



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

November 18, 2008

The Honorable Wayne Stover  
Mayor, Town of Clayton  
P.O. Box 2230  
Clayton, DE 19938

RE: PLUS review – 2008-10-03; Town of Clayton Comprehensive Plan

Dear Mayor Stover:

Thank you for meeting with State agency planners on October 22, 2008 to discuss the proposed Town of Clayton 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.

***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 last comprehensive plan annual report we have on file for the Town of Clayton is dated 2004. Please forward annual reports for 2005, 2006 and 2007 for our records. The annual reports are a requirement in the Delaware Code, and we will not be able to forward the plan to the Governor until this requirement is met. A template is attached to this letter that you may use when preparing your report.

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

This office has received the following comments from State agencies:

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

Our office would like to commend the Town of Clayton for preparing a well crafted and thorough comprehensive plan update. Clayton has long been recognized as one of the leaders in municipal comprehensive planning, and the State has always appreciated Clayton’s foresight and cooperation with planning issues. The Town has seen a great deal of growth and change over the past decade, but it is clear that the growth has been managed in a way that has maintained the character and quality of life in your community.

This plan was reviewed based upon the population reported in the 2000 US Census, and as such we considered it a “municipal development strategy” under the criteria found in Delaware Code. Except for the annual report requirement listed above as a certification item, we have found that the Plan meets all of the requirements of a municipal development strategy. Even so, it is noted that this plan goes far beyond those minimum requirements and has more in common with the more stringent requirement for comprehensive plans in larger towns. This level of detail should serve the Town well in the next five year period.

We have one recommendation:

- We would like to meet with the Town of Clayton to update the Town’s PLUS Memorandum of Understanding to ensure that the terms in the memorandum are consistent with the needs of both the Town and the State. Such a meeting could occur before or after plan certification. Our office will be contacting the Town to set up a meeting.

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

No comments received

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

- 1) In the last paragraph of Section 2-2, which concerns the Town’s history, there is a statement that “Most of the Town’s working residents are employed in Kent County outside of the Town.” That was probably true for previous Plans, but is it still true? As indicated in Section 6-1c, the 2000 Census found Kent County outside Clayton to be the most common place of employment, but that is not quite the same thing, and conditions may have changed further since 2000. With the opening of Delaware Route 1, the Town has become more attractive to people who work in New Castle County.
- 2) Map 4, Community Facilities, shows wastewater pump and lift stations. However, DelDOT is aware of two such facilities that are missing from the map.

- One is on Wheatley’s Farm Drive at the head of Wheatley’s Pond. The other is on SR 300 immediately west of the Bid Master property.
- 3) In Section 9-1, Greenspring Road (SR 15) is described as accommodating “travel within the Clayton vicinity.” Most of the traffic on it may be local trips, but SR 15 was created as a scenic route, to do for the west sides of Kent and southern New Castle Counties what SR 9 does for their east sides.
  - 4) In Section 9-2, the nearest DART First State stop is said to be at the Smyrna Rest Area. The stop on US Route 13 at Mount Vernon Street in Smyrna is closer.
  - 5) Section 9-3b describes a railroad right-of-way running along the north side of Main Street (Smyrna-Clayton Boulevard) from the Norfolk Southern tracks east into Smyrna. It continues a recommendation from the 1996 Plan that this area be used for a pedestrian and bicycle facility. Presently, this area is attractively landscaped and serves to buffer properties along the north side of (Smyrna-Clayton Boulevard) from automobile traffic, while pedestrians use a sidewalk along the south side of the street and bicyclists, depending on their age and capability ride with traffic or on the sidewalk. DelDOT can foresee practical problems in creating a separate path within the railroad right-of-way. Instead we suggest that it may be appropriate to use part of the railroad right-of-way to expand the Smyrna-Clayton Boulevard right-of-way widen the road to include sidewalks and striped on-road bike paths on both sides.
  - 6) Section 9-4c says in part that “The Town of Smyrna is creating a paved bicycle/pedestrian trail along Green’s Branch...” This trail appears to be complete.
  - 7) In Section 10-1, we recommend that properties that do not yet have structures on them be described as “unbuilt” or “undeveloped” rather than “vacant.” The word “vacant” could be misunderstood as indicating property that has been developed but is not occupied for reasons such as abandonment or foreclosure. Careful reading of the Plan would suggest what was meant, but first impressions matter.
  - 8) DelDOT has the following comments on Section 10-3b, Areas recommended for Annexation:
    - a) The Wright Farm, while legally contiguous to the Town, is contiguous only through the St. Joseph property, which is permanently preserved. DelDOT understands that the applicant for annexation of the Wright Farm is offering preservation of the Peoples Farm as an incentive to encourage the annexation, that preservation of the Peoples Farm is important to many Clayton residents, and that the recommendation for annexation was developed after consulting New Castle County staff and officials. However, in street miles, the developable parts of the Wright Farm are about a mile away from the currently developed and developable parts of

