



**STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF STATE PLANNING COORDINATION**

September 16, 2011

Mr. Clifford Graviet  
Town of Bethany Beach  
P.O. Box 109  
Bethany Beach, De 19930

**RE: PLUS 2011-08-07; Town of Bethany Beach Comprehensive Plan Update**

Dear Mr. Graviet:

Thank you for meeting with State agency planners on August 24, 2011 to discuss the proposed Town of Bethany Beach 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.

No certification issues were found in the plan presented.

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

This office has received the following comments from State agencies:

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

The Office of State Planning Coordination commends the Town on its efforts as part of this most recent comprehensive plan update and offers the its assistance to revise and update its current design standards and zoning code to allow for a diverse housing stock for the community. The office can offer a variety of sample codes and housing product samples that may be considered to meet the needs of all residents.

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

The State Historic Preservation Office has reviewed the Town of Bethany Beach's revised comprehensive plan. The section on the historic properties is well developed and presents the problems and opportunities of trying to preserve buildings in this challenging economic and natural environment. It identifies a number of resources that, while they may not be currently eligible for the National Register of Historic Places, still are important to the Town's identity and sense of place. They encourage the Town to continue its efforts to maintain and promote the preservation of its historic properties.

The State Historic Preservation office would be happy to work with homeowners and commercial property owners in their efforts to preserve and rehabilitate their properties, with technical advice on alternate methods that can preserve the historic appearance. As the Town recognizes, preservation of these older buildings adds considerably to the traditional charm, livability, and tourist appeal of the resort. If the Town pursues participation in the National Trust's Main Street program, we would be happy to provide any assistance we can. Furthermore, if you have any questions or concerns, please contact Alice Guerrant at 302-736-7412.

**Department of Transportation – Contact: Bill Brockenbrough: 760-2100**

- On page 4, there are references to “County or State” transportation studies. To DelDOT’s knowledge, apart from providing supporting land use information, no County governments in Delaware take an active role in transportation studies. Therefore, it may be more appropriate to just say “State”.
- On page 7, the Plan says that the Town should continue to review and comment on DelDOT’s Long-Range Transportation Plan. We suggest that the Town also review and, as necessary, comment on our 6-year Capital Transportation Plans (CTP). The CTP hearing in Sussex County is on September 15<sup>th</sup> in Georgetown.
- In Section 7.2.1, there is a reference to Standards and Regulations for Access to State Highways. That publication was updated and merged with another publication in 2007. The current title is Standards and Regulations for Subdivision Streets and State Highway Access. Also in this section, we now have 80 permanent traffic counter stations.
- In Section 7.2.2, Annual Average Daily Traffic data from DelDOT’s permanent counter stations on Route 1 in Fenwick Island and in Dewey Beach are compared and the difference is taken to be an indication of the traffic on Route 1 through Bethany Beach. This difference, while perhaps interesting, should not be taken as an indication of the traffic on Route 1 through Bethany Beach. The volumes at these two points on the road are necessarily affected by local traffic. Also, significant volumes of traffic enter and exit Route 1 by way of Route 54. All this difference really indicates is that on an annual

average basis, the section of Route 1 in Dewey Beach has about 43 percent more traffic than the section of Route 1 south of Route 54 in Fenwick Island.

- Section 7.3 mentions a Carolina Trailways bus that provides one trip per day from Bethany Beach to Washington, DC. Is return service available? If the bus only passes through one way, where is it coming from when it arrives?
- Section 7.4, in listing traffic –calming measures proposed by DelDOT, mentions “speed bumps.” What we have proposed are speed humps, which are lower and more gradual, than speed bumps.
- Near the bottom of page 56, there is a reference to “Delaware’s Department of Highway Safety”. Their correct name is the “Office of Highway Safety”.

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

DNREC commends the Mayor and Council and members of the Planning Commission for a thorough, well-written plan that attempts to recognize and protect vital natural resources and the environment, thereby preserving and improving the residents’ quality of life.

