



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

May 18, 2009

Ms. Faye Lingo  
Town of Millsboro  
322 Wilson Highway  
Millsboro, DE 19966

RE: 2009-04-02; Town of Millsboro Comprehensive Plan Update

Dear Ms. Lingo:

Thank you for meeting with State agency planners on April 27, 2009 to discuss the proposed Town Of Millsboro draft 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.

- Based upon review of the DRAFT 2009 Town of Millsboro Comprehensive Plan Update; the plan meets minimum certification requirements as defined by Delaware Code and this office no certification requirements at this time.

***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 – Contact: Bryan Hall 739-3090**

The Office of State Planning and Coordination commends the Town for its efforts for this most recent update of their comprehensive land use plan. After review of the document, this office finds that it meets the minimum requirements as defined by Delaware Code for certification by the State. However, I would ask that you review these recommendations

provided by State and County agencies to further strength you plan, such issues as highlighting the parks and recreation program, indentify further opportunities to strengthen environmental protection regulations and the need to manage key infrastructure such as waste water and storm water within the community. Once again, I commend the Town and its consultants for their efforts and if you have any questions, please contact me.

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

The State Historic Preservation Office has no objection to the proposed changes, and if you have any further questions in reference to this Comprehensive Plan, we please contact Alice Guerrant at 302-736-7412 or by e-mail, [alice.guerrant@state.de.us](mailto:alice.guerrant@state.de.us)

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

The Town of Millsboro has submitted their draft update of their comprehensive plan for review. Briefly, the 2001 Plan was a good plan and the 2004 and 2009 Updates have built on it. We have no recommendations for improvement, but we would like to recognize the particular emphasis on service roads, shared access, and greenways in the Transportation chapter, and the Town’s active participation in the US 113 North-South Study. Further, we commend the Town for their extensive public participation effort and the detail on it that they provided in the Update. For an update, as opposed to a completely new plan, both are exceptional.

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

DNREC’s principal concern is the proximity of the Northwest Annexation Area, and the large-scale commercial development planned for that sector, to the Doe Bridge Nature Preserve – an area of great ecological significance with dozens of documented rare plant and animal species – and other natural areas. DNREC asks that the Town work together with their department and the developers to safeguard those fragile ecosystems.

**Fish and Wildlife**

**Future Land Use Plan/Northwest Annexation Areas**

Parcels designated for future land use within the ‘Northwest Annexation Area’ map have environmentally sensitive areas including forests, wetlands, key wildlife habitat, state natural areas and habitat that support species of greatest conservation need (SGCN<sup>1</sup>). It is unclear how the Town will address protection of these areas as there are no specific

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<sup>1</sup> Species of greatest conservation need (SGCN) are identified in the Delaware Wildlife Action Plan (DEWAP). In a broad sense, SGCN, as defined for DEWAP, are indicative of the overall diversity and health of the State’s wildlife resources. Some may be rare or declining, others may be vital components of certain habitats, and still others may have a significant portion of their population in Delaware.

action items/recommendations in the plan that address forest protection or protection of habitat that supports rare, threatened or endangered species.

Page 3, goal #6. States: “*Protect the natural environment and prevent the destruction of natural resources through the preservation of ecological systems and mitigation of development impact on the natural environment.*” How does the Town specifically plan to obtain this goal? There are no recommendations that specifically address preservation or mitigation.

The following text is on Page 26 “*Environmental conservation provisions will be extremely important to preserve natural habitats, reduce flooding hazards and to keep sediment and other pollutants out of the inland bays. Due to the sensitive environmental nature of these areas, every effort should be made to minimize tree loss, clearing activities and development in the wetlands, the 100-year floodplain and the riparian corridors. Please refer to Chapter 4 – Environmental Protection for recommendations to protect the environmentally sensitive areas.*” There are no action items/recommendations in Chapter 4 that specifically outline a plan to preserve natural habitats, minimize forest loss or protect habitat that supports rare species.

#### Rare species and unique natural communities

Division scientists have not surveyed most of the area to be annexed; however, rare species have been documented along or within Sheep Pen Ditch, Mirey Branch and Cow Bridge Branch. These riparian habitats could be impacted directly by development construction or indirectly by run-off from those developments.

