

1 **AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III, IV, V AND**
2 **VI SECTIONS 99-5, 99-6, 99-23, 99-26, 99-27, 99-30, 99-31 AND 99-32 AND**
3 **BY ADDING A NEW SECTION 99-21A , AND CHAPTER 115, ARTICLES**
4 **IV, V, VI, VII, VIII AND XXVIII SECTIONS 115-20, 115-25, 115-29, 15-37,**
5 **115-45, 115-53 AND 115-28 REGARDING PERIMETER BUFFERS**
6 **AROUND RESIDENTIAL DEVELOPMENT.**

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

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

13 WHEREAS, the existing Section 99-5 of the Code of Sussex County currently
14 establishes certain perimeter buffer requirements within the definition of “Forested
15 and or Landscaped Buffer Strip” and

16 WHEREAS, the perimeter buffer requirements contained in Chapter 99 are in need
17 of improvement regarding their interpretation, application and protection of existing
18 trees and forests within the buffer areas; and

19 WHEREAS, the 2019 Sussex County Comprehensive Plan contemplates the review
20 and improvement of the protection of perimeter buffers and forested areas in Sussex
21 County; and

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

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

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30 **NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

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32 **Section 1. The Code of Sussex County, Chapter 99, Article I, §99-5**
33 **“Definitions,” is hereby amended by deleting the language in brackets and**
34 **strikethrough and inserting the italicized and underlined language**
35 **alphabetically:**

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§99-5 Definitions.

CLEARING or CLEARED

Any type of clearing or cutting of woodland areas that is regulated under the Sediment and Stormwater Management rules of the Delaware Department of Natural Resources and Environmental Control.

...

~~[FORESTED AND/OR LANDSCAPED BUFFER STRIP~~

~~A strip of land, not less than 20 feet in width, exclusive of any residential lots, stormwater management areas or facilities, open space (except that the land area within the buffer strip may be included in the overall calculation of open space), recreational amenities, wastewater treatment and/or disposal facilities, water treatment facilities, streets, buildings or other surface improvements and located along the entire outer perimeter of any portion of a major subdivision of lands into four or more lots adjacent to land of other ownership. A landscape plan for the buffer shall be designed and certified to by a licensed landscape architect, licensed forester or forester designated by the Society of American Foresters as a "certified forester." The landscape plan shall be reviewed and commented on by the State Forester and shall be subject to the final review and approval of the Commission. The following conditions shall apply to the forested buffer:~~

~~A. All trees that are to be planted shall include a mix of 70% deciduous shade trees and 30% evergreen trees, a majority of which shall be suitable trees of common local species, which may include existing as well as planted trees. Every one hundred-foot length of buffer shall include a minimum total of 15 trees.~~

~~B. All deciduous trees that are planted to establish the buffer plantings shall have a minimum caliper of 1.5 inches and a minimum height of six feet above ground when planted in order to insure that the trees will be capable of obtaining a minimum height of 10 feet above ground within five years of being planted.~~

~~C. All evergreen trees that are planted to establish the buffer plantings shall have a minimum height of five feet above ground when planted in order to insure that they~~

72 are reasonably capable of attaining a minimum height of 10 feet above ground within
73 five years of being planted.

74
75 ~~D. The landscape plan may include suitable existing deciduous and evergreen trees~~
76 ~~of common local species, provided they will achieve the overall goal of the plan as~~
77 ~~described in Subsection E hereof and provided that said existing trees survive the~~
78 ~~site work construction activity and any changes in the water table and exposure~~
79 ~~which may result from the construction activity occurring prior to the date the buffer~~
80 ~~plantings are required to be installed as provided in Subsection F hereof.~~

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83 ~~E. The goal of the landscape plan for the forested buffer area shall be to include trees~~
84 ~~of the type indicated herein that will be planted in a staggered natural manner, as~~
85 ~~opposed to being planted in row fashion, which will filter views from and into the~~
86 ~~subdivision in such a manner that the areas on the agricultural side of the buffer area~~
87 ~~appear more green and less visible and the structures or uses on the subdivision side~~
88 ~~appear less obvious and less dense than if no landscaping had been required. The~~
89 ~~procedures and details for planting new trees shall be specified by the landscape~~
90 ~~architect on the plan submitted to and approved by the Commission and shall include~~
91 ~~the requirement that the buffer area shall have a final grade that contains a minimum~~
92 ~~of four inches of topsoil and a suitable grass mix planted as sacrificial cover between~~
93 ~~the buffer trees for soil stabilization until the newly planted trees become larger. The~~
94 ~~plan may substitute woodchips for planted grass between the buffer trees in respect~~
95 ~~to both newly planted and existing trees, as determined by the landscape architect.~~

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97 ~~F. The forested and/or landscape buffer shall be installed within 18 months from the~~
98 ~~date site work is authorized to commence, as documented by a notice to proceed~~
99 ~~letter from the Commission. For subdivisions that are approved to be constructed in~~
100 ~~phases, the buffer for each phase must be completed before County approvals or~~
101 ~~permits will be granted to construct the next phase.~~

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103 ~~G. The land developer shall be held responsible for the health and survival of the~~
104 ~~trees, including regular necessary watering for a minimum of two years or until such~~
105 ~~later date as the maintenance responsibilities are transferred to a homeowners'~~
106 ~~association; provided, however, that the developer shall replace any trees that die~~
107 ~~during the minimum two year developer maintenance prior to transferring~~
108 ~~maintenance responsibilities to a homeowners' association.~~

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110 ~~H. The perpetual maintenance of the buffer plantings by a homeowners' association~~
111 ~~shall be assured through the restrictive covenants and/or homeowners' association~~

