

July 23, 2009

**In reply, refer to:**

New Castle County Ord. 09-066 (2009-0391-T)  
Enhanced Plan Review Process 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 09-066 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><br><br>87 Reads Way<br>New Castle, DE 19720 | <b>Contact Person: David Culver</b>      |
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**Date of Most Recently Certified Comprehensive Plan: July 31, 2007**

**Application Type:**

**Comprehensive Plan Amendment: NA**

**Text Amendment: Ord. 09-066 (2009-0391-T) is a text amendment to Chapter 40 of the *New Castle County Code* designed to enhance and improve the land development plan review process.**

**Other: NA**

|   |                        |
|---|------------------------|
| <b>Comprehensive Plan Amendment or Municipal Ordinance prepared by:</b> |                        |
| <b>Address:</b><br><br>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:**

The purpose of this text amendment is to improve and simplify the current three-step review process for rezonings and major land development plans. The new process consolidates the process and requires and encourages all technical and public comments to be submitted during the exploratory plan review stage. This includes the State of Delaware Preliminary Land Use Service (PLUS) review. As a result emphasis is placed on streamlining the process, being more productive, doing more with less, and the fact that comments received at the earlier stage rather than preliminary stage are far more likely to be incorporated into the plan than at the later preliminary stage. This will allow the applicant and the Department an opportunity to incorporate appropriate comments into the design of the plan at any earlier stage and prior to the expenditures of detailed engineering analysis.

See attachment for more detail.

Introduced by: Councilman George Smiley  
Date of introduction: July 28, 2009

**ORDINANCE NO. 09 - 066**

**TO REVISE CHAPTER 40 OF THE *NEW CASTLE COUNTY CODE*  
(ALSO KNOWN AS THE UNIFIED DEVELOPMENT CODE - UDC)  
REGARDING ARTICLE 1 (TITLE AND APPLICABILITY), ARTICLE 3 (USE  
REGULATIONS), ARTICLE 5 (SITE CAPACITY AND CONCURRENCY  
CALCULATIONS), ARTICLE 7 (TRANSFER OF DEVELOPMENT RIGHTS AND  
OTHER INCENTIVES AND BONUSES), ARTICLE 11 (TRANSPORTATION IMPACT),  
ARTICLE 20 (SUBDIVISION AND LAND DEVELOPMENT DESIGN PRINCIPLES),  
ARTICLE 24 (SPECIAL SUBDIVISIONS), ARTICLE 27 (MAINTENANCE  
CORPORATIONS, OPEN SPACE, AND COMMON FACILITIES), ARTICLE 30  
(COUNTY COUNCIL AND ADMINISTRATIVE BOARDS), ARTICLE 31  
(PROCEDURES AND ADMINISTRATION), AND ARTICLE 33 (DEFINITIONS) TO  
REVISE THE SUBDIVISION AND LAND DEVELOPMENT REVIEW AND  
APPROVAL PROCESS**

**WHEREAS**, on December 31, 1997, New Castle County adopted and the County Executive approved Chapter 40 of the New Castle County Code; and

**WHEREAS**, when Chapter 40 of the *New Castle County Code* was adopted, the process for the review of subdivision and land development plans was a carry-over from the former code; and

**WHEREAS**, County Council has determined that it is desirable to improve and simplify the current three-step plan review process for major plans and rezonings with a two-step review process that includes a first-step public hearing and comment; and

**WHEREAS**, through the Preliminary Land Use Service (PLUS) review, outside agencies will be more involved in early plan review; and

**WHEREAS**, in-house department divisional staff will also be more involved in construction plan review to help ensure a more practical and collaborated design; and

**WHEREAS**, the two-step process will improve plan review times by reducing redundant reviews and revising submission dates; and

**WHEREAS**, New Castle County Council has determined that the provisions of this ordinance will substantially advance, and are reasonable 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.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 1 (“Title and Applicability”), Division 40.01.100 (“Applicability”), Section 40.01.130 (“Sunsetting of recorded subdivision or land development plans”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

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

- A. Plans recorded after adoption of these regulations. Construction of development....
- B. Plans recorded before the adoption of these regulations. Construction of development....
- C. The applicant shall bear the burden of providing evidence....
- D. If construction has not commenced within five (5) years, the [~~preliminary plan and the~~] record plan shall be resubmitted and reviewed by the [~~Technical Advisory Committee~~] Department to determine if the conditions of approval of the original record major subdivision or land development plan have changed or have been altered by the subsequent adoption of, or amendments to, this Chapter. [~~Based on the comments of the Technical Advisory Committee, t~~]The Department shall either:
  - 1. Reapprove the record plan, and give written notice to the owner....
  - 2. Disapprove the record plan and give written notice to the owner of the specific areas of noncompliance. The modifications necessary to bring the plan into compliance with this Chapter shall be incorporated into a revised [~~preliminary~~] exploratory plan and resubmitted. Upon approval of a revised [~~preliminary~~] exploratory plan, a new major subdivision or land development plan may be submitted for approval. The new plan approved and recorded pursuant to this Section shall have the effect of superseding the original record major subdivision or land development plan. The owner shall then have five (5) years from the date of notice made pursuant to this subsection to obtain building permits and commence construction.
  - 3. If a rezoning of the property occurred simultaneously with the approval of the preliminary or exploratory plan and the Department has determined that a new revised [~~preliminary~~] exploratory plan is required, the zoning of the property shall revert to the previous zoning district. The processing of the revised [~~preliminary~~] exploratory plan shall require full compliance with the then current rezoning procedures.

**Section 2.** *New Castle County Code Chapter 40 (Unified Development Code or “UDC”), Article 3 (“Use Regulations”), Division 40.03.300 (“Additional limited and special use standards”), Section 40.03.332 (“Limited waiver to Table 40.03.210 A”)* is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Sec. 40.03.332. Limited waiver to Table 40.03.210A.**

County Council may grant a waiver from the five hundred (500) foot distance from use provisions contained in Table 40.03.210A for commercial lodging and restaurants where Council is satisfied after a public hearing that a reduction in the five hundred (500) foot distance would not adversely impact the character of the existing development in the area or otherwise adversely impact existing development in the area. To obtain a waiver from the five hundred (500) foot distance requirement contained in Table 40.3.210A for commercial lodging and restaurants, the applicant must request in writing that County Council adopt an ordinance of approval. The request shall be forwarded to the Department for a recommendation. The Department shall then have twenty (20) days to issue its recommendation to County Council based upon the same criteria County Council must consider pursuant to this Section. A request for such a waiver shall not be considered by County Council until the applicant has obtained [~~preliminary~~] exploratory plan approval for the proposed development for which the waiver is sought.