State-rare Atlantic white cedar wetlands have been documented along Sheep Pen Ditch and parts of Cow Bridge Branch. These unique wetlands typically grow under unique conditions which are often refugia for rare species. This wetland type is sensitive to sedimentation and changes in water quality, especially pH. The hydrological regime is a major determinant of the resulting biota in this system. If these conditions are disturbed or changed in any way from development activities, the potential exists for community structure and plant species composition to shift in an unfavorable direction.

Doe Bridge Nature Preserve is an area of approximately 314 acres along Cow Bridge Branch that has a large tract of intact forest. Surveys are on-going; however, initial surveys have revealed a unique array of vegetation communities. These communities support 26 species of rare plants. Additionally, twelve species of rare animals were discovered at Doe Bridge, including a visual observation of a federally endangered Delmarva fox squirrel (*Sciurus niger cinereus*) and Chermock’s mulberry wing (*Poanes massasoit chermocki*), a butterfly that has been found at only one other site in the world.

Increased amounts of run-off and sediments from development of parcels designated as ‘Town Center Commercial’ could ultimately flow towards this nature preserve. If the existing water quality conditions are changed, there is a potential that vegetative community structure and species composition could shift in an unfavorable direction.

### Forested Habitat/Key Wildlife Habitat

The plan does not include specific action items that will aide in preservation of forested resources. Some of the land proposed for annexation is mapped as key wildlife habitat in the Delaware Wildlife Action Plan (DEWAP<sup>2</sup>). This includes the forested riparian buffers along Sheep Pen Ditch and fairly large areas of forest on tax parcels 133-11.00-3.00, 133-11.00-4.00 (both sides of US Route 113), 133-11.00-5.00. Cumulative forest loss and fragmentation throughout the State is of utmost concern to our Division which is responsible for conserving and managing the State's wildlife (see [www.fw.delaware.gov](http://www.fw.delaware.gov) and the Delaware Code, Title 7). There is an overall lack of forest protection on the State and County level.

#### *Recommendations:*

1. DNREC recommends the Town refer to the key wildlife habitat maps in the Delaware Wildlife Action Plan (DEWAP) when making land-use decisions. The Town should implement specific measures that will aide in forest protection. Especially important is the preservation of larger, connected areas of forest and those forested areas along water bodies.
2. DNREC high 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:

Edna Stetzar  
Environmental Review Coordinator  
Natural Heritage and Endangered Species Program  
DNREC-Division of Fish and Wildlife  
4876 Hay Point Landing Rd  
Smyrna, DE 19977  
[Edna.Stetzar@state.de.us](mailto:Edna.Stetzar@state.de.us)  
(302) 653-2880 ext. 101

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<sup>2</sup> 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 DNREC's Natural Heritage and Endangered Species Program website at <http://www.dnrec.state.de.us/nhp>. This document also contains a list of SGCN as well as species-habitat associations.

3. Efforts should be made to ensure that run-off generated by development of lands designated as ‘Town Center Commercial’ does not impact the Doe Bridge Nature Preserve. Hydrological connections within the watershed should be examined first so that proper measures can be implemented to ensure habitat quality of the preserve is protected.

## **Parks and Recreation**

### Natural Areas

A portion of the lands proposed for Phase 1 Annexation east of Millsboro Pond are currently listed on Delaware’s Natural Areas Inventory. Natural Areas contain lands of statewide significance identified by the Natural Areas Advisor Council as the highest quality and most important natural lands remaining in Delaware. Serious consideration should be given to protecting these resources. If the lands surrounding Millsboro Pond are annexed as outlined, every effort should be made to protect a forested buffer around the pond. For more information, please contact the Office of Nature Preserves at 302.739.9235.

### Parks and Recreation

Parks and Recreation appreciates the Town’s effort to include Conservation, Open Space, and Recreation priorities within the Comprehensive Plan. The following is an overview of updated information to keep in mind when planning various park facilities.

