



Quality Private Community Open Space Enhanced Factsheet

Table of Contents

- Summary
- Purpose
- Requirement for Maintenance Organizations
- Required Guarantees and Financial Contributions
- Construction, Completion and Inspection Requirements
- Transfer of Ownership
- Maintenance of Open Space and Common Facilities

SUMMARY

This legislation aims to achieve higher quality private open space—both in terms of its significance to the community and its environmental value. It defines a phased process for turning over community open space with steps to help ensure successful transition, establishment, and long-term maintenance. The ordinance will also allow flexibility to adapt open space landscaping as the needs of the community change over time.

PURPOSE

New provisions are intended to:

- Incorporate environmentally sensitive designs into the open space layout with emphasis on providing maximum resource protection.
- Permit passive use areas for activities such as farming, community gardens and solar fields, to reduce the burden on community required by traditional open space areas that required costly regular maintenance.
- Integrate stormwater management into the landscape design so that these features are an aesthetic and functional amenity of the community.

REQUIREMENT FOR MAINTENANCE ORGANIZATIONS

Prior to plan recordation, the developer shall identify an appropriate maintenance organization or governmental body responsible for maintaining the open space and common facilities. Each form of maintenance organization has standards regarding maintenance responsibility. New provisions for each are as follows:

- *Condominium.*
 - The form and content of the Declaration must be approved by the Office of Law prior to plan recordation.
 - A staging plan shall be submitted prior to recordation that delineates areas to be maintained as open space to ensure the open space can be turned over to the community while the remaining units are constructed. The areas around the buildings will be inspected for compliance during the final inspection of the building permit. These areas shall be free of debris.
- *Maintenance corporation.* This option allows for the developer to form a non-stock corporation pursuant to state law.
 - The County must approve this organization and its certificate of incorporation. The Developer is responsible for rectifying any discrepancies between the documents for the life of the community at no cost to the community. The owner of the open space is responsible for enforcing all deed restrictions within the community.
 - The developer shall be responsible for paying an assessment for each parcel owned within each phase that has been turned over to the community.

Conditions of recordation

Prior to recordation of a plan, the developer of the property must demonstrate that the maintenance organization has a perpetual obligation to maintain the open space and common facilities, that all lot or unit owners have a right to enjoy the private open space and common facilities, subject only to reasonable rules and regulations, and the payment of appropriate maintenance organization fees. New provisions include:

- The Developer's design professional shall design the project phases of open space to be turned over when they are completed in accordance with turn-over requirements.
- All open space, classified as active recreation, be graded to permit activities within the space to occur safely. Slopes must not exceed 5:1 unless the developer demonstrates that the use would accommodate a steeper slope.
- A maintenance plan must be provided for all existing undisturbed land or structures, to remain within the subdivision and further demonstrate that it is not a health, safety, or welfare issue.
- Open space, that is deemed active recreation, must be situated in proximity to all lots unless a means of access is provided within the open space.
- All historic structures to be preserved must to be kept in good repair and if they are to be reconstructed, the work shall be complete prior to the issuance of seventy-five (75) percent of building permits within the subdivision.
- Contaminated soils shall not be buried within any residential open space or lots.

Duty to inform home buyer

In residential home sales, the seller of a lot, or his or her authorized agent, has an affirmative duty to inform the purchaser about maintenance corporation membership and educate the purchaser about members' responsibilities. This duty requires the seller to provide the buyer with a copy of the maintenance declaration and bylaws. A written acknowledgment stating that the seller has fulfilled his or her duty under this section shall be signed by the purchaser.

New provisions require that the seller provide a document outlining the maintenance to be performed by the maintenance corporation to each buyer within the maintenance declaration.

REQUIRED GUARANTEES AND FINANCIAL CONTRIBUTIONS

Performance guarantees are required to ensure that open space is designed, built and maintained according to the plan submission. Possible violation includes:

- The County may pull the performance bond of any Developer who ceases work for longer than two (2) years and complete the open space for the phases that have been constructed and not turned over.

Maintenance escrow

The developer shall place funds in an interest-bearing escrow account equivalent to the cost of maintaining the private open space and common facilities for a two (2) year period, as determined by the construction plans, natural resource area open space management plan, open space management plan, and landscape plan, but in no event shall the amount be less than the equivalent of three hundred (\$300.00) dollars per lot within the subdivision. New provisions require that in addition, the amount shall include long term replacement cost for any privately maintained alleys, streets, and storm sewer.

