



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

February 25, 2008

Delores E. Price  
President, Town of Ellendale Council  
Ellendale Town Hall  
P.O. Box 6  
Ellendale, DE 19941

RE: PLUS review – 2008-01-06; Town of Ellendale Comprehensive Plan Amendment

Dear Ms. Price:

Thank you for meeting with State agency planners on January 30, 2008 to discuss the proposed Town of Ellendale comprehensive plan amendment.

According to the information received, you are seeking an amendment to the comprehensive plan to change the area west of 113 identified in your 2004 plan as a Special Study Area, and include it in the Future Land Use and Potential Growth Area and Annexation area component of your plan. This amendment will add approximately 275 acres west of the intersection of US Route 113 and Delaware Route 16 to be included in your future annexation area.

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.

***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 report highlights only one letter provided by DNREC that speaks of species impact; however, the report does little to highlight the impacts to the Redden State Forest Lands nor does it provide any discussion regarding water resources impacts as well the need for the community to further expand the need to address regional storm water impacts to the community.
- The report also provides little discussion on the impact the annexation of these lands on the regional waste water partnership with Sussex County. It provides no highlights on the impact to the Town if this partnership is unable to provide service and a private waste water provider is consider providing service.

***Recommendations:* Our office strongly recommends that the Town consider these recommendations as you review your plan for final approval.**

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

The Office of State Planning and Coordination appreciates the efforts undertaken by the Town of Ellendale to further implement their current comprehensive land use plan and develop a study for lands west of US 113. This office appreciates the hardships experienced by the community as it has considered this area for future annexation and possible development. The following comments are based upon information provided through the special study area report and by comments provided by those agencies who participate with the PLUS Process:

- The report does an excellent job of discussing the historical aspect of the community and further highlights the impact of a regional transportation corridor on the growth and development of the community. However, this office questions the need to relocate the community as a whole at this time. Yes, it is logical that possibly over time the intersection of US 113 and DE Route 16 will develop; however, relocating the town does not seem a viable solution given the report provides little or no discussion on the redevelopment of old Ellendale and does nothing to discuss the social justice aspects and the impacts to this predominately minority community.

In addition to these comments, this office is further concerned about the potential impact to the US 113 Highway Preservation Program and the failure to discuss the use of alternative land use management tools such as Transfer of Development Rights to further

preserve the existing community. Based upon these concerns and many others not mentioned in these comments; the Office of State Planning makes the following recommendations for the community to consider:

- **The amendment of the current comprehensive land use to redefine the areas west of US 113 as an Area of Concern** - This reclassification supports the current land use plan and the proposed Sussex County Land Use plan by allowing for both groups to further plan for future growth and consider the impacts to necessary infrastructure.
- The addition of a discussion of a Transfer of Development Rights Program to develop a local green belt around the community to preserve the current character while allowing for densities to be relocated to the existing community to further grow and preserve this area.

**Division of Historical and Cultural Affairs – Contact: Terrance Burns 739-5685**

**No comments were received from the Division of Historical and Cultural Affairs**

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

- 1) The report from Nutter Associates discusses the US 113 North/South Study on pages 7 and 8. DelDOT appreciates the depth and detail of that discussion. Please note, however, that DelDOT's Recommended Preferred Alternative for the Ellendale Area is the On-Alignment Alternative, not the Refined On-Alignment Alternative. This may seem to be a small distinction, but in the Georgetown Area there is a difference between the On-Alignment Alternative and the Refined On-Alignment Alternative. For clarity, we ask that the word "Refined" be deleted.
- 2) The designation of the entire area as mixed-use may be premature. The Town might want to take the time to develop a clear vision for how they want the area to be developed. Mixed- use development typical of the existing downtown area may be sustainable along Route 16, and possibly along Webbs Road (Sussex Road 43) as well, but without detailed plans mixed-use development may be difficult to achieve on some of the larger parcels. If the intent is that these large parcels should be developed as planned-unit developments (PUDs) or similar developments, this should be mentioned. As presented, the Town may be put into the position of having to accept virtually any development proposal for these lands. DelDOT recommends further study and the development of a more specific land use plan before amending the Comprehensive Plan.

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

**Soils**

Page 6, Soils, Hydrology and other Natural Resources Elements

The statement that the “special study area evinces a typical mix of soils similar to that east of Route 113” does not convey any specific or relevant information about the overall soil suitability within the proposed annexation area, and should certainly not be used to justify annexation or for making specific land-use planning decisions about this area. This statement, therefore, should be clarified or deleted from the narrative.

