

Introduced by: Mr. Tackett
Ms. Kilpatrick
Date of introduction: March 27, 2018

**SUBSTITUTE NO. 1
TO
ORDINANCE NO. 18-020**

**TO AMEND *NEW CASTLE COUNTY CODE* CHAPTER 40
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE OR "UDC"),
REGARDING ARTICLE 1 ("TITLE AND APPLICABILITY"), ARTICLE 3 ("USE
REGULATIONS"), ARTICLE 10 ("ENVIRONMENTAL STANDARDS"), ARTICLE 12
("SEWER AND WATER IMPACT"), ARTICLE 20 ("SUBDIVISION AND LAND
DEVELOPMENT DESIGN PRINCIPLES"), ARTICLE 22 ("DRAINAGE, UTILITIES,
SEPTIC SYSTEMS, PARKING, LOADING, AND LIGHTING"), ARTICLE 27
("MAINTENANCE ORGANIZATIONS, OPEN SPACE, AND COMMON
FACILITIES"), ARTICLE 31 ("PROCEDURES AND ADMINISTRATION"), ARTICLE
33 ("DEFINITIONS"), APPENDIX 1 ("APPLICATION AND PLAN REQUIREMENTS")
AND APPENDIX 2 ("FEES")**

WHEREAS, New Castle County ("County") has engaged in a comprehensive review of the Unified Development Code ("UDC") to identify standards that need revision for technical compliance, internal consistency, or consistency with current development practices; and

WHEREAS, the County has undertaken a robust public review process with stakeholders including County residents, developers and homebuilders, engineers, landscape architects, and a professional planning consultant, which included at least eleven meetings comprised of six focus group sessions, four stakeholder meetings, and a public workshop; and

WHEREAS, based on a comprehensive review of the UDC by the professional staff in the County's Department of Land Use, a professional planning consultant, and comments by stakeholders, applicants and local experts in land use issues, the County has developed updated standards for sunsetting, water resource protection areas, sewer capacity/connections/easements, community outreach, record plan modification, code enforcement and resubdivision plans; and

WHEREAS, the Department of Land Use has continued to review, interpret, and monitor the continued application of the UDC with regard to land development and has identified additional clarifications, corrections, improvements and changes necessary to further enhance the land development process; and

WHEREAS, County Council has determined that the provisions of this Ordinance substantially advance, and are reasonably and rationally related to, legitimate government interests, including, but not limited to, the protection and preservation of the public health, safety, prosperity, general welfare, and quality of life.

NOW, THEREFORE, THE COUNTY OF NEW CASTLE HEREBY ORDAINS:

Section 1. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 1 (“Title and Applicability”), Division 40.01.100 (“Applicability”), Section 40.01.130 (“Sunsetting of recorded subdivision or land development plans”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.01.130. Sunsetting of recorded subdivision or land development plans.

A. Plans recorded after adoption of these regulations. Construction of development or improvements shown on ~~[an approved]~~ a recorded major land development plan ~~[for a subdivision or land development]~~ shall commence within five (5) years of the date of recordation of the ~~[first]~~ original record plan for the ~~[subdivision or]~~ land development ~~[plan]~~.

B. Plans recorded before the adoption of these regulations. Construction of development or improvements shown on a recorded major land development plan ~~[for a major subdivision or major land development]~~ shall commence within five (5) years from December 31, 1997; except that, as provided in Section 40.01.120, any approved record plan for:

1. Any ~~[major subdivision or]~~ major land development plan that was unbuildable immediately prior to the adoption of this Chapter for any reason (including, without limitation, zoning changes after plan approval and the expiration of any period of protection under former Code provisions); and,
2. Any resubdivision plan . . .

C. The applicant shall bear the burden of . . .

D. If construction has not commenced within five (5) years, the record plan shall be resubmitted and reviewed by the Department to determine if the conditions of approval of the original record major ~~[subdivision or]~~ land development plan have changed or have been altered by the subsequent adoption of, or amendments to, this Chapter. The resubmission must occur prior to the five (5)-year deadline for commencement of construction. Plans recorded prior to July 1, 2014 shall have until July 1, 2019 to resubmit for review. Plans not resubmitted in the required timeframe will expire and any subsequent plan for the subject property must comply with the zoning and subdivision regulations in effect at the time of application. The Department shall either:

1. Reapprove the record plan, and give written notice to the owner of reapproval. Such approval shall allow the issuance of building permits subject to the provisions of the original record major subdivision or land development plan and/or any recorded resubdivision plans. The owner shall then have five (5) years from the date of such notice of reapproval to obtain building permits and commence construction. If construction has not commenced within five (5) years, the record plan shall expire.

2. Disapprove the record plan and give written notice to the owner of the specific areas of noncompliance. The modifications necessary to bring the plan into compliance with this Chapter shall be incorporated into a revised exploratory plan and resubmitted. Upon approval of a revised exploratory plan, a new major [~~subdivision or~~] land development plan may be submitted for approval. The new plan approved and recorded pursuant to this Section shall have the effect of superseding the original record major [~~subdivision or~~] land development plan. The owner shall then have five (5) years from the date of notice made pursuant to this subsection to obtain building permits and commence construction. If construction has not commenced within five (5) years, the record plan shall expire. . . .

Section 2. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.100 (“Use regulations”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Division 40.03.100. Use regulations.

