



**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET  
STATE PLANNING COORDINATION**

August 14, 2006

Mr. Richard Carmean  
City of Milford  
P.O. Box 159  
Milford, DE 19963

RE: PLUS review – PLUS 2006-06-09; City of Milford comprehensive plan amendment

Dear Mr. Carmean:

Thank you for meeting with State agency planners on July 26, 2006 to discuss the proposed City of Milford comprehensive plan amendment. According to the information received, you are seeking a plan amendment with updates to the Land Use and Annexation section of the plan. You also intend to provide more specific implementation strategies for smart growth initiatives.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting.

This is the second review of a proposed comprehensive plan amendment for the City of Milford. The area in question is located in Sussex County southeast of the City, east of State Route 1. The area in question is currently located in Investment Level 4 according to the Strategies for State Policies and Spending. Our comments from the previous review of this plan (PLUS 2005-11-17) acknowledge that this request has been initiated due to the “Badger Creek Bayside and the New Milford” subdivision application (reviewed as PLUS 2005-05-23). This project is a 786 lot cluster subdivision that takes full advantage of Sussex County’s cluster ordinance, which ensures a density of 2.00 units per acre.

We understand that the City is very concerned about the prospect of having such a large subdivision located immediately southeast of the city limits. Although somewhat isolated by its located east of Route 1, the subdivision will impact City services and infrastructure including fire, police, parks, libraries, and roads. Due to these concerns, our office has agreed to consider the possibility of an annexation plan amendment that would ultimately allow the inclusion of this subdivision and some adjacent lands in the City limits. Since this original review, there has been a proposal to locate a hospital campus in this annexation area.

The following are our comments on this version of the proposed comprehensive plan amendment:

**Office of State Planning Coordination – Contact: David Edgell 739-3090**

Certification Comments:

- 1) Memorandum of Understanding. Our office will propose a “Memorandum of Understanding” to the City of Milford related to this plan amendment. This MOU will address two important items: 1) There will be no additional plan amendments until Milford’s plan is due for its regular update in 2008; and 2) The proposed southeastern annexation area will be master planned to address the numerous infrastructure issues and agency concerns regarding this area. In addition, the MOU will address the issues and concerns of the Delaware Department of Agriculture, and DelDOT. These agencies will be included in the discussions about the MOU. Plan certification will only be considered by our office if an MOU agreeable to all parties can be developed. David Edgell of our office will be the primary contact between the City and the State Government.
- 2) Master Planning. At the PLUS meeting and in discussions with our office the City has committed to undertaking a master plan for this annexation area. A master planning approach is an opportunity to address infrastructure timing and phasing, land use, community design, natural resources, and land preservation in a comprehensive fashion. Needed investments can be identified in advance, and costs shared equitably among all parties. Our office supports this concept as the only viable planning mechanism available to address State concerns in a comprehensive fashion. A master plan would most likely occur after annexation, but before any development approvals were given in this area. Our office will work out the details and timing of this planning activity through the MOU discussed above. The plan should provide details on the master plan, what it will include, how it will be implemented, and what agencies and other entities are needed as partners to complete the plan.

- 3) Agricultural Preservation / Natural Resources / TDRs. The Delaware Department of Agriculture remains opposed to this comprehensive plan amendment. Their detailed comments are found below in this letter. The DDA has indicated their willingness to work with the City of Milford and our office on a Transfer of Development Rights program for the City. The DDA and our office are both concerned that without stronger policies, implementation measures, and tools this annexation plan amendment could lead to extensive development in this area of Sussex County. It will be necessary to meet with the DDA to discuss plan changes that will mitigate their concerns. As noted above, this agency will be a party to the Memorandum of Understanding that is a certification requirement.
- 4) Circulation Element. The transportation section of the plan needs to have more concrete implementation measures. Please see DelDOT's detailed comments below. Perhaps this can be addressed through the plan text regarding master planning, described above.
- 5) Future Land Use in Southeastern Annexation Area. The future land uses in the proposed annexation area need to be clarified. The future land use map must look into the future to identify what the land use is proposed to be, not what it is today. Please carefully evaluate the "existing if requested" parcels. It is strongly recommended that the "existing if requested" language be removed, as this continues to be problematic in other communities. It is also strongly recommended that the plan use general land use categories such as "residential" and "commercial" to allow flexibility, especially considering that a master plan concept is possible in this area.
- 6) City Wide Land Use Changes. As noted in our previous comments, it is recommended that the City evaluate future land use city wide, since there will be no additional plan amendments until 2008. Your response letter indicates that there will be some changes to the future land use in the other portions of the City. It was expected that any changes to the future land use map would be included with this submission. We will review these proposed land use changes when they are presented to us. Please be advised that additional reviews through the PLUS process may be required.
- 7) Agricultural Preservation Districts must be removed from the future land use map as annexation areas. If they are identified at all they must be shown as Agricultural Preservation Districts. A standard note may be added to the parcels and in the text:

