

improvements to the Sussex County Code including the protection of existing forest on land to be developed and planting requirements for new development; and

WHEREAS, this Ordinance is in furtherance of the recommendations of the Land Use Reform Working Group regarding forest preservation and tree planting; and

WHEREAS, it has been determined that this Ordinance promotes and protects the health, safety, convenience, orderly growth and welfare of the inhabitants of Sussex County.

NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:

Section 1. The Code of Sussex County, Chapter 99, Article I, §99-5 “Definitions” is hereby amended by deleting the language in brackets and inserting the italicized and underlined language as follows:

§ 99-5 Definitions.

For the purpose of this chapter, certain terms and words are hereby defined:

...

FOREST - A vegetative community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater, including land that formally had forest cover and will be naturally or artificially regenerated.

FOREST ASSESSMENT - A method or process, to include a forest inventory/tree survey, for determining the area or areas within a parcel that contain high habitat value and groupings of trees or individual trees to be preserved within the Perimeter Buffer and Perimeter Buffer

Protection Area.

FOREST ASSESSMENT REPORT -A report detailing the findings of a Forest Assessment prepared and certified by a licensed landscape architect, certified arborist, or licensed forester or a forester designated by the Society of American Foresters as a "certified forester."]

FOREST COVER – The area of a site meeting the definition of forest.

FOREST STAND DELINEATION (FSD) – A plan and narrative report that identifies existing forest cover, vegetation, and environmental features on a proposed development site. A Forest Stand Delineation plan includes an accurate depiction of the forest species, composition, age, condition, location, acreage, and the location of the 100-year floodplain existing on a property. A Forest Stand Delineation shall be prepared by a licensed landscape architect, certified arborist, or licensed forester or forester designated by the Society of American Foresters as a “certified forester.”

FOREST PRESERVATION – The retention of existing forest or the creation of new forest.

....

Section 2. The Code of Sussex County, Chapter 99, Article III, §99-21A “Perimeter Buffers” is hereby amended by deleting the language in brackets and by inserting the italicized and underlined language as follows:

§ 99-21.A Perimeter buffers.

A. Perimeter buffer general standards.

(1) There shall be a Perimeter Buffer established along the boundary of every major subdivision or residential planned community. A Perimeter Buffer shall not be required along internal boundaries within a subdivision or residential planned community, such as internal phasing lines.

(2) The Perimeter Buffer shall be planted with a variety of trees and shrubs so as to create a visual landscaped screening. All trees and shrubs shall be local and native species. All planting activities shall [adhere to ANSI A300, Planting Standards] comply with the American National Standard Institute (ANSI) A300 Standards.

(3) The Perimeter Buffer shall include a mix of 70% deciduous shade trees and 30% evergreen trees as well as shrubs. The Perimeter Buffer shall include at least 15 trees within every 100 linear feet of the Buffer. All deciduous and evergreen trees that are planted shall have a minimum height of six feet above ground when planted, shall be a species that typically achieves a height of at least 10 feet, and arranged in a staggered natural manner throughout the entire width of the Perimeter Buffer to effectively achieve a visual landscaped screening which will filter views from and into the subdivision. The Perimeter Buffer may include existing [Woodlands] Forest and planted trees to achieve these planting standards.

(4) In the event that a Resource Buffer (§ 115-193) is required in the location of a Perimeter Buffer or Perimeter Buffer Protection Area, the Resource Buffer standards shall take precedence over, and shall not be in addition to, the Perimeter Buffer and/or Perimeter Buffer Protection Area requirements for that same location.

(5) The Perimeter Buffer shall be marked with permanent, in-ground signage located at 100-foot intervals along the edge of the Perimeter Buffer to confirm the existence and non-disturbance of the Perimeter Buffer. This signage shall be at least five inches by seven inches in size and shall identify the existence of the Perimeter Buffer, the fact that it is a non-disturbance Area and a reference to

penalties and/or remediation required if unauthorized disturbance occurs.