112 documents. The perpetual maintenance plan shall include the requirement that any
113 trees that die must be replanted with trees of the same type and species and in
114 accordance with the original landscape plan approved by the County. The perpetual
115 maintenance plan shall also include a requirement that the forested buffer area be
116 planted and maintained according to best management practices in the forestry
117 industry. The responsibility for the perpetual maintenance of the buffer strip and its
118 plantings shall be assured through restrictive covenants which are obligatory upon
119 the purchasers through assessments by the homeowners' association. The applicant
120 and/or land developer must provide the Commission with satisfactory proof that the
121 covenants include a perpetual maintenance plan which shall be binding upon the
122 applicant and/or developer during the minimum two year period described in
123 Subsection G above and thereafter by the homeowners' association. The
124 Commission and its attorney shall review and approve the perpetual maintenance
125 plan prior to the restrictive covenants being recorded and prior to granting final site
126 plan approval.

127
128 I. The twenty foot forested and/or landscape buffer strip is not required to be
129 installed in those portions of the subdivision perimeter which represent the width of
130 a right-of-way connector road or street that DelDOT or the Commission required the
131 applicant to install pursuant to § 99-17D and the width of a stormwater outfall shown
132 on the final site plan to drain surface or stormwater outside the perimeter of the
133 subdivision.

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135 J. The landscape plan shall avoid placing planted trees or allowing existing trees to
136 remain in the areas adjacent to entrances into and exits from the development in such
137 a manner as to restrict the view of motorists entering or exiting from the development
138 or restricting site lines for motorists in such a manner as to create a potential safety
139 hazard.

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141 K. Notwithstanding any other provisions of this chapter, the Planning and Zoning
142 Commission shall be authorized, as part of the site plan review process, to grant final
143 approval of a plan for the roadway frontage of a major subdivision which may
144 include landscape and design features, such as fences, walls, berms, landscape
145 plantings of shrubs, ornamental grasses and/or trees, multimodal paths required by
146 DelDOT, open areas, or a combination of such features which is designed and
147 certified to by a licensed landscape architect, licensed forester or forester designated
148 by the Society of American Foresters as a "certified forester" and reviewed and
149 commented upon by the State Forester, for the purpose of making the subdivision
150 more attractive, more in keeping with the surrounding area and less visible from the
151 roadway, provided said plan will not cause the landscape features contained in the

152 ~~plan to be placed in an area adjacent to the entrance in such a manner as to restrict~~
153 ~~the view of motorists entering or exiting from the subdivision or restricting the sight~~
154 ~~lines of motorists in such a manner as to create a potential safety or traffic hazard.]~~
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157 FOREST ASSESSMENT

158 A method or process, to include a tree survey, for determining the area or areas
159 within a parcel that contain high habitat value and individual trees to be preserved.

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163 OPEN SPACE

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165 Those land areas within all major residential subdivisions, residential planned
166 communities or developments which have a purpose to provide active and/or passive
167 recreational opportunities, maintain land in a predominantly undeveloped or natural
168 state, including lands used for agricultural purposes, promote conservation, protect
169 wildlife or serve as a buffer between residential and nonresidential areas and/or
170 commercial and noncommercial areas.

171

172 A. The following uses are permitted and the land area devoted to said uses
173 will be included in the calculation of open space:

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175 (1) Recreational facilities, including swimming pools, game courts,
176 play areas, walking paths, bike paths and multimodal paths that are not
177 located on state road rights-of-way, provided that impervious cover
178 does not exceed 15% of calculated open space area.

179

180 (2) Ponds which have a demonstrated recreational value.

181

182 (3) ~~[Buffers]~~ Perimeter buffers, perimeter buffer protection areas,
183 resource buffers and forested areas.

184

185 (4) Areas protected by perpetual conservation easements.

186

187 (5) Areas providing scenic vistas, areas providing wildlife corridors.

- 188
- 189 (6) Sidewalks not located within street rights-of-way.
- 190 (7) Areas designated as "safe zones" under the Source Water Protection
- 191 Ordinance contained in Chapter 89.
- 192
- 193 (8) Spray irrigation areas, not including areas occupied by rapid
- 194 infiltration basins.
- 195
- 196 (9) Tidal and nontidal wetlands.
- 197
- 198 (10) Stormwater management facility areas.
- 199

200 B. The following uses are not permitted and the land area devoted to said uses
201 will not be included in the calculation of open space:

- 202
- 203 (1) Land area included within designated lot lines.
- 204
- 205 (2) Building footprints.
- 206
- 207 (3) Predominantly impervious surfaces, such as street rights-of-way,
- 208 sidewalks within street rights-of-way, parking and/or loading areas.
- 209
- 210 (4) Utility facilities, including but not limited to, any building, plant,
- 211 equipment for treatment or pumping, lagoons and rapid infiltration
- 212 basins, for sewer, water, gas, and/or electric utilities.
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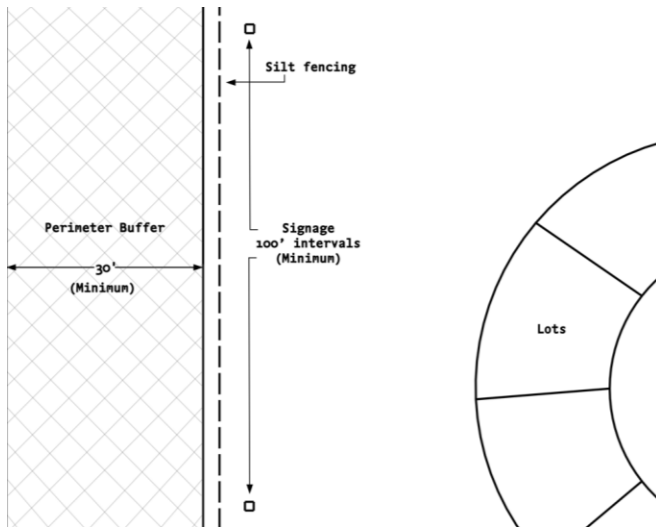
214 C. Any reference in this chapter to "open space" shall be subject to and
215 governed by this definition.