**Section 3.** *New Castle County Code Chapter 40 (Unified Development Code or “UDC”), Article 5 (“Site Capacity and Concurrence Calculations”), Division 40.05.300 (“Water and sewer capacity”), Section 40.05.310 (“Water capacity calculation”)* is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Sec. 40.05.310. Water capacity calculation.**

Prior to receiving a rezoning or record subdivision or land development final plan approval from the Department, the developer shall obtain from the water service provider the following form and certification (Form 40.05.310 Water Capacity Certification).

| <i>Form 40.05.310<br/>Water Capacity Certification</i> |  |             |             |   |
|--|--|-------------|-------------|---|
| 1. Water Service Provider                              | Name:                                      |             |             |   |
| 2. Development   | Name:                                      |             |             |   |
| 3. Service Standards                                   |  |             |             |   |
|  | Residential                                | Retail      | Office      | Industrial                              |
| Daily Peak - Lots less than 1 acre                     | 400 gpd/detached du<br>250 gpd/attached du | 0.5 gpd/sf. | 0.3 gpd/sf. | 0.5 gpd/sf. or actual whichever is more |

Form 40.05.310  
Water Capacity Certification

|   |   |             |             |   |
|---|---|-------------|-------------|---|
| Daily Peak - Lots<br>1 acre of more   | 500 gpd/du  | 0.5 gpd/sf. | 0.3 gpd/sf. | 0.5 gpd/sf. or actual whichever is more |
| Fire Flows gpm*   | 500 - 1000gpm   | 1000 gpm    | 1000 gpm    | 1500 gpm                                |
| Minimum Residual<br>Pressure *  | 20 psi  | 20 psi      | 20 psi      | 20 psi                                  |
| Minimum Service<br>Pressure   | 25 psi  | 25 psi      | 25 psi      | 25 psi                                  |
| 4. Site<br>Requirement  | That the water supply system and proposed development improvements proposed by the subject development has met the service standards in 3.  |             |             |   |
| 5. Storage<br>Requirement   | That the water storage and distribution facilities serving the proposed development can continue to provide service meeting the standards in 3 within the proposed development and all other areas served by those storage and distribution facilities.   |             |             |   |
| 6. Line<br>Requirement  | That the distribution lines directly serving the proposed development can continue to provide service meeting the standards in 3 within the proposed development and all other existing and proposed future areas to be served by those distribution lines. (Proposed areas shall mean those areas for which a final plan has been approved by the Department).   |             |             |   |
| 7. Supply Capacity  | That the capacity of the water supply during a drought of record with stream flows meeting the prevailing flow standards (currently 7Q10) is adequate to serve existing customers and future customers as determined by the number of lots or square footage shown on an approved [ <del>preliminary</del> ] <u>exploratory</u> plan; that the capacity of the water supply from groundwater sources be of sufficient quantity and pressure (as monitored) or as determined by DNREC allocations of groundwater supply based on maximum regulatory drawdown limits to serve existing customers and future customers as determined by the number of lots or square footage shown on an approved [ <del>preliminary</del> ] <u>exploratory</u> plan; that imported water from other watersheds be of sufficient quantity (as reduced to account for periods during a drought of record) and quality to serve the existing and future customers of the watershed of origin as well as any areas outside said watershed. If the capacity of the existing water supply is inadequate to serve the demands of existing and future customers, describe the plans to provide additional water supplies. |             |             |   |
| 8. Reduced<br>Capacity (if<br>applicable)                                       | The analysis demonstrated that the maximum capacity of the site that meets 3-7 above is _____ dwelling units and/or _____ square feet of _____.   |             |             |   |
| 9. Certification  | I, (name) _____, (title) _____  |             |             |   |
|   | Employed by the (water supplier) _____, as an engineer.   |             |             |   |
|   | I have analyzed the area using and find that the standards in 3, 4, 5, 6 & 7 will be met after this development and any others approved in the area of influence are fully developed and occupied.  |             |             |   |
|   | signature   | seal        |             |   |
| * See Chapter 6, Delaware State Fire Prevention Regulations, as may be amended. |   |             |             |   |

**Section 4.** *New Castle County Code Chapter 40 (Unified Development Code or “UDC”), Article 7 (“Transfer of Development Rights and Other Incentives and Bonuses”), Division 40.07.200 (“Transferable development rights”), Section 40.07.210 (“Noncontiguous development”)* is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Sec. 40.07.210. Noncontiguous development.**

When development rights are transferred in the process of subdivision or land development, noncontiguous properties may be developed as a single unit pursuant to the provisions of this Article. The landowner shall provide the following information:

- A. At the time an exploratory plan is submitted....
- B. ~~[At preliminary]~~ Prior to exploratory plan [submission] approval a document indicating the pending sale of the development rights or common ownership of the noncontiguous parcels shall be part of the application. The document shall indicate rights available for transfer, those to be transferred, and any rights to remain on the property.
- C. Except as provided in paragraph E below, all the calculations required....
- D. When a record plan is submitted, the following documents are required....
- E. For purposes of complying with Article 11 of this Chapter....

**Section 5.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 7 (“Transfer of Development Rights and Other Incentives and Bonuses”), Division 40.07.200 (“Transferable development rights”), Section 40.07.224 (“Limitations”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Sec. 40.07.224. Limitations.**

The development rights provided for in this Article do not create any additional property rights and shall be subject to change by amendment of this Article by County Council at any time. However, transferred development rights that make up part of the development depicted upon an approved ~~[preliminary]~~ exploratory plan may not be changed or altered by subsequent amendments of this Article unless the ~~[preliminary]~~ exploratory plan approval expires or the sunset provisions of this Chapter extinguish the record plan.

**Section 6.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 7 (“Transfer of Development Rights and Other Incentives and Bonuses”), Division 40.07.300 (“Workforce housing incentives”), Section 40.07.311 (“Voluntary applicability”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Sec. 40.07.311. Voluntary applicability.**

- A. To secure a residential density bonus....