B. Perimeter buffer standards —[Woodlands] Forest requirements. Where a Perimeter Buffer contains existing [Woodlands] Forest at the time of application, the following requirements shall apply:

(1) Any major subdivision or residential planned community where [Woodlands] Forest exist at the time of application shall require a [Forest Assessment Report] Forest Stand Delineation. The [Forest Assessment Report] Forest Stand Delineation must be submitted as part of the application.

(2) The [Woodlands] Forest retained within the Perimeter Buffer shall be depicted generally on the Preliminary Site Plan and with detail on the Perimeter Buffer Landscape Plan.

(3) Unless otherwise provided for herein, the [Woodlands] Forest within the Perimeter Buffer shall remain in its natural state.

(4) The Area of the Perimeter Buffer containing [Woodlands] Forest shall be bordered by a Perimeter Buffer Protection Area.

(5) There shall be protective tree fencing, staking, or continuous ribbon installed along the entire edge of the Perimeter Buffer Protection Area adjacent to the interior of the development to protect the integrity of existing trees within the Perimeter Buffer.

(6) Selective clearing of the [Woodlands] Forest retained for the use of the Perimeter Buffer may be permitted but at no time shall trees of six-inch diameter at breast height be damaged, removed, or otherwise adversely affected. Dead, dying or unstable live trees that present an imminent danger to persons or property may be removed.

(7) Walking trails within the [Woodlands] Forest for the purpose of providing access to the Perimeter Buffer may be permitted and shall be depicted on the Perimeter Buffer Landscape Plan.

(8) Access points to the [Woodlands] Forest for the purpose of Perimeter Buffer maintenance may be permitted and shall be

depicted on the Perimeter Buffer Landscape Plan.

(9) Any removal or damage of trees within the [Woodlands] Forest, the Perimeter Buffer or the Perimeter Buffer Protection Area (with the exception of the removal of invasive species) shall be subject to the mitigation requirements as well as the violations and penalties located in this Chapter.

(10) At no time shall the ground within [Woodlands] the Forest area of a Perimeter Buffer and Perimeter Buffer Protection Area be cleared, graded, regraded, or grubbed. Permitted stump removal shall only occur by stump grinding that does not disturb the surrounding area or vegetation.

(11) If [Woodlands] Forest on the land where the Perimeter Buffer is to be located have been cleared for a timber harvest within five years prior to the date of application, the following additional planting requirements shall apply:

(a) The cleared area along the Perimeter Buffer shall be measured and known as the "Cleared Area."

(b) The Perimeter Buffer shall be planted back with at least 15 trees every 50 linear feet of the Buffer.

(c) In addition to the Perimeter Buffer, a new [Woodlands] Forest shall be planted that is 2.0 times the size of the Cleared Area and a rate of at least 50 trees per acre.

(d) The new [Woodlands] Forest may border the area of the Perimeter Buffer or be in a separate area, but at no times shall the Perimeter Buffer be less than 30' in width measured from the property boundary.

(e) The planted Perimeter Buffer and new [Woodlands] Forest comply with the sizes and percentages required by § 99-21A.A(2) and (3).

(f) If the applicant chooses to provide replacement plantings on any property other than the one on which the timber harvest

occurred or protect an off-site [Woodlands] Forest area, the mitigation plan must be reviewed and approved by the Director, and:

[1] The replacement plantings or off-site [Woodlands] Forest area must be located within the same twelve-digit hydrologic unit code as defined by the United States Geological Survey as the proposed development.

[2] The replacement plantings or [Woodlands] Forest area located off-site must be protected under a perpetual conservation easement for the benefit of a conservation organization approved by Sussex County.

[3] At no time shall the area of the replacement plantings be less than 2.0 times the area of [Woodlands] Forest to be the Perimeter Buffer that was cleared and a rate of at least 50 trees per acre and shall meet the tree and shrub requirements of this Chapter.

(12) Removal of any invasive species from the [Woodlands] Forest is permitted.

