

Maintenance Corporation Manual



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MAINTENANCE CORPORATION MANUAL
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INTRODUCTION

The Delaware Code authorizes the counties to regulate the subdivision of all land that is not within the corporate limits of any city or town, in order to “insure the conservation of property values and natural resources, including the protection of the County’s agricultural lands, water resources, and industrial potential, and to afford adequate provisions for public utilities, water supply, drainage, sanitation, vehicular access, educational and recreational facilities, parkland and open space.”



New Castle County adopted its first Subdivision regulations, in 1967. The Subdivision and Zoning regulations were later consolidated into a Unified Development Code (“UDC”), on December 31, 1997. Article 27 of the UDC contains the regulations for maintenance organizations, open space, and common facilities.

As part of new development plans, developers are required to set aside open space and create adequate controls for stormwater management. In subdivisions and land developments where lots will be sold to individual purchasers, the developer of the property is required to identify an appropriate organization that will be responsible for owning, maintaining and/or managing the open space and common facilities. In most situations, the responsible entity will be a maintenance organization. However, condominium associations are permissible for common interest communities that comply with the Delaware Uniform Common Interest Ownership Act (“DUCIOA”), Title 25 Ch. 81 of the Delaware Code.

Because maintenance corporations are the most common type of maintenance organization in

New Castle County, this manual was developed for the use of those organizations. It is divided into three sections: (1) basic overview of maintenance corporations and the covenants that obligate homeowners to be members of the maintenance corporation; (2) explanation of corporate law principles and discussion of how the corporation should generally operate; and (3) property maintenance issues. Additional information is also included that may prove helpful to community leaders and lot owners.

COMMUNITY MAINTENANCE CORPORATIONS



The Maintenance Declaration

Prior to plan recordation, and the sale of any lots in a development, the developer is required to submit a maintenance declaration, certificate of incorporation and bylaws, which conform to the model instruments found in the appendices in the UDC, to the Departments of Land Use and Law for review and approval.

The maintenance declaration is a covenant that creates a legal obligation for every lot owner to share the responsibility and cost of maintaining the open space and common facilities in the development. The rights and obligations created by the maintenance declaration are real covenants running with the land. This means the covenants bind the land perpetually and every lot owner is subject to them.

The document also grants the maintenance corporation the power to assess homeowners for their share of the cost of necessary maintenance. If a homeowner fails to pay an assessment, the maintenance corporation may place a lien on the property.

Lastly, the declaration provides free and uninterrupted use of all open space and common facilities to the members of the maintenance corporation.

Amending the Maintenance Declaration

The process for amending the maintenance declaration is described in the UDC and includes the need for County Council approval. First, any consent percentage stated in the declaration must be satisfied. For instance, if the declaration requires two-thirds (2/3) percent approval for any change, that percentage must be attained before moving forward with an amendment. Once membership consent is acquired, a written request for the proposed amendment must be sent to the County Departments of Land Use and Law. The request must include a copy of the present restrictions, a copy of the proposed restrictions, and the reason for the change. Proof of required consent from the appropriate percentage of the homeowners must also be included with the request. The Departments of Land Use and Law then make recommendations to County Council regarding the proposed change. County Council may adopt a resolution approving the change upon receipt of a favorable recommendation from the Departments of Land Use and Law. A fee, currently one thousand seven hundred twenty-five (\$1,725) dollars, must be submitted with the request.

Assessments

The maintenance corporation is charged with the duty of maintaining the private open space and common facilities. In order to generate money for such maintenance, the maintenance declaration and the UDC provide that the maintenance corporation has the authority to assess each homeowner his or her pro rata share of the cost of maintaining the areas and any charges necessary for running the corporation.

If the homeowner fails to pay the annual assessment, the maintenance corporation may file an action with the appropriate Justice of the Peace Court. At such time that the Justice of Peace enters a judgment against the homeowner, the maintenance corporation may transfer the judgment to Superior Court. Once the judgment is transferred, it becomes a lien on all the real estate the homeowner owns in the County.

If the maintenance corporation fails to adequately maintain the open space and common facilities, the County may enter upon the land and maintain the area. The County may collect all costs incurred from the maintenance corporation or from individual homeowners. If a homeowner fails to pay a County imposed charge, the County may place a lien on the homeowner's property.

Transferring Control of the Maintenance Corporation to the Homeowners

All lot owners are members of the maintenance corporation. Yet, it is not uncommon for homeowners to live in a community for months or years without ever thinking about the maintenance corporation because the developer and his or her representatives still serve as the Board of Directors, also referred to as the governing body, of the maintenance corporation.

After 50% of the new home permits have been issued, and prior to 75%, the developer is required to initiate the transfer of control of the Board of Directors from the developer to the homeowners. The process is outlined in the UDC and includes providing thirty (30) days written notice to each homeowner of the developer's intent to transfer Control of the Board of Directors to the homeowners. Generally, the notice will all also designate a time and place for the meeting. To ensure that proper notice was given, the developer must contemporaneously submit a copy of the notice, and an Affidavit listing the names of the homeowners to whom the notice was sent, to the Departments of Land Use and Law.

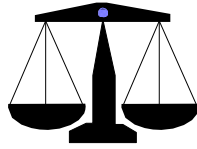
At the meeting, a new governing body will be nominated or elected from interested homeowners and the developer will resign. The transfer of control may occur in one meeting or may involve several meetings, depending on the maintenance corporation's governing documents. When the developer resigns from the governing body, all financial records and corporate documents are required to be provided to the newly elected governing body.

Working Together - Membership and Management

While membership in a maintenance corporation is mandated by County law, the decision to serve on the governing body of your maintenance corporation is voluntary. The members of the governing body will have control over what occurs in the community concerning the open space. If you want to be involved in decision making, volunteer to serve on the Board of Directors. If you do not wish to manage the corporation, cooperate with those who are in control. Remember, no homeowner receives a salary for serving on the maintenance corporation's management team. Service is about sacrificing time and energy and working for all members of the corporation. Above all, a maintenance corporation should be neighbors working together for the common cause of bettering their communities.



WHAT IT MEANS TO BE A CORPORATION



A community maintenance corporation is a legal entity formed pursuant to Delaware General Corporation Law. The body of corporate law that applies to the biggest multinational Delaware corporations also applies to the smallest maintenance corporation. Unlike publicly traded companies listed on exchanges such as NASDAQ or the New York Stock Exchange, however, a maintenance corporation is designed as a non-stock, not-for-profit corporation. A homeowner need not own stock to be a member. Instead, membership in the maintenance corporation automatically vests with the lot owners. While there are differences, in many respects Delaware Corporate Law treats for-profit and not-for-profit corporations similarly. What is most advantageous is that a concrete and predictable body of law exists concerning how the corporation should be run and the members' rights.

The Certificate of Incorporation

Prior to plan recordation, and the sale of any home in the community, the developer forms a maintenance corporation by filing a certificate of incorporation with the Secretary of State, Division of Corporations. After the certificate of incorporation is filed with the Secretary of State, it is also recorded at the Recorder of Deeds Office in and for New Castle County. The certificate of incorporation serves as a contract between the State and the corporation, and it also acts as a contract among the members of the corporation. Delaware General Corporation law delineates the required elements of the certificate, which include the following mandatory provisions:

1. Name of corporation

The name chosen for the corporation will generally be the name of the subdivision plan followed by "Maintenance Corporation" or "Service Corporation."

2. Address of registered office and agent

A registered agent for a corporation serves the function of providing a Delaware address for service of process. In Delaware, there are companies that specialize in acting as the registered office and agent for out-of-state corporations. However, any individual with a Delaware address may serve as the registered agent. The Secretary of State must be informed if the address or agent changes.

To change the name of the registered agent or location of the registered office, the governing body must adopt a resolution authorizing the change. Upon the adoption of the resolution, a certificate certifying the change must be signed (by the president), attested (by the secretary), notarized, and filed with the Division of Corporations, Secretary of State. A certified copy must then be recorded in the Office of the Recorder of Deeds.

3. Nature of the business or the purposes to be conducted or promoted.

The purpose of the maintenance corporation is limited to providing for the maintenance of the open space and common facilities, including snow plowing.

4. Authority to issue stock

Maintenance corporations do not have authority to issue stock. Homeowners do not own shares. Rather, they become members of the corporation by accepting the deed to their homes.

5. Name and mailing address of incorporator

The incorporator is the person or entity (could be another corporation) that organizes the corporation by filing and recording the certificate of incorporation. The developer, or his or her representative, will be the incorporator of most maintenance corporations.

6. Names and addresses of the first board of directors until the first annual meeting or until the successors are elected

The incorporator may identify directors to run the affairs of the corporation until the first annual election. However, if the incorporator does not identify board members, the incorporator may manage the affairs of the corporation until a board comprised of homeowners is duly elected at the first annual meeting of the members.

In addition to the mandatory provisions, Delaware General Corporation Law also allows the addition of other provisions in the certificate of incorporation. These provisions include, but are not limited to, the following:

1. Any provision relating to the management of the business and for the conduct of the affairs of the corporation.

2. Voting requirements more stringent than those required by Delaware General Corporate Law.

It is recommended that voting on all general issues should require at least two-thirds (2/3) percent approval. The reason for this is that to qualify for HUD/VA mortgage insurance, HUD requires a two-thirds (2/3) percent approval on certain community property related issues. By having at least a two-thirds (2/3) requirement for all voting issues, potential issues that could interfere with the resale of homes in the community may be avoided.

In order to qualify for County assistance with stormwater management, the articles of incorporation must contain a provision that requires full membership votes on financial issues and land use matters. This does not mean that one hundred (100) percent of the homeowners agree on the issue, but that the issue is presented to all homeowners for their vote.

3. Provision making the members liable for the debts of the corporation

Pursuant to the County Code, homeowners are responsible for the debts of the corporation and a provision to this effect should be included in the certificate of incorporation. If the maintenance corporation fails to maintain the open space according to the minimum standards of the Code, the County may enter upon the land, maintain the area, and charge either the maintenance corporation or the individual members for all costs incurred.

4. Provision limiting or eliminating the personal liability of a director

Although unlikely, it is possible that the individuals comprising the governing body of the maintenance corporation can be the subject of lawsuits for their operation of the corporation.

The Delaware Code exempts maintenance corporations from civil liability for negligence relating to the construction and maintenance of open space. This protection is not total but does provide a liability shield for negligent acts and omissions. This Code section will be discussed in the material that follows.

A provision may be added to the certificate of incorporation that limits liability for monetary damages for breaches of a director's duty to the corporation. However, liability cannot be waived for certain types of actions that involve intentional misconduct or a knowing violation of the law.



Bylaws

A corporation's bylaws outline how the affairs of the corporation are conducted. Essentially, bylaws serve as rules among the members. The bylaws delineate the powers and duties of the governing body and define the responsibilities of each office. Bylaws may also explain voting and election procedures, terms of office, and any other information the corporation deems relevant. Bylaws may not contradict information provided in the certificate of incorporation, but may supplement it. Bylaws are not filed with the Secretary of State and are not recorded. They can be repealed, altered, amended or supplemented according to the terms stated in the bylaws.

The developer may or may not enact bylaws prior to transferring control of the maintenance corporation to the homeowners. When the homeowners take control of the maintenance corporation, the governing body should review any existing bylaws to see if changes would be beneficial to the running of the corporation. If bylaws do not exist or cannot be located, the governing body should create bylaws.