The funding of this account shall coincide with the real estate settlement for each lot and the developer must demonstrate that the funds have been placed with an independent escrow agent who is not under the power and control of the developer. The developer shall have a professional provide a written cost estimate to maintain the proposed open space. The estimate must include all privately maintained aspects of the open space (stormwater management, storm sewer, private streets, sidewalk, landscaping, etc.)

Residential stormwater management facility maintenance fund

The developer shall pay funds to the County for the purpose of residential stormwater management facility maintenance and inspections. The money shall be used for costs associated with annual inspections, long term sediment clean-out, and structural repair and reconstruction of facilities located in residential subdivisions throughout the County. The amount shall be determined on a phase-by-phase basis and noted on the Record Plan. The amount must be paid prior to the turnover of the facility to the community and the County may increase the amount if construction of the phase has not occurred within 5 years of recordation.

Non-residential stormwater management facility maintenance fund

The developer shall pay funds to the County for the purpose of non-residential stormwater management facility maintenance annual inspections according to a standard formula developed by the Department of Public Works based on inspection costs incurred by the Department. Potential new provisions include:

- Funds must be paid prior to scheduling the pre-construction meeting if no building permit is proposed with the project and the fee is noted on the plans. Projects with permits shall have the amount paid prior to occupying.
- The County may increase the amount if the construction of the phase has not occurred within 5 years of recordation. The additional amount shall be calculated as outlined within this chapter. Notice shall be provided to the Developer prior to the start of construction of the phase. The additional amount shall be paid prior to receiving a certificate of occupancy.



CONSTRUCTION, COMPLETION AND INSPECTION REQUIREMENTS

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. Potential new provisions require that:

- All open space shall be final graded prior to the release of building permits within each phase. The requirements must be outlined on the construction plan for all requirements to be completed. These requirements are sidewalk/walking path, conveyance systems, landscaping, stormwater management facilities, reforestation, evasive treatment, etc. The sequence of construction must outline how each of these are addressed during the construction of the phase. An extension for planting of landscaping must be made by the Engineering Manager or his designee due to the time of year (i.e., winter or summer). The request must be made by the Developer prior to the scheduling of a Post Bulk inspection.
- Construction of future phases will be prohibited if the open space within the previous phase is not completed, has an extension, or is not being maintained in good condition. Exception for cut or fill necessary from another phase under construction.
- Perimeter monuments shall be installed, and documentation from a Professional Surveyor provided to the Department prior to the release of permits. Permits designated as model homes may be issued prior.
- Community signs must be installed prior to issuance of fifty (50) percent of the total building permits within the subdivision.
- The Developer shall provide semiannual reports by the first of January and July outlining required maintenance and future progress over the next six (6) months to the Department after the passing of the post bulk inspection. All items requiring maintenance shall be noted with a time for completion. The January report shall include a summary of all work that was performed over the prior year. The Department shall withhold permits when reports are not submitted on time until such time they are received.
- If the developer cannot complete the open space pursuant to the timeframes designated on the plan, status report or as provided in this section, the Department may, for good cause shown, allow additional time for completion of the open space and/or common facilities subject to the following and may issue additional building permits.
 - The developer shall provide the Department with a contract and a letter of credit or certified check in the amount of one hundred (100) percent of the cost of completing the unfinished open space and common facilities along with a review and processing fee. The contract shall provide for the completion of the open space and common facilities as soon as practicable and provide for the default of the funds for failure to comply with the extended timeframes. The contract and letter of



credit shall be approved by the Office of Law and the Department of Land Use. The cost estimate shall be prepared by a County licensed contractor and provided to support the cost of completion. The Department may require a third-party estimate when the estimate would not cover the cost of construction to complete the work. For phased projects the amount to complete shall only be for the work remaining within the phase(s) noted within the agreement. Agreement and extensions shall not exceed six (6) months. Only 2 extensions shall be granted. At which time the agreement is not in good standing the Developer shall be found not in Good Standing and all County services withheld.

