



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

September 25, 2014

Mr. Michael Fortner  
City of Newark  
220 South Main Street  
Newark, DE 19711

RE: PLUS 2014-08-11, Newark Comprehensive Plan Update

Dear Mr. Fortner,

Thank you for meeting with State agency planners on August 27, 2014 to discuss the proposed comprehensive plan update for the City of Newark.

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. See the DNREC comments below for "Source Water Protection". In regard to these comments, Kevin Coyle, from DNREC, has offered to meet with you in Newark at your convenience with the appropriate DNREC staff to help you in resolving this certification issue. Please call him at the number listed in the DNREC section below.

***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 Herb Inden 739-3090**

Newark is to be commended for their effort which includes submitting a draft plan for two pre-PLUS meetings. The City is also to be commended for its extensive effort to gain public input with more than 30 opportunities for public comment. We further appreciate that the City has included "health" in their vision as of the importance that the physical environment can play in the health of our citizens.

We do have two mapping issues:

- Existing land use map – in looking at this map, it is not always clear what the existing land use zoning classification is on this map for the areas demarcated as “Vacant”. Understanding that the existing use is vacant – it would just seem helpful to know how it could currently be used as a matter of right.
- Chapter 11: Growth and Annexation:
  - The Areas of Concern Map has no color key.
  - Also, there does not appear to be a discussion as to why these are areas of concern.
  - The Planning Areas (1-6) – not sure what these are – do these refer to the **Adjacent Areas Land Use Plan**? Maybe they are new additions to the Adjacent Areas Plan?
  - Also, we do not see an **Adjacent Areas Land Use Plan** other than what is mentioned in the text. Is this a separate plan?

Our office looks forward to assisting the City in implementing this comp plan once certified. Feel free to contact Herb Inden for any such assistance.

**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 City’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. Again, DNREC requests an opportunity to meet with the City in a collaborative manner to discuss these recommendations and possible future ordinances.

- **Recommendations for Comprehensive Plan Revisions**
  - **Water Supply**  
*Recommendation:* Consolidate the discussion of water supply found in Chapters 4, Public Utilities and Infrastructure, and Chapter 7, Environmental Quality and Natural Resources, and place in Chapter 4. The discussion of TMDLs/water quality should remain in Chapter 7.
  - **Source Water Protection**  
The Comprehensive Plan must contain the following elements per the Memorandum of Understanding between the Office of State Planning Coordination and the 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)<sup>1</sup>, 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.

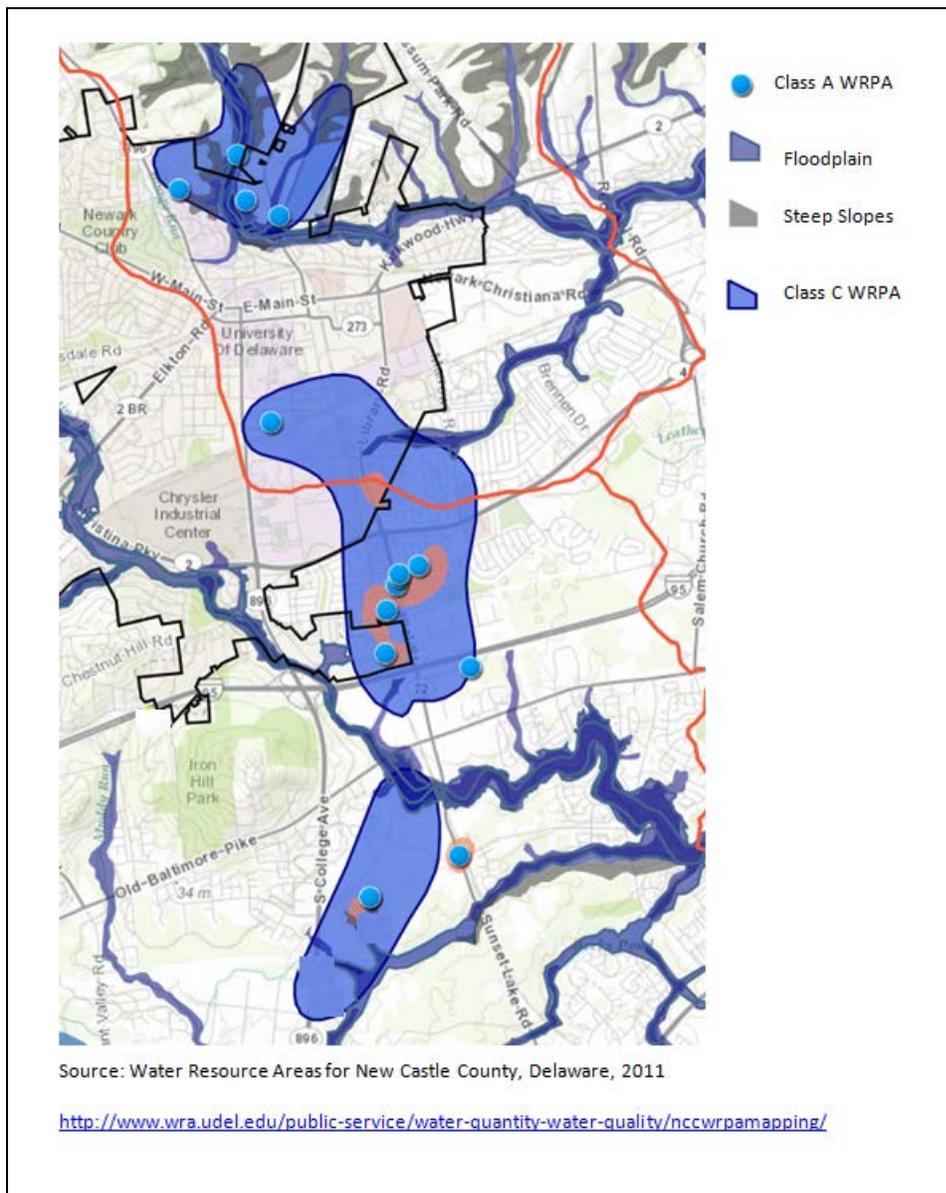
- A map of source water resources (excellent recharge areas, wellhead protection areas) shall be included in the plan. This map must be derived from the most current source water protection datasets<sup>2</sup> provided by the Department of Natural Resources and Environmental Control (DNREC).
- The map and plan text must clearly include the note that the regulatory provisions of any source water ordinance<sup>3</sup> will refer to the most current source water protection datasets<sup>1</sup>.

