



**CHAPTER 40
ARTICLE 27
MAINTENANCE ORGANIZATIONS, OPEN SPACE,
AND COMMON FACILITIES**

(Amended May 8, 2007 by Ord. 07-012)

DIVISION 40.27.000 PURPOSE

The provisions of this Article require that all open space set aside as part of a subdivision or land development plan be transferred to and maintained by a governmental body or a maintenance organization by:

- A. Requiring the developer to create or identify a maintenance organization as a condition of recordation of the record plan.
- B. Delineating the maintenance responsibilities for all areas designated on the record plan as open space or common facilities including, but not limited to, private streets or rights-of-way, parking areas, drainage facilities, stormwater management facilities, and active or passive recreation areas and providing that such areas shall be maintained pursuant to the terms of a maintenance declaration, landscape plan, open space management plan or natural resource management plan approved by the Department prior to plan recordation.
- C. Requiring the transfer of ownership of the open space and common facilities to a maintenance organization or governmental body, and defining the process by which transfer shall occur.
- D. Defining the process by which the transfer of control of the maintenance corporation from the developer to the homeowners shall occur.
- E. Requiring all subdivisions and land developments constructed prior to the enactment of this Article to comply with all applicable Code provisions pertaining to maintenance organizations, open space, and common facilities.

(Amended July 8, 2003 by Ordinance 03-045; amended January 18, 2011 by Ordinance 10-113)

DIVISION 40.27.100 REQUIREMENT FOR MAINTENANCE ORGANIZATIONS

SECTION 40.27.110 MAINTENANCE ORGANIZATIONS

In subdivisions and land developments where lots or units will be sold to individual purchasers, the developer of the property shall establish or identify an appropriate organization that shall be responsible for owning, maintaining and/or managing the open space and common facilities.

(Amended July 8, 2003 by Ordinance 03-045)

SECTION 40.27.120 EXCEPTIONS

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

- A. The record plan contains only public open space that will be owned and maintained by a governmental body.
- B. The record plan contains no private open space but depicts common facilities and:
 - 1. The Department of Law and the Department agree in writing, prior to plan recordation, that a maintenance organization is not necessary;

2. An appropriate agreement, such as an access or easement agreement, binds the lot owners and establishes obligations regarding use and maintenance of the common facilities; and
3. Such agreement is approved by the Department of Law and the Department, noted on the record plan, and recorded in the Office of the Recorder of Deeds.

(Amended July 8, 2003 by Ordinance 03-045)

SECTION 40.27.130 REQUIRED ORGANIZATIONAL FORM

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

- A. **Condominium.** A condominium organization is permissible only if the property complies with the requirements of 25 *Del. C. Ch. 22* (Unit Property Act). In such a case, "common elements" as used in the Unit Property Act shall, in addition to its given definition, mean and refer to "open space" and "common facilities" as used in this Article. The Declaration required by the Unit Property Act shall, by reference to this Article, subject the unit owners to the provisions of this Article.
 1. The form and content of the Declaration as required by the Unit Property Act shall be approved by the Department of Law prior to plan recordation.
 2. The plan shall reference the Declaration by instrument number and state that maintenance of the open space and common facilities are subject to this Article and said Declaration.
- B. **Third party conservancy.** The County may approve a third party entity ("conservancy") to operate as a maintenance organization upon a showing that the conservancy has the ability to maintain and manage the open space. The conservancy may be a conservation group, land trust, land management group, public/private partnership or any other type of entity as long as the conservancy's primary purpose is preservation or conservation. The conservancy must be approved by the Department prior to plan approval. The conservancy must meet the following requirements to the Department's satisfaction to be considered for approval as a maintenance organization.
 1. The ability to fund the costs of implementing and completing a natural resource area management plan, landscape plan, and other approved plans that concern the open space;
 2. The ability to fund the costs of perpetual maintenance and management of the open space.
 3. The knowledge and expertise to complete, manage, and maintain the approved natural resources area management plan, landscape plan, and other approved plans that concern the open space.
 4. Proof of adequate oversight mechanisms to carry out the responsibilities of open space management and maintenance.
 5. Documentation of long term financial and organizational stability and of perpetual existence.
 6. Assurance that at such time the organization can no longer perform its management and maintenance responsibilities, all open space shall be transferred to a party responsible for management and maintenance of the open space. The owner shall include such reverter or retransfer provisions in the deed transferring the land to the maintenance organization. Such provisions must be approved by the Department of Law before the open space is transferred.
 7. Execution of documents including maintenance agreements and conservation easements acceptable to the Department and Department of Law that ensures the preservation of the open space in the condition contemplated by the record plan, natural resource area open space management plan, landscape plan, and any other applicable plan.
 8. Language on the record plan and in the deed transferring the land to the maintenance organization creating restrictive covenants to ensure the availability of the open space for those whose use of the open space is intended and restrictions on transferability and use.
- C. **Maintenance corporation.** Unless Subsections A. or B. applies, the developer shall form a non-stock corporation pursuant to the provisions of 8 *Del. C. Ch. 1* (General Corporation Law).

