



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

January 16, 2009

The Honorable Patti Adams  
Mayor, Town of Dagsboro  
P.O. Box 420  
Dagsboro, DE 19989

RE: PLUS review – 2008-12-02; Dagsboro Comprehensive Plan

Dear Ms. Adams:

Thank you for meeting with State agency planners on December 17, 2008 to discuss the proposed 2008 Comprehensive Plan Update.

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 Dagsboro is dated 2004. Please forward annual reports for 2005, 2006 and 2007 and 2008 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.

- As part of the recently adopted Pollution Control regulations adopted by DNREC, the Town should review all aspects of the proposed comp plan to ensure accuracy and compliance for these new regulations. The Town of Dagsboro is located within the greater Inland Bays drainage. The Inland Bays drainage is assigned a range of nutrient (e.g., 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.

<b>Inland Bays Drainage (low reduction area)</b>	<b>N- reduction requirements</b>	<b>P-reduction requirements</b>	<b>Bacteria-reduction requirements</b>
Indian River Bay watershed	40%	40%	40% Fresh; 17% Marine

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

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

The OSPC wishes to commend the Town for their efforts in developing a well thought out plan that addresses current needs while providing a positive frame work for future growth and development. This office asks that the Town address those items as identified for certification and consider the additional recommendations to strengthen the proposed plan. If you have any questions or wish to develop a path forward fro implementation, please contact this office.

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

No comments received.

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

The Town of Dagsboro proposes to update its 2003 Comprehensive Plan. As presented, this is a well written Plan. DelDOT offers the following comments as to how the Plan may be improved:

- 1) In Section 1-5, Public Participation, there is discussion of the public open house that was held and the community survey that was administered, but there is no indication of how many people attended the open house or how it was advertised. Similarly, there is no mention of how many survey responses were received, either in terms of an actual number or a percentage of those sent out. Including at least estimates of these numbers would be helpful to people trying to assess the amount of public involvement that the Plan received.

- 2) In Section 2-2, Demographics, Future Population, and Housing Growth, Table 3a shows an increase of 49 residents and 87 dwelling units from 2001 to 2007. The supporting text discusses growth and the large number of recorded lots, but there is necessarily something else happening if the number of dwelling units is increasing faster than the number of residents. It was explained at the PLUS meeting that this disparity is due to the construction of summer homes. We recommend that this explanation be included in the text of the Plan.
- 3) In Section 2-4b, Public Safety and Community Services, there is a very brief recommendation that the Town “Establish a town trash service.” DelDOT suggests that the Plan should offer a recommendation on how to best do that. The options they see are contracting for the service and including the service in the public works department, which could initially be as small as two contract or part-time employees.
- 4) DelDOT has several comments regarding Section 2-4c, Transportation:
  - a) Regarding the intersection of Vines Creek Road (Sussex Road 26), Armory Road (Sussex Road 382) and Chapel Lane, DelDOT is aware that the community continues to have concerns about this area. The design of recent improvements there was constrained by the need to avoid the cemetery associated with Prince George’s Chapel and a desire to avoid the surrounding residential properties. The Traffic Section has evaluated the signalization there previously and continues to look for ways to improve it. Mr. Thomas Meyer, our Traffic Studies Manager, may be contacted for more information in this regard. Mr. Meyer may be reached at (302) 659-4090.
  - b) The intersection of Iron Branch Road (Sussex Road 331), Main Street (Sussex Road 334) and Hudson Road (Sussex Road 336A), was recently evaluated as part of the traffic impact study for Moorings at Peppers Creek, a proposed subdivision on Piney Neck Road (Sussex Road 336) east of the town. Presently DelDOT is in discussions with the developer regarding this location but their intention is to have the developer lengthen the right turn lane on Iron Branch Road. DelDOT would also have them enter a signal agreement, whereby they would fund all or part of a future signal at the intersection of Main Street and Iron Branch Road. DelDOT only installs signals when sufficient traffic volumes or other specific site conditions, such as high pedestrian volumes, are present to warrant them. Presently, it does not appear that there is sufficient traffic on Iron Branch Road to meet the relevant warrants. However, Mr. Meyer may be contacted at the number above to schedule a new warrant study if necessary. Options were considered and rejected for closing Hudson Street at Iron Branch Road or limiting turning movements there. For now DelDOT will leave that aspect of the intersection as it is.

