



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET  
Budget Development, Planning and Administration  
State Planning Coordination

September 25, 2008

Mr. Conway Gregory  
Town of Ocean View  
P.O. Box 3  
Ocean View, DE 19970

RE: PLUS review – 2008-08-02; Town of Ocean View Pre-Update Review

Dear Mr. Gregory:

Thank you for meeting with State agency planners on August 27, 2008 to discuss the proposed update for the Town of Ocean View comprehensive plan.

This letter is to provide suggestions and revisions to the current plan in addition to any code changes since the last date of certification that should be included in the update of your plan.

This office has received the following comments from State agencies:

**Office of State Planning Coordination – Contact: Herb Inden 739-3090**

Our office would like to commend the Town of Ocean View for taking advantage of our new Pre-Update (PLUS) Review Process. As always, our office appreciates the efforts that Ocean View puts into the development of its comprehensive plans, especially in it's willingness to work with state agencies and we look forward to continuing this relationship with this update.

We have one note of caution, at this point, with regard to annexation. We know that from the east and west the Town can no longer grow however to the South there is a concern with Millville and Ocean View developing overlapping growth and annexation areas. In this regard, we want to emphasize the need of multi-jurisdiction coordination with any proposed future growth and annexation areas.

Ocean View’s current certified plan meets all of the requirements of a “Municipal Development Strategy” for towns of 2000 or less residents. Taking into consideration the comments from this meeting should help in making for a smooth certification process for this plan update.

As always, our office is available to help with this process.

**State Historic Preservation Office (SHPO) – Contact: Terrence Burns 739-5685**

No comments Received

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

- 1) The Introduction refers to House Bill 255. Because Bill numbers are specific to the General Assembly session in which the bill was considered, and are re-used every two years with the start of a new session, such references can become outdated quickly. If the Town wants to keep the reference to House Bill 255, it is recommended that they mention the year in which it was adopted.
- 2) In the chapter on Land Use, the recent decline in the housing market may have raised new issues that the Town might want to address. For example, does the Town have, or want, a “sunsetting” ordinance that would invalidate subdivision plans that remain unbuilt for a certain number of years? Are the town’s subdivision street regulations adequate with regard to bonding, phasing, and the placement of temporary barricades at the end of stub streets?
- 3) Also in the Land Use chapter, there is a statement that “Ocean View feels that it would not be advantageous to become a designated Transferable Development Rights receiving area.” The Plan should explain the reason for this position.
- 4) Finally in the Land Use chapter, one of the recommended Strategies is to “Amend the current landscape ordinance pertaining to the GB District to include multi-family and multi-zoned parcels located on Route 26.” It is not clear what is meant by “multi-zoned.” Split zoning, in which zoning district lines bisect parcels, is generally considered administratively undesirable. Whether the idea is to permit residences upstairs over businesses or to place overlay zones in addition to the base zoning, the meaning of “multi-zoned” should be clarified.
- 5) The Transportation chapter discussed two DelDOT projects relating to Route 26, our Atlantic Avenue improvements, from Route 17 to the Assawoman Canal, and our Detour Routes project, which would improve local roads that are likely to get more traffic while we are improving Atlantic Avenue. The schedules for both projects have changed since 2004. Specifically, the Atlantic Avenue improvements are scheduled to begin in September 2011 and to be complete in late 2015, and the Detour Routes project is scheduled to begin in September 2009 and to be complete in late 2011.

- 6) The Transportation chapter also mentioned interim improvements at Route 26 and Central Avenue and at Route 26 and West Avenue. DelDOT completed those improvements in May of 2005. A southbound right turn lane was added to Central Avenue at SR26. New signals were installed at both intersections. The cut-through problem on Woodland Avenue was addressed with the addition of the right turn lane, and the safety problem at Route 26 and West Avenue was addressed with the new signals.
- 7) Finally in the Transportation chapter, one of the recommended Strategies is to “Form an intergovernmental group to improve evacuation plans. Adopt a formal emergency evacuation plan for the Town.” DelDOT and public safety officials have already done significant work in this regard, although it may not be specific to Ocean View. We recommend that the Town contact the Operations Manager for our Traffic Management Center, Mr. Gene Donaldson to find out more about what has been done thus far and what assistance his office can provide in the development of the Town’s plans. Mr. Donaldson may be reached at (302) 659-4601.

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

### **Water Resources/Water Quality**

1. The Plan narrative should mention specific Federal and State wetland regulatory programs for protecting nontidal and tidal wetlands and incorporate the following proposed (or paraphrased) language as a “stand-alone” subsection under the Environmental Protection Plan section:

“Regulatory Protection of wetlands is mandated under Section 404 provisions of the Federal Clean Water Act. Certain other wetlands (mainly in tidal areas) are accorded additional regulatory protection under provisions of Title 7, Delaware Code, Chapter 66. Compliance with these statutes may require an Army Corps of Engineers approved field wetlands delineation and/or an official DNREC wetland jurisdictional determination.”

2. The Plan should make specific recommendations for reducing imperviousness. The following recommendations could be incorporated in an ordinance:

Require the use of pervious paving materials, whenever practicable, in lieu of conventional paving materials. The use of pervious paving materials is especially important for large commercial parking lot areas. Studies have shown a strong relationship between increases in impervious cover to decreases in a watershed’s overall water quality. Reducing the amount of surface imperviousness through the use of pervious paving materials (“pervious pavers”)

in lieu of asphalt or concrete, is an example of practical BMPs that could easily be implemented to help reduce surface imperviousness.