C. Perimeter buffer standards — non-[woodlands] Forest requirements. Where a Perimeter Buffer does not contain existing [Woodlands] Forest at the time of application, the following requirements shall apply:

(1) Any major subdivision or residential planned community where [Woodlands] Forest do not exist within the Perimeter Buffer shall comply with the planting requirements of the Perimeter Buffer Standards and Perimeter Buffer Landscape Plan.

(2) There shall be protective fencing, staking, or continuous ribbon installed along the entire edge of the Perimeter Buffer adjacent to the interior of the development to protect the integrity of the Perimeter Buffer.

(3) There shall be a final grade that contains a minimum of four

inches of topsoil and a suitable grass mix or wildflowers planted as sacrificial cover between the buffer trees for soil stabilization until the newly planted trees become larger. Woodchips may substitute for planted grass between the buffer trees around both newly planted and existing trees.

(4) Walking trails within the Perimeter Buffer may be permitted and shall be depicted on the Perimeter Buffer Landscape Plan.

(5) Access points to the Perimeter Buffer and Perimeter Buffer Protection Area for the purpose of Perimeter Buffer maintenance shall be depicted on the Perimeter Buffer Landscape Plan.

(6) The Perimeter Buffer shall have a two-year guarantee secured by bonding from the date that substantial completion is issued for the phase where the Perimeter Buffer is located.

D. Perimeter buffer landscape plan.

(1) The Perimeter Buffer shall be depicted generally on the Preliminary Site Plan and in detail on a Perimeter Buffer Landscape Plan that is included within a Final Site Plan.

(2) The Perimeter Buffer Landscape Plan shall provide sufficient information and detail to clearly demonstrate that all applicable requirements and standards for Perimeter Buffers and Perimeter Buffer Protection Areas are satisfied. The Perimeter Buffer Landscape Plan shall contain, at a minimum, the following:

(a) Approximate location and description of the protective tree fencing, staking, or continuous ribbon.

(b) The location, spacing, height, and species of existing and new trees and shrubs proposed to meet tree planting requirements.

(c) The design and location of the required Perimeter Buffer signage.

(d) Measures to be taken to avoid sedimentation intrusions

and erosion in the Perimeter Buffer.

(e) A summary table of the number of new trees to be planted and minimum number of existing trees to be retained (if any) to meet the tree specification and density requirements with calculations confirming that these requirements have been achieved. The summary table may include example groupings of trees to be planted instead of each new tree labeled on the Perimeter Buffer Landscape Plan.

(f) A note confirming that the developer guarantees the full cost of replacement [Woodlands] Forest of the Perimeter Buffer for two years after the determination of substantial completion in accordance with § 99-31.

(g) A planting schedule for the Perimeter Buffer. The planting schedule shall demonstrate the installation of the Perimeter Buffer prior to the issuance of the first residential building permits in the phase where it is located. The Perimeter Buffer shall be planted and inspected prior to the issuance of the first residential building permit within the phase where the Buffer is located. Each phase of the development must include the Perimeter Buffer and Perimeter Buffer Protection Area (as applicable) that is adjacent to that Phase.

(h) Notwithstanding any other provisions of this chapter, the Planning and Zoning Commission shall be authorized, as part of the site plan review process, to grant final approval of a Plan for the roadway frontage of a major subdivision which may include landscape and design features, such as ornamental fences that are not used as screens, berms, landscape plantings of shrubs, non-invasive ornamental grasses and/or trees, multimodal paths required by DelDOT, or a combination of such features which is designed and certified to by a licensed Landscape architect, licensed Forester or Forester designated by the Society of American Foresters as a "Certified Forester," for the purpose of making the subdivision more attractive,

more in keeping with the surrounding area and less visible from the roadway, provided said plan will not cause the landscape features contained in the plan to be placed in an area adjacent to the entrance in such a manner as to restrict the view of motorists entering or exiting from the subdivision or restricting the sight lines of motorists in such a manner as to create a potential safety or traffic hazard. This authorization shall only apply to a subdivision's roadway frontage where its entrance is located. All other roadway frontages shall comply with the requirements of Subsections A., B. and C above, as applicable.