- c) The second recommendation, “for the Town and DeIDOT...to work together in redirecting Route 26 south of the Town and reassign existing Route 26 as a business Route 26 through Town,” is characterized as “a short term recommendation”. DeIDOT believes that characterization significantly understates the situation. The suggested bypass route would include at least 1.5 miles of new road, a railroad crossing, which would probably require a bridge, and at least one stream crossing, also requiring a bridge. In comparison to the road contemplated in the US 113 North-South Study, this new road might be relatively short-term, but allowing five years for planning, design and right-of-way acquisition and three years for construction, it would take a minimum of eight years to build this road if funds were available to do so, which they are not. If the Town would like us to consider a Route 26 bypass, they should present this concern during the preparation of the next Capital Transportation Program. The Public Relations Section may be contacted at 760-2080 for the current hearing schedule.
- 5) There are several recommendations relating to DeIDOT in Section 3-1, Summary of Recommendations. DeIDOT supports all of them, but have difficulty relating them to the more specific recommendations in Section 2-4c. DeIDOT suggests that one or both sections be revised to reconcile the two.

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

Most of DNREC’s comments relate to the implementation of Dagsboro’s comprehensive plan and subsequent ordinances. DNREC welcomes the opportunity to advise the town and work with it on the development of ordinances that protect natural resources and environmentally sensitive features.

**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.
3. The Plan narrative did not mention the specific Federal and State wetland regulatory programs for protecting nontidal and tidal wetlands. We strongly suggest the following being added as a “stand-alone section” under the Environmental Protection section:

Regulatory protection of wetlands (tidal and nontidal) is mandated under Section 404 provisions of the Federal Clean Water Act through the United States Army Corps of Engineers (USACE). Certain other wetlands (mainly in tidal areas) are accorded additional regulatory protection under Title 7, Chapter 66 provisions of the State of Delaware’s Code.

***Specific Comments***

Page 28, Environmental Protection Section: DNREC feels that the environmental protection section should include more specifics and clarifying commentary on TMDLs. Therefore, they suggest that you eliminate the second paragraph under this section and replace with the following narrative and table:

The Town of Dagsboro is located within the greater Inland Bays drainage. Under Section 303(d) of the 1972 Federal Clean Water Act (CWA), states are required to identify all impaired waters and establish total maximum daily loads (TMDLs) to restore their beneficial uses (e.g., swimming, fishing, 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. In simplistic terms, a TMDL matches the strength, location and timing of pollution sources within a watershed with the inherent ability of the receiving water to assimilate the pollutant without adverse impact. Moreover, reducing the pollutants to the level specified by the TMDL(s) will ensure that a water body meets the water quality criteria and goals in the State Water Quality Standards.

A Pollution Control Strategy (PCS) is an implementation strategy that identifies the actions necessary to systematically reduce the pollutant loading rate for a given water

body, and meet the TMDL reduction requirements specified for that water body. A variety of site-specific best management practices (BMPs) will be the primary actions required by the PCS to reduce pollutant loadings. The pollutants specifically targeted for reduction in the Inland Bays watershed are nutrients (e.g., nitrogen and phosphorus) and bacteria. The PCS for the Inland Bays was approved on November 11, 2008, and is now a regulatory directive containing enforceable provisions.

The Town of Dagsboro is located within the greater Inland Bays drainage (high nutrient reduction area). The Inland Bays drainage is assigned a range of nutrient (e.g., 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 Drainage (high reduction area)</b>	<b>N- reduction requirements</b>	<b>P-reduction requirements</b>	<b>Bacteria-reduction requirements</b>
Indian River Bay watershed	85%	65%	40% Fresh; 17% Marine

Table 1: TMDL Nutrient (Nitrogen and Phosphorus) and Bacteria reduction requirements for the Inland Bays (high reduction area).

