buffer width averaging of buffers on tidal wetlands
 695 and/or waters shall be limited to buffers of tidal wetlands and/or tidal
 696 waters within the boundaries of the proposed development and not
 697 extend to buffers of other feature types.
 698
 699

C. Permitted Activities.

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

| <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> |

| | | |
|--|-------------------------|-------------------------|
| <p><u>3. Repair or maintenance of existing infrastructure or utilities, including roads, bridges, culverts, water lines, and sanitary sewer lines.</u></p> | <p><i>PERMITTED</i></p> | <p><i>PERMITTED</i></p> |
| <p><u>4. Temporary impacts resulting from installation of utilities by trenching</u></p> | <p><i>PERMITTED</i></p> | <p><i>PERMITTED</i></p> |

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

| <u>Table 2: Resource Buffer Activities by Zone</u> | | |
|--|--|-----------------------------|
| ACTIVITY | ZONE A | ZONE B |
| <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 where any 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>NOT 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> (Limited to 10% of Total square footage of Zone A in a proposed development) | <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> | | |
|--|----------------------|----------------------|
| ACTIVITY | ZONE A | ZONE B |
| <u>23. Swimming pools, community clubhouses, and all Non-Water-Dependent or Non-Water Related improvements not specifically permitted under this section.</u> | NOT PERMITTED | NOT PERMITTED |

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D.Resource Buffer Standards.

1. All existing (i.e., at the time of application) conditions, including the vegetative land features, and the proposed conditions within the proposed Resource Buffer shall be identified on the Preliminary Site Plan.
2. If a proposed development contains a Resource, then the associated Resource Buffer shall conform with the following criteria based on vegetative features existing at the time of Preliminary Site plan Submission:

(a) Established native forests and non-forest meadows including all existing trees and understory constituting a Resource Buffer shall be preserved and maintained in their natural state. “Selective Cutting” (Subsection E) activities may be implemented. Invasive species are encouraged be removed from the Resource Buffer.

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

(ii) Non forest Meadow: Subject to §115-193C, all existing meadows constituting a proposed non-forested Resource Buffer that are composed of herbaceous and shrub species shall be preserved and maintained in their natural state. Non forest meadow may also include old field areas with a mixture of herbaceous vegetation, shrubs and trees transitioning to

~~cession. Invasive species may be removed from the Resource Buffer.~~

(b) ~~Grazed pasture, meadows, fallow fields, managed turf, active cropland or areas of bare earth not stabilized with vegetative cover shall be re-established as native forest or non-forest meadow prior to determination of substantial completion of the proposed development phase where that "unstabilized" area is located by planning and planting of a diverse mixture of trees and shrubs native to Delaware and by controlling invasive species. non-invasive species or through the process of natural succession augmented with invasive species control.~~

(i) **A reforestation plan including species, planting rates, planting schedule, planting survival standards, and maintenance actions during reestablishment shall be designed by a Licensed Forester, ISA Certified Arborist, Registered Landscape Architect, or Qualified Resource Buffer Professional and included in the Resource and Resource Buffer Management Plan under Section H.**

(ii) **Mulch or native ground cover must cover the area until buffer plantings are established.**

(iii) **Plantings must include canopy trees, understory trees, and shrubs and be distributed throughout the buffer to optimize buffer function under §99-5**

(iv) **A diversity of Delaware native species of no less than 5 species of trees and 2 species of shrubs normally found in and adapted to the conditions in the buffer must be planted.**

(v) **Flexibility of tree stock is allowed based on the following survival standards over a period of 2 years:**

| Stock Size (Trees Only) | Number per Acre | Required Survival Rate |
|--|------------------------|-------------------------------|
| Bare-root seedling or whip | 700 | 50% 350 per acre |
| ½" to 1" Container grown trees | 450 | 75% 338 per acre |
| More than 1-inch container grown tree | 350 | 80% 280 per acre |

(vi) **Natural regeneration of native forest is permitted in place of planting within 25 feet of a mature forest that contains a seed bank of native species adequate for natural regeneration. The reforestation plan**

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an to be implemented if, at the end of 5 years, the areal coverage of the Buffer does not contain, on a per-acre basis, at least 300 native woody stems at least 4 feet in height.

