

**ORDINANCE NO. 2852**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

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

§99-5 Definitions.

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

...

#### EPHEMERAL STREAMS

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

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#### INTERMITTENT STREAMS

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

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#### MAJOR SUBDIVISION

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

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#### MINOR SUBDIVISION

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

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#### NON-TIDAL WETLANDS

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

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#### ORDINARY HIGH WATER MARK DELINEATION

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

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

...

#### PERENNIAL NON-TIDAL RIVERS AND STREAMS

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

...

#### RESOURCE BUFFER - WETLANDS AND WATERS

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

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

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#### RESOURCES

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

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#### TAX DITCH

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

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#### TIDAL WATERS (MEAN HIGH-WATER LINE)

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

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#### TIDAL WETLANDS

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

...

#### WATER DEPENDENT ACTIVITIES

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

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#### WATER RELATED ACTIVITIES

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

...

#### WETLANDS

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

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

§99-6 General Requirements and Restrictions.

...

H. When land being subdivided contains wetlands, either state or federal, or a Resource with Resource Buffers, the recorded restrictive covenants or declaration for the subdivision and the deeds to the lots to be conveyed [, containing wetlands] shall include a disclosure statement that reads “This site contains regulated wetlands or a Resource with Resource Buffers governed by the Sussex County Zoning and Subdivision Codes. Activities within these wetlands may require a permit from the U.S. Army Corps of Engineers and/or the State of Delaware. Disturbance of a Resource or Resource Buffer may be a violation of the Sussex County Zoning and Subdivision Codes, for which penalties and other remedies may be imposed by Sussex County.”

...

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

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

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

§99-7 Preliminary Conference.

...

C. If the Director determines that the proposed subdivision represents a minor subdivision of a parcel, existing as of the effective date of this amended provision, on a street other than a major arterial roadway, and if the Director determines that review by the Commission is not necessary or desirable, he may waive the requirement of preparing a preliminary plat and may authorize the preparation of a

record plat for purposes of recordation. He may, however, request review assistance from other concerned agencies prior to authorizing preparation of the plat. Lots in any minor subdivision plat approved by the Director, without review by the Commission, shall have a minimum area of 3/4 of an acre and a minimum width of 150 feet and shall utilize entrances as approved by the Delaware Department of Transportation. [Such a minor subdivision shall be limited to four lots per parcel, as well as one additional lot for each 10 acres of parcel size, with a maximum of four subdivided lots approved for recordation per calendar year.]

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

§99-23 Information to Be Shown.

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

...

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

(1) 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.

(2) 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.

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

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

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

(6) 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.

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

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

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

§99-24 Supporting Statements

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

...

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

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

§99-26 Information to Be Shown.

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

...

(21) The location of all Resource Buffers.

(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. In addition, the boundary shall marked on the site itself with permanent markers and signage, with the location and type of signage depicted on the final plat.

(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 area limits of the required Resource Buffer.

(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 (§155-193F).

(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 statement incorporating the Resource and Resource Management and Maintenance Plan by reference.

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

(i) That disturbance of the Resource Buffers on the site may result in penalties imposed pursuant to Section 115-193.K of the Sussex County Zoning Code.



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

...

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

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

§99-30 Plans.

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

...

J. Resources and Resource Buffers.

K. Proposed access easement layout 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.

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

§115-4 Definitions and Word Usage.

....

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

....

EPHEMERAL STREAMS

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

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#### ORDINARY HIGH WATER MARK DELINEATION

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

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#### PERENNIAL NON-TIDAL RIVERS AND STREAMS

A well-defined channel that contains flowing water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the

year and which is not subject to tidal influence. Groundwater is the primary source of water for a perennial stream, but it also carries runoff. A Perennial Stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

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## RESOURCE BUFFER - WETLANDS AND WATERS

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

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

...

## RESOURCES

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

...

## TAX DITCH

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

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## TIDAL WATERS (MEAN HIGH-WATER LINE)

Those waters occurring below the mean high-water line of any tidal water body, tidal stream, or tidal marsh, which is defined as 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 WETLANDS

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

...

## WATER DEPENDENT ACTIVITIES

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

...

## WATER RELATED ACTIVITIES

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

...

## WETLANDS

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

Section 9. 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 inserting the italicized and underlined language in Subsection F(3)(a)[4] thereof:

§115-25 Height, Area and Bulk

F. Review procedures for cluster development

...

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

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

...

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

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

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

[A.

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

#### BUFFER ZONE

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

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

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

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

is most proximate to the wetland area and a variance is granted as provided below.

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

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

- (1) That findings are made by the Board of Adjustment which demonstrate that special conditions or circumstances exist that are peculiar to the land or structure within the county and that a literal enforcement of provisions within the buffer zone as designated by this section would result in unwarranted hardship.
- (2) That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming, on any neighboring property.
- (3) That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the designated buffer zones and in waters adjacent to buffer zones. Variances will be in harmony with the general spirit and intent of the section and any subsequent regulations.
- (4) That applications for a variance will be made, in writing, to the Board of Adjustment, with a copy to the County Administrator.
- (5) Any land upon which development has progressed to the point of pouring of a foundation or the installation of structural improvements as of the date of the approval of this section shall be permitted to be developed, provided that there shall be no further encroachment upon the buffer zone, as required in Subsection E(1) above.]

