



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

September 10, 2007

Anthony Carson  
Town of Fenwick Island  
800 Coastal Highway  
Fenwick Island, DE 19944

RE: PLUS review – PLUS 2007-08-07; Town of Fenwick Island Comprehensive Plan

Dear Mr. Carson:

Thank you for meeting with State agency planners on August 22, 2007 to discuss the proposed Town of Fenwick Island draft Comprehensive Plan.

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.

The following are a complete list of comments received by State agencies:

**Office of State Planning Coordination – Contact: Bryan Hall 739-3090**

***Certification Comments:* These comments must be addressed in order for our office to consider the plan amendment consistent with the terms of your certification and the requirements of Title 22, § 702 of the Del. Code.**

The Office of State Planning and Coordination commends the Town for its efforts to develop the first comprehensive land use plan. At this time the office finds no issues and recommends certification at this time and would ask the town to consider the following recommendations identified by this office and other state agencies.

***Recommendations:* Our office strongly recommends that the Town consider these recommendations as you revise your plan.**

Many of the recommendations identified by the Office of State Planning and Coordination should be considered by the Town as part of their implementation efforts of this comprehensive plan. The town should consider the necessary evaluation of zoning code and Town Charter to ensure the successful completion of the goals identified within the plan to preserve the way of life expressed within this DRAFT.

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

- 1) The degree of public participation in preparing this plan, and indeed in running the Town government, seems very impressive. The Town is to be congratulated on its success in this regard. However, if possible DelDOT recommends that the Town include more quantitative information on the public involvement process. For example, how many people attended the workshops that were held; how many people were involved in the plan preparation through participation on committees?
- 2) DelDOT recognize that the Town is not interested in pursuing annexation now and it is appropriate to say that in the Plan. DelDOT suggests, however, that the area between the Town's south boundary and the Maryland line is a logical place to extend the Town's boundaries. They recommend that the Town consider including a future annexation area there so that if owners of parcels there request annexation the Town has the ability to annex them without amending their plan.
- 3) DelDOT appreciates the Town's efforts to work with them on the Pedestrian Plan and they are willing to continue working with them in that regard to improve safety for both pedestrians and drivers.
- 4) In reading the Plan, DelDOT found that significant amounts of text were repeated from one chapter to another. DelDOT appreciates the effort that went into making the Plan "user friendly," and the repetition may be a part of that effort. However, to reduce the bulk of the plan, it may be desirable to recount some things, for example the history of the town before it was incorporated, only once and then refer the reader to the appropriate section for details as necessary.

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

**Water Quality**

The Division of Water Resources is encouraged with the Town of Fenwick Island's efforts to successfully draft an updated comprehensive plan.

Protecting ground water, surface water and wetlands appear to be of utmost importance to the Town. It cannot be done without the Town's recognition of the connection between its land use practices and its commitment to environmentally sensitive land use and growth.

Water quality in the dead-end canals is best managed through minimizing dredging, limiting depth and through implementing modern practices to control storm water run off.

The Water Quality Section needs to be revised to show the community's commitment to local actions the Town can take inside its own boundaries to address the Total Maximum Daily Load (TMDL) and provide leadership that positively influences neighboring land use practices.

The Town should have its own ordinances to improve water quality and habitat quality.

It appears that most of the Town is within or close to 100 feet from surface water. Therefore, it may not be practicable for the implementation of 100-foot undeveloped buffers. However, it appears there may be incremental opportunities to review and modify proposed designs to reduce contaminants in run off and potential contamination of ground water when building permits are issued, structures are elevated and redevelopment occurs.

Examples of other opportunities include:

- Strengthening wetlands protection,
- Minimizing dredging and limiting dead end canal depth
- Controlling impervious coverage of lots
- Promoting pervious pavement, green roofs, and rain barrels, etc.
- The implementation of a landscaping, tree or vegetation ordinance using native plants
- Best Management Practices that may reduce nutrients, bacteria and other non point source pollution to the Town's water resources

- Source Water Protection and Well Head Protection Ordinances
- Promoting Leadership in Energy and Environmental Design (LEED) ) see the US Building Council at <http://www.usgbc.org/DisplayPage.aspx?CategoryID=19>

Below are specific comments:

Section (Page) 3-20, Water

Water Supply Section, Ground Water Protection (GWPB), found wellhead protection areas within the Town's municipal boundaries (see map). These wellhead protection areas are for public water systems as defined by the Source Water Assessment and Protection Program. No excellent ground-water recharge potential areas are located within the municipal boundary.

