



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF  
STATE PLANNING COORDINATION

May 14, 2004

Ms. Faye Lingo  
Town of Millsboro  
322 Wilson Highway  
Millsboro, DE 19716

RE: PLUS review – PLUS 2004-04-09; Millsboro Comprehensive Plan Update

Dear Ms. Lingo:

Thank you for meeting with State agency planners on May 5, 2004 to discuss the proposed comprehensive plan update for the Town of Millsboro. We would like to congratulate the Town on a well written plan that not only shows how and where the Town would like to grow, but gives recommendations on how to make it happen.

The State would also like to take the time to thank the Town of Millsboro for continuing to meet with State agencies and take comments regarding the plan.

State agencies met informally with the Town on April 19, 2004 to discuss the plan and at that time sent comments (copy of 423-04 letter attached). These comments are still valid. The PLUS meeting was held on May 5, 2004 and additional comments were given. The purpose of this letter is to provide, in writing, the additional comments from the April 21<sup>st</sup> meeting.

The following are certification issues and will need to be addressed before adoption:

The annexation area northeast of town, comprising the Chorman property, should be scaled back prior to the plan's adoption, in accordance with the comments listed below by the Department of Agriculture, as the landowners have applied for a permanent easement. The location of this parcel was shared during the meeting on May 5. If additional information is needed as to the location of these parcels, please contact Mark Davis, with the Department of Agriculture at (302) 739-4811.

The annexation area west of town, south of Route 24 goes beyond the areas preferred for development in the Strategies for State Policies and Spending. At the meeting on May 5,

we agreed that the State would not object to the annexation area if the portion of the area bounded on three sides by Radish Road, Parker Road, and Injun Town Road were to be removed from the annexation area.

The State would also like to offer the following comments which we feel will further strengthen your plan. Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State.

**State Historic Preservation Office (SHPO) – Contact: Anne McCleave 739-5685**

After talking to our National Register Coordinator, Anne received some additional information about Millsboro and had a few more comments in regard to the Comp Plan.

The Potential Old Landing Road Historic District is located between Wharton St. and Rt. 113 and consists of bungalow houses. This could be a district the Town might consider listing in the National Register of Historic Places. There is another area, that though it may not meet any criteria for listing in the National Register, is still an area that the Town should consider implementing some sort of design review to help preserve what is currently there and the historic significance. This is the area on the east and west sides of State Street between Morris and Wilson streets. The Town may also think about having an architectural survey done of Millsboro so they can become aware of the cultural resources they have and can better structure their historic preservation program.

The Town should be aware of the high probability of archaeological sites in and around their town. This is important to know when they develop vacant and newly annexed parcels as well as redevelop old parcels. Due to the many mills that were in the area and with the amount of water surrounding the town, there is a high probability for prehistoric and historic archaeological sites.

**Department of Transportation – Contact: Bill Brockenbrough 760-2109**

Delaware Transit Corporation (DTC) is in the early stages of planning transit service to the Town. The State would urge the Town to work with DTC's Service Development Planner for Sussex County, Mr. David Dooley, to address the role of such service in the Plan. Mr. Dooley may be reached at (302) 577-3278 ext. 3464.

**The Department of Natural Resources and Environmental Control – Contact: Kevin Coyle 739-3091**

**Soils**

According to the soil survey update, the following soils were found in the immediate vicinity of subject site (generally grouped on the basis of drainage class):

Human altered with an undefined drainage class – Pits, sand, & gravel  
Excessively well drained – Evesboro & Runclint  
Well Drained – Fort Mott/Henlopen complex  
Moderately well drained – Woodstown & Keyport  
Somewhat poorly drained (**potentially hydric**) - Klej and Aquic Udorthents-  
Urban Land complex  
Poorly drained (**hydric**) – Hurlock & Askecksy  
Very poorly drained (**hydric**) – Mullica, Zekiah-Longmarsh complex, Broadkill  
mucky silt loam (**tidal**) & Manahawkin muck

