

July 23, 2009

**In reply, refer to:**

New Castle County Ord. 09-068 (2009-0393-T)  
2009 UDC Omnibus Text Amendment

Constance Holland, Director  
Office of State Planning  
122 William Penn Street  
Haslett Armory, Suite 301  
Dover, DE 19901-3636

Dear Ms. Holland:

The New Castle County Department of Land Use is submitting a copy of the above referenced ordinance to you and requesting that a review of this ordinance go through the Office of State Planning for a Preliminary Land Use Service (PLUS) Review and comment.

Ordinance 09-068 will be on the September 1, 2009 New Castle County Planning Board Public Hearing agenda. New Castle County Council will have an opportunity to act on this amendment after the Planning Board Public Hearing.

Please submit the PLUS comments to the Department before the end of business on Friday, August 21, 2009.

If you have questions or concerns about this request, please do not hesitate to call me at 395-5434.

Sincerely,

Kenneth R. Bieri  
Assistant Planning Manager

CC: Nicole Majeski  
David Culver  
George Haggerty

Enclosure

**Preliminary Land Use Service (PLUS)  
Comprehensive Plan Amendments and Municipal Ordinances**

Delaware State Planning Coordination  
122 William Penn Street • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-6958

<b>Name of Municipality: NEW CASTLE COUNTY</b>	
<b>Address:</b>  87 Reads Way New Castle, DE 19720	<b>Contact Person: David Culver</b>
	<b>Phone Number: 302-395-5463</b>
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	<b>E-mail Address: krbieri@nccde.org</b>

**Date of Most Recently Certified Comprehensive Plan: July 31, 2007**

**Application Type:**

**Comprehensive Plan Amendment: NA**

**Text Amendment: Ord. 09 – 068 (2009-0393-T) is an omnibus text amendment that proposes changes to a variety of UDC sections where clarifications and changes are necessary to improve and enhance the regulations.**

**Other: NA**

<b>Comprehensive Plan Amendment or Municipal Ordinance prepared by:</b>	
<b>Address:</b>  Same as above	<b>Contact Person:</b>
	<b>Phone Number:</b>
	<b>Fax Number:</b>
	<b>E-mail Address:</b>

<b>Maps Prepared by: NA</b>	
<b>Address:</b>	<b>Contact Person:</b>
	<b>Phone Number:</b>
	<b>Fax Number:</b>
	<b>E-mail Address:</b>

# Preliminary Land Use Service (PLUS) Comprehensive Plan Amendments and Municipal Ordinances

Delaware State Planning Coordination

122 William Penn Street • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-6958

## **Please describe the submission:**

This amendment is a reflection of Department's ongoing efforts to review, interpret and monitor the continued application of the UDC with regard to land use applications. The amendments proposed have been identified for additional clarifications, corrections, improvements and changes necessary to further enhance the UDC regulations, standards and procedures. The amendment consists primarily of housekeeping amendments and also: (1) removes a figure which is inconsistent with the text; (2) clarifies the ADU exception for the Ardens; (3) removes an imprisonment penalty; (4) clarifies that all protected resources must be in open space; (5) provides for an exception to a lot line encroachment for residential handicapped access ramps; (6) provides for a series of clarifications regarding the federal flood plain regulations; (7) permits the Department to require a jurisdictional determination from the Army Corps of Engineers; (8) recognizes the new data base that replaces the former USGS Geologic Survey 7 ½ minute topographic sheets; (9) clarifies that DelDOT shall govern cul-de-sac design; (10) clarifies what actions require RPATAC review; (11) clarifies the process for amending the Appendix; (12) clarifies the time limits for expiration of various plan submission stages; (13) clarifies the definition of the term minor land development; (14) clarifies the meaning of the term collector street; and (15) removes references to outdated Army Corps of Engineers wetland delineation manuals.

See attachment for more detail.

Introduced by: Joseph Reda and  
David Tackett  
Date of introduction: July 28, 2009

**ORDINANCE NO. 09 – 068**

**TO REVISE CHAPTER 40 OF THE NEW CASTLE COUNTY CODE (ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE – UDC) REGARDING ARTICLE 2 (ESTABLISHMENT OF ZONING DISTRICTS), ARTICLE 3 (USE REGULATIONS), ARTICLE 4 (DISTRICT INTENSITY AND BULK STANDARDS), ARTICLE 10 (ENVIRONMENTAL STANDARDS), ARTICLE 20 (SLD DESIGN PRINCIPALS), ARTICLE 21 (IMPROVEMENT AND DESIGN STANDARDS), ARTICLE 30 (COUNTY COUNCIL AND ADMINSTRATIVE BODIES), ARTICLE 31 (PROCEDURES AND ADMINISTRATION), AND ARTICLE 33 (DEFINITIONS)**

**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 omnibus text amendments to 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 the UDC with regard to subdivision and land development 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 (i.e., promoting the health, safety, morals, convenience, order, prosperity and/or welfare of the present and future inhabitants of this State).