In May and June 2008, the Delaware Division of Parks and Recreation conducted a telephone survey of Delaware residents to gather information and trends on outdoor recreation patterns and preferences as well as other information on their landscape perception. These findings are the foundation of the 2008-2011 Statewide Comprehensive Outdoor Recreation Plan (SCORP) providing guidance for investments in needed outdoor recreation facilities. The SCORP can be a useful document when addressing parks and recreation facilities and needs within county and municipal comprehensive plans. For the purpose of refining data and research findings, Delaware was divided into five planning regions. The Town of Millsboro is located within SCORP Planning Region 5.

### Importance of Outdoor Recreation

When looking at the findings from the 2008 telephone survey, it is apparent that Delawareans place a high importance on outdoor recreation. Statewide, 91% of Delaware residents indicated that outdoor recreation had some importance in their lives, while 64% said it was very important to them personally. These findings are very close to the results of the same question asked in the 2002 public opinion telephone survey, indicating a continued demand for outdoor recreation opportunities throughout the state.

Placing high importance on outdoor recreation resonates throughout the five SCORP regions. In Region 5 (eastern Sussex County), 91% of residents indicated that outdoor recreation had some importance in their lives, while 64% said it was very important to them personally.

#### Participation in Outdoor Recreation

In SCORP Region 5 (eastern Sussex County), walking and jogging (86%) was the most participated in household activity followed by swimming at the beach (74%), and visiting historic sites (70%). Region 5 had lower than the statewide average household participation in tennis (13%) but had the highest level of participation in fishing (57%).

#### Reasons for Participating in Outdoor Recreation

In Region 5, 55% of the residents said that they participate in outdoor recreation for their physical fitness. This is a 9% increase from the same question asked in 2002. This increase is a clear indication of a growing demand for walking paths and trails. Other top reasons for participating in outdoor recreation in Region 5 include; for relaxation (20%), to be close to nature (17%), and to be with family and friends (15%).

#### Outdoor Recreation Needs/Priorities

Based on the public opinion survey, the most needed outdoor recreation facilities in Millsboro include:

High facility needs:

- Walking and jogging paths
- Bicycle paths
- Public Swimming Pools
- Fishing Areas
- Open Space and Passive Recreation Areas
- Picnic Areas
- Playgrounds
- Hiking Trails

Moderate facilities needs:

- Access for Boating (canoe, kayak, and powerboat)
- Public Golf Courses
- Campgrounds
- Baseball/Softball Fields
- Horseshoe Pits
- Basketball Courts
- Tennis Courts

The Town of Millsboro is encouraged to work toward incorporating and/or continuing to offer some of these opportunities in the development of their Comprehensive Plan.

#### Town of Millsboro Parks and Recreation Facility Inventory

There are 4 Park and/or Recreation facilities in the Town of Millsboro:

- Cupola Park- a waterfront facility with picnic areas and a boat launch
- W.B. Atkins Memorial Park- facility with ball fields
- Sussex Central Middle School- facilities include a track, ball fields, and tennis courts
- Millsboro Pond

#### Delaware Land and Water Conservation Trust Fund (DTF)

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 in perpetuity. Three of Millsboro's parks have received funding through the DTF program. They include: Cupola Park, W.B. Atkins Memorial Park, and Sussex Central Middle School. The Town of Millsboro could further benefit from this program when incorporating new outdoor recreational facilities or adding amenities to existing parks. For more information on the Delaware Land and Water Conservation Trust Fund, please contact: Robert Ehemann @ 302.739.9235.

*This information was compiled by the Delaware Division of Parks and Recreation, Parks Resource Office. For more information on the Statewide Comprehensive Outdoor Recreation Plan and public opinion survey results please contact Kendall Sommers at [Kendall.Sommers@state.de.us](mailto:Kendall.Sommers@state.de.us) or 302.739.9235.*

#### **Potential Brownfield Sites**

DNREC's 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.

## **Water Resources Comments**

**Chapter 3, Land Use.** DNREC recommends the incorporation of a separate (or “stand-alone section”) “Environmental Protection” section within chapter 3. Moreover, they believe that this chapter should offer more specific and clarifying commentary on TMDLs and wetland regulatory issues. They further believe that that this section should make specific “actionable” recommendations (i.e., through ordinances) that will help ensure compliance with said regulatory issues. Please consider the following:

### TMDLs

Under Section 303(d) of the 1972 Federal Clean Water Act (CWA), states are required to identify all impaired waters and establish total maximum daily loads to restore their beneficial uses (e.g., 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 (WLA’s) for point sources and Load Allocations (LA’s) 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.