All land uses or structures shall be permitted in districts only as indicated in this Division. Permitted uses must occur within the parcel boundaries subject to the use regulations provided in this Chapter. All permitted uses shall also . . .

- A. "Y" indicates a permitted use . . .
- B. "N" indicates a prohibited use.
- C. "L" indicates a use permitted only if a limited use is approved pursuant to Section 40.31.210. The limited use review determines whether the locational, design, or other criteria of Table 40.03.210, Division 40.03.300 and other sections of this Chapter have been met for the proposed site or specific land use. Not all properties may meet these requirements, thus limiting the sites upon which the use may be established. Where the limited use standards apply to only a specific use, all other uses in the general use category are permitted by right and without the need for [~~a~~] limited use [~~permit~~] review. [~~A-I~~] Limited use [~~permit~~] approval must be issued by the Department certifying compliance before the limited use is lawfully permitted. . . .

Section 3. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.300 (“Additional limited and special use standards”), Section 40.03.330 (“Public interest and special events”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.03.330. Public interest and special events.

- A. A limited use permit . . .

D. All display areas and temporary structures shall comply with the minimum required yard setbacks for the zoning district in which the public interest/special event is being proposed and may not displace required parking for the primary use of the property, except that the Department may permit the displacement of required parking for parking lots containing no fewer than 500 parking spaces when the applicant demonstrates that sufficient parking will be available throughout the event.

Section 4. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.300 (“Additional limited and special use standards”), Section 40.03.331 (“Temporary miscellaneous sales”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.03.331. Temporary miscellaneous sales.

A. A limited use permit shall be required . . .

E. [~~A letter of credit, or other acceptable surety, shall be required by the Department. The amount shall be based on the estimated cost of cleaning the site at the cessation of the limited use permit. Upon approval of the Department, a signed contract with a disposal firm, which covers the cleanup of the site after the cessation of the temporary use, may satisfy the surety requirement.~~] Reserved.

F. A copy of the DelDOT . . .

G. No display, sales or parking . . .

H. All display areas and temporary structures shall comply with the minimum required yard setbacks for the zoning district in which the temporary sales event is being proposed and may not displace required parking for the primary use of the property, except that the Department may permit the displacement of required parking for parking lots containing no fewer than 500 parking spaces when the applicant demonstrates that sufficient parking will be available throughout the event. . . .

Section 5. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.300 (“Additional limited and special use standards”), Section 40.03.334 (“Minor utilities”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.03.334. Minor utilities.

- A. Any new utility substation ...
- B. Elevated storage tanks and standpipes.
 - 1. Any new elevated storage tank or standpipe which is not a replacement of any existing elevated storage tank or standpipe shall be setback from any adjoining property line a minimum of not less than one-fourth (1/4) its height, or one-half (1/2) its maximum diameter or thirty (30) feet, whichever is greatest.
 - 2. No identification sign on any new elevated storage tank or standpipe shall be illuminated. Additionally, subject to any applicable State or federal regulations or statute to the contrary, any blinking or rotating light thereon shall be screened so as not to throw its light below the horizontal plane on which it is located.
 - 3. The Department following the receipt of a utility plan exploratory submission for an elevated storage tank or standpipe shall schedule the application for review and approval at a regularly scheduled Planning Board public hearing. The Planning Board shall review the proposal and shall consider the impacts of the proposed tank on adjoining properties. Planning Board approval of the exploratory sketch plan shall be required prior to submission of a record plan to the Department and shall not be withheld where Subsections [A]B.1 and [A]B.2 have been satisfied by the applicant. However, the Planning Board approval may contain certain additional conditions deemed reasonably necessary by the Planning Board to protect adjacent land uses including requirements for fencing, landscaping, and tank color.

Section 6. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 5 (“Site Capacity and Concurrency Regulations”), Division 40.05.000 (“Purpose”), Section 40.05.050 (“Applicability”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Section 40.05.050. Applicability.

- At the preapplication stage . . .
- A. A site resource capacity analysis . . .
 - E. A site resources capacity analysis pursuant to Division 40.05.400 need not be conducted where a parcel is to be subdivided into not more than five (5) residential lots[taking direct access to an existing street, and where the depth does not permit constructing streets from the development]. However, all resources . . .

Section 7. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 10 (“Environmental Standards”), Division 40.10.100 (“Resource protection standards”),

Section 40.10.115 (“Additional resource standards”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.10.115. Additional resource standards.

The following Sections set forth additional standards that protect natural resources or permit mitigation. For all protected resources, stormwater outfalls shall be permitted, provided that the discharge ~~[velocity from the terminal end of the pipe or the associated energy dissipation practice does not exceed two (2) feet per second (fps) for the two (2) year frequency storm event]~~ complies with the standards for adequate conveyance established by Chapter 12 of the *New Castle County Code*. Green technology stormwater best management practice[s] methods shall be used to convert concentrated flow to uniform, shallow sheet flow, filter sediments, and control erosion.

Section 8. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 10 (“Environmental Standards”), Division 40.10.100 (“Resource protection standards”), Section 40.10.160 (“Water Resources Protection Areas”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.10.160. Water Resources Protection Areas (WRPA).

