



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

August 18, 2015

Mr. Jeff Hurlock  
Town of Clayton  
P.O. Box 1130  
414 Main Street  
Clayton, DE 19938

RE: PLUS review 2015-07-01: Town of Clayton Comprehensive Plan Amendment

Dear Jeff,

Thank you for meeting with State agency planners on July 22, 2015 to discuss the proposed comprehensive Plan Amendment for the Town of Clayton. The amendment serves as the Town's required 5-year review of the most recently certified Comprehensive Plan as well as;

- Makes several deletions and revisions to the Town's future land use map and areas recommended for annexation
- Reflects the Town Council's recent adoption of a source-water protection ordinance and map
- Adopts official town boundaries, and
- Addresses the town's desire to pursue designation as a Downtown Development District

***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**

Our office would like to commend the Town of Clayton for continually working to keep its comprehensive plan up to date to guide the growth and redevelopment of the town. Here are some recommendations to strengthen this plan amendment:

- Upon adoption, please carefully consider whether you format this amendment as an addendum to the current plan or whether the town republishes the plan document with the

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amended information. The scope of this amendment touches or embellishes upon multiple plan elements, so it may be appropriate to republish the entire document.

- Page 3, Boundary Recordation: Please edit this section to indicate that the recordation of the town boundary is a requirement in Clayton’s charter. As it reads, it appears that it is simply the preference of OSPC.
- Pages 7 – 9, Downtown Development District: This section is a general summary of the District Plan that was created for the DDD application process last fall. It is recommended that the entire District Plan be added to the comprehensive plan in this section or as an appendix. The District Plan will then formally become Clayton’s downtown redevelopment plan.
- Pages 7 – 9, Downtown Development District: At the PLUS meeting it was discussed that the priority projects listed in the District Plan were already being redeveloped. It is recommended that the District Plan be revised to reference these success stories, and identify new priority projects that may be poised for redevelopment in the future.
- Page 21, Source Water Protection Areas: DNREC prefers that this information be in the “Infrastructure” or “Utilities” chapter, rather than in the Environmental Protection chapter. They will probably recommend moving it to that chapter.
- Page 22, Boundary Maintenance: Please edit this section to indicate that the recordation of the town boundary is a requirement in Clayton’s charter. As it reads, it appears that it is simply the preference of OSPC.

**Department of Natural Resources and Environmental Control – Contact: Michael Tholstrup 735-3352**

**Source Water Protection Areas.**

- DNREC applauds the City’s Source Water Protection Ordinance for its protection of the resource and the proper citing of the source water elements within the text of the Comprehensive Plan.

**Flood Management.**

- Staff from the Flood Management Program confirmed that the Town updated their ordinance in May 2014 and that it is consistent with current federal regulations; they also confirmed that the Environmental Features 2014 map illustrates the correct flood hazard areas (0.2% and 1.0% Annual Chances).

**Brownfields/Lebanon Chemical.**

- 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. 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 (SIRS) 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>.
- If any future development occurs on sites with previous manufacturing, industrial, or agricultural use, DNREC 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 to 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.
- Please be advised that property within the proposed annex area, located at 4474 Wheatley’s Pond Road, is the location of a SIRS site: Bordon Chemical, (aka Lebanon Chemical; DE-0022). The Site entered the Preliminary Assessment/Site Investigation program in December 2001 and a Site Investigation (SI) was conducted in May and June of 2002. The SI concluded that the site did not pose a threat to human or environmental health as long as it remained zoned as commercial/light industrial. Although the Site was given a No Further Action designation in April 2005, **please be advised that additional remediation may be required if the Bordon Chemical property will be used for residential purposes.**

#### **Wildlife Habitat.**

- It doesn’t appear in the Comprehensive Plan that any consideration has been given to the preservation of wildlife habitat. One opportunity to do so would be to retain People’s Farm as a potential conservation/preservation area for the protection of wildlife. This could provide an opportunity to expand buffers along Duck Creek Pond to allow for

reforestation.

**Bog Turtle.**

- Bog turtles are listed as federally threatened under the U.S. Endangered Species Act. Please note that there are bog turtle habitats surrounding the railroad area that is to be annexed. If new work were to be proposed, Phase I, and in some cases Phase II, bog turtle surveys would likely be necessary. The following is a list of parcels that are included in or adjacent to the railroad area that would likely require bog turtle surveys if work were proposed.