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(c) Grazed pasture, managed turf, active cropland or areas of bare earth not stabilized with vegetative cover shall be re-established as native forest or

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728 E. Removal of Invasive Species.

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730 1. Invasive species control shall be completed under the guidance and approval of a
731 Licensed Forester, ISA Certified Arborist, Registered Landscape Architect, or
732 Qualified Resource Buffer Professional.

733 F. Maintenance of Drainage Conveyances

734
735 1. All Resource Buffers identified on a Final Site Plan shall be designated as a
736 drainage and access easement permitting access by any future owners’
737 association, federal, state or local agency and the public, for the limited
738 purpose of maintenance or monitoring of drainage capacity or conveyance by
739 any future owners’ association; federal state or local agency; and the public.
740 In addition, a corresponding easement for access into each individual
741 Resource Buffer established on the site shall, whenever possible, be provided
742 from a public road or street within a proposed development.

743
744 2. If a Resource Buffer abuts or contains features such as ephemeral,
745 intermittent or perennial streams which are not part of an established Tax
746 Ditch and which convey drainage from or through a site proposed for
747 development, a “Drainage Assessment Report” shall be prepared by a
748 registered Delaware Professional Engineer. As part of the pre-application
749 process, Sussex County will determine the information to be included in the
750 Drainage Assessment Report. At a minimum, the Drainage Assessment
751 Report shall identify the following concerning measures needed for drainage
752 conveyances:

753
754 (a) Identification of any unstable or eroding stream banks or
755 conveyance requiring stabilization or restoration measures.

756
757 (a) The location of any stream blockages such as debris jams, ~~fallen or~~
758 ~~unstable trees~~, beaver dams or similar impediments to conveyance that
759 pose a credible and impending threat of flooding to nearby landuses
760 or property.

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

768
769 (d) A discussion of all recommended measures to remedy any
770 impediment to drainage conveyance or drainage stability.

771
772 (e) A summary of required local, state or federal permits required to
773 remedy any impediment to drainage conveyance.

774
775 (f) The easement width and a sufficient number of easements to provide
776 adequate access to the Resource for maintenance.

777
778 3. Remedies required by Sussex County as a result of the Drainage
779 Assessment Report shall be shown on the Final Site Plan.

780
781 G.Resource Buffer Options

782
783 I. A proposed development shall be permitted to utilize the following options,
784 consistent with §115-193, Section B. Resource Buffer Width Averaging, to
785 incentivize the retention of forests:

786
787 (a)When the preservation of a forest within the Resource Buffer that has
788 been in existence for at least five years prior to the date of application
789 as identified by a Licensed Forester, Arborist, Landscape Architect, or
790 Qualified Resource Buffer Professional is achieved, then a
791 corresponding area reduction of either the Resource Buffer Zone B
792 along the entire or part of that Resource; or the Forested and/or
793 Landscaped Buffer required in Chapter 99 in areas adjacent to like-
794 zoned land is permitted.

795
796 (b)When the Preservation of a natural forest connected to (but not within) a
797 Resource Buffer in excess of the requirements listed in Section 115-
798 193.A. is achieved by adding the area to Zone B, then a corresponding
799 area reduction of either non-Forest Resource Buffer Zone B on the same
800 Resource, or Forested and/or Landscaped Buffer required in Chapter
801 99 in areas adjacent to like zoned land is permitted.