Page 28, Implementation Section: The Plan should offer more specific “actionable” environmental protection strategies than currently offered. 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 to 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**

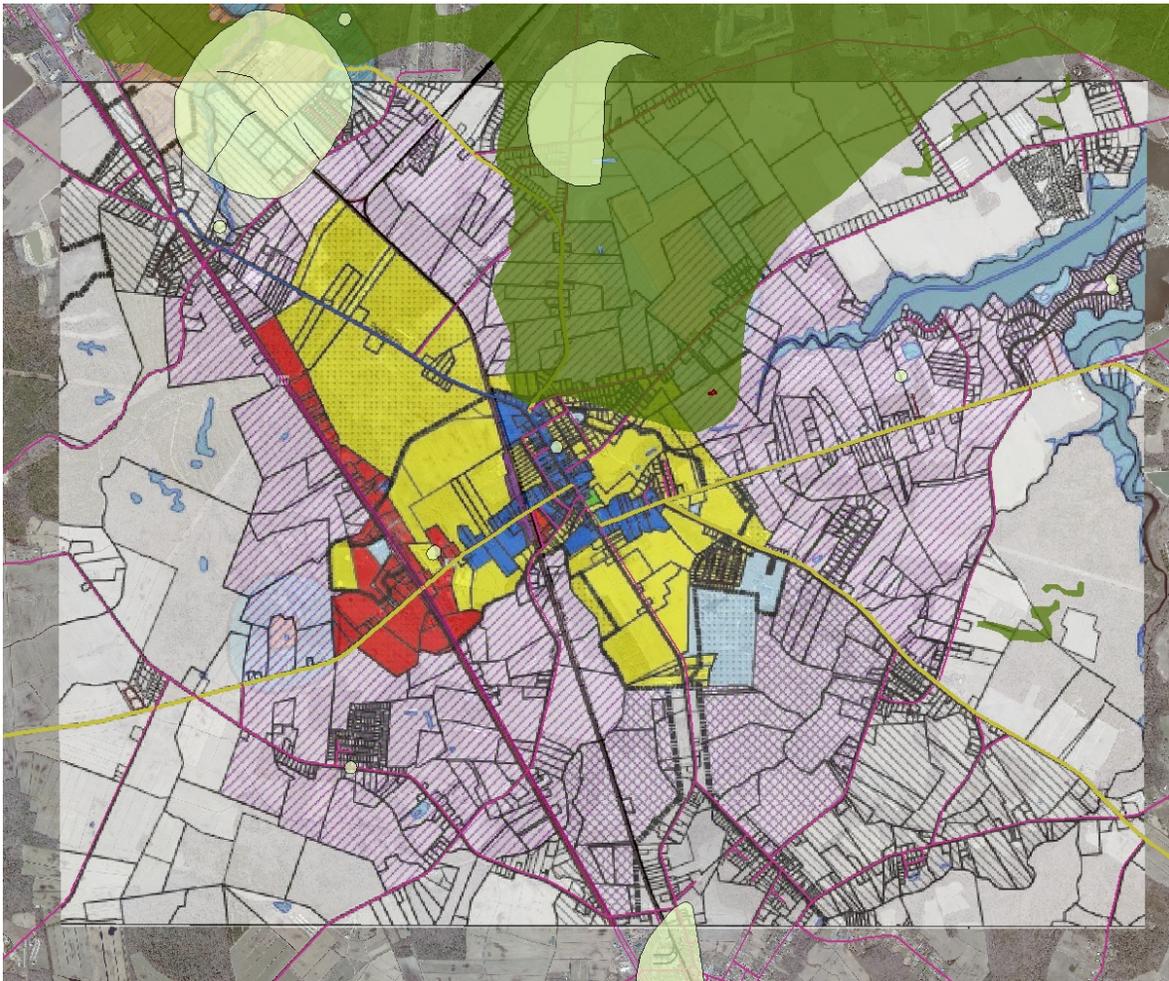
The Water Supply Section, Groundwater Protection Branch (GPB) applauds the Town's intent to develop a source water protection ordinance in preparation for the expansion of the Town's water system. The Town should include protection for excellent groundwater recharge potential as well as wellhead protection areas because there is an area of excellent recharge potential within the proposed annexation area: Map 4 Future Land Use and Annexations.