Require an impervious surface mitigation plan for all residential and commercial development exceeding 20% imperviousness. The impervious surface mitigation plan should demonstrate that the impervious cover in excess of 20% will not impact ground water recharge, surface water hydrology, and/or water quality of the site and/or adjacent properties. If impacts to groundwater recharge, surface water hydrology will occur, the plan should then demonstrate mitigation of said impacts and/or if impacts cannot be mitigated, the site plan will be modified to reduce the impact of impervious cover. Additionally, it is further recommended the pervious paving materials be required. In commercial areas, it is strongly recommended that pervious paving materials be required for at least 50% of the total paved surface area(s).

Define how developers may calculate surface imperviousness. The calculation for surface imperviousness include all of the following forms of constructed surface imperviousness: all paved surfaces (e.g., roads, sidewalks, and parking areas), rooftops, and open-water stormwater management structures.

3. The Plan should make a recommendation to protect open space

It is strongly recommended that the Town exclude structural Best Management Practices (BMPs) such as community wastewater treatment areas, open-water stormwater treatment structures and wetlands from consideration as open space.

*Individual Wells*

It is possible that the Town of Ocean View may be able to restrict the construction of new individual wells depending on their charter or other provisions of law. Generally, public water may be more economical than individual wells.

Only a licensed well driller can construct wells. The Regulations for Licensing Water Well Contractors, Pump Installer Contractors, Well Drillers, Well Drivers and Pump Installers contains the requirements for obtaining licenses as a water well contractor, pump installer contractor, pump installer, well driller and well driver. You can also contact the Well Permits Branch at (302) 739-3665.

These regulations allow wells to be reclassified; for example, an existing domestic well may be reclassified to an Agricultural Well if it meets plumbing standards and codes that prevent it from serving a dwelling. An Agricultural Well may be used for the watering of livestock, poultry, aquaculture uses, or solely for the watering of household yards and gardens or for other purposes related to farming in general but not including the irrigation of lands or crops. The water is not used for human consumption or to service a dwelling.

### *Waste Water*

The Town of Ocean View discharges all of its raw wastewater to the Sussex County South Coastal Regional Wastewater Treatment Facility for treatment and discharge to the Atlantic Ocean. The Town of Ocean View is part of the Bethany Sanitary Sewer District, which is administered by Sussex County. The Town of Ocean View's sewer project was completed in 2001, and all residents must connect to this system. The Town's future growth area east of Central Avenue was included in the South Coastal Area Planning Study, which allows an average of four units per acre. The Town will continue to work with Sussex County to ensure that any new developments do not exceed the sewer capacity limitations. The Town requires that an application for subdivision or annexation must be accompanied by a letter stating sewer capacity is available for the proposed land use application.

Although inferred, the 2004 Plan does not clearly state if construction of individual or community On-site Wastewater Treatment and Disposal Systems (OWTDSs) would be prohibited in any of the proposed annexation areas. The GWDS recommends the 2008 Plan prohibit the installation of individual or community OWTDSs within the annexation areas, and clearly state that in the 2008 Plan.

### *Water Allocation*

The public water supply in Ocean View currently comes from Tidewater Utilities' Bethany Bay/Ocean View district, and from the town of Bethany Beach. It is understood that in March 2008 the Town separated itself from the Tidewater system.

Now that the Town is separate from the Tidewater system, where will the water come from?

Tidewater currently supplies the Town from sources outside the Town limits. Tidewater's current expansion will provide more water from sources located in Bear Trap Dunes, Bay Forest and Sea Colony, mostly outside the limits of the Town of Ocean View. Will the water resources located inside the Town limits be sufficient to provide water for the future population of 3,666 on a day of peak water use? Peak day water use in nearby Bethany Beach is almost 600 gallons per day per person (gpdc), while the statewide average is only 80 gpdc. The peak day per capita water use in Ocean View is essential information for planning, but should not be picked by guesswork or by using numbers from some other location. That information is available in Tidewater's billing records, but extraction of those numbers from the records can be time consuming.

After making the best possible estimate of future peak day water use, the Town needs to do a Water Resources Evaluation. This includes drilling test wells, aquifer tests, and calculation of maximum safe yield. In a rapidly urbanizing area surrounded by other population centers, it should not be assumed that the needed water is available within the town limits without a thorough study. This study needs to be done before the Town commits to the purchase of Tidewater's CPCN.

### *Source Water Protection*

The Water Supply Section, Ground-Water Protection Branch (GPB) found wellhead protection areas and excellent ground-water recharge potential areas within the municipal boundary. The 2004 Comprehensive Plan Map No. 10 does show excellent and good recharge potential areas. The document does not contain language pertaining to source water protection.