Pits, sand, and gravel is a classification given to soils that have been excessively excavated, filled, or graded; these soils have unpredictable site-specific limitations. Evesboro and Runclint are excessively well-drained soils that, generally, have moderate limitations on account of rapid permeability. Fort Mott/Henlopen complex is a well-drained upland soil that has few limitations for development. Woodstown and Keyport are moderately well-drained soils of low-lying upland that have moderate limitations for development. Klej and Aquic Udorthents are somewhat poorly-drained that that have moderate to severe limitations for development. The remaining soils – Hurlock, Askecksy, Mullica, Zekiah-Longmarsh complex, Broadkill mucky silt loam & Manahawkin muck – are poorly to very poorly-drained wetland associated (hydric) soils that have severe limitations for development.

Although a significant portion of the soils found on subject parcel are fairly well drained, they have limitations associated with rapidly permeable sandy surface and subsurface horizons. Such soils are conducive to nutrient leaching via groundwater or surface runoff into the surrounding watershed. In soils containing shallow water tables, these impacts are greatly intensified.

## **Wetlands**

According to Statewide Wetland Mapping Project (SWMP) maps, the following wetland types are found with the boundaries defined by said Comprehensive Plan: Estuarine Emergent (**tidal**), Palustrine Forested, Palustrine Scrub/Shrub, Palustrine Unconsolidated Bottom, and Lacustrine Unconsolidated Bottom.

It should be noted that tidal wetlands are regulated and/or protected somewhat more stringently than nontidal wetlands – regulatory jurisdiction falls under the Chapter 66 provisions of the State of Delaware’s Tidal Wetlands Regulations. **Where applicable, it is strongly recommended that the Wetlands Section of the Division of Water Resources be contacted for questions pertaining to tidal wetlands. They can be reached at 739-4691.**

Although tidal wetlands are protected under Federal and/or State statute, nontidal wetlands are regulated exclusively under the Federal 404 provisions of the Clean Water

Act. Under the Federal 404 provisions, the avoidance of construction/filling activities in those areas containing wetlands or wetland-associated hydric soils is usually prohibited.

**A wetlands delineation is highly recommended before commencing site development on any of the proposed parcels within the geographic boundaries defined by the Town of Millsboro’s Comprehensive Annexation Plan.** Specific regulatory questions pertaining to nontidal wetland regulations should be directed to the Army Corps of Engineers (ACOE).

Although the presence of jurisdictional wetlands (i.e., as defined by criteria defined in the 1987 ACOE Wetlands Delineation Manual) is usually apparent from mapped wetlands and/or hydric soil mapping, it is never considered 100 percent accurate. Because of the interpretative difficulties involved when one tries to translate polygon lines (i.e., SWMP, and soil survey mapping units) that encompass large land areas containing considerable on-the-ground variability, some wetland acreage may be either omitted or overestimated. This is particularly true for small “drier end” wetland/upland areas. It should also be noted that the SWMP and soil survey mapping data were never intended for use assessments of regulatory jurisdiction, but as management tools to inventory existing land resources. Therefore, neither the SWMP mapping nor the soil survey should be construed as a substitute for wetlands delineation.

**However, where large blocks of mapped wetlands are present, jurisdictional wetland presence is nearly assured. Consequently, it is recommended that Town of Millsboro remove such lands from annexation consideration.**

Further, it is recommended that the Farm Services Agency of the USDA be contacted to assess whether the farmed wetlands on subject parcel meet the recognized criteria for classification as “prior converted wetlands.” Prior converted wetlands are farmed wetlands that have drained or altered before December 23, 1985, and no longer meet the wetland criteria established under the 404 program. Such wetlands are considered exempt from regulatory protection provided that there is no proof of a continuous “fallow period” of five years or greater in that parcel’s cropping history. Parcels converted after said date regardless of cropping history are considered jurisdictional by the Army Corps of Engineers (ACOE). **The contact person for assessing a parcel’s cropping history is Sally Griffin at the USDA – she can be reached at 678-4182.**

### **Buffers**

**It is recommended that the Town adopt and require a minimum 100-foot buffer width from landward edge of all wetlands or waterways, whichever distance is greatest.** In cases where natural buffer vegetation has been removed or reduced by past development or farming activities, the town is encouraged to make future development contingent upon the restoration/establishment of said buffer width with native herbaceous and/or woody vegetation. Efforts to maintain existing natural forested buffers beyond the recommended 100-foot minimum are strongly encouraged.

