

Introduced by: Mr. Tackett
Ms. Kilpatrick
Date of introduction: August 25, 2020

SUBSTITUTE NO.1 TO ORDINANCE NO. 20-090

**TO AMEND NEW CASTLE COUNTY CODE CHAPTER 40
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE OR “UDC”),
REGARDING ARTICLE 27 (“MAINTENANCE ORGANIZATIONS, OPEN SPACE,
AND COMMON FACILITIES”), ARTICLE 31 (“PROCEDURES AND
ADMINISTRATION”), AND APPENDIX 2 (“FEES”)**

WHEREAS, on December 31, 1997, New Castle County Council adopted and the County Executive approved the *Unified Development Code* (UDC); and

WHEREAS, the New Castle County Department of Land Use and the New Castle County Council have adopted and approved several subsequent text amendments to Article 27 of the UDC to further clarify, expand and improve upon certain provisions of the original UDC; and

WHEREAS, the Department of Land Use has continued to review, interpret and monitor the continued application of Articles 27 and 31 of the UDC with regard to maintenance organizations and open space and common facilities and has identified additional clarifications, corrections, improvements and changes necessary to further enhance the UDC regulations, standards and procedures; 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 27 (“Maintenance Organizations, Open Space, and Common Facilities”), Division 40.27.100 (“Requirement for maintenance organizations”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.27.120. Exceptions.

A maintenance organization shall not be required under the following circumstances:

- A. The record plan...
- B. The record plan contains no private open space but depicts common facilities and:
 1. The ~~Department~~Office of Law and the Department...

2. An appropriate agreement, ...
3. Such agreement is approved by the ~~[Department]~~Office of Law and the...

Sec. 40.27.130. Required organizational form.

Prior to plan recordation, the developer shall identify an appropriate maintenance organization or governmental body responsible for maintaining the open space and common facilities. The maintenance organization shall consist of one (1) of the following entities.

- A. *Condominium.* A condominium organization is permissible only if the property complies with the requirements of 25 Del. C. Ch. 22 (Unit Property Act)~~[-]~~ or Ch. 81 (Delaware Uniform Common Interest Ownership Act or "DUCIOA") depending upon which Act applies to the condominium organization. In such a case, "common elements" as used in the Unit Property Act or DUCIOA as applicable shall, in addition to its given definition, mean and refer to "open space" and "common facilities" as used in this Article. The Declaration required by the Unit Property Act or DUCIOA shall, by reference to this Article, subject the unit owners to the provisions of this Article.
 1. The form and content of the Declaration ~~[as required by the Unit Property Act]~~ shall be approved by the ~~[Department]~~Office of Law prior to plan recordation.
 2. The plan shall reference...
- B. *Third party conservancy.* The County may...
 1. The ability to ...
 6. Assurance that at such time the organization can no longer perform its management and maintenance responsibilities, all open space shall be transferred to a party responsible for management and maintenance of the open space. The owner shall include such reverter or retransfer provisions in the deed transferring the land to the maintenance organization. Such provisions must be approved by the ~~[Department]~~Office of Law before the open space is transferred.
 7. Execution of documents including maintenance agreements and conservation easements acceptable to the Department and ~~[Department]~~Office of Law that ensures the preservation of the open space in the condition contemplated by the record plan, natural resource area open space management plan, landscape plan, and any other applicable plan.
 8. Language on the record plan ...

- C. *Maintenance corporation.* Unless Subsection[s] A. or B. applies, the developer shall form a non-stock corporation pursuant to the provisions of 8 Del. C. Ch. 1 (General Corporation Law).
1. Prior to plan recordation, the developer shall submit to the Department and the ~~[Department]~~Office of Law, for their review and approval, the maintenance declaration...
 2. The maintenance declaration...

Sec. 40.27.140. Conditions of recordation.

Prior to recordation of the plan, the developer of the property shall demonstrate:

- A. The maintenance organization...
- E. That all other provisions...
- F. The developer has provided the Department with the name, address, email, and telephone number of the developer's representative who will be responsible for maintenance of open space and common facilities during development of the subdivision.
- G. The developer...
- H. The developer has provided a natural resource area open space management plan, open space management plan, landscape plan or an active recreation plan or a combination thereof.
1. The specific content of the plan(s) will be established by the Department according to the requirements of this Chapter for the particular subdivision in question.
 2. The plan(s) must include open space and common facility construction and the open space and common facility completion sequence. The completion sequence should be phased where practical so that the construction and completion of open space and common facilities coincide with the completion of the dwelling units that border said open space or common facilities. The plan must specify the planting season for all landscaping to be installed.
- I. Prior to construction plan approval, the developer shall provide open space classified as active recreation with a slope that permits activities within the space to occur safely. Slopes must not exceed 5:1 unless the developer can demonstrate that the use would require a steeper slope.
- J. The developer has provided maintenance specifications on a plan for all existing undisturbed land or structures to remain within the subdivision and further demonstrate that the land or structure does not present a danger to public health, safety, or welfare.