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

**Section 1.** Chapter 40 of the *New Castle County Code* is hereby revised by the addition of the underlined text and the deletion of the text contained within brackets as set forth in “**Exhibit A**” attached hereto, and made a part hereof as if fully set forth herein.

**Section 2. Consistent with Comprehensive Development Plan.** 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 3. Inconsistent Ordinances and Resolutions Repealed.** 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 4. Severability.** 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 5. Effective Date.** This Ordinance shall become effective immediately upon its adoption by County Council and approval by the County Executive.

Approved on:

Adopted by County Council of  
New Castle County on:

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County Executive

---

President of County Council  
New Castle County

**SYNOPSIS:** This amendment is a reflection of Department's ongoing efforts to review, interpret and monitor the continued application of the UDC with regard to land use applications. The amendments proposed have been identified for additional clarifications, corrections, improvements and changes necessary to further enhance the UDC regulations, standards and procedures. The amendment consists primarily of housekeeping amendments and also: (1) removes a figure which is inconsistent with the text; (2) clarifies the ADU exception for the Ardens; (3) removes an imprisonment penalty; (4) clarifies that all protected resources must be in open space; (5) provides for an exception to a lot line encroachment for residential handicapped access ramps; (6) provides for a series of clarifications regarding the federal flood plain regulations; (7) permits the Department to require a jurisdictional determination from the Army Corps of Engineers; (8) recognizes the new data base that replaces the former USGS Geologic Survey 7 ½ minute topographic sheets; (9) clarifies that DelDOT shall govern cul-de-sac design; (10) clarifies what actions require RPATAC review; (11) clarifies the process for amending the Appendix; (12) clarifies the time limits for expiration of various plan submission stages; (13) clarifies the definition of the term minor land development; (14) clarifies the meaning of the term collector street; and (15) removes references to outdated Army Corps of Engineers wetland delineation manuals.

**FISCAL NOTE:** This ordinance will have no discernable fiscal impact.

# EXHIBIT A

**Sec. 40.02.130. Developments in more than one (1) zoning district.**

At the time of adoption of the Unified Development Code, where a tract or parcel of land is located in more than one (1) zoning district, the development may be designed as if each district were a separate parcel or designed and developed as a single project. The following rules govern developments in two (2) or more districts which are developed as a single project:

A. A concept plan shall be required....

....

E. The proportion of the density of the development in the two (2) districts....

1. The proportion of land used for development....

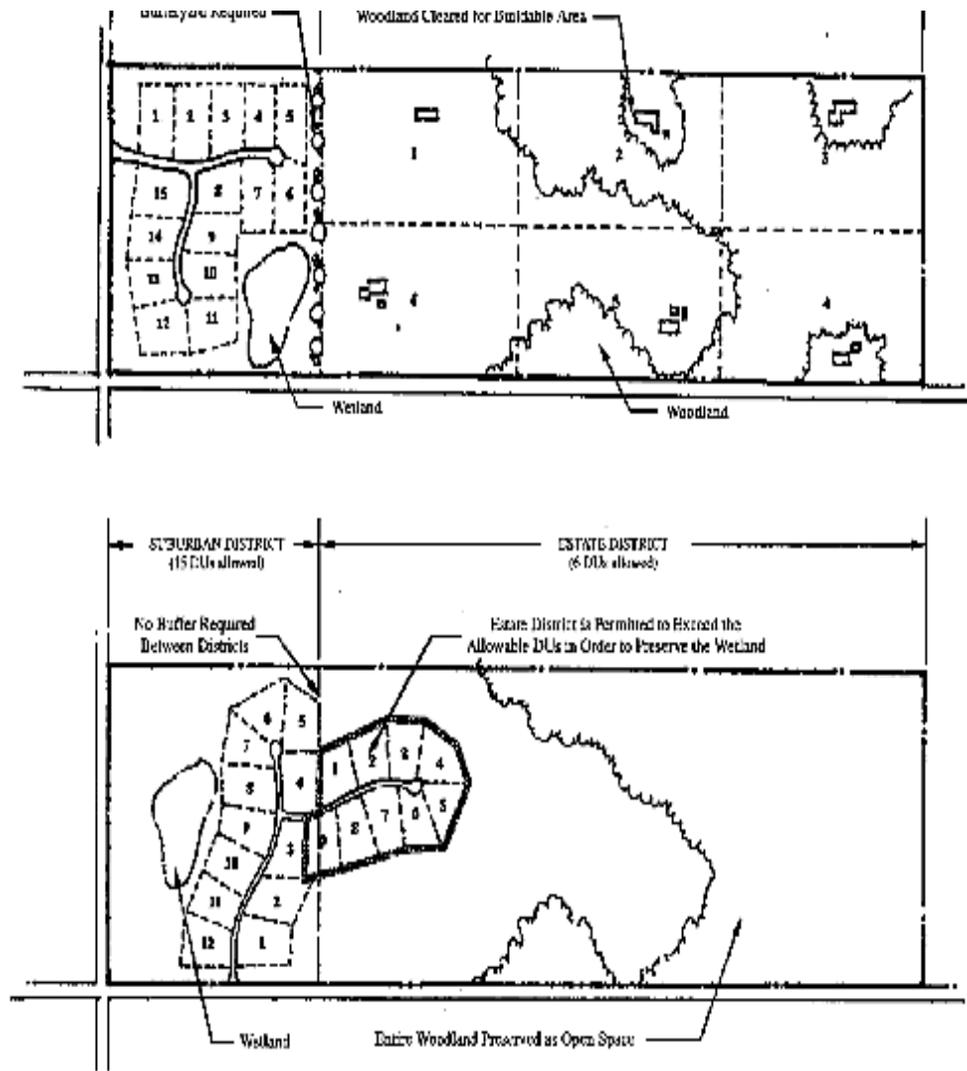
2. Where, for aesthetic or environmental reasons.... [~~(See Figure 40.02.130).~~]