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218 **PERIMETER BUFFER**

219 *A managed area of planted or existing trees and shrubs and associated landscaping,*
220 *not less than 30 feet in width measured from the property boundary located along*
221 *the entire outer perimeter of any portion of a major subdivision. No lots or*
222 *stormwater management facilities (excepting outfalls) shall exist within the*
223 *Perimeter Buffer. See illustration below.*



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228 PERIMETER BUFFER LANDSCAPE PLAN

229 A plan prepared by a developer depicting compliance with the Perimeter Buffer and
 230 Perimeter Buffer Protection Area, including, but not limited to, planting schedules,
 231 types of vegetation (existing and to be planted); fencing, signage and other marking.
 232 The Perimeter Buffer Landscape Plan shall be prepared and certified by a licensed
 233 landscape architect, certified arborist, certified nursery professional, or licensed
 234 forester or forester designated by the Society of American Foresters as a “certified
 235 forester.”

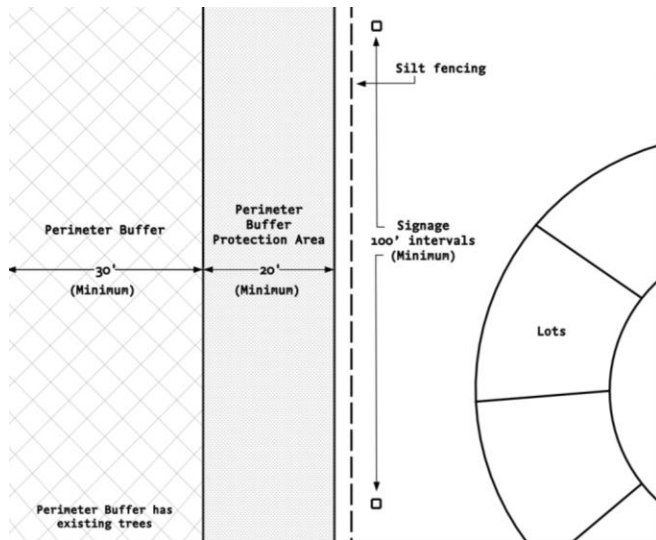
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239 PERIMETER BUFFER PROTECTION AREA

240 An area adjacent to a Perimeter Buffer that contains Woodlands that is not less than
 241 20 feet in width measured from the edge of the Perimeter Buffer to be retained and
 242 protected to ensure that existing Woodlands in a Perimeter Buffer are not disturbed.
 243 No lots or stormwater management facilities (excepting outfalls) shall be permitted
 244 in the Perimeter Buffer Protection Area. See illustration below.



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248 WOODLANDS

249 An area of contiguous wooded vegetation of at least 10,000 square feet in an area
 250 where trees exist at a density of at least one tree with diameter at breast height of
 251 six inches or greater per 400 square feet of land and where the tree branches form
 252 a contiguous canopy. Active tree nurseries and orchards shall not be considered
 253 Woodlands.

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255 . . .

256 **Section 2. The Code of Sussex County, Chapter 99, Article I, §99-6 “General**
 257 **Requirements and Restrictions” is hereby amended by deleting the language**
 258 **in brackets and strikethrough and inserting the italicized and underlined**
 259 **language as follows:**

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261 **§99-6 General Requirements and Restrictions.**

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266 J. [~~A forested and/or landscape buffer~~] Perimeter buffers and perimeter buffer
 267 protection areas, as [defined in § 99-5, Subsections A through J] required by §99-
 268 21A, must be depicted on the preliminary and final plot plans for each major

269 subdivision of lands and must be established in accordance with all the requirements
270 of ~~[the definition of "forested and/or landscaped buffer strip,"~~
271 ~~Subsections A through J in § 99-5]~~ §99-21A.

272
273 **Section 3. The Code of Sussex County, Chapter 99, Article III, §99-16**
274 **“Suitability of land; preservation of natural features” is hereby amended by**
275 **deleting the language in brackets and strikethrough and inserting the italicized**
276 **and underlined language as follows:**

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278 **§ 99-16 Suitability of land; preservation of natural features.**

279
280 D. It is the intent of the County to stress the preservation of all agricultural lands
281 which are feasible and worthwhile of such preservation in order to conserve such
282 natural amenities. Where residential subdivisions are established adjacent to lands
283 used for agricultural purposes, the subdivider shall ensure that there shall be no
284 negative effect on the agricultural uses. ~~[The twenty foot wide forested and/or~~
285 ~~landscaped buffer strip required by § 99-5]~~ A perimeter buffer and a perimeter buffer
286 protection area (if applicable) shall be provided along the outer perimeter of any
287 boundary of a residential major subdivision ~~[or development of four or more lots~~
288 ~~that is adjacent to agricultural farmland. "Agricultural purposes" shall be defined as~~
289 ~~those uses identified in Chapter 115, Zoning, Article IV, § 115-20,~~
290 ~~Subsection B(1), (2), (3), (4) and (5)].~~

291
292 **Section 4. The Code of Sussex County, Chapter 99, Article III, is hereby**
293 **amended by inserting a new §99-21.A “Perimeter Buffers,” by inserting the**
294 **italicized and underlined language alphabetically:**

295
296 **§99-21.A Perimeter Buffers.**

297 **A. Perimeter Buffer General Standards**

298 **1. There shall be a Perimeter Buffer established along the boundary of every**
299 **major subdivision or residential planned community. A Perimeter Buffer shall not**
300 **be required along internal boundaries within a subdivision or residential planned**
301 **community, such as internal phasing lines.**

302 **2. The Perimeter Buffer shall be planted with a variety of trees and shrubs so as**
303 **to create a visual landscaped screening. All trees and shrubs shall be local and**

304 native species. All planting activities shall adhere to ANSI A300, Planting
305 Standards.