- K. Approval in accordance with DNREC Remediation Section (or as amended) for all sites containing contaminated soils. No development shall be permitted that places any burden or liability associated with contaminated soils on residential maintenance organizations.
- L. All privately maintained storm sewer and stormwater management outfall pipe and structures with materials rated by the manufacture to have a life span at a minimum of fifty (50) years. Metal pipe is not permitted.
- M. Plans require restoration areas to be established prior to turnover. Monitoring requirements for the areas to achieve establishment must also be noted on the plans.

Sec. 40.27.150. Duty to inform home buyer.

In residential home sales...

- A. [~~New subdivisions~~]New subdivisions. The developer of a new subdivision...
 - 1. The seller shall obtain...
 - 2. A complete copy...
 - 3. The seller must provide documents outlining the open space maintenance to be performed by the maintenance corporation, as outlined on the approved subdivision plan, to each buyer subject to the maintenance declaration.
- B. *Existing homes*. In existing subdivisions...

Section 2. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 27 (“Maintenance Organizations, Open Space, and Common Facilities”), Division 40.27.200 (“Required guarantees and financial contributions”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.27.210. Performance guarantee for open space and common facilities.

A. The performance guarantee shall become part of the Development Agreement pursuant to Article 31.

B. The County may pursue the performance guarantee against any Developer that has not completed the common facilities within a phase where a period of one year has passed since a dwelling unit permit was obtained.

Sec. 40.27.220. 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, ~~[or]~~ and landscape plan, but in no event shall the amount be less than the equivalent of three hundred (\$300) dollars per lot within the subdivision. The escrow will also include an amount equal to ten (10) percent of the cost of acquiring and installing the landscaping. All interest that accrues in this account shall be turned over to the maintenance organization.

- A. The funding of this account shall coincide with the real estate settlement for each lot and shall be verified ~~[prior to]~~ no later than the issuance of twenty-five (25), fifty (50) and seventy-five (75) percent of [building]dwelling unit permits within the subdivision. The Department shall withhold the building permits for the ~~[remaining twenty five (25) percent]~~ remainder of the subdivision until the Department is furnished with satisfactory proof that the account has been fully funded in accordance with the requirements of this Section.
- B. The developer ...
- C. The escrow agreement ...
- D. At the time the homeowners assume control of the maintenance corporation and elect a board of directors, the escrow amount for one hundred (100) percent of the lots within the phase being turned over to the community plus any interest shall be transferred to the maintenance corporation. Such transfer shall not occur without the approval of the ~~[Department]~~ Office of Law.
- E. The maintenance escrow amount shall become part of the Land Development Improvement Agreement pursuant to Article 31 and the fee shall be noted on the record plan.
- F. The Developer shall have a professional written estimate of the annual cost to maintain the proposed open space that is reviewed and approved by the Department.

Sec. 40.27.230. 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.

- A. An amount shall...
- B. The money...
- C. [Upon the issuance of seventy five (75) percent of the building permits, t]The amount shall be determined on a phase-by-phase basis and as noted on the record plan. The amount for a phase shall be paid prior to the title transfer of the open space within that phase. The total

amount for the subdivision shall be paid no later than the issuance of seventy-five (75) percent of permits for dwelling units in the subdivision. The Department shall withhold the issuance of any additional building permits until the Department is furnished with satisfactory proof that the funds have been provided to the County in accordance with the requirements of this section.

- D. Any obligation...
- E. The County ...
- F. The County will review and may increase the amount if construction of the phase has not commenced within five (5) years of recordation. The developer must pay any additional amount required prior to the time renewed construction plans are approved.

Sec. 40.27.240. Nonresidential stormwater management facility maintenance fund.

The developer shall pay funds to the County for the purpose of nonresidential stormwater management facility annual inspections according to a standard formula developed by the Department of Public Works based on inspection costs incurred by the Department.

- A. Any obligation to contribute to the Long Term Stormwater Maintenance and Inspection Fund shall become part of the Land Development Improvement Agreement pursuant to Article 31 and the [fee]amount shall be noted on the record plan. The amount will be determined on a phase by phase basis.
 - 1. If the development does not require a building permit, the amount must be paid prior to scheduling the pre-construction meeting.
 - 2. If the development requires a building permit, the amount must be paid prior to the issuance of the first certificate of occupancy.
- B. The County shall provide the developer with a letter that acknowledges receipt of the funds upon request.
- C. The County will review and may increase the amount if construction of the phase has not commenced within five (5) years of recordation. The developer must pay any additional amount required prior to the time renewed construction plans are approved.

Section 3. *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”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec 40.27.310. Construction of open space and common facilities.