- B. Any plan submitted pursuant to this Division....
- C. Existing record plans may be resubmitted to the Department as revised minor land development plans for consideration under this Division, provided any increases are based only on the number of recorded lots. If the new plan proposes an increase of more than fifty (50) percent of the existing recorded units or more than one hundred (100) new units (whichever is less), then the plan will be classified as a major land development plan. Any recorded plan that was the subject of a rezoning or any modification or change to the recorded street right-of-way will disqualify the new plan as a minor land development plan. Regardless, if the former preliminary plan was approved pursuant to previous Code Section 40.03.319, no additional [~~preliminary~~] plan approval by County Council is required. The Department will work with the applicant in an effort to achieve plan approval for minor plans within twelve (12) months of application. All existing record plans revised pursuant to this section will require an exploratory plan hearing, certification from the Department of Education for the proposed additional units that there is capacity or that a voluntary assessment is agreed to, and County Council consent prior to recordation pursuant to Section 40.31.114 (C) of this Chapter.
- D. Applications must be served....

**Section 7.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 7 (“Transfer of Development Rights and Other Incentives and Bonuses”), Division 40.07.300 (“Workforce housing incentives”), Section 40.07.333 (“Exterior appearance of workforce dwelling units”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Sec. 40.07.333. Exterior appearance of workforce dwelling units.**

The exterior appearance of the workforce dwelling units should be similar to market rate dwelling units of the same unit type, by providing similar architectural style and similar exterior building materials, finishes, and quality of construction. At [~~preliminary~~] exploratory plan submission for a major or record plan submission for a minor the applicant shall submit architectural renderings or design guidelines for the project that are in compliance with the standards of Article 25.

**Section 8.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 11 (“Transportation Impact”), Division 40.11.100 (“Transportation capacity”), Section 40.11.120 (“Need for traffic analysis”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Sec. 40.11.120. Need for traffic analysis.**

A. Except as exempted elsewhere in this Chapter, an applicant shall submit the following traffic information for all major plans and rezonings.

1. Approximate vehicle trips per day during the week and the weekend, and the a.m. and p.m. peak hour trips generated by the proposed development;
2. Road conditions and access geometry including roadway surface, horizontal, and vertical alignment conditions associated with the access and egress location(s) to the adjoining roadway;
3. Accident data within the area of influence for the last three (3) years for the roadway in which the development is proposed to have access and egress; and
4. Existing peak hour level of service at intersections in the area of influence of the proposed development, if available.

B. In order to expedite the review of the above information, the applicant may, at its option, provide it to the Department and DelDOT in advance of the scheduled preapplication conference.

[A]C. If the Department and DelDOT find, based upon the information supplied by the applicant pursuant to ~~[Section 40.31.112 (C) (2)]~~ subparagraph A above and the standards set forth in this Section, that a proposed rezoning, subdivision, or land development could generate significant traffic impacts, the Department shall require the applicant to prepare and submit a traffic impact study to the Department and DelDOT. Significant impact shall be considered to exist and a traffic impact study required for a rezoning change or a major subdivision or land development if any of the following conditions exist.

1. The proposal exceeds the projected average....
2. The proposal is projected to generate more than....
3. The subject property is located....
4. The proposed development causes the total development ....
5. The proposed development will impact roadways....

**Section 9.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 11 (“Transportation Impact”), Division 40.11.100 (“Transportation capacity”), Section 40.11.130 (“Traffic impact study requirements”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Sec. 40.11.130. Traffic impact study requirements.**

- A. A traffic impact study shall be prepared by individuals or firms that perform traffic engineering which shall be reviewed and sealed by a professional engineer. The content and format of the study shall be as prescribed by Section 15 of DelDOT's "Rules and Regulations for Subdivision Streets" or any amendments thereto, and include all of the following additional requirements:
1. The anticipated trip generation....
  2. New traffic counts will be required....
  3. Currently planned traffic mitigation....
  4. The projected peak hour level of service....
  5. A geometric assessment of any roadways.....
  6. If the proposed rezoning, subdivision, or land development....
  7. Future traffic shall be projected by the inclusion of trip generation from projects with recorded plans, major plans and plans with rezonings not initiated by the County that have, [projects with preliminary] exploratory plan approval, projects having had a zoning change approved within a three (3) year prior period, and projects containing deed restrictions requiring phasing to coincide with improvements to the transportation system. Future traffic shall also be projected by the inclusion of trip generation based upon a growth factor for background traffic. The Department shall provide DelDOT a list of all plans, projects, and rezonings described above.
  8. A statement indicating whether the peak hour level of service....
  9. Recommendations regarding what, if any....
  10. A statement signed by the applicant and referenced....
  11. Cross-reference should also be made....

**Section 10.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 11 (“Transportation Impact”), Division 40.11.100 (“Transportation capacity”), Section 40.11.150 (“Subdivision or land development traffic impact study plan approval”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Sec. 40.11.150. Subdivision or land development traffic impact study plan approval.**

- A. Upon receipt of the traffic impact study and comments from DelDOT or individual or firm approved by the Department as provided in Section 40.11.140(B), the Department shall review the traffic impact study with regard to the following:
1. The accuracy, completeness, and thoroughness....
  2. DelDOT's comments and recommendations.....
  3. The level of service requirements.....
  4. Appropriateness and adequacy.....
  5. Compatibility with regional.....
  6. Design principles and standards....
- B. Based upon the above criteria, the Department shall approve, approve with conditions....
- C. If the traffic impact study is approved or approved with conditions for a major plan, the applicant may proceed with [~~the exploratory~~] record plan review [~~and a preliminary plan submission~~] as provided in Article 31. [~~The applicant and future owners shall provide educational materials and conduct informational programs with employees and/or residents regarding available modes of transportation. This may include, but is not limited to, the explanation and availability of bus and train schedules, information on Ride Share Delaware, location of bike paths, etc. A note regarding the owner's responsibility to provide alternate mode of travel education shall be added to the Record Plan.~~]

**Section 11.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 20 (“Subdivision and Land Development Design Principles”), Division 40.20.200 (“Subdivision layout”), Section 40.20.231 (“Subdivision and street names”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Sec. 40.20.231. Subdivision and street names.**

- A. Subdivision names, street names and street name signs for all subdivisions and public or private streets shall be in conformance with the regulations of DelDOT. When determining proper subdivision and street names for new roads in a subdivision or land development, the Department shall check with the County 911 staff, the Post Office in the City of Wilmington, and the Post Office nearest the street or road concerned, to determine that there is no conflict with the proposed names that would result in confusion in providing emergency services or in delivery of mail. The ~~[proposed]~~ approved subdivision and street names ~~[should be submitted with the preliminary plan]~~ shall be part of the record plan submission.
- B. The naming of unnamed existing public and private streets.....
- C. A copy of all such resolutions adopted by Council....
- D. A common driveway or easement established....
- E. Installation of street name signs. To ensure that emergency vehicles....