DNREC offers several comments and suggestions to improve conservation and protection of the Town’s resources. While the cumulative impact of various program suggestions and concerns may sound negative, the intent is to improve the plan elements related to environmental protection, open space, recreation and water quality and supply. DNREC welcomes the opportunity to meet with the Town in a collaborative manner to discuss these recommendations and possible future ordinances.

**Recommendations for Comprehensive Plan Revisions**

**Source Water Protection**

- The data in Table 14, page 42, describing the wells operated by the Town needs to be updated to include well #232512. This is a 12-inch well and has the largest capacity of all the Town’s wells.
- Text of the comprehensive plan may include description of source water requirements in 7 Del. C., §6082(c), and include goals and objectives related to the protection of the resource. This text shall be placed within the water and sewer element of the local government’s comprehensive plan, as prescribed by Title 22 of the Delaware Code. NOTE: This element calls for moving the material covered in Section 8.1.2 on page 60 of the draft to the water and sewer section.

- The reference to Senate Bill 119 on page 60 should be corrected to refer to 7 Del. C., Sections 6081-6084.
- The Town should update the discussion regarding the Indian River Power Plant on page 60.
- A map of source water resources (excellent recharge areas, wellhead protection areas) may be included in the plan. This map must be derived from the most current datasets\* provided by the Department of Natural Resources and Environmental Control (DNREC).
- If included, the map and plan text must clearly include the note that the regulatory provisions of any source water ordinance will refer to the most current source water protection datasets\*.

*Recommendation:* The Town may adopt, after consultation with DNREC, an ordinance that is protective of the resource. If adopted, the ordinance shall refer to the most current official source water map and relevant data, as provided in the current Comprehensive Plan and as amended from time to time or include a map update procedure.

\*<http://www.nav.dnrec.delaware.gov/DEN3/DataDownload.aspx>

### **Bethany Beach Nature Park (page 82)**

- The Division's ecologist Robert Coxe conducted a vegetative community survey of tax parcel 1-34-130-118-00 on March 27, 2008 (please note that surveys for rare animal species were not conducted). Two State-rare vegetation communities were documented: a 'Loblolly Pine/Wax-Myrtle/Salt Meadow Cordgrass Woodland' and a 'Needlerush High Marsh'.

A report with maps depicting the location of these two communities was sent to Matt Spong of Landscape Architectural Services Inc. who at the time was working with the town on a boardwalk project on this parcel. The proposed boardwalk alignment would result in direct impacts to the Needlerush High Marsh community.

*Recommendation:* Consideration should be given to reconfiguring the boardwalk to avoid impacts.

*Recommendation:* Vegetative communities should be flagged on the ground by Mr. Coxe to ensure the boundaries of the communities are clear and to aid with planning. As the Town continues to plan for the future of the nature park, we

recommend that further consideration be given to avoiding impacts to these State-rare vegetation communities. The presence of these communities on land owned by the Town could actually be an asset to the park if nature education is a planned use. If the Town would like additional information or a copy of the report/maps, please get in touch with Edna Stetzar at (302) 735-8654; [Edna.Stetzar@state.de.us](mailto:Edna.Stetzar@state.de.us)

### **Key Wildlife Habitat**

- There are wetlands and dune areas within Town boundaries that are mapped as Key Wildlife Habitat (KWH) in the Delaware Wildlife Action Plan<sup>1</sup> (DEWAP) because they are known to support Species of Greatest Conservation Need<sup>2</sup> (SGCN) or are part of a larger area of habitat that could support an array of plant and animal species. The maps in DEWAP show areas of the State where conservation efforts can be focused. Although designation as KWH is non-regulatory these maps are intended to help guide site-specific conservation planning efforts.

### **Coordination with Delaware Natural Heritage and Endangered Species Program**

- Although many areas of open space within Town boundaries have been developed, there are some undeveloped areas that could support species of concern or contain wildlife habitat.

*Recommendation:* The Town should require applicants of development projects to contact the Natural Heritage and Endangered Species Program to determine if their project activities will impact a species or habitat of conservation concern. In some cases, a site visit may be requested in order to make informed comments and to provide recommendations that would minimize impacts.