<http://delcode.delaware.gov/title7/c060/sc06/index.shtml>

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

<http://library.municode.com/index.aspx?clientId=10128>

Chapter 30, Article VII



## Water Allocation

- Newark's current water allocation permits total 2.15 billion gallons (BG) per year, 55% more than the current annual water use. With a projected 20-year population growth of only 3% (0.15% per year), the current allocation is expected to be more than adequate.
- The sum of groundwater allocations for the City is more than 1.5 BG per year, enough to cover the expected demand over 20 years without relying on any surface water supply. However, the City has not yet completed the investigation of contamination in the Columbia aquifer well field, and the full groundwater allocation may not be available if

the contamination cannot be easily remediated. In 2013, only 4 wells were used, and only 31% of the total water supply was groundwater. The other wells remained unused because of contamination, cost of operation, and maintenance issues. It has not been reported to the Department what percentage of allocated groundwater can actually be used to meet future demand.

- In 2013, the City used 741 million gallons (MG) from its White Clay Creek intake, exceeding the allocation of 648 MG. This overuse was necessary because of the contamination issue in the well field. However, the allocation was calculated based on stream flow and protection of species in White Clay Creek, and this volume may not be available in dry years. Future water use must make use of a greater number of the City's facilities and not rely so heavily on a few sources.
- As seen in the City's 2013 water usage, there is a considerable amount of maintenance that needs to be done to be able to meet future demand. Although it is fortunate that very slow growth of resident population is expected, the proposed plan does not address water use by students, who comprise 34% of the City's total population when they are present.
- *Recommendation:* The population and water use breakdown in the proposed plan should be expanded to include projected water use by non-resident students. The plan should also include a more detailed breakdown of which wells will be brought back online to reduce the use of surface water to allocated volumes.

### **Wastewater**

- *Recommendation:* Consolidate the discussion of sewage (perhaps a name change?) on page 38, Chapter 4, Public Utilities and Infrastructure (under Water Service), with the discussion of wastewater on page 84, Chapter 7, Environmental Quality and Natural Resources, and place in Chapter 4.

### **Stormwater Management**

- The *Delaware Sediment and Stormwater Regulations* have been revised and became effective January 1, 2014. A three-step plan review process is now prescribed in the regulations. Proposed development projects must submit a Stormwater Assessment Study for the project limits of disturbance and hold a project application meeting with the reviewing delegated agency as the first step, prior to submitting stormwater calculations or construction drawings, which are steps two and three. Resulting from the project application meeting a Stormwater Assessment Report will be completed by the reviewing agency and the developer and forwarded to the Town. This Stormwater Assessment Report will rate the anticipated engineering effort necessary to overcome certain stormwater assessment items such as soils, drainage outlets, and impervious cover. The Sediment and Stormwater Program recommends that the Town consider the ratings from the Stormwater Assessment Report in making a decision to issue preliminary approval for any development request by incorporating the Stormwater Assessment Report as a

required element when a plan is submitted into the municipal preliminary plan approval process.