A. Water resource protection areas . . .

B. No development shall be permitted to have more than twenty (20) percent impervious surface ratio ~~[unless]~~ without an environmental impact assessment report and a recommendation from RPATAC supporting a greater than twenty (20) percent impervious surface ratio. The environmental impact assessment report shall be certified by a State-registered professional geologist or professional engineer with [a background] technical expertise in hydrogeology[~~indicates that additional development would not endanger the public or the environment. All environmental impact assessment reports performed pursuant to this Section shall be reviewed in accordance with Section 40.10.385 and the procedures set forth in Articles 30 and 31 for environmental impact assessment reports~~]. The impervious surface ratio and open space ratio operate independently and are based on the base site area.

C. The Department may permit . . .

D. The Department may consider, with the recommendation of RPATAC, the transfer of development rights of a Recharge Area WRPA to another Recharge Area WRPA. ~~[the contribution of like land by the applicant to be preserved in other WRPA's.]~~ A conservation easement ~~[or the outright acquisition of the like land or resource]~~ shall ~~[occur which will]~~ be established to prohibit the disturbance of the [like land] WRPA in perpetuity. ~~[Like lands are those lands within a Recharge or Wellhead WRPA that have infiltration rates that are equal to or greater than those found on the subject property. The minimum area of the restricted land shall be the area that would otherwise be required by this Chapter.]~~

Section 9. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 10 (“Environmental Standards”), Division 40.10.100 (“Resource protection standards”), Section 40.10.162 (“Wellhead protection areas (public water supply wells)”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.10.162. Wellhead protection areas (public water supply wells).

A. Wellhead protection areas . . .

D. ~~[A stormwater system's discharge to wellhead WRPA's shall be by sheet flow through a grassland or discharged from a stormwater management facility having a wetland or aquatic bench.]~~ Stormwater runoff from ~~[all parking areas shall be directed to a stormwater management facility before it is discharged]~~ developed impervious areas must be managed by a best management practice before discharge into a wellhead WRPA. . . .

Section 10. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 10 (“Environmental Standards”), Division 40.10.100 (“Resource protection standards”), Section 40.10.165 (“Uniform standards and criteria”), is hereby amended by deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.10.165. Uniform standards and criteria.

A. The following standards and criteria shall be applicable to any limited use, special use or other use requiring an environmental impact assessment report permitted pursuant to this division:

1. Stormwater management facilities . . .

2. With the exception of floodplain and erosion-prone slope water resource protection areas, stormwater management and recharge facilities shall be designed with the goal of maintaining the quantity and quality of groundwater recharge at predevelopment levels. ~~[To facilitate the design of recharge facilities, a manual of best management practices for the design, construction and maintenance of recharge structures shall be developed. The manual shall be approved by the resource protection area technical advisory committee (RPATAC) and may be revised as necessary to reflect advances in recharge technology.]~~

. . .

Section 11. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 12 (“Sewer and Water Impact”), Division 40.12.100 (“Sewer capacity”), Section 40.12.110 (“Sewer service areas”), is hereby amended by adding the material that is underscored, as set forth below.

Sec. 40.12.110. Sewer service areas.

The County sewer model is based on the analysis of sewer capacities in lines, pump stations and treatment plants. A map reflecting . . .

Section 12. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 12 (“Sewer and Water Impact”), Division 40.12.100 (“Sewer capacity”), Section 40.12.111 (“Capacity”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.12.111. Capacity.

The capacity of sewer service areas is identified [~~in the New Castle County Sewer Capacity Report~~] on the Capacity Status Map and is available for review at the Department of Special Services. [~~The report provides the capacity of the interceptors, pumping stations, and treatment plants.~~] The [~~County Sewer Capacity Report~~] Capacity Status Map is prepared using the County model to determine the existing capacity of the sewer in the County. The methodology in Section 40.12.310 shall be adhered to by the County in its determination of sewer capacity. The capacity of the various units shall be in gallons per day (~~[gd]~~gpd) or millions of gallons per day (mgd).

Section 13. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 12 (“Sewer and Water Impact”), Division 40.12.100 (“Sewer capacity”), Section 40.12.112 (“Sewer treatment facilities”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.12.112. Sewer treatment facilities.

[~~A. In the Suburban zoning districts, sewer improvements may include the use of spray irrigation, provided that such system has a minimum processing capacity of one hundred thousand (100,000) gallons per day and so long as the capacity of the system can be increased at a later time by an additional fifty thousand (50,000) gallons per day. Other types of large scale treatment systems may be permitted if approved by DNREC and the Department of Special Services. Such facilities shall only be permitted in Suburban zoning districts and shall only be constructed in accordance with the rules and regulations governing such systems as promulgated by DNREC and the Department of Special Services. All such systems shall be turned over to the County upon their completion and formal acceptance by the Department of Special Services.~~]

[~~B. In the Suburban Reserve zoning districts, private nonresidential spray irrigation may be permitted subject to approval by the Department of Special Services and DNREC and subject to any restrictions deemed necessary by the Department of Special Services or DNREC. All such facilities shall be subject to regular inspection by the County and shall be charged an inspection fee by the Department of Special Services based upon the type and amount of discharge.~~]

[~~C.~~]The Department of Special Services may sell treated effluent from any County owned or operated sewer treatment facility to the public.

Section 14. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 12 (“Sewer and Water Impact”), Division 40.12.300 (“Service capacity

calculations”), Section 40.12.310 (“Sewer capacity calculations”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.12.310. Sewer capacity calculations.

In determining sewer capacities pursuant to this Article, the following methodology shall be used.