Members' Rights

If you compare your community maintenance corporation to a publicly traded corporation, members' rights in a maintenance corporation are analogous to the rights of stockholders. Stockholders are generally not involved in the daily operations of the corporation and have minimal input in decisions made by the directors. If stockholders are unhappy with the way the affairs of the corporation are conducted, they may exercise their voting rights to remove the offending director from office. Basically, members choose those individuals they feel will best operate the corporation, and those serving on the governing body have broad discretion in running the corporation.

Powers and Duties of the Governing Body

Corporate law is based on the central premise that the board of directors has the power to run the affairs of the corporation. In a non-stock corporation, the term "governing body" is used instead of "board of directors." However, the concept that certain people have broad authority to make decisions for the corporation is equally true to those serving on the governing body as it is for the directors of a publicly traded corporation. Specifically, Delaware General Corporation Law provides "[t]he business and affairs of every corporation organized under this chapter shall be managed by or under the direction of a board of directors, except as may be otherwise provided in this chapter or in its certificate of incorporation." Under this rule, the governing body has broad discretion in running the affairs of the corporation but must exercise its business judgment with care, in good faith and fair dealing.

Corporate Fiduciary Duties

The Delaware Code does not delineate the duties but decades of cases before the Delaware Court of Chancery have helped define a corporate director's fiduciary duties. The members of the governing body have fiduciary duties to the corporation to act with care, loyalty, and good faith. Below is a brief description of the duties. Keep in mind that only a court can decide if an actual breach has occurred - the examples are illustrative only.

- The duty of loyalty requires the director to place the interests of the corporation and its members ahead of his or her own interest. The director cannot benefit from a transaction to the detriment of the corporation. An example of a breach of the duty of loyalty would be if the treasurer looted the corporate accounts and spent the money on a home improvement project. Or, if the president hired her son to cut the grass located in the open space and paid him ten times more than the average lawn care contractor would charge.
- The duty of care requires the directors to be diligent and to make inquiries before acting on behalf of the corporation. An example of a duty of care breach would be if a director spent an exorbitant amount of money on an "automatic" pond scrubber that allegedly would clean the pond with no effort. If the director did not make reasonable efforts to ascertain the effectiveness or need for a pond scrubber, the members may be able to bring a suit seeking that the directors reimburse the corporation for the money spent on the pond scrubber.
- The duty of good faith is not as easily definable as the duties of care and loyalty. It can best be described as a requirement that the directors act honestly with the members of the corporation and with each other. If one acts under a mistaken belief that he or she believes to be true, there will be no violation. However, if the director knowingly misrepresents a material fact, a breach of the duty of good faith may occur.

It may appear that members of a governing body may regularly be subject to claims of alleged breaches of a fiduciary duty. But, this liability will generally attach only to obvious examples of misconduct and abuse of the member's position. It is assumed that members of the governing body exercise this broad level of discretion with good faith. This assumption is known as the "business judgment rule." Under corporate law principles, the

members of a governing body will not be liable for decisions if the governing body is acting with honesty and in the interest of the maintenance corporation. Mistakes can be made as long as bad faith is not involved in the decision.

Authority of the Governing Body

The governing body of a maintenance corporation can make decisions involving the open space and the maintenance corporation without consulting the other homeowners. The exception to this is where the certificate of incorporation states the powers and duties of the governing body are to be exercised subject to stated guidelines. For instance, the articles of incorporation that were adopted with the Unified Development Code provide that matters relating to membership fees and land use must be presented to the entire membership for voting. Accordingly, when the governing body develops a budget, the budget should be presented at the annual meeting and the entire membership should vote on the proposed assessments. Additionally, if the maintenance corporation proposes to speak for the community on a land use matter, that matter must be presented to the entire membership for approval.



While the governing body has broad discretion to act unless specifically limited, it may be a good practice to bring major issues to the membership to discuss. For instance, hiring contractors to cut grass and purchasing insurance on the land are routine operational issues, but deciding to install basketball courts or a walking trail may be a good issue to present to all homeowners. It may not be mandatory to do so, but it may be a matter of good governance.

Lastly, certain changes to open space may require a record plan submission to the Department of Land Use. The Department of Land Use may process a plan that involves changes to open space or common facilities only if a member of the governing body of the maintenance corporation signs the plan and two-thirds (2/3) of the homeowners consent to the changes depicted on the record plan. A petition signed by the requisite number of homeowners must accompany the record plan submission.

Corporate Resolutions

Since the members of the governing body may change annually, it is a good idea to document significant decisions made by the corporation. Corporate resolutions authorized by the governing body can serve the important function of documenting decisions and preserving a record of such decisions. In fact, any document that is executed by a corporation and recorded in the Office of the Recorder of Deeds should be accompanied by a resolution of the governing body authorizing the action. Additionally, although not mandatory, contracts that are executed by the corporation should be authorized by a corporate resolution.

Resolutions need not be complicated or lengthy. They should consist of a brief explanation of the issue, a statement that the corporation has authority to take such action, and a summary of the action taken by the governing body. If a vote was involved, the resolution

should state the outcome of the vote. All resolutions should be filed with the corporation's books and records and made available for review by the members of the corporation.

Liability for Acts or Omissions of the Governing Body

Members of a governing body may be held liable for breaches of their fiduciary duties of care, loyalty, and good faith. Additionally, the maintenance corporation as an entity could theoretically be held liable for injuries occurring on open space. There are, however, four different mechanisms that may reduce the potential liability.

1. Statutory Immunity

Delaware Code Title 16, Sections 6840 & 6841, provides protection for the maintenance corporation and members of the maintenance corporation from civil damages resulting from construction or maintenance of parkland. Damages cannot be recovered for any negligent act or omission of maintenance corporation, its staff, or any person or entity with which the maintenance corporation may contract, if the act or omission occurs in connection with the construction or maintenance of the open space. The immunity provides protection to the extent damages exceed either existing liability insurance coverage applicable to the act or omission or the minimum liability insurance coverage required by law if no coverage exists.

2. Property Liability Insurance

A general liability policy would insure the maintenance corporation as a whole against claims for damages that a person incurred from his or her use of the open space. The damages could result from a personal injury or damage to one's property. The County does not require the maintenance corporation to insure open space. As discussed above, the Delaware Code provides immunity from damages due to negligent acts or omissions. Accordingly, any policy purchased should protect against gross negligence and intentional willful and wanton infliction of injury. It is doubtful that an insurance company would provide such coverage. In fact, insurance companies are likely to provide protection against only negligent acts or omissions. The maintenance corporation must research the level of coverage provided by any property liability policy and ascertain if purchasing a policy would be redundant since the Delaware Code provides protection for negligent acts or omissions. However, a policy may be beneficial if the insurance company has a duty to defend the maintenance corporation in the event a suit is filed.

3. Exculpatory Statute

The maintenance corporation may limit the directors' liability for the breach of fiduciary duty by providing an exculpatory clause in the certificate of incorporation. Title 8, section 102(b)(7) of the Delaware Code allows a provision to be added that eliminates or limits the personal liability of a director to the corporation or its members for monetary damages for breach of a fiduciary duty as a director, provided such provision does not eliminate or limit the liability of a director for: (1) any breach of the director's duty of loyalty to the corporation or its members; or (2) omissions not in good faith or which involve intentional misconduct or a knowing violation of the law; or (3) for any violation where the director derived an improper personal benefit. Essentially, the members may agree to limit liability for a breach of the duty of care. If the corporation chooses to provide this protection, the certificate of incorporation must be amended to add the provision.

4. Directors and Officer Liability Insurance

Commonly known as D&O insurance, this type of policy can protect the individual directors from claims arising from breach of fiduciary duty. If a director is found liable, a D&O policy will pay for damages to the extent stated in the policy. It is common for this type of policy to allow the insurance company to defend the director in a lawsuit. Certain types of fiduciary breach, such as breach of the duty of loyalty, are generally exempted from coverage. Again, if the corporation adopts a 102(b)(7) provision, D&O insurance may not be necessary. It may however, be useful if the policy provides coverage for the legal expense of defending a lawsuit.

Before purchasing any type of insurance, or adopting amendments to the governing documents, the members of the governing body should analyze the types of risks facing the corporation and the members of the governing body. Protecting the corporation and the members of the governing body is important to the proper functioning of the corporation. While some coverage may be beneficial, your insurance agent should be able to provide adequate coverage that will not result in over insurance and a waste of corporate assets.

Tax Status

As a legally existing entity, maintenance corporations and property owned by maintenance corporations are subject to taxation. It is possible to escape most tax liability if the corporation files the appropriate paperwork with the taxing authority.

1. Federal Income Tax

Maintenance corporations are exempt from most federal income tax but the exemption is not automatic and is limited. The Treasury Department requires the maintenance corporation apply for the exemption annually by filing a form 1120H. The exemption requires that the maintenance corporation meet the following requirements: 1) at least 60% of the corporation's income must derive from homeowner assessments, 2) at least 90% of the corporations expenses must relate to maintaining and managing open space and snow removal. Maintenance corporations are not formed as a charity. Therefore, they do not qualify for a 501 status under the Internal Revenue Code. Current IRS forms and publications can be accessed via the internet at: <https://www.irs.gov/forms-instructions>.

2. State Income Tax

Maintenance corporations are exempt from corporate income taxes pursuant to Title 30, section 1902(b)(4) & (5) of the Delaware Code. The corporation need not file any forms with the State of Delaware, Division of Revenue in order to be exempt from taxation. It is automatic.

3. State Franchise Tax

Maintenance corporations are subject to corporation franchise taxes. The annual franchise tax report is due to the Secretary of State on or before the first day in March. The forms are available from the Secretary of State, and the information required is delineated in Title 8, section 502 of the Delaware Code. The cost of the tax is calculated using the number or value of capital stock. Since a maintenance corporation has no capital stock, the maintenance corporation files an annual report and pays a filing fee.

4. State and Local Property Taxes

All real property located in the State is liable to taxation and assessment by the County in which the property is located. However, maintenance corporations owning parkland or open space are not liable to taxation and assessment for the parkland or open space. The parkland or open space must be owned by the maintenance corporation to be exempt. Accordingly, any taxes that accrued prior to the time the open space was transferred to the maintenance corporation will continue to accrue until the taxes and penalties are paid. When the County Law Department oversees the transfer of open space from the developer to the maintenance corporation, the County Attorney verifies that all taxes are paid up to the date of transfer. If the property is transferred after January 1, 2000, the County will automatically process the property tax exemption when the open space is transferred. If the open space was transferred prior to January 1, 2000, exemption from property tax did not occur automatically. If a maintenance corporation is receiving property tax bills for open space, a member of the governing body should file the appropriate exemption forms with the County Tax Assessment Office.

Finances

Budget

The governing body must create an annual budget. The budget should contain all anticipated costs that will be incurred in the upcoming year. These costs include, but are not limited to: grass cutting, fertilizing, snow removal, insurance, taxes, accounting fees, court costs, bank fees, stationary and postage, post office box, stormwater management and any other items reasonably relating to the affairs of the corporation. The members of the governing body cannot receive a salary but should not incur personal out-of-pocket costs for corporation related activities. Next, the total amount should be divided by the number of homes to arrive at a per-lot assessment rate. Anticipated delinquent payments or non-payments should be factored into the budget. It may take a few years of experience to "balance" your corporation's budget.