E. Timing; bonds and guarantees.

(1) The Perimeter Buffer Landscape Plan shall include the planting schedule for the entire Perimeter Buffer. The planting schedule shall demonstrate the installation of the Perimeter Buffer prior to the issuance of any residential building permits within the phase. The Perimeter Buffer shall be planted and inspected prior to the issuance of the first residential building permit within the phase where the Perimeter Buffer is located. Each phase of the development must include the Perimeter Buffer and Perimeter Buffer Protection Area (as applicable) that is adjacent to that phase. The Perimeter Buffer for each phase must be planted and inspected before County approvals or permits will be granted to construct the next phase. The portion of any non-[Woodlands] Forest Perimeter Buffer within the entirety of the development that is adjacent to other existing or approved dwellings or lots shall be planted in accordance with the requirements of § 99-21.A.A and C within 12 months of the issuance a Notice to Proceed for the first phase of the development.

(2) Where [Woodlands] Forest exist in the Perimeter Buffer, the Perimeter Buffer and Perimeter Buffer Protection Area shall be protected and marked as provided herein for the entire development (subject to inspection and approval by Sussex County) prior to the

issuance of any notice to proceed for site work. For subdivisions that are to be constructed in phases, the protection and marking of existing [Woodlands] Forest shall be maintained and inspected prior to the issuance of any notice to proceed for site work or construction within a subsequent phase.

(3) The developer shall be responsible for the removal and replacement of any dead, dying or diseased trees and for the removal from the site of all stakes, guy wires, protective tree fencing, staking, or continuous ribbon upon the conclusion of the two-year guaranty period.

(4) The developer shall post a performance bond or other guaranty for the Perimeter Buffer in an amount sufficient to install the Perimeter Buffer and the Perimeter Buffer Protection Area (as applicable) in a form acceptable to the County Attorney. The amount of such bond shall be 125% of the cost of the installation the Perimeter Buffer (including all plantings) and the Perimeter Buffer Protection Area (as applicable) or \$50,000, whichever is greater. The Perimeter Buffer shown on the Perimeter Buffer Landscape Plan may be bonded as a separate phase or phases of the subdivision, provided that all Perimeter Buffers containing [Woodlands] Forest must be bonded before a Notice to Proceed is issued for any phase of the development.

(5) Bonds posted to ensure the completion and non-disturbance of the Perimeter Buffers shall be posted with the Director of Planning and Zoning.

(6) The trees and shrubs located within the Perimeter Buffer shall be in good health prior to the issuance of substantial completion in accordance with § 99-31 of the Code. The Bonds for the Perimeter Buffer shall thereafter remain in place until two years after the determination of substantial completion in accordance with § 99-31.

(7) A party may not alter the Perimeter Buffer Area of the development (or any phase thereof) unless an amended Perimeter Buffer Landscaping Plan is approved by Sussex County and a new

bond or other guaranty is provided for the alteration.

F. Perimeter buffer maintenance.

(1) The developer shall be responsible for the health and survival of the Perimeter Buffer, including regular necessary watering until the determination of substantial completion in accordance with § 99-31. This shall include the obligation to replace any trees and shrubs within the Perimeter Buffer that do not survive during this time period.

(2) The Perimeter Buffer shall be maintained in perpetuity. The perpetual maintenance of the Perimeter Buffer by a homeowners' association shall be confirmed in the recorded declaration or restrictive covenants for the development with the requirement that any trees or shrubs that do not survive must be replanted with trees or shrubs of the same type and species in accordance with the original Landscape Plan approved by Sussex County. The Perimeter Buffer shall be maintained (and any replacement trees or shrubs planted) according to **[best management practices in the Forestry industry (ANSI A300)]** the American National Standard Institute (ANSI) A300 Standards. The applicant and/or developer must provide the Commission with satisfactory proof that the declaration or restrictive covenants include a perpetual maintenance plan which shall be binding upon the applicant and/or developer and thereafter by the homeowners' association. The Commission and its attorney shall review and approve the perpetual maintenance plan prior to the restrictive covenants being recorded and prior to granting final site plan approval.

