

**ORDINANCE NO. 4044**

**AN ORDINANCE TO AMEND CHAPTER 90, §§90-3, 90-6 AND TO ADD NEW §§90-8, [90-9] AND 90-[10]-2; TO AMEND CHAPTER 99, ARTICLES I, II, IV, V AND VI, §§99-5, 99-7, 99-9, 99-23, 99-26 AND 99-29; TO AMEND CHAPTER 110, ARTICLES I AND III, §§110-1 AND 110-12; AND TO AMEND CHAPTER 115, ARTICLES I AND XXV, §§115-4 AND 115-193 OF THE CODE OF SUSSEX COUNTY REGARDING SEDIMENT RELEASES AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT**

**WHEREAS, Chapter 90 of the Code of Sussex County governs sediment control and stormwater management in Sussex County; and**

**WHEREAS, the currently stated purpose of Chapter 90 of the Code of Sussex County is “to protect, maintain, and enhance the public health, safety and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with sediment and modified stormwater characteristics. Proper implementation and maintenance of sediment control and stormwater management will minimize adverse impacts to public and private property, reduce the impacts that the developmental process has on land stream channel erosion, assist in the maintenance of water quality standards, reduce the potential for localized flooding and maintain after development, to the extent that it can be maintained, the predevelopment runoff characteristics” and this purpose can be improved upon; and**

**WHEREAS, Sussex County has been experiencing more frequent storms which exceeded the Conveyance Event, as defined in 7 Del. Admin. C. §5105 resulting documented failures of the State-required sediment and erosion control measures as well as increased flooding of downstream properties; and**

**WHEREAS, Chapter 99 of the Code of Sussex County contains requirements including the consideration of stormwater management, erosion and sedimentation control and runoff volume from subdivided properties as part of the approval process; and**

**WHEREAS, This Ordinance is intended to improve the sediment and erosion control design requirements by introducing science based protection measures for non-erosive conveyance of surface water runoff during project construction and post development as well as inclusion of site specifics in the Zone B Resource Buffer layout and the selection of the stormwater management practice as defined in 7 Del. Admin. C. §5105 ; and**

**WHEREAS, it is necessary to amend portions of Chapters 99, 110 and 115 of the Code of Sussex County to implement the proposed revisions to Chapter 90 of the Code of Sussex County; 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 90, §90-3 “Purpose” is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language as follows:**

**§ 90-3 Purpose.**

**The purpose of this chapter is to protect, maintain and enhance the public health, safety and general welfare by establishing [minimum] requirements and procedures to control the adverse impacts associated with sediment *releases* and [modified] *post development* stormwater characteristics. [Proper] [i]Implementation and maintenance of sediment control and stormwater management will minimize adverse impacts to public and private property, reduce the impacts that the developmental process has on land and stream channel erosion, assist in the maintenance of water quality standards, reduce the potential for localized flooding and maintain after development, to the extent that it can be maintained, the predevelopment runoff characteristics.**

**Section 2. The Code of Sussex County, Chapter 90, §90-6 “Suspension or revocation of permit” is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language as follows:**

**§ 90-6 Suspension or revocation of permit.**

Any grading plan approval or building permit issued by the County may be suspended or revoked (a) by the County Engineer or the Director of Planning & Zoning for violation of these requirements or (b) [upon request by the Sussex Conservation District and a new sediment control and stormwater plan required to be submitted to the District for approval after written notice is given by the District to the permittee for any of the following reasons] upon request by the Sussex Conservation District in which case the permittee shall submit a revised sediment and stormwater management plan (as defined in 7 Del. Admin. C. §5105) to the Sussex Conservation District for approval after written notice is given by the Sussex Conservation District to the permittee for any of the following reasons:

A. Any violation or violations of the conditions of the sediment [control] and stormwater management plan approval.

[B. Changes in site runoff characteristics upon which a waiver was granted] Changes in site runoff characteristics that differ from those in the approved sediment and stormwater management plan.

C. Construction which was not in accordance with the approved plans. The land-disturbed area was enlarged beyond that shown on the originally approved plan.

D. The land disturbed area was enlarged beyond that shown on the originally approved sediment and stormwater management plan.

[D]E. Noncompliance with [correction] corrective notice or notices or stop-work orders by the Department of Natural Resources and Environmental Control.

[E]F. An immediate danger exists in a downstream area in the opinion of the District.

[F. The District determines it is necessary and appropriate in order to more fully effect the purposes and intents of this chapter.]

Section 3. The Code of Sussex County, Chapter 90, is hereby amended by inserting the italicized and underlined language as a new § 90-8 "Sediment capture requirements" as follows:

§ 90-8 Sediment capture requirements.