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<sup>1</sup> The Delaware Wildlife Action Plan (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. Congress challenged the states to demonstrate comprehensive wildlife conservation. Delaware, along with all of the other states and provinces throughout the country are working to implement their wildlife action plans. This document can be viewed via the Division of Fish and Wildlife's website at <http://www.fw.delaware.gov/dwap/Pages/default.aspx>. DEWAP also contains a list of species of greatest conservation need, key wildlife habitat, and species-habitat associations.

<sup>2</sup> Species of greatest conservation need (SGCN) 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. SGCN are identified in the Delaware Wildlife Action Plan (DEWAP).

*Contact information:*

Environmental Review Coordinator  
Natural Heritage and Endangered Species Program  
DNREC-Division of Fish and Wildlife  
4876 Hay Point Landing Rd  
Smyrna, DE 1997  
(302) 735-8654  
[Edna.Stetzar@state.de.us](mailto:Edna.Stetzar@state.de.us)

## **Parks and Recreation**

- 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 2009-2011 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 Bethany Beach is located within SCORP Planning Region 5.

### Outdoor Recreation Needs/Priorities

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

#### High Facility needs:

- Walking/Jogging Paths
- Bike Paths
- Beach Access
- Swimming Pools
- Fishing Access
- Open Space/Passive Recreation Areas
- Access to Historic Sites
- Picnic Areas
- Playgrounds
- Hiking Trails

#### Moderate Facility Needs:

- Powerboat Access

- Nature Programs
- Golf Courses
- Kayak/Canoe Access
- Camping Areas
- Baseball/Softball Fields
- Basketball Courts
- Tennis Courts
- Football Fields
- Soccer Fields
- Hunting Areas

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

### **Potential Brownfield sites**

- Brownfields are real property that may be vacant, abandoned or underutilized as a result of a reasonably-held belief that they may be environmentally contaminated (7 Del.C. § 9103(3)). Productive use of these idle properties provides “new” areas for economic development, primarily in former industrial/urban areas with existing utilities, roads and other infrastructure. DNREC encourages the development of Brownfields and can provide grant funding and other assistance when investigating and remediating Brownfield sites.

The Delaware Brownfields Marketplace is an interactive database that contains a list of market-ready Brownfield sites throughout Delaware. The inventory is designed to make it easier for potential buyers and developers to locate available Brownfield properties. Cleaning up and reinvesting in these properties protects the environment, reduces blight, and helps to create jobs for Delaware citizens, while preserving Delaware’s precious green space and natural resources.

*Recommendation:* To add sites in your municipality to the Marketplace (with owner approval) or to determine if any sites in your municipality are Brownfields, please contact Melissa Leckie at DNREC’s Site Investigation and Restoration Section at (302) 395-2600 or by e-mail at [Melissa.Leckie@state.de.us](mailto:Melissa.Leckie@state.de.us) . For more information online, please visit: <http://apps.dnrec.state.de.us/BFExt/BFExtMain.aspx>

## **DNREC Recommendations for Ordinances and Plan Implementation**

### **Open Space**

- DNREC notes that it might be helpful to have a consistent definition of “open space” in your comprehensive plan and/or Town ordinances. In a guidance document that DNREC is developing for the PLUS and other local technical review processes, we have defined 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.

### **Wetlands protection**

- DNREC offers several recommendations to ensure that wetlands within the jurisdiction are adequately protected and able to perform their valuable ecological functions.

*Recommendation:* 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.

*Recommendation:* Implement regulations to protect freshwater wetlands where regulatory gaps exist (i.e., isolated wetlands and headwater wetlands).

*Recommendation:* Require a 100-foot upland buffer width from all delineated wetlands (approved by the USACE and DNREC) 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: 878-882.), an adequately-sized buffer that effectively protects water quality in 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 all water bodies (including ditches) and wetlands.