F. Where a unified development straddles....

G. *Nonresidential access.* All nonresidential uses....

~~[Figure 40.02.130  
LAND IN TWO ZONING DISTRICTS]~~

[



]

**SYNOPSIS:** This amendment removes Figure 40.02.130 and reference to the figure. The drawing does not help to explain or clarify the rules for developments in more than one (1) zoning district.

**Sec. 40.03.410. Accessory uses, residential.**

Residential uses may have accessory buildings and accessory uses provided they conform to the following standards:

A. *General standards.* Unless otherwise provided...

H. *Accessory dwelling unit (ADU).*

1. Only one (1) accessory dwelling unit...

13. *Ardens exception for existing ADUs.* All accessory dwelling units existing in The Ardens prior to May 1, 2007 and which have been individually certified in writing as permitted by the respective Village Trustees from Arden, Ardencroft and Ardentown shall be considered a permitted use and notwithstanding the requirements for an accessory dwelling unit in this section. Certified accessory dwelling units shall not be subject to the provisions of Article 8 of this Chapter. In addition, each accessory dwelling unit certified pursuant to this section shall be permitted to rebuild, restore, replace, or repair the accessory dwelling unit as necessary in the event the structure is destroyed or rendered uninhabitable for any reason. The restoration, replacement or repair must be completed within the existing footprint of the structure. All repairs, restoration or rebuilding must be in conformance with the Chapter 6 (Building Code) of the *New Castle County Code*. For purposes of this exception and certification process, an accessory dwelling unit in the Ardens, constructed prior to May 1, 2007 may include more than one (1) attached or detached subordinate dwelling unit on the leasehold property and which provides living, sleeping, eating, cooking, and sanitation facilities.

I. *Temporary roadside stand.* A roadside stand...

**SYNOPSIS:** This amendment is intended to more accurately reflect the historical character of existing ADU's on leasehold property in the Ardens to be certified, provided the ADU was constructed prior to May 1, 2007.

.....  
**Sec. 40.03.420. Accessory uses, residential home uses.**

A. *Home occupation.* Any home occupation....

1. *Employees:* The owner of the home....

10. *Penalties.*

- a. Each person who engages in a home occupation with on-site, non-resident/family employees or independent contractors without having filed the Conditional Home Occupation Agreement or updating the Conditional Home Occupation Agreement as required (except for those exempted as valid nonconforming uses at the time of the passage of this ordinance) shall be guilty of a violation of this Chapter and subjected to a fine of up to one hundred (\$100.00) dollars~~[, or imprisonment for up to ten (10) days, or both]~~. Each day that a violation of this Code Section continues shall constitute a separate offense for which a separate conviction may be obtained and a separate penalty imposed.
- b. Each person found to have included a false statement in the Conditional Home Occupation Agreement shall be subject to the penalties for violation of Title 11, Chapter 5, Subchapter III, Subpart F of the Delaware Code or its successor.
- c. Each person found to have violated any other provision of this home occupation ordinance shall be guilty of a violation of this Chapter punishable by a fine of up to one hundred (\$100.00) dollars ~~[or imprisonment for up to ten (10) days, or both]~~. Each day that a violation of the home occupation ordinance continues shall constitute a separate offense for which a separate conviction may be obtained and a separate penalty imposed.

11. *Nonconforming uses*: Legal home occupation uses....

**SYNOPSIS:** This amendment removes the jail time penalty as it is inappropriate for this to be in this section.

.....

**Sec. 40.04.110. District and bulk standards.**

This Section contains the basic district standards applicable to all uses. Table 40.04.110 contains intensity, lot, bulk and exterior storage standards. These standards may be modified by the Department pursuant to Article 26.