306

307 3. The Perimeter Buffer shall include a mix of 70% deciduous shade trees and
308 30% evergreen trees. The Perimeter Buffer shall include at least fifteen trees within
309 every one-hundred linear feet of the Buffer. All deciduous and evergreen trees that
310 are planted shall have a minimum height of six feet above ground when planted,
311 obtain a minimum height of ten feet, and arranged in a staggered natural manner to
312 effectively achieve a visual landscaped screening which will filter views from and
313 into the subdivision. The Perimeter Buffer may include existing Woodlands and
314 planted trees to achieve these planting standards.

315

316 4. In the event that a Resource Buffer (Section 115-193) is required in the
317 location of a Perimeter Buffer or Perimeter Buffer Protection Area, the Resource
318 Buffer standards shall take precedence over, and shall not be in addition to, the
319 Perimeter Buffer and/or Perimeter Buffer Protection Area requirements for that
320 same location.

321

322 5. The Perimeter Buffer shall be marked with permanent, in-ground signage
323 located at 100-foot intervals along the edge of the Perimeter Buffer to confirm the
324 existence and non-disturbance of the Perimeter Buffer. This signage shall be at least
325 five inches by seven inches in size and shall identify the existence of the Buffer, the
326 fact that it is a non-disturbance Area and a reference to penalties and/or remediation
327 required if unauthorized disturbance occurs.

328 B. Perimeter Buffer Standards – Woodlands Requirements

329 Where a Perimeter Buffer contains existing Woodlands at the time of application,
330 the following requirements shall apply:

331 1. Any major subdivision or residential planned community where Woodlands
332 exist at the time of application shall require a Forest Assessment prepared and
333 certified by a licensed landscape architect, certified arborist, certified nursery
334 professional, or licensed forester or forester designated by the Society of American
335 Foresters as a “certified forester.” The Forest Assessment must be submitted as
336 part of the application.

337 2. The Woodlands retained within the Perimeter Buffer shall be depicted
338 generally on the Preliminary Site Plan and with detail on the Perimeter Buffer
339 Landscape Plan.

340 3. Unless otherwise provided for herein, the Woodlands within the Perimeter
341 Buffer shall remain in its natural state.

342 4. The Area of the Perimeter Buffer containing Woodlands shall be bordered by
343 a Perimeter Buffer Protection Area.

344 5. There shall be protective tree fencing, staking, or continuous ribbon installed
345 along the entire edge of the Perimeter Buffer Protection Area adjacent to the interior
346 of the development to protect the integrity of existing trees within the Perimeter
347 Buffer.

348 6. Selective clearing of the Woodlands retained for the use of the Perimeter
349 Buffer may be permitted but at no time shall trees of six-inch diameter at breast
350 height be damaged, removed, or otherwise adversely affected. Dead, dying or
351 unstable live trees that present an imminent danger to persons or property may be
352 removed. Removal of any invasive species from the Woodlands is permitted.

353 7. Walking trails within the Woodlands for the purpose of providing access to
354 the Perimeter Buffer may be permitted and shall be depicted on the Perimeter Buffer
355 Landscape Plan.

356 8. Access points to the Woodlands for the purpose of Perimeter Buffer
357 maintenance may be permitted and shall be depicted on the Perimeter Buffer
358 Landscape Plan.

359 9. Any removal or damage of trees within the Woodlands, the Perimeter Buffer
360 or the Perimeter Buffer Protection Area shall be subject to the mitigation
361 requirements as well as the violations and penalties located in this Chapter.

362 10. At no time shall the ground within Woodlands area of a Perimeter Buffer be
363 cleared, graded, regraded, or grubbed.

364 11. If Woodlands on the land where the Perimeter Buffer is to be located have
365 been cleared for a timber harvest within five years prior to the date of application,
366 the following additional planting requirements shall apply:

367 (a) The cleared area along the Perimeter Buffer shall be measured and known as
368 the "Cleared Area".

369
370 (b) The Perimeter Buffer shall be planted back with at least fifteen trees every
371 fifty linear feet of the Buffer.

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373 (c) In addition to the Perimeter Buffer, a new Woodlands shall be planted that is
374 2.0 times the size of the Cleared Area and a rate of at least 50 trees per acre.

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(d) The new Woodlands may border the area of the Perimeter Buffer or be in a separate area, but at no times shall the Perimeter Buffer be less than 30' in width measured from the property boundary.

(e) The planted Perimeter Buffer and new Woodlands shall meet the tree and shrub requirements of this Chapter.

(f) If the applicant chooses to provide replacement plantings on any property other than the one on which the timber harvest occurred or protect an off-site Woodlands area, the mitigation plan must be reviewed and approved by the Planning and Zoning Commission, and:

(1) The replacement plantings or off-site Woodlands area must be located within the same twelve-digit hydrologic unit code as defined by the United States Geological Survey as the proposed development.

(2) The replacement plantings or Woodlands area located off-site must be protected under a perpetual conservation easement for the benefit of a conservation organization approved by Sussex County.

(3) At no time shall the area of the replacement plantings be less than 2.0 times the area of Woodlands to be the Perimeter Buffer that was cleared and a rate of at least 50 trees per acre and shall meet the tree and shrub requirements of this Chapter.