- A. [Service]Capacity. [Service]Capacity is measured in gallons per day (~~[gd]~~gpd) or millions of gallons per day (mgd), beginning at the plant. Each element of the system has a rated average daily capacity for processing, pumping, or flow.
- B. Available capacity determination. The ~~[current]~~proposed loads are compared against the capacity of the system component. The available capacity is determined by subtracting the existing and obligated volumes from the capacity of the component. If the number is positive, then the resultant is the available capacity.

Section 15. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 20 (“Subdivision and Land Development Design Principles”), Division 40.20.200 (“Subdivision layout”), Section 40.20.242 (“Easements”), is hereby amended by adding the material that is underscored, as set forth below.

Sec. 40.20.242. Easements.

Where required, all lots shall provide easements for sewer, water, drainage, gas, telephone, or cable TV necessary to serve the subdivision. Such easements shall be located in either street rights-of-way, alleys, side or rear yards. The following standards shall apply to easements:

- A. The utility easements shall be a minimum . . .
- G. The Department of Public Works shall determine the size of required sewer easements. No other utility, tree, shrub, fence, structure or other man-made improvements (excluding paving) may be planted, erected, or constructed within a sewer easement, without the written approval of the Department of Public Works.

Section 16. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 22 (“Drainage, Utilities, Septic Systems, Parking, Loading, and Lighting”), Division 40.22.200 (“Grading and drainage”), Section 40.22.230 (“As-built drawings”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.22.230. As-built [~~drawings~~]documents.

As-built drawings shall be provided in accordance with Chapter 12 and as follows:

A. Where field modifications . . .

E. As-built plans for the sanitary sewer system, including pump stations and force mains, shall be required in accordance with standards established by the Department of Public Works. As-built plans shall be submitted to the Department of Public Works prior to construction acceptance.

Section 17. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 22 (“Drainage, Utilities, Septic Systems, Parking, Loading, and Lighting”), Division 40.22.300 (“Sanitary sewer”), Section 40.22.320 (“Wastewater disposal connections”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.22.320. Wastewater disposal connections.

A. All lots that discharge sanitary sewage . . .

B. All current and future lots discharging sanitary sewage shall be connected to the public system ~~[upon the occurrence of any of the following:]~~either at the time of construction of a building, or at the time of septic system failure for an existing building, if the building is located in a recognized sewer service area, where sewer capacity is available, and where a suitable sanitary sewer line is accessible to the property as determined by the Department of Public Works.

~~[1. At the time of construction of a building or dwelling if the lot is located in a recognized County sewer service area, where sewer capacity is available and where a suitable sanitary sewer line is located within two hundred (200) feet of the lot property line as measured along a street right-of-way or an appropriate utility easement or right-of-way as may be applicable.]~~

~~[2. At the time of septic system failure if the lot is located within a County sewer service area where sewer capacity is available and a sanitary sewer collector line is located within two hundred (200) feet of the lot property line as measured along a street right-of-way or an appropriate utility easement or right-of-way as may be applicable and within four hundred (400) feet of the building or dwelling. Septic system failure is defined as any condition that necessitates work on a septic system (including construction, alteration, or repair) for which a DNREC permit is required; and, where such permit is denied in whole or in part by DNREC because a central wastewater system is legally and physically available as defined in DNREC’s Regulations Governing the Design, Installation, and Operation of On-site Wastewater Treatment and Disposal Systems.]~~

C. ~~[Failure to connect to the sanitary sewer system as required above shall result in the connection fee becoming due and payable. Failure to pay the connection fee within a one (1) year period shall result in a lien against the property pursuant to the provisions of Section 38.02.105.]~~The Department of Public Works shall review all plans which propose to connect to the public sanitary sewer system and shall inspect the construction thereof. No

certificates of occupancy shall be provided unless the Department of Public Works confirms that all construction conforms to approved plans and has been accepted for operation.

Section 18. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 27 (“Maintenance Organizations, Open Space, and Common Facilities”), Division 40.27.300 (“Construction, completion and inspection requirements”), Section 40.27.310 (“Construction of open space and common facilities”), is hereby amended by adding the material that is underscored, as set forth below.

Sec. 40.27.310. Construction of open space and common facilities.

A. All areas designated . . .

B. All areas designated on the record plan as open space and/or common facilities including, but not limited to, streets or rights-of-way, parking areas, stormwater management facilities, drainage facilities, and active or passive recreation areas, shall be constructed, installed, or dedicated by developers, at no expense to the County. Construction, installation, and dedication of such open space or common facilities shall be subject to approval by the appropriate officials at the developer's expense.

1. All active recreation areas and structured recreational facilities (clubhouses, pavilions, etc.) shall be completed prior to the issuance of fifty (50) percent of the total building permits within the subdivision.

2. The developer shall be responsible for the maintenance of such open space and facilities until all of the conditions set forth in Section 40.27.510 are satisfied.

C. Unless waived by the Department . . .

D. Prior to the issuance of both fifty (50) percent and seventy-five (75) percent of the building permits, the developer shall submit a[~~n~~] certified open space status report to the Department. [~~Prior to the issuance of seventy-five (75) percent of the permits for the subdivision, the developer shall submit an open space status report to the Department certified~~] Certification shall be provided by the professional(s) who designed and prepared the plan depicting the condition of each aspect of the completed open space. At the request of the developer [~~with good cause shown~~], another professional may certify this report with the prior approval of the Department....