G. Perimeter buffer tree mitigation.

(1) In the event that trees, shrubs, **[Woodlands]** Forest, Perimeter Buffer or the Perimeter Buffer Protection Area are removed or damaged without authorization, tree mitigation shall be required. In addition, violations and penalties may be assessed.

(2) If trees within a Perimeter Buffer (whether **[Woodlands]**

387 Forest or planted) have been damaged or removed (unless such
388 damage or removal is the result of Act of God or natural causes and
389 are therefore subject to the Perimeter Buffer Maintenance
390 Requirements), tree mitigation must occur as follows:

391 (a) A mitigation plan shall be prepared by a licensed
392 Landscape architect, certified arborist, or licensed Forester or
393 Forester designated by the Society of American Foresters as a
394 "Certified Forester."

395 (b) New [Woodlands] Forest shall be created for the area of
396 [Woodlands] Forest in the Perimeter Buffer that was illegally
397 accessed or damaged with at least three replacement trees
398 planted for every tree removed or damaged.

399 (c) The replacement plantings shall meet the tree and shrub
400 requirements of this Section.

401 (d) The developer, property owner and/or party who violates
402 this section shall be responsible for the health and survival of
403 the replacement in accordance with this Section.

404 (e) All tree mitigation plantings must be on the same lot,
405 parcel, or tract on which the illegal activity occurred, except
406 as noted herein.

407 H. Violations and penalties.

408 (1) The developer, owner of the land and any person or
409 corporation who shall violate any provisions of this Section shall be
410 subject to the following penalties in addition to other requirements
411 set forth in this Section. Separate violations or a series of violations
412 may be combined to determine the total area where the violation
413 occurred:

414 (a) A fine of \$10,000 per quarter acre, pro rata, of disturbance
415 within the Perimeter Buffer and Perimeter Buffer Protection Area,
416 as applicable, shall be imposed; and

417 (b) A tree mitigation plan in accordance with the requirements of

418 this Section shall be approved by the Planning and Zoning
419 Commission.

420 (2) Where the developer is the party who has violated the
421 provisions of this Section, no building or zoning permits shall be
422 issued nor shall any inspections occur within the phase where the
423 violation occurred (including, but not limited to building code and
424 utility inspections) until the tree mitigation plan is complete and
425 approved by the Commission.

426
427 **Section 3. The Code of Sussex County, Chapter 99, Article V, §99-26**
428 **“Information To Be Shown” is hereby amended by inserting the**
429 **italicized and underlined language as follows:**

430
431 **§99-26 Information To Be Shown.**

432 The final plat shall be legibly and accurately drawn and shall show the
433 following information:

434 . . .

435 *(23) Protective tree fencing, staking, or continuous ribbon shall be*
436 *installed along the entire edge of any Forest being protected pursuant*
437 *to §115-194.8 and trees planted pursuant to §115-194.9. All work*
438 *conducted pursuant to this subsection shall comply with the American*
439 *National Standard Institute (ANSI) A300 Standards.*

440
441 **Section 4. The Code of Sussex County, Chapter 115, Article I, §115-**
442 **4 “Definitions and Word usage” is hereby amended by inserting the**
443 **italicized and underlined language as follows:**

444
445 **§ 115-4 Definitions and word usage.**

446 . . .

447
448 B. General definitions. For the purpose of this chapter, certain terms
449 and words are hereby defined as follows:

...
FOREST - A vegetative community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater, including land that formally had forest cover and will be naturally or artificially regenerated.

FOREST COVER – The area of a site meeting the definition of forest.

FOREST STAND DELINEATION (FSD) – A plan and narrative report that identifies existing forest cover, vegetation, and environmental features on a proposed development site. A Forest Stand Delineation plan includes an accurate depiction of the forest species, composition, age, condition, location, acreage, and the location of the 100-year floodplain existing on a property. A Forest Stand Delineation shall be prepared by a licensed landscape architect, certified arborist, or licensed forester or forester designated by the Society of American Foresters as a “certified forester.”