C. Perimeter Buffer Standards – Non-Woodlands Requirements

Where a Perimeter Buffer does not contain existing Woodlands at the time of application, the following requirements shall apply:

1. Any major subdivision or residential planned community where Woodlands do not exist within the Perimeter Buffer shall comply with the planting requirements of the Perimeter Buffer Standards and Perimeter Buffer Landscape Plan.

2. There shall be protective fencing, staking, or continuous ribbon installed along the entire edge of the Perimeter Buffer adjacent to the interior of the development to protect the integrity of the Perimeter Buffer.

3. There shall be a final grade that contains a minimum of four inches of topsoil

414 and a suitable grass mix planted as sacrificial cover between the buffer trees for soil
415 stabilization until the newly planted trees become larger. Woodchips may substitute
416 for planted grass between the buffer trees around both newly planted and existing
417 trees.

418
419 4. Walking trails within Perimeter Buffer may be permitted and shall be depicted
420 on the Perimeter Buffer Landscape Plan.

421
422 5. Access points to the Woodlands for the purpose of Perimeter Buffer
423 maintenance shall be depicted on the Perimeter Buffer Landscape Plan.

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425 6. The Perimeter Buffer shall have a two-year guarantee secured by bonding
426 from the date that substantial completion is issued for the phase where the Perimeter
427 Buffer is located.

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429 D. Perimeter Buffer Landscape Plan

430 1. The Perimeter Buffer shall be depicted generally on the Preliminary Site Plan
431 and in detail on a Perimeter Buffer Landscape Plan that is included within a Final
432 Site Plan.

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434 2. The Perimeter Buffer Landscape Plan shall provide sufficient information and
435 detail to clearly demonstrate that all applicable requirements and standards for
436 Perimeter Buffers and Perimeter Buffer Protection Areas are satisfied. The
437 Perimeter Buffer Landscape Plan shall contain, at a minimum, the following:

438 (a) Approximate location and description of the protective tree fencing, staking,
439 or continuous ribbon.

440 (b) The location, spacing, height, and species of existing and new trees and
441 shrubs proposed to meet tree planting requirements.

442 (c) The design and location of the required Perimeter Buffer signage.

443 (d) Measures to be taken to avoid sedimentation intrusions and erosion in the
444 Perimeter Buffer.

445 (e) A summary table of the number of new trees to be planted and minimum
446 number of existing trees to be retained (if any) to meet the tree specification and
447 density requirements with calculations confirming that these requirements have
448 been achieved. The summary table may include example groupings of trees to be
449 planted instead of each new tree labeled on the Perimeter Buffer Landscape Plan.

450 (f) A note confirming that the developer guarantees the full cost of replacement
451 for any trees, shrubs or existing Woodlands.

452 (g)A planting schedule for the Perimeter Buffer. The planting schedule shall
453 demonstrate the installation of the Perimeter Buffer prior to the issuance of the first
454 residential building permits in the phase where it is located. The Perimeter Buffer
455 shall be planted and inspected prior to the issuance of the first residential building
456 permit within the phase where the Buffer is located. Each phase of the development
457 must include the Perimeter Buffer and Perimeter Buffer Protection Area (as
458 applicable) that is adjacent to that Phase.

459 (h)Notwithstanding any other provisions of this chapter, the Planning and
460 Zoning Commission shall be authorized, as part of the site plan review process, to
461 grant final approval of a Plan for the roadway frontage of a major subdivision which
462 may include landscape and design features, such as fences, walls, berms, landscape
463 plantings of shrubs, ornamental grasses and/or trees, multimodal paths required by
464 DelDOT, or a combination of such features which is designed and certified to by a
465 licensed Landscape architect, licensed Forester or Forester designated by the
466 Society of American Foresters as a "Certified Forester", for the purpose of making
467 the subdivision more attractive, more in keeping with the surrounding area and less
468 visible from the roadway, provided said plan will not cause the landscape features
469 contained in the plan to be placed in an area adjacent to the entrance in such a
470 manner as to restrict the view of motorists entering or exiting from the subdivision
471 or restricting the sight lines of motorists in such a manner as to create a potential
472 safety or traffic hazard.

473 E. Timing; Bonds and Guarantees.

474
475 1. The Perimeter Buffer Landscape Plan shall include the planting schedule for
476 the entire Perimeter Buffer. The planting schedule shall demonstrate the installation
477 of the Perimeter Buffer prior to the issuance of any residential building permits
478 within the phase. The Perimeter Buffer shall be planted and inspected prior to the
479 issuance of the first residential building permit within the phase where the Perimeter
480 Buffer is located. Each phase of the development must include the Perimeter Buffer
481 and Perimeter Buffer Protection Area (as applicable) that is adjacent to that phase.
482 The Perimeter Buffer for each phase must be planted and inspected before County
483 approvals or permits will be granted to construct the next phase.

484
485 2. Where Woodlands exist in the Perimeter Buffer, the Perimeter Buffer and
486 Perimeter Buffer Protection Area shall be protected and marked as provided herein
487 for the entire development (subject to inspection and approval by Sussex County)

488 prior to the issuance of any notice to proceed for site work. For subdivisions that
489 are to be constructed in phases, the Protection and marking of existing Woodlands
490 shall be maintained and inspected prior to the issuance of any notice to proceed for
491 site work or construction within a subsequent phase.

492 3. The developer shall be responsible for the removal from the site of all stakes,
493 guy wires, protective tree fencing, staking, or continuous ribbon upon the conclusion
494 of the two-year guaranty period.