Section 19. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 27 (“Maintenance Organizations, Open Space, and Common Facilities”), Division 40.27.700 (“Annual registration requirement”), Section 40.27.710 (“Registration requirement”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below:

Sec. 40.27.710. Registration requirement.

A maintenance organization must register Registration shall include[=]

~~[A.] [F]the names, addresses, email addresses, and telephone numbers of the board of directors and any officers of the maintenance corporation.~~

~~[B. Minutes of any annual or special meeting.~~

~~C. A copy of the governing documents, including the maintenance declaration, certificate of incorporation and the bylaws. The articles of incorporation shall contain provisions requiring full membership votes on financial issues and land use matters.~~

~~D. Any amendments to the maintenance corporation's governing documents.~~

~~E. A copy of its franchise tax receipt, provided the corporation has been in existence for a period of sufficient length to have incurred liability for the tax.]~~

Section 20. *New Castle County Code* Chapter 40 (Unified Development Code or "UDC"), Article 27 ("Maintenance Organizations, Open Space, and Common Facilities"), Division 40.27.700 ("Annual registration requirement"), Section 40.27.720 ("Failure to register and/or to perform minor maintenance"), is hereby amended by deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.27.720. Failure to register and/or to perform minor maintenance.

~~[A.] Maintenance organizations that are not registered . . .~~

~~[B. As a one-time exception to the registration requirement set forth above, any maintenance organization that registered with the County and agreed thereafter in perpetuity to perform minor maintenance at its own expense, qualifies for financial assistance from the County, subject to the availability of funds, even if the major maintenance is due to past failure to perform minor maintenance. The one-time exception to the registration requirement is extended until December 31, 2006 for maintenance organizations which are not in legal possession of the stormwater facility/land as of June 30, 2006 due to legal ownership and/or transfer issues, as determined by the law department, provided that the maintenance organizations once in possession of the facility/land and prior to the expiration of the amnesty period agrees thereafter in perpetuity to perform minor maintenance at its own expense.]~~

~~[C. To qualify for the exception, maintenance organizations or property owners must execute a binding agreement in a form approved by the law department, if they have not already done so, expressly granting to the County the authority to enter upon premises to perform maintenance at the expense of the maintenance association or property owners and to impose a lien upon the property if required minor maintenance is not performed.]~~

Section 21. *New Castle County Code* Chapter 40 (Unified Development Code or "UDC"), Article 30 ("County Council and Administrative Bodies"), Division 40.30.400 ("Administrative agents"), Section 40.30.430 ("Resource Protection Area, Technical Advisory Committee"), is hereby amended by adding the material that is underscored, as set forth below.

Sec. 40.30.430. Resource Protection Area, Technical Advisory Committee.

The purposes and duties of the RPATAC are to:

- A. Provide technical support . . .
- H. Provide technical support and recommendations to the Department concerning the transfer of development rights from one WRPA to another.

Section 22. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.100 (“Application review procedures”), Section 40.31.110 (“Rezoning/major and minor plan review”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.31.110. Rezoning/major and minor plan review.

<i>Stage/Steps</i>	<i>Rezoning</i>	<i>Major Plan</i>	<i>Minor Plan</i>
Pre-application Sketch Plan Review			
Submission	Y	Optional, Y for major residential plans	Optional
Conference	Y	Optional, Y for major residential plans	Optional
<u>Community Meeting</u>	<u>Optional</u>	<u>Optional</u>	<u>Optional</u>
Exploratory Plan Review Stage . . .			

Section 23. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.100 (“Application review procedures”), Section 40.31.112 (“Pre-application sketch plan review/conference”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.31.112. Pre-application sketch plan review/conference.

- A. *Applicability.* A pre-application sketch . . .
- D. Community Outreach.
 1. Community Outreach consists of a community meeting that occurs after the pre-application sketch plan review conference and prior to exploratory plan submission for plans that propose a rezoning, major or minor land development plan. This outreach is optional.
 2. The purpose of the community meeting is to:

- a. Encourage the applicant to pursue early and effective communications with members of the community that may be impacted by the application and the resident council person, providing the applicant an opportunity to understand and attempt to mitigate adverse impacts of a proposed project on the community, and to educate and inform the public.
 - b. Provide property owners of impacted areas with an opportunity to learn about an application and an opportunity to work with an applicant to resolve concerns at an early stage of the process.
3. The applicant shall notify the Department of Land Use and the resident council person of the date and location of the community meeting at least ten (10) business days prior to the event.

E. Subsequent submission. For all rezonings . . .

Section 24. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.100 (“Application review procedures”), Section 40.31.113 (“Exploratory plan review stage”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.31.113. Exploratory plan review stage.

A. *Applicability* . . .

B. *Exemptions* . . .

C. *Submission requirements.*

- 1. The applicant shall . . .
- 2. Traffic impact study (TIS). For all major plans and plans with rezonings where the Department has not waived traffic analysis requirements, the applicant shall submit traffic information pursuant to Article 11. If a traffic impact study is required, a scoping meeting shall be scheduled pursuant to Article 11 to identify concurrency issues. For all major plans and plans with rezonings, exploratory plans shall not be noticed for Planning Board public hearing until the Department is in receipt of DelDOT's comments and recommendations on the final TIS. For all major plans and plans with rezonings, ~~[N]~~no record plan submission shall occur until such time that the TIS is approved and the plan meets the concurrency requirements of Article 11.
- 3. It is the applicant’s responsibility . . .