The applicant also suggests that “some sensitive soils may require special treatment and land conservation measures within the overall study area, the soils are equally suited well-suited for land development”; this should be clarified with specifics, or deleted from the narrative. An assessment of the existing soil survey mapping by DNREC suggests that the soils on both east and west sides of Route 113 would be more appropriately characterized as having marginal suitability, not “well suited for development” as asserted by the applicant, mainly because much of the soil acreage within the proposed annexation area contains a mixed assortment of soils having moderately well drained (e.g., Woodstown), somewhat poorly drained (e.g., Klej), poorly-drained (e.g., Fallsington and Hurlock), or very poorly-drained (e.g., Mullica) soil drainage classes. Soils mapped as Fallsington, Hurlock, or Mullica soil drainage classes are generally considered unsuitable (i.e., hydric) for development. Soils mapped as Klej soils are likely to contain both suitable and unsuitable (i.e., hydric) soils. This should be clarified/ corrected in the narrative.

**Water Resource Protection Areas**

DNREC Water Supply Section, GWPB has found wellhead protection and excellent ground-water recharge potential areas within the existing municipal boundary and in the areas proposed for annexation (see following map).

The Comprehensive Plan contains a section entitled; *Soil, Hydrology, And Other Natural Resources Elements*. This section contains two ambiguous sentences referring to “hydrological factors”. The Comprehensive Plan needs to address wellhead protection areas and excellent ground-water recharge potential areas.

As the Town of Ellendale plans for growth, it would be of benefit to adopt overlay maps showing wellhead protection areas and excellent ground-water recharge potential areas and develop a source water protection ordinance to protect these resources. These measures would be voluntary since the 2000 population census showed the Town's population under 2,000 persons.

As stated in 7 Del. C. Chapter 60 Subchapter VI, § 6082, municipalities with populations of less than 2,000 persons, with the assistance of the DNREC, may adopt by ordinance the overlay maps delineating, as critical areas, source water assessment, wellhead protection, and excellent ground-water recharge potential areas. Furthermore, the ordinance shall include regulations governing the use of land within those critical areas designed to protect those critical areas from activities and substances that may harm water quality and subtract from overall water quantity.

Resources to develop ordinances can be found at:

Delaware Department of Natural Resources and Environmental Control. (1999). *The State of Delaware Source Water Assessment Plan*: Dover, DE, 301 p.

<http://www.wr.udel.edu/swaphome/publications.html>

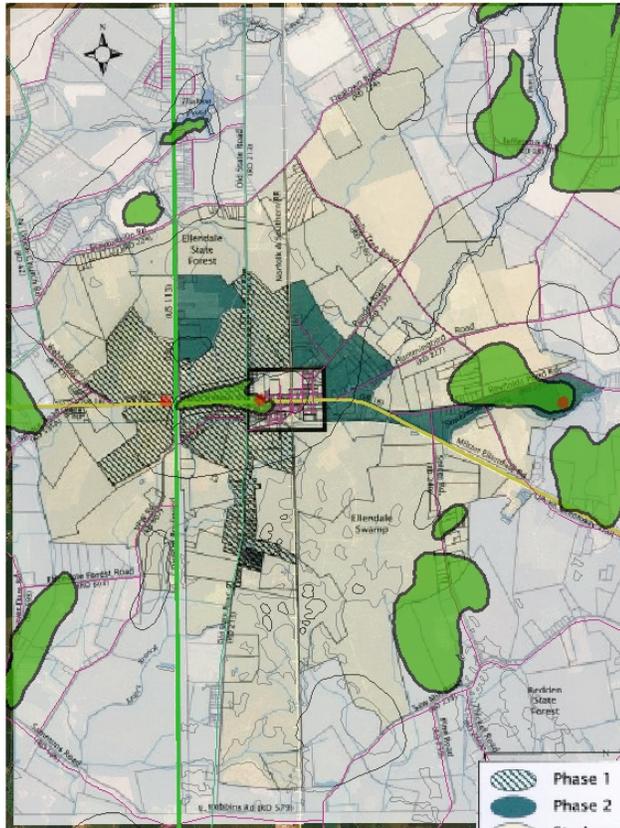
Delaware Department of Natural Resources and Environmental Control. (2002). A *Compendium of Federal, State, and Local Regulatory Authorities that Support The Source Water Assessment and Protection Program in Delaware*. Electronic Version 02.02]. Retrieved November 8, 2006, from:

<http://www.wr.udel.edu/swaphome/publications.html>.