FOREST PRESERVATION – The retention of existing forest or the creation of new forest.

...
Section 5. The Code of Sussex County, Chapter 115, Article XXV, is hereby amended by inserting a new Section 115-194.8 “Forest Preservation” and by adding the italicized and underlined language as follows:

§ 115-194.8. Forest Preservation

All residential development including mixed use development (with the exception of minor subdivisions, projects governed by Chapter 72 of this

Code and Accessory Dwelling Units) shall be subject to the following requirements related to forest preservation. This section shall not apply to land which is actively managed and used for silviculture or other logging or forestry activities for a commercial purpose which shall remain in forest.

A. Forest Stand Delineation

(1) Where Forest exists at the time of application, the applicant shall develop A Forest Stand Delineation which shall be submitted as part of the application and used to determine the most suitable and practical areas for forest preservation.

B. Minimum Protection Standards of existing Forest.

(1) Where an existing Forest will be impacted or disturbed within a development, that Forest shall be protected and preserved as follows:

(a) Developments located in the Growth Area as described within the Land Use Element and as shown on the Future Land Use Map of the adopted Sussex County Comprehensive Plan, shall protect and preserve 30% of the pre-existing Forest as shown on the Forest Stand Delineation (not including the Perimeter Buffer required by Section 99-21A).

(b) Developments located in the Rural Areas as described within the Land Use Element and as shown on the Future Land Use Map of the adopted Sussex County Comprehensive Plan, shall protect and preserve 50% of the pre-existing Forest as

shown on the Forest Stand Delineation (not including the Perimeter Buffer required by Section 99-21A).

(2) The following trees, shrubs, plants and specific areas are considered priority for retention and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Commission, that reasonable efforts have been made to protect them and the plan cannot be altered:

- (a) Trees, shrubs, and plants located in sensitive areas including the 100-year floodplain, perennial nontidal rivers and streams and their buffers, intermittent streams and their buffers; and
- (b) Contiguous Forest that connects the largest undeveloped or most vegetated tracts of land within and adjacent to the site.

(4) There shall be protective tree fencing, staking, or continuous ribbon installed along the entire edge of any Forest being protected hereunder to protect the integrity of the existing Forest within the site. All work conducted pursuant to this subsection shall comply with the American National Standard Institute (ANSI) A300 Standards.

(5) Any Forest and limit of disturbance areas designated to be protected shall not be cleared, graded, regraded or grubbed. All work conducted pursuant to this subsection shall comply

543 with the American National Standard Institute (ANSI) A300
544 Standards.

545
546 C. Mitigation of Forest Removal

547 (1) In the event an application proposes removal of Forest in
548 excess of the amounts permitted under § 115-194.8B, the
549 application shall require mitigation in the form of new Forest
550 creation as follows:

551
552 (a) A mitigation plan shall be prepared by a licensed
553 landscape architect, certified arborist, or licensed forester
554 or forester designated by the Society of American Foresters
555 as a “certified forester.” The mitigation plan shall include
556 the following information and shall also comply with the
557 requirements of subparagraph (d) below:

558
559 i. A table that lists the proposed values of the
560 following, in square feet:

561
562 a. The gross Forest area on the entire
563 property prior to an application for
564 development being filed with the
565 Department.

566 b. The area of Forest to be protected
567 and preserved on the entire property.

568 c. The area of Forest that the applicant
569 proposes to remove.

570
571 ii. A site plan with clear graphic indication of the
572 Forest, drawn to scale, showing the Forest to be

protected and the Forest to be removed.

(b) If the application is located in a Growth Area as described within the Land Use Element and as shown on the Future Land Use Map of the adopted Sussex County Comprehensive Plan then the Forest area cleared shall be reforested in accordance with the mitigation plan in an amount equal to 2.0 times the Forest area cleared in excess of the amount required to be preserved under §115-194.8B (measured to the nearest square foot).