Clayton. Even if the developer provided the capital facilities, it would be inefficient to provide municipal services there and it could be difficult to make residents feel part of the Town. Rather than annex the Wright Farm, we would urge the Town to continue to work with New Castle County, the Department of Agriculture, and any relevant conservation groups, such as the Nature Conservancy, to find another way to preserve the Peoples Farm, or at least the portion of it closest to Duck Creek.

- b) DelDOT suggests that as traffic increases on Wheatley's Pond Road (SR 300), the Town may see interest in redeveloping the Royster-Clark Fertilizer Plant and properties in the Wheatley's Pond Road Single-Family Area for office or commercial use. They are not opposed to the recommendations presently proposed in the Plan, but they would urge the Town to consider how they may want to address future rezoning requests in this area.
  - c) In the Byler portion of the Byler and Pheasant Point Area, there is a largely undeveloped cul-de-sac subdivision in which a vacant lot abuts a stub street in Old Country Farm. While it would require the concurrence of any other lot owners in the cul-de-sac development, DelDOT would recommend that the developer be required to reconfigure their development and connect to the stub street if possible.
  - d) DelDOT supports the Plan's other recommendations regarding the Sensenig Property but we would also suggest that the Town approach the School District regarding the feasibility of a street along the back of their property to connect Old Country Farm and the Sensenig Property. A connection of Old Country Farm and the Sensenig Property through the Green Gable Farm is important regardless, but as a general rule more interconnections is better.
- 9) Section 10-3c lists areas not recommended for annexation. Given that most of these areas are not presently contiguous to the Town and that State law requires reviews of comprehensive plans every five years, the content of this section is appropriate now. DelDOT suggests, however, that the Town may want to revisit some of these areas in future plans. As is mentioned in this section, the Town could become the de facto service provider for these areas, so it may be appropriate to annex them.

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

**Water Resources/Water Quality**

*General Comments*

1) 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 a practical BMP 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. This ordinance should specify and require that 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. For planning purposes, the Department utilizes Technical Release 55 (TR-55), Urban Hydrology for Small Watersheds, published by the U.S. Department of Agriculture, Natural Resources Conservation Service, June 1986 (see Table 2-2a, page 2-5).

2) The Plan should make a recommendation to protect open space via ordinance

It is strongly recommended that the Town adopt an "open-space" ordinance recommendation which specifically excludes structural Best Management Practices (BMPs) such as community wastewater treatment areas, open-water stormwater treatment structures and wetlands from consideration as open space. The Department defines "open space" as those areas with public value in a predominantly natural state and

undeveloped condition. Such areas may contain, but are not limited to, wildlife and native plant habitat, forest, farmland, meadows, wetlands, floodplains, shorelines, stream corridors, steep slopes, and other areas that have species or habitats of conservation concern.

Open Space may be preserved, enhanced and restored in order to maintain or improve the natural, ecological, hydrological, or geological values. An important design element to consider when incorporating Open Space in a development is to take maximum advantage of adjoining Open Space areas. This will advance the goal of an interconnected network of habitat corridors for wildlife and provide for future potential linkages.

**Open Space is not:**

- impervious surfaces (e.g., roads, parking lots, sidewalks, buildings)
- swimming pools or ponds that are lined or contain an impervious substrate
- stormwater management structures
- wastewater treatment systems

**Types of Recreational Open Space:**

- *Passive*-Passive recreation areas include only low-impact activities having little or no disturbance on natural features.
- *Active*-Active recreation areas (e.g., ball fields, playgrounds) should be placed only in Open Space areas that do not already contain natural habitat.

*Specific Comments*

Page 21, Soils: The Plan should reference the recently completed soil survey update for soils information in the immediate vicinity of Clayton. Please contact the Natural Resources Conservation Service (NRCS), Dover Office, at (302) 741-2600, extension 3, for additional information.