Delaware Department of Natural Resources and Environmental Control (2005): *Source Water Protection Guidance Manual for the Local Governments of Delaware*: Dover, DE, 144 p.

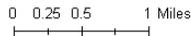
[http://www.wr.udel.edu/publications/SWAPP/swapp\\_manual\\_final/swapp\\_guidance\\_manual\\_final.pdf](http://www.wr.udel.edu/publications/SWAPP/swapp_manual_final/swapp_guidance_manual_final.pdf)

### Town of Ellendale, DE



- Legend**
- Wellhead Protection Area
  - Excellent Ground Water Recharge Potential Area

- Phase 1
- Phase 2
- Study area
- Water feature
- Municipal boundary
- Railroad



### Drainage

Surface water management and the development of a master drainage plan are key elements that are missing in the comprehensive plan. Tax Ditch Organizations within the special study area for the Town are the Maple Marsh Tax Ditch, Gravelly Branch Tax

Ditch, and the Ellendale Tax Ditch. Along with tax ditches that have an established right-of-way within the Tax Ditch Organizations are a network of private ditches, without right-of-way, that convey surface water to existing tax ditches. Well-organized and maintained tax ditches provide the drainage conveyance framework that enables the area to have productive farmland and desirable residences.

Existing tax ditch rights-of-way should be protected from development encroachment to allow for routine maintenance and periodic reconstruction. Routine maintenance primarily consists of mowing ditch bank vegetation and the removal of small blockages. Periodic tax ditch reconstruction involves the removal of sediment from the ditch bottom to reestablish the original design grade. The removed sediment, referred to as spoil, is typically disposed of by spreading within the tax ditch right-of-way.

***Consider requiring buffers when land is converted from agriculture to urban uses.***

Streams, tax ditches, and private ditches will require periodic reconstruction at intervals dependent upon the sedimentation load from upstream. Periodic reconstruction involves the removal of sediment from the ditch bottom to establish or reestablish a design grade. The removed sediment, referred to as spoil, is typically disposed of by spreading along side the ditch within the tax ditch right-of-way. Tax ditch rights-of-way need to be unobstructed.

Planting of riparian buffers should consider drainage maintenance. On private ditches, where practical, the buffers should be planted on the south and west side of the ditch to maximize shading. Trees and shrubs should be native species, spaced to allow for mechanized drainage maintenance at maturity. Tree and shrub planting in this manner will provide a shading effect promoting water quality while allowing future drainage maintenance. Trees should not be planted within 5 feet of the top of the bank to avoid future blockages from roots. The buffers as well as the channel banks should be planted with herbaceous vegetation to aid in the reduction of sediment and nutrients entering into the conveyance. Grasses, forbs and sedges planted within this buffer should be native species, selected for their height, ease of maintenance, erosion control, and nutrient uptake capabilities.

The Town should explore the practice of one-sided construction and maintenance of private ditches and tax ditches providing there is adequate room for maintenance. Work with the DNREC Drainage Program, Sussex Conservation District, and the Maple Marsh Tax Ditch, Gravelly Branch Tax Ditch, and the Ellendale Tax Ditch to ensure adequate tax ditch right of way is retained for the placement of spoil.

*Suggested additions to a subdivision ordinance:*

A 20-foot drainage easement for storm drains, 10 feet per side within subdivisions.

Open channels within subdivisions require a minimum 20-foot drainage easement as measured from top of bank to allow maintenance access and/or reconstruction.

Maintenance access along open channels should be dedicated open space.

Swales within subdivisions would require a 20-foot drainage easement measured from the centerline of the swale, or the width of the swale, whichever is greater.

Prohibit the routing of major stormwater pipes through yards within a subdivision.

Encourage the elevation of rear yards within subdivisions to direct water towards the streets where storm drains are accessible for maintenance.

The Drainage Program requests a 15-foot side yard setback on all subdivision lots with a storm drain on the side. A 15-foot side yard setback will allow room for equipment to utilize the entire 10-foot drainage easement and maneuver free of obstructions if the drainage conveyance requires periodic maintenance or future re-construction.

The Drainage Program requests a 10-foot drainage easement around all catch basins located on private property to ensure adequate room for maintenance.

Any catch basin or swale placed in rear and side yards will need to be clear of obstructions and be accessible for maintenance. Decks, sheds, fences, and kennels can hinder drainage patterns as well as future maintenance to the catch basin or swale. Deed restrictions, building setback lines, along with drainage easements recorded on deeds, should ensure adequate future maintenance access.

