



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

May 21, 2014

Mr. Dawson Green  
Town of Townsend  
PO Box 223  
661 South Street  
Townsend, DE 19734

RE: PLUS Review 2014-04-02, Comprehensive Plan Amendment

Dear Mr. Green,

Thank you for meeting with State agency planners on April 23, 2014 to discuss the proposed Comprehensive Plan amendment for the Town of Townsend. According to the application, the Town desires to amend the existing comprehensive plan to add parcels to the annexation area.

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.

**Office of State Planning Coordination – Contact Herb Inden 739-3090**

- We cannot support this proposal at this time based on the attached letter we received from New Castle County government dated May 7, 2014 which states an opposition to this annexation effort and our understanding of a signed agreement between the Town and the County on such matters.

***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:

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

- The Town of Townsend has a Historic District that is listed on the National Register of Historic Places. The Office has no objections to proposed rezonings. If you have any questions or concerns, please contact Alice Guerrant at 736-7412.

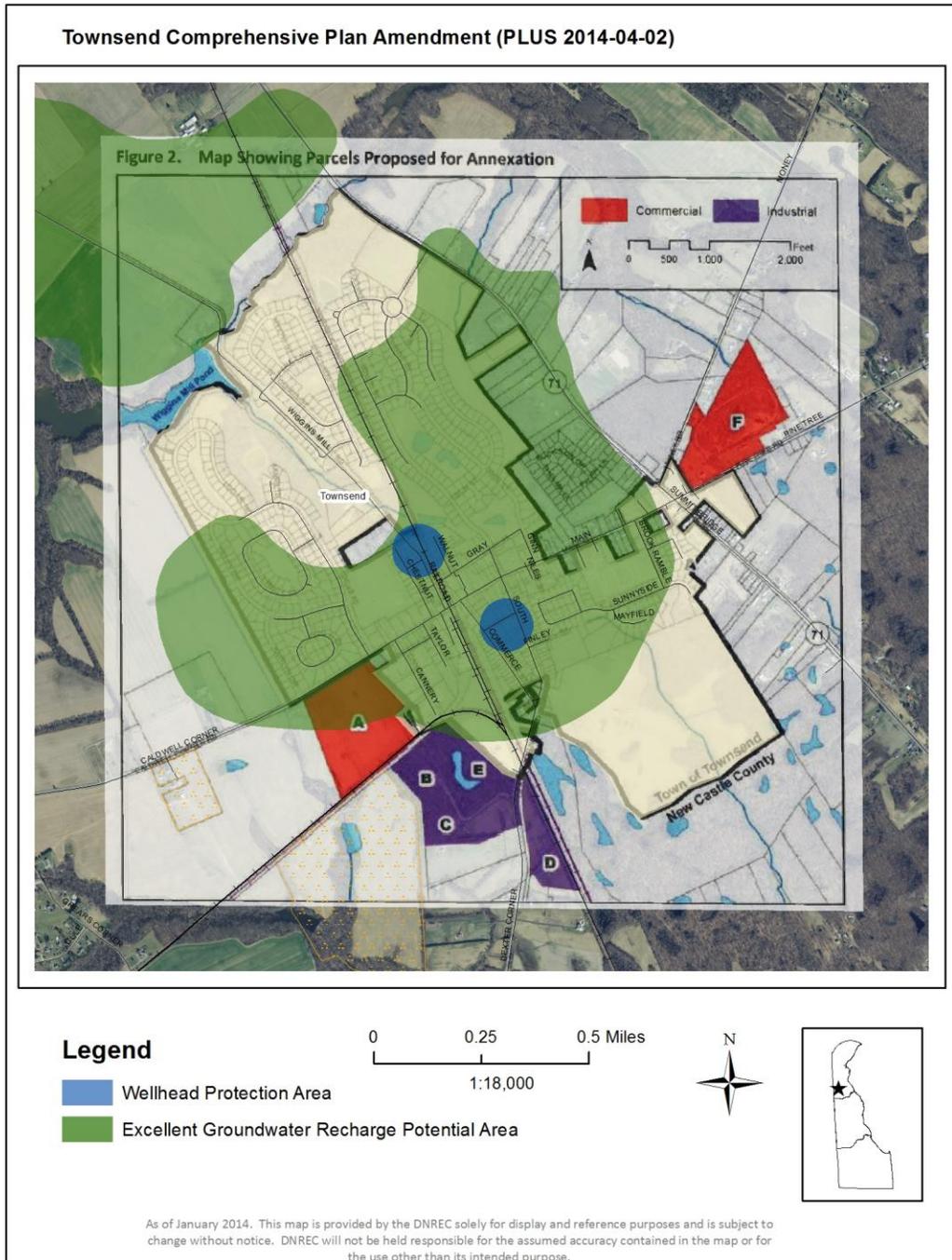
**The Department of Natural Resources and Environmental Control – Contact Kevin Coyle 739-9071**