1. Prior to plan recordation, the developer shall submit to the Department and the Department of Law, for their review and approval, the maintenance declaration, certificate of incorporation, and bylaws as required by this Article. These forms shall conform to the model forms contained in the Appendix to this Chapter.
2. The maintenance declaration shall be executed by the legal owner of the property and shall create covenants that run with the land. The declaration shall be recorded by the Recorder of Deeds in and for New Castle County prior to record plan approval.
3. The record plan shall reference the maintenance declaration, landscape plan, open space management plan, or natural resource management plan and state that maintenance of the common areas and facilities is subject to the provisions of this Article, the maintenance declaration, and applicable plans.
4. At such time assessments are collected by the maintenance corporation for the maintenance of the open space, the developer shall be responsible for paying an assessment for each parcel owned.

(Amended July 8, 2003 by Ordinance 03-045; amended May 8, 2007 by Ord. 07-012; amended January 18, 2011 by Ordinance 10-113)

SECTION 40.27.140 CONDITIONS OF RECORDATION

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

- A. The maintenance organization has a perpetual obligation to maintain the open space and common facilities.
- B. The legal owner has created adequate restrictions on the record plan and in the maintenance declaration and any other document that is required by the Department concerning the transferability and use of the open space.
- C. That all lot or unit owners have a right to enjoy the private open space and common facilities, subject only to reasonable rules and regulations, and the payment of appropriate maintenance organization fees.
- D. That the maintenance organization has or will have the resources to discharge its maintenance obligations.
- E. That all other provisions of this Article have been observed and that a satisfactory plan is presented demonstrating that all remaining obligations will be fully discharged.
- F. The developer has provided the Department with the name, address, and telephone number of the developer's representative who will be responsible for maintenance of open space and common facilities during development of the subdivision.
- G. The developer has certified by affidavit, signed by the affiant under penalty of perjury, and notarized, that all subdivisions or land developments that the developer is or has been financially associated with are in compliance with this Article and any other applicable provisions of this Code pertaining to maintenance organizations, open space or common facilities. The developer must disclose all prior and current land use projects in the County in which any financial interest were or is presently held. This includes all projects conducted under the affiant's current business name as well as any prior construction or development business under which affiant has operated as a principal.

(Amended July 8, 2003 by Ordinance 03-045; amended May 8, 2007 by Ord. 07-012; amended January 18, 2011 by Ordinance 10-113)

SECTION 40.27.150 DUTY TO INFORM HOME BUYER

In residential home sales, the seller of a lot, or his or her authorized agent, has an affirmative duty to inform the purchaser about maintenance corporation membership and educate the purchaser about members' responsibilities. This duty requires the seller to provide the buyer with a copy of the maintenance declaration and bylaws. A written acknowledgment stating that the seller has fulfilled his or her duty under this section shall be signed by the purchaser.

- A. **New subdivisions.** The developer of a new subdivision shall maintain a record of the individual acknowledgments evidencing the fact that the purchaser of a lot within the subdivision has been provided a copy of the maintenance declaration and the bylaws.
1. The seller shall obtain the purchaser's acknowledgment at or before the time an agreement of sale is executed. Each acknowledgment shall be presented to the Department as a condition precedent to the issuance of each certificate of occupancy.
 2. A complete copy of the record of all acknowledgments shall be delivered by the developer to the board of directors of the maintenance corporation and the Department prior to the time the homeowners assume control of the board of directors.
- B. **Existing homes.** In existing subdivisions that are encumbered with maintenance declarations, the purchaser, at or before settlement, shall sign an acknowledgment evidencing the fact that the seller has provided a copy of the maintenance declaration and the bylaws to purchaser.

(Amended July 8, 2003 by Ordinance 03-045; amended May 8, 2007 by Ord. 07-012; amended September 25, 2007 by Ordinance 07-117; amended January 18, 2011 by Ordinance 10-113)

DIVISION 40.27.200 REQUIRED GUARANTEES AND FINANCIAL CONTRIBUTIONS

(Amended May 8, 2007 by Ord. 07-012)

SECTION 40.27.210 PERFORMANCE GUARANTEE FOR OPEN SPACE AND COMMON FACILITIES

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

(Amended July 8, 2003 by Ordinance 03-045; amended May 8, 2007 by Ord. 07-012; amended January 18, 2011 by Ordinance 10-113)

SECTION 40.27.220 MAINTENANCE ESCROW

The developer shall place funds in an interest-bearing escrow account equivalent to the cost of maintaining the private open space and common facilities for a two (2) year period, as determined by the natural resource area open space management plan, open space management plan, or landscape plan, but in no event shall the amount be less than the equivalent of three hundred (\$300) dollars per lot within the subdivision. All interest that accrues in this account shall be turned over to the maintenance organization.