A. All areas designated...

B. All areas designated...

1. The Department may not issue more than fifty (50) percent of the total dwelling unit permits within the subdivision until [A]all active recreation areas and structured [recreational]facilities (clubhouses, pavilions, historical structures etc.) [shall be completed prior to]have been turned over to the community[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.
3. Open space and common facilities such as sidewalk/walking path/alleys, conveyance systems, landscaping, stormwater management facilities, reforestation, invasive treatments, and final grading must be outlined on the construction plan and must be completed prior to the release of any permit within the phase, other than a permit for a model home. The sequence of construction must outline how each of these is addressed during the construction of the phase. Any extension request must be submitted prior to the scheduling of a post bulk inspection. An extension may be approved by the Department when warranted for weather conditions and sound engineering practices.
4. Construction of an additional phase will be prohibited if the subdivision or land development is not in compliance with any approved plan or the County code.
5. Perimeter monuments must be installed, and documentation from a State-registered professional land surveyor provided to the Department prior to the release of dwelling unit permits other than permits for model homes.
6. The Department may not issue more than fifty (50) percent of the total dwelling unit permits within the subdivision until the community entrance signs have been installed.
7. Open space shall not be utilized for construction access or disturbed once completed unless maintenance is needed within the open space

~~[C. Unless waived by the Department, a natural resource area open space management plan, open space management plan, landscape plan and/or an active recreation plan shall be submitted for review at the time of review of the record plan for the subdivision.~~

1. ~~The specific content of the plan(s) shall be established by the Department according to the requirements of this Chapter for the particular subdivision in question.~~
2. ~~The plan(s) shall include open space and common facility construction and the open space and common facility completion sequence. The completion sequence shall be phased where practical so that the construction and completion of open space and common~~

facilities coincide with the completion of the dwelling units that border said open space or common facilities.

~~D. Prior to the issuance of both fifty (50) percent and seventy five (75) percent of the building permits, the developer shall submit a certified open space status report to the Department. 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, another professional may certify this report with the prior approval of the Department.~~

- ~~1. At a minimum, the open space status report shall contain the following information:-
 - a. A report of the condition of the open space.
 - b. A report of the percentage of open space completed.
 - c. A report evaluating the storm water management facilities (which may include as-built information and a functionality assessment).
 - d. The status of compliance with any approved plan including the sequence of construction of open space and common facilities.
 - e. An explanation of any reasons for noncompliance and plans including specific dates for compliance.
 - f. A schedule of completion of all developed open space and common facilities including a detailed explanation of plantings and completion of landscaping tied to upcoming planting seasons.
 - g. Any other information required by the Department related to completion time frames for open space and common facilities.~~
- ~~2. The Department shall review the open space status report within ten (10) days of receipt of the report or revised report. The Department may require changes to the report to ensure that the requirements of this Chapter and any applicable plan are satisfied. Once the Department approves the report, the recommendations in the report shall be enforced and any deviations from these recommendations, without Department approvals, shall constitute violations of this Chapter.~~
- ~~3. The Department shall withhold building permits until such time as the open space status reports are approved by the Department.]~~

C. When the developer passes the post bulk inspection, the developer must provide semiannual reports by the first of January and July outlining required maintenance and anticipated progress over the next six (6) months. All items requiring maintenance shall be noted with a time for completion. The January report must include a summary of all work that was performed over the prior year. If open space and common facilities are maintained in conformance with the plan for

three consecutive reports, the Department may reduce reporting to an annual basis. Reporting may be increased as deemed necessary by the Department if the open space is not maintained. The Department must withhold building permits until such time as the required reporting is provided to the Department.

~~[E.]D.~~ Where the open space or common facilities are to be developed, such development shall be completed at such time the open space area or common facilities are no longer directly and materially affected by construction activity but shall be completed no later than the issuance of ninety (90) percent of permits for ~~[building]dwelling units[lots]~~. The number of lots open for construction at any one time may be further limited by phases shown on the approved record plan, landscape plan, open space management plan or construction management plans.

~~[F.]E.~~ If the developer cannot complete the open space pursuant to the timeframes designated on the plan, ~~[in the open space]~~ 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.

1. The developer shall provide the Department with a ~~[contract]~~ written proposal for the extension request (“Proposal”) and a letter of credit or certified check in the amount of one hundred- ~~twenty-five~~ (1~~00~~25) percent of the fair market value of completing the unfinished open space and common facilities ~~[and an additional one thousand (\$1,000.00) dollars as]~~ along with a review and processing fee as outlined in Appendix 2. The ~~[contract]~~ Proposal 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]~~ Proposal and letter of credit shall be ~~[approved]~~ subject to review and approval by the ~~[Department]~~ Office of Law and the Department. A County licensed contractor shall provide the Department with a fair market estimate to complete the unfinished open space and common facilities. The Department may require additional estimates if it believes that the fair market estimate will not cover the cost to complete construction and turnover. For phased projects the County may accept an amount sufficient to complete work within particular phases.
2. ~~[An extension]~~ A Proposal may be ~~[granted]~~ approved only if the Department determines that one (1) or more of the following conditions apply:
 - a. ~~the extension is necessary due to unforeseen conditions or events beyond the control of the developer that prevented timely completion of the open space or common facility;~~
 - b. ~~the delay in the completion is mandated by a governmental agency;~~