Page 22, Pollution Control: The narrative on TMDLs is quite good. However, we suggest that the narrative make specific mention of the fact that the Town of Clayton is located within the Smyrna River watershed of the greater Delaware River and Bay drainage. We further suggest a reference to the specific nutrient (nitrogen and phosphorus) and bacterial TMDL load reduction requirements that must be met in order to comply with the State Water Quality Standards (See table 1).

<b>Delaware River and Bay drainage</b>	<b>N- reduction requirements</b>	<b>P-reduction requirements</b>	<b>Bacteria-reduction requirements</b>
Smyrna River	40%	40%	75%

Table 1: TMDL nutrient (nitrogen and phosphorus) and bacteria reduction requirements for the Smyrna River watershed.

Page 22, Recommendations: The Plan should offer more specific “actionable” environmental protection strategies than currently offered. We recommend 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.

### **Water Resource Protection Areas**

The Groundwater Protection Branch (GPB) review of the Plan found wellhead and excellent ground-water recharge potential areas within the Town’s municipal boundaries (see following map).

GPB agrees with the Comprehensive Plan Draft statement that it would be prudent to review the measures recommended by DNREC and adopt measures that would be appropriate. GPB applauds the Town’s intent to protect source water protection areas.

GPB found some contextual errors and suggests the Town review additional references in order to understand and provide for continued security and quality of its public water supplies.

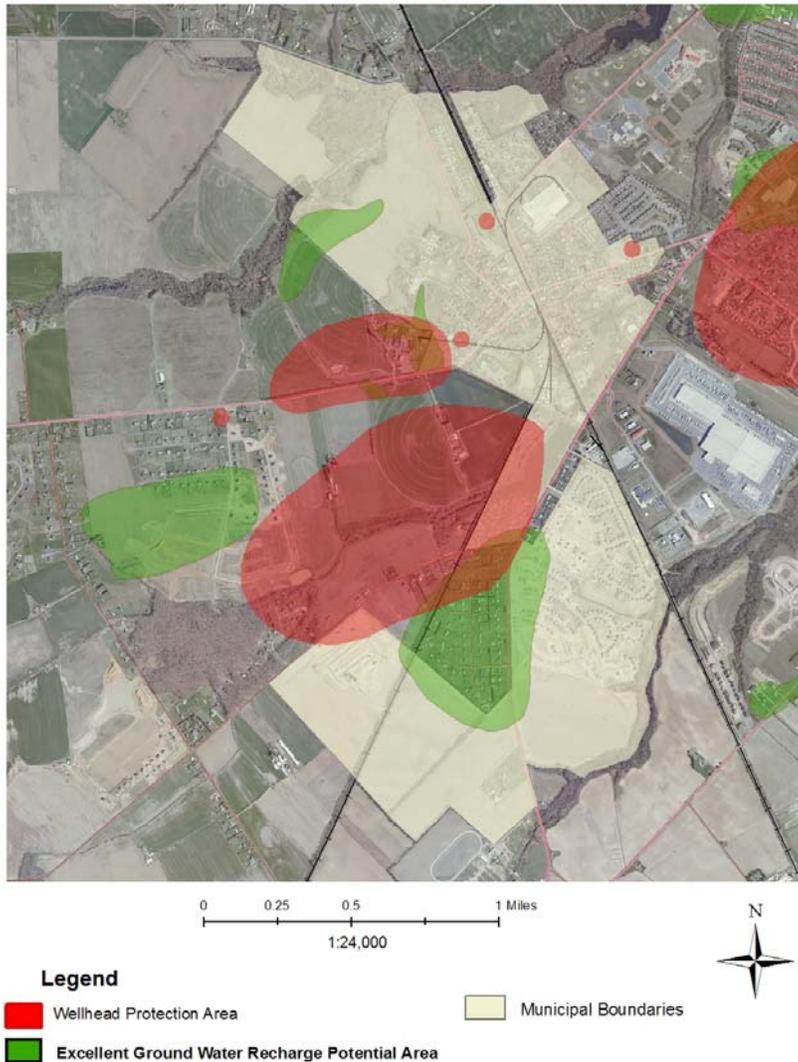
On Page 31, the second paragraph refers to passage of Senate Bill 119 of the 2001 Delaware General Assembly. The Plan should cite Title 7, Delaware Code, Chapter 60, Subchapter VI, § 6082 instead of the Senate Bill 119.