Books and Records

The corporation should maintain organized books and records. A current list of the members of the corporation must be maintained according to Delaware General Corporation Law. A ledger should be maintained that accurately records assessments as they are paid and all debts as they are incurred and satisfied. The tax returns, County exemption records, franchise tax filings, corporate resolutions, and all other material relevant to the affairs of the corporation should be properly organized. Any member of the



corporation has a right to review the books and records of the corporation during regular business hours and with proper notice. The member must have a proper corporate purpose relating to his or her status as a member in order to review the records. A proper corporate purpose should be liberally construed and could include access to names and addresses to solicit votes or an accounting to determine how the corporate funds are being spent.

YOUR OPEN SPACE



As members of maintenance corporations, homeowners, and their guests, have the right to free and uninterrupted use of all common facilities and open space. The use of open space, however, may be regulated by reasonable rules and regulations. For example, swimming in stormwater management ponds may be prohibited or hours may be posted in active recreation areas so not to disturb adjacent homeowners with

late night or early morning noise. Areas of open space may not be possessed by a homeowner for his or her own benefit. For example, a fence may not be extended into open space to increase the size of one's yard, nor may a homeowner situate a shed or garden on open space. The open space is to be shared equally by all community homeowners and their guests.

Maintenance Responsibilities

During the majority of time when homes in the subdivision are being built, the developer is responsible for constructing and maintaining the open space and common facilities located within the development. At some point, the responsibility of maintaining the open space shifts from the developer to the maintenance corporation. The timing of the shift depends on the date the subdivision was approved by the Land Use Department. What is consistent in every community is that the developer, or other entity that holds title to the open space, is responsible for maintaining the area until the title to the property is legally transferred to the maintenance corporation. The title cannot be legally transferred until the open space is inspected and approved by New Castle County and the legal documents are approved by the County Law Department. All communities receiving Land Use Department approval after December 31, 1997 are subject to the Unified Development Code. The rules contained therein provide the following maintenance responsibilities:

1. Developer Responsibility

The developer is responsible for maintaining the open space until the open space is transferred to the maintenance corporation and control of the corporation has been turned over to the homeowners. If the developer fails to maintain the open space, the County, after providing proper notice, may stop issuing building permits and enter upon the premises and complete any needed maintenance and repairs. If the County incurs costs maintaining the property, the cost of the work performed will be charged to the developer, and building permits will be withheld until payment is received by New Castle County.

2. Maintenance Corporation Responsibility

After the property is legally transferred and transfer of control is complete, the maintenance corporation is responsible for the maintenance of the open space. Upon failure of the maintenance corporation to maintain the open space, the County, after providing proper notice, may enter upon the land and perform the necessary maintenance and/or repairs. The cost of the work performed by the County will be charged to the maintenance corporation or the owners of the lots within the subdivision. When the assessment is made against the maintenance corporation, it becomes a lien against all properties owned by the maintenance corporation. When the assessment is made to a homeowner, the debt must be paid by the homeowner or the County may proceed with legal action to create a lien on the homeowner's property.

Transferring Title of the Open Space

The developer is responsible for constructing the open space in your community. The specifications for the open space are included on the record plan and the minimum requirements for the condition of the open space are delineated in the Code. At such time that construction of the open space is completed, the developer contacts the Department of Land Use to initiate the transfer process.

Open Space Inspections

Representatives of the Department will inspect the land to determine if all requirements have been satisfied. The open space is inspected to assure accuracy of the lines and grades, confirm compliance with landscape plans, inspect the maintenance and "use" integrity of the open space, and confirm the completion of storm water management facilities. The following requirements will be checked for minimum levels of quality:

1. The area should be clean and contain no buried or surface debris unless shown on the record plan. If the subdivision record plan was approved prior to December 1988, "debris disposal sites" were permitted and the location was designated on the plan. Surface debris such as trash, litter, building materials, and unsightly conditions should be removed.
2. The land must be graded to conform to the approved lines and grades plan so as to drain well and be free of standing water. The storm water management areas must be constructed as nearly to finished condition as possible based on percent completion of the subdivision. In certain instances, natural areas are to remain untouched and could contain pockets of standing water. In other instances, wetlands may be a part of the open space, in which case, the standing water is to remain.
3. No standing dead trees, limbs, or branches that pose a safety hazard may remain. Wooded areas, where active recreation is not designated or likely to occur, are considered exceptions. Except along the perimeter of these wooded areas where a safety hazard may exist, the deeper wooded areas need not be clear of dead trees or limbs.

4. No cutting or filling around tree root zones is permitted, as it will eventually cause a stressful condition and even death to the trees. Although the trees may look good at the time of inspection, their survival rate is greatly reduced by this practice.
5. No manmade conditions that pose a safety hazard are permitted. If unnatural conditions are created as part of the plan, steps must be taken to alleviate the hazard. This could include, but is not limited to, the construction of new features such as fences or berms to protect open space users from abrupt drop-offs from sidewalks or steep slopes to drainage ditches.
6. There should be no remnants from construction material stockpiles such as stone, riprap, silt fence, and forms.
7. Excessive soil compaction caused by construction vehicles or material stockpiles must be alleviated.
8. All open space should be top soiled, where disturbed, to replicate existing undisturbed topsoil areas. It is imperative to provide a good growing medium for the turf areas.
9. A good stand of grass is required on all disturbed open space areas not intended to be covered by shrub or tree growth. A good quality grass seed must be used and applied at a rate specified in the Code. All seedbeds must be treated with a one-time application of fertilizer and lime as specified and at a rate specified in the Code. Certain areas are intended to be used as wildlife areas rather than mowed turf areas. These areas are planted with an approved "wildlife seed mix" as specified in the Code.
10. The area should be free of all unauthorized encroachments such as sheds, fences, line defining plant material, or gardens that create a visual intrusion and prohibit the intended use of the open space.
11. In some cases, a particular use of the open space may be required by an authorized agency, such as a construction road. In these cases, the open space may receive conditional approval for transfer with a guarantee and surety by the developer that when the required use is no longer needed, the area will be restored as originally intended.
12. Some open space is intended to be an undisturbed natural area. Should this be the intent, a note on the record plan shall designate the area and restrict the developer and contractors from accessing or in any way disturbing the area. Acceptance of the natural area shall be approved if the area was untouched and the maintenance corporation must accept the original condition. The only exception is if the area is disturbed or if safety precautions must be undertaken.

Legal Transfer

After the open space is inspected and approved, the developer, or his or her attorney, contacts the Department of Law to make arrangements for the transfer of title to the open space. The developer prepares a legal description and deed for the land, obtains a title search, and certifies that no liens exist on the land. The developer must also provide proof that the maintenance corporation has been created and is in good standing with the Secretary of State, Division of Corporations. Additional forms as required by the Office of

Recorder of Deeds or any other governmental agency are also submitted to the Department of Law. An attorney in the Department of Law will review all documents to ensure that the title is free of all taxes, liens, judgments, and encumbrances, and the deed is legally adequate. When all documents are acceptable, the Department of Law will authorize recordation of the deed. The developer records the deed and provides a copy to the Department of Law and to the maintenance corporation.

Improving the Open Space

Some changes to the open space may require a record plan submission. The process to complete a record plan submission is contained in the Code but the maintenance corporation may need to hire a professional engineer to prepare the plan and navigate the plan through the process. The governing body has authority to submit plans on behalf of the maintenance corporation. However, any record plan submission proposing a change to open space must be accompanied by a petition signed by two-thirds (2/3) of the affected homeowners consenting to the proposed change.

The open space is for the enjoyment of all the residents within the subdivision, and as such, must remain free of all unauthorized encroachments, such as sheds, private gardens, fences, line defining plant material, or any object or structure not approved by the maintenance corporation governing body.

Ensuring Availability to All Community Members

The maintenance corporation should be aware of special needs of individuals when making decisions concerning open space. There may exist, for example, accessibility issues for physically disabled persons. If the maintenance corporation is providing a parking area for a recreation area, adequate handicap parking should be provided. Perhaps an access ramp to a playground area would prove beneficial to a young child in a wheelchair who wants to spend time with friends or utilize the play equipment. The governing body should be cognizant of these issues and should be responsive to reasonable requests made by disabled persons.

The payment of assessments is the only prerequisite to a homeowner's right to use the common facilities and open space. Areas may not be sectioned off for the exclusive use of one homeowner or a certain group of homeowners. For instance, assume the maintenance corporation decided to construct a swimming pool on the open space. The maintenance corporation then decided to restrict access to only those homeowners who paid pool membership fees. This policy would violate the rights of those homeowners who are denied access to the open space for failure to pay the pool membership fees. The open space and common facilities must be available to all homeowners subject to the payment of assessments and reasonable rules and regulations concerning the use of the open space.

STORMWATER MANAGEMENT FACILITIES

Stormwater management facilities are required pursuant to the Delaware Code. The State of Delaware adopted regulations in the early 1990's that require land developers to control the quantity of stormwater runoff for land development projects to the pre-development flow rates for specific storm events. The same regulations also contain requirements that are intended to manage the pollutant levels in stormwater runoff. The enforcement of these regulations was delegated to New Castle County in July of 1991.

There are different types of stormwater management practices. The type that is implemented depends on site specific conditions including the compatibility with the type of development, location in a drainage watershed, and existing land conditions. The following stormwater management practices are typical in New Castle County:

- **Wet Pond**
A surface pond with a permanent pool of water for stormwater pollutant management as well as animal habitat. The depth of this permanent pool during dry weather conditions is normally in excess of three (3) feet. Storage of stormwater runoff occurs above the normal, dry weather water surface of the permanent pool.
- **Dry Basin**
A surface area with a runoff storage area that is normally dry during dry weather conditions, but stores stormwater as it rains. Such a detention facility does not have a permanent pool of water and the entire volume of the runoff storage areas is utilized to store stormwater runoff.
- **Bio-Filtration Practices**
Typically broad, grass covered ditches with a relatively flat grade. These are constructed where stormwater flow rate control is not necessary. These provide filtering and infiltration of stormwater runoff back into the ground.

All stormwater management facilities require some level of maintenance to operate properly. Ultimately, the maintenance corporation is charged with the responsibility of maintaining the stormwater facilities located in the community. Unfortunately, many maintenance corporations lack the expertise or experience in understanding the maintenance needs of these structures. Additionally, maintenance corporations were encountering problems budgeting for the long term maintenance of the facilities. Accordingly, the county developed a program to ease the burden on maintenance corporations. Below is a description of the initiative. It is important to note that maintenance corporations are still responsible for routine maintenance.



New Castle County Stormwater Management Initiative

Under this initiative, New Castle County will assume responsibility for the following items if the maintenance corporation registers with the Department of Public Works. If the community does not register with the County, it will not be eligible for assistance.

- New Castle County will assume responsibility for the annual inspection of stormwater management facilities.
- The County will perform long-term sediment clean-out of storm water retention facilities.
- The County will replace deteriorated structural components leading into or from the retention or detention area.

Community Maintenance Responsibilities

Maintenance corporations will continue to be responsible for routine maintenance of stormwater management facilities, including grass mowing and trash removal. The maintenance corporation will be responsible for the following maintenance tasks that need to be performed on a regular basis unless there is a specific maintenance plan for the facility.

Grass Mowing

All grass areas within the limits of each stormwater management facility and not under water should be mowed to a height between three (3) inches and eight (8) inches. For stormwater management facilities that are adjacent to a public road, the grass mowing should extend to the curblineline or edge of such road.