**Section 12.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 24 (“Special Subdivisions”), Division 40.24.200 (“Village staged development”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Division 40.24.200. Village staged development.**

The village-suburban with bonus option (Table 40.25.130) is available only to developments where the employment-to-population ratio is above the level specified in Table 40.25.130. Where employment is established prior to housing, monitoring the actual achievement of this is easy. More likely, the development will seek to begin with residential uses; in this case, plan phases will be required to be staged so that residential development cannot reach the higher densities unless actually accompanied by the employment. A staging plan shall be approved with the ~~[preliminary]~~ exploratory plan by the Department.

**Section 13.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 24 (“Special Subdivisions”), Division 40.24.200 (“Village staged development”), Section 40.24.210 (“Village development plan”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Sec. 40.24.210. Village development plan.**

All villages shall submit a staging or phasing plan as a part of the [preliminary] exploratory plan. A village employment bonus option shall also show a plan of phases that will be eliminated so as to remain within the base density should the employment not materialize.

**Section 14.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 27 (“Maintenance Corporations, 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 as set forth below.

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

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 at least two-thirds (2/3) of the lot 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.

**Section 15.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 30 (“County Council and Administrative Bodies”), Division 40.30.100 (“Administration”), Section 40.30.110 (“Responsibility”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Sec. 40.30.110. Responsibility.**

The following codes are used in Table 40.30.110...

| Table 40.30.110<br>PROCEDURAL RESPONSIBILITIES         |                |                       |                      |                       |                        |  |                                    |
|--|----------------|-----------------------|----------------------|-----------------------|------------------------|--|------------------------------------|
| Type of Action   | County Council | Administrative Boards |                      |                       | Administrative Agents  |  |                                    |
|  |                | Plan-ning Board       | Board of Adjust-ment | Historic Review Board | Department of Land Use | <del>[Technical Advisory Commit-tee]</del> <u>PLUS</u> | RPA - Technical Advisory Committee |
| General Reviews (see Division 40.31.400 for standards) |                |                       |                      |                       |                        |  |                                    |
| .....  |                |                       |                      |                       |                        |  |                                    |

**Section 16.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 30 (“County Council and Administrative Bodies”), Division 40.30.400 (“Administrative agents”), Section 40.30.410 (“Department of Land Use”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

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

The Department General Manager and such other employees as the Department General Manager designates shall constitute the Department. The Department ~~[shall]~~ may present Department recommendations to County Council, the Planning Board, the Board of Adjustment or the Historic Review Board. The Department shall have the following jurisdiction, authority, and duties under this Code.

- A. To hear, consider and decide upon applications for limited uses.
- B. To review, consider and render recommendations for the disposition of applications for ~~[limited]~~ special use, zoning and administrative variance permits or approvals as indicated in Table 40.30.110.
- C. To make written interpretations of this Code....
- ....
- 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 shall cause notice of the amendments to be published in the Saturday edition of the News Journal and the public shall have twenty (20) days from the date of publication to submit written comments to 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 appendix to Chapter 40 of the New Castle County Code and as may be amended from time to time is hereby stricken from the official codified version of New Castle County Code.
- N. All other responsibilities and duties pursuant to 9 *Del. C.* § 1301.

**Section 17.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 30 (“County Council and Administrative Bodies”), Division 40.30.400 (“Administrative agents”), Section 40.30.420 (“Technical Advisory Committee”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Sec. 40.30.420. [~~Technical Advisory Committee~~] State of Delaware Preliminary Land Use Service (PLUS).**

The [~~Committee~~] PLUS shall be responsible for the following:

- A. Review and make recommendations for major subdivision and land development plans.
- B. Review and make recommendations on zoning applications.

**Section 18.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.100 (“Application review procedures”), Section 40.31.110 (“Rezoning/major and minor plan review”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

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

| <i>[Weeks]</i>   | <i>Stage/steps</i>   | <i>Rezoning</i> | <i>Major Plan [<del>w/o</del> Rezoning]</i>    | <i>Minor Plan [<del>w/o</del> Rezoning]</i> |
|--|--|-----------------|--|---|
| <b><u>Pre-application Sketch Plan Review</u></b>         |  |                 |  |   |
|  | <u>Submission</u>  | <u>Y</u>        | <u>Optional, Y for major residential plans</u> | <u>Optional</u>                             |
|  | <u>Conference</u>  | <u>Y</u>        | <u>Optional, Y for major residential plans</u> | <u>Optional</u>                             |
| <u>Exploratory [<del>Sketch</del>] Plan Review Stage</u> |  |                 |  |   |
| [1]  | <del>[Exploratory Sketch] Submission</del>                   | Y               | Y  | Y   |
| [2]  | <del>[Exploratory Sketch Conference]</del>                   | <del>[Y]</del>  | <del>[Optional]</del>                          | <del>[Optional]</del>                       |
| [3-4]  | <del>[Department Review Report] PLUS Review and Report</del> | Y               | Y  | <del>[Y] N</del>                            |
| <u>[Rezoning/Preliminary Plan]</u>                       |  |                 |  |   |
| [1]  | <del>[Rezoning/Preliminary Plan Submission]</del>            | <del>[Y]</del>  | <del>[Y]</del>                                 | <del>[Optional]</del>                       |
| [3]  | <del>[Dept. Notifies TAC agency]</del>                       | <del>[Y]</del>  | <del>[Y]</del>                                 | <del>[Optional]</del>                       |
| [7]  | <del>[TAC Review]</del>                                      | <del>[Y]</del>  | <del>[Y]</del>                                 | <del>[Optional]</del>                       |
| [9]  | <del>[Dept. Report]</del>                                    | <del>[Y]</del>  | <del>[Y]</del>                                 | <del>[Optional]</del>                       |
| [12]   | <u>Rezoning Ordinance Introduction</u>                       | Y               | N  | N   |
|  | <u>Exploratory Plan Initial Report</u>                       | <u>Y</u>        | <u>Y</u>                                       | <u>N</u>                                    |
| [14]   | <u>Dept./Planning Board Hearing</u>                          | Y               | Y  | <del>[Optional] N</del>                     |