- A. The funding of this account shall coincide with the real estate settlement for each lot and shall be verified prior to the issuance of seventy-five (75) percent of building permits within the subdivision. The Department shall withhold the building permits for the remaining twenty-five (25) percent of the subdivision until the Department is furnished with satisfactory proof that the account has been fully funded in accordance with the requirements of this Section.
- B. The developer must demonstrate that the funds have been placed with an independent escrow agent who is not under the power and control of the developer.
- C. The escrow agreement shall provide that the funds shall not be withdrawn by the developer or any person acting on behalf of the developer.
- D. At the time the homeowners assume control of the maintenance corporation and elect a board of directors, the escrow amount for one hundred (100) percent of the lots plus any interest shall be transferred to the maintenance corporation. Such transfer shall not occur without the approval of the Department of Law.
- E. The maintenance escrow shall become part of the Land Development Improvement Agreement pursuant to Article 31 and the fee shall be noted on the record plan.

(Amended July 8, 2003 by Ordinance 03-045; amended May 8, 2007 by Ord. 07-012; amended January 18, 2011 by Ordinance 10-113)

SECTION 40.27.230 RESIDENTIAL STORMWATER MANAGEMENT FACILITY MAINTENANCE FUND

The developer shall pay funds to the County for the purpose of residential stormwater management facility

maintenance and inspections.

- A. An amount shall be determined according to a standard formula derived from maintenance guidelines developed by the Department of Special Services and inspection costs incurred by the Department.
- B. The money shall be used for costs associated with annual inspections, long term sediment clean out, and structural repair and reconstruction of facilities located in residential subdivisions throughout the County.
- C. Upon the issuance of seventy-five (75) percent of the building permits, the Department shall withhold the issuance of any additional building permits until the Department is furnished with satisfactory proof that the funds have been provided to the County in accordance with the requirements of this section.
- D. Any obligation to contribute to the Long Term Stormwater Maintenance and Inspection Fund shall become part of the Land Development Improvement Agreement pursuant to Article 31 of this Chapter and the fee shall be noted on the record plan.
- E. The County shall provide the developer with a letter that acknowledges receipt of the funds upon request.

(Amended May 8, 2007 by Ord. 07-012; amended January 18, 2011 by Ordinance 10-113)

SECTION 40.27.240 NONRESIDENTIAL STORMWATER MANAGEMENT FACILITY MAINTENANCE FUND

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

- A. Any obligation to contribute to the Long Term Stormwater Maintenance and Inspection Fund shall become part of the Land Development Improvement Agreement pursuant to Article 31 and the fee shall be noted on the record plan.
- B. The County shall provide the developer with a letter that acknowledges receipt of the funds upon request.

(Amended May 8, 2007 by Ord. 07-012; amended January 18, 2011 by Ordinance 10-113)

DIVISION 40.27.300 CONSTRUCTION, COMPLETION AND INSPECTION REQUIREMENTS

(amended May 8, 2007 by Ordinance 07-012)

SECTION 40.27.310 CONSTRUCTION OF OPEN SPACE AND COMMON FACILITIES.

- A. All areas designated on the record plan as open space and/or common facilities including, but not limited to, streets or rights-of-way, parking areas, stormwater management facilities, drainage facilities, and active or passive recreation areas, shall be constructed by the developer of the subdivision, and/or any other person or entity that constructs dwelling units within the subdivision or improves the development site. Such responsibility shall be joint and several, and allocation of responsibility shall be determined by the individual persons or entities constructing dwelling units in the subdivision and by the developer.
- B. All areas designated on the record plan as open space and/or common facilities including, but not limited to, streets or rights-of-way, parking areas, stormwater management facilities, drainage facilities, and active or passive recreation areas, shall be constructed, installed, or dedicated by developers, at no expense to the County. Construction, installation, and dedication of such open space or common facilities shall be subject to approval by the appropriate officials at the developer's expense.
- C. Unless waived by the Department, a natural resource area open space management plan, open space management plan, landscape plan and/or an active recreation plan shall be submitted for review at

the time of review of the record plan for the subdivision.