(c) If the application is located in a Rural Area as described within the Land Use Element and as shown on the Future Land Use Map of the adopted Sussex County Comprehensive Plan then the Forest area cleared shall be reforested in accordance with the mitigation plan in an amount equal to 2.5 times the Forest area cleared in excess of the amount required to be preserved under §115-194.8B (measured to the nearest square foot).

(d) The mitigation plan shall demonstrate reforestation that creates a biological community dominated by native trees and other woody plants that should be planted at a minimum caliper of 2.5" for shade trees, 1.5" for ornamental trees, and six-foot height for multi-stem and evergreen trees and containing at least 100 live trees per acre with a least 50 percent of those trees having the potential of attaining a 2-inch or greater diameter measured at 4.5 feet above the ground within 7 years. The mitigation plan shall demonstrate the location, spacing,

height, and species of existing and new trees and shrubs proposed to meet Forest mitigation requirements.

(e) The mitigation plan shall provide the location protective tree fencing, staking, or continuous ribbon installed along the entire edge of any reforested area, which shall also be installed on the site itself. All work conducted pursuant to this subsection shall comply with the American National Standard Institute (ANSI) A300 Standards.

D. Timing, bonds and guarantees.

(1) The Forest must be preserved and inspected and any mitigation areas planted and inspected before County approvals or permits will be granted to construct the next phase of the development.

(2) Any mitigation plan shall include the planting schedule for the entire mitigation area. The planting schedule shall demonstrate the installation of the trees or vegetation in the mitigation area prior to the issuance of any residential building permits within the phase where the mitigation area is located. The trees and vegetation in the mitigation area shall be planted and inspected prior to the issuance of the first residential building permit within the phase where the mitigation area is located.

(2) The trees and vegetation located within any Forest or mitigation area shall be free of defects and in good health prior to the issuance of substantial completion in accordance with § 99-31 of the Code for subdivisions and prior to the issuance of individual certificates of occupancy for other residential development.

635 (3) The developer shall post a bond or other guarantee for any
636 mitigation area in an amount sufficient to install the plantings in the
637 mitigation area(s) in a form acceptable to the County Attorney. The
638 amount of such bond shall be 125% of the cost of the installation of
639 all plantings in the mitigation area or \$50,000, whichever is greater.
640 The mitigation areas shown on the mitigation plan may be bonded
641 as a separate phase or phases of the development. Such bonds shall
642 be posted with the Director of Planning and Zoning. The bonds
643 shall remain in place until two years after the determination of
644 substantial completion in accordance with § 99-31 of the Code for
645 subdivisions and prior to the issuance of individual certificates of
646 occupancy for other residential development.

647
648 E. Violation and Penalties

649
650 (1) In the event a developer, owner of the land or any person or
651 corporation removes or damages Forests in excess of the amount
652 required to be retained pursuant to § 115-194.8B hereof and as
653 specified in the approved plans for such development, such party
654 shall be responsible for mitigation pursuant to § 115-194.8C at a
655 rate of 2 times the Forest area (measured to the nearest square foot)
656 removed (which may require a reconfiguration of the approved site
657 plan for the development to accommodate the additional planting)
658 and shall pay a fine equal to the Forest area (measured to the
659 nearest square foot) damaged or disturbed multiplied by \$4.356 per
660 square foot. Such fine shall be authorized and approved in the
661 County's annual budget and deposited in the County's open space
662 fund to be used for land and easement acquisitions.

663
664 (2) Where the developer or their agents or contractors are the
665 party who has violated the provisions of this Section, no building or
666 zoning permits shall be issued nor shall any development-related
667 inspections occur (including, but not limited to, Building Code
668 and/or utility inspections) until the mitigation plan set forth in § 115-

194.8C is completed, submitted to, and approved by the Commission.

Section 6. The Code of Sussex County, Chapter 115, Article XXV, is hereby amended by inserting a new Section 115-194.9 “Tree Planting Requirements” and by adding the italicized and underlined language as follows:

§ 115-194.9. Tree Planting Requirements.