- i. “This parcel is enrolled in an Agricultural Preservation District (APD) which will be subject to possible removal by the owners in DATE. The City of Milford may consider these parcels for annexation when and if the APD is removed by the owners, but only with the property owners consent. A plan amendment will not be required unless five years have passed between the date of plan certification and the application for annexation. If annexation is considered under these criteria the future land use will be FUTURE LAND USE.”
- 8) In your response letter dated July 10, 2006 you indicate your willingness to make this change to the agricultural districts shown on the map, which we appreciate. In the version of the note that was included in that letter you indicate the future land use for one of these areas would be “blended community concept.” Please define this term in the plan text.
- 9) Mention potential TMDL regulatory requirements. Please see DNREC’s detailed comments below.

Other Comments:

- 1) It is recommended that the City of Milford actively participate in the upcoming Sussex County Comprehensive Plan amendment process. It will be very important for the City and the County to collaborate on land use strategies and regulations that support growth in designated development districts, annexation areas and municipal boundaries while protecting the rural character and agricultural industry outside of these areas.

**Division of Historical and Cultural Affairs – Contact: Alice Guerrant 739-5685**

The Milford Comprehensive Plan Amendment, Subdivision and Zoning Implementation Policies provide an important foundation for making Milford a desirable place to live into the future and the leadership for this community should be commended. Additionally, the Historical and Cultural Affairs office would like to support the retention of the important historic resources that survive in Milford and in the lands proposed for annexation. They expect that the master plan for the annexation area will include some consideration for historic properties outside of the historic city core. Historic buildings were built to accommodate the land use policies the city is embracing and should be included in the redevelopment plans when appropriate. In addition, protections for archaeological sites should be considered.

Milford is fortunate to have some of the most beautiful historic areas in the state, and several National Register-listed properties and districts. These are assets that can be built upon to help Milford achieve these important stated policies. Historic zoning is a regulatory tool that can be used to insure developers consider the preservation and inclusion of these historic assets in their plans. The State Historic Preservation Office can provide information, model ordinances, and design guideline development assistance to the town and connect Milford town officials with others in Sussex County and across the state who are using this tool to preserve important community character.

The downtown core is important as the visible heart of the town. Downtown revitalization efforts should be continued and reinforced. State and federal income tax incentives are available for projects that involve commercial property as well as homeowners. These incentives provide income tax credits for the rehabilitation of historic properties, a dollar-for-dollar credit off of income tax owed, of a percentage of the amount of money spent on the project, based on the program that applies. Protecting the important existing buildings that make Milford the lovely community it is today will complement and reinforce the goals for the planning and subdivision implementation strategies enumerated in this plan amendment.

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

Responding to comments from the City Manager, Mr. Richard Carmean, at the PLUS meeting, DelDOT is pleased to hear that the City intends to develop a master plan for the East Annexation Area. They welcome the opportunity to work with them and others on it. At the meeting, there was discussion of a memorandum of agreement concerning the development of the master plan. The Assistant Director for Development Coordination, Mr. Ted Bishop, will serve as the DelDOT contact in this regard. He may be reached at (302) 760-2272. DelDOT's participation in this agreement will be coordinated through the State Planning Office.