A Pollution Control Strategy (PCS) specifies actions necessary to systematically reduce nutrient and bacterial pollutant loading to the level(s) specified by the Total Maximum Daily Load; and must reduce pollutants to level specified by the State Water Quality Standards. A variety of site-specific best management practices (BMPs) will be the primary actions required by the PCS to reduce pollutant loading(s).

The Town of Millsboro is located within the greater Inland Bays/Atlantic Ocean Drainage, specifically within the Indian River Bay watershed. The pollutants targeted for reduction in the Indian River Bay watershed are nutrients (e.g., nitrogen and phosphorus) and bacteria (Table 1). As mentioned previously, the PCS will require specific actions that reduce nutrient and bacterial loads to levels consistent with the goals and criteria specified in the State Water Quality Standards. The PCS for the Inland Bays was approved on November 11, 2008, and is now an enforceable regulatory directive.

<b>Inland Bays/Atlantic Ocean Drainage</b>	<b>N- reduction requirements</b>	<b>P-reduction requirements</b>	<b>Bacteria-reduction requirements</b>
Indian River Bay	40% low reduction area, 85% high reduction area	40% low reduction area, 65% high reduction area	40% fresh, 17% marine

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

Wetlands

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

Source Water Protection Areas

The City’s source water protection ordinance is protective of the resource. DNREC applauds the City’s efforts in restricting land use and land cover in areas delineated by Delaware Geological Survey (DGS) as ‘good ground-water recharge potential,’ going above the State’s requirement to protect excellent ground-water recharge potential areas. However, there are some contextual errors, and the Environmental Features map is difficult to interpret.

1. The Plan contains a discussion on ‘Immediate Recharge Areas,’ ‘Excellent Recharge Areas’ and ‘Primary Recharge Areas’. §210-23.C. of the Town’s ordinance does not use the same names. The ordinance uses ‘Immediate Recharge Areas,’ ‘Primary Recharge Areas’ and ‘Secondary Recharge Areas’.

- GPB recommends:

Use the same language found in the Ordinance to reference these areas

2. Secondary Recharge Areas (good ground-water recharge potential areas) are protected by the Town under §210-23.C. (3) (a) but are not shown on the Town’s Environmental Features map (Map 1).

- GPB recommends:

Include good ground-water recharge potential areas on the Town’s Environmental Features map.

3. The intent of the source water protection ordinance is to protect all public water systems (PWS) not just wells owned and maintained by the Town. The Town's Environmental Features map is not current. It does not show all the wellhead protection areas.

- GPB recommends:

Please contact DNREC Source Water Protection Program for an update on wellhead protection area delineations for all PWS in the areas of concern for inclusion in the map.

4. The Environmental Features map is difficult to interpret. Wellhead Protection Areas (WHPA) are shown using the ESRI symbol 721 Massive Igneous Rock 1. This symbol is a matrix of plus signs (+) and is lost in the map.

- GPB recommends:

Use a solid color or a symbol that is readily identifiable to show the source water protection areas.

5. The area for annexation and consideration for the Racino Project falls within an area of good ground-water recharge potential protected under the Town's ordinance §210-23.C. (3) (a) (Map 2). The ordinance limits impervious cover to no greater than 50% and has restrictions on land use and land activities.

6. §210-23 C (1), (2), and (3) refer to the Millsboro 2004 Comprehensive Plan for definitions of the three districts included in the Wellhead Protection Overlay Zone. These districts are not defined in the 2004 Comp Plan; they are only shown on the map.

§210-23 C (2) (b) states in part that excellent ground-water recharge potential areas are identified by Delaware Certified Geologists using accepted hydrogeological techniques. The Delaware Geological Survey Report of Investigations No.66 delineated excellent and good recharge potential areas.