| <i>[Weeks]</i>   | <i>Stage/steps</i>   | <i>Rezoning</i> | <i>Major Plan [<del>w/o</del> Rezoning]</i> | <i>Minor Plan [<del>w/o</del> Rezoning]</i> |
|--|--|-----------------|---|---|
| [18]   | PB Business Meeting <del>[h]</del> <u>and rezoning Recommendation</u>  | Y               | N   | [Optional] <u>N</u>                         |
|  | <u>Exploratory Plan Final Report</u>   | <u>Y</u>        | <u>Y</u>                                    | <u>Y</u>                                    |
| [20]   | County Council <u>Rezoning Hearing</u> <del>[h]</del> <u>and Decision</u>  | Y               | N   | N   |
|  | <u>Construction Plan Submission</u>  | <u>Y</u>        | <u>Y</u>                                    | <u>Y</u>                                    |
| [24]   | <del>[County Council Decision Deadline]</del>  | <del>[Y]</del>  | <del>[N]</del>                              | <del>[N]</del>                              |
| <b>Record Plan [<del>Submission</del>] Review Stage</b>                            |  |                 |   |   |
| [1]  | <del>[Record Plan]</del> Submission  | Y               | Y   | Y   |
| [3]  | Department Review <u>and</u> Approval  | Y               | Y   | Y   |
| [4]  | <del>[Minor Plan Recordation]</del>  | <del>[N]</del>  | <del>[N]</del>                              | <del>[Y]</del>                              |
| [8]  | <u>Major Plan Rezoning</u> <del>[/]</del> or <u>Major Plan</u><br><del>[CC:]</del> <u>County Council</u> Consent | Y               | Y   | N   |
| [9]  | <del>[Rezoning/Major]</del> Plan Recordation   | Y               | Y   | <del>[N]</del> <u>Y</u>                     |
|  | <u>Zoning Map Revised</u>  | <u>Y</u>        | <u>N</u>                                    | <u>N</u>                                    |
| [* Week numbers are intended for guidance only.]<br>[(Y required, N not required)] |  |                 |   |   |

**Section 19.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.100 (“Application review procedures”), Section 40.31.112 (“Exploratory sketch plan review/conference”) and Section 40.31.113 (“Rezoning/preliminary plan application”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Sec. 40.31.112. Pre-application [~~Exploratory~~] sketch plan review/conference.**

A. *Applicability.*

- [1.] A pre-application~~[exploratory]~~ sketch plan review conference is required for all rezoning requests and major residential subdivisions. An applicant may request a pre-application [~~exploratory~~] sketch plan review conference for all other major or minor plans at any time. The pre-application sketch plan review conference may be waived by the Department when it is determined, after a review of the submission, that no departmental concerns exist. [~~Subsequent to the conference, an exploratory sketch plan with the level of detail listed in Appendix 1, Section 2 should be submitted within six (6) months to facilitate thorough Departmental review. This will result in the issuance of the exploratory sketch plan review~~]

letter upon which the timeframes of Section 40.31.390 are based.]

~~[2. An exploratory sketch plan review is required for all land development plans, including those proposals for which a rezoning is sought. ]~~

- B. ~~[Exemptions. The Department shall have the authority to waive plan review requirements for County initiated rezonings, administrative adjustments or rezonings not requiring a minor or major plan. The pre-exploratory sketch plan conference may also be waived when it is determined by the Department, after a review of the submission that no departmental concerns exist. ]~~

Submission requirements. See Appendix 1 of this Chapter.

- C. ~~Pre-[exploratory] application sketch plan review conference.~~ The purpose of the pre-[exploratory] application sketch plan review conference is to familiarize the applicant with principles of conservation design, departmental concerns and with the applicable provisions of this Chapter, as well as to permit the Department to assess the proposal and to identify any service problems or concerns in conjunction with the applicant's objectives. If additional studies and/or information are required for the proposed project, those studies and/or information must be provided to the Department prior to exploratory plan approval ~~[prior to the rezoning/preliminary plan submission].~~

The Department shall use the pre-[exploratory] application sketch plan review conference to also identify conservation, open space and development areas. Site design and management practices shall also be examined to determine how minimal disturbance can be achieved while maintaining a high standard of community design. Discussion points will include:

1. Greenway linkages on- and off-site (trails, biodiversity corridors, habitat areas, CNA's, etc.);
2. Interconnectivity issues (pedestrian, vehicular, mass transit, etc.) and access issues;
3. Open space linkages (parks, public and private open space and conservation areas);
4. Article 10 resource protection areas;
5. On-site, of regional scope (extending off-site), fully protected vs. partially protected resources;
6. Soil associations;

7. Farmland concentrations (agricultural districts, preservation easement purchases);
8. Existence and location of historic and cultural resources;
9. Scenic viewsheds or vistas into or out of the site (visual accents and vista points pursuant to County Scenic River and Highway Studies);
10. Natural drainage patterns (pre-development), boundaries and discharged points based on characteristics such as soils, topography, vegetation and other local watershed issues, and;
11. Development options given zoning district and resource protection objectives.

~~[A pre-exploratory sketch plan review conference shall be scheduled by the Department or can be requested at anytime by the applicant.]~~

~~[D]. [Submission requirements.]~~

~~[1.] [All major residential subdivisions shall submit the required application materials pursuant to the provisions contained in this Section and Appendix 1, except that prior to the pre-exploratory sketch plan review conference, only the following information shall be required]:~~

~~[a. SLD 1 form;]~~

~~[b. Site analysis plan pursuant to Appendix 1 (3) (k);]~~

~~[c. One or more concept plans with defined conservation, open space and development areas;]~~

~~[d. All adjacent recorded subdivision and development plans;]~~

~~[e. Sanitary sewer location and all possible tie-ins;]~~

~~[f. All existing adjacent transportation, pedestrian and open space inter connections;]~~

~~[g. The required review fee, and;]~~

~~[h. All requirements of D (4) and D (5) of this Section.]~~

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

**Sec. 40.31.113. Exploratory Plan Review Stage.**

A. Applicability. An exploratory plan review is required for all land development plans, including those proposals for which a rezoning is sought. For all major plans and rezonings, the Department initial report and PLUS report is required prior to Planning Board public hearing.

B. Exemptions. The Department shall have the authority to waive plan review requirements for County-initiated rezonings, administrative adjustments or rezonings not requiring a minor or major plan.