~~[e.]a.~~ weather conditions over the previous 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, may be required];~~ or

~~[d.]~~b. sound engineering and construction practices warrant the extension~~[- including the potential for sediment generation from undeveloped lots].~~

3. If ~~[the]~~an 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. Prior to the release of additional permits, the Department must receive verification of distribution of the notification in the form of certified letters, affidavits of site postings or such other proof as the Department may find acceptable.
4. An extension and any renewal shall not exceed six (6) months. The Developer is responsible to pay the County as outlined within Appendix 2 when an extension expires without completion of the open space and when the developer has not made a complete submission for renewal.

Sec 40.27.320. Condition of developed open space areas and common facilities.

At the time of inspection, developed open space and common facilities must be in good condition so that ~~[it]~~they may be used for ~~[its]~~their intended purpose and must be in conformity with the following requirements. These requirements are not all-inclusive but are intended to describe and establish minimum levels of quality for open space. The open space and common facilities must ~~[shall]~~be, at a minimum:

- A. Clean and contain ...
- B. Graded to drain ~~[well]~~and be free of standing water seventy-two (72) hours after a rain event, except within undisturbed natural areas.
- C. Free of standing ...
- E. Free of unnatural conditions ...
- F. Free of any remnants from construction material and soil stockpiles.
- G. Free of soil compaction by construction vehicles or construction material stockpiles. All areas subject to soil compaction shall be broken up or otherwise loosened to a depth of twelve (12) inches. The developer must provide photographic documentation of the appropriate equipment performing the work on areas noted on the construction plans or where haul roads have been utilized. Documentation must be provided prior to the release of dwelling units permits.
- H. Vegetated in accordance...
- I. Free of all unauthorized encroachments; (e.g., sheds, gardens, fences, line-defining plant material~~[-ete]~~).

- J. 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 pursuant to Chapter 12. Stormwater management areas must be free of algae, invasive vegetation, and undesirable vegetation that is detrimental to the proper operation of the facility.
- K. Delineated with instructional signs.
- L. The Department may utilize a third-party professional to confirm the good condition of any open space area or common facility prior to acceptance of the open space.

Sec 40.27.340. Inspection and approval process.

These procedures shall be followed for inspections of open space and common facilities.

- A. 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, as-built surveys, ~~[open space]~~status reports, applicable plans, studies, reports, private storm sewer video, contact information for all board members, notification to the district councilperson or any other additional information and all required fees.
- B. Within ~~[ten]~~twenty ~~([10]~~20) days of the receipt of the request, the Department must coordinate an inspection of the open space for conformance with this Article and this land transfer procedure. Once the open space inspection has been scheduled, the Department will notify the board members and district councilperson. There shall be no fee for the first inspection. Notwithstanding the foregoing, if weather conditions prevent the Department from inspecting the open space within the ~~[ten]~~twenty ~~([10]~~20) day period, as determined by the Department, the Department ~~[shall]~~must have an additional ten (10) days in which to make the inspection. 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. Non-compliant items not corrected within the specified time period will be subject to Sediment Management and Erosion and Sediment Control re-inspection fees.
- C. When all specified defects and non-compliant items have been corrected, the developer shall notify the Department in writing with a response letter and photographic documentation of this fact. The Department will coordinate a reinspection~~[of the land as provided]~~. Record Plan Open Space reinspection fees are outlined within Appendix 2 of this chapter. [The first re-inspection fee shall be two hundred fifty dollars (\$250) payable to the County prior to the reinspection. If the reinspection reveals uncorrected conditions, or unacceptable conditions created after the first inspection, they will be recorded, in writing, and sent to the developer. The developer must correct the problems and renotify the Department. The second reinspection fee shall be five hundred dollars (\$500), the third shall be seven hundred fifty dollars (\$750), the fourth and subsequent reinspection fees

~~shall be one thousand dollars (\$1,000) all payable to the County prior to any additional reinspection.]~~ At the time the Department finds that the condition of the open space conforms to all plan specifications and any requirements under this Chapter, the developer shall be notified within ten (10) days, in writing, that the open space and common facilities have been approved.

D. Prior to requesting an inspection, the developer must submit a landscape plan, certified by a registered landscape architect and dated within fifteen (15) days of the request that affirms all vegetation is installed, alive, and in good condition.

E. A third-party professional must certify that the private storm sewer and streets are constructed in compliance with DeIDOT standards. The Department must find the report, as-built plan and pipe video acceptable prior to the inspection of the open space.