In addition to using the *Source Water Protection Guidance Manual for the Local Governments in Delaware*, the Town would benefit from referring to the following publications for guidance and language in development of their ordinance:

- The Kent County source water protection measures: Ordinances LC07-36 and 08-15  
[http://www.wr.udel.edu/swaphome/Publications/SWPOrdinances/kent\\_swp\\_ord\\_fini.pdf](http://www.wr.udel.edu/swaphome/Publications/SWPOrdinances/kent_swp_ord_fini.pdf)
- 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)
- Ground-Water Recharge Potential Mapping in Kent and Sussex Counties, Delaware: Delaware Geological Survey Report of Investigations No. 66  
<http://www.dgs.udel.edu/publications/pubs/ReportOfInvestigations/ri66.pdf>

Additional resources can be found at the Delaware Source Water Assessment and Protection Program Homepage: <http://www.wr.udel.edu/swaphome/index.html>

## Town of Clayton, DE



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

Page 30, Chapter 4, Environmental Resources, Section 4-3, Recommendations

The Drainage and Stormwater Section applauds the Town for supporting strategies to curb water pollution and to preserve water bodies and requests that the following recommendations be considered to achieve those goals.

- Develop a Master Drainage Plan for the Town.
- Existing woodland provides valuable wildlife habitat as well as soil erosion protection and water quality filtering. The Town can adopt ordinances that are

more stringent than the current State of Delaware Sediment and Stormwater regulations and protect woodland, riparian buffers, and wetlands by not allow the clearing of woodland, riparian buffers, and wetlands for the creation of 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. Without such protections, the drainage complaints within these areas may be the responsibility of the town to resolve.
- Review town ordinances and revise as necessary to promote green technology best management practices for stormwater.
- Water bodies, ponds, intermittent and perennial streams, along with ditches, should be buffered from development. 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. Key components for an ordinance to achieve this recommendation are:
  - Consider future drainage maintenance before planting riparian buffers. Planted trees and shrubs should be native species, spaced to allow for a small backhoe or excavator to work through when trees are 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 from the top of the bank to avoid future blockages within the channel 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.

Page 49, Chapter 8, Community Facilities and Services, Section 8-3(g), Stormwater Management

- Be advised the Sediment and Stormwater Program is currently undergoing revisions to the sediment and stormwater regulations. It is unclear at this time when the new regulations will be promulgated.

Page 56, Chapter 8, Community Facilities and Services, Section 8-8, Goals and Recommendations

The Drainage and Stormwater Section requests that the Town to consider the following recommendations:

- Explore the feasibility of stormwater utility to fund upgrades to stormwater infrastructure. Upgrades to the stormwater system may reduce pollutant loads and help reach the established total maximum daily load for nitrogen, phosphorus, and bacteria. Reach out to the Kent Conservation District, Kent County, and the Delaware Clean Water Advisory Council as partners in funding stormwater retrofits.
- 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 Kent 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.
- Lines and grades: If the Town does not have a lines and grades requirement for new construction, the Division recommends 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 Town should pursue drainage easements along waterways, ditches, and storm drains where currently there is 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.
- Require a Drainage Management Plan for new subdivisions which border a stream or ditch. Streams and 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 stream or ditch. A Drainage Management Plan would include points of access for maintenance equipment, and designate spoil disposal areas.

- 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.

Page 78, Chapter 11, Implementation, Section 11-4(d), Floodplains

- Consider designating floodplains as un-subdivided open space. During prolonged wet periods, the floodplain may become too wet for normal residential use resulting in nuisance drainage complaints to the Town. Without such protections, the drainage complaints within these areas may be the responsibility of the town to resolve.

## **Natural Heritage and Endangered Species**

Chapter 4, Section 4-2(b), Greens Branch Area

This section describes the land surrounding Greens Branch and outlines development options, but there is no real plan mentioned for protecting the water quality of this stream. Even maintaining the area along the branch as recreational open space requires some planning for water quality protection.

Recommendations should include a requirement for at least a 100-foot buffer zone comprised of existing vegetation (not mowed grass) along Greens Branch. This buffer zone should not include lots, infrastructure, trails, etc. In areas along the branch where the existing buffer is less than 100 feet, plantings of native species of grasses, shrubs, trees or wildflowers should be conducted. This buffer zone is especially important given the amount of clearing that has already occurred along the length of this waterway. Cumulative impacts to water quality and habitat loss are a real concern.