1. The specific content of the plan(s) shall be established by the Department according to the requirements of this Chapter for the particular subdivision in question.
 2. The plan(s) shall include open space and common facility construction and the open space and common facility completion sequence. The completion sequence shall be phased where practical so that the construction and completion of open space and common facilities coincide with the completion of the dwelling units that border said open space or common facilities.
- D. Prior to the issuance of fifty (50) percent of the permits, the developer shall submit an open space status report to the Department. Prior to the issuance of seventy-five (75) percent of the permits for the subdivision, the developer shall submit an open space status report to the Department certified by the professional(s) who designed and prepared the plan depicting the condition of the completed open space. At the request of the developer with good cause shown, another professional may certify this report with the prior approval of the Department.
1. At a minimum, the open space status report shall contain the following information:
 - a. A report of the condition of the open space.
 - b. A report of the percentage of open space completed.
 - c. A report evaluating the storm water management facilities (which may include as-built information and a functionality assessment).
 - d. The status of compliance with any approved plan including the sequence of construction of open space and common facilities.
 - e. An explanation of any reasons for noncompliance and plans including specific dates for compliance.
 - f. A schedule of completion of all developed open space and common facilities including a detailed explanation of plantings and completion of landscaping tied to upcoming planting seasons.
 - g. Any other information required by the Department related to completion time frames for open space and common facilities.
 2. The Department shall review the open space status report within ten (10) days of receipt of the report or revised report. The Department may require changes to the report to ensure that the requirements of this Chapter and any applicable plan are satisfied. Once the Department approves the report, the recommendations in the report shall be enforced and any deviations from these recommendations, without Department approvals, shall constitute violations of this Chapter.
 3. The Department may withhold building permits until such time as the open space status reports are approved by the Department.
- E. Where the open space or common facilities are to be developed, such development shall be completed at such time the open space area or common facilities are no longer directly and materially affected by construction activity but shall be completed no later than the issuance of ninety (90) percent of permits for building lots. The number of lots open for construction at any one time may be further limited by phases shown on the approved record plan, landscape plan, open space management plan or construction management plans.
- F. If the developer cannot complete the open space pursuant to the timeframes designated on the plan, in the open space status report or as provided in this section, the Department may, for good cause shown, allow additional time for completion of the open space and/or common facilities subject to the following and may issue additional building permits.
1. The developer shall provide the Department with a contract and a letter of credit or certified check in the amount of one hundred (100) percent of the cost of completing the unfinished open space and common facilities and an additional one thousand dollars (\$1,000) as a review

and processing fee. The contract shall provide for the completion of the open space and common facilities as soon as practicable and provide for the default of the funds for failure to comply with the extended timeframes. The contract and letter of credit shall be approved by the Department of Law.

2. An extension may be granted only if the Department determines that one or more of the following conditions apply:
 - a. the extension is necessary due to unforeseen conditions or events beyond the control of the developer that prevented timely completion of the open space or common facility;
 - b. the delay in the completion is mandated by a governmental agency;
 - c. weather conditions prevent the timely completion of the open space or common facilities; if the area cannot be stabilized with vegetation during the normal growing season, alternative stabilization techniques, which shall also be approved by the Department of Special Services, may be required; or
 - d. sound engineering and construction practices warrant the extension, including the potential for sediment generation from undeveloped lots.
3. If the extension is granted, the developer shall provide written notification to the current property owners and those with sales agreements describing the reasons for the delay and providing an expected schedule of completion.

(Amended July 8, 2003 by Ordinance 03-045; amended July 13, 2004 by Ordinance 04-059; amended May 8, 2007 by Ordinance 07-012; amended September 25, 2007 by Ordinance 07-117)

SECTION 40.27.320 CONDITION OF DEVELOPED OPEN SPACE AREAS

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

- A. Clean and contain no surface or buried debris.
- B. Graded to drain well and be free of standing water, except within undisturbed natural areas.
- C. Free of standing dead trees, limbs and branches that pose a safety hazard to open space users. Notwithstanding the foregoing, nothing herein shall require removal of limbs and branches within forested areas, but shall only require removal of such hazards along the perimeter of the forested open space areas. Line defining plant material planted by a lot owner may be permitted as long as the root ball does not encroach into the open space.
- D. Free of conditions harmful to the preservation of trees thereon, such as fill or excavation around tree root zones.
- E. Free of unnatural conditions created by the developer that may be hazardous to users of the open space within disturbed areas. The requirements of this subsection shall be satisfied by, for example, but not by way of limitation, construction of new features or safety improvements such as fences or berms to protect open space users from newly created hazards; e.g., abrupt dropoffs from sidewalks to drainage ditches, steep embankments.
- F. Free of any remnants from construction material stockpiles.
- G. Free of soil compaction by construction vehicles or construction material stockpiles. All areas subject to soil compaction shall be broken up or otherwise loosened to a depth of twelve (12) inches.
- H. Vegetated in accordance with the Additional Standard and Specifications of the Delaware Erosion and Sediment Control Handbook, and in accordance with the natural resource area open space management plan, open space management plan or landscape plan as certified by the professional(s) who designed and prepared the plan depicting the condition of the completed open space. The Department shall require the Developer to reseed and stabilize any and all areas where a satisfactory stand of vegetation as determined by the Department does not exist at the time of the ninety (90)

percent inspection. A re-inspection shall be required when perennial vegetation is established prior to the release of the performance bond.