4. The Department of Public Works shall review sanitary sewer system plans in accordance with the engineering checklist. The Department of Public Works shall determine sewer feasibility based on the submitted plan.

5. The Department will return to the applicant . . .

D. *Exploratory plan initial report* . . .

E. *Public hearing requirements* . . .

G. *County Council rezoning hearing and decision.* Upon receipt of a rezoning recommendation . . . Any [The] record plan submitted after County Council adopts a rezoning shall be in general conformance with the development depicted on the approved exploratory or preliminary plan that was relied upon by County Council when it granted the rezoning. . . .

Section 25. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.100 (“Application review procedures”), Section 40.31.114 (“Record plan review stage”), is hereby amended by adding the material that is underscored, as set forth below.

Sec. 40.31.114. Record plan review stage.

A. *Record plan requirements* . . .

B. *Record plan review report* . . .

C. *Department review/approval.* If the record plan and all supporting documents . . . Supporting documents shall include, but are not limited to:

1. Letter of approval from DeIDOT . . .

2. Letter of approval from the State Fire Marshal.

3. Approval from the Engineering Section . . .

4. Approval from the Department of Public Works regarding sanitary sewer design and easements. . . .

Section 26. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.100 (“Application review procedures”), Section 40.31.130 (“Deed restriction changes”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.31.130. Deed restriction changes.

Any amendment to a declaration of restrictions . . .

A. *Applicability.* This Section applies . . .

B. *Submission requirements.* The applicant shall submit all deed restriction change request materials to the Department pursuant to the provisions contained in Appendix 1 to this Chapter. Such materials shall include:

1. The application, consisting of a copy of the existing recorded declaration of restrictions, the proposed declarations, and the reasons for the change. Upon receipt of the application, the Department of Land Use shall forward the ~~[same]~~ application to the Clerk of County Council~~;~~ and the district Council member~~;~~ and the President of County Council. With the exception of the County, the proposed declarations shall be signed by all parties subject to the restrictions.
2. A draft resolution for County Council's consideration which is to also be provided in electronic form. After review and correction if necessary, the Department of Land Use will forward same to the Clerk of County Council~~;~~ and the district Council member~~;~~ and the President of County Council.
3. The applicable Departmental filing fee . . .

E. *Department report.*

1. After consideration of the deed restriction change application, the Department and the Planning Board shall forward their recommendations in one (1) report to the Clerk of County Council~~;~~ the sponsor, the sponsor's legislative aide, and the applicant and the district council member. The written recommendations by the Department and the Planning Board shall contain specific findings of fact resulting from the PLUS report, the public hearing and Department analysis.
2. If the Department recommends conditional approval of the application, declarations and resolution, or if the Department finds that the original declarations or resolution must otherwise be revised to meet the current recommendation, the applicant may submit revised documents in conformance with the Department's recommendation. All revised documents shall be submitted to the Department within sixty (60) days of the issuance of the written recommendation report and shall include; ~~which shall submit to County Council after review and correction if necessary~~:
 - a. Revised declarations approved by the Department as meeting such conditions or necessary revisions and signed by all parties subject to the restrictions with the exception of the County; and
 - b. A substitute draft resolution in both written and electronic form~~;~~ and

e. ~~Recorder of Deeds filing fees, before the application will be placed on the agenda for County Council's consideration].~~

F. Upon the Department's review of the application, declarations and resolution, as may be revised, the Department shall forward the documents and the recommendation report to the Clerk of Council and the district Council member to be placed on the agenda for County Council's consideration.

G. *County Council hearing and action.* Upon receipt of the documents and the recommendation report from the Department [~~containing the recommendations of the Department and the Planning Board~~], County Council shall act on the resolution, or any substitute resolution, at one of its next ~~[two]~~three ~~[(2)]~~[(3)] regularly scheduled public meetings. A simple majority . . .

~~[G.]~~H. The applicant shall be responsible for all Recorder of Deeds filing fees.

I. Exceptions. An amendment of a declaration of restrictions . . .

Section 27. *New Castle County Code* Chapter 40 (Unified Development Code or "UDC"), Article 31 ("Procedures and Administration"), Division 40.31.200 ("Miscellaneous application and other reviews"), Section 40.31.210 ("Limited or special use"), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.31.210. Limited or special use.

A limited or special use shall require the submission of a site plan unless a land development plan or parking plan is otherwise required. The Department may at its discretion waive ~~[the]~~any site plan ~~[submission review]~~requirement[s] where in the opinion of the Department the proposed use will have a limited impact on the surrounding property and roads. The Department shall consider the traffic, parking, lighting, noise, litter, event duration, event hours, and other similar criteria when considering this waiver.

Section 28. *New Castle County Code* Chapter 40 (Unified Development Code or "UDC"), Article 31 ("Procedures and Administration"), Division 40.31.200 ("Miscellaneous application and other reviews"), Section 40.31.230 ("Reserved"), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.31.230. ~~[Reserved]~~Property line adjustments.

A property line adjustment is limited to the relocation of a common property line between two (2) residentially-zoned parcels that are proposed for residential use, provided the resulting lots are in conformance with this Chapter or with a variance granted by the Department or Board of Adjustment.