495 4. The developer shall post a performance bond or other guaranty for the
496 Perimeter Buffer in an amount sufficient to install the Perimeter Buffer and the
497 Perimeter Buffer Protection Area (as applicable) in a form acceptable to the County
498 Attorney. The amount of such bond shall be 125% of the cost of the installation the
499 Perimeter Buffer (including all plantings) and the Perimeter Buffer Protection Area
500 (as applicable) or \$50,000, whichever is greater. The Perimeter Buffer shown on the
501 Perimeter Buffer Landscape Plan may be bonded as a separate phase or phases of
502 the subdivision, provided that all Perimeter Buffers containing Woodlands must be
503 bonded before a Notice to Proceed is issued for any phase of the development.

504
505 5. Bonds posted to ensure the completion and non-disturbance of the Perimeter
506 Buffers shall be posted with the Director of Planning and Zoning.

507 6. The trees and shrubs located within the Perimeter Buffer shall be in good
508 health prior to the issuance of substantial completion in accordance with Section
509 99-31 of the Code. The Bonds for the Perimeter Buffer shall thereafter remain in
510 place until the latter of two years after the determination of substantial completion
511 in accordance with Section 99-31 or two years after such date as the maintenance
512 responsibilities are transferred to a homeowners' association.

513
514 7. A party may not alter the Perimeter Buffer Area of the development (or any
515 phase thereof) unless an amended Perimeter Buffer Landscaping Plan is approved
516 by Sussex County and a new bond or other guaranty is provided for the alteration.

517
518 F. Perimeter Buffer Maintenance

519
520 1. The developer shall be responsible for the health and survival of the Perimeter
521 Buffer, including regular necessary watering until the determination of substantial
522 completion in accordance with Section 99-31. This shall include the obligation to
523 replace any trees and shrubs within the Perimeter Buffer that do not survive during
524 this time period.

525
526 2. The Perimeter Buffer shall be maintained in perpetuity. The perpetual
527 maintenance of the Perimeter Buffer by a homeowners' association shall be
528 confirmed in the recorded declaration or restrictive covenants for the development
529 with the requirement that any trees or shrubs that do not survive must be replanted
530 with trees or shrubs of the same type and species in accordance with the original
531 Landscape Plan approved by Sussex County. The Perimeter Buffer shall be
532 maintained (and any replacement trees or shrubs planted) according to best
533 management practices in the Forestry industry (ANSI A300). The applicant and/or
534 developer must provide the Commission with satisfactory proof that the declaration
535 or restrictive covenants include a perpetual maintenance plan which shall be
536 binding upon the applicant and/or developer and thereafter by the homeowners'
537 association. The Commission and its attorney shall review and approve the
538 perpetual maintenance plan prior to the restrictive covenants being recorded and
539 prior to granting final site plan approval.

540 G. Perimeter Buffer Tree Mitigation

541 1. In the event that trees, shrubs, Woodlands, or the Perimeter Buffer Protection
542 Area are removed or damaged without authorization, tree mitigation shall be
543 required. In addition, violations and penalties may be assessed.

544 2. If trees within a Perimeter Buffer (whether Woodlands or planted) have been
545 damaged or removed (unless such damage or removal is the result of Act of God or
546 natural causes and are therefore subject to the Perimeter Buffer Maintenance
547 Requirements), tree mitigation must occur in the form of newly created Woodlands
548 as follows:

549 (a) A mitigation plan shall be prepared by a licensed Landscape architect,
550 certified arborist, certified nursery professional, or licensed Forester or
551 Forester designated by the Society of American Foresters as a "Certified
552 Forester."

553
554 (b) New Woodlands shall be created for the area of Woodlands in the Perimeter
555 Buffer that was illegally accessed or damaged with at least three replacement
556 trees planted for every tree removed or damaged.

557
558 (c) The replacement plantings shall meet the tree and shrub requirements of this
559 Section.

560

561 (d) The developer, property owner and/or party who violates this section shall be
562 responsible for the health and survival of the replacement in accordance with
563 this Section.

564
565 (e) All tree mitigation plantings must be on the same lot, parcel, or tract on which
566 the illegal activity occurred, except as noted herein.

567 H. Violations and Penalties

568
569 The developer, owner of the land and any person or corporation who shall violate
570 any provisions of this Section shall be subject to the following penalties in addition
571 to other requirements set forth in this Section. Separate violations or a series of
572 violations may be combined to determine the total area where the violation
573 occurred:

- 574
575 1. A fine of \$10,000 per quarter acre, pro rata, of disturbance within the
576 Perimeter Buffer and Perimeter Buffer Protection Area, as applicable, shall
577 be imposed; and
578
579 2. A tree mitigation plan in accordance with the requirements of this Section
580 shall be approved by the Planning and Zoning Commission.

581
582 Where the developer is the party who has violated the provisions of this Section, no
583 building or zoning permits shall be issued nor shall any inspections occur within the
584 phase where the violation occurred (including, but not limited to building code and
585 utility inspections) until the tree mitigation plan is complete and approved by the
586 Commission.

587
588 **Section 5. The Code of Sussex County, Chapter 99, Article IV, §99-23**
589 **“Information To Be Shown” is hereby amended by deleting the language in**
590 **brackets and strikethrough and inserting the italicized and underlined**
591 **language as follows:**

592
593 **§99-23 Information To Be Shown.**

594 The preliminary plat shall be drawn in a clear and legible manner and shall show the
595 following information:

596 . . .

597 P. The designation of parcels to be set aside for [~~forested buffer strips~~] perimeter
598 buffers and perimeter buffer protection areas, where required and proposed access
599 points to the perimeter buffers and perimeter buffer protection areas for
600 maintenance purposes.

601 . . .