Following are our comments on the text and graphics of the plan amendment that we received for review.

- 1) DelDOT generally supports the proposed changes in the City's land use policies. They would like to see Milford take a more aggressive position toward the adoption and use of transfer of development rights. DelDOT understands understand that it is a new program in Delaware, but if every municipality waits for other municipalities to develop experience with it, then none ever will.
- 2) DelDOT has three comments regarding the proposed East Annexation Area:

- a) The section on Transportation, on pages 8 and 9, seems adequate from a policy perspective. It supports DeIDOT's Corridor Capacity Preservation Program, although curiously it does not mention that program by name. We think it should. It mentions the planned interchange of Delaware Routes 1 and 30. It also mentions that State funding for road improvements is not anticipated and states, "Costs for these improvements should be borne by the developers."

However, the Plan amendment is lacking in implementation steps. For example, there is a statement that "A coordinated district development plan for transportation could provide a more cost effective and timely implementation of the interchange improvements." DeIDOT agrees, but there is no statement in the Plan amendment about who should participate in developing the plan and when or whether development should be allowed to proceed in the absence of that plan.

The subject area already includes one large and active development proposal, Badger Creek at New Milford, and one major transportation improvement, the Route 1 and Route 30 interchange. More development can be expected and more improvements will be needed. Therefore, they consider it essential that the City and DeIDOT work together to jointly develop a plan that recognizes the important relationship that exists between land development and transportation in the subject area. It is critical that the City have a Comprehensive Plan that specifies the preparation of such a plan and a strategy by which developers will be made to implement it. One element of such a strategy might be the use of recoupment areas, which identifies how present and future development will share the cost of improvements. DeIDOT has used this idea in Middletown, at Little Heaven and in Frederica.

- b) While it may be a minor point, Map Nos. 5 and 7B do not correctly show the road network in the area. Previously, Beaver Dam Road (Sussex Road 209) crossed Delaware Route 1. For safety reasons, that intersection was eliminated several years ago. The section of that road east of Route 1 now is designated as part of Bucks Road (Sussex Road 210).
- c) The City is encouraged to coordinate the planning of this area with the DeIDOT's ongoing US 113 North/South Study. Several of the alternative alignments retained for future study have the potential to impact this area. Should one of these alignments ultimately be chosen, the transportation

system in this new annexation area would have to be integrated with the future by-pass.

**The Department of Natural Resources and Environmental Control – Contact: Kevin Coyle 739-9071**

### **General Comment**

DNREC strongly urges the City to develop a “Master Plan” for the Eastern Annexation Area. From an environmental/natural resources perspective, the Master Plan should, at a minimum, address issues of buffers from wetlands/water bodies, source water protection, TMDLs, stormwater management/drainage, open space/State Resource Areas/Natural Areas, and recreation. Please contact the Department for technical assistance in any/all of these subject areas.

### **TMDLs/Stormwater Management**

#### **Recommendation 1: Mention potential TMDL regulatory requirements**

Since the waters, tributaries, and ponds of the Mispillion watershed are impaired by elevated levels of nitrogen and phosphorus and high levels of bacteria and are not able to meet the water quality criteria specified under Section 303(d) of the Clean Water Act, specific pollutant load allocations or loading limits (nonpoint and point sources) known as Total Maximum Daily Loads (TMDLs) are being developed for pollutants or stressors causing the impairment. Since TMDLs are likely to be regulatory requirements that affect development practices and patterns within the Mispillion watershed in the near future, it is strongly recommended that the applicant make specific mention of them in the Comprehensive Plan.

With enough imagination and cooperation, the Master Plan could be a regional model for implementation of a practical pollution control strategy to meet Total Maximum Daily Load reductions for nutrients, bacteria and dissolved oxygen. For more information, see the “[Draft Mispillion River and Cedar Creek Watershed TMDL Technical Support Document](#)” at the link below.