[E]F. The developer must provide written notification to each dwelling unit owner of the scheduled inspection at least five (5) working days prior to the inspection date and affirm to the Department that this has been completed.

[E]G. The design professional who prepared the grading and stormwater management plan must provide a certification verifying the stormwater management design for the site is functioning as designed. Upon written request, the Department may approve another professional to provide the certification.

H. An open space inspection approval is valid for sixty (60) days.

Section 4. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 27 (“Maintenance Organizations, Open Space, and Common Facilities”), Division 40.27.400 (“Transfer of ownership”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec 40.27.410. Legal transfer of title to open space.

A. Open space shall be conveyed no later than the issuance of building permits for ninety (90) percent of the dwelling[s] units within the subdivision. For purposes of a phased development, the County may apply this requirement on a phase-by-phase basis.

B. All costs associated ...

C. For purposes of a phased development, the title to open space may be transferred on a phase-by-phase basis.

D. The developer must verify that it provided all documents required to maintain the open space to the maintenance organization in both electronic and paper format. Documents provided must include any open space management plans, and any stormwater maintenance and private storm sewer specifications.

Sec 40.27.420. Title transfer process.

A. The developer, or its designee, shall contact the [Department]Office of Law to make arrangements for the transfer. All required documents shall be submitted to the [Department]Office of Law. In addition to documents specifically required herein, the [Department]Office of Law may require any other documentation necessary for proper review of the transfer.

1. The developer or its designee shall prepare a legal description and deed for the land. The deed shall contain such provisions and restrictions required by the [Department]Office of Law necessary to protect the status of the open space and common facilities.
2. The developer or its designee shall provide a lien search from a title abstractor acceptable to the [Department]Office of Law. A certification that no liens exist on the land shall be submitted by the owner of the property.
3. Any additional ...

D. No transfer of dedicated public open space shall be effective until the [Department]Office of Law gives written notification to the grantor that the land has been formally accepted and the deed has been recorded. Land that is to be dedicated as public open space and transferred to New Castle County, shall also require the written approval and acceptance of the General Manager of the Department of [Special Services]Public Works.

E. The transfer ...

F. When the title documents are approved, the developer shall record the deed and forward stamped copies to the [Department]Office of Law and the maintenance organization.

Sec 40.27.430. Property tax exemption.

Upon receipt of the recorded deed, the [Department]Office of Law shall have the open space parcel(s) declared exempt from taxation.

Sec. 40.27.440. Transfer prior to completion and approval of open space and common facilities.

Legal transfer of the land prior to final County approval shall not relieve the developer of maintenance responsibilities of the open space and common facilities or legal liability for such land. If the open space is transferred prior to its condition being approved by the Department, the developer shall provide the [Department]Office of Law with such documents necessary to allow access to complete or restore the open space and common facilities and agreements necessary to indemnify and hold harmless the maintenance organization or governmental body from any and all occurrences on the property until such time the maintenance organization or governmental body is legally liable for the land.

Sec. 40.27.450. Condominiums.

In residential subdivisions where units are transferred as condominiums within the meaning of the Unit Property Act or DUCIOA depending upon which Act applies, ownership of the open space shall not be transferred as provided herein but shall be held as provided by the condominium declaration. The developer shall be responsible for the costs of constructing and maintaining the open space until such time that it is inspected and approved by the Department. Developer must provide staging on the construction and landscape plans for conveyance of the open space to a condominium association while units are constructed. The plans must delineate the open space and common facilities to be completed prior to the issuance of a certificate of occupancy for each building.

Section 5. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 27 (“Maintenance Organizations, Open Space, and Common Facilities”), Division 40.27.500 (“Maintenance of open space and common 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. 40.27.510. Maintenance by developer.

A. The developer of a subdivision ...

B. The developer controlled maintenance organization may collect an assessment for completed open space and common facilities, and such assessments shall be in accordance with DUCIOA to the extent DUCIOA is applicable.

Sec. 40.27.540. Changes to open space or common facilities.

A. *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. The petition shall be executed by the owners of at least two-thirds (2/3) of the lots [owners] of the existing plan having an interest in the private open space or common facilities. In DPUD's or phased developments, if the private open space or common facility is predominately designed for use by lot owners of a delineated section or phase, consent of two-thirds (2/3) of the lot owners in the section or phase containing the private open space or community facility shall be required. The Department may allow substitutions of plant material on the landscape plan without a petition if the plant substitutions conform to the plant list in Appendix 3.

B. *Maintenance organization, condominium or third-party conservancies.* Once the developer satisfies the conditions for transferring maintenance responsibility, open space that has been turned over may be modified pursuant to a vote taken according to the organization's governing documents. Any change must be submitted to the Department on a record or landscape plan for review and is subject to Department approval. Any change to a stormwater management facility must also obtain approval from the Department of Public Works.