- **Source Water Protection.** Portions of the proposed annexations fall within an excellent ground water recharge potential area (see map). DNREC acknowledges that the Town has adopted water resource protection area ordinances and applauds the Town's efforts to minimize industrial land use in water resource protection areas. However, the proposed commercial area (A) in the southwestern portion of the excellent ground water recharge potential area has the potential to create a large amount of impervious cover.
- Excellent Ground-Water Recharge Areas are those areas mapped by the Delaware Geological Survey where the first 20 feet of subsurface soils and geologic materials are exceptionally sandy. These soils are able to transmit water very quickly from the land surface to the water table. This map category (excellent) is an indicator of how fast contaminants will move and how much water may become contaminated (Andres, 2004). Land use activities or impervious cover on areas of excellent ground-water recharge potential may adversely affect ground water in these areas.

In addition, because the excellent ground water recharge area can readily affect the underlying aquifer if contaminants are spilled or discharged across the area, the storage of hazardous substances or wastes should not be allowed within the area unless specific approval is obtained from the relevant state, federal, or local program.

**References**

Andres, A. Scott, 2004, Ground-Water Recharge Potential Mapping in Kent and Sussex Counties, Delaware: Delaware Geological Survey Report of Investigations No. 66, p. 14.  
<http://www.udel.edu/dgs/Publications/pubform.html#investigations>



- **Appoquinimink and Blackbird Natural Areas.** While more detailed project plans for these parcels would be needed for the Wildlife Species Conservation and Research Program (WSCR) to render an evaluation, parcels B, C, D and E are of particular concern as they are

slated for industrial uses and are adjacent or very near to Blackbird Natural Area, which is on Delaware's Natural Areas Inventory. Further, parcel F is nearly surrounded by State Natural Areas, with Appoquinimink River Natural Area to the northwest, and Blackbird Natural Area to the southeast. State Natural Areas involve areas of land and/or water, whether in public or private ownership, which either retains or has reestablished its natural character (although it need not be undisturbed), or has unusual flora or fauna, or has biotic, geological, scenic or archaeological features of scientific or educational value. These particular State Natural Areas are documented habitat for numerous state rare species. If further information about this is required for planning, please contact Eileen Butler, Natural Areas Program Manager, at 739-9235.

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

- Parcel A (Tax Parcel No. 14-015.00-254) is proposed for annexation with commercial zoning. It is located on the west edge of the town and the east edge of an area where the State and the County are planning for agriculture to be preserved. Indeed there is a line of parcels to the west that are permanently preserved. Because retailers generally prefer to be surrounded by potential customers, we suggest that this could be a difficult location at which to attract and retain businesses.
- All of the parcels proposed for annexation are served by State-maintained roads, accordingly, their development will require record plan and entrance plan approvals, and entrance permits, from DelDOT. Information is available on our application processes at <http://www.deldot.gov/information/business/> under Subdivisions. An initial contact in this regard would be our Subdivision Manager for southern New Castle County, Mr. Pao Lin. Mr. Lin may be reached at (302) 760-2157.
- Depending on the specific uses that are developed on the parcels proposed for annexation, the developers may be required to make off-site improvements beyond their entrances. These improvements will be determined through DelDOT's plan review process, which could include a requirement that a developer provide a Traffic Impact Study. One area likely to require improvements if Parcels B through E are developed is the railroad grade crossing on Dexter Corner Road (New Castle Road 36).

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

- The owner of any parcel developed within 300 feet of a parcel enrolled in the Agricultural Lands Preservation program, regardless of whether they are in town or the county, will need to determine if the following apply:

The proposed project is adjacent to a property protected through the State's Agricultural Lands Preservation Program. Therefore, the activities conducted on this preserved property are protected by the agricultural use protections outlined in **Title 3, Del. C., Chapter 9**. These protections effect adjoining developing properties. The 300 foot notification requirement

affects **all new deeds** in a subdivision located in whole or part within 300 feet of an Agricultural District. Please take note of these restrictions as follows:

**§ 910. Agricultural use protections.**

(a) Normal agricultural uses and activities conducted in a lawful manner are preferred and priority uses and activities in Agricultural Preservation Districts. In order to establish and maintain a preference and priority for such normal agricultural uses and activities and avert and negate complaints arising from normal noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations, land use adjacent to Agricultural Preservation Districts shall be subject to the following restrictions:

(1) For any new subdivision development located in whole or in part within 300 feet of the boundary of an Agricultural Preservation District, the owner of the development shall provide in the deed restrictions and any leases or agreements of sale for any residential lot or dwelling unit the following notice:

This property is located in the vicinity of an established Agricultural Preservation District in which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities."