- A. *Minimum open space ratio.* For residential subdivisions of five (5) lots or less open space shall not be required. Protected resource land shall be preserved by conservation easements. For major land development plans, all protected resources shall be in open space and none shall be permitted on any residential lots.
- B. *Minimum site area.* Minimum site area....

E. *Exceptions.*

1. *Projections into required yards.* The following exceptions are permitted for residential dwellings
  - a. Bay windows....
  - h. Uncovered handicapped access ramps may project to within three (3) feet of any property line or to within zero (0) feet of any property line if the ground level landing is parallel to the property line. The owner shall be required to provide proof of need and the ramp shall be removed no later than six (6) months after the need no longer exists.

**SYNOPSIS:** This amendment clarifies that all protected resource lands associated with major land development plans shall be in areas designated as open space. No protected resource lands are to be located on any private residential lots. The amendment also provides for an exception to handicapped access ramps and will permit these projects to move forward without delay for a BOA variance in most circumstances.

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**Sec. 40.04.112. Lot standards for other housing types.**

Housing types used in open space planned developments, hamlets, villages, and for attached or multi-family housing is contained in Table 40.04.112. Housing types and lot configurations are illustrated in Figure 40.04.111.

Table 40.04.112 LOT STANDARDS FOR ATTACHED AND OPEN SPACE PLANNED HOUSING TYPES												
Dwelling Unit Type	Minimum							Maximum	Patio Minimums		Side Load Garage Setback (ft)	Minimum Percent in Width Type
	Site Area (sq. ft.)	Lot Area (sq. ft.)	Lot Width (ft)	Street Yard (ft)	Side Yard (ft)	Building Spacing (ft)	Rear Yard (ft)	Height (ft)	Area (sq. ft.)	Width (ft)		
<b>Single-Family Detached</b>												
Lot line [(See Section 40.04.120)]		7,300	60	20 <sup>1</sup>	1@20	20	30	36			8	20
		8,000	65								8	40
		8,600	70								8	remainder

**SYNOPSIS:** This amendment removes a reference to a drawing that no longer exists in the Code.

.....

**Sec. 40.10.310. FEMA floodplains and nondelineated floodplains.**

- A. *FEMA Flood Insurance Rate Maps (FIRM) and Flood Insurance Study (FIS).* In New Castle County (community number 10585), the areas identified....
- B. All land disturbing (excavation or filing) activity, building construction, or development in a FEMA delineated or nondelineated floodplain shall comply with ~~[this]~~ Division 40.10.300 and be performed pursuant to authorization from the Department in the form of an approved floodplain permit as set forth in Appendix 1 of this Chapter.

....

**SYNOPSIS:** This amendment adds reference to Flood Insurance Study (FIS) and is one of several places in the Code where this is necessary. The amendment also clarifies a division reference.

.....

**Sec. 40.10.312. Floodplain boundary interpretation.**

The methodologies listed below shall be used to delineate the limits of floodplains....

- A. *FEMA mapped floodplains.* Those areas within the limits of the Zone A floodplain and Zone AE floodway and flood fringe as depicted on the Federal Emergency Management Agency's National Flood Insurance Rate Maps (FIRM) for unincorporated New Castle County.
  - 1. *Floodplain (Zone A - no flood elevations provided).* Scale the delineation from the appropriate FIRM panel and superimpose it on a topographic map with a compatible datum. The extent to which the delineations differ as determined by the Department may result in a LOMC (Letter of Map Change) application to FEMA to certify the limit of the floodplain; however, the delineation from the FIRM map and FIS governs unless amended by FEMA.
  - 2. *Flood fringe (Zone AE - flood elevations included on the FEMA panel).* Scale the delineation from the appropriate FIRM panel and Flood Insurance Study (FIS) and superimpose it on a topographic map with a compatible datum. Next, transfer the base flood elevations from the appropriate FIRM panel onto a topographic map with a compatible datum. The extent to which the delineations differ as determined by the Department may result in a LOMC[A] application to FEMA to certify the limit of the floodplain; however, the delineation from the FIRM map and FIS governs unless amended by FEMA.

3. *Floodway (Zone AE)*. The limit of the floodway shall be scaled from the appropriate FIRM panel using a street or mapped roadway as a reference point.

B. *Nondelineated floodplain (see Division 40.33.300 for definition)*....

**SYNOPSIS:** This amendment adds reference to Flood Insurance Studies (FIS) and is one of several places in the Code where this is necessary.

.....

**Sec. 40.10.313. Regulations pertaining to activities in the floodplain.**

This Chapter is predicated on minimizing building or filling in the floodplain.

- A. No development or structures shall be permitted in the floodplain; however, the Department may approve development or structures in the floodplain for approved uses listed in Table 40.10.210 or as approved by a beneficial use pursuant to Section 40.10.315. To determine the impact of fill on the community, the floodplain permit application must include a detailed hydrologic and hydraulic study using methodologies and study parameters for the flow rates and incorporate existing and proposed cross sections accepted by FEMA. The applicant must secure a Conditional Letter of Map Revision (CLOMR) from FEMA before the Department issues its approval. In addition, a registered professional engineer shall prepare the design specifications and plans for submission and certify that the structures are designed and constructed to withstand the hydrostatic and hydrodynamic forces anticipated during the one hundred (100) year flood event.