- I. Free of all unauthorized encroachments; e.g., sheds, gardens, fences, line-defining plant material, etc.
- J. Improved according to the open space management plan, natural resource area open space management plan, landscape plan and/or related construction drawings. This requires that stormwater management facilities must be completed and maintained pursuant to Chapter 12. Stormwater management areas must be free of algae, invasive vegetation, and undesirable vegetation that is detrimental to the proper operation of the facility.

(Amended July 8, 2003 by Ordinance 03-045; amended July 13, 2004 by Ordinance 04-059; amended September 13, 2005 by Ordinance 05-081; amended May 8, 2007 by Ord. 07-012; amended September 25, 2007 by Ordinance 07-117; amended January 18, 2011 by Ordinance 10-113)

SECTION 40.27.330 CONDITION OF NATURAL OPEN SPACE AREAS

As determined by the natural resource management plan, open space management plan or landscape plan, open space may be intended for use as an undisturbed or natural area. Should this be the intent, the note on the record plan shall prohibit disturbance of the area. The area shall be transferred in this "untouched" natural state with the governmental body or maintenance organization accepting the original condition. The only exception to the prohibition on disturbing the designated area shall be if:

- A. The open space is disturbed or artificially changed while under the ownership of the developer as provided for on the record plan; or
- B. Safety precautions are undertaken along the perimeter to protect open space users and adjacent property owners; e.g., tree trimming or removal, or the erection of safety barriers.

(Amended July 8, 2003 by Ordinance 03-045; amended May 8, 2007 by Ord. 07-012)

SECTION 40.27.340 INSPECTION AND APPROVAL PROCESS

These procedures shall be followed for inspections of open space.

- A. The developer shall contact the Department, in writing, requesting an inspection of the open space. The developer's request shall include the items required by the Department such as certifications, as-built surveys, open space status reports, applicable plans, studies, reports or any other additional information and all required fees.
- B. Within ten (10) days of the receipt of the request, the Department shall coordinate an inspection of the open space for conformance with this Article and this land transfer procedure. There shall be no fee for the first inspection. Notwithstanding the foregoing, if weather conditions prevent the Department from inspecting the open space within the ten (10) day period, as determined by the Department, the Department shall have an additional ten (10) days in which to make the inspection. The Department will notify the developer, in writing, of any defects or non-compliant items found during the inspection and will specify a time period in which to correct them.
- C. When all specified defects and non-compliant items have been corrected, the developer shall notify the Department in writing of this fact. The Department will coordinate a reinspection of the land as provided. The first re-inspection fee shall be two hundred fifty dollars (\$250) payable to the County prior to the reinspection. If the reinspection reveals uncorrected conditions, or unacceptable conditions created after the first inspection, they will be recorded, in writing, and sent to the developer. The developer must correct the problems and renotify the Department. The second reinspection fee shall be five hundred dollars (\$500), the third shall be seven hundred fifty dollars (\$750), the fourth and subsequent reinspection fees shall be one thousand dollars (\$1,000) all payable to the County prior to any additional reinspection. At the time the Department finds that the condition of the open space conforms to all plan specifications and any requirements under this Chapter, the developer shall be notified within ten (10) days, in writing, that the open space and common facilities have been approved.

(Amended May 8, 2007 by Ord. 07-012; amended September 25, 2007 by Ordinance 07-117; amended January 18, 2011 by Ordinance 10-113; amended January 8, 2012 by Ordinance 12-068)

DIVISION 40.27.400 TRANSFER OF OWNERSHIP

(amended May 8, 2007 by Ordinance 07-012)

SECTION 40.27.410 LEGAL TRANSFER OF TITLE TO OPEN SPACE

- A. Open space shall be conveyed no later than the issuance of building permits for ninety (90) percent of the dwellings within the subdivision.
- B. All costs associated with the transfer of open space and the recordation of the open space deed shall be borne by the developer.

(Amended July 8, 2003 by Ordinance 03-045; amended May 8, 2007 by Ord. 07-012; amended January 8, 2013 by Ordinance 12-068)

SECTION 40.27.420 TITLE TRANSFER PROCESS

- A. The developer, or its designee, shall contact the Department of Law to make arrangements for the transfer. All required documents shall be submitted to the Department of Law. In addition to documents specifically required herein, the Department of Law may require any other documentation necessary for proper review of the transfer.
 - 1. The developer or its designee shall prepare a legal description and deed for the land. The deed shall contain such provisions and restrictions required by the Department of Law necessary to protect the status of the open space and common facilities.
 - 2. The developer or its designee shall provide a lien search from a title abstractor acceptable to the Department of Law. A certification that no liens exist on the land shall be submitted by the owner of the property.
 - 3. Any additional forms required from the Office of the Recorder of Deeds or any other governmental office shall also be submitted.
- B. No lands shall be transferred unless title is free of all taxes, liens, judgments or encumbrances and the deed is legally adequate
- C. If a developer fails to properly transfer the open space, the remaining permits will not be issued and the developer shall be responsible for the maintenance of the open space until all land is properly and legally transferred and all other provisions of this Article are met.
- D. No transfer of dedicated public open space shall be effective until the Department of Law gives written notification to the grantor that the land has been formally accepted and the deed has been recorded. Land that is to be dedicated as public open space and transferred to New Castle County, shall also require the written approval and acceptance of the General Manager of the Department of Special Services.
- E. The transfer of ownership of public open space to a governmental body shall occur in accordance with the transfer procedures established by the applicable public agency.
- F. When the title documents are approved, the developer shall record the deed and forward stamped copies to the Department of Law and the maintenance organization.