All grass should be mowed in such a way and with such equipment to reduce the grass cuttings to a fine mulch that is distributed evenly throughout the mowed area. Disposal of all cuttings shall be done in a manner consistent with all applicable regulations. Cuttings entering the stormwater management facility will detrimentally affect the proper functioning of the system. Rutting and other damage to grass cover, topsoil, and subsoil should be avoided. All damage resulting from the grass mowing must be repaired.

Grass Trimming

Grass trimming should be performed in conjunction with grass mowing. The edges and perimeters of all grassed areas within the limits of each stormwater management facility should be trimmed to a height equal to the mowed grass height. The location of required grass trimming shall include, but not be limited to, all outlet structures, headwalls, low flow channels, trees, shrubs, and landscape areas, curbing, manholes, drain inlets, sidewalks, and guard rails. A 10-foot wide access path must be maintained around the perimeter of the facility and to all structures

Minor Debris Removal

Minor debris removal shall consist of the removal of leaves, paper, trash, branches, and other man-made and natural material that may have accumulated within the limits of the stormwater management facility, particularly at trash racks, low flow channels, and points of stormwater inflow. Such debris shall be considered minor if it can be removed from the area by hand or with hand tools such as rakes, shovels, picks, shears, or a skimmer. All debris collected from the stormwater management facility shall be removed

as necessary from the site. Disposal of all debris shall be done in a manner consistent with all applicable regulations.

All minor debris removal shall be performed in such a way and utilizing such equipment as necessary to prevent damage to grass cover, topsoil, and subsoil. All damage resulting from the minor debris removal must be repaired.

Minor Sediment Removal

Minor sediment removal shall consist of the removal of sediment and other particulate matter that may have accumulated in the stormwater management facility including the outlet structure, low flow channels, and headwall aprons. Sediment will be considered minor if it can be removed by hand or with hand tools such as rakes, shovels, picks, or brooms.

The need for minor sediment removal shall be based upon the presence of sediment within the facility, particularly in the bottom or any low flow channels or aprons. All sediment collected must be removed as necessary from the site. Disposal of all sediment shall be done in a manner consistent with all applicable regulations.

All minor sediment removal shall be performed in such a way and utilizing such equipment as necessary to prevent damage to grass cover, topsoil, and subsoil. All damage resulting from the minor sediment removal must be repaired.

Erosion, Animal Burrows, and Woody Vegetation

All eroded areas and animal burrows must be filled, compacted, and stabilized with reinforced erosion control products or turf reinforcing mats, reseeded, and replanted. Woody vegetation should be removed from all slopes and embankments.

Inspections

All stormwater management facilities must be inspected by the maintenance organization in the spring and fall of every year and after heavy rainfall in excess of two (2) inches.

Organization Annual Registration

The Maintenance Organization must register every year with the Department of Public Works. New Castle County Code Section 40.27.720 provides that maintenance organizations not registered with the Department of Public Works shall not be eligible for New Castle County financial assistance with major work of stormwater management facility cleanout and replacement of structural components. New Castle County Code also provides that the County will be responsible for major maintenance only if the maintenance organization has performed all required minor maintenance. To register your Stormwater Pond, please contact the Department of Public Works at (302) 395-5700.

The Appendix contains a stormwater management facility maintenance log that can be used for record keeping for the routine maintenance tasks described above. This log may be given to your landscaping contractor so that he or she is familiar with the County maintenance requirements. The report can also be used to track the condition of the pond and may prove useful when requesting the County to perform any required long term maintenance.

REGISTRATION REQUIRMENTS

Registration Requirements

The County may need to contact the maintenance corporation to forward the stormwater management facility annual report and to inform communities of upcoming workshops and events. Additionally, to address the concerns of maintenance corporation members, the County will maintain a file containing each corporation's governing documents. To ensure this information is available, within thirty (30) days after control of the maintenance corporation is transferred to the homeowners, and within thirty (30) days after each meeting in which a governing body is elected, the members of the governing body must register with the Department of Public Works. Registration must include the following information:

1. The names, addresses, and telephone numbers of the members of the governing body of the maintenance corporation.
2. Minutes of any annual or special meeting.
3. A copy of the governing documents, including the maintenance declaration, certificate of incorporation, and the bylaws. The bylaws must contain provisions requiring full membership votes on financial issues and land use matters.
4. Any amendments to the maintenance corporation's governing documents.
5. Proof that the maintenance corporation is in good standing with the Secretary of State Division of Corporations.

Online registration is available:

<https://www.nccde.org/FormCenter/Stormwater-Management-5/Stormwater-Management-Maintenance-Organi-45>

Failure to Register And/Or Perform Minor Maintenance

Maintenance corporations that are not registered with the Department of Public Works or that fail to perform required maintenance and fail to file annual stormwater maintenance facility inspection and maintenance logs as required by Chapter 12, Article 6, shall not be eligible for County financial assistance with stormwater management facility sediment clean out and replacement of structural components.



frequently asked QUESTIONS

What is a maintenance corporation?

A maintenance corporation is a legal entity comprised of all lot owners in a subdivision. It is required in communities that have open space or other common facilities that are to be owned jointly by the homeowners. The Corporation is responsible for maintaining the open space and common facilities specified on the record plan and in the maintenance declaration.

Why do some communities not have a maintenance corporation?

Some smaller or older communities may be designed with no open space or common facilities and do not require the formation of a maintenance corporation. It is also possible that a community was developed with open space and common facilities but was not required to have a maintenance corporation. Generally, these communities were developed with common facilities or public open space that is County parkland. The parkland is open to all New Castle County residents and is maintained as part of the County park system.

Since 1973, communities that have private open space or common facilities have been required to have a maintenance corporation. Perhaps the developer failed to file the required documents or create a legal corporation. Or, maybe a maintenance corporation operated years ago but through neglect, the homeowners are not actively managing it. Regardless of the situation, the homeowners are still responsible for maintaining the private open space located on the record plan..

When should a community accept responsibility for its maintenance corporation?

The transfer of control of the maintenance corporation from the developer to the homeowners is a legal and mandatory process. Transfer of control of the governing body from the developer to the homeowners, should be initiated by the developer after the issuance of fifty (50) percent and prior to the issuance of seventy-five (75) percent of the dwelling permits for the lots within the subdivision.

Who is responsible for maintaining the open space and common facilities prior to the time the land is transferred to the maintenance corporation?

Prior to the legal transfer of the deed, the owner of the land is responsible for maintaining the land in compliance with the Code. The owner of the open space is usually the developer prior to its transfer to the maintenance corporation.

When should the community accept responsibility for the common facilities?

After the deed has been legally transferred, the maintenance corporation becomes responsible for maintaining the land. However, if the community is controlled by the Unified Development Code, which means it received approval after December 31, 1997, in addition to the above requirements, the homeowners must also have governing control of the corporation.

What happens if the maintenance corporation refuses to accept the open space or refuses to organize?

Joining a maintenance corporation after you have accepted the deed to a lot is not an option. If a community fails to organize or accept the land, through no fault of the developer, the County will make the necessary improvements. New Castle County has authority to enter the premises for the purpose of maintaining the common facilities to comply with the Code. If the land is owned by the maintenance corporation, the County may place a lien on each home in the subdivision until it recovers all costs incurred by maintaining the open space or common facilities.

Can a maintenance corporation refuse to accept open space until complaints about home construction are addressed?

No. The transfer of open space to the maintenance corporation and complaints about home construction are independent issues. If you feel your personal concerns have not been addressed, that is a civil issue between you and the developer/builder.

How does a community set up a maintenance corporation governing body and run elections?

The bylaws of the corporation provide the election procedures. Maintenance corporations operate similarly to any corporation. Generally, the members of a governing body are elected by the other members. Positions of the governing body usually consist of a President, Vice President, Secretary, and Treasurer. However, the bylaws for your individual community should be reviewed prior to the election.

Prior to the election, nominations for the governing body should be solicited. Many communities have formal resumes submitted. To ensure equality, the election must be open to all lot owners of the community. The entire community must be properly notified and given information about each candidate. This can be achieved orally at a meeting or in writing to each lot owner.

Generally, each household has one vote. The number of votes given to each lot may vary in older developments - check the bylaws. If a lot owner cannot attend the meeting, a proxy vote may be sufficient. The proxy transfers the voting rights to another eligible voter.

Once the election is complete, the governing body may begin running the affairs of the maintenance corporation. Within thirty (30) days after the election, the new governing body must contact the Department of Public Works to update the information about the members of the governing body. This must be completed in order to remain registered with New Castle County and receive assistance.

How does a maintenance corporation make assessments?

After the budget has been approved according to the community bylaws, the collection of assessments may commence. Written notice is sent to the owner of each lot indicating the amount owed. If the governing body does not have the names and addresses of all of the lot owners, this information can be obtained by entering the subdivision name in “parcel search” using the county’s online parcel search platform.

What if a homeowner does not pay the annual assessment?

By accepting the deed to a lot in a subdivision with a maintenance corporation, an individual automatically becomes a member of the maintenance corporation. Thus, the homeowner is obligated to pay the annual assessment. If the homeowner fails to pay the annual assessment or any “special” assessment, the maintenance corporation may place a lien on the homeowner’s property.

How does a maintenance corporation file a lien on a homeowner’s property?

First the maintenance corporation must comply with the procedures established for the collection of assessments as defined in the governing documents. If the homeowner fails to timely pay the assessment, the corporation may file a claim in the appropriate Justice of the Peace Court. A nominal fee will be collected for the filing of the claim. If judgment is awarded to the maintenance corporation, a lien may then be placed on the property by transferring the judgment to Superior Court.

The process for transferring a judgment to Superior Court is delineated in Title 10, section 9569 of the Delaware Code. Essentially, the judgment creditor, the maintenance corporation, must file a certified transcript of the docket entries of the judgment in the Office of the Prothonotary. Once the judgment is entered, it becomes a lien on all the real estate of the debtor in the County.

A maintenance corporation may also choose to file an action in Superior Court. The fee associated with this option may be higher. If the maintenance corporation files in Superior Court, the costs associated with the legal action may be recovered and the transfer of a lien to the Prothonotary’s Office is automatic.

Where can I get a copy of my governing documents?

The developer should be able to provide a copy of all of the governing documents for your community. Once control of the corporation is in the hands of the homeowners, the governing body should have current copies of all governing documents including the certificate of incorporation, the maintenance declaration, and the bylaws. The certificate of incorporation and the maintenance declaration are of public record at New Castle County Recorder of Deeds, located in the City/County Building in Wilmington.

Is there a minimum maintenance standard for storm water management facilities?

Yes. There are four routine maintenance operations that must be performed. The four tasks are: grass mowing, grass trimming, minor debris removal, and minor sediment removal. These tasks are outlined in greater detail in the section of this manual entitled "Stormwater Management Facilities."

How do I know if my community's open space is tax exempt?

The County Tax Assessment Office can assist you in determining the tax status of your open space. The Delaware Code delineates the criteria for tax exemption on open space. If your open space qualifies for tax exemption, an application for exemption must be filed with the County Tax Assessment Office.

Should my community have insurance?

New Castle County does not require insurance on open space or insurance for the governing body. Insurance coverage may be in your community's best interest. The governing body should discuss insurance options with reputable insurance agents and assess the risks that the corporation and the governing body may be subject. For additional information, you may contact the Insurance Commissioner (see useful phone numbers).