802

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

807
808 2. *A proposed development shall be permitted to utilize the following options to*
809 *incentivize the retention or expansion of Resource Buffers or provide*
810 *additional functional benefit of Resource Buffers:*

811
812 (a)(i) *When the creation of an off site Resource Buffer is protected under a*
813 *perpetual conservation easement, then a 75 percent corresponding area*
814 *reduction of the Resource Buffer Zones A and/or B in the same Resource*
815 *within the development is permitted. The upland line of that new off site*
816 *Resource Buffer and perpetual conservation easement shall be*
817 *considered the edge of the Resource for locating a Resource Buffer in*
818 *the event that the off site land is developed in the future. The perpetual*
819 *conservation easement shall be for the benefit of a conservation*
820 *organization approved by Sussex County, and it must be located within*
821 *the same twelve digit hydrologic unit code as defined by the United*
822 *States Geological Survey as the proposed development.*

823
824 (ii) *When the creation of an off site Resource Buffer for forest preservation*
825 *is protected under a perpetual conservation easement, then a 125*
826 *percent corresponding area reduction of the Resource Buffer Zones A*
827 *and/or B in the same Resource within the development is permitted. The*
828 *upland line of that new off site Resource Buffer and perpetual*
829 *conservation easement shall be considered the edge of the Resource for*
830 *locating a Resource Buffer in the event that the off site land is developed*
831 *in the future. The perpetual conservation easement shall be for the*
832 *benefit of a conservation organization approved by Sussex County, and*
833 *it must be located within the same twelve digit hydrologic unit code as*
834 *defined by the United States Geological Survey as the proposed*
835 *development.*

836
837 (b) *Funding, partially or entirely, an off site restoration project under the*
838 *Sussex County Clean Water Enhancement Program, subject to approval*
839 *of the Sussex Conservation District, with completion of the restoration*

by Sussex County prior to final acceptance of the first phase of the proposed development by the Sussex County Engineering Department in the same twelve digit hydrologic unit code as defined by the United States Geological Survey as the proposed development with a corresponding Resource Buffer Zone A and/or B reduction equal to the Resource Buffer area on that same resource created in the off site project.

(c) (i) When a proposed development has a pre-existing property boundary that is located in the center of an Intermittent or Perennial Stream and the entire Resource (including the off-site portion of it) including an off-site Resource Buffer Zone A is protected under a perpetual conservation easement, then a corresponding area reduction of the Resource Buffer Zones B on the same Resource development is permitted. The upland line of that new off-site Resource Buffer Zone A and perpetual conservation easement shall be considered the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County.

(ii) When a proposed development has a pre-existing property boundary that is located in the center of an Intermittent or Perennial Stream and the entire Resource (including the off-site portion of it) including an off-site Resource Buffer Zone A in the form of a natural forest is protected under a perpetual conservation easement, then a corresponding 125% area reduction of the Resource Buffer Zones B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer Zone A and perpetual conservation easement shall be considered the edge of the Resource for locating a Resource Buffer in the event that the off-site land is developed in the future. The perpetual conservation easement shall be for the benefit of a conservation organization approved by Sussex County.

3. For purposes of this Subsection G., “Forest” shall mean: A vegetative community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater. Forest includes: (1) areas that have at least 100 trees per acre with at least 50% of those having a two-inch or greater

diameter at 4.5 feet above the ground and larger, and (2) forest areas that have been cut but neither stumps were removed nor the land surface regraded.

H. *Resource and Resource Buffer Maintenance and Management.*

1. *Resource and Resource Buffer Management Plan*

Any proposed development where Resource Buffers are required shall submit a Resource and Resource Buffer Management Plan, prepared by a Qualified Resource Buffer Management Professional, that describes measures for maintaining or improving the Resource and the Resource Buffer(s) on the site. The Resource and Resource Buffer Management Plan shall be proffered as part of the Supporting Statement requirements of §99-24, or at the time of Preliminary Site Plan approval for any residential conditional use. The maintenance standards or management actions associated with the Resource and Resource Buffer Management Plan shall be included as an obligation of the owners' association in the recorded declaration for any new development. The Resource and Resource Buffer Management Plan shall describe how the Resource Buffer will be managed to maintain its functions and cite any measures to be implemented for the enhancement of Resource Buffers or their functions **including reforestation plans**. It shall also include a narrative discussing the overall plan for access easements sufficient for expected short- and long-term maintenance and management needs.