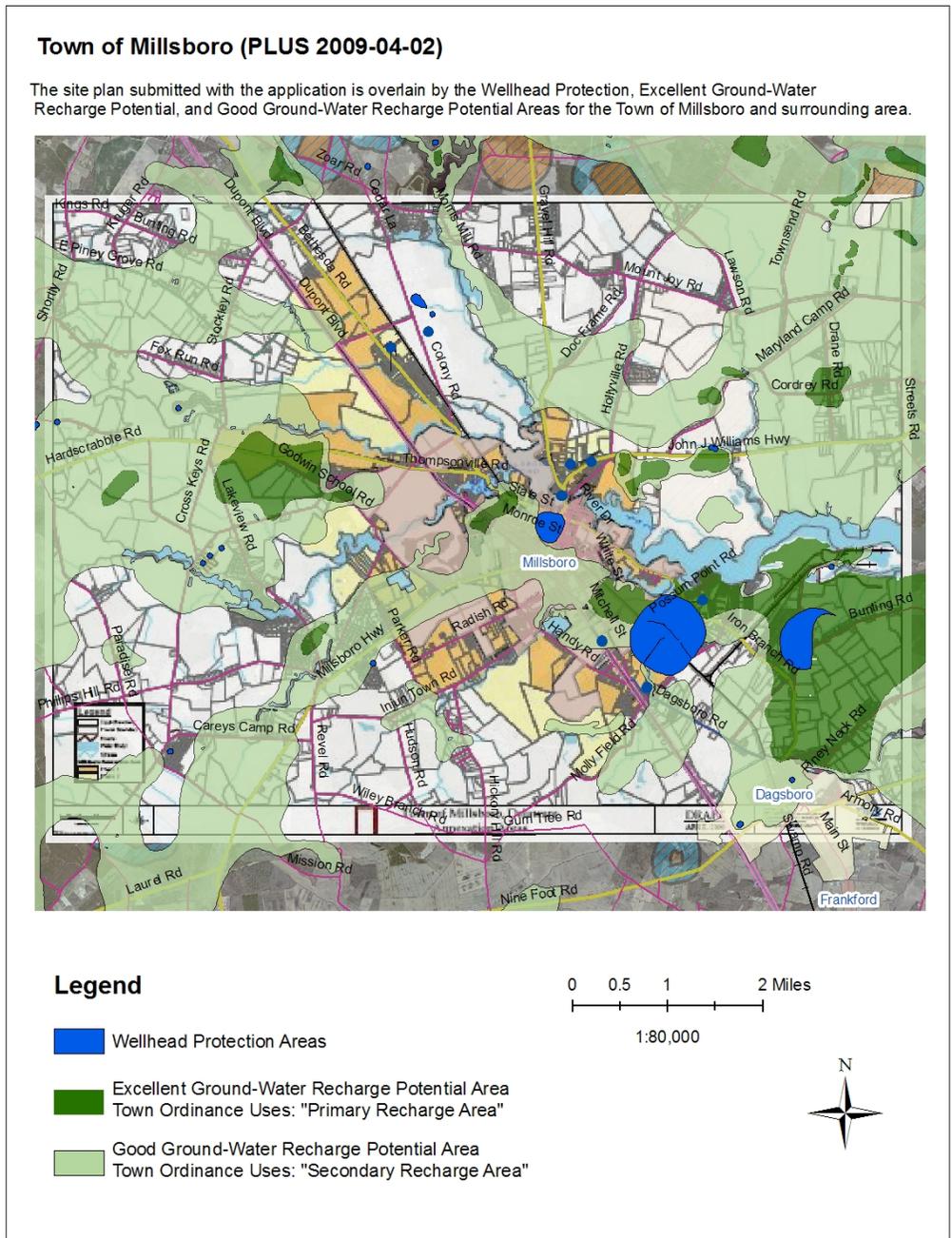
- GPB recommends use of the following language:

Excellent Ground-Water Recharge Potential Area: Those areas with high percentages of sand and gravel that have "excellent" potential for recharge as determined through a Stack Unit Mapping Analysis delineated by the Delaware Geological Survey and presented in the Report of Investigations No. 66, Ground-water Recharge Potential Mapping in Kent and Sussex Counties, Delaware, Geological Survey, 2004.