<http://www.dnrec.state.de.us/water2000/Sections/Watershed/TMDL/Mispillion%20and%20Cedar%20TMDL%20TSD%20Updated.pdf>

**Recommendation 2: Implement ordinances requiring Best Management Practices (BMPs) such as 100-foot buffers and green-technology stormwater management structures.**

The Town's current required 20-foot setback from wetlands or water bodies is insufficient to mitigate nutrient-runoff impacts to waters or wetlands of the Mispillion watershed. To ensure consistency with State recommendations and help ensure the attainment of imminent TMDL nutrient reduction requirements for nitrogen and phosphorus, a buffer width of at least 100-foot (planted in native vegetation) is the recommended minimum buffer width from wetlands/water bodies and all recorded lot-line boundaries. Studies have shown a 100-foot buffer is the minimum width necessary for maintaining water and habitat quality. It is further recommended that the Town adopt an ordinance requiring the implementation of "green-technology" stormwater management practices in lieu of outdated "open-water" (i.e., ponds) stormwater management.

**Water Resource Protection Areas**

The City of Milford population was 7,088 in the year 2004; therefore, Title 7, Part VII, Chapter 60, Subchapter VI, and the amendments contained in Chapter 67 (formerly Senate Bill No. 119) of the Delaware Code has required the city to recognize these areas in its comprehensive Plan (which it has already done) as well as adopt protection measures by December 2007 for these critical areas. We recognize the initiative that the City of Milford has shown thus far in protecting these critical areas.

Critical Areas are defined as wellhead protection areas and excellent ground-water recharge areas. There are excellent ground-water recharge areas present within the proposed Eastern Annexation Area of the 2006 Amendment. The Document states that the City "strongly prefers to encourage use of its existing water and sewer services as a method of limiting the growth of on-site systems and private wells". DNREC Water Supply Section agrees but also notes that this may result in additional City public supply wells that may be located within the Eastern Annexation Area. These additional wells have not been discussed in detail; however, these new wells would require the delineation of new wellhead protection areas which would be new Critical Areas. We would also like to point out that the Delaware Code provides for language stronger than "encourage", and requires specific ordinances and regulations which protect these Critical Areas.

Once the City has determined that additional public wells are needed, the Department would be glad to assist in both their location and the mapping of the new wellhead protection area. Please note that the Department would also be revising your source water assessment at that time to include these new areas.

A review of the City of Milford Comprehensive Plan: February 28, 2003 has shown that The City of Milford Appendix 9: May 22, 2006 has two inconsistencies in language regarding critical areas. Appendix 9, Page 10 refers to “resource projection area” and “zones for projection”. We interpret this as a typographic error and recommend a change to “resource **protection** area” and “zones for **protection**” for clarification.

The Eastern Annexation Area has an area designated as an excellent ground-water recharge area. It is important that this Comprehensive Plan adopt the Critical areas (excellent recharge and wellhead protection) as areas that will be protected.

DNREC Water Supply- Source Water Protection Program is interested in assisting the City of Milford with questions or concerns with technical issues, creation, or implementation of source water protection programs and ordinance development. You may contact the program at 302-739-9945 with questions.

**City of Milford.** Eastern Annexation Area is shown outlined in blue. Excellent ground-water recharge areas are shown in green.



## **Water Supply**

There was not enough information provided to project water supply allocation needs. Please contact the Water Supply Section at 302-739-9945 to discuss further.

## **State Resource Areas/Natural Areas**

The area of concern in the northeast section of the city limits includes a forested riparian area along the Mispillion River. This area is known as the Milford Neck Natural Area. Any development in this area should be strongly tempered with environmentally sensitive technologies to ensure protection of the forest as well as the riparian lands.

The application indicates that the City's existing ordinances and policies include provisions for open space, dedication or funding for active recreation area, protection of wetlands and other environmentally sensitive areas. The Office of Nature Preserves requests information on specific natural resource protection levels for forests, wetlands, and riparian areas especially as the City plans to annex areas 4 and 7 which contain Natural Area lands and State Resource Area lands respectively.

The Comprehensive Plan states that the following land use policy is desired by the City: *Open space should be defined as usable open space, passive open space and preserved open space. Requirements for open space should be made compatible with the Plan land use and conservation area maps.* The Office of Nature Preserves requests information on where the City is proposing preserved open space.