Many of the parcels in said plan will have the potential to negatively impact sensitive headwater stream(s) in the Inland Bays watershed. In fact, it has been shown by numerous independent researchers over the years, that undisturbed headwater streams are critically important for the maintenance and preservation of the water quality and the ecological function of the larger downstream area. Undisturbed headwater riparian areas and their associated forest lands not only protect and enhance water quality, they provide migratory corridors and habitat for a variety of wildlife species. Because of their sensitivity, efforts to protect them should be given the highest priority. **Therefore, it is strongly recommended that the “comp plan” prescribe buffer widths beyond the recommended minimum for those areas bordering riparian (1<sup>st</sup> order) headwater streams.**

Finally, it should be acknowledged that undisturbed upland forests are often an integral component in the maintenance/preservation of water quality and/or habitat integrity ecosystem integrity for a given watershed. Therefore, efforts to maximize the preservation of existing upland forested acreage are strongly recommended.

### **ERES Waters**

This project is located adjacent to receiving waters of Inland Bays designated as waters having Exceptional Recreational or Ecological Significance (ERES). ERES waters are recognized as special assets of the State, and shall be protected and/or restored, to the maximum extent practicable, to their natural condition. Provisions in Section 11.5 of Delaware’s “Surface Water Quality Standards” (as amended August 11, 1999), specify that all designated ERES waters and receiving tributaries develop a “pollution control strategy” to reduce non-point sources of nutrient runoff through implementation of Best Management Practices (BMPs). Best Management Practices as defined in subsection 11.5(e) of this section, expressly authorizes the Department to provide standards for controlling the addition of pollutants and reducing them to the greatest degree practicable, or where attainable, a standard requiring no discharge of pollutants.

### **TMDLs**

With the adoption of Total Maximum Daily Loads (TMDLs) as a “nutrient-runoff-mitigation strategy” for reducing nutrients in the Inland Bays Watershed, reduction of nitrogen and phosphorus loading will be mandatory. A TMDL is the maximum level of pollution allowed for a given pollutant below which a “water quality limited water body” can assimilate and still meet water quality standards to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. Although TMDLs are authorized under federal code, states are charged with developing and implementing standards to support those desired use goals. The Jurisdictional authority for attaining these use goals will fall under the auspices of Section 11.5 of the State of Delaware’s Surface Water Quality Standards (as amended August 11, 1999), and will be achieved via nutrient reductions referred to as “pollution control strategies.”

Nutrient reductions prescribed under TMDLs are assigned on basis of water quality concerns – that is, the those regions deemed to be of greatest environmental concern will require correspondingly higher levels of nutrient reduction than those regions deemed less environmentally sensitive. In this watershed, these regions are demarcated as high and low reduction zones. The high reduction zone corresponds to the western portion of the watershed, and requires a reduction of nitrogen and phosphorus by 85 and 65 percent, respectively. The low reduction zone corresponds to the eastern portion of the watershed, and requires a reduction of nitrogen and phosphorus by 40 percent. **Subject parcels proposed for annexation within the Town of Millsboro all fall within the high nutrient reduction zone.**

**In order for the applicant to verify compliance with the TMDL mandate, a full nutrient accounting process known as nutrient budget should be prepared.** The developer/consultant should contact Lyle Jones in the Department's Watershed Assessment Section for further information regarding the acceptable protocol for calculating a nutrient budget. He can be reached as 739-4590.

