



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

November 21, 2014

Mr. Christopher Fazio  
Remington Vernick & Beach Engineers  
University Office Plaze, Bellvue Building  
262 Chapman Road, Suite 105  
Newark, DE 19702

RE: PLUS review 2014-10-04, Newport Comprehensive Plan

Dear Mr. Fazio,

Thank you for meeting with State agency planners on October 22, 2014 to discuss the proposed Comprehensive Plan for the Town of Newport.

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.

- There are no certification issues.

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

Department of Transportation – Contact Bill Brockenbrough 760-2109

- On page 25, in Section 5.3, there are statements to the effect that I-95 and I-295 are maintained by the Federal government. In fact, they are State-maintained, using Federal aid, as are the State Routes passing through the town.

Delaware State Housing Authority- Contact Karen Horton 739-4263

- Title 22, Section 702 Del Code, requires towns with populations less than 2,000 to state their position on housing growth. The draft plan is compliant with these regulations and DSHA supports their comprehensive plan.
- DSHA commends the Town of Newport for critically examining the housing issues facing their community and developing strong goals and objectives, and responsive strategies. The implementation of the identified strategies should have a long term positive impact on the economic vitality and quality of life for all residents in 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. The website can be found at: [www.destatehousing.com](http://www.destatehousing.com) "Affordable Housing Resource Center" under Other Programs.

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.

**TMDLs**

- *Recommendation:* DNREC recommends a new stand-alone section for information pertaining to Total Maximum Daily Loads (TMDLs) in the Town of Newport's Comprehensive Plan (currently discussed on page 30, Section 6.2.6, under the title of "Open Space/Recreation"). DNREC further suggests substituting the following narrative about TMDLs and the Pollution Control Strategy (PCS) as replacement/substitute for the existing narrative:
  - **TMDLs and the PCS**
    - Under Section 303(d) of the 1972 Federal Clean Water Act (CWA), states are required to identify all impaired waters and establish total maximum daily loads to restore their beneficial uses (e.g., swimming, fishing, drinking water, and shellfish harvesting). A TMDL defines the amount a given pollutant (i.e., or the pollutant loading rate reduction for a given pollutant) that may be discharged to a water body from all point, nonpoint, and natural background sources, thus enabling that water body to meet or attain all applicable narrative and numerical water quality criteria (e.g., nutrient/bacteria concentrations, dissolved oxygen, and temperature) in the State of Delaware's Water Quality Standards. A TMDL may also include a reasonable

margin of safety (MOS) to account for uncertainties regarding the relationship between mass loading and resulting water quality.

In simple terms, a TMDL matches the strength, location and timing of pollution sources within a watershed with the inherent ability of the receiving water to assimilate that pollutant without adverse impact. The realization of these TMDL pollutant load reductions will be through a Pollution Control Strategy (PCS). A PCS identifies the specific strategies and actions (e.g., best management practices) necessary for reducing pollutants in a given water body (or basin/watershed), thus realizing the water quality criteria or standards set forth in the State of Delaware’s Water Quality Standards, ultimately leading to the restoration of a given water body’s designated beneficial use(s). Specifically, a PCS is a combination of best management practices (e.g., wetland buffers, green technology stormwater treatment, pervious paving materials, rain gardens, etc.) that will reduce nutrient and bacterial pollutant runoff loading by optimizing BMPs. The PCS for the Christina River Basin consists of recommendations from the following three areas: agriculture, stormwater, and wastewater. Currently, the PCS for the Christina River Basin contains only suggested or non-regulatory recommendations.

- The Town of Newport is located within the Piedmont drainage, specifically within the greater Christina River Basin. The Christina River Basin includes Christina River Sub-basin and the White Clay Creek Sub-basin. Within this basin, specific-designated nutrient (nitrogen and phosphorus) and bacterial TMDL load reductions requirements are displayed in Table 1.

<b>Piedmont drainage</b>	<b>N</b>	<b>P</b>	<b>Bacteria</b>
Christina River	0-62% High Flow	0-77% High Flow	29%-95% High Flow

