



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

May 21, 2013

Gary J. Norris  
City of Milford  
201 South Walnut Street  
Milford, DE 19963

RE: 2013-04-02; City of Milford Comprehensive Plan Amendment

Dear Mr. Norris:

Thank you for meeting with State agency planners on April 24, 2013 to discuss the proposed City of Milford 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.

The “New Wharf Development” depicted on Figure Y is a major change proposed by this plan. The current plan identifies this area as Open Space, which is consistent with our longstanding policy promoting rural uses and low density development East of Route 1. The proposal presented in this plan is to annex two properties totaling approximately 194 +/- acres and zone half of it highway commercial and half of it moderate density residential. Gary Norris informed us at the PLUS meeting that the applicant has altered his request and now seeks to zone all 194 acres highway commercial. Here are our comments:

The State supports the current plan which identifies this area as “Open Space” due to our longstanding policy promoting rural and low density uses East of Route 1

The State cannot support the comprehensive plan amendment as currently proposed for the following reasons:

- The area will not be served by appropriate transportation infrastructure for the proposed use until the planned grade separated interchange at NE Front Street, New Wharf Road and Route 1 is constructed. Construction of this project is not currently planned until 2019 at the earliest, making this application premature. Annexation and zoning prior to the interchange being in place has the potential to create serious problems for area roadways.
- The magnitude of this proposal is far too large. Considering that the developed portion of the Dover Mall is located on 145 +/- acres, the development potential of this parcel could be greater than the Dover Mall. Needless to say, this has a number of implications on:
  - The adjacent rural communities
  - Environmental resources
  - Transportation infrastructure
  - Market competition with downtown Milford, the Route 113 corridor, and the new commercial areas planned in the Southeast Neighborhood Master Plan. No retail market study was included in the plan to demonstrate the need or demand for additional commercial land use at this location.
- The plan contains no analysis of any of the issues listed above. In order for the State to consider this comprehensive plan amendment, the plan would have to address the potential impacts of the commercial development on surrounding neighborhoods, the environment, the transportation network, and the commercial / retail market in Milford.
- It is acknowledged that the construction of the grade separated interchange will influence changes of land use around it. We would like to offer our support to work with the City of Milford, DelDOT and other stakeholders to create a master plan for this area that would address land use, transportation, environmental resources and other issues to be determined by the stakeholders. Such a master plan would be similar to the process that led to the Southeast Neighborhood Master Plan, only with a smaller project area. It is anticipated that all of the issues above could be addressed in such a Master Plan. Given that the construction of the interchange is likely 7 years away, we could start this master plan project in approximately 3 or 4 years (2016 – 2017). Any sooner than that would be premature, since conditions will no doubt change between now and then.

### **Source Water Protection**

- Chapter 10 of the Plan includes a discussion of wellhead protection and excellent groundwater protection areas and references to the City's Source Water Assessment for the public water system. This assessment is provided to public water systems as required by 7 Del. C. 6083.

- DNREC recognizes the City's efforts in developing and adopting a source water protection ordinance; however, there is neither discussion nor reference to the City's ordinance in the comprehensive plan. We take this opportunity to remind the Town that these elements are required. This is a certification issue.
- The Comprehensive Plan must contain the following elements per the Memorandum of Understanding between the Office of State Planning and Division of Water dated July 2011.
- Counties and Municipalities Over 2,000 Population (as reported in the most recent decennial Census):
  - Text of the comprehensive plan must include description of source water requirements in 7 Del. C. 6082(b), 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 9 or Title 22 of the Delaware Code.
  - 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<sup>1</sup>.
  - The local government shall adopt, after consultation with DNREC, an ordinance that is protective of the resource. 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.

DNREC's Groundwater Protection Branch (GPB; 302-739-9945) is available to assist the Town in this endeavor.