**Therefore, should a developer wish to pursue development of any of these parcels, it shall be incumbent upon him/her to employ best available technologies (BATS) and/or best management practices as “methodological mitigative strategies” to reduce the degradative impacts associated with development and related activities.** This should be incorporated by the developer in the conceptual project design.

It is further recommended that:

1. TMDL concerns are lacking when referencing the need for stormwater impact statements. These statements should include analyses which state whether the stormwater quality will work toward achieving the nonpoint source TMDLs for Total Nitrogen (TN) and Total Phosphorus (TP).
2. Millsboro needs to enact ordinances to work to achieve the nonpoint source TMDL reductions. Thus, ordinances are needed to require forested buffers along all water ways and wetlands. In addition, they should require the use of Low Impact Development and Better Site Design principles as well as Green Technologies in development projects.

### **Rare/Threatened/Endangered Species**

A review of our database indicates that there are numerous state-rare or federally listed plants, animals or natural communities that are located within the areas designated as 'study area' (green outline), 'Phase 1' (solid yellow), 'Phase 2' (solid red), and 'In Town' (solid green) on the map of Millsboro that was provided via internet. As these areas are

considered for development, efforts should be made to avoid any impacts to the species listed in the tables below.

To request additional information on the location of these species, a data manager or planner for the town of Millsboro will need to contact us directly. Please contact Karen Bennett at [Karen.Bennett@state.de.us](mailto:Karen.Bennett@state.de.us) or call (302) 653-2883.

The following table lists those species that are at or adjacent to the ‘study area’ (green outline):

Scientific Name	Common Name	Taxon	State Rank	State Status	Global Rank	Federal Status
<i>Dendroica dominica</i>	Yellow-Throated Warbler	Bird	S2B		G5	
<i>Anodonta implicata</i>	Alewite Floater	Mussel	S1		G5	
<i>Lampetra appendix</i>	American Brook Lamprey	Fish	S2		G4	
<i>Notropis chalybaeus</i>	Ironcolor Shiner	Fish	S2		G4	
<i>Apeltes quadracus</i>	Fourspine Stickleback	Fish	S2		G5	
<i>Enneacanthus chaetodon</i>	Blackbanded Sunfish	Fish	S2		G4	

The following table lists those species that are located at or adjacent to the areas designated as ‘Phase 1’ (solid yellow), ‘Phase 2’ (solid red), and ‘In Town’ (solid green):

Scientific Name	Common Name	Taxon	State Rank	State Status	Global Rank	Federal Status
<i>Anodonta implicata</i>	Alewite Floater	Mussel	S1		G5	
<i>Elliptio fisheriana</i>	Northern Lance	Mussel	S2		G4	
<i>Acantharchus pomotis</i>	Mud Sunfish	Fish	S2		G5	
<i>Enneacanthus obesus</i>	Banded Sunfish	Fish	S2		G5	
<i>Enneacanthus chaetodon</i>	Blackbanded Sunfish	Fish	S2		G4	
<i>Notropis chalybaeus</i>	Ironcolor Shiner	Fish	S2		G4	
<i>Apeltes quadracus</i>	Fourspine Stickleback	Fish	S2		G5	
<i>Dendroica dominica</i>	Yellow-Throated Warbler	Bird	S2B		G5	
<i>Haliaeetus leucocephalus</i>	Bald Eagle	Bird	S2B,S3N	E	G4	PS:LT
<i>Chamaecyparis thyoides-Acer rubrum</i>	Delmarva Atlantic White Cedar Swamp	Community	S2		G?	
<i>Hypericum adpressum</i>	Creeping St. John’s-Wort	Plant	S2		G2G3	
<i>Alnus maritima</i>	Seaside Alder	Plant	S3		G3	
<i>Panicum hemitomon</i>	Maidencane	Plant	S2		G5?	
<i>Myriophyllum pinnatum</i>	Cutleaf Water-Milfoil	Plant	S2		G5	
<i>Juncus militaris</i>	Bayonet Rush	Plant	S2		G4	
<i>Schoenoplectus subterminalis</i>	Water Bulrush	Plant	S2		G4G5	
<i>Utricularia biflora</i>	Two-Flower Bladderwort	Plant	S2		G5	