- The revised *Delaware Sediment and Stormwater Regulations*, effective January 1, 2014, have a goal of reducing stormwater runoff for the rainfall events up to the equivalent one-year storm, 2.7 inches of rainfall in 24 hours. Runoff reduction encourages runoff to infiltrate back into the soil as in the natural pre-development system and results in pollutant removal and stream protection. Best management practices (BMPs) that encourage infiltration or reuse of runoff, such as porous pavements, rain gardens, rain barrels and cisterns, green roofs, open vegetated swales, and infiltration systems should be allowed for new development sites within the Town. Furthermore, limiting land disturbance on new development projects and limiting impervious surfaces by allowing narrower street widths, reducing parking requirements, and allowing pervious sidewalk materials will be necessary to help achieve the runoff reduction goals in the revised regulations.
- *Recommendation:* This section (pages 39-40, Chapter 4) should include language that refers to the new sediment and stormwater regulations that went into effect in January 2014, giving a brief description of the new regulations and how that will impact Newark as a delegated agency for sediment and stormwater management plan reviews.
- *Note:* There is a discussion of stormwater management on page 84, Chapter 7, which is actually about TMDLs and should be renamed as such.

### **Flood Management**

- DNREC has been working with the Federal Emergency Management Agency (FEMA) to produce new flood risk maps for each County. Preliminary Flood Insurance Rate Maps (FIRMs) for New Castle County are scheduled to become effective on February 4, 2015. Every participating municipality in the State will be required to have their floodplain regulations reviewed. A FEMA approved set of regulations must be adopted prior to the effective date of the map listed above.
- *Recommendation:* The discussion of Stream Valley Protection and Preservation on page 86, Chapter 7, should reference the new FIRM maps.

### **Rare Species and Wildlife Habitat**

- *Recommendation:* Consolidate the discussion of rare species and wildlife habitat on page 88, Chapter 7, with the discussion of rare species and wildlife habitat on page 97, Chapter 8, Parks, Recreation, and Open Space, and place in Chapter 7.

### **Parks and Recreation**

- *Recommendation:* Page 103, Goal 1, Action Item 1: Please replace “the Delaware Division of State Parks and Recreation” with “the Delaware Division of Parks and Recreation.”
- *Recommendation:* Please see attached 2011 Outdoor Recreation Participation and Trends (ORPT) phone survey results for the City of Newark, indicating the types of activities Newark residents participate in. The City is encouraged to work toward incorporating and/or continuing to offer some of these opportunities in the development of their Comprehensive Plan.

### **Brownfields**

- *Recommendation:* Move the discussion of brownfields from page 38 (in the third full paragraph), Chapter 4, Public Utilities and Infrastructure (under the heading of Stormwater Management), to Chapter 9, Economic Development. Brownfields are typically discussed under the heading of “Redevelopment.”

### **Sustainability**

- *Recommendation:* Newark may want to group its discussion of Green Energy (Green Energy, McKees Park Solar Project) and Conservation (Energy Conservation, Newark LEED Program, Recycling and Reuse, and the U Don’t Need It Program), present its health and sustainability visions and goals, and discuss issues like resiliency, assessment of infrastructure vulnerabilities in increased temperature and precipitation scenarios, green buildings, etc., in a subsection of Chapter 7 or as a stand-alone chapter entitled “Sustainability.”
- **Recommendations for Ordinances and Plan Implementation**

### **Wetlands Delineations**

- *Recommendation:* Require all applicants to submit to the City a copy of the development site plan showing the extent of State-regulated wetlands (as depicted by the State Wetland Regulatory Maps), and a United States Army Corps of Engineers (USACE) approved wetlands delineation as conditional approval for any new commercial and/or residential development. Additionally, the site plan should depict all streams and ditches which are jurisdictional pursuant to the Subaqueous Act (7 Del. C., Chapter 72) as determined by DNREC.

### **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).

### **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 City'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 New Castle Conservation District, New Castle County, and the Delaware Clean Water Advisory Council as partners in funding stormwater retrofits.

### **Drainage Easements**

- *Recommendation:* The City should pursue drainage easements along waterways and storm drains where currently there is none.

### **Department of Agriculture-Contact Scott Blaier 698-4500**

- As the City of Newark is developed city in a predominantly urban setting, there are not any agricultural issues to comment on other than those already discussed in Chapter 8 regarding urban forestry. The Department would just reiterate its previous comments on urban forestry and agribusiness.

### ***Approval Procedures:***

- 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.
- Our office will require a maximum of 20 working days to complete this review.
  - If our review determines that the revisions have adequately addressed all certification items, we will forward you a letter to this effect.
  - 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.
- 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.

- 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.
- At his discretion, the Governor will issue a certification letter to your City.
- 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 typed name and title.

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

CC: New Castle County