Section 6. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 27 (“Maintenance Organizations, Open Space, and Common Facilities”), Division

40.27.600 (“Transfer of control of maintenance corporation”), is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

Sec. 40.27.610. Process.

The Department shall serve as a resource for the developer and the homeowners to ensure the transfer of control is completed correctly.

- A. Transfer of control of the [~~board of directors~~]maintenance corporation from the developer to the homeowners [~~shall~~]must be completed [~~initiated by the developer after issuance of fifty (50) percent and prior to~~]no later than the issuance of seventy-five (75) percent of the [~~building~~]permits for the [~~lots~~]dwelling units within the subdivision.
- B. The developer shall provide at least thirty (30) days written notice to each homeowner of the developer's intent to transfer of control of the [~~board of directors~~]maintenance corporation to the homeowners.
 - 1. For the purposes ...
 - 2. A copy of the notice and an affidavit from the author of the letter listing the names of the homeowners to whom the notice was sent and the address where the notice was sent must be provided to the [~~Department~~]Office of Law and the Department contemporaneously with the notice to the homeowners so that the Department can confirm that proper notice was effectuated.
 - 3. The Department shall issue no further building permits after the issuance of seventy-five (75) percent of the building permits for the [~~lots~~]dwelling units within the subdivision until the appropriate Departments receive a copy of the notice and affidavit.
- C. Each director...
- D. [~~The transfer of control must be completed prior to the issuance of ninety (90) percent of the permits within the subdivision. At a minimum, p~~]Proof of transfer of control of the maintenance corporation shall consist of a notarized affidavit signed by the developer [~~owner or principal of the organization applying for further building permits~~]and a list of the homeowners who have assumed control of the maintenance corporation. Said affidavit shall state that control of the maintenance corporation has been fully turned over to the homeowners.
- E. The developer ...

Section 7. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.800 (“Performance guarantee”), 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 . . .

- A. The developer's engineer . . .
- C. The developer shall establish a performance guarantee acceptable to the ~~[Department]~~County to guarantee and warrant the costs of constructing and/or reconstructing all improvements shown on the record plan. The performance guarant~~y~~ee shall be provided in one (1) of two (2) ways:
 1. The developer may submit the performance guarantee prior to plan recordation. In accordance with the construction phasing plan, the performance guarantee may be tied to the cost of the improvements for phases of the minor or major land development plans, as shown on such plans, in which case a surety in the amount of ~~[twenty (20) percent of the cost of the improvements of the total; or,]one hundred twenty~~ (~~[+100]~~120) percent for a particular phase shall be available upon recordation of the record plan and subsequent phase sureties posted at the time of pre-construction ~~[approval]~~request or building permit; or
 2. In lieu of Subsection C.1, the developer shall, prior to plan recordation, submit a performance guarantee in the sum of five thousand dollars (\$5,000.00). The developer shall then submit the full performance guarantee under Subsection C.1, prior to the preconstruction meeting or building permit application....
- D. The performance guarantee shall remain posted with the ~~[Department]~~County until such time that all open space and common facilities have been inspected and receive final approval and in accordance with the construction phasing plan. The amount of the surety shall be ~~[required and]~~determined by the ~~[Department]~~County in the amount of one hundred twenty (120) percent of the cost estimates ~~[and/]~~or the cost of completing the open space and common facilities ~~[and]~~in accordance with the construction phasing plan.
 1. The surety shall be reduced to the amount of the maintenance guarantee as outlined below and the remainder returned to the developer after the completed work has been approved by the Departments of Public Works and Land Use.
 2. ~~[A new surety, made out to the Department of Public Works, equal to twenty (20) percent of]~~The maintenance guarantee amount will be equal to twenty (20) percent of the cost of constructing the stormwater management facilities and shall serve as the maintenance guarantee that all improvements are free from defects for a ~~[period]~~minimum of ~~[three (3)]~~five (5) years after the date of the Department of ~~[Special Service's]~~Public Works' inspection and acceptance of the final improvement to be constructed. The Department of Public Works may extend the maintenance guarantee period as deemed necessary by the General Manager as defects are discovered. ~~[This surety must be provided as a pre-paid bond or letter~~

~~of credit for the three (3) year period.]~~The purpose of this surety is to ensure that the facilities are designed and constructed to function as intended.

3. All reductions...
- E. Each surety . . .
- F. The bond, letter of credit or other surety shall be executed by the applicant and a corporate surety or financial institution licensed to do business in the State that is not associated with the developer.
- G. Prior to the approval of a minor or major land development plan, the LDIA must be reviewed by the County and recorded in the Office of the Recorder of Deeds.

Section 8. *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Appendix 2 (“Fees”), Division 2 is hereby amended by adding the material that is underscored and deleting the material that is bracketed and stricken, as set forth below.