(Amended July 8, 2003 by Ordinance 03-045; amended May 8, 2007 by Ord. 07-012)

SECTION 40.27.430 PROPERTY TAX EXEMPTION

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

(Amended July 8, 2003 by Ordinance 03-045; amended May 8, 2007 by Ordinance 07-012)

SECTION 40.27.440 TRANSFER PRIOR TO COMPLETION AND APPROVAL OF OPEN SPACE AND COMMON FACILITIES

Legal transfer of the land prior to final County approval shall not relieve the developer of maintenance responsibilities of the open space and common facilities or legal liability for such land. If the open space is transferred prior to its condition being approved by the Department, the developer shall provide the Department of Law with such documents necessary to allow access to complete or restore the open space

and common facilities and agreements necessary to indemnify and hold harmless the maintenance organization or governmental body from any and all occurrences on the property until such time the maintenance organization or governmental body is legally liable for the land.

(Amended July 25, 2000 by Ordinance 00-040; amended July 8, 2003 by Ordinance 03-045; amended May 8, 2007 by Ord. 07-012; amended September 25, 2007 by Ordinance 07-117)

SECTION 40.27.450 CONDOMINIUMS.

In residential subdivisions where units are transferred as condominiums within the meaning of the Unit Property Act, ownership of the open space shall not be transferred as provided herein but shall be held as provided by the condominium declaration. The developer shall be responsible for the costs of constructing and maintaining the open space until such time that it is inspected and approved by the Department.

(Amended May 8, 2007 by Ord. 07-012)

DIVISION 40.27.500 MAINTENANCE OF OPEN SPACE AND COMMON FACILITIES

(Amended July 8, 2003 by Ordinance 03-045; amended May 8, 2007 by Ordinance 07-012)

SECTION 40.27.510 MAINTENANCE BY DEVELOPER.

- A. The developer of a subdivision shall maintain the open space and common facilities and shall be responsible for the cost of such maintenance until the following conditions are satisfied:
1. The open space and common facilities shown on the record plan and natural resource area open space management plan, open space management plan or landscape plan and/or related construction drawing(s) have been improved according to the approved plans and approved as required by this Article;
 2. The open space and common facilities have been transferred to a maintenance organization or governmental body according to the provisions of this Article; and
 3. If applicable, the developer has transferred control of the maintenance corporation to the homeowners.

(Amended May 8, 2007 by Ord. 07-012)

SECTION 40.27.520 MAINTENANCE BY MAINTENANCE ORGANIZATION.

- A. The maintenance organization shall not be responsible for maintaining open space and common facilities until:
1. The open space and common facilities shown on the record plan and natural resource area open space management plan, open space management plan, or landscape plan have been improved and approved as required by this Article;
 2. The open space and common facilities have been transferred to the maintenance organization according to the provisions of this Article; and
 3. If applicable, the developer has transferred control of the maintenance organization to the homeowners.
- B. When the requirements of this Section have been satisfied, the open space and common facilities shall thereafter be maintained and kept in good order and repair by the maintenance organization.
- C. All registered maintenance organizations created for the purpose of maintaining common facilities located in residential subdivisions are required to perform minor maintenance and inspections on their stormwater management facilities as required by Chapter 12, Article 6 in order to qualify for financial assistance from the County for major maintenance and repairs of stormwater management facilities, subject to the availability of funds. Failure to perform required maintenance could result in corrective action by the County and imposition of a lien as set forth in Section 40.27.530, or its predecessor, or any recorded maintenance declaration, and ineligibility for County financial assistance, unless and until all required inspections and minor maintenance are up to date.

(Amended May 8, 2007 by Ord. 07-012; amended January 18, 2011 by Ordinance 10-113)

SECTION 40.27.530 FAILURE TO MAINTAIN OPEN SPACE OR COMMON FACILITIES.