Good Ground-Water Recharge Potential Area: Those areas with a significant percentage of sand and gravel that have a "good" potential for recharge as determined through a Stack Unit Mapping Analysis delineated by the Delaware Geological Survey and presented in the Report of Investigations No. 66, Ground-water Recharge Potential Mapping in Kent and Sussex Counties, Delaware, Geological Survey, 2004.

Please contact the Source Water Protection Program at 302-739-9945 if you have any questions.

**Map 1** The areas of 'good ground-water recharge potential areas, defined in the Town's ordinance as 'Secondary Recharge Areas' and as 'Primary Recharge Areas in the Comprehensive Plan are not shown on the Town's Environmental Features map.



**Map 2** The site concept plan is shown overlain by the good ground-water recharge potential area. Good ground-water recharge potential areas are protected under the Town of Millsboro’s source water protection ordinance §210-23.



## **Stormwater/Drainage Comments**

### Chapter 4, Environmental Protection

- The Drainage and Stormwater Section recommends subwatershed planning within the future annexation areas. By utilizing the drainage pattern, the Town may be able to combine habitat protection, recreation, and stormwater management. The Town would need to partner with Sussex County as the watersheds extend out of the proposed annexation area identified by the Town.
- Existing woodland provides valuable wildlife habitat as well as soil erosion protection and water quality filtering. Preserve existing woodland within proposed annexation areas. Do not allow the clearing of woodland to create stormwater management areas. Develop a tree planting guideline, a tree mitigation planting guideline and woodland preservation language to protect the existing woodland from harvest prior to and after annexation.

### Page 28, Stormwater

- 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 Town should pursue drainage easements along waterways, ditches, and storm drains where currently there is none. The Drainage Program is aware the Town does not want the responsibility of routine maintenance on the conveyances. However the Town should have the ability to remove blockages either natural or manmade.
- 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.

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

#### Page 28, Wetlands

- The Drainage Program recommends including wetlands setbacks as part of the ordinances to protect environmental resources. Wetlands should be protected and a setback of un-subdivided open space surround 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.

#### Page 33, Open Space & Recreation

- 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.
- 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 provide 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.

### **Plan Implementation**

The Plan should offer more specific “actionable” environmental protection strategies than currently offered. Within the newly created “Environmental Protection” section, we strongly recommend an ordinance or ordinances which would:

- a) Require all applicants to submit to the City 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. (1994), an adequately sized buffer that effectively protects wetlands and streams - in most circumstances - is about 100-foot 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) Require an impervious surface mitigation plan for all residential and commercial developments exceeding 20% imperviousness. In commercial developments, it is strongly recommended that pervious paving materials be required on at least 50% of the total paved surface area(s).
- e) Require the calculation for surface imperviousness (for both commercial and residential development) take in to account all constructed forms of surface

imperviousness - including all paved surfaces (roads, parking lots, and sidewalks), rooftops, and open-water stormwater management structures.

- f) 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.
- g) Exclude structural Best Management Practices (BMPs) such as community wastewater treatment areas, open-water stormwater treatment structures and natural areas containing regulated wetlands from consideration as open space.
- 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.

#### Literature Cited

Castelle, A. J., A. W. Johnson and C. Conolly. 1994. *Wetland and Stream Buffer Requirements – A Review*. J. Environ. Qual. 23: 878

#### **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.

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

The DE State Fire Marshal's Office has no objection to the annexation growth and boundaries.

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

The Department would like to congratulate the town on a thoughtful well-written comprehensive plan. The Department would also like to thank the town for meeting with us before the PLUS meeting to discuss issues affecting agriculture. As a result, many of

the issues important to the Department have already been addressed in the plan. We offer a few additional comments and suggestions below.

The DDA asks that the town consider placing the land designated for spray irrigation in the state's Agricultural Lands Preservation Program. In addition to adding to the more than 200,000 acres of farmland already preserved by the program, the property will also benefit from the features the program offers. Please contact Scott Blaier at (302) 698-4530 for more information.

The Department also encourages the town to consider establishing agricultural/business zoning within the city to promote and support the agriculture. In addition to supporting existing agriculture in the area, there will also be additional opportunities associated with the Del Pointe project.