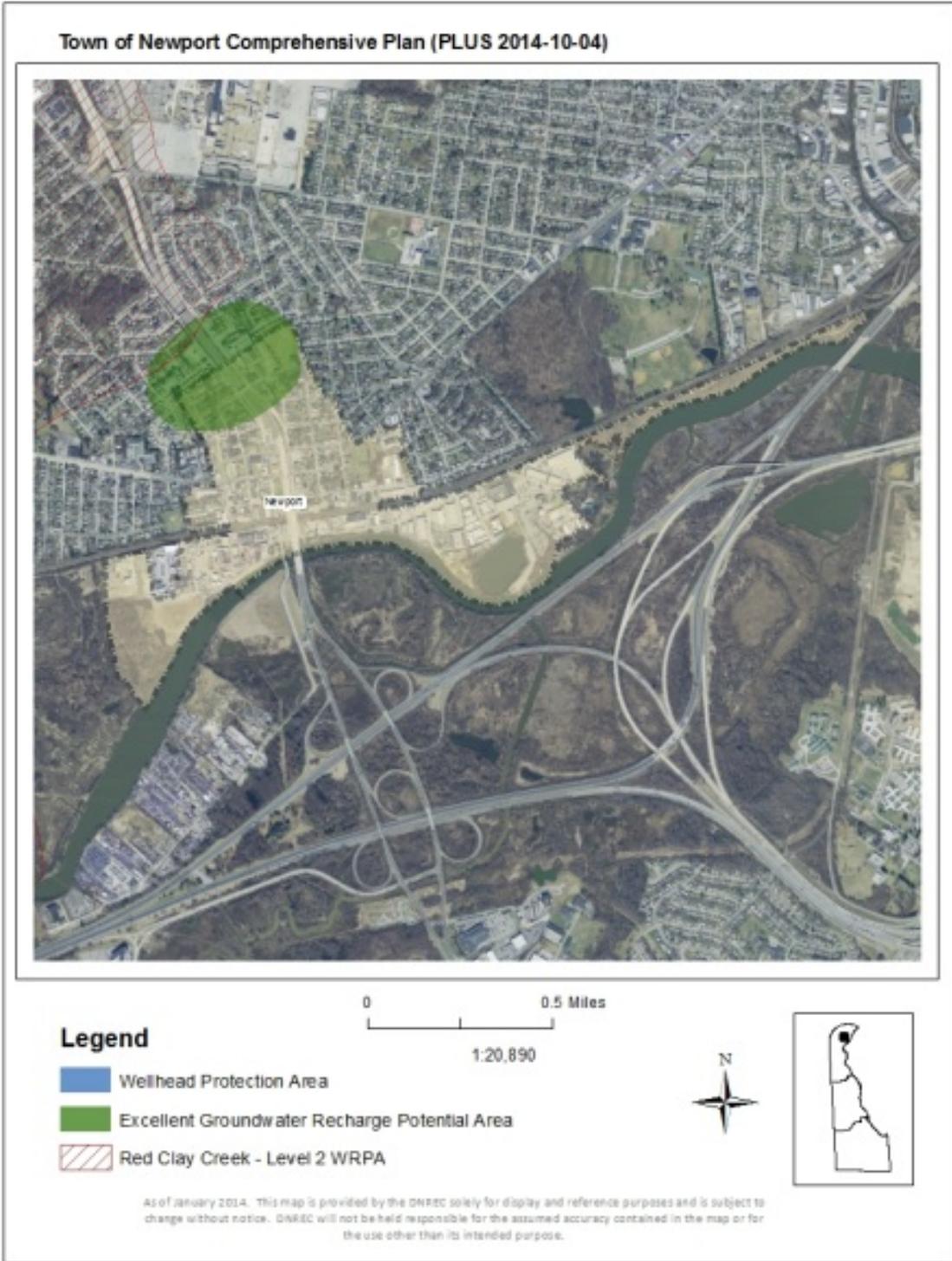
Table 1: TMDL reduction requirements for the Christina River Basin

**Source Water Protection Areas**

- The Plan does not contain any language that refers to source water protection. The review found an area of excellent ground-water recharge within the municipal boundary.

The 2010 Census reported the population of Newport at 1,055 persons. According to Title 7, Del. Code, Chapter 60, Subchapter VI, § 6082, the Town is not required to adopt a source water protection ordinance. It would benefit the Town to develop a source water protection ordinance to protect the resource.

- *Recommendation:* DNREC strongly encourages the Town of Newport to adopt a source water protection ordinance to identify excellent recharge areas as Critical Areas that need protection to insure a sufficient supply of clean drinking water.



### **Sediment and Stormwater Program**

- 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 of Newport. 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 of Newport 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.
- *Recommendation:* Incorporate a requirement for a stormwater review into the Town of Newport's preliminary approval requirements for new development requests.
- *Recommendation:* 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 of Newport. 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.

### **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 tentatively 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.

### **Drainage**

- The Drainage Program has developed a model drainage ordinance with the recommended drainage standards as a stand-alone ordinance.