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

This office has received the following comments from State agencies:

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

- There are numerous updates of factual data throughout the plan. This includes updating population data to the 2010 Census, which has already been done. There are a number of other sections to be updated (public involvement, public works, etc.) that are highlighted in the document. We will need to review the final text of these updates before the plan is considered for adoption. No changes other than factual information are expected. Any other changes may require additional PLUS review.

- The land use in the Southwest Neighborhood has been amended to adjust the number of parcels identified as Institutional. We are to understand that this is to include a number of parcels that are owned by Bayhealth that will be used in the upcoming hospital expansion project. We have no objections to this change.
- This plan does not reflect any changes to the Southeast Neighborhood Master Plan. This plan references that Master Plan and directs readers to it for all information about the area. Any changes to the Southeast Neighborhood Master Plan will require that all parties involved in the creation of that plan must meet and decide to amend the plan. Should all parties choose to explore amending the plan, then an appropriate planning process involving all of the stakeholders and the public must be undertaken. Contact David Edgell at OSPC in order to discuss the procedures for beginning such an amendment.

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

- As in previous plans, there is a good history of the town and a great appreciation of the City's historic properties and their connection with continuing economic viability of the area. It would be good to add a table that identifies all the National Register-listed properties in and around Milford, and not just the most prominent ones. The State Historic Preservation Office would be happy to supply this list.

The plan identifies the partner organizations with the City in its historic preservation efforts and mentions the on-going efforts of the Main Street program. In addition, the City has drafted a historic preservation ordinance for its historic districts, which we are happy to support. The plan however does not address historic properties outside of the historic limits of the City, neither architectural nor archaeological. The plan would be strengthened if such properties could be given some recognition or protection upon annexation or redevelopment. Archaeology is not mentioned even within the historic City, although there may be important archaeological resources related to early mills and to the City's early development remaining.

Milford is in need of additional historic property survey, since most of the early to mid-20<sup>th</sup> century architecture has not been looked at. While the City does not promise to fund such survey, the plan does promise the City's support for private citizen's efforts to extend the historic survey and/or to apply for federal funds for historic preservation needs. Historic properties will also serve as focal points of the City's Riverwalk and related pedestrian and bicycle trails that provide recreational and cultural benefits for its citizens. The plan mentions successful reuse and renovation of several historic properties downtown, coupled with on-going streetscape improvements to increase the visual and economic appeal of the area. The plan is projecting considerable growth in population, and it would be desirable to see support for cluster development and creating receiving zones for Transfer of Development Rights, to assist in the preservation of the historic

agricultural landscape that surrounds Milford. If you have any questions or concerns, please contact Alice Guarrant at 302-736-7412.

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

Figure Y (New Wharf Development) shows a proposed annexation and rezoning of lands east of Delaware Route 1 and south of New Wharf Road. This proposal is discussed briefly on page 58 of the plan, where New Wharf Road is incorrectly identified as Route 14. That designation stops at Route 1. In any case, the proposal concerns us in several respects.

First, and perhaps most easily addressed, it is proposed as an expansion of the Town Center Neighborhood, whereas the land directly across New Wharf Road is part of the North Neighborhood. Arguably the land on the north side of New Wharf Road west of Route 1 does not belong in the North neighborhood either. Our concern is that for planning purposes Route 1 serves as a more rational neighborhood boundary than does New Wharf Road and that the area east of Route 1 between the Mispillion River and Swan Creek should be addressed as a whole. If the City thinks it appropriate, it might be reasonable to designate it as a separate Northeast Neighborhood in the Plan.

Second, much of the land proposed for commercial development, and part of the land proposed for residential development, would be needed for our planned grade separation of Route 1, Northeast Front Street and New Wharf Road. Information on this project is available at [http://www.del.dot.gov/information/projects/sr1/sr1\\_northeast\\_front\\_st/](http://www.del.dot.gov/information/projects/sr1/sr1_northeast_front_st/), where the preferred alternative for the design is shown as Concept 4. To update the information provided on our website, in our proposed Capital Transportation Program for the six years beginning with Fiscal Year 2014 (July 2013) acquisition of right-of-way is scheduled to begin in 2017. Construction is not scheduled because it is a six-year document, but would normally follow about two years after the start of right-of-way acquisition.

