



January 30, 2007

Mr. Ryan Mawhinney
URS Corporation
DuPont Office Suites, Suite C
201 West DuPont Highway
Millsboro, DE 19966

RE: PLUS review – PLUS 2006-12-04; Town of Frederica Comprehensive Plan Amendment

Dear Mr. Mawhinney:

Thank you for meeting with State agency planners on January 3, 2007 to discuss the proposed Town of Frederica comprehensive plan amendment.

According to the information received, you are seeking to amend you're the Town of Frederica certified comprehensive plan to expand the annexation boundary to include the balance of a 340 acre annexation proposal location north of Johnny Cake Landing Road and southwest of Spring Creek.

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.

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

Certification Issues:

1. **Population Projections, p. 9 c.:** The plan must have a “position on housing growth” as per Title 22, Section 702, “Municipal Development Strategy.” We presume that the town’s position is that it desires annexation and housing growth

due to the contents of this amendment. If this is so, then the plan must make a statement to this effect.

Other comments:

1. **Population projections, p. 9 c.:** We understand the build out analysis and the potential future population if everything is constructed. What is the rate of buildout expected to be? How does this coincide with the rate of population growth in Kent County as per DPC and Census projections?
2. **Water System, pp. 16-17 b.:** The Vineyard and McCloskey parcels are in an Artesian CPCN, but plan further states that the Town's Land Development Ordinance requires connection to the Town water system. How will this be resolved? Who will provide water to the development? The Plan should provide some recommendations, and possibly a path forward. This has the potential to be an issue that will hold up the Plan of Services.
3. **Wastewater System, pp. 17 c.:** The estimate for wastewater demand at buildout of current town is too low (1,800 gpd = 6 houses). It appears that this calculation only refers to six vacant lots in town, but not the larger vacant parcels such as Harbourtown and Waters Edge. Please revise to clarify.
4. **Wastewater System, p. 18 c.:** It is noted that pump station (13) is adequate to handle the flow from town. Does this pump station only handle the Town of Frederica, or does it also manage wastewater from the surrounding SSD? What is the current flow rate? Have you talked with Kent County Engineering about the system? If not, it is recommended that you do. It will be up to the developers to secure the district expansion and work with the County to provide adequate sewer service.
5. **Schools, p. 20 b.:** We are encouraged by the developer's interest in donating a school site, and are eager to discuss such a donation in conjunction with the Lake Forest School District and the Department of Education.
6. **Transportation, p. 22, c., "Traffic Calming":** The plan calls for traffic calming measures on Front and David Streets. Some specific measures are recommended. This recommendation could be implemented via a comprehensive street design project. It is recommended that you contact DelDOT to discuss possible design and funding assistance.

7. **Open Space Environment / Natural Resources, p. 26, “Wetlands” and pp. 27 – 28, “State Resource Area & Green Infrastructure”:** It is mentioned that the wetland areas are proposed as a State Resource Area. Those maps are now adopted. The plan should indicate the Town’s commitment to protecting these areas. Ordinances appear to be in place to protect the ecological components of the State Resource Area.
8. **Open Space Environment / Natural Resources, pp. 26-27, “Excellent Recharge Area”:** Use “best management practices” to reduce imperviousness in developed area. We acknowledge that 50% or less impervious may not be achievable given the development goals. Consider requiring BMPs as part of conditional use approval for the project. It is recommended that the town work with DNREC to balance their objectives of protecting recharge areas with the goals of the town and Livable Delaware to promote higher density development in and adjacent to existing municipalities.
9. **Open Space – Parks & Recreation, p. 29, i:** The riparian buffer area text indicates that an on-site TDR program would be utilized to preserve natural features on the site. This text indicates that the program is defined in **Section 2-5c “Transfer of Development Rights” on p. 13**. However, such a program is not described on p. 13. It is recommended that Section 2-5c be expanded to include a description of how an on-site TDR program would work.
10. **Section 3-6 “Administrative Capacity” p. 30:** It is recommended that this section be revised to discuss steps the town should take to grow its administrative capacity as the town grows from 650 to 5,600 persons. What new services and infrastructure are needed, and how should the town scale up their operation to meet those needs? It is also curious that this section does not make mention of the Town’s hiring of a planning consultant to administer the LDO. This is a significant and noteworthy step that deserves to be highlighted. The administrator will be a critical position that will help the town manage development in the NWAA.
11. **General Comment:** The plan recommendations are good, but they get lost in the text. It is recommended that all plan recommendations be summarized at the end of the document. It might also be desirable to highlight recommendations in the text, perhaps in bold, as bullet points, in text boxes etc. A new section titled **Implementation** could be added.
12. **Amended Map 7:** It is recommended that the legend be revised to clearly indicate that “Traditional Neighborhood Development” is a Future Land Use. As