Current required buffer widths do not appear to recognize scientific research indicating that 100-foot vegetative buffers are necessary to adequately protect water quality. Upland buffers along waterways (especially those with riparian forest) are critical to many species of wildlife, providing breeding, resting and foraging areas. Wildlife also utilizes these buffers as a travel corridor when migrating between habitats.

#### Appendix A, Parcels recommended for annexation

Tax parcel #s KH-00-01800-01-0600 and KH-00-1800-01-0500 are being recommended for annexation and subsequent residential development. These parcels abut Greens Branch and if developed, the Town should require the buffer zone suggested above.

#### Map 3, Clayton Vicinity Environmental Features

Although most of the area has been previously cleared for development and/or agriculture, there are a few forested parcels and forested riparian buffer areas. This map should include forested areas as an environmental feature.

#### Map 6, Future Land Use

Several of the parcels designated as ‘Agricultural PDRs’ contain forested and riparian areas. Efforts to protect these environmental features should be a goal of this plan.

Tax parcels KH-00-02700-01-0100 & KH-00-02600-01-1000 are designated as PDRs and along with several other parcels, form one of the few remaining large, connected forest blocks in this vicinity. State wetlands maps indicate that this forested area contains wetlands. Forested wetlands can support an array of plant and animal species, including those that are rare. Cumulative forest loss throughout the state is of utmost concern to our Division which is responsible for conserving and managing the states wildlife (see [www.fw.delaware.gov](http://www.fw.delaware.gov) and the Delaware State Code, Title 7).

Tax parcels KH-00-02700-01-2100 & KH-00-02700-01-1300 abut Mill Creek and efforts should be made to protect the riparian buffer zone along this waterway as described above.

#### Rare Species

The Natural Heritage and Endangered Species Program has not surveyed the entire area of interest and, therefore, it is unknown if rare species will be impacted by future proposed development. Several rare plant species have already been extirpated by development in this area.

We recommend that the Town require developers to contact the Natural Heritage and Endangered Species Program to determine if their project activities will impact a State-rare or federally listed species, especially on parcels that contain forested or wetland areas. 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

## **Parks and Recreation**

### 3-4, Recreation and Open Space

In May and June of 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 will be the foundation of the 2008-2011 Statewide Comprehensive Outdoor Recreation Plan (SCORP) providing guidance for investments in needed outdoor recreation facilities.

Eighty-eight percent of residents living in Kent County indicated that outdoor recreation was very or somewhat important to them. Based on the public opinion survey, the most needed outdoor recreation facilities in Kent County include: Walking/jogging paths, public swimming pools, bicycle paths, open space for passive recreation, playground, and picnic spaces or gathering areas. Currently, the Town of Clayton has two recreation facilities within the Town's corporate limits. One is at the Clayton Elementary School which has a ball field and small playground. The second is Clayton Community Park which is located at the corner of Smyrna Avenue and Basset Street. Clayton Community Park is a .25 acre park with playground equipment, picnic area and walkways. Because of the importance of outdoor recreation in Kent County, the Town of Clayton should work to incorporate more of these opportunities in the development of their comprehensive plan.

The Division of Parks and Recreation provides matching grant assistance through the Delaware Land and Water Conservation Trust Fund (DTF) to local governments for land acquisition and for park development. Lands that have received DTF assistance must remain as open space for conservation or recreation purposes. Clayton Community Park has received funding through this program and is protected in perpetuity. The Town of Clayton could further benefit from this program when incorporating new outdoor recreational facilities.

To assist in the acquisition of recreational facilities, the Town of Clayton should consider the inclusion of open space and/or recreational requirements in its subdivision code for any new developments.

### 3-6, Transportation

#### Railroads: *Clayton-Easton Line*

The Clayton-Easton line begins at School Lane and extends 44 miles through Marydel to Easton, Maryland. Fourteen miles of this line are in Delaware. In the 1980s, the state of Maryland purchased this line from Norfolk Southern. After some commercial use, the Maryland Department of Transportation banked this rail line making it a candidate for re-use. DNREC's Division of Parks and Recreation has identified the Clayton-Easton segment as having rail-trail potential in a portion of Kent County that has few active recreational opportunities. The Division has a signed licensed agreement with Maryland to use the rail line as a recreational facility. The Division is moving forward with the planning process for the use of the rail line. Clayton has been identified as a trailhead for the Clayton-Easton Trail.