Compensation to the property owners when right-of-way is acquired is based on “highest and best use,” which does not necessarily follow zoning, and we are willing to pay the appraised value of the property in due course, but we are concerned that if the property is annexed and rezoned now, we may have to relocate businesses and residents when we do go to acquire the right-of-way. Worse yet, we could find it necessary to re-evaluate the design in view of development that has occurred, thus lengthening a process that we would like to expedite if we can. Our understanding is that many residents of the area also view our project there as a priority.

Finally, in the absence of our planned grade separation, it is already difficult to provide safe access to the portion of the City east of Route 1. We have already had to prohibit through and left turn movements on eastbound Northeast Tenth Street and have considered a similar prohibition there westbound. These changes necessarily mean increased traffic at New Wharf Road, and we would be reluctant to place similar

restrictions there. Adding more traffic through the development of the subject lands would not help matters.

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

The following comments pertain to environmental features and natural resource protection related to a proposed annexation/change of land use East of State Route 1 in the vicinity of SR 1 and New Wharf Road, shown on Figure 14D and Figure Y of the 2013 Draft Plan as the New Wharf Development.

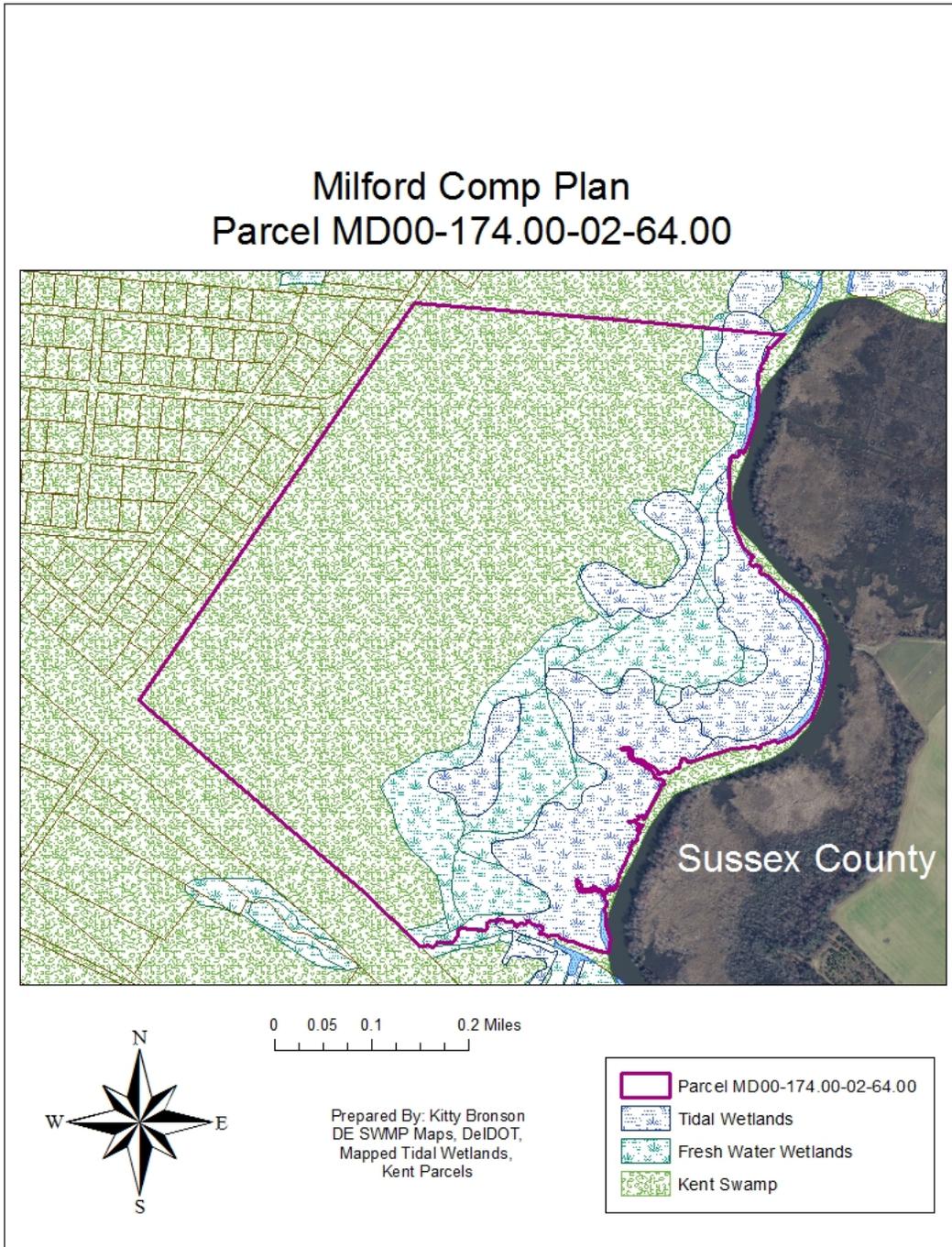
**Wetlands**

- State regulated wetlands ARE located on this property based on a review of the State wetland maps. State regulated wetlands are those wetlands identified on the State's official State Regulated Wetland Maps. State regulated wetlands are located on this property based on a review of the State wetland maps. Please refer to State Wetland map numbers 177, 178, 208 and 209. Any activity in State regulated wetlands may require a permit from DNREC's Wetlands and Subaqueous Lands Section. Additional information about State regulated wetlands is available by contacting the Wetlands and Subaqueous Lands Section at (302) 739-9943 or on line at <http://www.dnrec.delaware.gov/wr/Services/Pages/WetlandsAndSubaqueousLands.aspx>. There are significant State Regulated wetlands on this parcel.