602

603 **Section 6. The Code of Sussex County, Chapter 99, Article V, §99-26**
604 **“Information To Be Shown” is hereby amended by deleting the language in**
605 **brackets and strikethrough and inserting the italicized and underlined**
606 **language as follows:**

607

608 **§99-26 Information To Be Shown.**

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

611

612 . . .

613

614 (16) The locations, bearings and dimensions and area of any land set aside
615 for [~~forested buffer strips~~] perimeter buffers and perimeter buffer protection areas,
616 if required and proposed access points to the perimeter buffers and perimeter buffer
617 protection areas for maintenance purposes.

618

619

620

621 **Section 7. The Code of Sussex County, Chapter 99, Article V, §99-27**
622 **“Supporting Statements” is hereby amended by deleting the language in**
623 **brackets and strikethrough and inserting the italicized and underlined**
624 **language as follows:**

625

626 **§99-27 Supporting Statements.**

627

628 The following supporting statements are required:

629

630 A. A summary of deed restrictions applicable within the subdivision, including
631 agreements for the operation and maintenance by the property owners or agency in
632 the subdivision of street and road improvements, surface drainage facilities, erosion

633 and sedimentation control facilities, water supply facilities, sanitary sewer facilities,
634 [~~forested buffer strips~~] perimeter buffers and perimeter buffer protection areas,
635 resource buffers, all areas approved as open space as defined in § 99-5 and other
636 improvements deemed necessary by the Commission.

637
638 B. Evidence that all conditions related to the preliminary plat approval have been
639 satisfied.

640

641 **Section 8. The Code of Sussex County, Chapter 99, Article VI, §99-30 “Plans”**
642 **is hereby amended by deleting the language in brackets and strikethrough and**
643 **inserting the italicized and underlined language as follows:**

644

645 **§ 99-30 Plans.**

646

647 Plans, profiles and specifications for the required improvements shall be prepared
648 by the subdivider and submitted for approval by the appropriate public authorities
649 prior to construction. No construction shall commence prior to the issuance of a
650 notice to proceed by the County Engineer or his or her designee for the required
651 improvements. All plans, profiles and specifications approved by the County
652 Engineer or his or her designee with the issuance of a notice to proceed shall remain
653 valid or, if substantial construction is not actively and continuously underway, they
654 shall expire upon the expiration of the final site plan. Prior to the issuance of a notice
655 to proceed, the County Engineer may require the owner and/or his designee to
656 execute an agreement addressing the required improvements. The plans and profiles
657 submitted for all new construction shall include the following:

658

659 . . .

660

661 E. Plans and specifications for any [~~forested buffer strips~~] perimeter buffers and
662 perimeter buffer protection areas, if required.

663

664

665

666 **Section 9. The Code of Sussex County, Chapter 99, Article VI, §99-31**
667 **“Inspections; Closeout Procedures, Fees” is hereby amended by inserting the**
668 **italicized and underlined language as follows:**

669

670 **§ 99-31 Inspections; Closeout Procedures, Fees.**

671

672 . . .

673

674 E. Project closeout procedures.

675

676 . . .

677

678 (10) If perimeter buffers and perimeter buffer protection areas are required, the
679 Director shall confirm that the requirements of §99-21A have been satisfied.

680

681 . . .

682 **Section 10. The Code of Sussex County, Chapter 99, Article VI, §99-32 “Bonds**
683 **and Guaranties” is hereby amended by deleting the language in brackets and**
684 **strikethrough and inserting the italicized and underlined language as follows:**

685

686 **§99-32 Bonds and Guaranties.**

687 . . .

688

689 C. [~~Bonds posted to insure the completion of requirements for open space and~~
690 ~~forested buffers~~] Bonds posted for perimeter buffers and perimeter buffer protection
691 areas as required by §99-21A.E. and other improvements deemed necessary by the
692 Commission shall be posted with the Director of Planning and Zoning. All other
693 bonds and guaranties shall be posted with the County Engineer.

694

695 . . .

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697 **Section 11. The Code of Sussex County, Chapter 115, Article IV, §115-20**
698 **“Permitted Uses” is hereby amended by deleting the language in brackets and**
699 **strikethrough and inserting the italicized and underlined language as follows:**

700

701 **§115-20 Permitted Uses.**

702

703 A. A building or land shall be used only for the following purposes:

704 . . .

705

706 (17) A Sussex County Rental Program, or SCRP, townhouse or multifamily
707 development governed by, and subject to, Chapter 72, where at least 25% of
708 all dwelling units are SCRP Units pursuant to Chapter 72. The SCRP
709 development must satisfy the following criteria:

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...

(e) There shall be a one-hundred-foot-wide setback around the entire site, which shall incorporate [~~the forested and/or landscaped buffer strip identified in § 99-5~~] the perimeter buffers and perimeter buffer protection areas (if Perimeter Buffer Protection Areas are required) set forth in §99-21A. This setback may include walking and biking trails.

Section 12. The Code of Sussex County, Chapter 115, Article IV, §115-25 “Height Area and Bulk Requirements” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§115-25 Height Area and Bulk Requirements.

...

E. Design requirements for cluster development.

- (1) All development shall be in accordance with the latest amendment to the community design standards.
- (2) Housing types in the low-density area, as shown on the Sussex County Comprehensive Plan, are limited to single-family detached dwellings and manufactured homes where permitted by ordinance.
- (3) [~~A forested buffer area with a minimum width of 30 feet shall be provided for lots abutting an agricultural area~~]. The perimeter buffer and perimeter buffer protection area as required by §99-21A.
- ~~[(4) Dwellings located within 50 feet of an existing residential development shall provide adequate transition in density or shall provide a thirty-foot buffer meeting the standards below and maintained by a designated entity.~~

747 (a) ~~—A planting strip at least 30 feet wide near the property line which~~
748 ~~shall include two canopy trees, four understory trees and 10 shrubs per~~
749 ~~100 linear feet of buffer; or~~

750
751 (b) ~~—A landscaped rolling berm at least four feet in height; or~~

752
753 (c) ~~—A solid fence or wall a minimum of six feet in height designed~~
754 ~~with durable materials, texture and colors compatible with adjacent~~
755 ~~residential development.]~~

756
757 [~~(5)~~](4) No lots shall have direct access to any state-maintained roads.