- An agreement and extension may be granted only if the Department determines that one (1) or more of the following conditions apply:
 - weather conditions over the last six (6) months prevented the timely completion of the open space or common facilities; if the area cannot be stabilized with vegetation during the normal growing season as outlined within the Delaware Erosion and Sediment Control Handbook for vegetation, alternative stabilization techniques, shall be required; or
 - sound engineering and construction practices warrant the extension.
- If the extension is granted, the developer shall provide written notification to the current property owners and those with sales agreements describing the reasons for the delay and providing an expected schedule of completion. Documentation of the letter and verification of distribution shall be provided to the Department prior to acceptance of the agreement. Examples of verification are certified letter, acknowledgement from the homeowner's association, sign posting on site, etc. No permits will be released until documentation is provided to the Department.

Condition of developed open space areas

At the time of inspection, developed open space must be in good condition so that it may be used for its intended purpose. The open space shall be, at a minimum:

- Clean and contain no surface or buried debris. The Developer is responsible for the life of the community to remove the debris and remediate the area.
- Graded pursuant to the Grading Plan to drain and be free of standing water after forty-eight (48) hours, except within undisturbed natural areas. Any modifications to address standing water that cannot be addressed by the approved plan shall require a modification to the plan that shall obtain County approval.
- Free of standing dead trees, limbs and branches that pose a safety hazard to open space users. Notwithstanding the foregoing, nothing herein shall require removal of limbs and branches within forested areas, but shall only require removal of such hazards along the perimeter of the forested open space areas. Line defining plant material planted by a lot owner may be permitted as long as the root ball does not encroach into the open space.
- Free of conditions harmful to the preservation of trees thereon, such as fill or excavation around tree root zones.

- Free of unnatural conditions created by the developer that may be hazardous to users of the open space within disturbed areas. The requirements of this subsection shall be satisfied by, for example, but not by way of limitation, construction of new features or safety improvements such as fences or berms to protect open space users from newly created hazards; e.g., abrupt drop-offs from sidewalks to drainage ditches, steep embankments.
- Free of any remnants from construction stockpiles and construction material.
- Free of soil compaction by construction activities. All areas subject to soil compaction shall be broken up or otherwise loosened to a depth of twelve (12) inches. This shall be photographically documented prior to the passing of a post bulk inspection on areas as noted on the Construction Plans or where haul roads have been utilized.
- Vegetated in accordance with the Additional Standard and Specifications of the Delaware Erosion and Sediment Control Handbook, and in accordance with the natural resource area open space management plan, open space management plan or landscape plan as certified by the professional(s) who designed and prepared the plan depicting the condition of the completed open space. The Department shall require the Developer to reseed and stabilize any and all areas where a satisfactory stand of vegetation as determined by the Department does not exist at the time of the ninety (90) percent inspection. A re-inspection shall be required when perennial vegetation is established prior to the release of the performance bond.
- Free of all unauthorized encroachments; e.g., sheds, gardens, fences, line-defining plant material, etc.
- Improved according to the open space management plan, natural resource area open space management plan, landscape plan and/or related construction drawings. This requires that stormwater management facilities must be completed and maintained. Stormwater management areas must be free of algae, invasive vegetation, sediment, and undesirable vegetation that is detrimental to the proper operation of the facility. A Registered Landscape Architect shall certify the vegetation on the Landscape Plan is alive. If vegetation does not germinate the County shall require soil testing at the Developer's expense to verify adequate nutrients are present within the soil. Any recommendations from the soil testing shall be implemented and vegetation present prior to acceptance of the open space.
- Open space shall not be utilized for construction access or disturbed once completed unless maintenance is needed within the open space.
- All stormwater management facilities, private storm sewer, private streets, and conveyance systems shall be complete. The County must find the as-builts and pipe video acceptable prior to the turnover of the open space. The private storm sewer and streets shall be certified by a third party through a report submitted to the Department.
- Private storm pipe that has less than 10 years' service life at the time of turnover shall be replaced.
- All privately maintained storm sewer and stormwater management outfall pipe and structures shall have a minimum life span of fifty (50) years.
- All storm pipe shall be installed in accordance with all DelDOT standards and manufactures specifications.