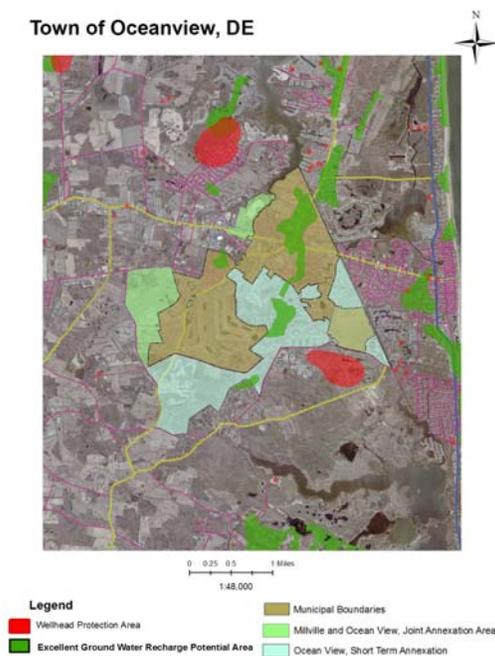
GPB recommends:

- The Town adopts a source water protection ordinance to assure an adequate supply of safe affordable drinking water. We suggest using the DNREC Draft Model Ordinance for Smaller Municipalities of Kent and Sussex Counties:

[http://www.wr.udel.edu/swaphome/Publications/SWPOrdinances/FinalDraftModelOrdinance\\_KnS\\_041408.pdf](http://www.wr.udel.edu/swaphome/Publications/SWPOrdinances/FinalDraftModelOrdinance_KnS_041408.pdf)

- The ordinance needs to contain supporting maps showing the source water protection areas.
- Land use within the source water protection areas must be appropriate.

### **Map of the Town of Ocean View, DE (PLUS 2008-08-02)**



*Total Maximum Daily Loads (TMDLs)*

On page 20, Environmental Protection Plan section, please replace the 1<sup>st</sup> paragraph in Environmental Protection Plan section with the following narrative and table:

Ocean View is located within the Indian River Bay watershed which is an impaired watershed according to Section 303(d) of the Clean Water Act.

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 to restore their beneficial uses (e.g., fishing, swimming, and drinking water). A TMDL defines the amount of a given pollutant that may be discharged to a water body from point, nonpoint, and natural background sources and still allows attainment or maintenance of the applicable narrative and numerical water quality standards. A TMDL is the sum of the individual Waste Load Applications (WLAs) for point sources and Load Allocations (LAs) for nonpoint sources and natural background sources of pollution. A TMDL may include a reasonable margin of safety (MOS) to account for uncertainties regarding the relationship between mass loading and resulting water quality. A TMDL matches the strength, location and timing of pollution sources within a watershed with the inherent ability of the receiving water body to assimilate the pollutant(s) without adverse impact. A Pollution Control Strategy (PCS) identifies the actions necessary to systematically achieve the pollutant load reductions specified by the Total Maximum Daily Load(s). Reducing the pollutants to the level specified by the TMDL(s) will ensure that a water body meets the water quality criteria and goals required for compliance with the State Water Quality Standards.

The Town of Ocean View is located within the Indian River Bay Watershed of the greater Inland Bays/Atlantic Ocean Drainage. This watershed is assigned a range of nutrient (nitrogen and phosphorus) and bacterial TMDL load reduction requirements that, as mentioned previously, must be met in order to meet the State Water Quality Standards (See table 1).

<b>Inland Bays/Atlantic Ocean Drainage</b>	<b>N- reduction requirements</b>	<b>P-reduction requirements</b>	<b>Bacteria-reduction requirements</b>
Indian River Bay	40% low reduction area, 85% high reduction area	40% low reduction area, 85% high reduction area	40% fresh 17% marine

Table 1: TMDL Nutrient (Nitrogen and Phosphorus) and Bacteria reduction requirements for the Indian River Bay watershed.

*Recommendations for future ordinances/revisions to existing ordinances*

DNREC recommends an ordinance or ordinances which would:

- a) require all applicants to submit to the Town a copy of the development site plan showing the extent of State-regulated wetlands (as depicted by the State Wetland Regulatory Maps), and a United States Army Corps of Engineers (USACE) approved wetlands delineation as conditional approval for any new commercial and/or residential development. Additionally, the site plan should depict all streams and ditches which are jurisdictional pursuant to the Subaqueous Act (7 Del. C., Chapter 72) as determined by DNREC.
- b) help protect freshwater wetlands where regulatory gaps exist between federal and state jurisdictions (i.e., isolated wetlands and headwater wetlands).
- c) require a 100-foot upland buffer width from all wetlands or water bodies (including ditches).

Based on a review of existing buffer research by Castelle et al. (Castelle, A. J., A. W. Johnson and C. Conolly. 1994. *Wetland and Stream Buffer Requirements – A Review*. J. Environ. Qual. 23: 878), an adequately-sized buffer that effectively protects wetlands and streams, in most circumstances, is about 100 feet in width. In recognition of this research and the need to protect water quality, the Watershed Assessment Section recommends that the applicant maintain/establish a minimum 100-foot upland buffer (planted in native vegetation) from the landward edge of all wetlands and water bodies (including all ditches).

- d) exclude structural Best Management Practices (BMPs) such as community wastewater treatment areas, open-water stormwater treatment structures and regulated wetlands from consideration as open space.
- e) require an impervious cover mitigation plan for all residential developments exceeding 20% imperviousness. In commercial developments, it is strongly recommended that pervious paving materials be required for at least 50% of the total paved surface area(s) where practicable.
- f) require the calculation for surface imperviousness for all commercial and residential development include all constructed forms of surface imperviousness, including all paved surfaces (roads, parking lots, and sidewalks), rooftops, and open-water stormwater management structures.
- g) require the assessment of a project's TMDL nutrient loading rate through use of the Department's nutrient budget protocol. The applicant should be further required to

use any combination of approved Best Management Practices (BMPs) to meet the required TMDLs for the affected watershed(s) in question.

- h) prohibit development on hydric soil mapping units. Proof or evidence of hydric soil mapping units should be provided through the submission of the most recent NRCS soil survey mapping of the parcel or through the submission of a field soil survey of the parcel by a licensed soil scientist.
- i) require the applicant to use “green-technology” stormwater management in lieu of “open-water” stormwater management ponds whenever practicable.

