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**Sussex County**

DELAWARE  
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## PLEASE NOTE

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COUNTY ADMINISTRATIVE OFFICES  
2 THE CIRCLE | PO BOX 417  
GEORGETOWN, DELAWARE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

63  
64 **NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**  
65

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

69

70 **§99-5 Definitions.**

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

72

73 . . .

74

75 **EPHEMERAL STREAMS**

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

83

84 . . .

85

86 **INTERMITTENT STREAMS**

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

93

94 . . .

95

96 **MAJOR SUBDIVISION**

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

99



100 . . .

101

102 **MINOR SUBDIVISION**

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

110

111 . . .

112

113 **NON-TIDAL WETLANDS**

114

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

121

122 . . .

123

124 **ORDINARY HIGH WATER MARK DELINEATION**

125

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

133

134 . . .

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

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

142

143 . . .

144

145 **RESOURCE BUFFER - WETLANDS AND WATERS**

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

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

160

161 . . .

162

163 **RESOURCES**

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

168

169 . . .

170

171 **TAX DITCH**

172

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

177

178 . . .

179

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

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

185

186 . . .

187

188 **TIDAL WETLANDS**

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

192

193 . . .

194

195 **WATER DEPENDENT ACTIVITIES**

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

202



203 . . .

204

205 **WATER RELATED ACTIVITIES**

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

209

210 . . .

211

212 **WETLANDS**

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

223

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

228

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

230

231 . . .

232

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



238

239 . . .

240

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

244

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

248

249 **§99-7 Preliminary Conference.**

250

251 . . .

252

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

266

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

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

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

273 . . .

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

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

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

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

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

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

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

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

293

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

297 **§99-24 Supporting Statements**

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

300 . . .

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

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

306

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

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

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

313 . . .

314 (21) The location of all Resource Buffers.

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

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

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

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

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

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

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



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

335 . . .

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

339

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

343 **§99-30 Plans.**

344

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

356

357 . . .

358

359 J. Resources and Resource Buffers.

360

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

365



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

369

370 §115-4 Definitions and Word Usage.

371

372 . . . .

373

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

376

377 . . . .

378

379 **EPHEMERAL STREAMS**

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

387

388 . . .

389

390 **INTERMITTENT STREAMS**

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

397

398 . . .

399 **NON-TIDAL WETLANDS**

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

406

407 . . .

408

#### 409 **ORDINARY HIGH WATER MARK DELINEATION**

410

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

418

419 . . .

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

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

427

428 . . .

429

#### 430 **RESOURCE BUFFER - WETLANDS AND WATERS**

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

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

445

446 . . .

447

## 448 **RESOURCES**

449 Those wetlands and waters to be provided with a Resource Buffer due to their

450 importance to Sussex County. These Resources include Tidal Waters, Tidal

451 Wetlands, Non-Tidal Wetlands, Perennial Streams, and those Intermittent Streams

452 providing a surface water connection between Wetlands.

453

454 . . .

455

## 456 **TAX DITCH**

457

458 A Tax Ditch is a drainage channel or conveyance and the corresponding right-of-

459 way established and/or formed in accordance with Title 7, Chapter 41 of the

460 Delaware Code, and approved by a "ditch order" entered by the Superior Court of

461 the State of Delaware and County of Sussex.

462

463 . . .

464

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

466 Those waters occurring below the mean high-water line of any tidal water body,

467 tidal stream, or tidal marsh, which is defined as the average height of all the high-

468 tide water recorded over a nineteen-year period as defined by the National Oceanic

469 and Atmospheric Administration tidal datum.



470

471 ...

472

473 **TIDAL WETLANDS**

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

477

478 ...

479

480 **WATER DEPENDENT ACTIVITIES**

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

487

488 ...

489

490 **WATER RELATED ACTIVITIES**

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

494 ...

495 **WETLANDS**

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



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

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

510

511 **§115-25** Height, Area and Bulk

512

513 F. Review procedures for cluster development

514

515 . . .

516

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

520

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

530

531 . . .

532

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

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

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

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

551 [A.

552  
553 Definitions. As used in this section, the following terms shall have the meanings  
554 indicated:

555 BUFFER ZONE

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

562

563 MEAN HIGH-WATER LINE OF TIDAL WATER

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

567 PERENNIAL NONTIDAL RIVERS AND STREAMS

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

570 TIDAL TRIBUTARY STREAM

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

572 TIDAL WETLANDS



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

577 WETLANDS

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

647  
648 A. Resource Buffer Widths.

649  
650 1. Resource Buffer Widths shall be established in accordance with Table  
651 1, with Zone A being closest to the Resource.

652  
653 2. Resource Buffers are not required landward/adjacent to those portions  
654 of Resources to be filled or developed with a valid U. S. Army Corps of  
655 Engineers or Delaware Department of Natural Resources and  
656 Environmental Control permit.

657  
658 3. No Resource Buffer shall overlay a Tax Ditch or Tax Ditch Right of  
659 Way. If a proposed development contains a Tax Ditch, with a right-of-  
660 way of less than the total Resource Buffer Width, then that area of the  
661 Resource Buffer outside of the right-of-way shall be designated as Zone  
662 B.

663

664

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

665

666 B. *Resource Buffer Width Averaging.*

667

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

672

673 2. *Criteria for utilizing Resource Buffer width averaging:*

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

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

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

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

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

686  
 687 C. Permitted Activities.