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

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

(b)If the deficient Perennial or Intermittent Stream has no adjacent Non-Tidal Wetlands, the applicant shall restore the conveyance

912 channel to a positive conveyance (i.e. the removal of conveyance
913 impediments) within the entire site prior to the issuance of substantial
914 completion of the first approved phase. This restoration shall be in
915 compliance with all applicable federal, state and county requirements.

916 I. Modifications and Exceptions.

917
918 The Planning and Zoning Commission shall be authorized, as part of the site plan
919 review process, to grant preliminary or final site plan approval with modifications
920 of, or exceptions to, the foregoing requirements upon the submission of a detailed
921 and specific written request from the applicant with supporting documentation from
922 a Qualified Wetland Resource Professional or Qualified Resource Buffer
923 Management Professional, but only upon the satisfaction of all of the following
924 conditions:

925
926 1. When the Commission finds that special conditions or circumstances
927 exist that are peculiar to the land or structure and that a literal enforcement
928 of a specific requirement of this section would result in unwarranted hardship.

929
930 2. That the modification or exception request is not based upon conditions
931 or circumstances which are the result of actions by the applicant, nor does
932 the request arise from any condition relating to land or building use, either
933 permitted or nonconforming, on any neighboring property.

934
935 3. That the granting of a modification or exception will not adversely
936 affect the functions of the Resource or its Resource Buffer as set forth in the
937 definition of that term. Waivers shall be in harmony with the general spirit
938 and intent of this section and any subsequent regulations.

939
940 4. That the basis for the modification or exception cannot be achieved
941 through Resource Buffer Width Averaging as provided by §115-193B.

942
943 5. That in no event shall there be a modification or exception to the width
944 requirements of Zone A.

945
946 The date of any modification or exception by the Commission shall be noted on the
947 final site plan.

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

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

§115-220 Preliminary Site Plan Requirements

...

B. The preliminary site plan shall show the following:

...

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

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

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

(c) The limits of the required Resource Buffers.

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

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

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

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

979 (h)Any walking trails, including the method of construction and the materials
980 used to establish the trails.

981

982 **Section12. The Code of Sussex County, Chapter 115, Article XXVIII, §115-221**
983 **“Final Site Plan Requirements”, is hereby amended by inserting the italicized**
984 **and underlined language as a new Subsections B(19) and E. thereof:**

985 **§115-221 Final Site Plan Requirements**

986 . . .

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

988 (19) In the case of a proposed development with the uses identified in §115-
989 219A(1) and (2) or Residential Planned Communities, the site plan shall include all
990 required Resources and Resource Buffers including the following, where applicable:

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

995 (b)All existing (i.e., at the time of application) natural forest, managed forest and
996 non-forest meadow within the future Resource Buffer shall be identified.

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

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

999 (e) Calculations supporting Resource Buffer enhancement calculations and
1000 corresponding Forested and/or Landscaped Buffer reductions, if applicable (§115-
1001 193F).

1002 (f) Proposed access easement layout for access to Resource Buffers and the
1003 adjacent Resources with a note that such access easements are “public access
1004 easements for maintenance purposes”. For purposes of this requirement, “public”
1005 shall mean, and be limited to, those parties requiring access for maintenance
1006 purposes.

1007 (g)A statement incorporating the Resource and Resource Management and
1008 Maintenance Plan by reference.

1009 (h) A reference by title, author and date, to the “Drainage Assessment Report”
1010 required by Section 115-193.F.2.

1011 (g) Any walking trails, including the method of construction and the materials
1012 used to establish the trails.

1013 . . .

1014 E. An AutoCAD drawing file containing all items required in Section A above
1015 shall be submitted in electronic format. The data shall be referenced in NAD 1983
1016 StatePlane Delaware FIPS 0700 (U.S. Feet) Projected Coordinate System.

1017

1018 **Section 13. Effective Date.**

1019 This Ordinance shall take effect upon six (6) months from the date of adoption by
1020 Sussex County Council. Provided however, that it shall not apply to any completed
1021 applications on file with the Sussex County Office of Planning & Zoning.