.....

**SYNOPSIS:** This amendment provides a reference to the standards required for the approval of a beneficial use in the floodplain and adds a commonly referenced acronym.

.....

**Sec. 40.10.314. Filling in the floodplain.**

Where permitted by Table 40.10.210 or as approved as a Beneficial Use, the following criteria shall apply to all land disturbing activities in the floodplain:

- A. No net fill shall be permitted in the floodplain; however, the Department may approve development or structures in the Zone AE floodfringe or Zone A floodplain for approved uses listed as permitted in Table 40.10.210. To determine the impact....

**SYNOPSIS:** This amendment clarifies that the Zone A floodplain is part of the overall definition of

the term floodplain.

.....

**Sec. 40.10.316. Criteria for building in the floodplain.**

In reviewing an application, the Department shall consider and/or require the following....

....

C. Wet flood proofing that allows the free flow of flood waters through the areas of a structure above its lowest floor shall not be permitted unless or except E below. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction are in accordance with accepted standards of practice for meeting these provisions.

D. The mechanical, plumbing and other service facilities....

E. For all new construction and substantial improvements, fully enclosed areas below the lowest floor area that are useable solely for parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must be certified by a professional engineer with a background in structural design and must meet or exceed the following minimum criteria:

1. A minimum of two (2) openings having a total net area of not less than one (1) square inch or every square foot of enclosed area subject to flooding shall be provided.
2. The bottom of all openings shall be no higher than one (1) foot above grade.
3. Openings may be equipped with screens, louvers or other coverings or devices provided they permit the automatic entry and exit of floodwaters.

....

H. A FEMA NFIP Elevation Certificate must be submitted to the Department for any building constructed, substantially improved, or horizontally expanded in the FEMA floodplain before the certificate of occupancy is issued.

.....

**Sec. 40.10.320. Wetlands.**

- A. The one hundred (100) percent protection level for preservation of wetlands established in Table 40.05.420 and Table 40.10.010 may be reduced when a permit from the United States Army Corps of Engineers is issued for filling or disturbance of jurisdictional wetlands. Wetland mitigation shall be that for which a permit has been issued by the United States Army Corps of Engineers. In addition, any mitigation approved by the United States Army Corps of Engineers is also subject to approval by the Department before any mitigation may occur. Permits from the State may also be required.

The required protection level for nonjurisdictional wetlands may be reduced if a variance is approved by the Board of Adjustment with a recommendation from the Resource Protection Area Technical Advisory Committee. Prior to making application for a variance to disturb wetlands, the applicant must submit a copy of the Jurisdictional Determination (JD) from the United States Army Corps of Engineers that certifies the subject wetlands as being nonjurisdictional.

- B. *Exception.* Nonjurisdictional wetlands that are man-made....

**SYNOPSIS:** This amendment clarifies that the Department has authority to require an applicant to obtain an Army corps of Engineers Jurisdictional Determination prior to any disturbance.

.....

**Sec. 40.10.380. Water resource protection area (WRPA).**

- A. Water resource protection areas are the Cockeysville Formation....
- B. No development shall be permitted....
- C. The Department may permit...
- D. ~~[As an alternative, t]~~The Department may consider the contribution of like land by the applicant to be preserved in other Water Resource Protection Areas. A conservation easement or the outright acquisition of the like land or resource shall occur which will prohibit the disturbance of the like land 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 ~~[to reduce impervious surface on the site]~~.

**SYNOPSIS:** This amendment clarifies that any application for a new or modified use is eligible to contribute like land to meet the WRPA protection standards.

.....

**Sec. 40.10.383. Wellhead protection areas (public water supply wells).**

- A. Wellhead protection areas....
- B. The resource protection area around a public water supply well....

Notwithstanding any other provisions in [Article 13] Chapter 40 of the *New Castle County Code*, the minimum lot area required for a public water supply well....

**SYNOPSIS:** This amendment corrects an outdated reference to the UDC. When first adopted in December 1997, the UDC was Chapter 13 of the *New Castle County Code*.

.....

**Sec. 40.20.510. Mapping criteria.**

The following shall be used for mapping natural resources or other features of plans:

- A. Streams (perennial, intermittent, mapped, and unmapped)....
- B. Initial identification of the watercourses/water bodies shall be made using National Hydrographic Dataset (NHD) utilized by the United States [U. S.] Geological Survey [quadrangle maps] or more accurate information, as available. Field verification to determine evidence and location of channelized flow is required for a specific determination.
- C. Measurements for the boundary....