Developing a facility of this type will require support and financial partners to build the rail-trail and other support facilities. Operation and maintenance of the linear recreation facility would become the responsibility of the Division of Parks and Recreation. Once complete, the rail trail would serve as an off road connection between the Delaware Towns of Clayton, Kenton, Hartly, and Marydel.

#### **Air Quality**

How does the City intend to address, or is already addressing, mitigation for the impacts of residential development on air quality (e.g., higher density to promote more walkability/transit-friendliness, planting more trees, the Energy Star program, etc.)?

#### **Under/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 at 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 will 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 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.

When developing ordinances, 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.

### **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.

#### **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 congratulate the Town of Clayton on a well-written comprehensive plan. The plan addresses the previous comments and suggestions offered by the Department during the “pre PLUS” review.

The Department is encouraged to see the town working with New Castle County to preserve the Peoples farm through the transfer of development rights. The Department would be glad to assist the town and county in any capacity possible to achieve this admirable goal. Please feel free to contact us at (302) 698-4530.

#### **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 Economic Development Office – Contact: Jeff Stone 672-6849**

No comments received

#### **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 Clayton Comprehensive Plan Review:

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

The draft comprehensive plan offered an excellent plan to address active transportation.

- Ensure that there are sidewalks, crosswalks and walking/bicycling paths connecting the neighboring residential developments. The proposed plan for upgrading the streetscape, incorporating bike routes, and conducting a sidewalk inventory are strongly encouraged. Further, the plan to implement Rail-to-Trails is also encouraged. There was concern on the funding for such a project. It is suggested that the town planner review the “Healthy Communities: A Resource Guide to Delaware Municipalities.” This document addresses the steps to take to implement Rails-to-Trails as well as funding opportunities to support this project.
- Explore facilities that provide opportunities for indoor recreation for residents of all ages. Although the Town of Clayton 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. The comprehensive plan addressed the need to improve its attractiveness. Community gardens in undeveloped lots or in the town center would be an approach to improve attractiveness. In addition, community gardens not only provide residents access to healthy nutrition, but they also provide opportunities for physical activity and community cohesiveness.<sup>5</sup>

<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**

The Town of Clayton Comprehensive Plan provides a vision for the future growth and development of Clayton. Since the Town has less than 2,000 people, Delaware Code does not require the plan to contain an affordable housing element. However, Clayton's Comprehensive Plan is written to reflect Clayton's future growth that will exceed a population of 2,000 or more people. Delaware Code requires that towns of 2,000 or more develop a Plan to address affordable housing, which this Plan does state. DSHA supports the Plan and we applaud the Town of Clayton for aggressively responding to the needs of affordable housing. We support the Plan's goals for providing sound affordable housing to low- and moderate-income people and furthermore, preserving the existing housing stock through City codes and infill development. We specifically like the strategy to provide balanced housing opportunities for all income levels and phases in life and that the Town will encourage new proposals to include a variety of housing types. Overall, this is a well thought out Plan that addresses housing issues pertinent to the Town of Clayton.

### **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.

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.

1. 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.
2. 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.
3. The DOE offers its support to assist and participate by coordinating with the Town of Clayton, 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.
4. DOE has no objections or comments regarding the Comp. Plan under consideration.

***Approval Procedures:***

1. Once all edits, changes and corrections have been made to the plan, please submit the completed document (text and maps) to our office for review. **Your PLUS response letter should accompany this submission.** Also include documentation about the public review process. In addition, please include documentation that the plan has been sent to other jurisdictions for review and comment, and include any comments received and your response to them.
2. Our office will require a maximum of 20 working days to complete this review.
  - a. If our review determines that the revisions have adequately addressed all certification items, we will forward you a letter to this effect.
  - b. If there are outstanding items we will document them in a letter, and ask the town to resubmit the plan once the items are addressed. Once all items are addressed, we will send you the letter as described above.
3. Once you receive our letter stating that all certification items have been addressed, the Planning Commission and Council should adopt the plan pending State certification. We strongly recommend that your Council adopt the plan by ordinance. The ordinance should be written so that the plan will go into effect upon receipt of the certification letter from the Governor.
4. Send our office a copy of the adopted plan along with the ordinance (or other documentation) that formally adopts your plan. We will forward these materials to the Governor for her consideration.

5. At her discretion, the Governor will issue a certification letter to your City.
6. Once you receive your certification letter, please forward two (2) bound paper copies and one electronic copy of your plan to our office for our records.

Thank you for the opportunity to review this plan. 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: Town of Smyrna  
Kent County