How does a maintenance corporation file for a non-profit status number with the IRS?

To file for a non-profit status number, the maintenance corporation must simply fill out an application. The form allows you to apply for 501(c)(3) status. To order this form call the IRS at 1-800-829-3676 or download the forms from the IRS internet web site at <https://www.irs.gov/forms-instructions>

How does a maintenance corporation remain in good standing with the Secretary of State, Division of Corporations?

To remain in good standing with the Secretary of State, Division of Corporations, a maintenance corporation must file a report each year and pay any applicable state tax.

How do we prove that our maintenance corporation is operating in compliance with the provisions of the Delaware General Corporation Law, as required by New Castle County for registration?

In order to provide proof that your maintenance corporation is operating in compliance with the provisions of the Delaware General Corporation Law, a letter of good standing may be obtained from the State of Delaware Division of Corporations.

Does a maintenance corporation have to file each year with the IRS?

Yes. Even if a maintenance corporation receives 501(c) status, the corporation must still file a tax return and declare all non-exempt income, such as interest. You may obtain the appropriate form by contacting the IRS (see useful phone numbers) or stop by the local office at:

844 N. King Street
3rd Floor
Wilmington, DE 19801

Who is responsible for snow removal prior to the roads being accepted by DelDOT?

The developer is responsible for snow removal until the roads are accepted by DelDOT.

Who is responsible for snow removal after the roads are accepted by DelDOT?

DelDOT will generally not clear snow from residential streets. It is up to the members of the community to arrange for private snow removal. DelDOT will provide partial reimbursement for snow removal under certain conditions.

How does a Maintenance Corporation qualify for snow removal reimbursement?

The Delaware legislature adopted House Bill No. 544, as amended, on July 1, 1996. This bill stated the Department of Transportation shall be responsible for reimbursing certain eligible organizations up to seventy-five (75) percent of its costs for snow removal services within residential developments or communities. A policy statement is issued each year. Your community must register with the Department of Transportation each year. Contact DelDOT at (302) 760-2085 for more information.



How can a community get street signs?

Some communities would like additional signs in their area, for example, "Children at Play" signs. Contact DelDOT for these types of requests

How does a community get streetlights installed?

The establishment of a special tax assessment district may authorize streetlights in residential areas by action of the County Council. A petition must be signed by fifty one percent (51) percent of the lot owners within the subdivision. To obtain a street light petition form, call New Castle County Treasury Department at 395-5083. The homeowners will be taxed for the cost of the electricity.

Who should be contacted for speed bumps?

Speed bumps are funded by your State Senator or State Representative through his or her suburban street fund account. If your community is interested, please contact your district's elected State officials.

Does a condominium community require a maintenance corporation?

No. In these communities, a condominium association is responsible for maintaining the common elements. A condominium association operates similarly to a maintenance corporation. Contractual obligations are created pursuant to governing documents, a governing body is elected, and fees are paid by the unit owners. In fact, maintenance corporations were modeled after condominium associations.

How does a maintenance corporation force a homeowner to remove personal property, such as sheds or fences, from the open space?



First, the maintenance corporation should notify the homeowner that the homeowner's property is encroaching on the open space. Often, the encroachment is unintentional and the homeowner simply misjudged the property line. If the encroachment continues, the maintenance corporation should send the homeowner a certified letter delineating the encroachment and demand removal of the encroachment in a specified time. If this fails to correct the problem, the maintenance corporation can file a trespass action in Chancery Court. The maintenance corporation may want to seek the assistance of an attorney to file the claim.

DEFINITIONS

Articles of Incorporation - See Certificate of Incorporation.

Assessment - The fee allocated to each member of a maintenance corporation to pay for the costs associated with the maintenance of the community's open space and common facilities.



Bio-Filtration - A stormwater management practice designed to enhance the filtration and infiltration of stormwater into the water table.

Bylaws - A document containing the rules that govern the operation of a maintenance corporation.

Certificate of Incorporation - A document filed with the Secretary of State, Division of Corporations that establishes the maintenance corporation as a legal entity. Also referred to as articles of incorporation or the corporate charter.

Common Facilities - Refers to those areas located in a subdivision that are constructed for the common benefit of the residents of the subdivision. Common facilities may include, but are not limited to, streets - unless accepted for dedication by DelDOT, stormwater management facilities, recharge systems, parks, playground equipment, recreational facilities, landscaping in common areas, common parking areas, rights-of-way and easements designated for maintenance by the maintenance corporation, and entrance signs and islands.

Community - A group of people living in the same locality and under the same government. When used in this manual, Community means a particular development that can be identified on a land development or subdivision plan on file with New Castle County. Also referred to as Development or Subdivision.

DelDOT - Delaware Department of Transportation; a State agency.

DNREC - Department of Natural Resources and Environmental Control; a State agency

Declaration of Restrictions - A legal document that lists restrictions for a community and is recorded by the developer prior to the sale of the first lot in the subdivision. The restrictions are covenants that run with the land thereby obligating all future owners to the covenants stated in the document. Also referred to as "deed restrictions."

Deed Restrictions - See Declaration of Restrictions.

Developer - The person or entity that submits a land development plan to the Department of Land Use for approval. Once the plan is approved, the developer owns the development rights of the project. It is common for a developer to sell building lots to individuals or builders. The developer is usually responsible for constructing the infrastructure in the development including sewer lines, pumping stations, roads, open space and stormwater

management facilities.

Development - a particular community that is identified on a record plan on file with New Castle County. Also referred to as Community or Subdivision.

Dry Basin - A stormwater management facility with a runoff storage area that is normally dry during dry weather conditions. A dry basin does not have a permanent pool of water and the entire volume of the runoff storage areas is utilized to store storm water runoff. Also referred to as a detention basin.

Governing Body - Duly elected individuals who are authorized to manage the affairs of the maintenance corporation. Most commonly consists of a president, vice president, secretary and treasurer. Also referred to as the board of directors.

Governing Documents - The documents controlling the governance and operation of the maintenance corporation. Includes the bylaws, maintenance declaration, and certificate of incorporation.

Lien - The right to take and hold or sell the property of a debtor as security or payment for a debt.

Lot Owner - an individual or entity that owns a lot identified on a record plan. The lot may be improved with a structure or unimproved.

Maintenance Corporation - A legal entity comprised of all lot owners in subdivision as required by the New Castle County Code. The corporation is responsible for maintaining the common facilities specified on the record plan and in the maintenance declaration.

Maintenance Declaration - A legal document that specifies the rights and obligations of the maintenance corporation.

Maintenance Task - One of the four routine maintenance procedures a maintenance corporation must perform to properly maintain the storm water management facility.

Member - an individual who belongs to a maintenance corporation.

Open Space, Private - A parcel of land, an area of water, or a combination of land and water within a developed site that is designed and intended for use and enjoyment by the residents of the community.

Open Space, Public - A parcel of land or an area of water, or a combination of land and water within a developed site that is designed and intended for use and enjoyment by the residents of the County.

Record Plan - A complete subdivision or land development plan, including all required supplementary data, which defines property lines, proposed streets and other improvements, and easements. The plan is recorded at the Office of the Recorder of Deeds in and for New Castle County and is also on file with the Department of Land Use. The maintenance declaration is usually referenced in a note on the record plan. All lots shown on the record plan are subject to the maintenance declaration that applies to that record plan.

Stormwater Management - The mitigation of the hydrologic impacts of lost natural runoff storage by the use of constructed storage facilities.

- For water quantity control, a system of vegetative, structural, and other measures that may control the volume and rate of stormwater runoff which may be caused by land disturbing activities or activities upon the land; and
- For water quality control, a system of vegetative, structural, and other measures that control adverse effect on water quality that may be caused by land disturbing activities or activities upon the land.

Stormwater Management Facility - A surface facility comprised of inflow structure(s), an outflow control structure, and storm water runoff from an area of land. A SWMF may either be a detention or retention facility depending upon its normal or intended dry weather condition. It may also be referred to as a common facility.

Subdivision - See Development.

Unified Development Code - The comprehensive body of law in New Castle County that regulates land use. It was adopted on December 31, 1997.

Wet Pond - A stormwater management facility with a permanent pool of water within its runoff storage area. The depth of this permanent pool during dry weather conditions is normally in excess of three (3) feet. Storage of storm water runoff occurs above the normal, dry weather water surface of the permanent pool. Also referred to as a retention basin.

STORMWATER

STORMWATER MANAGEMENT FACILITY INSPECTION AND MAINTENANCE LOG FOR BMPs 2019



Name of Development: _____

Location of Facility: _____ Type of Facility: _____

Board Member Signature: _____ Date: _____

Printed Name: _____

JAN FEB MAR APR MAY JUN JUL AUG SEP OCT NOV DEC

Fill in Date:

	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Check dams												
Erosion												
Grass cutting												
Minor sediment removal												
Mulch												
Soil Amendments												
Comments:												

Fill in date of inspection below the month and ✓ each item inspected. **One maintenance log per SWM facility per year. A minimum of two (2) inspections (spring and fall) and after each 2" rainfall must be done per year.** Mail back to: New Castle County, Department of Public Works, ATTN: Janice Catherman, 187 A Old Churchmans Road, New Castle, DE 19720; Janice.Catherman@newcastle.gov or FAX: (302) 395-5802 by January 31, 2020.

Sample Bylaws of a Maintenance Corporation

BYLAWS OF (SUBDIVISION NAME) MAINTENANCE CORPORATION

ARTICLE I NAME AND LOCATION

The name of the corporation is (Subdivision name) Maintenance Corporation, hereinafter referred to as the "Corporation:."

The principal office of the Corporation shall be located at the home of the acting (President or other Director) of the Corporation, but meetings of members and directors may be held at such places within the State of Delaware, County of New Castle, as may be designated by the Board of Directors.

The name and address of the Corporation's registered agent in the State of Delaware is as set forth in the Certificate of Incorporation.

ARTICLE II CORPORATE SEAL

The corporate seal shall have inscribed thereon the name of the corporation and the year of its incorporation.

ARTICLE III MEETING OF MEMBERS

Section 1. First Meeting of the Members. The first meeting of the members shall be called by the initial Board of Directors and shall be for the purpose of nominating a Board of Directors consisting of homeowners of the (Subdivision Name). The initial Board of Directors shall send each homeowner notice of the meeting at least (30) days before the meeting. The notice shall specify the place, day and hour of the meeting and shall state that the purpose of the meeting is to nominate a new Board of Directors. The notice shall list each office and describe the duties associated with such office. Nominations shall be accepted by proxy received by the initial Board of Directors prior to the end of the first meeting. In addition to nominations received by proxy, nominations may be made at the meeting. A list of nominations including the offices that the nominee is interested, shall be prepared by the initial Board of Directors. Within ten business days of the first meeting, the initial Board of Directors shall notice a second meeting for the purpose of electing a Board of Directors. The minutes of the first meeting, the list of nominees, and notice of the second meeting, including the place, day, and hour of the second meeting, shall be mailed, postage prepaid, to each member entitled to vote at such meeting. The second meeting shall be held within twenty business days from the date noticing such meeting. The initial Board of Directors shall oversee the election and shall remain in office until another Board is duly elected. Elections shall be by ballot, by plurality vote. Notwithstanding any contrary provision in the governing documents, quorum requirements for nominations and election of the first Board of Directors consisting of homeowners shall be duly satisfied in the meetings are properly noticed in conformance with this section.