Have all drainage easements recorded on deeds and place restrictions on obstructions within the easements to ensure access for periodic maintenance or future re-construction. Future property owners may not be aware of a drainage easement on their property if the easement is only on the record plan. However, by recording the drainage easement on the deed, the second owner, and any subsequent owner of the property, will be fully aware of the drainage easement on their property.

Drainage easements should be for the town and recorded as such. This gives the Town the ability to hire a contractor for maintenance for the drainage conveyance.

Tax ditch rights-of-way should be designated open space.

Exempt tax ditch rights-of-way, riparian buffer areas, and stormwater management areas from grass height restrictions to aid in the prevention of nuisance geese.

*Suggested additions to a Land Development Code:*

The Drainage Program recommends adding the definitions of maintenance access, buffer, vegetative buffer, riparian buffer, tax ditch right-of-way, and other such key words to the planning and zoning code.

The Town of Ellendale should develop a master drainage plan to identify existing open channels within the Town boundary and within future annexation area as these channels may require maintenance in the future. The riparian buffers along the channels provide a multitude of benefits to water quality and wildlife. Most of the channels have trees and wetlands adjacent to the channel. There must be a balance between preserving the riparian buffer and having the capability to access the channel to perform maintenance. A recommended easement width of 20 feet from edge of existing tree line, wetland, or top of bank whichever is greater would allow such access. By identifying such areas now, future development would incorporate the easement into community open space thereby preserving the riparian buffer while allowing for channel maintenance access.

Water bodies, ponds, intermittent and perennial streams, ditches should be buffered from development. Existing buffers could be enhanced or new buffers planted to obtain 100-foot buffers on each side of the existing water conveyance. A minimum 50-foot tree and shrub planting on buffers with the tallest trees planted on the south and west side of the water conveyance will maximize shading of water. Trees and shrubs should be native species, spaced to allow for mechanized drainage maintenance at maturity. Tree and shrub planting in this manner will provide a shading effect promoting water quality while allowing future drainage maintenance. Do not plant trees closer than 5 feet of the top of the bank to avoid future blockages from tree roots. Plant the balance of the 100-foot buffer, as well as stream and ditch banks, with herbaceous vegetation to aid in the reduction of sediment and nutrients entering into water conveyance. Grasses, forbs and sedges planted within these buffers should be native species, selected for their height, ease of maintenance, erosion control, and nutrient uptake capabilities. Remove invasive vegetation prior to the planting of native species. The construction of pedestrian and bicycle paths within the outer 50 foot of the buffer should be encouraged.

Wetlands should be protected from development with a 50-foot vegetated buffer. Grasses, forbs and sedges planted within these buffers should be native species, selected

for their height, ease of maintenance, erosion control, and nutrient uptake capabilities. Remove invasive vegetation prior to the planting of native species.

Designate all buffers for water bodies, ponds, intermittent and perennial streams, ditches, and wetlands as un-subdivided open space. No portion of any building lot should be within the buffers.

Designate all wetland buffers as un-subdivided open space. No portion of any building lot should be within the buffers. During prolonged wet periods, the wetland buffers may become too wet for normal residential use. Designation as open space will aid in the prevention of decks, sheds, fences, kennels, and backyards being placed within the buffers thereby reducing nuisance drainage complaints.

Existing woodland provides valuable wildlife habitat as well as soil erosion protection and water quality filtering. Preserve existing woodland within proposed annexation areas. Do not allow the clearing of woodland to create stormwater management areas. Develop a tree planting guideline, a tree mitigation planting guideline and woodland preservation language to protect the existing woodland from harvest after annexation.

For new subdivisions, the developer's engineer should check the existing downstream conveyance and pipes for function and blockages prior to the town's approval of plans and annexation. The developer should notify downstream landowners of any change in volume of water released on them. The examination of downstream conveyance and notification to downstream landowners should not stop at the town boundary.

Evaluate the existing drainage patterns within future annexation areas to ensure adequate drainage for the cumulative stormwater impact upon full build out of the annexation area. The city should be mindful of potential stormwater impacts from the town onto county residents.

***Encourage Bicycle and Pedestrian interconnections in new developments.***

Explore the use of drainage ways and other open space set aside for drainage maintenance for bicycle and pedestrian interconnections in new developments.

For questions or clarifications, please contact Jim Sullivan at (302) 739-9921.