## **Specific Eastern Annexation Area Comments**

- Eastern Annexation area includes both the Beaverdam Branch Natural Area as well as State Resource Area lands to the west of the Beaverdam Branch Natural Area. Beaverdam Branch is a tributary of Cedar Creek, and its watershed contains a substantial concentration of Atlantic white cedar to be found in the Delaware River Basin.
- According to the Comprehensive Plan, "(I)n the amendment area, Beaverdam Creek has a mapped 100-year flood plain based on the most recent FEMA Flood Insurance Rate Maps. The creek bottom is a probable location for non-tidal wetlands, and currently includes a wooded stream course from Cedar Neck Road and hence to the east toward the Delaware Bay. The City will encourage developers working within the City limits to maintain a reasonable wooded corridor along Beaverdam Branch and its tributaries, and to encourage use of green technologies for stormwater management." The Office of Nature Preserves

requests additional information on how the City will encourage developers to “maintain a reasonable wooded corridor” and what is meant by “reasonable.”

### **Rare Species/Site Visit Request**

According to Appendix 9, page 10, “(T)he PLUS review for the Amendment area indicated that there are no records of state-rare or federally listed plants, animals or natural communities in the area.” It is possible that the previous statement was preceded by the phrase, “Because we have not surveyed the site(s), ...” In order to provide more informed comments and to make reasonable recommendations, our program botanist and zoologist request the opportunity to survey the forested and wetland resources which could potentially be impacted by development. This would also allow future applicants the opportunity to reduce potential impacts to rare species and to ensure that future projects are environmentally sensitive. Please contact Bill McAvoy or Kitt Heckscher at (302) 653-2880 to set up (a) site visit(s).

### **State Fire Marshal’s Office – Contact: John Rossiter 739-4394**

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal’s Office. The DE State Fire Marshal’s Office has the responsibility to review all commercial and residential subdivisions for compliance with the DE State Fire Prevention Regulations. This Agency’s approvals are based on the DE State Fire Prevention Regulations only.

The DE State Fire Marshal’s Office has no objection to the annexation growth and boundaries.

### **Department of Agriculture - Contact: Milton Melendez 698-4500**

The Delaware Department of Agriculture has reviewed the City of Milford’s Comprehensive Plan amendments, and offers the following comments:

The Department of Agriculture understands that the City of Milford’s request to annex agricultural land east of State Route 1 is largely reactive, not proactive. The Department is aware that even if the city does not annex the land, it could still be developed for residential use under Sussex County ordinances. It may also be true that the city could be asked unfairly to provide services and other benefits to such development without compensation. However, the Department has consistently opposed any residential development east of State Route 1 (SR1). We do so for the following reasons:

To date, the State, through the Delaware Agricultural Lands Preservation Foundation (DALPF), has invested nearly two (2) million dollars (\$2,000,000) in public funds to permanently preserve approximately 2,400 acres of farmland within approximately three (3) miles east of the city's current eastern boundary along SR1. In addition, the State currently has an additional 1,100 acres of agricultural land enrolled in its 10-year program, with the potential to purchase and permanently preserve those acres in the future.

An analysis of the farm parcels east of the city, along SR1 to the Delaware Bay, shows an average Land Evaluation Site Assessment (LESA) score of 200 (on a scale of 0 to 300). A parcel of land must achieve a score of 170 to be eligible for enrollment in the DALPF. The LESA Model is a State and Federal approved land analysis system that uses a point-based rating system to identify parcels of land that are best suited for long-term agricultural practices. The Land Evaluation (LE) factor is determined by using a soil productivity index, while the Site Assessment (SA) factor is derived from non-soil factors, many of which are non-agricultural. The model assigns a parcel of land a "score"; the higher the LESA score, the more suitable a parcel of land is for sustained agricultural use. The analysis above, and the resulting average LESA score of 200, demonstrates the land east of SR1 is ideally suited for continued long term agricultural land use.