Section 2. Annual meetings. After the first Board of Directors comprised of homeowners is elected, each subsequent regular annual meeting of the members shall be held on the same day of the same month of each year following the first election meeting, at which meeting they shall elect by ballot, by plurality vote, a Board of Directors and may transact such other business as may come before the meeting. If the day for the annual meeting of the members is a legal holiday, the meeting will be held on the first day following which is not a legal holiday.

Section 3. Special meetings. Special meetings of the members may be called at any time by the President and must be called on the request, in writing or by the vote of the majority, of the Directors, or at the request in writing of five (5) or more members of the Corporation.

Section 4. Notice of meetings. Except as otherwise noted herein, written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of the notice, postage prepaid, at least fifteen (15) days before the meeting to each member entitled to vote at the meeting, addressed to the member's address last appearing on the books of the corporation, or supplied by the member to the corporation for the purpose of notice. The notice shall specify the place, day and hour of the meeting and, in the case of a special meeting, the purpose of the meeting. No change in the time or place of a meeting for the election of Directors, as fixed by these Bylaws shall be made within ten (10) next before the day on which such election is to be held. In case of any change in such time or place for such election of Directors, notice thereof shall be given to each member entitled to vote in person, or mailed to his or her last known post office address, at least the (10) days before the election is held.

Section 5. List of members. A complete list of members entitled to vote, arranged in alphabetical order, shall be prepared by the Secretary and shall be open to examination by any member at the principal office of the Corporation and the place of election, for ten (10) days prior thereto, and during the whole term of the election.

Section 6. Proxies. Each member entitled to vote shall, at every meeting of the members, be entitled to vote in person or by proxy, in writing and signed by him or her, but no proxy shall be voted after one (1) year from its date, unless it provides for a longer period. Every proxy shall be revocable and shall automatically cease upon conveyance of the lot. Such right to vote shall be subject to the right of the Board of Directors to close the transfer books or to fix a record date for voting members as hereinafter provided and if the Directors shall not have exercised such right, no vote shall be cast at any election for Directors by anyone who shall have accepted membership in the Corporation within ten (10) days of such election. Only one (1) vote shall be cast with respect to each lot in the (subdivision). In the event that members who hold title to any lot either by the entirety, or as joint tenants, or as tenants in common, attempt to cast the vote for such lot in conflicting ways, such vote shall be recorded as a fractional vote.

Section 7. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, thirty (30) percent of the total members entitled to vote shall constitute a quorum (counting one member for each lot regardless of the number of persons holding title to such lot) for any action except as otherwise provided in the Articles of Incorporation,

the Maintenance Declaration, or these Bylaws. If however, a quorum shall not be present at any meeting, the members entitled to vote there shall have the power to adjourn the meeting, without notice other than announcement at the meeting, until a quorum shall be present.

ARTICLE IV BOARD OF DIRECTORS: SELECTION; TERM OF OFFICE

Section 1. Number. The property and business of the Corporation shall be managed and controlled by its Board of Directors, consisting of two (2) or more Directors, not to exceed eight (8). Directors must be members of the Corporation.

Section 2. Election. At the second meeting of the Corporation, the members shall elect the Directors for a one year term. The Directors shall hold office until the next annual election and until their successors are elected and qualify.

Section 3. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the members of the Corporation. In the event of death, resignation or removal of a Director, a successor shall be selected by the remaining members of the Board, though less a quorum, by majority vote, and shall serve for the unexpired term of his or her predecessor.

Section 4. Compensation. No Director shall receive compensation for any service rendered to the Corporation. However, any Director may be reimbursed for actual expenses incurred in the performance of his or her duties.

Section 5. Action taken without a meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at a meeting of the Directors.

ARTICLE V MEETING OF DIRECTORS

Section 1. Regular meetings. After each annual election of Directors, the newly elected Directors may meet for the purpose of organization, the election of officers, and the transaction of other business, at such place and time as shall be fixed by the members at the annual meeting, and if a majority of the Directors be present at such place and time, no prior notice of such meeting shall be required to be given to the Directors. The place and time of such meeting may also be fixed by written consent of the Directors.

Section 2. Special meeting. Meetings of the Directors may be called by the President on five (5) days notice in writing or on two (2) days notice by telephone to each Director and shall be called by the President in like manner on the written request of two (2) Directors. A majority of the Directors shall constitute a quorum, but a smaller number may adjourn from time to time, without further notice, until a quorum is secured.

ARTICLE VI
POWERS AND DUTIES OF THE BOARD

Section 1. Powers. The Board of Directors shall have the power to:

- A. Adopt and publish rules and regulations governing the use of the common properties and facilities, and the personal conduct of the members and their guest, and to establish penalties for infractions.
- B. Exercise for the Corporation all powers, duties and authority vested in or delegated to this Corporation and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Maintenance Declaration;
- C. Declare the office of a member of the Board of Directors to be vacant in the event the member shall be absent from three (3) consecutive regular meetings of the Board of Directors ; and
- D. Employ a manager, an independent contractor, or other employees as they deem necessary, and to prescribe their duties.
- E. Close the membership rolls of the Corporation for a period not exceeding ten (10) days preceding the date of any meeting of members.

Section 2. Duties. It shall be the duty of the Board of Directors to:

- A. Cause to be kept a complete record of all of its acts and corporate affairs and to present a statement of its acts and corporate affairs to the members at the annual meeting of the members or at any special meeting when the statement is requested in writing by five (5) or more members of the Corporation.
- B. Supervise all officers, agents and employees of the Corporation, and to see that their duties are properly performed;
- C. As more fully provided here, and in the Maintenance Declaration, to:
 - 1. determine the amount of the annual assessment against each lot for approval by vote of the Corporation's members at least thirty (30) days in advance of each annual assessment period; and
 - 2. send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period.
- D. Issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. a reasonable charge, not to exceed five dollars (\$5) may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment.
- E. Procure and maintain adequate liability and hazard insurance on property owned by the Corporation.
- F. Cause all officers, employees or independent contractors having fiscal responsibilities to be bonded, as it may deem appropriate; and

G. Cause all open space and common facilities to be maintained as required.

ARTICLE VII COMMITTEES

The Board of Directors may, by resolution or resolutions passed by a majority of the whole Board, designate such committees as it deems necessary or desirable, each such committee to consist of two (2) or more of the Directors of the Corporation. Such committees shall meet at stated times or on notice to all by any of their own number. They shall fix their own rules of procedure. A majority shall constitute a quorum, but the affirmative vote of a majority of the whole committee shall be necessary in every case. Such committees shall have and may exercise the powers of the Board of Directors to the extent as provided in such resolution or resolutions.

ARTICLE VIII OFFICERS OF THE CORPORATION

The officers of the Corporation shall be a President, one or more Vice-Presidents, Secretary, Treasurer, and such other officers as may from time to time be chosen by the Board of Directors. The President and Vice President shall be chosen from among the Directors. The officers of the Corporation shall hold office until their successors are chosen and qualify in their stead. Any officer chosen or appointed by the Board of Directors may be removed with or without cause at any time by the affirmative vote of a majority of the whole Board of Directors. If the office of any officer or officers becomes vacant for any reason, the vacancy shall be filled by the affirmative vote of a majority of the whole Board of Directors.

Section 1. Duties of the President. The President shall be the chief executive officer of the Corporation. It shall be his duty to preside at all meetings of the members and Directors; to have general and active management of the business and the Corporation; to see that all orders and resolutions of the Board of Directors are carried into effect; to execute all agreements and other instruments in the name of the Corporation, and to affix the corporate seal thereto when authorized by the Board of Directors.

He shall have the general supervision and direction of the other officers of the Corporation and shall see that their duties are properly performed.

He shall submit a report of the operations of the Corporation for the year to the Directors at their meeting next preceding the annual meeting of the members and to the members at their annual meeting.

He shall be ex-officio a member of all committees and shall have the general duties and powers of supervision and management usually vested in the office of the President of a corporation.

Section 2. Vice-President. The Vice-President or Vice-Presidents, in the order designated by the Board of Directors, shall be vested with all powers and required to perform all the duties of the President in his absence or disability and shall perform such other duties as may be prescribed by the Board of Directors.

Section 3. President Pro Tem. In the absence or disability of the President and the Vice-President(s), the Board may appoint from their own number a president pro tem.

Section 4. Secretary. The Secretary shall attend all meetings of the Corporation, the Board of Directors, and any committee meetings. He shall act as clerk thereof and shall record all of the proceedings of such meetings in a book kept for that purpose. He shall give proper notice of meetings of members and Directors and shall perform such other duties as shall be assigned to him by the President or the Board of Directors.

Section 5. Treasurer. The Treasurer shall have custody of the funds and securities of the Corporation and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all monies and other valuable effects in the name and to the credit of the Corporation

He shall disburse the funds of the Corporation as may be ordered by the Board or President, taking proper vouchers for such disbursements, and shall render to the President and Directors, whenever the may require it, an account of all his transactions as Treasurer, and of the financial condition of the Corporation, and at the regular meeting of the Board next preceding the annual members meeting, a like report for the preceding year.

He shall keep an account of the members of record in such manner and subject to such regulations as the Board of Directors may prescribe.

He shall give the Corporation a bond, if required by the Board of Directors, in sum and in form and with corporate security satisfactory to the Board of Directors for the faithful performance of the duties of his office and the restoration to the Corporation, in case of his death, resignation or removal from office, of all books, papers, vouchers, money and other property of whatever kind in his possession, belonging to the Corporation. Such bond and security shall, if required, be provided at the Corporation's expense. He shall perform such other duties as the Board of Directors may from time to time prescribe or require.

Section 6. Delegation of duties. In case of the absence or disability of any officer of the Corporation or for any other reason deemed sufficient by the majority of the Board, the Board of Directors may delegate his powers or duties to any other officer or to any Director for the time being.

ARTICLE IX ASSESSMENTS

Section 1. Creation of the lien and personal obligation of assessments. By the Declaration, each member is deemed to covenant and agrees to pay to the Corporation:

- A. Annual assessments or charges; and
- B. Special assessments for capital improvements.

The annual and special assessments, together with interest and costs of collection, as provided below, shall be a charge on the land and shall be a continuing lien upon the property against which each assessment is made. Each assessment, together with interest, cost and reasonable attorney's fees shall also be the personal obligation of the person who was the owner of the property at the time when the assessment fell due and shall not pass to successors in title unless expressly assumed by them.

Section 2. Purpose of assessments. The assessments levied by the Corporation shall be used for the purpose of maintaining the private open spaces and common facilities in the (Subdivision name), and all improvements located thereon, including, but not limited to, any storm water management facilities, common landscaping features, and any of the other purposes as set forth in these Bylaws, the Certificate of Incorporation or Maintenance Declaration.

Section 3. Annual assessments. An annual assessment shall be set by a majority vote of the members who are voting in person or by proxy at the annual meeting.

Section 4. Special assessments for capital improvements. In addition to the annual assessments authorized above, the corporation may levy in any calendar year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement involving the open space or common facilities. A special assessment, if necessary, shall be set by a majority vote of the members who are voting in person or by proxy at the annual meeting or at a meeting duly called for this purpose.

Section 5. Uniform rate. Both annual and special assessments must be fixed at a uniform rate for all lots.