758
759 [~~(6)~~](5) All lots shall be configured to be contained completely outside
760 of all wetlands.

761
762 [~~(7)~~](6) Any development using the option in Subsection B(2) shall have
763 central water and wastewater systems operated and maintained by companies
764 authorized by the State of Delaware to perform such services. Wastewater
765 collection and treatment systems must be designed in accordance with the
766 requirements of Sussex County ordinances and conform to the requirements
767 for a central sewer system as defined in § 115-194A of the Sussex County
768 Zoning Ordinance.

769
770

771
772 **Section 13. The Code of Sussex County, Chapter 115, Article V, §115-29**
773 **“Permitted Uses” is hereby amended by deleting the language in brackets and**
774 **strikethrough and inserting the italicized and underlined language as follows:**

775
776 **§115-29 Permitted Uses.**

777
778 A. A building or land shall be used only for the following purposes:

779 . . .

780
781 M. A Sussex County Rental Program, or SCRP, townhouse or multifamily
782 development governed by, and subject to, Chapter 72, where at least 25% of all
783 dwelling units are SCRP Units pursuant to Chapter 72. The SCRP development must
784 satisfy the following criteria:

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(5) There shall be a one-hundred-foot-wide setback around the entire site, which shall incorporate [~~the forested and/or landscaped buffer strip identified in § 99-5~~] the perimeter buffers and perimeter buffer protection areas set forth in §99-21A. This setback may include walking and biking trails.

...

Section 14. The Code of Sussex County, Chapter 115, Article VI, §115-37 “Permitted Uses” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§115-37 Permitted Uses.

Permitted uses area as follows:

...

C. A Sussex County Rental Program, or SCRP, townhouse or multifamily development governed by, and subject to, Chapter 72, where at least 25% of all dwelling units are SCRP Units pursuant to Chapter 72. The SCRP development must satisfy the following criteria:

...

(5) There shall be a one-hundred-foot-wide setback around the entire site, which shall incorporate [~~the forested and/or landscaped buffer strip identified in § 99-5~~] the perimeter buffers and perimeter buffer protection areas set forth in §99-21A. This setback may include walking and biking trails.

....

Section 15. The Code of Sussex County, Chapter 115, Article VII, §115-45 “Permitted Uses” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§115-45 Permitted Uses.

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Permitted uses area as follows:

...

F. A Sussex County Rental Program, or SCRP, townhouse or multifamily development governed by, and subject to, Chapter 72, where at least 25% of all dwelling units are SCRP Units pursuant to Chapter 72. The SCRP development must satisfy the following criteria:

...

(5) There shall be a one-hundred-foot-wide setback around the entire site, which shall incorporate [~~the forested and/or landscaped buffer strip identified in § 99-5~~] the perimeter buffers and perimeter buffer protection areas set forth in §99-21A. This setback may include walking and biking trails.

...

Section 16. The Code of Sussex County, Chapter 115, Article VIII, §115-53 “Permitted Uses” is hereby amended by deleting the language in brackets and strikethrough and inserting the italicized and underlined language as follows:

§115-53 Permitted Uses.

A building or land shall only be used for the following purposes:

...

K. A Sussex County Rental Program, or SCRP, townhouse or multifamily development governed by, and subject to, Chapter 72, where at least 25% of all dwelling units are SCRP Units pursuant to Chapter 72. The SCRP development must satisfy the following criteria:

...

(5) There shall be a one-hundred-foot-wide setback around the entire site, which shall incorporate [~~the forested and/or landscaped buffer strip identified~~

859 ~~in § 99-5]~~ *the perimeter buffers and perimeter buffer protection areas set forth*
860 *in §99-21A*. This setback may include walking and biking trails.

861
862 . . .

863
864 **Section 17. The Code of Sussex County, Chapter 115, Article XXVIII, §115-**
865 **218 “Procedure for RPC District, C-4 Planned Commercial District and**
866 **Conditional Use Site Plan Approval” is hereby amended by deleting the**
867 **language in brackets and strikethrough and inserting the italicized and**
868 **underlined language as follows:**

869
870
871 **§ 115-218 Procedure for RPC District, C-4 Planned Commercial District**
872 **and conditional use site plan approval.**

873
874 Where the provisions of this chapter require the submittal of site plans for RPC
875 Districts, C-4 Planned Commercial Districts and conditional uses, the following
876 schedule of procedure shall apply:

877
878
879 E. When approving a conditional use for attached or detached single-family or
880 multifamily dwellings or a change of zone for a residential planned community of
881 attached or detached single-family or multifamily dwellings, in any zoning district
882 in which they are permitted with Council approval, Council shall have the right to
883 impose a condition requiring the applicant to install [~~a forested and/or landscaped~~
884 ~~buffer as defined in §§ 99-5 and 99-6D]~~ *the perimeter buffers and perimeter buffer*
885 *protection areas set forth in §99-21A* of the Subdivision Ordinance.

886
887
888 **Section 18. Effective Date.**

889
890 This Ordinance shall take effect upon six (6) months from the date of adoption by
891 Sussex County Council. Provided however, that it shall not apply to any completed
892 applications on file with the Sussex County Office of Planning & Zoning