- State regulated subaqueous lands ARE likely to be located adjacent to this property based on a review of aerial photographs, SWMP maps, Soil Surveys and USGS topographic maps. Upon review of the GIS layers, this property is located directly adjacent to the Mispillion River. State subaqueous lands include all tidal waters (up to the mean high water line), most non-tidal rivers, streams, lakes, ponds, bays and inlets (up to the ordinary high water line), most perennial streams and ditches and many intermittent streams and ditches. State regulated subaqueous lands are likely to be located on this adjacent to this property based on a review of aerial photographs, SWMP maps, Soil Surveys and USGS topographic maps. An on-site inspection by a representative of the Wetlands and Subaqueous Lands Section or an environmental consultant is recommended to determine the limits of jurisdictional State subaqueous lands. ***Upon review of the GIS layers, Perennial River/Streams are located on the property.*** Additional information about State regulated subaqueous lands is available by contacting the Wetlands and Subaqueous Lands Section at (302) 739-9943 or on line at <http://www.dnrec.delaware.gov/wr/Services/Pages/WetlandsAndSubaqueousLands.aspx>.

Waters of the U.S. regulated by the U.S. Army Corps of Engineers ARE likely to be located on this property based on a review of aerial photographs, SWMP maps, Soil Surveys and USGS topographic maps. Waters of the United States include the following: navigable waters of the United States; wetlands; tributaries to navigable waters of the

United States, including adjacent wetlands and lakes and ponds; interstate waters and their tributaries, including adjacent wetlands; and all other waters of the United States not identified above, such as isolated wetlands, intermittent streams, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, where the use, degradation or destruction of these waters could affect interstate or foreign commerce. Waters of the U.S. regulated by the U.S. Army Corps of Engineers are likely to be located on this property based on a review of aerial photographs, SWMP maps, Soil Surveys and USGS topographic maps. The extent of Federal jurisdiction over Waters of the United States is determined by the U.S. Army Corps of Engineers and is based on site specific conditions. Therefore, an on-site inspection by an environmental consultant is recommended to determine if Waters of the U.S. are located on the property and the limits of Federal jurisdiction. The U.S. Army Corps of Engineers can be contacted at (215) 656-6728 or online at <http://www.nap.usace.army.mil/cenap-op/regulatory/regulatory.htm>.