The Department is concerned that extending infrastructure such as sewer and water service east of Route 1 will act as a catalyst and spur additional residential development in an area that is largely agricultural. Even if the city decided not to annex additional land east of SR 1 after this request, they could still extend sewer and water service to support additional residential development outside their incorporated area as a means to generate revenue. Even if the city (charter, ordinance, etc.) currently does not permit extending services outside their incorporated area, the city could always eliminate this restriction in the future.

Those landowners who are currently enrolled in the State's Agricultural Lands Preservation program have made a substantial commitment to the state. This is especially true regarding those who have permanently preserved their land through the sale of their "development rights". The Department believes the state should reciprocate by trying to preserve and maintain agriculture around working farms already in the preservation program. To allow preserved farms to become islands among "sprawl" will make it increasingly difficult for those farms to operate. In addition, we run the risk of undermining the program's credibility among those considering permanent preservation of their farm through easement sale, and those considering participating agricultural lands preservation program for the first time.

The Department's "standard" Level 4 comments apply to this request, and are as follows:

The proposed annexation area is in an area designated as Investment Level 4 under the *Strategies for State Policies and Spending*. The *Strategies* do not support this residential development in this area. The intent of this plan is to preserve the agricultural lands, forestlands, recreational uses, and open spaces that are preferred uses in Level 4 areas. The Department of Agriculture opposes development which conflicts with the preferred land uses, making it more difficult for agriculture and forestry to succeed, and increases the cost to the public for services and facilities.

More importantly, the Department of Agriculture opposes this annexation because it negatively impacts those land uses that are the backbone of Delaware's resource industries - agriculture, forestry, horticulture - and the related industries they support. Often new residents of developments like this one, with little understanding or appreciation for modern agriculture and forestry, find their own lifestyles in direct conflict with the demands of these industries. Often these conflicts result in compromised health and safety; one example being decreased highway safety with farm equipment and cars competing on rural roads. The crucial economic, environmental and open space benefits of agriculture and forestry are compromised by such development.

Part of the proposed annexation area will be adjacent to, or within 300 feet, of properties currently enrolled in the State's Agricultural Lands Protection Program. Therefore, the farming activities conducted on these properties will be protected by the agricultural use protections outlined in Title 3, Del. C., Chapter 9 as long as they remain in the program.

**§ 910. Agricultural use protections.**

(a) Normal agricultural uses and activities conducted in a lawful manner are preferred and priority uses and activities in Agricultural Preservation Districts. In order to establish and maintain a preference and priority for such normal agricultural uses and activities and avert and negate complaints arising from normal noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations, land use adjacent to Agricultural Preservation Districts shall be subject to the following restrictions:

(1) For any new subdivision development located in whole or in part within 300 feet of the boundary of an Agricultural Preservation District, the owner of the development shall provide in the deed restrictions and any leases or agreements of sale for any residential lot or dwelling unit the following notice:

This property is located in the vicinity of an established Agricultural Preservation District in which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities."

(2) For any new subdivision development located in whole or in part within 50 feet of the boundary of an Agricultural Preservation District, no improvement requiring an occupancy approval shall be constructed within 50 feet of the boundary of the Agricultural Preservation District.

(b) Normal agricultural uses and activities conducted in accordance with good husbandry and best management practices in Agricultural Preservation Districts shall be deemed protected actions and not subject to any claim or complaint of nuisance, including any such claims under any existing or future county or municipal code or ordinance. In the event a formal complaint alleging nuisance related to normal agricultural uses and activities is filed against an owner of lands located in an Agricultural Preservation District, such owner, upon prevailing in any such action, shall be entitled to recover reasonably incurred costs and expenses related to the defense of any such action, including reasonable attorney's fees (68 Del. Laws, c. 118, § 2.).