**SYNOPSIS:** This amendment reflects a new reference to the former USGS 7.5 minute quadrangle sheets as recommended by both DNREC and the USGS.

.....

**Sec. 40.21.141. Cul-de-sacs.**

All cul-de-sacs shall be designed to [~~permit vehicles to turn around without backing, except on private roads serving less than five (5) lots and shall~~] meet DelDOT standards.

**SYNOPSIS:** The amendment clarifies that DelDOT controls the design of cul-de-sacs.

.....

**Sec. 40.30.110. Responsibility.**

The following codes are used in Table 40.30.110 to indicate what types of responsibilities....

<b>Table 40.30.110 PROCEDURAL RESPONSIBILITIES</b>							
<i>Type of Action</i>	<i>County Council</i>	<i>Administrative Boards</i>			<i>Administrative Agents</i>		
		<i>Plan-ning Board</i>	<i>Board of Adjust-ment</i>	<i>Historic Review Board</i>	<i>Department of Land Use</i>	<i>Technical Advisory Committee</i>	<i>RPA - Technical Advisory Committee</i>
General Reviews (see Division 40.31.400 for standards)							
.....							
* Pursuant to 9 Del. C. § 1313 (f), .....							
** Only required if relief is sought from any regulation pertaining to [ <del>a Water Resource Protection Area (WRPA)</del> ] <u>an Article 10 protected resource</u> issue.							
*** See Section 40.02.110 (for zoning map corrections).....							

**SYNOPSIS:** This text amendment clarifies that RPATAC is to be consulted whenever there is relief sought to any protected resource, not just a WRPA and it is consistent with Article 10.

.....

**Sec. 40.30.410. Department of Land Use.**

The Department General Manager and such other employees....

- A. To hear, consider and decide....
- M. An appendix to this Code shall be maintained by the Department, and shall be amended from time to time as deemed necessary by the Department. [~~(The Department of Law shall be required to approve all legal forms and documents which appear in the appendix, and shall be responsible for updating and making any amendments thereto)~~] review and approve all changes. The Department shall provide for a thirty (30) day public notice prior to finalizing changes to the Appendix.
- N. All other responsibilities and duties pursuant to 9 Del. C. § 1301.

**SYNOPSIS:** The amendment clarifies the process for amending the Appendix to Chapter 40.

.....

**Sec. 40.31.112. Exploratory sketch plan review/conference.**

A. *Applicability....*

G. *Subsequent submissions.* An applicant shall have twelve (12) months from the date of the exploratory plan review letter to proceed forward to the next review stage (i.e. the submission of a preliminary plan or record plan) or the plan will expire. The General Manager of the Department may grant no more than two (2) three (3) month extensions for circumstances beyond the applicant's control. For major plans and all rezonings, and upon completion of all studies, if any, and the exploratory sketch plan is approved, the applicant shall be entitled to file a rezoning/preliminary plan application with the Department. For minor land development plans, a record plan may be submitted if the exploratory sketch plan is approved.

For all major residential subdivisions, the applicant shall have six (6) months from the date of the pre-exploratory sketch plan review conference to submit an exploratory plan. The Department may require a new pre-exploratory sketch plan review conference if a exploratory sketch plan submission is not made within six (6) months.

**SYNOPSIS:** This amendment clarifies the time frame for the next submission to avoid plan expiration.

.....

**Sec. 40.31.113. Rezoning/preliminary plan application.**

A. *Applicability....*

C. *Department and TAC review and report.* The Department shall notify TAC agencies to submit comments for applications scheduled for public hearing. The Department shall review the TAC comments and shall prepare a preliminary plan and TAC report prior to the public hearing. An applicant shall have twelve (12) months from the date of the preliminary plan and TAC report to proceed forward to the next review stage (i.e. the submission of a record plan) or the plan will expire. The General Manager of the Department may grant no more than two (2) three (3) month extensions for circumstances beyond the applicants control. If applicable, the Department's report shall include a discussion as to the appropriateness of the rezoning.

D. *County Council initiated rezonings....*

**SYNOPSIS:** This amendment clarifies the time frame for the next submission to avoid plan expiration.

.....

**Sec. 40.31.114. Record plan submission.**

Record plan submissions shall not be accepted if the date of Department receipt is greater than one (1) year from the date of the exploratory plan review letter for minors or preliminary plan and TAC report for majors or rezonings. The record plan....

- A. *Submission requirements....*
- B. *Department review/approval.* The Department will issue a written report that identifies any concerns relating to Chapter compliance, record plan submission requirements, or other factors the applicant must consider. If the record plan and all supporting documents comply with this Chapter and any other applicable regulations, the General Manager of the Department shall approve the record plan and the Department will issue an approval letter. The General Manager of the Department shall....
- C. *Council consent....*
- D. *Action upon receipt of County Council referral....*
- E. *Recordation.* Upon final approval or consent pursuant to this Section, the plan shall be recorded at the Recorder of Deeds. An applicant shall have eighteen (18) months from the date of the record plan submission to record the plan. The General Manager of the Department may grant two (2) three (3) month extension for circumstances beyond the applicants control.