APPENDIX 2. FEES

1 Land Development and Rezoning Processing...

2. Engineering Section

A. Exploratory Sketch

~~[N. Stormwater As built Plan Review - \$315.00]~~

~~[O]N. [Pre-bulk\Post-bulk\Record Plan Open Space]Site Re-inspection Fees~~

~~Second and all subsequent inspections - \$1,000.00,~~

1. Pre-Bulk inspection - \$1000.00
2. Post Bulk Inspection - \$1000.00
3. Record Plan Inspection - \$1000.00
4. Open Space inspection - \$1000.00

~~[P]O. Storm Sewer As-Built and pipe video review - ~~[\$315]~~500.00~~

~~[Q]P. Water Management Agreement review/inspection - \$5,000.00~~

~~[R]Q. [Site permit per phase (annual)]Stormwater Management Permit Fee (Per Facility) - \$2,000.00~~

~~[S]R. Failure to submit escrow and semi-annual reports - \$100 for each day late~~

~~[T]S. Constructing a Stormwater facility without scheduling - \$500.00 per facility~~

~~[U]~~T. Starting site work without a pre-construction or site permit when required - \$1,000.00

~~[V]~~U. Failure to complete Stormwater Management prior to Occupancy - \$ 5,000.00 per month

~~[X]~~V. An annual administrative fee until full performance guarantee is provided - \$250

3. Board of Adjustment...

4. Other

A. Zoning Permit...

G. Open Space Completion Agreement [~~fee—\$1,000.00~~]

1. Initial fee - \$5,000.00

2. Renewal Fee - \$10,000.00

3. Expired Open Space Completion Agreement fee - \$5,000.00

H. [~~Open Space Completion Agreement renewal fee—\$500.00~~]

[F] Adult entertainment use verification – \$1,000.00

[J]I. Department of Land Use administrative variance - \$50.00

~~[K]~~J. Department of Land Use confirmation of nonconforming status for an individual residential lot or use – \$250.00

Department of Land Use confirmation of nonconforming status for other residential and nonresidential lots or uses – \$1,000.00

~~[L]~~K. Environmental Impact Assessment report review by RPATAC – \$750.00

~~[M]~~L. Extractive Use

Preliminary Review – \$575.00

Hearing Fee – \$2,300.00 for the first 25 acres, plus \$115.00 for each additional acre

Fee Limit – \$23,000.00

Extractive Use renewal - \$1,500.00

~~[N]~~M. Level of Service (LOS) waiver application – \$1,150.00

Request for a Traffic Impact Study (TIS) Waiver: \$1,150.00

~~[O]~~N. Expedited review – to expedite a project the fee(s) is tripled for each individual submission. All requests for an expedited review shall require that both planning and engineering reviews be expedited.

~~[P]~~O. Show cause hearing – \$300.00

- ~~[Q]~~P. Wetland or floodplain review – \$65.00
- ~~[R]~~Q. Failed foundation as-built survey – \$65.00
- ~~[S]~~R. Land Development Improvement Agreements, and other agreements – \$300.00
- ~~[T]~~S. Temporary certificate of use including site plan review for commercial outdoor sales, special events and public interest uses – \$105.00; except for temporary miscellaneous sales which is \$55.00
- ~~[U]~~T. Administrative Subdivision Request – \$300.00
- ~~[V]~~U. Property Line Adjustment - \$500.00
- ~~[W]~~V. Unified Development Code Hard Copy Purchase - \$200.00
Unified Development Code Annual Supplement Subscription - \$150.00
- ~~[X]~~W. Any other permit required by Chapter 40 – \$575.00

Exceptions: No fees are required when New Castle County is the applicant for land development plans/projects.

Section 9. New Castle County Council finds that the provisions of this Ordinance are consistent with the spirit and intent of the New Castle County Comprehensive Development Plan.

Section 10. All ordinances or parts of ordinances and all resolutions or parts of resolutions that may be in conflict herewith are hereby repealed except to the extent they remain applicable to land use matters reviewed under previous Code provisions as provided in Chapter 40 of the *New Castle County Code*.

Section 11. The provisions of this Ordinance shall be severable. If any provision of this Ordinance is found by any court of competent jurisdiction to be unconstitutional or void, the remaining provisions of this Ordinance shall remain valid, unless the court finds that the valid provisions of this Ordinance are so essentially and inseparably connected with, and so dependent upon, the unconstitutional or void provision that it cannot be presumed that County Council would have enacted the remaining valid provisions without the unconstitutional or void one, or unless the court finds that the remaining valid provisions, standing alone, are incomplete and incapable of being executed in accordance with County Council's intent. If any provision of this Ordinance or any zoning map or portion thereof is found to be unconstitutional or void, all applicable former ordinances, resolutions, zoning maps or portions thereof shall become applicable and shall be considered as continuations thereof and not as new enactments regardless if severability is possible.