## **Stormwater Management and Drainage**

### *General Comments*

- 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 Town and the potential growth/ annexation areas are the Banks Bennett Tax Ditch, Beaverdam Canal Tax Ditch, Deep Hole Tax Ditch, Derrickson Canal Tax Ditch, Little Bay Tax Ditch, and the McCabe Tax Ditch.
- Adequate drainage and the proper maintenance of drainage systems within and around the Town of Ocean View are vital to existing and proposed development, and the overall quality of life within the Town. Along with tax ditches, that have an established right-of-way, 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. The placement of permanent obstructions within tax ditch rights-of-way is prohibited. Any change to the location of the tax ditch, or the existing tax ditch rights-of-way, will require a change to the tax ditch court order.

### *Community Services and Facilities*

- The Town should identify existing open channels within the Town boundary, and future annexation areas, 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 along with recreational opportunities. The development of a master drainage plan could also serve as a guide to link future development open space as greenways.
- Explore the use of drainage ways and other open space set aside for drainage maintenance for bicycle and pedestrian interconnections in new developments. For developments on waterways that are of sufficient size to kayak consider an unimproved launch area in the recreation open space plan. This would allow more residents to access the waterways, in a non-mechanized manor, while keeping the cost of operations and maintenance down.
- With the exception of Tax Ditches, the Town should pursue drainage easements along waterways, ditches, and storm drains where currently there are none. This would give the Town the ability to hire contractors to remove blockages without the time-consuming task of the State obtaining permission to trespass on the property to conduct surveys.

### *Natural Resources and Environmental Protection*

- Existing drainage ways should be incorporated into the green infrastructure. However, a maintenance plan needs to be in place should blockages from storm debris, beaver, or other sources occur. The Town should identify existing open channels within the Town boundary as these channels may require maintenance in the future. Most of the channels have trees and wetlands adjacent to the channel and the riparian buffer provide a multitude of benefits for water quality and wildlife. There must be a balance between preserving the riparian buffer and having the capability to access the channel to perform maintenance. Excluding Tax Ditches, a recommended easement width of 50 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.
- Existing woodland provides valuable wildlife habitat as well as soil erosion protection and water quality filtering. Do not allow the clearing of woodland to create stormwater management areas.

- 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.
- Water bodies, ponds, intermittent and perennial streams, along with ditches should be buffered from development. However, the planting of riparian buffers should consider future drainage maintenance. When applied in conjunction with a Drainage Management Plan, existing buffers should be enhanced or new buffers planted to obtain riparian buffers on each side of the existing water conveyance. A 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 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 buffer should be encouraged.

#### *Future Land Use and Annexation*

- The Drainage Program recommends each parcel have a tax ditch right-of-way review conducted on the parcel prior to annexation by the Town. Please contact our Georgetown office at (302) 855-1930 to request a review tax ditch rights-of-way on a parcel.
- When a project involves a tax ditch, or tax ditch right-of-way, include the Drainage Program in the pre-application meeting with the Sussex Conservation District to discuss drainage, stormwater management, tax ditch maintenance, and the release of stormwater into the tax ditch.
- Contact the Drainage Program concerning technical assistance for the maintenance and upgrade of private drainage ways within the Town or future annexation area.

- 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 or piling alongside the ditch. On a Tax Ditch, this is done within the tax ditch right-of-way which is why Tax Ditch rights-of-way need to be unobstructed. For private ditches, a Drainage Management Plan would include a maintenance plan for drainage conveyances, include points of access for maintenance equipment, and designate spoil disposal areas.

#### *Sediment and Erosion Control/Stormwater Management*

- The Comprehensive Plan lacks a discussion of the Town's stormwater and drainage systems. Please incorporate discussion that reflects how the Town currently deals with stormwater management and how they would like to see it dealt with in the future as development occurs. The Town may want to consider surface water management (drainage, stormwater, flooding potential), in addition to wastewater and sewer capacities when reviewing annexation requests and plans.
- The Town should also consider identifying any problem drainage areas, and tax or public ditch systems within the Town's boundaries. Contact Brooks Cahall at the DNREC Drainage Office located in Georgetown, (302) 855-1930, to obtain a GIS layer showing existing tax ditch channels and/or public ditch systems. As annexation occurs, any drainage ways within those areas may become the responsibility of the Town to maintain. The Town may want to consider developing a Drainage Code or Drainage Management Plan. Because of the Town's proximity to Millville and the amount of development pressure between the two towns, Ocean View may want to consider coordinating a regional Master Drainage Plan/Stormwater Management Code.
- The Division of Soil and Water Conservation is requesting that the Town incorporate a requirement for a stormwater and drainage review into the Town's preapproval requirements for new development requests. Proposed development projects should hold a pre-application meeting with the delegated agency, the Sussex Conservation District, to discuss stormwater and drainage prior to the Town reviewing and/or approving plans or issuing building permits. The Sediment and Stormwater Program is set to begin requiring a pre-application meeting for all proposed land disturbing activities that require a detailed Sediment & Stormwater Plan within the coming year. These meetings are structured to assist developers in the design process and for early notification of approval

requirements. In order to schedule a pre-application meeting, the applicant must forward a completed Stormwater Impact Study (SIS) to the appropriate Delegated Agency. Please contact Jennifer Campagnini or Elaine Webb with the DNREC Sediment and Stormwater Program if you have any questions regarding this new process. Please note that this process does not replace the State's PLUS process. The SIS Findings report will also be provided through that process.