**SYNOPSIS:** This amendment clarifies the time frame for the next submission to avoid plan expiration.

.....

**Sec. 40.31.390. Time limits and expiration.**

- A. Land use application decisions are effective....

<b>Table 40.31.390</b>			
<b>TIME LIMITS</b>			
<i>Application Type or Action</i>	<i>Time Limitation (months)</i>	<i>Extensions</i>	<i>Action Required to Avoid Expiration</i>

**Table 40.31.390  
TIME LIMITS**

<i>Application Type or Action</i>	<i>Time Limitation (months)</i>	<i>Extensions</i>	<i>Action Required to Avoid Expiration</i>
Special use	24	0	The building, structure or parcel(s) has been used for the purposes set forth....
Variance	24	0	Construction has commenced implementing the variance....
Limited use	12	0	The building, structure or parcel(s) has been used for the purposes set forth in the approval
Zoning permit	12	0	Construction has commenced implementing the approved use....
Exploratory plan review letter	12	2	Submission of the next plan required (i.e. Preliminary Plan or Record Plan) is made
Preliminary plan report or for a rezoning....	12	2	Submission of the Record Plan is made
Record Plan [ <del>Approval</del> ] <u>Submission</u>	18	2	<del>[Final approval of the Record Plan by the Department is obtained]</del> <u>Recordation</u>

B. After a rezoning of a property by County Council....

**SYNOPSIS:** This amendment clarifies the final stage from record submission to recordation.

.....

**Sec. 40.31.451. Standards for zoning variances.**

A. The Board of Adjustment shall hear and decide applications....

B. All case law that has developed, and continues to develop, interpreting 9 Del. C. §[~~1352~~]  
1313 shall be adhered to by the Board of Adjustment.

**SYNOPSIS:** This amendment corrects a reference to State code.

.....

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

All improvements contemplated in minor or major land development plans....

- A. The developer’ engineer shall submit an itemized cost estimate....
- B. In the alternative, the formula as established by the Department and found in Appendix [7] 2 may be used in lieu of cost estimates.
- C. The developer, prior to plan recordation, shall post a letter of credit or....

**SYNOPSIS:** This amendment provides a correct reference to the formula for LDIA cost estimates.

.....

**Division 40.33.200. Use definitions.**

The uses found in Table 40.03.110 are defined in this Division. Specific uses may be further defined in Division 40.33.300. If a use is not enumerated in either of these Divisions, see Section 40.31.520 for interpretations. Any use not specifically listed in Table 40.03.110 and defined in this Article is expressly prohibited, unless the interpretation is that the use is similar to a permitted use. The [2002] 2007 North American Industrial Classification System (NAICS), as published by the Federal government and as may be amended from time to time, shall be used as a guide to define uses.

**SYNOPSIS:** This amendment updates the reference to the NAICS Manual guide and eliminates further amendments by noting that the manual may be amended in the future.

.....

**Division 40.33.300. General definitions.**

This Division contains the definition of words used in this Code.

.....

~~[Corporate guest house.— One or more buildings, owned by a business entity, in which there are no more than ten (10) guestrooms, or suites of rooms, available for temporary occupancy for varying lengths of time, without compensation to the owner, by employees, customers, and other persons whose presence in the building is due principally to their relationship with the business entity.]~~

.....

*Drainageway.* A minor watercourse (not in an RBA), seasonally or continually available for the passage of water, of which functions include, but are not limited to: flood control, groundwater recharge, drainage, and sedimentation and erosion control. The presence of a drainageway is determined by one (1) or more of the following two (2) conditions: 1) the presence of certain specific soil types, (such as Codorus silt loam (Co), Comus silt loam (Cu), Hatboro silt loam (Ha), Johnston loam (Jo), or Mixed alluvial land (Mv)); 2) the land on either side of and within twenty-five (25) feet of the centerline of any swale, intermittent or perennial stream shown on the National Hydrographic Dataset (NHD) utilized by the United States Geological Survey [(USGS) 7.5 minute quadrangle sheets] as having an upstream drainage area of five (5) or more acres.

....

*Minor land development.* A plan that proposes one (1) or more of the following:

- A. A subdivision of land resulting in five (5) lots or less....
- B. Except for single-family dwellings and accessory structures....
  - 1. Proposed buildings less than twenty thousand (20,000) square feet GFA. One (1) or more buildings may be constructed; however, once the cumulative total of approved square footage on the site exceeds twenty thousand (20,000) square feet GFA, the plan shall be reviewed as a major plan.
  - 2. For lots containing....
  - 6. Expansions of existing institutional facilities or the replacement of existing public schools provided that no special studies are required for approval e.g. TIS, CNA, environmental impact assessment report, floodplain application, WRPA, subsidence. The project must be such that any issues or concerns are minor in nature and can be evaluated without the necessity of TAC review.