- A. Applicability. A property line adjustment shall not be processed if:
1. The subject parcels were created on an open space subdivision plan, planned unit development or alternative development option.
 2. The adjustment would result in the transfer of a dwelling from one parcel to the other.
 3. Buildings, structures or uses on either of the subject parcels do not conform with this Chapter and do not have confirmed nonconforming status under Article 8.
- B. Submission requirements. The submission shall include an SLD-1 application and other materials as set forth in Appendix 1 to this Chapter to include a property line adjustment survey.
- C. Department review. If the property line adjustment survey complies with the requirements of this section, the General Manager of the Department or his or her designee shall sign the survey.
- D. Deed Recordation. Upon approval of the application and survey, new deeds with revised legal descriptions of the two subject parcels must be recorded with the New Castle County Recorder of Deeds. The deeds shall include the approved survey as an exhibit. Department approval of the property line adjustment shall expire in one year from the date the General Manager signs the survey unless both deeds are revised consistent with the approved survey and recorded.

Section 29. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.300 (“Provisions of general applicability”), Section 40.31.320 (“Applications generally”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.31.320. Applications generally.

A. *Forms . . .*

F. *Public notice of land development plans.*

1. *Notice in newspapers.* The Department shall . . .
2. *Posted notice.* The applicant shall . . .
 - a. *Location.* The posted sign . . .
 - b. *Size.* The posted sign . . .

- c. Plan information. The sign shall depict the lot configuration of residential applications or building footprint with square footage, paving, and landscaping in the case of nonresidential applications. The application number, the applicant's name and phone number, the name of the plan, and the tax parcel number(s) shall be prominently displayed on the sign. [~~The applicant shall affix the Department application number to the posted sign as soon as it becomes known.~~] The applicant shall be responsible [tø] for cleaning and replacing any posted sign (no more than once) which has been defaced to the extent that the information to be conveyed is no longer legible. . . .

Section 30. *New Castle County Code* Chapter 40 (Unified Development Code or "UDC"), Article 31 ("Procedures and Administration"), Division 40.31.700 ("Reviews and types of plans"), Section 40.31.711 ("Resubdivision plan"), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.31.711. Resubdivision plan.

Proposed revisions to previously recorded plans and previously platted parcels that will not result in any new lots or additional gross floor area shall be considered resubdivisions and shall be reviewed as minor plans for any of the following purposes.

- A. Lot line changes.
- B. E[~~establishment, e~~]limination or relocation of any easements depicted on a record plan or the establishment of an easement that qualifies as a subdivision, except that revisions to establish, eliminate or relocate a private storm drainage easement or publicly-maintained and funded storm drainage or sewer easement shall not be required to be depicted on a record plan unless otherwise required by this Chapter or Chapter 12.
- C. Changes to parking . . .
- D. Changes in the design . . .
- E. Minor changes to stormwater . . .
- F. [~~Corrections or a~~]Amendments to notes or other data shown on a plan.

Section 31. *New Castle County Code* Chapter 40 (Unified Development Code or "UDC"), Article 31 ("Procedures and Administration"), Division 40.31.700 ("Reviews and types of plans"), Section 40.31.712 ("Reserved"), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.31.712. [~~Reserved~~]Modifications to Diversified Planned Unit Developments (DPUD).

Revisions to Diversified Planned Unit Developments (DPUD) shall be reviewed in accordance with the standards set forth in this Chapter. A new rezoning ordinance shall be submitted for reintroduction and hearing if the revisions constitute one of the following:

- A. An increase in overall density.
- B. An increase in the number of units of any dwelling unit type by fifteen (15) percent or more.
- C. A decrease in open space.
- D. Major changes in the location of use types on the site which amend the concepts or original intent of the design represented by the exploratory sketch plan.

Section 32. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.700 (“Reviews and types of plans”), Section 40.31.716 (“Reserved”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.31.716. [~~Reserved~~]Record plan modification.

The General Manager of the Department shall have the authority to approve record plan modifications to correct errors and to allow minor revisions to previously-recorded plans.

- A. A record plan modification shall be permitted for any of the following purposes.
 - 1. To correct typographical errors or missing or incorrect bearings and distances or building restriction lines.
 - 2. To adjust lot lines to correct surveying errors or omissions.
 - 3. To adjust plan phasing for plans that are of a single use category, with the exception of mixed use projects.
 - 4. To correct site data and plan notes that were made in error.
 - 5. To eliminate or relocate any private easements depicted on a record plan
- B. Record plan modifications shall be reviewed as minor plans.
 - 1. The record plan modification shall retain the original plan application number.
 - 2. Only modifications for permitted revisions and the required supersedes note may be depicted on the plan.

3. The Department shall forward the record plan modification to outside agencies for review and approval as it deems necessary.
4. Upon Department approval, the plan shall be recorded in the Office of the Recorder of Deeds.

Section 33. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.800 (“Performance guarantee”), Section 40.31.820 (“Land Development Improvement Agreement (LDIA)”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.31.820. Land Development Improvement Agreement (LDIA).

Except for minor residential subdivisions or plans for which a governmental entity is the applicant or property owner, [A]all improvements contemplated in minor or major land development plans as required by this Chapter for sewer, drainage and detention, as well as for other improvements such as stormwater management facilities, parking, curbing, paving, sidewalks, open space improvements and common facilities, property monuments, earthwork, lighting, landscaping and bufferyards (except for replacement of on-lot residential landscaping), shall be subject to a performance guarantee.