GWPB applauds the Town's position on environmental issues and their willingness to participate in the solution. Section 3-20 Water, states that the Town residents agree that protecting the community's water supply is an important consideration. The spirit of this statement is not contained in the Infrastructure Recommendations.

GWPB encourages:

- Including development of source water protection ordinances as an issue, defining the goal, and identify the objective.

**Town of Map of Fenwick Island** The municipal boundary is shaded in beige. Wellhead protection areas are shown in red. Excellent ground-water recharge potential areas are shown in green.



Section (Page) 3-33, Water Quality

The existing narrative should be rewritten to offer more specific measures that could be used by the Town. Examples of measures ensure that progress toward improved Water Quality is a community goal that will be implemented in the Town as opportunities are available. The Water Quality Section should also reference TMDLs and specify the level of TMDL nutrient and bacteria reduction required for the Little Assawoman watershed.

The Comprehensive Plan appears to imply that phytoplankton blooms in the Inland Bays are caused entirely by the application of fertilizers from farming operations. Although farming operations contribute to nutrient over-enrichment and phytoplankton blooms, they are far from the sole contributor.

At the August 22, 2007, PLUS Meeting it was revealed that the community was concerned that a specific list of measures and Best Management Practices in the Plan would preclude employment of new discoveries that may prove to be effective and economical. Clearly stating the community goals and providing examples to improve water quality could provide the foundation for progress inside the Town. It is better to state clearly that improved water quality and habitat quality are official community goals. Examples of results and actions the Town can take to address the community goals can be broad. Later, specific ordinances can be codified by the Town. The details of ordinances can be revised and updated as needed without revising the Comprehensive Plan.

**Consider adding the following TMDL narrative in the Water Quality Section:**

Under Section 303(d) of the 1972 Federal Clean Water Act (CWA), states are required to identify all impaired waters and establish total maximum daily loads (TMDLs) to restore their beneficial uses. A TMDL defines the amount of non point and point source pollutants a water body can absorb on a daily basis without violating State water quality standards. A Pollution Control Strategy (PCS) provides the regulatory framework for achieving the TMDL reductions necessary for meeting the State water quality standards.

The Town of Fenwick Island is located within the low TMDL nutrient reduction area of the Little Assawoman watershed. The TMDL for the low nutrient reduction area of the Little Assawoman Bay watershed requires a nutrient reduction of 40% for total nitrogen and total phosphorus from baseline conditions. Additionally, the TMDL for bacteria requires a 40% (17% for marine waters) reduction from baseline conditions.

Section 3-35, Natural Resources and Recommendations

The following are specific recommendations for future ordinances:

- a) An ordinance requiring all applicants for Town permits to submit a United States Army Corps of Engineers (USACE) approved wetlands delineation to the Town of Fenwick Island before any approvals for any new commercial and/or residential development. Additionally, the ordinance should also be tied to State of Delaware Wetlands and Subaqueous Lands jurisdictional determinations.
- b) An open space ordinance.
- c) An ordinance requiring a best management practice (BMP) implementation plan for all residential and/or commercial development exceeding 20% imperviousness.

- d) An ordinance requiring the applicant to use “green-technology” stormwater management - whenever practicable - in lieu of “open-water” stormwater management ponds.
- e) An ordinance discouraging the placement of stormwater management ponds within 100-feet of water bodies and wetlands. That is, all major commercial and/or residential projects should contain a vegetated (i.e., native vegetation) 100-foot upland buffer from all stormwater management ponds and wetlands if practicable.

### **Stormwater Management, Drainage, and Sediment and Erosion Control**

The Town of Fenwick Island should be commended for a well written and thought-out plan. We commend you for incorporating surface water management as a component of your plan.

The Division of Soil and Water Conservation only has a few comments and suggestions.

Section (Page) 3-19, Utilities, Storm Drainage, says “reduce point source drainage”...please clarify this statement. One could assume you are referring to a closed or piped drainage system rather than a system making use of open swales; however the use of the term “point source drainage” is a bit confusing.

The Division strongly recommends incorporating low impact development practices and innovative eco-friendly designs for redevelopment and infill throughout the town for residential, commercial and infrastructure uses where practical and in compliance with existing ordinances. As ordinances and codes are reviewed and updated, consider removing any potential barriers to the use of such practices, if practical.

The Town should consider taking advantage of undeveloped parcels by incorporating more green/open space in the town to reduce flooding potential, reduce drainage, and improve water quality.

The Division of Soil and Water Conservation is committed to providing technical assistance as needed as the Town works to revise local codes, ordinances, and local environmental management programs and policies. Please contact Jennifer Campagnini, Planner at 302.739.9921 or [Jennifer.campagnini@state.de.us](mailto:Jennifer.campagnini@state.de.us).