GPB encourages the Town to use *the Draft Model Ordinance for Smaller Municipalities of Kent and Sussex Counties, Source Water Protection Area Ordinance* to develop their ordinance. The publication can be found at,

[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 Town states on page 28 of the Plan that “two private water supply wells are found within the Town boundaries”. These are Public Water Supply systems. One system has two wells. Both these systems have interconnected to Dagsboro Public Water System. All three wells need to be properly abandoned by a State of Delaware Licensed well driller who must submit an abandonment report to DNREC Well Permitting Section.

**Map of the Town of Dagsboro, DE (PLUS 2008-12-02) Map 4.** Future land Uses and Annexations submitted as provided by applicant in the application is shown overlain DNREC source water protection areas.



## Legend

 Wellhead Protection Areas

 Excellent Ground-Water Recharge Potential Area

## **Water Supply**

The Town of Dagsboro proposes annexation of 900 acres on the north side of the Town, consisting mostly of residential areas. In addition, there is a large proposed annexation zoned for institutional development.

The Draft Update includes the following assessment of the adequacy of current water supply:

Water supply in the Town most likely will not keep up with the demand based on approved subdivisions and potential new development. The Town is currently receiving 81 percent of the agreed upon water allocation from the Town of Millsboro. This averages out to potentially 73 additional homes being built within the Town before the agreement with Millsboro has exceeded its agreed upon quantity. With the addition of Savannah Square Shopping Center, Clayton Crossing Business Park and the permitted commercial uses in these buildings, it is possible the amount of water available for additional homes will be much less.

The proposed 900 acres of new annexation represents an increase in area of 87%, and presumably represents an equivalent increase in water demand. There is currently less than 19% available new water. The Comprehensive Plan Update includes no plan for identifying new water supplies, only a recommendation that there should be a plan. Thus, the planning for water supply is lagging far behind the planning for new development. Given the current difficulties in the Town of Millsboro (the source of Dagsboro's water), it is critical that the water supply locations be identified before the development plans consume all the available space in the Town. Each water supply location needs to be free from contaminant sources, and its aquifers need to be evaluated for capacity and water quality. There has been general public dissatisfaction with the use of confined aquifer wells in Millsboro since the contaminant plume was found to be affecting the shallow wells. If the confined aquifer (Manokin aquifer) is to be used, a treatment process must be implemented to overcome the taste and odor issues associated with it. After the identification of water supply areas and selection of the aquifer to be used, the Town's source water ordinance requires that zoning around the water sources be adjusted to protect the resource.

## **Sediment, Stormwater, and Drainage**

Page 12, Future Land Use and Annexation

- 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.

- With the exception of Tax Ditches, 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 to survey.

#### Page 16, Recommendations, Addition of Recommendation #6

- 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 development 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.

#### Page 21, 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.
- 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 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 Dagsboro 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 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.
- Explore the feasibility of stormwater utility to fund upgrades to existing 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 Sussex Conservation District, Sussex County and the Delaware Clean Water Advisory Council as partners in funding stormwater retrofits.

Page 23, Recommendation #3

- 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 30, Recommendation #3

- The Drainage Program recommends including wetlands setbacks as part of the ordinances to protect environmental resources. Wetlands should be protected by a setback of un-subdivided open space surrounding them. No portion of any building lot should be within the setback. During prolonged wet periods, the area within the wetland setback 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 setback thereby reducing nuisance drainage complaints.

- 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. On private ditches, a Drainage Management Plan, working in conjunction with the sediment and stormwater plan, would include a maintenance plan for drainage conveyances, include points of access for maintenance equipment, and designate spoil disposal areas.

Page 33, Short term recommendation

- The Drainage Program recommends existing drainage ways be incorporated into open space plan. 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, along with potential annexation sites, as these channels may require maintenance in the future. Most of the channels have trees and wetlands adjacent to the channel and the riparian area, providing a multitude of benefits for water quality and wildlife. There must be a balance between preserving the riparian area and having the capability to access the channel to perform maintenance. By identifying such areas now, future development would incorporate the areas into community open space thereby preserving the riparian area while allowing for channel maintenance access.