Section 6. Remedies for non-payment of assessments. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate to (___) per centum (%) per annum, and the Corporation may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No owner may waive or otherwise escape liability for the assessment provided for herein by nonuse of the common area or abandonment of his or her lot.

ARTICLE X BOOKS AND RECORDS

The books, records and papers of the Corporation shall at all times, during reasonable business hours, be subject to inspection by any member. The Maintenance Declaration, the Articles of Incorporation and the Bylaws of the Corporation shall be available for inspection by any member at the principal office of the Corporation, where copies may be purchased at reasonable cost not to exceed five dollars (\$5.00) for all three (3) documents.

ARTICLE XI CORPORATION PAYMENTS

All checks, drafts or orders for the payment of money shall be signed by the President and the Treasurer or by such other officer or officers as the members of the Corporation may approve.

**ARTICLE XII MEMBERS
OF RECORD**

The Corporation shall be entitled to treat the title holder or holders of record of any lot in the (Subdivision name) as members in fact of the Corporation, and accordingly shall not be bound to recognize any equitable or other claim to or interest in such lot or memberships on the part of any other person, whether or not it shall have express or other notice thereof, save as expressly provided by the laws of Delaware.

**ARTICLE XIII
FISCAL YEAR**

The fiscal year of the Corporation shall begin on the first day of January of each year.

**ARTICLE XIV
AMENDMENT**

Section 1. Amendment. These Bylaws may be amended, altered, repealed or added to at any regular meeting of the members or at any special meeting called for that purpose, by affirmative vote of seventy-five percent (75%) of the members of the Corporation at any time after the first meeting of the members of the Corporation following the election of a Board of Directors comprised of homeowners.

Section 2. Expanded Duties. By vote of seventy-five (75%) of the members of the Corporation, the Corporation may provide for services in addition to the maintenance of private open space and common facilities. However, adoption of any such provision in these Bylaws shall place no duty or obligation on New Castle County to enforce and such additional provision.

**ARTICLE XV
DEFINITIONS**

The following definitions are applicable hereto:

1. "Corporation" shall mean and refer to the "maintenance corporation," its successors and assigns, and to the proper named corporate entity to be formed as provided hereunder.
2. "Lot" shall mean and refer to each lot as shown on the Record Major Subdivision Plan of _____.
3. "Member" shall mean and refer to every person or entity who holds membership in the Corporation.
4. "Owner" shall mean and refer to the record owner of a fee simple title to a lot as shown on the said Plan of _____.
5. "Declarant" shall mean and refer to _____, a corporation of the State of Delaware, its successors and assigns.
6. "Common Facilities" shall mean and refer to all private open space designated on the record plan and also any common areas or common amenities that may be depicted on the record plan including, but not limited to, streets, unless

accepted for dedication by DelDot, curbs, sidewalks, storm water management facilities including recharge systems, parks, recreational facilities, fire hydrants, landscaping, parking areas, rights- of -way, easements, monuments and markers, and all improvements now and hereafter located thereon (note that the assigned Planner may want to modify this standard definition depending on your particular plan).

ARTICLE XVI INCORPORATED BY REFERENCE

All of the terms, conditions, matters and information contained and more fully set forth in the Certificate of Incorporation and Maintenance Declaration are incorporated by reference.

IN WITNESS WHEREOF, we, being all the Directors of the _____ Corporation, have hereunto set our hands this ____ day of 20____.

STATE OF DELAWARE

COUNTY OF NEW CASTLE

BE IT REMEMBERED that on this ____ day of _____20____, personally appeared before me, the Subscriber, a Notary Public for the State of Delaware, the Directors of the _____ Corporation, a corporation existing under the laws of the State of Delaware, known to me personally to be such, and acknowledged the foregoing Bylaws.

SWORN AND SUBSCRIBED before me the day and year aforesaid

NOTARY PUBLIC

CERTIFICATION

I, the undersigned, do hereby certify that I am the duly elected and acting secretary of the _____ Corporation, a Delaware corporation, and that the foregoing Bylaws constitute the original Bylaws of said Corporation, as duly adopted at a meeting of the Board of Directors thereof, held on the __ day of _____, 20__.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Corporation this ____ day of _____, 20____.

SECRETARY

Best Management Practices for Your Small Pond



Do you picture your pond as a restful haven for frogs, dragonflies, and some fish for your children to catch for fun? Many pond-owners find that the reality of pond ownership is much different. The Division of Fish and Wildlife responds to numerous complaints every year from owners whose pond has turned from an attractive asset into an eyesore. In many cases, some upfront knowledge and Best Management Practices could have prevented or alleviated the problems.

What are Best Management Practices? They are routine maintenance and management activities on the land surrounding a small pond that extend the life of a pond. A pond begins to age as soon as it is dug or developed. Slowly over time, sediment and organic materials (leaves, grass clippings, goose droppings, fertilizer run-off) build up in the pond. Sediment begins to fill in the pond while the flow of nutrients, commonly attached to silt particles, encourages the growth of algae. As the pond gets shallower, rooted plants begin to grow. These plants tend to collect more sediment and the process speeds up. Over the period of a hundred years or more, the pond becomes a wetland or bog and finally reverts to dry land. Human activities around any waterway affect this entire process. Paving of land so more rainfall ends up in the nearest waterway, application of fertilizers, and mowing to the water's edge are all ways that our activities accelerate the pond aging process. Therefore, there are ways to slow down the process. Any management practice that slows the flow of surface water with its accompanying silt and nutrients lengthens the life of a pond.

Riparian Buffers

The single, most valuable management practice, before your pond begins to show signs of over-abundant nutrients, is the development of an unmowed, vegetated buffer strip around the pond. This is an area 15-20-foot wide area surrounding a pond that is left unmowed or mowed only once or twice a year so that grasses and plants grow knee-high. This vegetation serves to slow the flow of surface water into the pond allowing much of the silt and nutrients to drop out before they reach the pond. This unmowed area, called a riparian [meaning situated along the bank] buffer, may be enhanced by planting wildflowers and seasonal grasses to make the area attractive to butterflies, hummingbirds, dragonflies, and groundnesting birds. A list of some native grasses and wildflowers that serve this purpose and provide an attractive planting is available in Table 1.

Prevention is easier than a cure

If your pond often has a heavy coverage of algae, this indicates that nutrients have already become a problem. The best management practices will help limit additional nutrient input, but some type of weed control may be desired. There are two types of algae control: mechanical or chemical.

Mechanical control is the physical removal of algae mats using rakes or fencing materials to skim the pond surface. This is physically demanding but has the advantage of removing some of the nitrates and phosphates that are incorporated in the plant material. For some species, there may be no other, inexpensive alternative.

Chemical control means the use of herbicides. Herbicides to control algae are called algaecides and do not kill rooted plants in most cases. The application of algaecides approved for ponds with fish populations usually causes a rapid decrease in the algal material, but control is short-lived as decomposition makes the nutrients readily available for re-growth of algae or other plants. A fish kill can result if a large amount of plant material is treated at one time and decomposes using up the supply of dissolved oxygen in a pond. Additionally, there are several algaecides and it is necessary to identify which species of algae is present before determining the best algaecide. Too frequent use of copper-containing algaecides can result in toxic conditions for fish and aquatic invertebrates. It is important not to exceed label dosages and to be cautious about repetitive applications to avoid a toxic build-up of copper in a pond. For further information, read, "Controlling Algae in Delaware Ponds".

Placing some trees and shrubs around the pond, but not on an embankment, will help to absorb nutrients, may help to stabilize the bank, and also provide shading of the water. Many species of noxious algae are encouraged to grow when water temperatures increase. By maintaining lower water temperatures through shading, the incidence of algae is lowered. However, landscape plants and trees should not be placed on any easements around the pond.

Rooted aquatic plants may also be present in a pond. It is better to have rooted aquatics that compete with algae for nutrients and provide shading of the water. They also provide some fish habitat. The use of native species is recommended, because they will tend not to "take over" a pond as some exotic species can do. A brochure entitled, "Go Native with your

water garden” lists some of the species that can be planted at various depths within a pond. If you do have rooted aquatic plants exhibiting abundant growth, the species must be identified prior to recommendations for any control measures. Contact the Division at 302-653-2887 for assistance.

Biological control of some plant species and a few algal species may be possible through the stocking of grass carp. This is an Asian species of fish that feeds on some types of vegetation. For further information, including a list of plants that the fish eat, review the “Grass Carp Briefing Report” and the Grass Carp Policy”.

Resident Waterfowl

Many pond-owners report problems with resident populations of Canada geese. These birds can be attractive, but can cause a host of problems. Their droppings leave unsightly and slippery spots on grassy areas or walkways around a pond. They also increase the amount of nutrients in the pond by runoff of the droppings or the direct deposit into the water encouraging the growth of algae. Geese and clear, clean water do not mix. A couple of ducks are not cause for alarm, but a flock of Canada geese can adversely impact any pond.

Geese also fly to other areas to feed and have been responsible in several instances for transporting non-native plant species, such as hydrilla, into a pond. This is a very invasive species that can grow at depths up to 12 feet and reach the surface by late summer.

The presence of an unmowed buffer strip around a pond perimeter will discourage geese from frequenting the pond in addition to trapping nutrients from storm events. Geese are uncomfortable walking through high grass because they can't see predators. To prevent geese from flying into a pond that they have become accustomed to using, it may be necessary to construct a grid (20 feet apart) of wire or line about five feet above the water's surface. There are also chemicals that can be sprayed on plants to discourage geese from feeding on them, but these must be reapplied following every rain.

Mosquitoes

Some pond-owners are concerned about producing mosquitoes in a small pond. The best way to prevent mosquitoes in any small pond is to stock fish. Mosquitofish and bull minnow are small fish (less than 3 inches) that can live in most ponds where there is sufficient water depth to hold them over the winter. A deeper area within a pond of three feet is generally adequate. If the maximum depth is six feet or more and the pond exceeds ¼ acre (105 X 105 ft), largemouth bass and bluegill can be stocked.

Stormwater Management Basins

Stormwater basins are specialized ponds designed to collect water from areas such as developments and businesses which have a lot of paved surfaces (roads and driveways). Since July 1991, stormwater management has been required as an integral part of any site design so all development projects must include provisions for the management of runoff. Retention ponds or stormwater basins are one common method of managing stormwater runoff. These basins collect runoff following rain events and store the water temporarily allowing the silt and nutrients to drop out in the pond, so the runoff enters public waterways in a much cleaner condition. Most residential stormwater retention basins are constructed by the developer and later transferred to the homeowner's maintenance

association. The association is then responsible for the upkeep and maintenance of these basins.

It is important that all residents understand the function of a retention basin and the community's responsibility to maximize the pond's useable life. Any effort to minimize the flow of silt, nutrients (from lawn fertilizers, leaf litter, pet waste, etc) and hazardous materials such as oil, grease, and pesticides will help extend the life of most stormwater retention basins. Individual residents can do their part by using fertilizers sparingly, picking up pet waste, composting yard debris, and washing cars on the grass instead of the street. All septic systems should be functioning properly and bare soil should be planted or mulched.

These ponds usually do not provide a dependable source of fishing. They do not serve as reflecting pools or as ornamental water gardens. However, they can function as designed without becoming a community eyesore. The type of care and maintenance will determine if the pond will be an attractive addition to the community or a malodorous algae collector responsible for residents' complaints to their association. Further information on the maintenance of stormwater retention basins may be obtained from the Division of Soil and Water Conservation (302-739-9921).