In addition, if any wells are to be installed, Section 4.01(A) (2) of the Delaware Regulations Governing the Construction and Use of Wells will apply. This regulation states:

(2) For any parcel, lot, or subdivision created or recorded within fifty (50) feet of, or within the boundaries of, an Agricultural Lands Preservation District (as defined in Title 3, Del. C., Chapter 9); all wells constructed on such parcels shall be located a minimum of fifty (50) feet from any boundary of the Agricultural Lands Preservation District. This requirement does not apply to parcels recorded prior to the implementation date of these Regulations. However, it is recommended that all wells be placed the maximum distance possible from lands which are or have been used for the production of crops which have been subjected to the application of land applied federally regulated chemicals.

Some of the property being considered for annexation has been designated as having “excellent” ground-water recharge potential. DNREC has mapped all ground-water recharge-potential recharge areas for the state, and an “excellent” rating designates an area as having important groundwater recharge qualities.

Senate Bill 119, enacted by the 141<sup>st</sup> General Assembly in June of 2001, requires the counties and municipalities with over 2,000 people to adopt as part of the update and implementation of their 2007 comprehensive land use plans, areas delineating excellent ground-water recharge potential areas. Furthermore, the counties and municipalities are required to adopt regulations by December 31, 2007, governing land uses within those areas to preserve ground-water quality and quantity.

Maintaining pervious cover in excellent and good recharge areas is crucial for the overall environmental health of our state and extremely important to efforts which ensure a safe drinking water supply for future generations. Retention of pervious cover to ensure an adequate future water supply is also important for the future viability of agriculture in the First State. The loss of every acre of land designated as “excellent” and “good” recharge areas adversely impacts the future prospects for agriculture in Delaware. Every effort should be made to protect and maintain valuable ground-water recharge potential areas.

The Department encourages the City to establish its own transfer of development rights (TDR) program, and transfer density and growth to areas more suitable than east of SR1. The Department would be particularly interested in seeing those properties currently in the Delaware Agricultural Land Preservation Program’s 10 year (district) program permanently preserved as a first step in establishing a “green belt”. Preservation of these properties would help delineate the city’s eastern boundary by “open/green space”, and serve as a transitional buffer between the city and working agricultural land (farms) to the east. The Department would be glad to work with the City, the Office of State Planning Coordination (OSPC), and other stakeholders to develop and implement a successful TDR program. The Town of Middletown, among others, has already developed a TDR program which could serve as a template and guide for the City of Milford to create its own successful program.

**Public Service Commission - Contact: Andrea Maucher 739-4247**

Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety guidelines. Contact: Malak Michael at (302) 739-4247.

**Delaware State Housing Authority – Contact Karen Horton 739-4263**

This amendment for the City of Milford will establish +/-600 acres east of Route 1 as an anticipated growth area for the City. Normally, DSHA prefers land east of Route 1 to be preserved for agricultural and environmental preservation. However, we support an amendment that will provide a master plan for this area that will encourage compact mixed-use development containing a range of residential densities. Specific elements we support include the following:

- Densities of up to eight dwelling units per acre as they will facilitate affordable housing for low- and moderate-income households;
- Walkable residential developments that include businesses and services to support the residents, and reduce the need for driving. We particularly support permitting apartments above shops; and
- Design guidelines geared for different densities, such as the traditional neighborhood design being identified for the densities of eight dwelling units per acre.

While higher densities encourage affordability, it is not a guarantee. The most recent 2003 Statewide Housing Needs Assessment, as well as recent real estate information, indicates that there is a need for housing to support low- and moderate-income households. We recommend that the City, as part of this amendment, also include incentives that ensure long-term affordable housing for low- and moderate-income

**Department of Education – Contact: John Marinucci 739-4658**

1. The DOE supports the State Strategies for Policies and Spending, to the extent possible and practicable within the limits of the Federal and State mandates under which the Department operates.
2. In its review of Comprehensive Plans and Comprehensive Plan Amendments, the DOE considers:
  - Adequate civil infrastructure availability within the region to accommodate current and future educational facilities.
  - Transportation system connections and availability to support multimodal access within the community, to include but not limited to walk paths, bike paths, and safe pedestrian grade crossings.
  - Transportation road system adequacy to accommodate bus and delivery vehicle traffic to current, planned or potential educational facilities.