- *Recommendation:* DNREC recommends the Town of Newport incorporate the following drainage standards into their land development codes where appropriate:
  - Easements: Easements of an adequate width as determined by local governments shall be required over drainage conveyance systems within any proposed subdivision. Easements shall clearly designate responsible parties. The maintenance responsibilities shall be included as part of the easement language.
  - Obstructions: The willful or negligent obstruction of any drainage conveyance shall be prohibited.
  - Conveyance Systems: Drainage conveyance systems within proposed subdivisions shall meet the minimum 10-year storm event.
  - Lot Grading: Lot grading shall be accomplished to ensure adequate drainage away from buildings and accessory structures without creating an adverse impact to adjacent structures or lands.
  - Topographic Plan: A topographic plan shall be submitted for all construction activity and/or building permits greater than 5,000 square feet (or a square footage as determined appropriate by the town). Plans shall include, at a minimum, finished floor elevations and grading to a point of positive conveyance. Finished floor elevations shall be higher than the road elevation unless, adequate drainage away from structures is provided, mechanical systems are adequately protected, and no adverse impacts to adjacent structures can be demonstrated.
  - As-Built Plans (Post-Construction Verification Documents): As-built plans (post construction verification documents) shall be required for all new construction and/or building permits greater than 5,000 sq. ft. consistent with an approved topographic plan and final site plan. Information to be shown shall include, at a minimum, post-construction topography, floor elevations, road elevations, driveway and parking elevations, drainage and/or conveyance systems and a sufficient number of ground elevations to clearly demonstrate adequate drainage away from structures, protection of mechanical systems, and no adverse impacts to adjacent structures or lands.

### **Preparing for a Changing Climate**

- Sea level rise is one of several climate change impacts that can affect communities, the others being variable precipitation and increasing temperatures. Together, precipitation and accelerated sea level rise contribute to increased flooding. Under Governor Markell's Executive Order 41, directing Delaware State agencies to prepare for emerging climate impacts and seizing economic opportunities from reducing emissions, DNREC and the OSPC are tasked with identifying actions local governments can take to improve community resiliency, including an assessment of infrastructure vulnerabilities, land use policies, and other adaptation strategies that may be integrated into comprehensive land use plans. With that in mind, DNREC requests the opportunity to work with the Town to develop language for the comprehensive plan that addresses climate change impacts, as well as adaptation and mitigation strategies for the Town to pursue through implementing ordinances.

### **Sea Level Rise**

- Portions of Newport will be subject to direct and permanent inundation from sea level rise (<http://de.gov/slrmmap>). Sea levels in Delaware have risen by about a foot over the past century (NOAA, 2014). This rate of sea level rise is likely to accelerate in the coming decades as a result of global climate change and local subsidence. Accelerated sea level rise will result in permanent flooding of low-lying coastal areas and increased risk of flood damage during storms (DNREC, 2012).
- *Recommendations:*
  - The City should consider additional land use controls for the areas subject to 1.5 meter of sea level rise.
  - To reduce the costs of providing infrastructure the City should consider not permitting roads, sewer or water to be extended into areas subject to 1.5 meter of sea level rise.
  - The City should consider avoiding new structures within a mapped Sea Level Rise Area. Where such development cannot be avoided, new structures should be built with an additional 18 inches of freeboard to protect the health, safety and general welfare of people occupying and using the structures.
  - If you would like any additional information please contact Delaware Coastal Programs at (302) 739-9283.

#### References:

NOAA (National Oceanic and Atmospheric Administration). (2014). Mean Sea Level Trend, Lewes, DE. Retrieved from [http://tidesandcurrents.noaa.gov/sltrends/sltrends\\_station.shtml?stmid=8557380](http://tidesandcurrents.noaa.gov/sltrends/sltrends_station.shtml?stmid=8557380).

Delaware Coastal Programs. (2012). Preparing for Tomorrow's High Tide: Sea Level Rise Vulnerability Assessment for the State of Delaware. Dover, DE: Department of Natural Resources and Environmental Control. Retrieved from <http://de.gov/slrv>.

### **Parks and Recreation**

- The Division of Parks and Recreation provides matching grant assistance through the Delaware Land and Water Conservation Trust Fund (DTF) to local governments for land acquisition and for park development. Lands that have received DTF assistance must remain as open space for conservation or recreation purposes in perpetuity. Ella Johnson Park, located on W. Ayre Street, has received funding through the DTF program. For more information on the Delaware Land and Water Conservation Trust Fund, please contact Robert Ehemann at (302)739-9235.

### **Brownfields**

- 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.
- *Recommendation:* 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>

### **Air Quality**

- The Town of Newport is encouraged to implement transportation alternatives and land use measures that will substantially enhance air quality and reduce air emissions. For instance, DNREC fully support efforts that improve traffic flow and reduce vehicle emissions. DNREC also supports efforts to provide tie-ins to the nearest bike paths and links to any nearby mass transport systems including parks, public and cultural facilities and residential neighborhoods.
- There are additional measures that can be implemented to reduce the impact of growth and development on air quality in Newport. Should the Town have any questions, the Division of Air Quality points of contact are Rachel Yocum and Deanna Cuccinello; they may be reached at (302) 739-9402.
- *Recommendation:* The Town should address air quality as a quality of life issue for its residents in the Comprehensive Plan, detailing specific emission mitigation measures.

### **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).

### **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 New Castle Conservation District, New Castle 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.

### ***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 (if applicable), 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 (if applicable) 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.

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Thank you for the opportunity to review this Comprehensive Plan. 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: Town of Newport