- The Division has been seeing more small construction projects without an approved Sediment and Stormwater Plan. Sediment and Stormwater Regulations require a Sediment and Stormwater Plan for land disturbing activity 5,000 square feet or greater. Land disturbing activity may be more than the building footprint. Land disturbing activity means a land change or construction activity for residential, commercial, industrial, and institutional land use which may result in soil erosion from water or wind or movement of sediments or pollutants into State waters or onto lands in the State, or which may result in accelerated stormwater runoff, including but not limited to clearing, grading, excavating, transporting, and filling land. This seems to occur more often in Sussex County. As the Town of Ocean View updates any land use or subdivision codes, the Sediment and Stormwater Program requests the town make a note of the Sediment and Stormwater requirements on any construction-related project application checklists, etc.
- Lines and grades: If the Town does not have a lines and grades requirement for new construction, the Division recommends that this be considered to help resolve drainage issues arising from new construction during and post construction. County/municipal building inspectors would be able to use approved lines and grades requirement to field verify prior to issuance of Certificate of Occupancy or building permit, as appropriate.
- The Sediment and Stormwater Program is currently in the process of reviewing and updating the State's stormwater management regulations which, in the past, have focused on new development. However, many existing storm water runoff issues are associated with older developments built prior to the adoption of stormwater regulations in 1990. Managing surface water for quality as well as quantity has become a major focus as well. Awareness of water quality concerns and regulations have required us to explore methods for quality and quantity management in new development as well as opportunities for retrofits and restorations.

*Intergovernmental Coordination Efforts*

- Coordinate with Sussex County and surrounding municipalities within their areas of concern for annexation on the locations of tax ditches, drainage ditches, sensitive and critical habitat, wetlands, and greenways.
- Coordinate with Sussex County and surrounding municipalities for a dredge spoil disposal site for future White Creek dredging.

**Habitat Preservation**

Cumulative forest loss and wetland degradation 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). Current State, County and local ordinances and regulations do not adequately protect these resources. Therefore, we have to rely on landowners and/or the entity that approves projects (i.e., counties and municipalities) to consider implementing measures that will aid in forest loss reduction, wetland protection and water quality protection.

We have not surveyed all of the parcels that are being proposed for annexation (or those already annexed). Therefore, it is unknown if State-rare, or federally listed plants, animals or natural communities will be impacted by development of these parcels. Some of the parcels have been surveyed and both rare plant and animal species have been documented. These species could be impacted if development of the parcels do not include preservation of forested and wetlands areas.

*Recommendations:*

*Coordinate with Natural Heritage and Endangered Species Program (NHESP)*

DNREC highly recommends that the Town require developers, or applicants of development projects, to contact NHESP to determine if their project activities will impact a State-rare or federally listed species. In some cases a site visit may be requested in order to provide the necessary information. The Town should then consider requiring implementation of recommendations provided by the NHESP before approving site plans.

Contact information:

Environmental Review Coordinator  
Natural Heritage and Endangered Species Program  
DNREC-Division of Fish and Wildlife  
4876 Hay Point Landing Rd  
Smyrna, DE 19977

### *Land Preservation*

Forest blocks or forested wetlands on some of these parcels should be considered for preservation. Incentive-based programs for wildlife management are available to private landowners through our agency. Shelly Tovell is the contact person (302-735-3600).

### *Buffer Zones*

Many parcels in the Town and growth area contain wetlands and water courses and should be required to maintain at an absolute *minimum*, at least a 100-foot buffer comprised of the existing vegetation (or planted with native species of trees, shrubs, grasses, or wild flowers). Lot lines and infrastructure should not be permitted to impact this buffer zone. Current State, County and local required buffer widths do not appear to recognize scientific research which indicates that 100-foot vegetative buffers (not comprised of mowed grass) are necessary to adequately protect water quality. In addition, forested riparian areas are critical to many species of wildlife, providing travel corridors, foraging and nesting areas.

### *Whites Creek*

The NHESP database does contain observations of state-rare plants and animals on the northern end of Ocean View along White's Creek. In addition to state-rare species, Whites Creek also hosts nesting Ospreys. Maintaining existing buffer zones in this area will help to maintain the integrity of these wildlife habitats. Enhancing the buffer zones in this area wherever possible will improve habitat for the wildlife that exists there and may also provide the benefit of improved water quality in White's Creek.

### *Proposed District 3*

The forests and wetlands located in Proposed District 3 as depicted on the Proposed Zoning Map are of particular importance since they represent the bulk of the open space remaining in the Town. They also abut, or come in close proximity to, Assawoman Natural Area. Contiguous forested and wetland areas provide higher quality habitat than do isolated or fragmented areas. Please see following text for more information on the effects of forest fragmentation. The open spaces in Proposed District 3 present the opportunity to preserve wildlife habitat that has the added value of adjoining the habitats that currently exist in the Natural Area.

### *Effect of Forest Loss/Fragmentation on wildlife resources*

Forest loss that has occurred over the last decade has led to a corresponding loss of forest-dependent species. For migratory birds, it is extremely important to conserve large tracts of forests in the State of Delaware due to its position within the Atlantic flyway.