- A. **Developer.** Upon failure of the developer to maintain the open space and common facilities, pursuant to any applicable plan requirement or Code provisions, regardless of whether such open space or common facilities are improved or still under construction, the County may stop issuing building permits and enter upon the premises and complete such maintenance and repair. Upon notice of failure to maintain the common facilities, the County shall provide at least ten (10) days notice to the owner and developer of said condition. If the developer does not respond to the County's notice by correcting said condition, the Department shall not issue building permits until such condition is corrected. At the Department's discretion, if the condition is not corrected within thirty (30) days, or if immediate corrective action is necessary, the County may enter the property and correct the condition. If the condition cannot be corrected within thirty (30) days, the County may elect to extend the time limitation if corrective action is commenced and pursued with due diligence within thirty (30) days. If the County enters upon the land, the cost of the work performed by the County shall be charged to the owner and the developer. This cost shall be paid to the County by the owner or developer prior to the issuance of any additional building permits or in the Department's discretion, may be deducted from the performance surety.
- B. **Maintenance corporation or condominium organization.** Upon failure of the maintenance corporation or condominium organization to maintain and repair the open space and common facilities as required herein, the County may, in addition to any other remedy provided in this Chapter, enter upon the premises and perform such maintenance and repair, provided that at least ten (10) days notice is given to the board of directors of the maintenance corporation. In the case of a condominium organization, such notice shall be sufficient if given to the condominium council. Notice to individual residents shall not be required.
1. The cost of the work performed by the County shall be charged to the maintenance corporation or condominium organization or, at the election of the County, may be charged to the owners of the lots or units within the subdivision. In the latter case, the assessment shall be apportioned against each lot or unit in accordance with the provisions of the instruments, if any, governing their rights of use of enjoyment, or in the absence of any such provisions, the apportionment shall be by pro rata share per lot or unit.
 2. When the assessment is made against the maintenance corporation or condominium organization, it shall become a lien against the owners of the lots or units within the subdivision from the date when such lien is filed in the Office of the Recorder of Deeds.
 3. When the assessment is made against the owners of the lots or units in the subdivision, it shall become a lien against each lot or unit from the date when such lien is filed in the Office of the Recorder of Deeds. After thirty (30)-days notice to the owners, the assessment provided for herein may be collected by foreclosure of such lien, by action against the owners of such lots or units or by any other available legal means.
- C. **Third party conservancy.** Upon failure of the conservancy to maintain the open space in accordance with the record plan, natural resource area open space management plan, open space management plan, or landscape plan, the County may enter upon the premises and complete such maintenance and repair. If immediate corrective action is necessary in the Department's judgment, the County may immediately enter upon the land and correct the deficiencies. In all other cases, the County shall provide at least ten (10) days notice to the conservancy of said condition. If the conservancy does not respond to the County's notice by correcting said condition, the County may enter upon the property and correct the condition. If the condition cannot be corrected within the ten (10) days, the County may elect to extend the time limitation if corrective action is commenced and pursued with due diligence within thirty (30) days. If the County enters upon the land to maintain the open space or perform other services, the cost of the work performed by the County shall be charged to the conservancy. The County may pursue any remedy at law or in equity to secure payment of any fees charged to the conservancy. Additionally, any monies not paid when due shall become a lien on the property and all other property in the County owned by the conservancy to the extent permitted by law.

(amended May 8, 2007 by Ordinance 07-012)

Section 40.27.540. Changes to Open Space or Common Facilities.

If a plan proposes changes to private open spaces or common facilities delineated on an existing plan, a petition supporting the record plan shall be included with the submission. The petition shall be executed by at least two-thirds (2/3) of the lot owners of the existing plan having an interest in the private open space or common facilities. In DPUD's or phased developments, if the private open space or common facility is predominately designed for use by lot owners of a delineated section or phase, consent of two-thirds (2/3) of the lot owners in the section or phase containing the private open space or community facility shall be required.

(Amended January 1, 2010 by Ordinance 09-066)

DIVISION 40.27.600 TRANSFER OF CONTROL OF MAINTENANCE CORPORATION

(Amended May 8, 2007 by Ordinance 07-012)

SECTION 40.27.610 PROCESS

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

- A. Transfer of control of the board of directors from the developer to the homeowners shall be initiated by the developer after issuance of fifty (50) percent and prior to the issuance of seventy-five (75) percent of the building permits for the lots within the subdivision.
- B. The developer shall provide at least thirty (30) days written notice to each homeowner of the developer's intent to transfer of control of the board of directors to the homeowners.
 1. For the purposes of this Section, a form letter addressed to "Homeowners in the (Name of Subdivision) _____ Subdivision" shall suffice as long as the envelopes are individually addressed to each homeowner.
 2. A copy of the notice and an affidavit from the author of the letter listing the names of the homeowners to whom the notice was sent and the address where the notice was sent must be provided to the Department of Law and the Department contemporaneously with the notice to the homeowners so that the Department can confirm that proper notice was effectuated.
 3. The Department shall issue no further building permits after the issuance of seventy-five (75) percent of the building permits for the lots within the subdivision until the appropriate Departments receive a copy of the notice and affidavit.
- C. Each director serving on behalf of the developer shall hold his or her office until a successor is duly elected. Each director serving on behalf of the developer shall actively participate in the transfer process by calling the meeting and following the procedures for turnover delineated in the maintenance corporation's governing documents.
- D. The transfer of control must be completed prior to the issuance of ninety (90) percent of the permits within the subdivision. At a minimum, proof of transfer of control of the maintenance corporation shall consist of a notarized affidavit signed by the owner or principal of the organization applying for further building permits and a list of the homeowners who have assumed control of the maintenance corporation. Said affidavit shall state that control of the maintenance corporation has been fully turned over to the homeowners.
- E. The developer shall supply the with the names, addresses and phone numbers of the homeowners serving on the maintenance corporation's board of directors.