- All open space shall be clearly delineated until the open space is turned over to the community. The Department will be responsible for providing guidance of acceptable delineation methods.
- Permission to tie into a pipe system shall be provided from the owner of the downstream system when an easement or documentation of maintenance responsibility is or is not present.
- No emergency spillways of stormwater management facilities shall discharge to a residential property unless a conveyance system exists that can adequately convey the storm event the spillway is designed to discharge. The discharge shall be conveyed through an easement with no impact to surrounding structures.
- The Developer is responsible for snow removal until the streets are accepted by DelDOT. A snow removal plan shall be established and communicated to the homeowner owner association. Private streets shall be maintained by the Developer until they are turned over to the community.

Condition of natural open space areas

A new provision for natural open space areas allows disturbance where farmland is being converted to passive open space if farm operations cease.

Inspection and approval process

All open space must be inspected. The following provisions will be added to the inspection process:

- The developer shall contact the Department, in writing, requesting an inspection of the open space. The developer's request shall include the items required by the Department such as certifications, acceptable as-built surveys with required documentation, status reports, applicable plans, studies, reports, private storm video, names and emails for all board members or any other additional information and all required fees. All requests for a re-inspection shall include a response letter with photographic documentation of field conditions, along with any required documentation revisions. The Developer shall also provide documentation that they are in good standing with New Castle County with all taxes, has no outstanding fees due, and no current violations present on the open space.
- Once the inspection takes place, the Department will notify the developer, in writing, of any defects or non-compliant items found during the inspection and will specify a time period in which to correct them. All items shall be corrected within the time period unless an extension is granted by the County. Any outstanding items will be subject to re-inspection fees until the item is completed.
- A certified Landscape plan shall be submitted to the County that has occurred within 15 days of requesting an inspection verifying the site is in accordance with the open space management plan. Seeding tickets of the open space shall be provided with the



Landscape Plan along with verification the vegetation growing is in accordance with the plan.

- The Developer shall provide notification to the Community of the schedule inspection. The community may have a member present for the inspection.
- The design professional who prepared the plan, unless a written request is made to and approval is granted by the Department, for another professional, shall provide a certification verifying the stormwater management design for the site is functioning as designed and its intended purpose.
- The Developer shall provide documentation from his council verifying there are no deed restriction violations at the time of turnover. They are responsible to enforce the restrictions until the open space is turned over.

TRANSFER OF OWNERSHIP

Developers shall transfer ownership of open space in the following manner.

- Open space shall be conveyed no later than the issuance of building permits for ninety (90) percent of the dwellings within each phase in the subdivision as noted on the Record Plan.
- All costs associated with the transfer of open space and the recordation of the open space deed shall be borne by the developer.

When projects are phased for open space turnover, the Developer shall convey each phase to the maintenance organization. The owner of each improved lot within that phase shall be responsible to pay their share of maintenance cost for the completed open space.

Title transfer process

The developer, or its designee, shall contact the Office of Law to make arrangements for the transfer. A new provision states that if transfers that do not occur within sixty (60) days of passing an open space inspection a new inspection shall be required and shall be subject to reinspection fees. An extension may be granted by the Office of Law.

Condominiums

A proposed new provision requires that all projects provide a staging plan for conveyance of the open space to condominium association while units are constructed. The items around the unit are to be verified during the building permit final inspection and shall be noted on the lines and grades plan.



MAINTENANCE OF OPEN SPACE AND COMMON FACILITIES

Maintenance by developer

Where the developer of a subdivision maintains the open space and common facilities, a potential new provision allows the collection of a user fee for the open space.

Maintenance by maintenance organization

A potential new provision would require that developers be responsible for conveying all documents (i.e. Open Space Management Plans, Stormwater maintenance specifications, private storm sewer, etc.) required to maintain the open space to the maintenance organization. These documents shall be in the format of electronic and paper. Documentation shall be provided to the Department verifying these documents were provided. All minor maintenance shall be performed by a County approved contractor.

Changes to open space or common facilities

- Developer. If a plan proposes changes to private open spaces or common facilities delineated on an existing plan, a petition supporting the record plan shall be included with the submission. A new provision allows substitutions of plant material from the Landscape plan with Land Use Department approval if the plants conform to the plant list in this Chapter.
- Maintenance corporation or condominium organization. Open space that has been turned over to the homeowner association can be modified by conducting a vote in accordance with the HOA's bylaws. Any changes shall be submitted in writing to the Department for an administrative review and to maintain a record of all changes.