- Recreation facilities and opportunities within the community and their respective proximity to current and planned or potential education facilities. The DOE also recognizes the potential that the educational facilities are to be considered recreational facilities by and within the community.
3. The DOE *typically* considers industrial/commercial development incompatible with educational facilities, however, residential development and educational facilities *are typically* considered to be compatible. As a result, the DOE is interested in the proximity of current and planned or potential education facilities to commercial/industrial development zones.
  4. The DOE recognizes the integral role of educational facilities within communities. As such, the DOE seeks to assure that residential growth, that generates additional demand on educational facilities, is managed with adequate educational infrastructure being made a part of sub-division plans as appropriate.
  5. East-West traffic crossing Rt-1 during beach season has become increasingly difficult, particularly for school busses. This condition will most likely become worse with the proposed annexation east of Rt-1. In an effort to assure safe school bus East-West travel across Rt-1, please make improvements to the existing intersections, such a grade separated intersection, a part of the Comprehensive Plan Amendment.

**Sussex County – Contact: Richard Kautz 855-7878**

This replaces the third significant plan amendment in just over three years. Please refer to earlier comments.

While the pace of development in the Milford area may be driving much of this, the result is a very uncoordinated approach to planning. For example, the current "Anticipated Growth Areas" shown on Map Number 7B included with this case still makes no reference to growth in the area to the west and south of the City which was the basis for the Sussex County growth area around Milford included in the current County plan. Are these areas no longer of interest for annexation by the town?

Furthermore, page 12 of Appendix 9 includes an incorrect statement in the section on "Planning Coordination." The first paragraph ends with a statement that this area (presumably the East and Southeast Anticipated Growth Areas) "is within the Developing Area in the Sussex County Comprehensive Plan." The statement is only partially correct in that most of that area is outside of the County's Developing Area. As a result there will be an increase in planned density from 2 in the County Low Density area to as much

as 8 dwelling units per acre and a significant amount of future commercial land use in the new Milford Growth Areas.

In the near future Sussex County will be revising its plan and, in order to do so, will need to know the future land use plans of Milford. The City is encouraged to quickly complete a future land use plan for the area of Sussex County into which they plan to expand services and annex.

The Sussex County Engineer Comments:

The Sussex County Engineering Department has no objection to the Comprehensive Plan Amendment that proposes to add the "Eastern Annexation Area" to City of Milford's Comprehensive Plan. The proposed area of approximately 600 +/- acres is located east of Route 1 and adjoins the City of Milford and Anticipated Growth Areas. The area is located in Sussex County's North Coastal Planning area but is not in an Environmentally Sensitive Developing Area and Sussex County does not expect to provide sewer service to the area in the foreseeable future. The Sussex County Engineering Department supports annexation of the area and municipal sewer when development projects are proposed.

If projects are not annexed into the City of Milford, and have private community wastewater treatment systems, Sussex County requires design and construction of the collection and transmission systems to meet Sussex County sewer standards and specifications.

### **Certification Process**

1. Once all edits, changes and corrections have been made the plan please submit the completed document (text and maps) to our office for review. Your PLUS response letter should accompany this submission. Also include documentation about the public review process. In addition, please include documentation that the plan has been sent to other jurisdictions for review and comment, and include any comments received and your response to them. The Memorandum of Understanding described elsewhere in this letter must be completed as a prerequisite of our review of the revised plan.
2. Our office will require a maximum of 20 working days to complete this review.
3. We will provide the City of Milford with written verification that our office has accepted the plan and all changes for adoption.

4. The plan may then be formally adopted by your Planning and Zoning Commission and City Council.
5. Send our office documentation that the plan has been formally adopted by your Planning and Zoning Commission and Town Council. We will accept the plan as an amendment to your certified plan. A letter to this effect will be sent within 10 working days. The amendment will not alter your original plan certification date.

**Please remember to submit your response letter to our office with your final plan submission. Your letter must detail your response to comments received as a result of the pre-application process, noting whether comments were incorporated into the final plan or not and the reasons therefore.**

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".

Constance C. Holland, AICP  
Director

CC: Sussex County