A. At or before the Preliminary Conference as outlined in § 99-7 of Chapter 99 of this Code the subdivider shall provide the County Engineer with the following data for the subdivision [development] site:

[(a) Maximum predevelopment site slope(s) for a length of more than 100 feet along the flow path from the hydrologically most remote point of all sub-catchment areas to the point or points of discharge;]

*(a) Maximum predevelopment site slope for a length of more than 100 feet along the flow path from the hydrologically most remote point of each subcatchment area to the point of discharge.*

*(b) The combined on-site and off-site upstream sub-catchment drainage areas; and*

*(c) Site boundary line distance from a tidally influenced Resource as defined in §115-4 of Chapter 115 of this Code.*

*[B. Based on the data provided as required herein, the County Engineer or his or her designee shall apply that data to the approved County Engineer's Algorithm for determination of the necessary and required capture of sediment during construction. The Algorithm is set forth in and calculated by using the Electronic Online Sediment Capture System located at <https://sussexcountycle.gov/engineering-department> adopted as part of this Ordinance. Any changes to this Algorithm or Electronic Online Sediment Capture System will be made at the direction of the County Engineer with the approval of County Council. If the trigger value for sediment capture per the algorithm is met, the County Engineer shall advise the subdivider and the Sussex Conservation District which stormwater management practice permitted under the State of Delaware Sediment and Stormwater Regulations set forth in 7 Del. Admin. C. §5101 must be used in the design. The selected practice must be constructed and stabilized prior to any ground disturbance, and the site must be temporarily or permanently graded in such a way to receive the stormwater run-off during construction as well as post development.]*

*B. Based on the data provided as required herein, the County Engineer or his or her designee shall apply that data to the approved County Engineer's Algorithm for determination of the proposed subdivision site's potential for sediment discharges during construction. The Algorithm is located at <https://sussexcountycle.gov/engineering-department> and adopted as part of this Ordinance. Any changes to this Algorithm will be made at the direction of the County Engineer with the approval of County Council.*

[Section 4. The Code of Sussex County, Chapter 90, is hereby amended by inserting the italicized and underlined language as a new § 90-9 "Stormwater volume limitations for discharges at property lines" as follows:

*§ 90-9 Stormwater volume limitations for discharges at property lines.*

*A. The Delaware Sediment and Stormwater Regulations generally require the Conveyance Event, as defined therein, to have no adverse post development impact demonstrated by limiting the downstream water surface elevation increase to no more than 0.05 feet.*

*B. In the case of discharges at property lines onto adjacent parcels, the Conveyance Event, as defined in 7 Del. Admin. C. §5101, must have no post development runoff volume increase greater than 5%.]*

Section [5]4. The Code of Sussex County, Chapter 90, is hereby amended by inserting the italicized and underlined language as a new § 90-[10]9 “Limit of disturbance restrictions” as follows:

§ 90-[10]9 Limit of disturbance restrictions.

[A. The Delaware Sediment and Stormwater Regulations generally limit the land disturbance to not more than 20 acres at any one time.

B. Prior to the approval of Bulk Grading Plan as required by either Chapter 99 or Chapter 115 herein, the County Engineer or his or her designee shall review Table I: Allowable Limit of Disturbance (LOD) based on the following inputs:

(1) Bulk Grading Plan proposed slope(s) exceeding 3% for a length of more than 100 feet; and

(2) The combined on-site and off-site upstream drainage area exceeding 20 acres.

C. If the proposed subdivision or proposed development falls outside of the allowed values, then the Limit of Disturbance shall be reduced on a sliding scale to not less than 7.5 acres as set forth in Table I: Allowable Limit of Disturbance (LOD). The County Engineer or his or her designee shall thereafter advise the subdivider’s or developer’s engineer and the Sussex Conservation District what limitations are applied, if any, prior to construction plan submittal in accordance with § 99-30 of this Code.]

A. Unless an exception is approved by the Department of Natural Resources and Environmental Control or a Delegated Agency (as defined in 7 Del. Admin. C. § 5105), the Delaware Sediment and Stormwater Regulations limit the land disturbance to not more than 20 acres at any one time.

B. Prior to the approval of Bulk Grading Plan as required by either Chapter 99 or Chapter 115 herein, the County Engineer or his or her designee shall determine Sussex County’s allowable Limit of Disturbance for a proposed subdivision or proposed development utilizing Table I: Allowable Limit of Disturbance (LOD) based on the following inputs:

(1) Bulk Grading Plan proposed slope(s) exceeding 3% for a length of more than 100 feet; and

(2) The combined on-site and off-site upstream drainage area exceeding 20 acres.

C. If the proposed subdivision or proposed development requires a reduced Limit of Disturbance, the County Engineer or his or her designee shall inform the Sussex Conservation District of Sussex County’s project-specific LOD limitations.