Forest fragmentation resulting from development separates wildlife populations, and increases “edge effects” that leave many forest-dwelling species vulnerable to predation and infiltration by invasive species. When forested areas are cleared, wildlife must either co-exist with new human residents or disperse into surrounding areas. Either scenario can result in human/animal conflicts including interactions on the roadways. Greater pressure is placed on nearby protected lands such as wildlife areas, State forests and State parks as displaced wildlife compete for finite resources. Crowding wildlife into smaller and smaller ‘islands’ of habitat can also lead to an increase in disease related mortality.

Forests also provide environmental services that benefit humans directly such as water quality protection (erosion control and sediment, nutrient, biological and toxics removal), climate moderation, aesthetic value and recreational opportunities.

#### *Environmental Features Map*

On the Environmental Features map, we recommend that forested land be included. The existence of these forested areas should be acknowledged in the plan.

#### *Delmarva Fox Squirrel*

In Delaware, the federally listed Delmarva fox squirrel (*Sciurus niger cinereus*, DFS) occurs only in Sussex County. One population was introduced to the Assawoman Wildlife Area in the 1980’s and this population was designated as “nonessential experimental”. Other populations in Delaware retain the federally endangered status. Only the DFS within 3 miles of the Assawoman Wildlife are considered “nonessential experimental”.

Portions of the Town of Ocean View and its growth area lie within three miles of the DFS population located at the Assawoman Wildlife Area. Due to this nonessential experimental designation, the U.S. Fish and Wildlife Service (Service) provides the following advisory recommendations under the section 7 conference process of the Endangered Species Act of 1973, as amended, and the final decision of implementing any of these recommendations for minimizing impacts to the DFS are at your, the landowner(s), discretion. The Service makes the following recommendations, which if followed, will minimize potential impacts of this project on the DFS:

- 1) Retain mature forest habitat for DFS. Delmarva fox squirrels require mature forest for purposes of breeding, sheltering and feeding. Clearing of mature forest should be minimized to the extent possible, to avoid adverse effects on DFS.

When clearing of mature forest is unavoidable, the applicant should attempt to retain larger, connected wooded parcels rather than unnecessarily fragmenting large wooded habitat blocks. Forest blocks of at least 40 acres in extent are preferred for sustaining

DFS populations. Forest restoration efforts should be targeted in areas adjacent to already wooded parcels, to facilitate establishment of larger parcels which would have higher likelihood of sustaining DFS populations. Restoration should utilize the largest trees practicable, as DFS typically prefer forest stands of at least 40 years in age. Trees to be planted should be hard or soft-mast producing native species.

- 2) Forested riparian corridors should be retained. Retention of wooded riparian corridors would enhance the ability of DFS to move through the site even after the development, preserving the opportunity for DFS to disperse from the experimental release site. The Service recommends vegetated buffers (i.e., native trees) adjacent to streams, ditches and ponds, to enhance their suitability as dispersal corridors for DFS.
- 3) Avoid cutting of large trees (>12 in. dbh) during DFS breeding season. Avoidance of cutting trees during the primary breeding season for DFS (January 1 through May 15 of any year) would help avoid adverse effects on any juvenile and non-mobile DFS still left in leaf nests or tree cavities.
- 4) Reduce habitat degradation resulting from building and use of permanent structures. Habitat degradation associated with residential use of this growth area results from a variety of changes in the quality of the habitat, including human disturbance (e.g., noise), changes in microhabitat conditions, road kill mortality and barriers to DFS movement, and indirect effects of land use changes (e.g., presence of domestic pets such as dogs which may chase or kill resident DFS). To avoid these potential effects, the Service recommends placing structures and roads 150 feet or more from forested habitat.
- 5) Protect environmental health for DFS and other wildlife. Trash dumping into open space, and open-air fires, should be prohibited, to preserve environmental air and water quality for DFS. Controlling the availability of trash and other wastes possibly attractive to potential predators of DFS (e.g., foxes, owls feeding on rodents at trash sites), will reduce the likelihood of indirect adverse effects on DFS.
- 6) Conduct live trapping of DFS in selected woodlots on the project site if possible. Information on the presence and distribution of any DFS on the growth area would enhance our understanding of the dispersal and colonization ability of DFS, given the translocation to nearby Assawoman Wildlife Management Area. At the time of the experimental release, at least one radio-collared female DFS moved approximately 5 miles off the state lands. Live trapping efforts should follow Service protocols in terms of trap density, handling techniques, and environmental conditions. Permits,

approvals and appropriate credentials and experience are required *before* any consultant or other person can live-trap Delmarva fox squirrels. Please request our Live Trapping Survey Protocol for Delmarva Fox Squirrel by contacting Trevor Clark of the U.S. Fish and Wildlife Service at 410-573-4527 or Holly Niederriter of the Delaware Division of Fish and Wildlife, Nongame and Endangered Species Program at 302-653-2880.

## **Recreation**

Recognizing the benefits of a localized trail system, the town of Ocean View is partnering with the Delaware Division of Parks and Recreation to plan and develop a 1.1-mile trail between Elliott Avenue to the north and Atlantic Avenue (Route 26). The Town of Ocean View has worked with the Division to acquire the 0.7-acre Elechko property. Located directly adjacent to the Assawoman Canal this property will serve as a trail head for the Assawoman Canal Trail. Trail construction at the Assawoman Canal will provide much needed recreational and safe fitness opportunities away from heavily traveled roads. When completed the Assawoman Canal Trail – Phase 1 – will link with Cedar Neck Road, graded by DelDOT a connector bicycle route. The future trail will provide safe and convenient bicycling and walking making inter and intra community connections.