A. Resource Buffer Widths and Markers.

1. Resource Buffer Widths shall be established in accordance with Table 1, with Zone A being closest to the Resource.
2. Resource Buffers are not required landward/adjacent to those portions of Resources to be filled or developed with a valid U. S. Army Corps of Engineers or Delaware Department of Natural Resources and Environmental Control permit.

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

4. The upland edge of all Resource Buffers shall be clearly marked with permanent in-ground markers and signage located at one-hundred foot intervals. Such signage shall be at least five inches by seven inches in size.

Table 1: Resource Buffer Widths

<u>Resource Type (See Definitions, §115-4B)</u>	<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>

B. Resource Buffer Width Averaging.

1. Resource Buffer width averaging may be utilized but only within Resources Buffers adjacent to the same Resource to adjust the required Zone B Resource Buffer width thereby allowing flexibility for the proposed development, so long as the overall square footage of the Zone B Resource Buffer is maintained.

2. Criteria for utilizing Resource Buffer width averaging:

- (a) Resource Buffer width average is not available for Zone A.
- (b) The overall square footage of Zone B Resource Buffer must be achieved within the boundaries of the proposed development unless a Resource Buffer Option permitted under subsection G is utilized.



- (c) Resource Buffer width averaging may be used on all of the Zone B Resource Buffers within the boundaries of the proposed development.
- (d) Zone B Resource Buffer averaging shall not be expanded more than double the width of Zone B Resource Buffer as referenced in Section 115-193A.
- (e) The overall square footage of Zone B Resource Buffer must be calculated based upon the entire length of the Resource borderline that is located within the boundaries of the proposed development.
- (f) The Zone B Resource Buffer averaging shall only occur within the Resource Buffer adjacent to the same Resource.

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.

Table 2: Resource Buffer Activities by Zone

<u>ACTIVITY</u>	<u>ZONE A</u>	<u>ZONE B</u>
<u>1. Impacts to resource buffers resulting from State and/or Federally permitted disturbances to Resources (wetlands/waters) such as maintenance of Resources and Resource Buffers, utilities, roads, bridges, docks, piers, boat ramps, bulkheads, shoreline stabilization, and resources authorized to be filled or disturbed for development.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>2. Water-related facilities and ancillary uses required to support water-dependent projects approved by a federal or state permit, including but not limited to: marinas, wharfs, community docking facilities, boat ramps, and canoe/kayak launches.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>3. Repair or maintenance of existing infrastructure or utilities, including roads, bridges, culverts, water lines, and sanitary sewer lines.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>4. Temporary impacts resulting from installation of utilities by trenching methods which are part of State or Federally approved utility installation projects or the installation of utilities by directional boring methods.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>
<u>5. Stormwater Management conveyances as approved by the Sussex Conservation District.</u>	<u>PERMITTED</u>	<u>PERMITTED</u>

Table 2: Resource Buffer Activities by Zone

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

Table 2: Resource Buffer Activities by Zone

<u>ACTIVITY</u>	<u>ZONE A</u>	<u>ZONE B</u>
<u>17. Walking Trails where any impervious area runoff is managed under a Sussex Conservation District Permit that are generally perpendicular to a Resource for the purpose of providing access to the Resource or a Permitted Activity within the Resource Buffer.</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>23. Swimming pools, community clubhouses, and all Non-Water-Dependent or Non-Water Related improvements not specifically permitted under this section.</u>	<u>NOT PERMITTED</u>	<u>NOT PERMITTED</u>
<u>24. Walking Trails running by and with a Resource (i.e. generally parallel with the Resource) where any impervious area runoff is managed under a Sussex Conservation District Permit.</u>	<u>NOT PERMITTED</u>	<u>PERMITTED</u>

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 natural forests and non-forest meadows predominated by non-invasive species shall be retained.

(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. 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 a forested condition through natural succession. Invasive species may be removed from the Resource Buffer.

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

#### E. Removal of Invasive Species.

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

#### F. Maintenance of Drainage Conveyances

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

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

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

- (b) The location of any stream blockages such as debris jams, fallen or unstable trees, beaver dams or similar impediments to conveyance.
- (c) The location of any sand or gravel deposition within a channel or conveyance which impedes the flow of water produced by a storm having an annual probability of occurrence of 10%.
- (d) A discussion of all recommended measures to remedy any impediment to drainage conveyance or drainage stability.
- (e) A summary of required local, state or federal permits required to remedy any impediment to drainage conveyance.
- (f) The easement width and a sufficient number of easements to provide adequate access to the Resource for maintenance.