....

*Nonconforming lot.* A lot, legally established prior to the adoption of this Chapter or a subsequent amendment to this Chapter, which does not meet the standards of the district in which it is located. This can involve minimum area, buildable area, or dimensional requirements of the lot.

*Nonconforming sign.* Any sign, legally established prior to the adoption of this Chapter or a subsequent amendment to this Chapter, which does not fully comply with the standards of this Chapter.

....

*Nondelineated floodplain.* An area subject to a one hundred (100) year flood, for which FEMA has

not delineated a floodplain, adjacent to a watercourse that is also identified by a blue line on the National Hydrographic Dataset (NHD) utilized by the [current] United States Geological Survey [(USGS) topographic maps of the County,] or adjacent to a watercourse that is identified as a "stream" in the detailed maps of the N.C.C. Soil Survey.

....

*Plans, construction.* The architectural or engineering drawings showing the construction details and the types of material for the physical structures and facilities[~~, excluding dwelling units,~~] to be installed in conjunction with the development of the project.

....

*Riparian Buffer.* An RBA consists of land which forms a transition zone between aquatic and terrestrial environments. RBA's include...

The riparian buffer area shall consist of two (2) zones.

- A. *Zone 1* is the land within....
- B. *Zone 2* is the remainder....
- C. Identification and calculation.
  - 1. Reserved.
  - 2. Initial identification of the watercourses/water bodies shall be made using the National Hydrographic Dataset (NHD) utilized by the United States [U.S.] Geological Survey [quadrangle maps] or more accurate information, as available. Field verification to determine evidence and location of channelized flow is required for a specific determination.

....

*Street, collector.* Streets that generally carry medium traffic volumes over shorter distances. Although collector streets connect all types of streets, they rarely provide direct access to individual lots. Streets classified as collector on the most recent version of the New Castle County Functional Classification Map (published by DelDOT) are considered collector streets in the UDC. [~~S~~] Subdivision streets classified [as major collector in] by DelDOT [Rules and R] regulations [for Subdivision Streets are considered] as major collector or type III are considered collector streets in the UDC. [~~In addition, streets classified as local, outside the urbanized area, on the most recent version of the New Castle County Functional Classification Map (published by DelDOT) are considered collector streets in the UDC.~~]

....

*Surface water.* Natural or artificial bodies of water greater than one (1) acre in extent at the normal annual water level, as depicted on the National Hydrographic Dataset (NHD) utilized by the United States Geological Survey [USGS topographic quadrangles] and/or as determined by on-site surveys by a registered surveyor, landscape architect or engineer. Excluded from this definition are retention basins or other stormwater management facilities, farm ponds or other facilities associated with agricultural operations, sewage lagoons and other facilities for which normal maintenance and repair is necessary.

....

*Wetland.* Those areas inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions; or areas that are defined and delineated in accordance with the [~~"Federal Manual for Identifying and Delineating Jurisdictional Wetlands" dated January 10, 1989, and as may be amended from time to time; or as further defined and delineated by the~~] U.S. Army Corps of Engineers guidelines as may be amended from time to time, the U.S. Environmental Protection Agency, or the Delaware Department of Natural Resources and Environmental Control.

*Wetland delineation and report.* An on-site method or process for identifying wetlands as described [~~in~~] by the U.S. Army Corps of Engineers guidelines [Wetland Delineation Manual, Technical Report: Y 87-1, from 1987 and] as may be amended from time to time. The wetland delineation report shall be prepared by a person with professional experience and knowledge in wetlands identification and shall analyze a site for the existence and extent of wetlands. When such a delineation and report is required as part of a land use application, such report and delineation may be required to be updated and revised if the original report was prepared more than three (3) years prior to the date of submission of the land use application.

....

*Zoning regulations....*

**SYNOPSIS:** This amendment removes the definition of the term “corporate guest house” since it is already defined in Section 40.33.240.

For the terms ‘drainageway’, ‘nondelineated floodplain’, ‘riparian buffer’, and ‘surface water’ this amendment reflects a new reference to the former USGS 7.5 minute quadrangle sheets as recommended by both DNREC and the USGS.

The term minor land development is clarified to show that more than one building may be constructed provided the total GFA does not exceed 20,000 GFA.

The terms nonconforming signs and lots are clarified to be consistent with other nonconforming definitions and to acknowledge that a nonconformity may occur after amendments to this chapter.

The amendment removes the exclusion of dwelling units from construction plans.

The amendment to Street, collector is consistent with DeIDOT 's new Standards for Subdivision Streets and State Highway Access. The deletion of the last sentence is needed so that local roads will no longer be considered collectors.

The terms wetland and wetland delineation report are amended to reflect the discontinued use of the former federal manuals and to simply refer to federal guidelines that may be amended from time to time.