- According to DNREC GIS SWMP maps, there are considerable wetlands regulated by the U.S. Army Corps of Engineers. They suggest contacting them for an on-site inspection.



### Floodplains

- The wooded portion of the two New Wharf Road parcels is located in the 1% annual chance floodplain. This is the high risk Zone AE tidal floodplain.

## **Hazardous Waste Sites**

- There are two SIRS sites located within ½ mile radius of the proposed project area:
  - Scarborough Pit (DE-0236)
  - Wilkerson Terrace Pit (DE-0234)

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.

- 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). SIRS should also be contacted as soon as possible at 302-395-2600 for further instructions.
- If any future development occurs on sites with previous manufacturing, industrial, or agricultural use, SIRS strongly recommends that the land owner(s) 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 by the county or City of Milford.

## **Delaware State Housing Authority – Contact Vicki Powers 739-4263**

- DSHA is concerned that the only housing goal, and corresponding objectives, of the Town's Comprehensive Plan for housing is to preserve and improve the character and quality of life in traditional single family homes. DSHA recommends that the town considers the following information:
  - While large suburban homes have dominated development in Delaware for several decades, a growing body of research indicates that we are in the midst of a significant market shift. The baby boomers that once drove suburban development are now aging and are looking to downsize into something more manageable. The Delaware Population Consortium (DPC) projections for the next ten years indicate that not only will there be a large amount of suburban homes placed on the market by baby

boomers, but that there will be a *decline* in households in age ranges that typically seek large homes. These same DPC projections show growth in the younger age ranges most likely at stages in their life and income to support entry level homes.

- The combination of excess suburban housing supply currently on the market, additional supply being added by aging baby boomers, along with a changing market indicate that it is *critical* that communities *proactively* provide a variety of housing options to meet the needs of their residents.
  
- 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. To assist with this obligation, in July 2011, DSHA collaborated with the Cities of Wilmington and Dover, and New Castle County to conduct the *Statewide Analysis of Impediments to Fair Housing Choice*. (<http://www.destatehousing.com/FormsAndInformation/pubs.php>). The Analysis contains several recommendations for local jurisdictions. These include the following:
  - County and local government entities throughout the State of Delaware should reduce and/or waive their respective sewer, water, and/or public facilities and services impact fees for area developers and non-profit organizations seeking to build affordable housing units, both renter and owner units.
  
  - Amend the Town of Milford's zoning ordinance to include a more modern definition for the term "family."
  
  - Ease zoning and other regulatory barriers to affordable rental housing for families.
  
  - Incentivize the development of mixed-income housing in non-impacted areas.

*Because of its' very low homeownership rate and high percentage of subsidized rental units, DSHA has identified Census Tract 425 as a severely impacted area and discourages further rental in this area and instead encourages homeownership.*

  - Area localities should encourage members of appointed boards and commissions, elected officials, real estate agents, and municipal and county staff that deal with housing, community development, zoning, and code enforcement issues to attend an annual fair housing training.

- 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.

***Approval Procedures:***

**As described in this letter, there are a number of certification issues associated with this Plan Amendment. Once the Plan Amendment has been revised to address those certification issues (and hopefully the recommendations as well), please submit a draft to our office to review. Upon verification that these issues have been addressed, we will write you a letter to this effect. After receipt of our letter the City is welcome to have the plan adopted by the Planning Commission and Council.**

**Once a decision has been reached on this proposed comprehensive plan amendment, please forward a copy of the plan amendment to the Office of State Planning Coordination for our records. The plan amendment must include a revised version of the Future Land Use Map as well as any text that is necessary to amend the comprehensive plan and describe the change.**

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, Office of State Planning Coordination