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

#### G. Resource Buffer Options

1. A proposed development shall be permitted to utilize the following options, consistent with §115-193, Section B. Resource Buffer Width Averaging, to incentivize the retention of forests, but only for those Resource Buffers adjacent to Perennial Non-Tidal Rivers and Streams, Non-Tidal Wetlands and Intermittent Streams:

(a) When the preservation of a forest within the Resource Buffer that has been in existence for at least five years prior to the date of application as identified by a Licensed Forester, Arborist, Landscape Architect, or Qualified Resource Buffer Professional is achieved, then a corresponding area reduction of either the Resource Buffer Zone B along the entire or part of that Resource; or the Forested and/or Landscaped Buffer required in Chapter 99 in areas adjacent to a residential subdivision, residential conditional use or residential planned community is permitted.

(b) When the Preservation of a natural forest connected to (but not within) a Resource Buffer in excess of the requirements listed in Section 115-193.A. is achieved by adding the area to Zone B, then a corresponding area reduction of either non-Forest Resource Buffer Zone B on the same Resource, or Forested and/or Landscaped Buffer required in Chapter 99 in areas adjacent to a residential subdivision, residential conditional use or residential planned community is permitted.

(c) When the provision of Resource Buffer area in excess of the requirements listed in Section 115-193.A. is achieved, then a corresponding area reduction of the Forested and/or Landscaped Buffer required in Chapter 99 in areas adjacent to a residential subdivision.

residential conditional use or residential planned community is permitted.

2. A proposed development shall be permitted to utilize the following options to incentivize the retention or expansion of Resource Buffers or provide additional functional benefit of Resource Buffers forests, but only for those Resource Buffers adjacent to Perennial Non-Tidal Rivers and Streams, Non-Tidal Wetlands and Intermittent Streams:

(a) (i) When the creation of an off-site Resource Buffer is protected under a perpetual conservation easement, then a 75 percent corresponding area reduction of the Resource Buffer Zone B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer 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, and it must be located within the same twelve-digit hydrologic unit code as defined by the United States Geological Survey as the proposed development. The area within this conservation easement shall adhere to the requirements of subsection D. herein and shall not be used for agricultural purposes.

(ii) When the creation of an off-site Resource Buffer for forest preservation is protected under a perpetual conservation easement, then a 125 percent corresponding area reduction of the Resource Buffer Zone-B on the same Resource within the development is permitted. The upland line of that new off-site Resource Buffer 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, and it must be located within the same twelve-digit hydrologic unit code as defined by the United States Geological Survey as the proposed development. The area within this conservation easement shall adhere to the requirements of subsection D. herein and shall not be used for agricultural purposes.

(b) Funding, partially or entirely, an off-site restoration project under the Sussex County Clean Water Enhancement Program, subject to approval 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 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 Zone 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. The area within this conservation easement shall adhere to the requirements of subsection D. herein and shall not be used for agricultural purposes.

(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 Zone 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. The area within this conservation easement shall adhere to the requirements of subsection D. herein and shall not be used for agricultural purposes.

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. 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 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 first approved phase. This restoration shall be in compliance with all applicable federal, state and county requirements.

#### I. Modifications and Exceptions.

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

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

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

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

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

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



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

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

K. Violations and Penalties

The owner of the land and any person or corporation who shall violate any provisions of this Section shall be subject to the following penalties. Separate violations or a series of violations may be combined to determine the total area where the violation occurred.

(a) A fine of \$10,000.00 per quarter-acre of disturbance or part thereof shall be imposed; and

(b) Resource Buffer rehabilitation and replanting in the area where the violation occurred, in accordance with a Mitigation Plan approved by the Director that complies with the following:

(i) For every tree removed or destroyed with a caliper of six inches or greater at breast height, there shall be at least three replacement trees planted within the buffer area.

(ii) The replacement trees shall be a native species.

(iii) The quality and size of the replacement trees shall be at least two inches caliper at breast height. Any tree that was removed or destroyed shall be replaced through the Mitigation Plan at a ratio of at least one-inch per caliper at breast height for each inch of caliper removed. The property owner and/or party who violates this Section shall be responsible for the health and survival of the replacement trees, including regular necessary watering, for a minimum of two years and shall replace any trees that die within two years of planting.

(iv) The replanting design shown within the Mitigation Plan shall provide adequate space for root and crown development; and

(c) No building or zoning permits shall be issued nor shall any inspections occur within the Phase where the violation occurred (including, but not limited to building code and utility inspections) until the buffer rehabilitation is complete and approved by the Director.

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.

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

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

§115-221 Final Site Plan Requirements

...

B. The final site plan shall show the following:

(19) 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 Resources and Resource Buffers including the following, where applicable:

(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. In addition, the boundary shall marked on the site itself with permanent markers and signage, with the location and type of signage depicted on the final site plan.

(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 statement incorporating the Resource and Resource Management and Maintenance Plan by reference.
- (h) A reference by title, author and date, to the “Drainage Assessment Report” required by Section 115-193.F.2.
- (i) Any walking trails, including the method of construction and the materials used to establish the trails.
- (i) That disturbance of the Resource Buffers on the site may result in penalties imposed pursuant to Section 115-193.K of the Sussex County Zoning Code.


...

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

Section 13. Effective Date.

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

I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2852 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 17<sup>TH</sup> DAY OF MAY 2022.

  
TRACY N. TORBERT  
CLERK OF THE COUNCIL