the legend is currently designed, it appears that “Traditional Neighborhood Development” is an overlay of some sort, which may cause someone to question what the future land use is on that parcel. In addition, it is recommended that the text clearly indicate what is intended in the “Traditional Neighborhood Development” land use category. Section 2-5 does this well, so perhaps all that is needed in that section is a statement that details the land use category used on the map.

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

The Division of Historical and Cultural Affairs has no objection to the Town of Frederica’s amendment to its Future Land Use and Annexation maps. This area includes a known historic house (K-2767) and a prehistoric archaeological site (K-633). There is a high potential for other historic-period and prehistoric-period sites in the area. We recommend that Frederica provide some kind of protections for these historic properties in the development process.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

The DelDOT comments, which follow, concern Section 3-4 Transportation, which begins on page 20 of the draft Plan Amendment:

- 1) DelDOT appreciates the Town’s approach to transportation issues. Particular elements of the Transportation Section that they support include the continuation of the Town’s grid street pattern, the orientation toward pedestrian activity, and the emphasis on connectivity between the various parts of the town.
- 2) In the second paragraph under Traffic, the Amendment states “DelDOT is coordinating a Transportation Improvement District that will study the cumulative impacts and necessary improvements that may be necessary such as intersections, widening, etc. The Traffic Impact Study will look at capacity and will need to look at the collective whole of all developments.”

These statements suggest some confusion on the Town’s part about DelDOT’s current activities in the Frederica area and the nature of traffic impact studies. First, while DelDOT has created a district that encompasses Frederica, that district concerns only the funding of the North Frederica Interchange on Delaware Route 1. Second, DelDOT does intend to conduct an area study for a similar or larger area, and that study would result in the sort of district to which the plan refers, but we have not begun work on it yet. That study is discussed further in my next numbered comment below. Finally, the term “Traffic Impact Study” has a specific meaning, at least in DelDOT’s regulations. It refers to a study done

- with regard to a specific development to determine the road improvements needed to support that development. This term is used again on page 24, where they have the same concern.
- 3) As mentioned above, DelDOT intends to conduct a study of transportation needs in the greater Frederica area. They have already had preliminary conversations with Kent County about it. The County has indicated their support for such a study and has said that its results must be part of the plan for the proposed development of the Hastings Farm. DelDOT would like to work with the Town to make this study happen. The study will likely examine the benefits and feasibility of one or more bypass alternatives, but they would not expect any of these alternatives to make streetscape improvements in downtown Frederica unnecessary.
 - 4) The Town's concerns about safety at the intersection of Frederica Road and Route 1 are noted. As mentioned above, DelDOT has an interchange programmed for construction to eliminate the north intersection. They also plan to build another interchange to eliminate the south intersection. Although they do not yet have a design or a schedule for that interchange, they will be requiring developers in the area to make safety improvements there as part of their projects.

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

DNREC has no comments regarding the comprehensive plan amendment.

State Fire Marshal's Office – Contact: John Rudd 739-4394

The Delaware State Fire Marshal's Office has the responsibility to review all commercial and residential subdivisions for compliance with the Delaware State Fire Prevention Regulations. This Agency asks that a MOU be established between the Delaware State Fire Marshal's Office and the Town of Frederica. The State Fire Marshal's Office would be issuing approvals much like DelDOT, Kent Conservation, and DNREC. This Agency's approvals are based on the Delaware State Fire Prevention Regulations only.

