



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

October 24, 2011

Mr. Harry Wilson
Town of Dewey Beach
105 Rodney Avenue
Dewey Beach, DE 19971

RE: 2011-09-01; Town of Dewey Beach Comprehensive Plan Pre-Update Review

Dear Mr. Wilson:

Thank you for meeting with State agency planners on September 28, 2011 to discuss the Town of Dewey Beach comprehensive plan update. State agencies have reviewed your current comprehensive plan and have asked that the following be considered as you update your plan:

Certification Comments: These comments must be addressed during the update process for your plan to be eligible for certification:

- The Town of Dewey's Comprehensive Plan should be updated in accordance with Title 22, Section 702 Del C., for towns with a population less than 2,000.

Recommendations: Our office strongly recommends that the Town consider these recommendations from the various State agencies as you update your plan:

This office has received the following comments from State agencies:

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

- The OSPC would like to thank the Town for its continued work to develop and implement planning activities associated with its current comprehensive land use plan. As the Town considers its path forward, this office may assist with a variety of activities and the Town may contact this office at anytime for additional information or assistance.

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

- The DSHA still supports the town's goals for defining the architectural character of their neighborhoods and encouraging development that stays in character with these

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neighborhoods. In 2007, the housing stock was about 50% older than 50 years, so historic preservation approaches may be appropriate to the town's needs. The transportation goal of encouraging pedestrian and bicycle traffic, perhaps with a Bay Walk, and the natural resources of protecting trees both assist in maintaining the town's traditional character.

- In 2007, the DSHA suggested that the town consider a conservation district, to provide some protections for the more traditional neighborhoods without being quite as strict as a historic preservation overlay district. In addition, the Division of Historical & Cultural Affairs would be happy to discuss these issues with the town during the updating of their comprehensive plan, and if you have any questions or concerns, please contact Alice Guerrant at 302-736-7412.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

- Table 22 on page 23, and the supporting text, examines the change in Annual Average Daily Traffic on Delaware Route 1 just south of the town and finds 2.3% from 2001 to 2005. While the text contains several cautions and disclaimers, there is still the suggestion that traffic is increasing. In the somewhat expanded table below, however, it can be seen that traffic on Route 1 been relatively steady since 1997, although subject to a certain amount of variation from year to year. While DelDOT has not done a statistical analysis, they are less confident that there is a significant trend.

Year	Annual Average Daily Traffic
2010	16,285
2009	14,802
2008	15,930
2007	15,950
2006	15,653
2005	15,815
2004	15,744
2003	16,282
2002	19,723
2001	15,457
2000	15,161
1999	14,883
1998	16,351
1997	15,722

- On page 24, there is discussion of DelDOT Project No. T200401301 (Note the change in the project number format.) SR 1, Dewey Beach Pedestrian/Bicycle Improvements. The

2007 Plan included our then-current estimates as to when design and then construction might begin pending funding availability. Funding availability has been a constraint, however. Our Capital Transportation Program for Fiscal Years 2011-2016 shows design starting in 2015, with construction at some point beyond 2016.

- On pages 25 and 26, there are references to Transportation Enhancement projects, notably a proposed “Bay Walk.” In this regard, DelDOT recommends that the Town contact Mr. Jeff Niezgoda of our Statewide and Regional Planning Section, who manages our Transportation Enhancement program. Mr. Niezgoda may be reached at (302

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

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 would welcome the opportunity to meet with the Town in a collaborative manner to discuss these recommendations and possible future ordinances.

Recommended plan revisions

- At the September 28, 2011 PLUS meeting, there was some discussion about a “Baywalk” project. In addition to consulting with the Division of Parks and Recreation, the Town is encouraged to meet with staff in the Wetlands and Subaqueous Land Section as soon as possible to discuss the feasibility of such a project.
- **Total Maximum Daily Loads (page 30):**

Recommendation: DNREC suggests that the Town add the following about the Inland Bays Pollution Control Strategy (PCS) to the otherwise good narrative in the TMDL section:

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.

- **Water Supply/Allocation:**

Recommendation: At the very least, the Town should update the section on Water and Wastewater (page 27) to reflect: 1) the number of housing units currently served by the Dewey Beach public water system, 2) the number of wells that make up the system, and 3) the new daily/monthly/annual allocation numbers. In addition, the Town should consult with DNREC regarding the adequacy of the existing system to provide water in the future based on population and growth projections.

- **Key Wildlife Habitat (Appendix Map 7).** Beach, dune and some wetland areas within current town boundaries and in areas proposed for annexation /areas of concern (Appendix Map 7) are mapped as Key Wildlife Habitat (KWH) in the Delaware Wildlife Action Plan¹ (DEWAP) because they are part of a larger area of habitat that supports Species of Greatest Conservation Need² (SGCN¹) and 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.

Recommendation: Incorporate DEWAP maps depicting Key Wildlife Habitat in Section 2-6, Natural Resources.

- **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,

¹ 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.

² 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).

Delaware was divided into five planning regions. The Town of Dewey 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 Dewey Beach 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 Dewey Beach is encouraged to work toward incorporating and/or continuing to offer some of these opportunities in the development of their Comprehensive Plan.

Recommended Ordinances and Plan Implementation

- **Wetlands Delineations:**

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.