**Forest Preservation**

Cumulative forest loss throughout the State is of utmost concern to the Division of Fish and Wildlife which is responsible for conserving and managing the State's wildlife (see

[www.fw.delaware.gov](http://www.fw.delaware.gov) and the Delaware Code, Title 7). Because of an overall lack of forest protection, we have to rely on landowners and the entity that approves projects (i.e. counties and municipalities) to consider implementing measures that will aide in forest loss reduction.

The current comprehensive plan amendment demonstrates an effort by the Town to protect forested areas they intend to annex. However, it should be noted that applicants of developments that include forest clearing, and are currently outside of Town limits, can still pursue annexation into Town. The proposed Forest Landing development (tax parcels 230-19.00-112.00 & 230-20.00-12.00) will result in forest clearing and fragmentation on 126.86 acres. The applicant is currently pursuing annexation into the Town of Ellendale. In addition, the applicant of the proposed Ingram Village-PLUS 2008-01-07 (tax parcel 2-30-26.00-75.00) is pursuing annexation into the Town of Ellendale. This site contained forest that was at least 65 years old since it is present on both 1937 & 2002 aerial photographs. The forest has been clear-cut just since 2002. Another development in the same general area, Evans Property (PLUS 2007-04-02, tax parcel 230-26.00-32.00) will also result in forest loss and fragmentation; it is unknown whether the applicant is currently pursuing annexation.

*Recommendation #1:*

The amendment notes that forested areas on tax parcels 230-26.00-15.00 and 230-26.00-99.00 will be preserved. Measures to ensure this will be accomplished should be indicated in the plan.

*Recommendation #2:*

It should be noted that the rest of the 'Study Area' outside of the 'Special Study Area' contains numerous records of rare species. These species are mostly associated with forested areas and wetlands. Protection of rare species and their habitat should be considered for any additional future annexations efforts rather the Town is pursuing the annexation or the landowner/developer.

**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.

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 Ellendale. 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.

At the time of formal submittal, the applicant shall provide; completed application, fee, and three sets of plans in accordance with the Delaware State Fire Prevention Regulation.

Preliminary meetings with Fire Protection Specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: [www.statefiremarshal.delaware.gov](http://www.statefiremarshal.delaware.gov), technical services link, plan review, applications or brochures.

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

The Department of Agriculture is not in favor of the Town of Ellendale annexing the special study area at this time. There is at least one large project (Ingram Village, 399 houses) pending annexation into the town, and the Department believes the town should work to provide supporting infrastructure to complete projects such as this before annexing and developing the special study area.

Of particular concern to the Department is the establishment of a "Greenbelt" around the town's eventual terminal boundary. The requirement of creating a "greenbelt" is discussed on page 5 of the letter included with the PLUS application. However, no significant progress is noted in the discussion, and there is no discussion of a method (i.e. TDRs) to establish a greenbelt. The Department believes that development of the special study area without a permanently preserved "greenbelt" will only catalyze the development of Level 4 areas contiguous to the special study area.

**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.

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

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 and participate by coordinating with this municipality, 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.
  7. DOE has no comments regarding the Comprehensive Plan amendment under consideration.

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

Technically the request is inconsistent with the current Sussex County Comprehensive Plan. However, the draft Update now being considered recommends an expanded growth area around Ellendale. If the draft is approved the request will be inkeeping with the proposed Plan.

The town is encouraged to avoid the creation of new enclaves when annexing, to eliminate existing enclaves during its negotiation of the annexation agreement, and to notify the Sussex County Planning Department when the annexation becomes effective.

The Sussex County Engineer Comments:

If the State of Delaware approves an amendment to the Ellendale Comprehensive Plan to add area to the Town's growth and annexation area, then Sussex County shall provide sewer service to the added parcels. Sussex County has undertaken a study to address the future needs of the Sewer District including the growth and annexation area for the town of Ellendale. The study is developing alternatives for future treatment and disposal alternatives and is expected to be complete in early 2008.

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

***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 document may be formatted as addendum to your certified plan, or as replacement pages to be inserted in your plan at your discretion. **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.
2. Our office will require a maximum of 20 working days to complete this review.
3. We will provide the Town of Ellendale 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 December 7, 2009.

Note: The following must be completed by the Town of Ellendale before our office will consider accepting the proposed plan amendments as a part of your certified plan.

- Delaware Code requires that each jurisdiction file annual reports with our office. These reports are due on the anniversary of plan certification. We do not have records of any annual reports completed by the Town of Ellendale since certification in 2004. We apologize if our records are incomplete. If the City has prepared these reports, please send us copies for our records. If the reports have not been prepared, please send us reports covering 2004-2005, 2005-2006, and 2006-2007. A template for the annual report is included for your information and use.

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