Page 34, Mid/Long term Recommendation

- The Drainage Program applauds the effort for the Town to achieve the Tree City U.S.A. status and supports the town ordinances protecting greenery and forested tracks of land. Please be mindful when planting native vegetation along drainage conveyances and consider how future drainage maintenance will be performed. Key components to achieve this recommendation are :
  - Consider future drainage maintenance before planting riparian areas. 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 of the top of the bank to avoid future blockages within the channel from tree roots.
  - Plant the balance of the area, 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.

### **Habitat Protection**

2-3. Future Land Use and Annexation, Annexation (Short-term Growth Area): On page 14, the Town is proposing to annex approximately 782 acres: 560 acres for residential use, 155 acres for commercial use and 67 acres for institutional use.

1. DNREC recommends the Town also set aside some of the proposed annexed acreage as preserved open space.

Area of Concern (Long-term Growth), page 14: The Town outlines a request to have some degree of input or control over land use and development activities in those areas outside of Town boundaries that have the potential to impact the Town. They plan to coordinate with Sussex County on these issues and to notify and coordinate with the county if the town becomes aware of development activity in the Area of Concern.

2. DNREC recommends the Town also consider coordinating with State Agencies, such as DNREC, to ensure that projects are environmentally sensitive. If not, a project could go forward without the benefit of state agency input, which includes input from scientists that could aide in efforts to ensure environmentally sensitive development.
3. DNREC highly recommends that the Town require developers, or applicants of development projects, to contact the Natural Heritage and Endangered Species Program (NHESP) of DNREC's Division of Fish and Wildlife 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  
(302) 653-2880

4. DNREC also recommends the Town refer to the Delaware Wildlife Action Plan (DEWAP) when making land-use decisions. DEWAP is a comprehensive strategy for conserving the full array of native wildlife and habitats, common and uncommon, as vital components of the State's natural resources. This document can be viewed via

our program website at <http://www.dnrec.state.de.us/nhp>. This document also contains a list of Species of Greatest Conservation Need (SGN) as well as species-habitat associations.

2-4b. Public Safety and Community Services, Parks, Recreation and Open Space: On Page 23, recommendation #5 states *'Amend the zoning code to require new developments to preserve open space and environmentally significant features.'*

5. The Town should require new developments to create plans that maintain habitat connections to minimize impacts to wildlife across the landscape.

Open space within developed areas often serves as a travel pathway or corridor for wildlife between areas of fragmented habitat. Wildlife corridors support the survival of many species by providing sources of food and water, providing protective cover from predators, shelter from harsh weather, and reconnecting isolated populations. These corridors can help reduce the negative effects of habitat fragmentation by allowing dispersal of individuals between patches of remaining habitat.

6. Applicants of development projects should contact the NHESP (as described above) in order to determine what environmentally significant features occur on site as it relates to wildlife habitat and rare species occurrences.

Environmental Protection: On page 29 a tree protection ordinance is explained and recommendation #5 states that tree and woodland ordinances will be enforced to preserve greenery in Town.

7. DNREC recommends the Town also consider implementing its tree protection ordinances for parcels that are within the proposed annexation area and within the 'Area of Concern' if these parcels are annexed into the town in the future.
8. Especially important is the forested buffer area that occurs along Pepper Creek and is within the Area of Concern. If these parcels are annexed, the Town should require that the existing forested buffer be maintained. Among the many benefits of maintaining trees along the shore is the use of these trees by Bald Eagle for nesting, foraging and roosting.

### **Parks, Recreation, and Open Space**

The Town of Dagsboro currently has one public park facility: Katie Helm Park, located off of Main Street in between Canal Street and Swamp Road and two school sites (the new and old high school) that provide recreational opportunities.

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 are publicly accessible lands that must remain as open space for conservation or recreation

purposes in perpetuity. Both Katie Helm Park and the old High School complex have received funding through the DTF program. For more information regarding Katie Helm Park, or on the Delaware Land and Water Conservation Trust Fund, please contact: Robert Ehemann @302.739.9235

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 2009-2011 Statewide Comprehensive Outdoor Recreation Plan (SCORP) providing guidance for investments in needed outdoor recreation facilities.