C. Submission requirements.

[2.] 1. The applicant shall ~~[submit]~~ make a complete ~~[all]~~ exploratory ~~[sketch]~~ plan ~~[application materials pursuant to the provisions contained in]~~ submission in accordance with Appendix 1 of the UDC, including the applicable fee, the engineering checklist, a narrative addressing the comments from the pre-application meeting, and all other information required by this Chapter. Upon notification to the applicant of a complete submission, the applicant shall submit the major plan or rezoning to the Office of State Planning for Preliminary Land Use Service (PLUS) review.

[3] 2. *Traffic impact study (TIS).* For all major plans and plans with rezonings where the Department has not waived traffic analysis requirements, the applicant shall submit traffic information ~~[including:]~~ pursuant to Article 11. If a traffic impact study is required, a scoping meeting shall be scheduled pursuant to Article 11 to identify concurrency issues. The plan may not be recorded until such time that the TIS is approved and the plan meets the concurrency requirements of Article 11.

~~[a. Approximate vehicle trips per day during the week and the weekend, and the a.m. and p.m. peak hour trips generated by the proposed development;]~~

~~[b. Road conditions and access geometry including roadway surface, horizontal, and vertical alignment conditions associated with the access and egress location(s) to the adjoining roadway;]~~

~~[c. Accident data within the area of influence for the last three (3) years for the roadway in which the development is proposed to have access and egress; and]~~

~~[d. Existing peak hour level of service at intersections in the area of influence of the proposed development, if available. In order to expedite the review of this information, the applicant may, at its option, provide the foregoing information to the Department and DelDOT in advance of the scheduled preapplication conference.]~~

[4] 3. It is the applicant's responsibility to inform the County of any known restrictions or legal impediments which would interfere with or prevent the implementation of the proposed development.

[5] ~~[No application shall be processed unless proof has been provided in the form of verification from the County Division of Finance that all County taxes, school taxes and sewer service fees have been paid or are not delinquent on the land which is the subject of the application.]~~

[6] 4. The Department will return to the applicant any incomplete submission or those submissions that do not substantially comply with all provisions of the County Code.

[E]D. *Exploratory plan* ~~[review letter]~~ *initial report*. The Department will issue a written ~~[review letter]~~ report that identifies any concerns relating to Chapter compliance or other factors the applicant must consider.

For minor plans, [F]the exploratory plan [review letter] report shall inform the applicant whether the plan is found to be acceptable, acceptable with conditions, or unacceptable [of the Department's findings of plan approval, plan approval with modifications or plan denial]. Minor plans that are found acceptable or acceptable with conditions may submit site construction plans in accordance with Appendix 1 of this Chapter.

For major plans and rezonings where the Department finds the exploratory plan to be in general compliance with the standards of this Chapter and after the PLUS report is issued, those plans may advance to the Planning Board public hearing.

1. The ~~[response]~~ exploratory plan initial report shall list any other actions, environmental reports or other special studies required prior to subsequent plan submissions.
2. If applicable, the Department shall respond to the appropriateness of a rezoning request.

~~[3. For rezonings and major plan reviews, the Department will determine if a traffic impact study is required. If a traffic impact study is required, a scoping meeting shall be scheduled pursuant to Article 11. In the event that a TIS is required, the Department shall not be required to issue comments on the exploratory sketch plan until the TIS is found to comply with Article 11. If the TIS determines that the LOS requirements of Article 11 cannot be satisfied by the applicant, the Department may defer any further review and may not accept a rezoning or preliminary plan application. ]~~

~~[4]3. [For major residential subdivisions, the department shall not issue a formal review letter as a result of the pre-exploratory sketch plan review conference. The Department's exploratory sketch plan review letter will be issued after the detailed exploratory sketch plan submission is made with the level of detail required by Appendix 1, Section 2. Upon issuing a formal review letter, each subsequent submission shall be submitted with an additional review fee.] For any plan subject to Article 15 review; or for which a decision or recommendation is required by the Board of Adjustment, Planning Board, Historic Review Board, or Resource Protection Advisory Technical Advisory Committee or which is subject to any other special studies (i.e. floodplain, environmental impact assessment, Cockeysville, etc.); those decisions, recommendations, or studies must be issued and/or completed prior to record plan submission.~~

~~[F. *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). 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.]~~

~~**[Sec. 40.31.113. Rezoning/preliminary plan application.]**~~

~~[A. *Applicability.* Applications for rezonings must be submitted by the established deadline for the triannual rezoning process. Preliminary plans without a rezoning may be submitted at any time and will be scheduled for a public hearing. The plan shall not propose any development exceeding the limits included in the traffic impact study. If development is proposed beyond that which was evaluated in the TIS, the traffic impact study must be reevaluated by the Department and DelDOT prior to any further review.]~~

~~[B]~~E. Public hearing [~~Submission~~] requirements. Upon a finding by the Department that the major plan or rezoning is in general compliance with UDC standards, and upon receipt of the written PLUS report, ~~[The applicant shall submit]~~ the exploratory [a preliminary] plan [pursuant to the requirements of Appendix 1, including the applicable fee] shall be scheduled for a Planning Board public hearing on the next available hearing date. [The applicant shall provide all TAC agencies with copies of the rezoning application, preliminary plan and any required studies or reports.] In the Traditional Neighborhood (TN) District, and in hamlets and villages, the design guideline for the entire development for architecture, signs, landscaping, streets, and public spaces shall be submitted.

1. Exploratory plans without rezoning. Consideration of plans shall include public comment, discussions of the technical aspects of the plan, PLUS report, and Chapter compliance. It is not the purpose of this hearing to examine the appropriateness of the proposed use or its intensity and scale.
2. Rezoning. The Department shall establish public hearing dates based upon the triannual rezoning process. Following the introduction of a rezoning ordinance, an application shall be scheduled for the next triannual public hearing. Applicants shall address the standards for zoning map amendment in Section 40.31.410 as part of the public hearing presentation.

~~[C]~~E. Department [~~and TAC review and~~] exploratory plan final report and rezoning recommendation. ~~[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). If applicable, the Department's report shall include a discussion as to the appropriateness of the rezoning.]~~

1. Exploratory plans without rezoning. The Department will issue a final report and may either find the exploratory plan acceptable, acceptable with conditions, or unacceptable, in which case a revised exploratory plan must be submitted. If an exploratory plan is found acceptable or acceptable with conditions, the applicant may submit site construction plans in accordance with Appendix 1 of this Chapter.
2. Rezoning. At a Planning Board business meeting, the Department and Planning Board shall issue independent recommendations to either approve or conditionally approve the rezoning and the exploratory plan, or deny the rezoning. The written recommendations shall contain specific findings of fact resulting from the PLUS report, the public hearing, and Department analysis. The Department shall also

issue an exploratory plan final report. Regardless of the recommendation and prior to the rezoning application being transmitted to County Council, the exploratory plan must be found acceptable. The recommendation report, including an acceptable exploratory plan shall be transmitted to County Council for consideration. The applicant may submit site construction plans in accordance with Appendix 1 of this Chapter following County Council approval of the rezoning.