The Department encourages the town to promote farm markets to distribute and sell local produce and agricultural products. In order to be successful, it is important to coordinate farm market retailers with local suppliers. The Department has a fully staffed marketing section, and we encourage the town to contact them at (302) 698-4535 to see how they can help. Please contact Mark Davis at (302) 698-4503 or Kelli Steele at (302) 698-4535 to explore agricultural economic development activities.

The Delaware Forest Service encourages the town to develop a formal urban forestry management plan that addresses a tree canopy goal. Trees are a vital part of any community and the Delaware Forest Service recommends that trees be preserved during the development process. A tree ordinance protecting existing woodlands in future development as well as existing street trees can be developed and implemented to address this issue. The Delaware Urban & Community Forestry Program would be glad to offer assistance. Please contact the Delaware Forest Service for more information at (302) 659-6705 or 698-4547.

**Public Service Commission - Contact: Andrea Maucher 739-4247**

No comments were received regarding this application.

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

No comments were received regarding this application.

**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 Millsboro Comprehensive Plan Review:

### **Identify opportunities for physical activity and active transportation**

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

- The proposed bicycle/pedestrian plan is encouraged and offers an opportunity for active transportation. Address efforts to support and ensure inter-/intra-connectivity with residential and commercial properties through sidewalks, crosswalks and walking/bicycling paths. Consider a plan to install bike racks within commercial properties and in residential communities. It is suggested that the town planner review the “Healthy Communities: A Resource Guide to Delaware Municipalities.” This document addresses strategies and funding support to incorporate amenities (i.e. tree canopy, 5’ sidewalks, walking/bicycling paths, etc) that facilitate a healthy community
- The proposed strategies addressing recreation is commendable. It is recommended to explore facilities that provide opportunities for indoor recreation for residents of all ages. Indoor facilities will allow residents to engage in activity during the winter season or inclement weather.
- Address plans to incorporate suggestions made via the public participation process. For example, consider adding fitness trails in the community, which the results from the public participation process identified as a desirable amenity.

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

- Designate an area for a community garden. 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 Valerie Miller 739-4263**

DSHA has reviewed the Municipal Comprehensive Plan for the Town of Millsboro to determine how the Municipality has incorporated the State's goals, policies, and strategies as they relate to affordable housing. Since the Town of Millsboro has a population over 2,000 people, HB 396 mandates that towns of 2,000 or more develop a Plan to address affordable housing, which the Plan does state. DSHA supports the Plan and we applaud the Town of Millsboro for responding to the needs of affordable housing. DSHA's recognizes the Town of Millsboro's efforts in maintaining a balanced housing stock for its residents. We endorse the Plan's goals for housing and applaud Millsboro's efforts for taking into consideration resident concerns regarding housing. Specifically, we support the strategy to continue to require a variety of housing types through the development process. In particular, DSHA supports the housing recommended action to adopt a new zoning district that is consistent with neotraditional design principles. Neotraditional designed neighborhoods promote walkability and reduce the reliance on the automobile, thereby reducing the cost of living for many households. Also, such developments encourage more affordable housing options by integrating a variety of housing types.

Overall, this is a well thought out Plan with an appropriate housing analysis that addresses housing issues pertinent to the Town of Millsboro. However, we recommend concluding the 'Affordability' section of the housing element with a few remarks on how even though home prices have ballooned in recent years, Millsboro still provides housing affordable to all of its residents. DSHA can provide technical assistance on this subject. We have numerous resources available for local jurisdictions, including a guide to writing your housing element.

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

If you have any questions or would like to explore any of the housing tools in more depth, please feel free to call me at (302) 739-4263 ext. 260 or via e-mail at [valerie@destatehousing.com](mailto:valerie@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 this municipality, the local school districts, the County, the Office of State Planning Coordination as well as other school districts and stakeholders as future development and annexations may be considered.
5. DOE has no comments regarding the Comprehensive Plan update draft under consideration.

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

The Plan should include more consideration of industrial/business development along rail in either new or redeveloped sites.

***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 his consideration.
5. At his 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 project. If you have any questions, please contact me at 302-739-3090.

Sincerely,



Constance C. Holland, AICP  
Director

CC: Sussex County