(Amended September 13, 2005 by Ordinance 05-081; amended May 8, 2007 by Ord 07-012; amended September 25, 2007 by Ordinance 07-117)

SECTION 40.27.620 MAINTENANCE AND MANAGEMENT CONTRACTS.

Contracts entered into by the developer for the management of the maintenance corporation or the

maintenance of the open space may be assigned to the maintenance corporation only upon approval of the maintenance corporation once the homeowners are in control of the maintenance corporation and subject to the assignment provisions of the contract.

(Amended September 13, 2005 by Ordinance 05-081; amended August 22, 2006 by Ordinance 06-058; amended May 8, 2007 by Ord. 07-012)

DIVISION 40.27.700 ANNUAL REGISTRATION REQUIREMENT.

(Amended July 8, 2003 by Ordinance 03-045; amended May 8, 2007 by Ordinance 07-012)

SECTION 40.27.710. REGISTRATION REQUIREMENT.

A maintenance organization must register annually and file an annual stormwater management facility inspection and maintenance log with the Department of Special Services to qualify for financial assistance for major repairs, subject to the availability of funds, as set forth in Section 40.27.520 and Chapter 12, Article 6. The County may need to contact the maintenance organization to address common facility issues or to discuss other relevant information. Additionally, to address the concerns or questions of maintenance organization members, the County will maintain a file containing each organization's governing documents. To ensure this information is available, within thirty (30) days after the maintenance organization has legal responsibility to maintain the common facilities, and within thirty (30) days after each meeting in which directors or members of the governing body are elected, the maintenance organization shall register with the Department of Special Services. Registration shall include:

- A. The names, addresses, and telephone numbers of the board of directors and any officers of the maintenance corporation.
- B. Minutes of any annual or special meeting.
- C. A copy of the governing documents, including the maintenance declaration, certificate of incorporation and the bylaws. The articles of incorporation shall contain provisions requiring full membership votes on financial issues and land use matters.
- D. Any amendments to the maintenance corporation's governing documents.
- E. A copy of its franchise tax receipt, provided the corporation has been in existence for a period of sufficient length to have incurred liability for the tax.

(Amended May 8, 2007 by Ord. 07-012)

SECTION 40.27.720. FAILURE TO REGISTER AND/OR PERFORM MINOR MAINTENANCE.

- A. Maintenance organizations that are not registered with the Department of Special Services or that fail to perform required maintenance and fail to file annual stormwater management 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.
- B. As a one-time exception to the registration requirement set forth above, any maintenance organization that registered with the County and agreed thereafter in perpetuity to perform minor maintenance at its own expense, qualifies for financial assistance from the County, subject to the availability of funds, even if the major maintenance is due to past failure to perform minor maintenance. The one-time exception to the registration requirement is extended until December 31, 2006 for maintenance organizations which are not in legal possession of the stormwater facility/land as of June 30, 2006 due to legal ownership and/or transfer issues, as determined by the law department, provided that the maintenance organizations once in possession of the facility/land and prior to the expiration of the amnesty period agrees thereafter in perpetuity to perform minor maintenance at its own expense.
- C. To qualify for the exception, maintenance organizations or property owners must execute a binding agreement in a form approved by the law department, if they have not already done so, expressly granting to the County the authority to enter upon premises to perform maintenance at the expense of the maintenance association or property owners and to impose a lien upon the property if required

minor maintenance is not performed.

(Amended May 8, 2007 by Ord. 07-012; amended January 18, 2011 by Ordinance 10-113)

DIVISION 40.27.800. COMPLIANCE.

The owner or developer of a subdivision, or any part thereof, at the time of recording the record plan, and any subsequent owners thereof, shall be subject to the provisions of this Article and may be compelled by any available action at law or in equity to comply therewith. Additionally, any individual, corporation, partnership, joint venture or other legal entities in which any principal of the owner or developer, or any of his or her successors or assigns, shall become associated with shall also be subject to the denial of building permits and certificates of occupancy until violations of this Article have been corrected. Any remedy available under this Chapter shall apply to this Article.

(Amended May 8, 2007 by Ord. 07-012)