Ninety-one percent of residents living in eastern Sussex 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 western Sussex County include: walking/jogging paths, bicycle paths, public swimming areas, public fishing access, open space/passive recreation, picnic areas, playgrounds, and hiking trails. Moderate facility needs include: boating access, public campgrounds, baseball/softball fields, horseshoe pits, basketball courts and tennis courts. Because of the importance of outdoor recreation in eastern Sussex County, the Town of Dagsboro should work to incorporate some of these opportunities in the development of their comprehensive plan. For more information on the Statewide Comprehensive Outdoor Recreation Plan or the public opinion telephone survey, please contact: Kendall Sommers @ 302.739.9235.

*Recommendations:*

The Town of Dagsboro should work to pursue the plans for the Katie Helm Park. Top priorities should include parking and connecting the park to residential developments.

The Town of Dagsboro should consider creating an open space ordinance that would require all new developments to set aside land for parks and open space.

**Under/Aboveground Storage Tanks**

Should any underground storage tanks or petroleum contaminated soil be discovered by any person during construction, the Delaware Department of Natural Resources and Environmental Control-Tank Management Branch (DNREC-TMB) at (302) 395-2500 and the DNREC Emergency Response Hotline at (800) 662-8802 must be notified within 24 hours.

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.

If any aboveground storage tanks (ASTs) less than 12,500 gallons are installed, they must be registered with the Delaware Department of Natural Resources and Environmental Control Tank Management Branch (DNREC-TMB). If any ASTs greater than 12,500 gallons are installed they are subject to installation approval by the DNREC-TMB.

### **Site Investigation and Restoration**

DNREC's Site Investigation and Restoration Branch (SIRB) encourages the development of Brownfields and can provide assistance when investigating and remediating Brownfield sites. Note that the town of Dagsboro is connected to Millsboro's municipal water system. Millsboro has had high levels of TCE in the drinking water and is currently undergoing treatment for the contaminated water. The town of Dagsboro had low readings of TCE in the drinking water, and with treatment, TCE is no longer a threat to the residents of Dagsboro.

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**

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. At this time, this Agency has no objection to, and makes no comments regarding, the Comprehensive Plan or an amendment to a Comprehensive Plan.

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

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

The Delaware Department of Agriculture would like to commend the town on a well-conceived and well-written comprehensive plan. The Department offers no additional comments, as the town has already adequately addressed issues pertaining to agriculture.

### **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 Dagsboro 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 Dagsboro 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 interest 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**

DSHA has reviewed the Town of Dagsboro Comprehensive Plan. Since the Town of Dagsboro has a population of less than 2,000, they are required to state their position on housing growth. DSHA supports the Plan's position on housing growth.

DSHA has developed a website, **Affordable Housing Resource Center**, to learn about resources and tools to help create housing for households earning 100% of median income or below.

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

If you have any questions, please feel free to call me 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 to assist and participate by coordinating with the Town of Dagsboro, 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.
  5. DOE has no objections or comments regarding the Comp. Plan under consideration.

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

To address the Town's concern about adjacent development the County now uses the following process for proposals with Town Areas of Concern. Prior to submitting the project to Sussex County the applicant should (1) contact the town to apprise them of the project and (2) determine if the terms for annexation can be agreed upon. In addition, the County Council has adopted a standardize approach to MOU's for coordination with municipalities. Contact Hal Godwin for further assistance at 302.855.5060.

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

The Engineering Department comments:

Sussex County is nearing completion of the Dagsboro/Frankford Wastewater Study. The study performs wastewater planning for the Dagsboro/Frankford Sanitary Sewer District, including options for future sewer service. Alternatives for additional treatment and disposal capacity are being evaluated.

In the short term, Sussex County has submitted an application to rerate and increase the treatment/disposal capacity of the Piney Neck Regional Wastewater Facility. Based on anticipated approval and other upgrades being undertaken, Sussex County feels the existing system can serve parcels within the existing district for the foreseeable future. Sussex County is concerned with the additional mixed use areas shown on Map 4 because of the potential for increased density and additional wastewater discharge. Sussex County recommends that future land closely follows the previously considered density of 4.0 EDU for residential areas. Sussex County is also concerned with the additional commercial area shown west of 113. Planning study assumptions have limited commercial zoning consideration to a 500 foot wide strip along 113.

***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 town.
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 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, State Planning Coordination

CC: Sussex County