Section [6]5. The Code of Sussex County, Chapter 99, Article I, §99-5 “Definitions” is hereby amended by inserting the italicized and underlined language as follows:

§ 99-5 Definitions.

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

**BULK GRADING PLAN**

An overall lot grading plan prepared by a licensed professional who is permitted to prepare detailed sediment and stormwater plans, specifying the elevation, surface gradients, lot types, swale locations, driveway pipe sizes and other drainage information required for lot grading[, as further set forth in the Sussex Conservation District Technical Drainage and Grading Requirements]. A bulk grading plan shall confirm that all conveyance features must be located in deeded open space or the subject of a permanent easement, that none of the managed off-site discharges are directed into existing adjacent residential development lots and that they satisfy the following requirements:

....

**SEWER SERVICE CONCEPT EVALUATION (SSCE)**

*A Sussex County Engineering Department fee-based service study identifying system connection point(s), service to off-site parcels, district status and necessity of any use of existing infrastructure agreement to be presented at the § 99-7 Preliminary conference.*

Section [7]6. The Code of Sussex County, Chapter 99, Article II, §99-7 “Preliminary conference” is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language as follows:

§ 99-7 Preliminary conference.

A. Before the submission of a subdivision plat, the subdivider shall consult with the Commission's staff and other public agencies to ascertain the location of proposed major streets, highways, parks, playgrounds, school sites and other planned public improvements, and to determine the zoning regulations and other requirements relating to or affecting the proposed subdivision. The subdivider shall also consult with the County Engineer or his or her designee and, where applicable, State agencies having jurisdiction [Department of Natural Resources and Environmental Control] on matters relating to (i) proposed facilities for sanitary sewage service [disposal] in general; (ii) Sewer Concept Evaluations in particular, (iii) Resource Buffers generally and Resource Buffer Averaging of Zone B as set forth in §115-193 of this Code particularly; (iv) Sediment Capture [Selection] Recommendations; (v) storm

*drainage generally; (vi) Drainage Assessment Reports required under §115-193 of this Code; and (vii) drinking* water supply intended to serve the proposed subdivision. The purpose of these consultations is to assist the subdivider by furnishing information and advice, in order to expedite matters for the subdivider, saving [him] unnecessary expense and promote the best coordination between the plans of the subdivider and those of the county and other State [public] agencies.

Section [8]7. The Code of Sussex County, Chapter 99, Article II, §99-9 “Public hearing on preliminary plat approval or disapproval” is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language as follows:

§ 99-9 Public hearing on preliminary plat approval or disapproval.

....

C. In addition to the other provisions contained within this article, an applicant for approval of a preliminary plat shall provide that the following criteria are incorporated and addressed in the plat and the manner in which each one is incorporated and addressed through the design of the preliminary plat:

....

(8) That the [anticipated method of minimization of] erosion and sediment [sedimentation] control measures [are adequately identified] satisfy the requirements of §§ 90-8, 90-9 and 90-10 of this Code.

Section [9]8. The Code of Sussex County, Chapter 99, Article IV, §99-23 “Information to be shown” is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language as follows:

§ 99-23 Information to be shown.

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

...

G. Topographic contours at one-foot intervals and referenced to North American Datum of 1983 (NAD83) [United States Geological Survey data or other commonly accepted data. Where unusual conditions, such as steep slopes, create problems in

drafting contour lines, a greater interval may be used if other information is provided to adequately describe the true nature of the topography].

...

N. The tabulation of the range of predevelopment site slope(s) for a length of more than 100 feet of the flow path from the most hydrologically remote point of all sub-catchment areas to the point or points of discharge and the combined on-site and off-site upstream subcatchment areas. [The proposed grading plan when excavation, recontouring or similar work is to occur in conjunction with development of the subdivision].

...

T. The location of all water and wetland resources and their resource buffers.

(1) The boundary and type of any nontidal/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 nonforest meadow within the future resource buffer shall be identified.

(3) The area limits of the required resource buffers.

(4) Calculations supporting the overall square footage area of the Zone B resource buffer required to be concentrated pursuant to § 115-193B [width averaging (§ 115-193B)].

(5) Calculations supporting resource buffer enhancement calculations and corresponding forested and/or landscaped buffer reductions, if applicable (§ 115-193G).

(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 § 115-193F(2).

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

Section [10]9. The Code of Sussex County, Chapter 99, Article V, §99-26 “Information to be shown” is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language as follows:

§ 99-26 Information to be shown.

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

...

(21) The location of all resource buffers.

(a) The boundary and type of any nontidal/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 be 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 nonforest meadow within the future resource buffer shall be identified.

(c) The area limits of the required resource buffer.