Expanding the Assawoman Canal Trail and connecting existing open space within the town of Ocean View would provide residents with more convenient access to recreational facilities and a more comprehensive trail system. The town of Ocean View is in the process of revising their Zoning and Subdivision ordinances to require open space and recreation facilities with a focus on connecting these areas to adjacent properties. Open space should not include streets, driveways, sidewalks, stormwater management ponds, etc. This process should be updated in the new comprehensive plan.

In May and June 2008, the Division of Parks and Recreation conducted a telephone survey of Delaware residents to gather information on outdoor recreation patterns and preferences as well as other information on their landscape perception. These findings are the foundation of the 2008-2011 Statewide Comprehensive Outdoor Recreation Plan (SCORP) providing guidance for investments in needed outdoor recreation facilities. The high and moderate facility needs in Eastern Sussex County are listed below. Ninety-one percent of the respondents in eastern Sussex County said that Outdoor Recreation was very or somewhat important to them. Consideration should be given to addressing some of these needs in the Ocean View Comprehensive Plan. For additional information about the SCORP or outdoor recreation priorities, contact Kendall Sommers at 302.739.9235.

### **High facility needs:**

Walking/jogging Paths  
Bicycling Paths  
Public Swimming Pools  
Fishing Areas

### **Moderate facility needs:**

Access for Boating (canoe, kayak, and powerboat  
Public Golf Courses  
Campgrounds  
Baseball/Softball Fields

Open Space/Passive

Recreation

Picnic Areas

Playgrounds

Horseshoe Pits

Basketball Courts

Tennis Courts

Hiking Trails

### **Site Investigation and Restoration**

The Site Investigation and Restoration Branch (SIRB) encourages the development of Brownfields and can provide assistance when investigating and remediating Brownfield sites. Although SIRB has no specific comments regarding the proposed comprehensive plan at this time, if any future development occurs on sites with previous manufacturing, industrial, or agricultural use, SIRB recommends that a Phase I Environmental Site Assessment be conducted prior to development, due to the potential for a release of hazardous substances. If a release or imminent threat of a release of hazardous substances is discovered during the course of future development (e.g., contaminated water or soil); construction activities should be discontinued immediately, and DNREC should be notified at the 24-hour emergency number (800-662-8802). In addition, SIRB should be contacted as soon as possible at 302-395-2600 for further instructions.

### **Underground/Aboveground Storage Tanks**

Should any underground storage tanks or petroleum-contaminated soil be discovered by any person during construction, the DNREC-TMB and the DNREC Emergency Response Hotline must be notified within 24 hours. The DNREC-TMB and the Emergency Hotline may be reached at (302) 395-2500 and at (800) 662-8802, respectively. In addition, should any contamination be encountered, PVC pipe materials would have to be replaced with ductile steel and nitrile rubber gaskets in the contaminated areas.

All plans for UST system installations must be approved in advance by the TMB with exception of UST systems of 1,100 gallons or less that contain heating fuel for consumptive use on the premise where it is stored or systems that contain motor fuels for non-commercial purposes.

If any aboveground storage tanks (ASTs) less than 12,500 gallons are installed, they must be registered with the DNREC-TMB. If any ASTs greater than 12,500 gallons are installed, they are subject to installation approval by the DNREC-TMB.

Should the municipality anticipate being more restrictive than Delaware's *Regulations Governing Underground Storage Tank Systems* or Delaware's *Regulations Governing Aboveground Storage Tanks*, please be aware that the municipality shall be responsible for enforcing the more restrictive rules.

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

No comments received

**Department of Agriculture - Contact: Scott Blaier 739-4811**

The Department would like to commend the town for reviewing its current comprehensive plan with the PLUS group prior to updating it. The Department of Agriculture would like to offer the following comments and suggestions for your consideration.

**Economic Development**

The Department encourages the town to develop and promote agricultural business whenever possible, specifically farm markets. The Department now has a fully staffed marketing section, and we encourage the town to contact them at (302) 698-4535 to see how they can help. Please contact Kelli Steele of the Department's marketing section to explore agricultural economic development activities. Food safety, nutrition, and wholesomeness are consumer priorities these days, and many people are turning to local sources of food supply. As a result, there are a number of agricultural development opportunities.

**Urban Forestry**

The Delaware Forest Service encourages the Town of Ocean View to develop a formal urban forestry management plan that addresses a tree canopy goal. Trees are a vital part of any community and the Delaware Forest Service recommends that trees be preserved during the development process. A tree ordinance protecting existing woodlands in future development as well as existing street trees can be developed and implemented to address this issue. The Delaware Urban & Community Forestry Program would be glad to offer assistance. Please contact the Delaware Forest Service for more information at (302) 698-4500.

**Delaware Division of Public Health- Health Promotion Bureau- contact Michelle Eichinger (302) 744-1011**

Ensuring that new residential and commercial development incorporates pedestrian- and bicycle-friendly features allows people to travel by foot or by bicycle and promotes physical activity as part of daily routines. Regular physical activity offers a number of health benefits, including maintenance of weight and prevention of heart disease, type 2 diabetes and other chronic diseases.<sup>1</sup> Research shows that incorporating physical activity into daily routines has the potential to be a more effective and sustainable public health strategy than structured exercise programs.<sup>2</sup> This is particularly important considering about 65% of adult Delawareans are either overweight or obese.<sup>3</sup> This current obesity crisis is also affecting children. Approximately 37% of Delaware's children are overweight or obese<sup>4</sup>, which places them at risk for a range of health consequences that

include abnormal cholesterol, high blood pressure, type 2 diabetes, asthma, depression and anxiety.<sup>1</sup>

In Delaware, as in other states across the nation, certain patterns of land use can act as a barrier to physical activity and healthy eating for children and adults alike. Examples of such barriers include neighborhoods constructed without sidewalks or parks and shopping centers with full-service grocery stores situated too far from residential areas to allow for walking or biking between them.