Table 1. Plant list for vegetated buffer strip around ponds.

Well drained sites

Species	Scientific Name	Full	Sun Part	Shade	Ht (ft)	Color	Flowering month	Attracts Hummingbirds	Attracts Butterflies	Seeds*	Plants*
Columbine	Aquilegia Canadensis	X	X	X	1-2	Red/yellow	Apr-Jun	X		1, 5	L, 1, 5
Butterfly weed	Asclepias tuberosa	X			1-3	Orange	Jun-Sep		X	1, 2, 5	L, 1, 5
Aster	Aster novae-angliae	X	X	X	2-4	Purple	Sep-Oct		X	1, 2	1
Partridge pea	Cassia fasciculata	X			2-3	Yellow	Jul-Sep		X	1, 3, 5	1
Joe-pye weed	Eupatorium fistulosum	X	X		4-8	Purple	Jul-Sep		X	1	L, 1
Bee balm	Monarda fistulosa	X	X		3-5	Red/Lavender	Jun-Aug		X	5	L, 1
Br eye Susan	Rudbeckia hirta	X	X		3-5	Yellow/Brown	Jun-Aug		X	1, 2	L, 1
Golden rod	Solidago rugosa	X			3-5	Yellow	Sep-Oct		X		1

Moist sites

Swamp milkweed	Asclepias incarnata	X	X	X	1-2	Red/yellow	Apr-Jun	X		1, 5	L, 1, 5
Blazing star	Liatris spicata	X			1-3	Orange	Jun-Sep		X	1, 2, 5	L, 1, 5
Cardinal flower	Lobelia cardinalis	X	X	X	2-4	Purple	Sep-Oct		X	1, 2	1

Grass

Little bluestem	Schizachyrium scoparium	X	X	X	1-2	Red/yellow	Apr-Jun	X		1, 5	L, 1, 5
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Planting: Best success is achieved when planting occurs between May 15 and June 15. Grass should be planted at 8 lbs seed/acre. Wildflowers can be mixed and planted at ½ lb. seed per acre.

*Supplier Key:

L indicates available from local nursery suppliers

1 Shooting Star Nursery (Frankfort, KY) 502-223-1679

2 Stock Seed Company (Murdock, NE) 402-867-3771

3 Sharp Bros. Seed Company (Healy, KA) 1-800-462-8483

4 Ernst Seed Company 1-800-873-3321

5 Native Seed Company 1-800-728-4043

Mosquito Control Spray Policy

1. Control method practices and priorities

The Department's (DNREC's) first preference for control is to use environmentally-sound source reduction techniques such as Open Marsh Water Management (OMWM) for saltmarsh mosquito control, managing or manipulating water levels in high-level coastal impoundments so as to disrupt the mosquito's life cycle, or stocking of larvivorous fishes in stormwater basins, backyard ornamental ponds, beaver ponds, etc. Such biological controls are effective in controlling an estimated 95 percent of mosquitoes breeding in areas treated with source reduction. The Department has a long-term program for implementing such approaches and is carrying out this program as time and resources permit. However, source reduction techniques are not suitable for some mosquito producing habitats, and in some cases landowners will not permit the Department to undertake the activities needed for source reduction purposes. In such circumstances, other control measures must then be employed.

The second preference for control is selective application of environmentally-compatible, EPA-registered larvicides (products designed to kill mosquitoes while they are still in the concentrated aquatic life stage) applied to the areas where mosquitoes breed. Aerial larviciding by fixed-wing aircraft or helicopters is usually not practiced directly over residential or developed areas, but ground-applied larvicides are frequently used to treat roadside ditches, flooded fields, used tire piles, abandoned swimming pools, woodland pools, median strip swales, lawn puddles, etc. in urban areas or suburban communities. Aerial larviciding by fixed-winged aircraft or helicopter is primarily used to treat freshwater wetlands, flooded woodlands, or coastal salt marshes or tidal wetlands, and is done only as warranted based upon intensive field surveys of larval occurrence, distribution and abundance. To be effective, larvicides must be applied during a very restricted period in the mosquito's aquatic phase of development. However, unfavorable weather or tidal conditions may prevent effective larvicide applications during this period. Larvicides routinely used in the recent past have included organophosphates such as temephos (Abate); but there is now a tendency to move toward third-generation larvicides, including juvenile growth hormone mimics such as methoprene (Altosid), bacterial insecticides such as Bti (VectoBac, Aquabac, Teknar), or spinosad (Natular). We also make some local use of mono-molecular film larvicides (Agnique, Arosurf). These products may be either liquid or granular formulations. All larvicide products are applied according to federal, EPA-approved label specifications, as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

When unfavorable larviciding conditions occur or larviciding has been unsuccessful, it might be necessary to resort to adulticiding (the term used to describe spraying practices to control adult mosquitoes). This type of spraying always occurs via a liquid formulation which ultimately becomes a fog or vapor. This is not to be confused with larviciding, which is often done via a dry/granular formulation. The adulticides used for the control of pestiferous mosquito species (e.g. organophosphates such as naled, or synthetic pyrethroids such as permethrin, resmethrin or sumithrin, or etofenprox) are EPA-registered insecticides, which (like the larvicides) have demonstrated minimal human health or environmental risks, and as such can be sprayed over or within populated areas. The EPA has determined that all the mosquito control insecticides applied by the Mosquito Control Section can be used to kill mosquitoes without

posing unreasonable risks to human health, wildlife or the environment (but this is not to say that there are no risks at all). Once again, all adulticide products are applied according to federally, EPA-approved label specifications, as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Department will keep abreast of any EPA announcements that would suggest that a pesticide of choice (larvicide or adulticide) might present greater risks to human health or the environment than previously thought, and certainly comply with any new EPA requirements affecting the use of individual pesticide products.

When adulticides have to be used, our first choice is to apply them aerially by fixed-wing aircraft or helicopter within or immediately adjacent to mosquito-breeding areas, immediately after the adult mosquitoes have emerged. This tactic is more effective and less expensive than spraying adulticides over widespread areas after the adults have dispersed. However, before newly-emerged adults migrate to upland zones, the time period available to achieve satisfactory control on or near their breeding habitats is even shorter than for larviciding. In some cases, however, all of the above controls are inadequate to control mosquito populations prior to their movements into developed areas. In such cases, adulticiding in populated areas might have to be done, particularly if nuisance problems become intolerable or there is the chance of spreading mosquito-borne diseases. These adulticides might be applied aerially (by fixed-wing aircraft or helicopter) or by ground using truck-mounted sprayers. This spray policy primarily addresses the issues of insecticide applications in populated areas, with an emphasis on adulticide use whether by aerial or ground applications. The best available scientific information from the EPA and product manufacturers, plus independent research by the University of Delaware and other sources, leads us to conclude that the products we use, and the manner in which we use them, pose no unreasonable risks to the public (human health), wildlife or the environment. The EPA's product-labeling process reflects the permitted use and safety precautions that pesticide applicators must adhere to. The EPA, in order to designate a product's approved use, has to complete a risk assessment, and has to determine that the final end use possesses extremely low human health or environmental risks when applied in accordance with federally-approved label instructions, as required by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

2. Adulticiding in Populated Areas

The decision to spray for mosquitoes in populated areas depends upon two forms of evidence indicating that mosquito populations are unacceptably high. The first form is physical evidence obtained in populated areas from professional analyses of adult mosquito light-trap data (where available) for population abundance and species composition, or upon adult mosquito landing rate counts. Light-trap counts in populated areas exceeding 25 adult females per night of pestiferous species, or landing rate counts averaging three (3) or more adults per minute in populated areas, indicate a nuisance condition substantially lowering the quality-of-life, as well as an enhanced possibility for mosquito-borne disease transmission. Except when there are additional reasons to believe that some mosquito species may be presenting a significant public health risk, no spraying will be conducted unless physical or complaint evidence suggests that spraying is warranted.

The second form of evidence is public complaints in populated areas, resulting in requests for spraying coming from either individuals, civic or homeowners

associations, or local city or town officials within incorporated municipalities. To the extent practicable the Section will investigate in the field the need for a spray response based on the physical evidence previously described, collected in manner as can be practicably obtained in the field in consideration of mosquito species-specific diurnal/nocturnal activity patterns, sampling limitations, and staff or equipment logistical constraints. The Mosquito Control Section will decide whether spraying is warranted on the basis of physical evidence alone; or by the merit, as determined by the Section, of a municipal request; or by the number, merit and pattern, as determined by the Section, of citizen complaints directly received by the Section. [In regard to public requests for adulticide spraying coming from incorporated areas, the Section requires that citizen requests for spraying during an infestation be coordinated and conveyed to the Section by phone through a designated municipal official.]

3. Protocols for Adulticiding Unincorporated Areas

The spraying of adulticides by aerial or ground application in unincorporated areas does not require a signed Mosquito Control Spray Policy endorsement such as is needed prior to spraying incorporated municipalities. Because of insurmountable practical and logistical problems in communicating with individual citizens or civic associations in unincorporated areas, the Mosquito Control Section must assume that timely and safe adulticiding is allowable and desired whenever pest populations become excessive or mosquito-borne disease potentially threatens. The Section will determine when and where adulticiding is necessary, based on physical evidence and in conjunction with complaints from individual citizens or civic associations.

The application of adulticides in unincorporated areas will be similar to what is done in incorporated municipalities regarding times of spraying, insecticides used, and public health emergencies. However, in regards to providing advance notification of each spraying event, and because of insurmountable logistical problems, telephone calls or other personal contacts by the Section to individual citizens or civic associations will not be made. Nonetheless, concerned citizens can still inquire about the Section's intentions to spray by contacting, on a daily basis, the toll-free phone recording at 1-800-338-8181 or the Section's webpage posting at: <http://www.dnrec.delaware.gov/fw/Services/Pages/MosquitoSection.aspx> (and go to "Mosquito Spraying Announcements" on the webpage), or they can subscribe to the Section's listserver to automatically receive such spray announcements via the Internet, and they can also be aware of.

4. Policy Adoption

This "Mosquito Control Spray Policy" is adopted as Delaware Department of Natural Resources and Environmental Control management policy, and supersedes any

PROCEDURE FOR PROCUREMENT AND INSTALLATION OF COMMUNITY STREETLIGHTS

As a community, you must determine the style of light standard desired by the members of your community. Once you have made your decision, contact Denny Hardman, New Castle County Office of Treasury, 87 Reads Way, New Castle, DE 19720. He can also be reached by dialing (302) 395-5083.

Mr. Hardman will provide the following:

1. A Homeowner Petition- For homeowners to sign endorsing the installation of streetlights.
2. A list of the names of all property owners and applicable parcel numbers
3. Information containing the current tax rates to give the community a glimpse of the cost.

Upon receipt of the above information, the community members must circulate the petition and obtain 51% of the property owner's signatures endorsing the installation of streetlights.

All property owners must be contacted to express their opinion on this issue. The developer can sign the petition representing the undeveloped lots in the community.

Once the above items are complete, contact Mr. Hardman and advise him of this. He will provide further information as needed.

IF YOU HAVE STREET LIGHTS AND NEED TO REPORT AN OUTAGE, PLEASE CONTACT DELMARVA AT (302) 454-0300 OR ONLINE:

<https://www.delmarva.com/home/requests/outage/streetlight/outagereport/default.aspx>