Section 12. This Ordinance shall become effective immediately upon passage by New Castle County Council and signature of the County Executive or as otherwise provided in 9 *Del. C* § 1156 and shall only apply to Land Use applications submitted after such date unless the applicant by written request agrees to submit to the provisions of this Ordinance.

Adopted by County Council of
New Castle County on:

President of County Council
of New Castle County

Approved on:

County Executive
New Castle County

SNYPOSIS: The following is a summary of the revisions contained in this ordinance broken down by New Castle County Code Division or Section number.

Sec. 40.27.120. This amendment corrects references to the Office of Law.

Sec. 40.27.130. This amendment updates a reference to the Unit Property Act with a reference to the Delaware Uniform Common Interest Ownership Act (DUCIOA).

Sec. 40.27.140. This amendment provides requirements for the recording of a plan with proposed open space and common facilities.

Sec. 40.27.150. This amendment provides an additional duty for developers of new subdivisions to inform a home buyer of open space maintenance obligations.

Sec. 40.27.210. This amendment clarifies the County's ability to pursue performance bonds to complete open space.

Sec. 40.27.220. This amendment updates escrow requirements to ensure the maintenance corporation is provided with an adequate sum.

Sec. 40.27.230 & 240 These amendments provide standards for the collection of the residential and nonresidential maintenance funds.

Sec. 40.27.310 This amendment updates requirements for the construction of open space and common facilities. Former Section C is moved to Section 40.27.140.H. Open space and common facilities within a phase must be completed prior to the issuance of permits and additional phases may not be initiated if the project is not in compliance.

Sec. 40.27.320 This amendment provides that open space should be graded to be free of standing water after 72 hours. Open space must be free of soil stockpiles. Photographic documentation of the remediation of soil compaction is required. This amendment provides standards for the establishment of vegetation and the condition of common facilities prior to the open space inspection.

Sec. 40.27.340 This amendment provides additional requirements for an inspection of open space and common facilities. Fees are relocated to Appendix 2 to be consistent with other sections of the UDC.

Sec. 40.27.410 This amendment allows for the transfer of title to open space on a phase-by-phase basis and requires adequate documentation to be provided to the maintenance organization.

Sec. 40.27.450. This amendment updates the reference DUCIOA and requires more detail for common facilities provided in a condominium.

Sec. 40.27.510 This amendment allows for the collection of user fees in accordance with DUCIOA.

Sec. 40.27.540 This amendment allows plant substitutions prior to turnover in accordance with the appendix and allows a community to make changes to its open space consistent with the governing documents of its maintenance corporation.

Sec. 40.27.610. This amendment clarifies requirements for the transfer of control of a maintenance corporation.

Sec. 40.31.820. This amendment clarifies that the performance guarantee may be reduced to function as a maintenance guarantee, rather than require separate guarantees. The maintenance guarantee will be determined by the Department of Public Works, which may extend the guarantee period as necessary to cover improvements built to address defects.

Appendix 2. This amendment incorporates fees that were previously addressed in Article 27 and includes fees for additional review items.

Substitute No. 1. The following changes are included in Substitute No. 1:

Sec. 40.27.130.A Corrects a grammatical error and allows for references to both the Unit Property Act and DUCIOA.

Sec. 40.27.140.I Corrects a grammatical error.

Sec. 40.27.140.K Clarifies that no burden or liability associated with containment soils are to be passed on to residential or condominium maintenance organization.

Sec. 40.27.150.A.3 Clarifies the documents that are to be provided by the seller.

Sec. 40.27.310 Clarifies and enhances the nature of information the developer must provide the Department to determine the cost of completion so that the Department receives adequate economic security. Refines the permissible bases for an extension to complete open space. Clarifies that community signs are located at the entrance to a subdivision. Corrects typographical errors and adjusts formatting for clarity.

Sec. 40.27.320. Provides New Castle County the authority to contract independently with a third party professional to verify open space and common facility conditions. Certain proposed text moved to Section 40.270.340.

Sec. 40.27.340.D Clarifies the developer is required to have their professional certify the completion of landscaping obligations prior to requesting an open space inspection.

Sec. 40.27.340.E Text regarding third-party professional certification originally proposed for Section 40.27.320.J moved to Section 40.27.240.E.

Sec. 40.27.340.F Clarifies the timeframe for documenting with the Department the completion of written notification obligations to the community.

Sec. 40.27.450 Preserves the term Unit Property Act in addition to adding references to DUCIOA.

Sec. 40.27.510. B Changes the term “user fee” to “assessment” to align with DUCOIA.

Sec. 40.27.540 Clarifies the requirements for a petition to change open space.

Sec. 40.31.820.D.2 Revised to set the maintenance guarantee equal to twenty (20) percent of the stormwater construction cost.

Appendix 2.2. Removes the fee for the Stormwater As-built review and revises the Site Permit fee (annual) to a Stormwater Management Permit fee (per facility)

FISCAL NOTE: No discernable fiscal impact.