(d) Calculations supporting the overall square footage area of the Zone B resource buffer required to be concentrated pursuant to § 115-193B [width averaging (§ 115-193B)].

(e) Calculations supporting resource buffer enhancement calculations and corresponding forested and/or landscaped buffer reductions, if applicable (§ 115-193G).

(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 § 115-193F(2).
- (i) That disturbance of the resource buffers on the site may result in penalties imposed pursuant to § 115-193K of the Sussex County Zoning Code.

Section [11]10. The Code of Sussex County, Chapter 99, Article VI, §99-29 “Minimum installation requirements” is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language as follows:

§ 99-29 Minimum installation requirements.

The minimum requirements for the installation of improvements in subdivisions shall be as follows:

B. Surface drainage facilities.

(1) All drainage facilities shall be constructed in accordance with minimum construction standards established by the County Engineer or standards adopted by the Delaware [Division of Highways] Department of Transportation in areas where it has jurisdiction.

(2) Where subdivision and/or development results in increased volume [quantities] of stormwater runoff leaving the subdivision [development] site [area to be developed], the subdivider shall demonstrate that off-site drainage improvements are adequate to handle the additional water and that all new or expanded swales, pipes or other off-site improvements are located in dedicated easements which permit efficient access for maintenance purposes. Minimum standards shall be those established by the County Engineer or by the [State Division of Highways] Department of Transportation where it has jurisdiction.

C. Erosion and sedimentation control. All subdivision plans shall include [adequate] the provision for control of temporary flooding and/ or erosion and sediment control both during construction and after completion of construction as required by Chapter 90, Sediment Control and Stormwater Management.

Section [12]11. The Code of Sussex County, Chapter 110, Article I, §110-1 “Definitions; word usage; abbreviations” is hereby amended by inserting the italicized and underlined language as follows:

§ 110-1 Definitions; word usage; abbreviations.

A. Unless the context specifically indicates otherwise, the following terms and phrases, as used in this chapter, shall have the meanings hereinafter designated:

....

#### SEWER [SYSTEM] SERVICE CONCEPT EVALUATION (SSCE)

A Sussex County Engineering Department fee-based service study identifying system connection point(s), service to off-site parcels, district status and necessity of any use of existing infrastructure agreement to be presented at the § 99-7 Preliminary conference.

Section [13]12. The Code of Sussex County, Chapter 110, Article III, §110-12 “Connection of building sewer to public sewer” is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language as follows:

#### § 110-12 Connection of building sewer to public sewer.

The applicant for the building sewer permit shall notify the County when the building sewer connection to the public sewer is ready for an open-trench visual inspection [and connection to the public sewer]. The work shall be inspected and approved by the Engineer or his or her designee prior to being placed in service.

Section [14]13. 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 as follows:

#### § 115-4 Definitions and word usage.

#### BULK GRADING PLAN

An overall lot grading plan prepared by a licensed professional who is permitted to prepare detailed sediment and stormwater plans, specifying the elevation, surface gradients, lot types, swale locations, driveway pipe sizes and other drainage information required for lot grading[, as further set forth in the Sussex Conservation District Technical Drainage and Grading Requirements]. A bulk grading plan shall confirm that all conveyance features must be located in deeded open space or the subject of a permanent easement, that none of the managed off-site discharges are directed into existing adjacent residential development lots and that they satisfy the following requirements:

Section [15]14. The Code of Sussex County, Chapter 115, Article XXV, §115-193 “Resource protection” is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language as follows:

§ 115-193 Resource protection.

....

**B. Resource buffer width averaging.**

(1) Resource buffer width averaging shall be utilized in the area(s) of stormwater runoff concentration as determined by the County Engineer or his or her designee [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 averaging is not available for Zone A.

(b) The overall square footage of the 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] must be used on all of the Zone B resource buffers within the boundaries of the proposed development.

(d) Zone B resource buffer averaging layout requirements shall be provided by the County Engineer to the subdivider at the Preliminary Conference as outlined in § 99-7. [shall not be expanded more than double the width of the Zone B resource buffer as referenced in § 115-193A.]

(e) The overall square footage of the Zone B resource buffer must be calculated based upon the entire length of the resource border line 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 Zones 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.

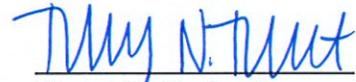
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20.	Stormwater management water quality BMPs <i>excluding sheet flow and afforestation</i> [as approved by Sussex Conservation District]	<u>Not</u> Permitted	<u>Not</u> Permitted
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**Section [16]15. Effective Date.**

**This Ordinance shall become effective upon the date of its adoption by Sussex County Council.**

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 4044 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 3<sup>RD</sup> DAY OF MARCH 2026.**

  
Tracy N. Torbert  
 Clerk of the Council