As a way to promote physical activity and access to healthy foods, we recommend that the following be included in the Town of Ocean View Pre-Update Comprehensive Review:

### **Increase opportunities for physical activity**

- Survey residents for ideas for recreational activities/programming as part of a recreation plan. Residents may benefit from organized recreational programming for all ages. In addition, please refer to the Statewide Comprehensive Outdoor Recreation Plan from the Division of Parks of Recreation.
- Explore facilities that provide opportunities for indoor recreation for residents of all ages. Although the Town of Ocean View provides amenities for outdoor recreation, there would be limited use of such amenities during inclement weather and during the winter season.

### **Increase opportunities for healthy eating**

- Designate an area for a seasonal farm stand or mini farmer's market that will promote the sale of fruits and vegetables.
- Designate an area for a community garden. Community gardens not only provide residents access to healthy nutrition, but they also provide opportunities for physical activity and community cohesiveness.<sup>5</sup>

### **Promote a healthy community**

- Explore ways to promote a healthy community in the Town of Wyoming. The Division of Public Health with the University of Delaware's Institute for Public Administration produced a resource manual to increase opportunities for a healthy community. Here is the link to this document,  
[http://www.ipa.udel.edu/publications/HealthyCommunities\\_guideWeb.pdf](http://www.ipa.udel.edu/publications/HealthyCommunities_guideWeb.pdf)

<sup>1</sup> Nemours Health and Prevention Services (2005). *Delaware Children's Health Chartbook*, Newark, DE.

<sup>2</sup> Active Living by Design. *Transportation Fact Sheet*. Retrieved May 17, 2007, from [http://www.activelivingbydesign.org/fileadmin/template/documents/factsheets/Transportation\\_Factsheet.pdf](http://www.activelivingbydesign.org/fileadmin/template/documents/factsheets/Transportation_Factsheet.pdf).

<sup>3</sup> Delaware Health and Social Services (2008), *Division of Public Health, Behavioral Risk Factor Surveillance System (BRFSS), 1990-2007*.

<sup>4</sup>Nemours Health and Prevention Services (2007). *2006 Delaware Survey of Children's Health Descriptive Statistics Summary, Volume 1*.

<sup>5</sup>Hancock, T. (2001). People, partnerships and human progress: building community capital. *Health Promotion International*, 16(3), 275-80.

### **Delaware State Housing Authority – Contact Vicki Powers 739-4263**

DSHA has reviewed the existing Certified Comprehensive Plan to advise the Town of Ocean View of new regulations passed since its certification in 2004 that should be included in their scheduled update. Since 2004, there has not been new regulations passed for housing, however Delaware and throughout the country have experienced a housing boom and resulting escalation in housing prices. Due to rising home prices, many working individuals and families have been left behind. Comparatively few new homes have been developed affordable for what is termed as Delaware's "workforce households" with incomes below 100 percent of the median income. As a result, we encourage the Town of Ocean View to pursue a balanced housing stock, in the development of their Comprehensive Plan that will allow residents a choice in where they want to live without putting a strain on their purse strings. A balanced housing stock in any town can significantly improve the quality of life for residents and the economic competitiveness of the region.

DSHA has provided a guide to help assist in writing any town's housing element: *Creating a Balanced Housing Stock: A Guide to Writing Your Town's Housing Element* outlines the steps in preparing a housing element for any Comprehensive Plan. Furthermore, DSHA is willing to work with the Town of Ocean View to provide data and technical assistance. In addition to our guide we have developed a website, Affordable Housing Resource Center, to learn about resources to help address the Town's housing needs.

The DSHA website can be found at: [www.destatehousing.com](http://www.destatehousing.com) "Affordable Housing Resource Center" under our new initiatives.

If you have any questions or would like to meet with DSHA, please feel free to contact Victoria Powers at (302)739-4263 ext. 219 or via e-mail at [vicky@destatehousing.com](mailto:vicky@destatehousing.com). Thank you.

### **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 and involvement to coordinate with the town, the local school districts, the Office of State Planning Coordination as well as other school districts and stakeholders.
  5. The Lord Baltimore Elementary School appears to be in District 2.
    - *Question – What are the Town’s intentions with District 2? It appears as though the suggested/preferred zoning is R-1 or RPC. Is this a down-zoning that affects the school? Map 7 Proposed zoning indicates district 2, page 11 defines district 2 as R-1, R-1 is defined as low density single family residential.*
  6. DOE has no further comments regarding the Comprehensive Plan update under consideration.

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

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

The Town should be aware that when a project is within an area proposed for annexation by the Town, prior to submitting the project to Sussex County the applicant is informed

they should (1) contact the town to apprise them of the project and (2) determine if the terms for annexation can be agreed upon.

The Sussex County Engineer Comments:

Planning and design of the County sewer system serving Ocean View has been based on density assumptions in Ocean View's 2004 Comprehensive Land Use Plan. Future land use plans should reflect that density to assure that sewer capacity is adequate. The Sussex County Engineering Department will review and comment on the draft 2008 update when it becomes available and does not have additional comments at this time.

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

**Once the plan is updated, please contact this office to schedule a PLUS review and certification process for the final draft of the 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