### **Total Maximum Daily Loads (TMDLs)**

- All open space land uses should be designed and managed in a manner that mitigates or reduces nutrient pollutant loading and its damaging impacts to water quality. Since changes in land use often increase runoff of nutrient pollutants into nearby waterways (including wetlands) draining to a common watershed, these nutrient pollutant loading impacts should be assessed at the preliminary project design phase. To this end, the Watershed Assessment Section has developed a methodology known as the “Nutrient Load Assessment Protocol” to assess such impacts. The protocol, which is currently being updated to be more accurate and user-friendly, is a tool used to assess changes in nutrient loading that result from the conversion of individual or combined land parcels to a different land use(s), and serves as a “benchmark indicator” of that project’s likely impacts to water quality. It is the intention of this protocol to inform those relevant governmental entities (i.e., State, county, and municipal) how a given project will affect water quality in their jurisdictions, while informing/encouraging developers of the need to incorporate better conservation practices (i.e., BMPs) in their project designs to help improve water quality.

*Recommendation:* Require completion of a Nutrient Budget protocol before granting preliminary approval for any proposed projects/developments.

*Recommendation:* Require the applicant use any combination of approved Best Management Practices (BMPs) to meet the required TMDLs for the affected

watershed(s) in question, so as to reduce or mitigate nutrient loading impacts on water quality.

### **Impervious Surface Mitigation Plan**

*Recommendation:* 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 storm water management structures.

*Recommendation:* To encourage compact development and redevelopment in the Town's central business area, require an impervious surface mitigation plan for all residential and commercial developments exceeding 20% imperviousness outside that area, or at least in excellent recharge areas outside that area. 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 how these impacts will be mitigated. If the impacts cannot be mitigated, the site plan should then be modified to reduce the impacts from impervious cover.

### **Poorly Drained (Hydric) Soils**

*Recommendation:* Prohibit development in poorly or very poorly drained (hydric) soil mapping units. Building in such areas predictably leads to flooding and drainage concerns from homeowners, as well as significant expense for them and, often, taxpayers. 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.

### **Green Technology Stormwater Management**

*Recommendation:* Require the applicant to use “green-technology” storm water management in lieu of “open-water” storm water management ponds whenever practicable.

### **Stormwater Utility**

*Recommendation:* Explore the feasibility of a 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.

### **Drainage Easements**

*Recommendation:* The Town should pursue drainage easements along waterways and storm drains where currently there are none.

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

- 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 be maintained between the Delaware State Fire Marshal's Office and the Town of Bethany Beach. 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 Department asks the town to review its zoning ordinances for compatibility with future agricultural business or agricultural related uses. It is important to provide provisions and flexibility in the zoning code to accommodate future agricultural related businesses that could bring employment and tax-base to the town.
- The Department encourages the town to continue to work with DDA's Forest Service to help the town meet its' tree canopy and urban forestry goals. It is especially important and beneficial for the town to work with the State Forest Service on tree plantings and urban forest issues when approving any new residential developments in the town.

### **Delaware State Housing Authority – Contact Karen Horton: 739-4263**

- The current "Affordable Housing Strategy" on page 29 states the following:

*The Town recognizes the importance of having affordable-housing available to and accessible by working families. However, the trend of development and housing costs in the Bethany Beach area preclude a local solution. The Town will work within County-driven initiatives to help seek a regional solution to affordable housing that is feasible, sustainable and will not further burden the current inadequate area infrastructure.*

DSHA recommends that the Town of Bethany revises this strategy to include local solutions in addition to supporting regional solutions. Many resort communities experience the same trends as the Town of Bethany Beach and are willing to support and facilitate local solutions. In addition, we are concerned about including the adequacy of area infrastructure as a reason

to deny affordable housing. Development, regardless of the income range targeted, should be treated equally in regard to infrastructure concerns. Adequate area infrastructure should not be an additional requirement specifically for affordable housing.

- DSHA offers technical assistance to the Town in reviewing tools and strategies to increase affordable housing opportunities within the Town.
- 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 Other Programs.
- DSHA encourages municipalities receiving federal funds for housing to be aware of their Civil Rights obligations at the U.S. Department of Housing and Urban Development (HUD). Specifically, federal fund recipients are obligated to Affirmatively Further Fair Housing (AFFH) by taking proactive steps to promote racially, ethnically, and socioeconomically diverse communities.

***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,

A handwritten signature in cursive script that reads "Constance C. Holland". The signature is written in black ink and is positioned above the printed name and title.

Constance C. Holland, AICP  
Office of State Planning Coordination Director