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

Department of Agriculture - Contact: Scott Blaier 698-4500

The Delaware Department of Agriculture has no objections to the proposed comprehensive plan amendment. The *Strategies for State Policies and Spending* encourages environmentally responsible development in Investment Level 3 areas.

The following comments are related to any future development planned for the site.

The proposed development is within 300 feet of a property permanently enrolled in the State's Agricultural Lands Preservation Program (Miller District) (Parcel 8-00-13000-02-2000). Therefore, the farming activities conducted on this preserved property will be protected by the agricultural use protections outlined in Title 3, Del. C., Chapter 9. These protections effect adjoining developing properties. The 300 foot notification requirement affects **all new deeds** in a subdivision located in whole or part within 300 feet of an Agricultural District. Please take note of these restrictions as follows:

§ 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.

Right Tree for the Right Place

The Delaware Department of Agriculture Forest Service encourages the developer to use the "Right Tree for the Right Place" for any design considerations. This concept allows for the proper placement of trees to increase property values in upwards of 25% of

appraised value and will reduce heating and cooling costs on average by 20 to 35 dollars per month. In addition, a landscape design that encompasses this approach will avoid future maintenance cost to the property owner and ensure a lasting forest resource.

Native Landscapes

The Delaware Department of Agriculture and the Delaware Forest Service encourages the developer to use native trees and shrubs to buffer the property from the adjacent land-use activities near this site. A properly designed forested buffer can create wildlife habitat corridors and improve air quality to the area by removing six to eight tons of carbon dioxide annually and will clean our rivers and creeks of storm-water run-off pollutants. To learn more about acceptable native trees and how to avoid plants considered invasive to our local landscapes, please contact the Delaware Department of Agriculture Plant Industry Section at (302) 698-4500.

Tree Mitigation

The Delaware Forest Service encourages the developer to implement a tree mitigation program to replace trees at a 1:1 ratio within the site and throughout the community. This will help to meet the community's forestry goals and objectives and reduce the environmental impacts to the surrounding natural resources. To learn more, please contact our offices at (302) 349-5754.

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 Vicki Walsh 739-4263

The Town of Frederica has proposed an amendment, to their 2004 Comprehensive Plan, to expand the annexation boundary to include the balance of a 340-acre annexation proposal, herein known as the Northwest Annexation Area (NWAA). According to the State Strategies Map, the proposal is located in Investment Level 2 and 3 areas. The Delaware State Housing Authority (DSHA) has reviewed the amendment to determine how the State's goals, policies, and strategies, as they relate to affordable housing, have been incorporated. The DSHA supports an amendment that will provide a master plan for the NWAA that will encourage compact mixed-use development containing a range of residential densities. Specific elements we support include the following:

- 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.
- Design guidelines geared for different densities, such as the traditional neighborhood design.
- Densities up to 10 dwelling units per acre will be included in the McCloskey Parcel.

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. They recommend that the Town of Frederica, as part of this amendment, also include incentives to ensure that some of the resulting housing units are indeed affordable for low- and moderate-income persons for the long term. DSHA offers assistance to the Town in exploring long-term affordability mechanisms, as well as achieving high-density design. Please contact Victoria Walsh, Management Analyst at (302) 739-4263 ext. 219 or via email at vicky@destatehousing.com

Department of Education – Contact: John Marinucci 739-4658

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.

1. 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.

2. 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.
3. 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.
4. The DOE offers its support to assist the town and participate in coordination between the town, the Lake Forest School District, Kent County, the Office of State Planning Coordination as well as other school districts and stakeholders as future developments and annexations may be considered.
5. The DOE has no further comments or objections to the proposed plan amendment.

Approval Procedures:

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. The Town should provide to the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the amendment or not and the reason therefore. Your 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.
2. Our office will require a maximum of 20 working days to complete this review.
3. We will provide the Town of Frederica with written verification that our office has accepted the plan and all changes for adoption and certification.
4. The plan may then be formally adopted by your Planning and Zoning Commission and Town Council.
5. Send our office documentation that the plan has been formally adopted by your Planning and Zoning Commission and Town Council. We will also require two

(2) bound paper copies of the plan and map series, and one (1) electronic copy for our records. 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. A full plan update will be due on or before March 17, 2009.

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: Kent County