(2) For any new subdivision development located in whole or in part within 50 feet of the boundary of an Agricultural Preservation District, no improvement requiring an occupancy approval shall be constructed within 50 feet of the boundary of the Agricultural Preservation District.

(b) Normal agricultural uses and activities conducted in accordance with good husbandry and best management practices in Agricultural Preservation Districts shall be deemed protected actions and not subject to any claim or complaint of nuisance, including any such claims under any existing or future county or municipal code or ordinance. In the event a formal complaint alleging nuisance related to normal agricultural uses and activities is filed against an owner of lands located in an Agricultural Preservation District, such owner, upon prevailing in any such action, shall be entitled to recover reasonably incurred costs and expenses related to the defense of any such action, including reasonable attorney's fees (68 Del. Laws, c. 118, § 2.).

- In addition, if any wells are to be installed, **Section 4.01(A)(2) of the Delaware Regulations Governing the Construction and Use of Wells** will apply. This regulation states: (2) For any parcel, lot, or subdivision created or recorded within fifty (50) feet of, or within the boundaries of, an Agricultural Lands Preservation District (as defined in Title 3, Del. C., Chapter 9); all wells constructed on such parcels shall be located a minimum of fifty (50) feet from any boundary of the Agricultural Lands Preservation District. This requirement does not apply to parcels recorded prior to the implementation date of these Regulations. However, it is recommended that all wells be placed the maximum distance possible from lands which are or have been used for the production of crops which have been subjected to the application of land applied federally regulated chemicals.

- The Department of Agriculture appreciates the town's consideration of agriculture in its future planning decisions. The Department would be glad to work with the town to develop any suitably zoned parcel within town as an agribusiness, should such an opportunity present itself.

Once the amendment is voted on by Planning and Zoning and/or Town Council, please forward a copy of the decision regarding the amendment to this office for our files. Thank you for the opportunity to review this amendment. If you have any questions, please contact me at 302-739-3090.

Sincerely,

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

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

CC: Eileen Forgarty

Attachment – letter from New Castle County dated May 7, 2014

ATTACHMENT

May 7, 2014

Constance Holland, AICP  
Herb Inden  
Office of State Planning Coordination  
122 Martin Luther King, Jr. Blvd, South  
Haslet Armory, Third Floor  
Dover, DE 19901

Dear Ms. Holland & Mr. Inden,

Thank you for allowing New Castle County to comment on Townsend's Comprehensive Plan update. As you know, this update proposes/identifies additional areas of unincorporated New Castle County that the Town has interest in annexing.

The County is not supportive of annexation of parcels of unincorporated New Castle County. This area has generally been reserved and preserved through zoning [Suburban Reserve (SR)]. That zoning district is defined as a five acre minimum lot size and zoned to compliment and support agricultural activities in lower New Castle County. This zoning district is not sewerred and is generally not in state investment areas.

There are unincorporated parcels inside the corporate borders that appear more suitable for annexation into the Town. This would be more consistent with accepted growth practices. Additionally sewer capacity is limited by agreements between the Town and the County that were agreed too several years ago.

The County will certainly work with the Town of Townsend to address infrastructure issues but feel that efforts should focus on what is bordered on all sides within by incorporated Townsend.

One of the areas noted for potential/future annexation is currently in the County Land Development review process. It is an expansion that focuses in direct support of the surrounding agriculture industry. This is a relevant example of the awkwardness often encountered as jurisdictions consider further annexation of unincorporated areas.

In the County's most recent efforts to "Plan for our future", we have heard a constant from all segments of our community the need for a clear vision and expectation for our future. The

immediate area around and the larger geographical area have been earmarked and zoned for low growth and supporting agricultural activities.

The Suburban Reserve zoning effort has been successful as it represents less than 1% of our growth annually. That is what the anticipated outcome was and is. That is the vision and expectation for the immediate future of these precious natural and agricultural areas. Having sufficient land mass and necessary infrastructure is vital to the agricultural industry and this area.

Again, thank you for allowing us the opportunity to voice our concerns on this particular area of Townsend's Comprehensive Plan update.

Respectfully,

Eileen P. Forgarty  
General Manager

Copy: County Executive Thomas Gordon  
David Grimaldi, Chief Administrative Officer