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

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



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

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



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

692

693 D. Resource Buffer Standards.

694

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

698

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

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

704

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

710

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

718



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

725 E. Selective Cutting.

726

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

734

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

738

739 F. Maintenance of Drainage Conveyances

740

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

749

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

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

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

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

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

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

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

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

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

781  
782 G. Resource Buffer Options

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

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



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

796

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

803

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

808

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

812

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

820

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

828

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



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

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

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

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

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

863  
864 1. Resource and Resource Buffer Management Plan

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

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

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

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

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

897 I. Modifications and Exceptions.

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



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

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

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

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

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

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

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

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

931

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

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

936 ...

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



938 . . .

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

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

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

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

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

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

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

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

960

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

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

965 . . .

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

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

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

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

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

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

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

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

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

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

990 . . .

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

994

995 **Section13. Effective Date.**

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



**Sussex County  
Drainage and Resource Buffer Ordinance  
Summary Paper**

The following information is a summary of the provisions within the Buffers – Wetlands – Drainage Ordinance to be used as a guide in the review of the Ordinance.

Section <sup>1</sup>	Title	Summary	Page Numbers
1	Definitions	Defines: ephemeral streams, intermittent streams, major subdivision, minor subdivision, non-tidal wetlands, ordinary high-water mark delineation, perennial non-tidal rivers and streams, resource buffer – wetlands and waters, resources, tax ditch, tidal waters (mean high-water line), tidal wetlands, water dependent activities, water related activities, and wetlands.	Pages: 3-7
2	General Requirements & Restrictions	Requires Resources and Resources Buffers to be depicted on preliminary and final plot plans for each major subdivision of lands	Pages: 7-8
3	Preliminary Conference	Amends the current Code to strike the reference to a minor subdivision	Page: 8
4	Information to Be Shown	Lists the specific information to be shown on the preliminary plat	Pages: 8-9
5	Supporting Statements	Requires a Resource and Resource Buffer Management Plan and the same to be recorded as part of the subdivision	Pages: 9-10
6	Information to Be Shown	Lists the specific information to be shown on the final plat	Pages: 10-11
7	Plans	Requires Resources and Resources Buffers and the public access easement as part of the Chapter 99 “Plans”	Page: 11
8	Definitions and Word Usage	Includes identical definitions as Section 1	Pages: 12-16
9	Height, Area and Bulk Requirements	Amends the current Code related to cluster subdivisions to come into compliance with the requirements of §115-193.	Pages: 16-17

Section <sup>1</sup>	Title	Summary	Page Numbers
10	Resource Protection	<p>Strikes the current buffer ordinance (§115-193) and renames the section "Resource Protection"</p> <p>10A. Requires Resource Buffer widths</p> <p>10A. Lists the Resource Buffer widths (Table 1)</p> <p>10B. Defines Resource Buffer averaging</p> <p>10C. Lists the Resource Buffer Permitted Activities by Zone (Table 2)</p> <p>10D. Defines the Resource Buffer Standards</p> <p>10E. Defines Selective Cutting</p> <p>10F. Defines the maintenance of drainage conveyances including a requirement for a Drainage Assessment Report</p> <p>10G. Defines Resource Buffer Options to incentivize the retention of forests and the retention or expansion of Resource Buffers</p> <p>10H. Defines the Resource and Resource Buffer Maintenance and Management requirements</p> <p>10I. Defines the requirements for the PZ Commission to grant an exception or modification</p>	<p>Pages: 17-20</p> <p>Pages: 20-21</p> <p>Page: 21</p> <p>Pages: 21-22</p> <p>Pages: 22-25</p> <p>Pages: 25-26</p> <p>Page: 26</p> <p>Pages: 26-27</p> <p>Pages: 27-29</p> <p>Pages: 29-30</p> <p>Pages: 30-31</p>
11	Preliminary Site Plan Requirements	Lists the specific information to be shown on the preliminary site plan	Pages: 31-32
12	Final Site Plan Requirements	Lists the specific information to be shown on the final site plan	Pages: 32-33
13	Effective Date	Effective date of the ordinance	Page: 33-34

1. Sections 1-7 address Chapter 99 of County Code. Sections 8-12 address Chapter 115 of County Code.

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**Jamie Whitehouse**

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**From:** webmaster@sussexcountyde.gov on behalf of Sussex County DE  
<webmaster@sussexcountyde.gov>  
**Sent:** Wednesday, October 27, 2021 10:47 AM  
**To:** Planning and Zoning  
**Subject:** Submission from: Planning & Zoning Commission contact form

RECIPIENTS: Jamie Whitehouse

**SUPPORT EXHIBIT**

Submitted on Wednesday, October 27, 2021 - 10:46am

Name: L Cherney  
Email address: chern5@aol.com  
Phone number: 410-419-9464  
Subject: Buffers

Message:

Please let it be known that I support increasing buffer zones around wetlands and forest, and bringing them in line with the other counties here in Delaware. Increasing the buffers will have a tremendous positive effect on reducing runoff, and increasing the health of inland bays and wetlands. It is important in this time of increased development, that we be forward- thinking in protecting the great amount of wetlands in Sussex county. We are the lowest county in the state, which has the lowest mean elevation of any state in the country. We have a responsibility and a privilege to protect our resources. Thank you, L Cherney