**State Rank:** S1 - extremely rare within the state (typically 5 or fewer occurrences); S2 - very rare within the state (6 to 20 occurrences); B - Breeding; N - Nonbreeding; **State Status:** E – endangered, i.e. designated by the Delaware Division of Fish and Wildlife as seriously threatened with extinction in the state; **Global Rank:** G1 - imperiled globally because of extreme rarity (5 or fewer occurrences worldwide); G2 - imperiled globally because of great rarity (6 to 20 occurrences); G3 - either very rare and local throughout its range (21 to 100 occurrences) or found only locally in a restricted range; G4 - apparently secure globally but uncommon in parts of its range; G5 - secure on a global basis but may be uncommon locally; T<sub>-</sub> - variety or subspecies rank; Q – questionable taxonomy; **Federal Status:** LE – endangered, i.e. designated by the U.S. Fish and Wildlife Service as being in danger of extinction throughout its range; LT – threatened, i.e. designated by USFWS as being likely to become endangered in the foreseeable future throughout all or a significant portion of its range; PS – proposed status.

There are two Bald Eagle nest sites located within those areas designated as Annexation Phase 1, Phase 2, and In Town. Bald eagle nesting areas retain protection under the federal Endangered Species Act. All habitat within 750 feet of the nest is protected; no activity is permitted within this zone at any time of the year. Any work proposed within a secondary protection zone, defined as the area between 750 feet and 1,320 feet from the nest, will be under time-of-year restriction; no activity is permitted within this zone from 15 December to 1 July. Because the Bald Eagle is a federally listed species, you or your client will need to contact the U.S. Fish and Wildlife Service (USFWS), as any decisions on federally listed species are ultimately their jurisdiction. Questions for USFWS should be directed to Craig Koppie at (410) 573-4534.

### **Habitat**

In the interest of water quality, wildlife habitat, and to protect the species listed in the tables above, we recommend maintaining a forested buffer of at least 100 ft along the tributaries, wetlands, and ponds that are found within the designated areas. Buffers are an integral component of aquatic and wetland habitats, reducing the amount of sediments, pollutants, and other non-point source material that may affect the function and integrity of habitat and the condition and survivability of aquatic organisms. Forested buffers also serve as habitat for many terrestrial species that are dependent on aquatic and wetlands habitats for a portion of their annual life cycle.

We also strongly encourage the preservation of upland, riparian, and wetland forests on these parcels. Forests provide environmental services that benefit humans directly such as water quality protection (erosion control and sediment, nutrient, biological and toxics removal), climate moderation, aesthetic value and recreational opportunities. In addition, forests provide habitat for many species of plants and animals. Forest fragmentation resulting from development separates wildlife populations, increases road mortality, and increases “edge effects” that leave many forest dwelling species, particularly songbirds, vulnerable to predation. We would gladly assist the landowner(s) in evaluating these parcels for wildlife habitat. Many new incentive-based programs for wildlife management are available to private landowners through our agency. Again, please contact Karen Bennett at [Karen.Bennett@state.de.us](mailto:Karen.Bennett@state.de.us) or call (302) 653-2883 if the landowner(s) is interested in more information.

## Recreation

It is recommended that sidewalks be built fronting every residence. A complete system of sidewalks will: 1) fulfill the recreation need for walking and biking facilities 2) provide opportunities for neighbors to interact in the community and 3) facilitate safe, convenient off-road access to neighboring communities, public mass transit stops, schools, stores, work etc.

If a trail system is planned, we recommend that a series of stacking trail loops be designed with access points in each subdivision “pod” and connections to adjacent communities. Community trail systems with long continuous trails, perimeter-only trails, and systems with few access points, often go unused and neglected. For trail design/construction specifications, contact Susan Moerschel at (302) 739-5285.