All residential development including mixed use development (with the exception of minor subdivisions, projects governed by Chapter 72 of this Code and Accessory Dwelling Units) projects shall be subject to the following requirements related to tree planting.

A. Tree Planting

(1) Tree planting shall create a biological community dominated by native trees and other native woody plants free of defects containing at least 100 live, non-containerized, trees per acre. Replacement trees should be planted at a minimum caliper of 2.5” for shade trees, 1.5” for ornamental trees, and six-foot height for multi-stem and evergreen trees. At least fifty percent of all planted trees shall have the potential of attaining a 2-inch or greater diameter measured at 4.5 feet above the ground, within 7 years. The tree planting plan shall demonstrate the location, spacing, height, and species of existing and new trees and shrubs proposed and shall be incorporated in the Forest Stand Delineation.

(2) For development in the Growth Areas as described within the Land Use Element and as shown on the Future Land Use Map of the adopted Sussex County Comprehensive Plan, in addition to any preservation, reforestation, mitigation or other requirements

found elsewhere in the Code, the developer shall plant, at a minimum:

(a) one (1) tree per 10,000 square feet of net developed area for residential development;

(b) one (1) tree per 5,000 square feet of net developed area for non-residential development.

(3) For development in the Rural Areas as described within the Land Use Element and as shown on the Future Land Use Map of the adopted Sussex County Comprehensive Plan, in addition to any preservation, reforestation, mitigation or other requirements found elsewhere in the Code, the developer shall plant, at a minimum:

(a) two (2) trees per 5,000 square feet of net developed area for residential development;

(b) one (1) tree per 3,000 square feet of net developed area for non-residential development.

(4) The foregoing planting requirements set forth in subsections (1) and (2) hereof may be satisfied by the retention of existing Forest in excess of Forest required to be preserved pursuant to § 115-194.8 so long as the Forest Stand Delineation verifies that the remaining Forest demonstrates optimal health for retention.

(5) Timing; bonds and guarantees.

(a) The developer shall provide a planting schedule for the trees to be planted in accordance with this section. The planting schedule shall demonstrate the installation of the trees prior to the issuance of any residential building permits within the phase where the trees will be planted. The trees

shall be planted and inspected prior to the issuance of the first residential building permit within the phase where the trees are located. The trees must be planted and inspected before County approvals or permits will be granted to construct the next phase.

(b) The trees shall be in good health prior to the issuance of substantial completion in accordance with § 99-31 of the Code for subdivisions and prior to the issuance of individual certificates of occupancy for other residential development..

(c) The developer shall post a performance bond or other guaranty for the trees to be planted in an amount sufficient to install the plantings in a form acceptable to the County Attorney. The amount of such bond shall be 125% of the cost of the installation of all trees or \$50,000, whichever is greater. These areas may be bonded as a separate phase or phases of the development. Such bonds shall be posted with the Director of Planning and Zoning. The Bonds shall remain in place until two years after the determination of substantial completion in accordance with § 99-31 of the Code for subdivisions and prior to the issuance of individual certificates of occupancy for other residential development.

Section 7. The Code of Sussex County, Chapter 115, Article XXVIII, §115-221 “Final Site Plan Requirements”, is hereby amended by inserting the italicized and underlined language as a new Subsections B(19) and E. thereof:

§115-221 Final Site Plan Requirements

...

B. The final site plan shall show the following:

...

(20) Protective tree fencing, staking, or continuous ribbon shall be installed along the entire edge of any Forest being protected pursuant to §115-194.8 and trees planted pursuant to §115-194.9. All work conducted pursuant to this subsection shall comply with the American National Standard Institute (ANSI) A300 Standards.

(21) The requirements pursuant to §115-194.8 including clear graphic indication of the Forest, drawn to scale, showing the Forest to be protected and the results of the mitigation plan.

Section 8. Effective Date.

This Ordinance shall take effect upon six (6) months from the date of adoption by Sussex County Council. Provided however, that it shall not apply to any completed applications on file with the Sussex County Office of Planning & Zoning.