G. County Council rezoning hearing and decision. Upon receipt of a rezoning recommendation report from the Department and Planning Board and within the time constraints of the triannual rezoning process, County Council shall hold a public hearing and render a decision. A simple majority or seven (7) votes shall be required to approve the rezoning ordinance when the Department recommends approval. A two-thirds (2/3) majority or nine (9) votes shall be required to approve the rezoning ordinance when the Department recommends disapproval. If County Council tables the rezoning ordinance for the purpose of obtaining more information, a final decision may be rendered outside the time constraints of the triannual rezoning dates. If County Council adopts the rezoning based upon the associated exploratory plan, the applicant may proceed to the record plan review stage. The effective date of the rezoning shall occur at plan recordation and the Official Zoning Map of New Castle County shall not be changed until that date. If there is no plan to be recorded associated with the rezoning, the effective date of the rezoning shall be the date the rezoning ordinance is signed by the County Executive. The record plan submitted shall be in general conformance with the development depicted on the approved exploratory plan that was relied upon by County Council when it granted the rezoning.

H. Subsequent submission. An applicant shall have thirty-six (36) months from the date of the exploratory plan initial report to proceed to the record plan review stage, or the plan will expire. Pursuant to Table 40.31.390, the General Manager of the Department may grant an extension(s) for circumstances beyond the applicants control.

~~[D. County Council initiated rezonings. At the applicant's request, the Department shall create a title and prepare the exhibits necessary for the introduction of a rezoning ordinance. ]~~

~~[E. Department/Planning Board public hearing. ]~~

~~[1. Rezonings. The Department shall establish public hearing dates based upon the triannual rezoning process. Following the introduction of a rezoning ordinance, an application shall be scheduled for the next triannual public hearing. Consideration of a rezoning shall include discussions of the plan's conformance with the Comprehensive Development Plan, impact upon the surrounding area and infrastructure, compatibility of land use, intensity and scale of proposed~~

development, the technical aspects of the associated plan, and any other Chapter requirements.]

~~[2. Preliminary plans without rezoning. The Department shall establish public hearing dates throughout the year. Following the issuance of the preliminary plan and TAC report, the preliminary plan shall be scheduled for the next public hearing. Consideration of plans shall include public comment, discussions of the technical aspects of the plan and Chapter compliance. It is not the purpose of this hearing to examine the appropriateness of the proposed use or its intensity and scale. ]~~

~~[F. Recommendation report and/or preliminary plan report. ]~~

~~[1. Rezoning. At a scheduled Planning Board business meeting, the Department and the Planning Board shall issue a recommendation to either approve the rezoning and the preliminary plan, deny the rezoning and/or find the plan unsatisfactory, in which case a revised preliminary plan must be submitted. A written recommendation of the Department and the Planning Board shall contain specific findings of fact resulting from the TAC report, the public hearing and Department analysis. In the event that a preliminary plan is found to be unsatisfactory, the processing of the application may result in a deferral to the next triannual rezoning cycle. The recommendation report, including an approved preliminary plan shall be transmitted to County Council for consideration.]~~

~~[2. Preliminary plans without rezoning. The Department may either approve the preliminary plan or find it unsatisfactory, in which case a revised preliminary plan must be submitted. If a preliminary plan is approved by the Department, a record plan may be submitted. ]~~

~~[G. Council hearing and decision. Upon receipt of a rezoning recommendation report from the Department and Planning Board and within the time constraints of the triannual rezoning process, County Council shall hold a public hearing and render a decision. A simple majority or seven (7) votes shall be required to approve the rezoning ordinance when the Department recommends approval. A two-thirds (2/3) majority or nine (9) votes shall be required to approve the rezoning ordinance when the Department recommends disapproval. If County Council tables the rezoning ordinance for the purpose of obtaining more information, a final decision may be rendered outside the time constraints of the triannual rezoning dates. If County Council adopts the rezoning based upon the associated preliminary plan, a record plan may be submitted to the Department. The record plan submitted to the Department shall be submitted in strict accordance with the development depicted on the approved preliminary plan that was relied upon by County Council when it granted the rezoning.]~~

**Section 20.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.100 (“Application review procedures”), Section 40.31.114 (“Record plan submission”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Sec. 40.31.114. Record plan review stage [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 shall be in strict conformity with the approved exploratory or preliminary plan. If the Department determines that the record plan is not in strict conformity with the approved exploratory or preliminary plan, the submission of a revised exploratory or preliminary plan shall be required. No development will be permitted until the record plan is submitted in strict conformity with the exploratory or preliminary plan. In addition, no resubdivision plan shall be accepted unless it is also in strict conformity with the exploratory plan.]~~

A. Record plan [Submission] requirements. ~~[The applicant shall submit]~~ Upon approval of the construction plans, the applicant may submit a record plan pursuant to the requirements in Appendix 1, including the applicable fee. Any agreements, surety, maintenance declarations or any other legal documents required by County Code ~~[this Chapter]~~ shall also be submitted. In the Traditional Neighborhood (TN) District and in hamlets and villages the final design guidelines for the entire development for architecture, signs, landscaping, streets, and public spaces shall be submitted. The record plan must be in general conformance with the approved exploratory plan.

~~[1. — If the 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 at least two thirds (2/3) of the lot 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. ]~~

~~[2. — In the Traditional Neighborhood (TN) District and in hamlets and villages the final design guideline for the entire development for architecture, signs, landscaping, streets, and public spaces shall be submitted.]~~

B. Record plan review report. 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.

~~[B]~~C. Department review/approval. 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 [~~of Land Use~~] shall also have the ability to approve all minor land development plans on behalf of County Council.

~~[C]~~D. Council consent.

1. For major plans, the record plan shall be forwarded to County Council for its consent. Upon receipt of the plan, County Council shall schedule the matter for its next public hearing, and may take one (1) of the following actions:

a. Adopt a resolution approving the record major plan; or

b. Table and refer the plan back to the Department, no more than twice, with specific questions relating to technical compliance with this Chapter, State or Federal constitutional requirements, or any other statute or ordinance for which compliance is required. Upon receipt of a Department recommendation reaffirming approval of the plan, County Council shall adopt the resolution of approval, unless a second referral is made because of additional questions or concerns. Upon receipt of the Department's recommendation reaffirming approval of the plan after review of any additional concerns raised by County Council, Council shall adopt the resolution of approval.