- **Freshwater Wetlands Protections:**

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

- **100 Foot Upland Buffer:** 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.

Recommendation: Require a 100-foot upland buffer width from all delineated wetlands (approved by the USACE and DNREC) or water bodies (including ditches).

- **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 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.

- **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.

- **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.** The Delaware Sediment and Stormwater Regulations are undergoing revisions. It is unclear at this time when the new regulations will be promulgated.

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 is none.

- **Coordination with Delaware Natural Heritage and Endangered Species Program (Section 3-2, Intergovernmental Coordination and Implementation).** 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.

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

- **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.

- There are no Brownfields sites listed on DNREC’s Brownfields Marketplace inventory within the proposed comprehensive plan amendment area. However, please note that properties within the municipality may qualify as “Brownfield” sites.

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 . For more information online, please visit: <http://apps.dnrec.state.de.us/BFExt/BFExtMain.aspx>

- **Hazardous Substances:** If it is determined by the Department that there was a release of a hazardous substance on the property in question and the Department requires remediation pursuant to the Hazardous Substance Cleanup Act, the provisions of 7 Del.C. Chapter 91, Delaware Hazardous Substance Cleanup Act and the Delaware *Regulations Governing Hazardous Substance Cleanup* shall be followed.

Recommendation: Develop an ordinance which would include the following:

- If any future development occurs on sites with previous manufacturing, industrial, or agricultural use, the land owner(s) should perform environmental due diligence of the property by performing a Phase I Environmental Site Assessment (*including a title search to identify environmental covenants*) in accordance with Section 9105(c) (2) of the Delaware Hazardous Substance Cleanup Act (HSCA). While this is not a requirement under HSCA, it is good business practice and failure to do so will prevent a person from being able to qualify for a potential affirmative defense under Section 9105(c) (2) of HSCA.
 - Additional remediation may be required if the project property or site is re-zoned.
 - Should a release or imminent threat of a release of hazardous substances be 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). SIRB should also be contacted as soon as possible at 302-395-2600 for further instructions.
 - There is 1 SIRS site or Groundwater Management Zones located within a ½ mile radius of the Town.
- **Tank Management:** Please be aware that if there is a release of a Regulated Substance within the limits of the Town of Bridgeville, you must comply with 7 Del.C. Chapter 60, 7 Del.C., Chapter 74 and DE Admin. Code 1351, State of Delaware *Regulations Governing Underground Storage Tank Systems* (the UST Regulations).

Recommendation: Develop an ordinance which would include the following:

- Per the **UST Regulations: Part E, § 1. Reporting Requirements:**

Any indication of a Release of a Regulated Substance that is discovered by any Person, including but not limited to environmental consultants, contractors, utility companies, financial institutions, real estate transfer companies, UST Owners or Operators, or Responsible Parties shall be reported within 24 hours to:

- The Department's 24-hour Release Hot Line by calling 800-662-8802; and
- The DNREC, Tank Management Branch by calling 302-395-2500.
- When contamination is encountered, PVC pipe materials should 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 TMB. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by the TMB.

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

Department of Agriculture - Contact: Scott Blaier 739-4811

- The Department would like to re-emphasize the section on Trees (page 33), and encourages the town to continue urban forestry planning.

Delaware State Housing Authority – Contact Vicki Powers 739-4263

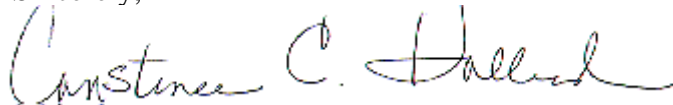
- During the Town of Dewey's last comprehensive plan update, DSHA was concerned with the Plan's focus on encouraging single family homes and protecting property values. These strategies can have an exclusionary effect when combined with no strategy targeted toward providing affordable housing. Given that housing opportunities are still needed for low- and moderate-income persons, such as those that work at the Town's service and retail establishments, DSHA offers the following resources, recommendations and information:
 - 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 "Affordable Housing Resource Center" under Other Programs.
 - The following are examples of strategies that could be particularly helpful in a coastal resort town such as the Town of Dewey:
 - Innovative zoning techniques to provide additional affordable housing opportunities within the existing housing stock such as permitting accessory

dwelling units in residential areas as a matter of right. This would help address some of the seasonal housing issues.

- Require, as part of all annexation agreements for parcels being annexed, that some of the units be set aside to be affordable for low- and moderate-income persons via long term affordability restrictions.
 - Consider long-affordability programs and tools to preserve public investment and to ensure a sustainable affordable housing stock. One way to do this is by partnering with the Diamond State Community Land Trust (DSCLT). This can be done by donating land to the DSCLT, within the Town of Dewey, or through contractual agreements for monitoring long-term affordability restrictions on units that have been set aside to be affordable.
 - Encourage the provision of employee-occupied rental units within commercial and public facilities.
 - Coordinate with other area beach towns to identify and implement regional strategies for addressing affordable housing needs.
 - The Town can also ensure that some of the housing units attained, through the above mechanisms, be targeted for employees of the Town, local businesses or local emergency service providers.
- 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.

Thank you for the opportunity to review this project. The State agencies look forward to working with the Town as you update your plan. Please feel free to contact us if you need additional information while preparing this update.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland".

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