The Division of Parks and Recreation conducted a telephone survey of Delaware residents to gather information on outdoor recreation patterns and preferences as well as other information on their landscape perception. These findings are the foundation of the 2003-2008 Statewide Comprehensive Outdoor Recreation Plan (SCORP) providing guidance for investments in needed outdoor recreation facilities. The high and moderate facility needs in Eastern Sussex County are listed below:

### High Priorities

Walking or Jogging Paths

Bike Paths

Fishing Areas

### Moderate Priorities

Picnic Areas

Skate Facilities

Canoe/Kayak Access

Hiking Trails

Swimming Pools

Playgrounds

Soccer Fields

Tennis Courts

Power Boat Access

Baseball/Softball Fields

The following comments are requirements from the Delaware State Fire Prevention Regulations (2003 ed.) that may have some impact on the Town of Millsboro's infrastructure.

a. **Fire Protection Water Requirements:**

- Water distribution system capable of delivering at least 1500 gpm for 2-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers. (Mercantile, Storage, and Industrial Occupancies)
- Water distribution system capable of delivering at least 1000 gpm for 1-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers. (Assembly, Education, Hospital, Hotel, Apartment, Townhouse, Daycare, and Business Occupancies)
- Water distribution system capable of delivering at least 500 gpm for 1-hour duration, at 20-psi residual pressure. Fire hydrants with 1000 feet spacing on centers are required. (One-two Family Occupancies)

b. **Fire Protection Features:**

- All structures over 10,000 Sq. Ft. aggregate will require automatic sprinkler protection installed.
- Buildings greater than 10,000 sq.ft., 3-stories or more or over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements.
- Show Fire Department Connection location (Must be within 300 feet of fire hydrant), and detail as shown in the DSFPR.

c. **Accessibility**

- All premises which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. This means that the access road to the subdivision from any road must be constructed so fire department apparatus may negotiate it.
- Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.
- Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn around.

- If the use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.

d. **Gas Piping and System Information:**

- Provide type of fuel proposed, and show locations of bulk containers on plan.

**Public Service Commission - Contact: David Bonar 739-4247**

Any annexations must be reported to the Public Service Commission.

**Office of Safety and Homeland Security – Contact: Kevin Kille 659-3362**

Emergency response agencies in the areas of police, fire fighters, and emergency medical response should be kept informed of additional housing and related developments, particularly those which would indicate a substantial increase in the population of Millsboro.

Builders of homes in the flood plain are reminded that the lowest level of dwellings should be elevated to above the 100-year flood level.

Developers should be informed that Millsboro is on the edge of the flood inundation area expected in the event of a hurricane impacting the Delaware coastline.

Developers should be informed that Millsboro is located on a coastal storm evacuation route. A substantial increase in population would add to the number of vehicles potentially requiring using that route, during an emergency.

**Department of Agriculture - Contact: Mark Davis 739-4811**

Department of Agriculture has noted that their primary comments center on the proposed annexation area. The area proposed for annexation which is located to the northeast of town should be reduced to minimize conflicts with the agricultural preservation located in that area. That particular district (Chorman Expansion of Baxter Farms, Inc.) has applied for permanent easement status. In addition, DDA understands that the area proposed for annexation to the northwest is currently under development, but the area to the southwest is not. The town has proposed an annexation plan in the southwest area that DDA believes is overly ambitious for the next five years given population projections.

The Town is encouraged to continue working with the urban forester, Bryan Hall, to develop a comprehensive tree ordinance that includes all aspects of urban forestry.

The State asks that the certification issue outlined in this letter be addressed and the other comments be considered before adoption on the plan. Specifically because the Town is

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located in the high nutrient reduction zone of the Inland Bays watershed, we strongly encourage the Town to consider requiring buffers and other measures recommended by DNREC. We would hope that these measures would be in place prior to the approval of any large development projects. If you would like the State's assistance with such ordinances, please call Ann Marie Townshend.

Once the plan has been adopted, please notify this office of the changes made before adoption so that we may review for certification. Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland". The signature is written in black ink and is positioned above the typed name and title.

Constance C. Holland, AICP

Director