2. County Council may use any one (1) or more of the above options subject to the limitations contained in each subparagraph.

~~[D]~~E. Action upon receipt of County Council referral. Upon receipt of specific questions from County Council, the Department shall respond with its findings and a recommendation. The recommendation shall be one (1) of the following:

1. That the plan be approved, in which case County Council shall adopt the resolution of plan approval at its next scheduled meeting unless a second referral is made, in which case Council shall adopt the resolution of plan approval at its next scheduled meeting following the second approval.

2. That the Department has rescinded its previous approval of the plan for noncompliance, in which case County Council shall withdraw the resolution of plan approval.

~~[E. *Recordation.* Upon final approval or consent pursuant to this Section, the plan shall be recorded at the Recorder of Deeds.]~~

**Section 21.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.100 (“Application review procedures”), Section 40.31.115 (“Recordation of plan stage”) is hereby amended by adding the material that is underscored, as set forth below.

**Sec. 40.31.115. Plan recordation and commencement of construction.**

- A. *Recordation.* Upon final approval or consent pursuant to Division 40.31.100, the plan shall be recorded at the Recorder of Deeds.
- B. *Commencement of construction.* Commencement of construction must begin within sixty (60) months of the date of recordation or the plan will sunset in accordance with the sunset provisions outlined in Article 1 of this Chapter.

**Section 22.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 31 (“Procedures and Administration”), Division 40.31.300 (“Provisions of general applicability”), Section 40.31.390 (“Time limits and expiration”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

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

- A. Land use application decisions are effective as of the date the written decision is issued. The decision may be either one of approval, conditional approval, or disapproval. The expiration time limits of a land use application decision contained in Table 40.31.390 shall commence on the date of the first written decision within each stage of the application review process. Where indicated in Table 40.31.390, the General Manager of the Department of Land Use may [twice] grant an [three (3) month] extension(s) of time for circumstances beyond the applicant’s control and shall state in writing the reasons therefore.

**Table 40.31.390  
TIME LIMITS**

| <i>Application Type</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 in the approval unless specified otherwise in the approval; the special use may also require periodic review at which time the approval could terminate; or the special use is utilized on a plan pursuing department approval or recordation; the special use shall expire if the plan expires or sunsets |
| Variance  | 24                              | 0                         | Construction has commenced implementing the variance and is diligently pursued to completion; or the variance is utilized on a plan pursuing department approval or recordation; the variance shall expire if the plan expires or sunsets  |
| 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 and is diligently pursued to completion or the building, structure or parcel(s) has been used for the purposes set forth in the approval  |
| Exploratory plan [ <del>review letter</del> ] <u>initial report issued</u>  | [ <del>12</del> ] <u>36</u>     | 2                         | Submission of [ <del>the next plan required (i.e. Preliminary Plan or</del> ] <u>Record Plan</u> [ <del>] is made</del> ]  |
| [ <del>Preliminary plan report or for a rezoning the department/planning board rezoning recommendation report</del> ] | [12]                            | [2]                       | [ <del>Submission of the Record Plan is made</del> ]   |
| Record Plan [ <del>Approval</del> ] <u>Submission</u>   | [ <del>18</del> ] <u>6</u>      | [ <del>2</del> ] <u>1</u> | [ <del>Final approval of the Record Plan by the Department is obtained</del> ] <u>Plan Recordation</u>   |

- B. After a rezoning of a property by County Council, no ordinance to amend the zoning map regarding the zoning designation of the property shall be considered until the expiration of three (3) years from the date of the rezoning except for zoning corrections pursuant to Section 40.02.110 C, New Castle County initiated rezonings, and comprehensive rezonings. No zoning map amendment that would change the zoning designation of property depicted on a record plan shall be considered until the expiration of the time limit provided for a record plan in Table 40.31.390 above, except for zoning corrections pursuant to Section 40.02.110 C.

**Section 23.** *New Castle County Code* Chapter 40 (Unified Development Code or “UDC”), Article 33 (“Definitions”), Division 40.33.300 (“General definitions”) is hereby amended by adding the material that is underscored and deleting the material that is bracketed with strikethroughs, as set forth below.

**Division 40.33.300. General definitions.**

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

*Abandonment.....*

~~[*Plan, preliminary.*— A plan of a subdivision or of a land development, including all required supplementary data, showing the approximate proposed street and lot or site layout, or a plan of existing private streets to be dedicated to public use, as a basis for consideration by the Department and the Technical Advisory Committee prior to the preparation of a record plan.]~~

.....

~~[*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.]~~

*Plans, site construction.* All applicable plans or information on all applicable plans required during the land use application review process that will be reviewed by the Department regarding the engineering and design of a site, including but not limited to, the Stormwater Management Plan, Erosion and Sediment Control Plan, General Grading Plan, Pre-Bulk Grading Plan, Post-Bulk Grading Plan, Lines and Grades Plan, Landscape Plan, Natural Resource Management Plan, and Open Space Management Plan.

**Section 24. 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 25. 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 26. 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 27. Effective Date.** This Ordinance shall become effective on January 1, 2010 following its passage by New Castle County Council and the signature of the County Executive or as otherwise provided in 9 *Del.C.* § 1156.

Approved on:

Adopted by County Council of  
New Castle County on:

\_\_\_\_\_  
County Executive

\_\_\_\_\_  
President of County Council  
New Castle County

**SYNOPSIS:** The purpose of this text amendment is to improve and simplify the current three-step review process for rezonings and major land development plans. The new process consolidates the process and requires and encourages all technical and public comments to be submitted during the exploratory plan review stage. This includes the State of Delaware Preliminary Land Use Service (PLUS) review. As a result emphasis is placed on streamlining the process, being more productive, doing more with less, and the fact that comments received at the earlier stage rather than preliminary stage are far more likely to be incorporated into the plan than at the later preliminary stage. This will allow the applicant and the Department an opportunity to incorporate appropriate comments into the design of the plan at any earlier stage and prior to the expenditures of detailed engineering analysis.

**FISCAL NOTE:** This Ordinance will have no discernable fiscal impact. The Department of Land Use will be adjusting the fees related to the subdivision and land development review process in Appendix 2 of the UDC that will be revenue neutral.