### **State Fire Marshal’s Office – Contact: Duane Fox 856-5298**

At this time, this Agency has no objection to, and makes no comments regarding, the Comprehensive Plan or an amendment to a Comprehensive Plan.

**Department of Agriculture - Contact: Scott Blaier 698-4500**

The Delaware Department of Agriculture would like to commend and congratulate the town on a well-conceived and well-written comprehensive plan.

The Delaware Forest Service would like to work with the Town of Fenwick Island to develop a comprehensive urban forestry plan that would address relevant issues within the Town. Trees should be considered a part of the Town's infrastructure just as roads and utilities. Planning to include tree conservation during development, and tree canopy goals would dovetail with goals already stated in the current update of the comprehensive plan. Please contact the Delaware Forest Service at (302) 659-6705 for more information.

**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**

DSHA has reviewed the Municipal Comprehensive Plan for Fenwick Island to determine how the Municipality has incorporated the State's goals, policies, and strategies as they relate to affordable housing. Since Fenwick Island's population is less than 2,000, the Comprehensive Plan is required to state their position on housing growth. DSHA supports the plan's position on housing growth. However, because of the increasing housing challenges and the need for attainable housing, we encourage Fenwick Island to also include incentives that ensure long-term affordable housing for low- and moderate-income persons.

The following list of tools and mechanisms are examples of some initiatives that Fenwick Island can implement in creating affordable housing opportunities to residents and employees:

- Innovative zoning techniques to provide additional affordable housing opportunities within the existing housing stock, such as permitting accessory dwelling units in residential areas as a matter of right. This would help address at least some of the seasonal housing issues;
- Require, as part of all annexation agreements for parcels being annexed, that some of the units be set aside to be affordable for low- and moderate-income persons via long-term affordability restrictions;

- Partner with the Diamond State Community Land Trust (DSCLT) to ensure long-term affordable homeownership opportunities to low- and moderate-income households. This can be done by donating land to the DSCLT, within the Town of Dewey Beach, or through contractual agreements for monitoring long-term affordability restrictions on units that have been set aside to be affordable;
- Encourage the provision of employee-occupied rental units within commercial and public facilities;
- Provide developer incentives, such as density bonuses or expedited review, to facilitate affordable housing opportunities; and
- The Town can also ensure that some of the housing units attained, through the above mechanisms, be targeted for employees of the Town, local businesses or local emergency service providers.

DSHA is available to meet with Fenwick Island to further discuss planning for affordable housing. Please contact Vicky Walsh at (302) 739-4263 or via e-mail at [Vicky@destatehousing.com](mailto:Vicky@destatehousing.com) if you have any questions or are interested in learning more about these programs.

**Department of Education – Contact: John Marinucci 735-4055**

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. The DOE offers its support to assist and participate by coordinating with Fenwick Island, the local school districts the County, the Office of State Planning Coordination as well as other school districts and stakeholders as future development and annexations may be considered.
  6. DOE has no objections or comments regarding the Comp. Plan under consideration.

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

Several places within the plan the Town suggest that they work with the County to improve design, lighting and signage, especially within the areas adjacent to the Town. The Town should take advantage of the current County Comprehensive Plan update process to make specific suggestions for inclusion in the Community Design Element of the draft Plan Update. The same comment would apply to the Town concern for updating the list of Historic Resources around Fenwick Island.

Please coordinate the boundary of the Area of Concern with the Town of Selbyville. The two areas overlap and therefore raise the potential for contradictory comments or concerns.

The Sussex County Engineer Comments:

As noted in the draft comprehensive plan, Sussex County operates the wastewater system that serves the incorporated area of Fenwick Island and an additional surrounding area. The report correctly notes that Sussex County has identified certain future upgrades to existing infrastructure that is required, and will undertake those upgrades in the future.

It is unclear how proposed changes to zoning and land use will relate to wastewater flows at this point. Any changes to uses that are more intense would concern the Engineering Department. Anything that would increase flow should be approved by the Sussex County Engineering Department. Based on its review of the preliminary draft comprehensive plan, Sussex County feels it will complete upgrades and be able to meet the needs of Fenwick Island.

For questions regarding these comments, contact Rob Davis, Sussex county Engineering Department at (302) 855-7820.

**Following receipt of this letter, the Town should make any certification changes noted in this letter and review all other comments for consideration. The plan should then be resubmitted to this office for review before final adoption by the Town. A written response regarding the changes made to the plan should accompany the resubmitted plan.**

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