- A. The developer's engineer . . .

Section 34. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.800 (“Performance guarantee”), Section 40.31.840 (“Release of surety”), is hereby amended by adding the material that is underscored, as set forth below.

Sec. 40.31.840. Release of surety.

A. Upon completion of all or part of the improvement, the developer may request a reduction or closure of the surety or performance guarantee. The Department shall have the development inspected. Any deficiencies shall be identified and the developer notified in writing of the deficiencies. If all work is complete and a maintenance bond provided, the surety shall be closed. For work proceeding in stages, the developer may request partial release. Prior to release, a maintenance guarantee shall be required.

B. When a resubdivision plan is recorded to eliminate all improvements shown on a previously recorded land development plan or revert subdivided property to its status prior to the most recent recorded land development plan, or when a plan sunsets in accordance with Section 40.01.130, the Department may release the required surety.

Section 35. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Division 40.31.900 (“Prohibitions, enforcement, and penalties”), Section 40.31.920

("Enforcement"), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.31.920. Enforcement.

A. *Administrative enforcement:*

1. [~~Code violations. Health, safety, welfare of public not in jeopardy.~~] Pre-deprivation show cause hearing: Except as provided in subsections 2 and 3 below, i[[f] such violations are not remedied within the time specified in the notice, the General Manager of the Department or his or her designee, shall schedule a rule to show cause hearing and provide the person an opportunity to defend his, her, or its conduct at a show cause hearing prior to any penalty being imposed. After such rule to show cause hearing, the General Manager of the Department or his or her designee, shall render a decision within ten (10) days and send a written letter to the person informing him, or her of his or her decision and detail the reasons for any adverse action taken.

2. The General Manager, or his or her designee, may issue a citation that imposes a civil penalty for violation of any code provision delineated herein. A pre-deprivation show cause hearing shall not be required prior to the issuance of the citation if the property owner or responsible party is provided an opportunity to contest the citation within ten (10) business days of its issuance.
 - a. Citations may be issued for a violation of:
 - i. Sections 40.03.420.A.6, 40.03.420.A.8, and 40.03.420.A.9 (concerning home occupations).
 - ii. Section 40.03.440 (concerning sale of motor vehicles as an accessory use).
 - iii. Sections 40.06.030.B.6.c and 40.06.030.B.6.d.iii (concerning Electronic Variable Message Sign (EVMS)).
 - iv. Section 40.06.040.E (concerning prohibited signs).

 - b. The civil penalty may not exceed \$50.00 for each violation that remains after the tenth (10th) calendar day of issuance of the notice of violation. However, any civil penalty not paid within thirty (30) calendar days from the date of the citation shall double.

 - c. After the property owner or responsible party has an opportunity to contest the citation through an administrative appeal process, the violation shall constitute a continuing violation if it is not remedied. A notice of violation shall not be required for a continuing violation and the General Manager, or his or her designee, may issue a citation and impose an additional \$50.00 penalty each day the violation continues.

- d. The owner of a property or the responsible party aggrieved by any citation issued pursuant to this section may, within ten (10) business days of the date of the citation, follow any one of the following administrative appeal processes to contest the citation:
 - i. Request a show cause hearing as described in subsection A. Requests shall be made in writing to the General Manager, or his or her designee, unless a different method is delineated in the notice of violation or citation.
 - ii. Submit a detailed written explanation of the grounds for the appeal to the General Manager, or his or her designee.
 - f. Stay. An appeal of a violation under this Section shall act as an automatic stay of the action being appealed.
 - g. The General Manager, or his or her designee, shall issue a written decision affirming, modifying, reversing, revoking or vacating the citation. The decision may be appealed pursuant to Division 40.31.500.
3. ~~[a. Exceptions.]~~In the event a violation of ~~[Division 40.06.000.D]~~ Section 40.06.040.E is reasonably believed to exist by the Department or a Code Enforcement Officer, the Department or Code Enforcement Officer may ~~[shall]~~ immediately confiscate the sign, display, or device. Any~~[H]~~ sign[s], display[s], or device~~[s-immediately]~~ shall become the property of the County if the property owner or responsible party does not claim it within ten (10) calendar days from the date of its~~[upon]~~ confiscation. No hearing shall be provided to the ~~[violate]~~ property owner or responsible party unless additional penalties are pursued.
- 4~~[2]~~. ~~[Unsafe work or work being done in the absence of necessary approval(s), plan(s), or permit(s).]~~ Post-deprivation show cause hearing: whenever the General Manager of the Department
- 5~~[3]~~. Penalties that may be imposed after hearing:
- a. *Refusal to issue any further building permits ~~[and]~~ or certificates of occupancy. .*
 - c. *Administrative fines.* Notwithstanding any other section of this Chapter, the General Manager of the Department, or his or her designee, may assess a civil penalty to the property owner or person responsible for the property for violation of any code provision delineated in is Chapter, or violation of any permit, certificate, approved plan, or directive of the General Manager, or his or her designee. The civil penalty may be up to one to one hundred (\$100.00) dollars for each day the violation continues. The General Manager of the Department, or his or her designee, may also assess the property owner or person responsible for the property any expense incurred by the County for the removal, abatement or