Kent County

- 3-04-00918-01-4400-00001
- 3-00-00900-01-0200-00001
- 1-04-00900-01-0100-00001
- 1-04-00900-01-0300-00001

New Castle County

- 1502700005
- 1502700026

Please note that it is also possible that there are other sites in the area. This is simply a list of parcels near the railroad area that were flagged for bog turtle in our database.

**Air Quality.**

- Please be advised that any land clearing and construction activities in annexation areas or areas within Town identified for redevelopment shall comply with all applicable Delaware air quality regulations. The following regulations in Table 1 – Potential Regulatory Requirements may apply to these projects:

<b>Table 1: Potential Regulatory Requirements</b>	
<b>Regulation</b>	<b>Requirements</b>
<b>7 DE Admin. Code 1106 -</b> Particulate Emissions from Construction and Materials Handling	Use dust suppressants and measures to prevent transport of dust off-site from material stockpile, material movement and use of unpaved roads. Use covers on trucks that transport material to and from site to prevent visible emissions.
<b>7 DE Admin. Code 1113 – Open Burning</b>	Prohibit open burns statewide during the Ozone Season from May 1-Sept. 30 each year. Prohibit the burning of land clearing debris. Prohibit the burning of trash or building materials/debris.

<b>7 DE Admin. Code 1135</b> – Conformity of General Federal Actions to the State Implementation Plan	Require, for any “federal action,” a conformity determination for each pollutant where the total of direct and indirect emissions would equal or exceed any of the de minimus levels (See Section 3.2.1)
<b>7 DE Admin. Code 1141</b> – Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products	Use structural/ paint coatings that are low in Volatile Organic Compounds. Use covers on paint containers when paint containers are not in use.
<b>7 DE Admin. Code 1144</b> – Control of Stationary Generator Emissions	Ensure that emissions of nitrogen oxides (NO <sub>x</sub> ), non-methane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO <sub>2</sub> ), carbon monoxide (CO), and carbon dioxide (CO <sub>2</sub> ) from emergency generators meet the emissions limits established. (See section 3.2). Maintain recordkeeping and reporting requirements.
<b>7 DE Admin. Code 1145</b> – Excessive Idling of Heavy Duty Vehicles	Restrict idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes.
<b>Regulation 21 Section 10</b> – Emission Standards for Hazardous Air Pollutants, Asbestos	Ensure no visible residue of asbestos materials remains in the work area after all asbestos materials are removed in accordance with NESHAP. Display DANGER signs whenever airborne asbestos may be present in accordance with NESHAP and OSHA Use wet removal techniques. Dispose of all asbestos containing waste in clearly labeled sealed containers and store in a secure location awaiting transport to an authorized disposal facility, not to exceed a period of 45 days

For a complete listing of all Delaware applicable regulations, please look at our website:

<http://www.awm.delaware.gov/AQM/Pages/AirRegulations.aspx>

- DNREC notes that some proposed land use changes will result in an increase in open space. For example, the vacant Hanover properties are proposed to go from Residential Suburban (RS) to Open Space (OS). The US EPA defines open space as “any open piece of land that is undeveloped (has no buildings or other built structures) and is accessible to the public.” DNREC supports this proposed addition of 34.4 acres of open space. These properties appear to be forested and, thus, provide air quality benefits to the Town.
- DNREC also notes that the proposed land use change for the abandoned Lebanon Chemical property potentially results in the reuse of an already developed area. The Plan states that the land lost its legal use as an industrial site several years ago and that the property offers an opportunity for annexation into the Town as a commercial site. While

DNREC supports the reuse of already developed lands, particularly where doing so allows preservation of rural or forested lands, DNREC cautions the Town to consider all applicable air quality regulations, should demolition and/or new construction be required.

- There are things that prospective developers can do to lessen the effects of air pollution resulting from construction and occupancy of future residential developments within the Town, as it continues to expand westward:

**Constructing with only energy efficient products.**

- Energy Star qualified products are up to 30% more energy efficient. Savings come from building envelope upgrades, high performance windows, controlled air infiltration, upgraded heating and air conditioning systems, tight duct systems and upgraded water-heating equipment. Every percentage of energy efficiency translates into a percent reduction in pollution. The Energy Star Program is an excellent way to save on energy costs and reduce air pollution.

**Offering geothermal and/or photo voltaic energy options.**

- These systems can significantly reduce emissions from electrical generation and from the use of oil or gas heating equipment.

**Constructing with high albedo, high solar reflectance materials.**

- This includes roofing and hardscape. These materials help to reduce heat island impacts and, by extension, help to minimize the potential for localized ground-level ozone formation. These materials also help reduce demands on air conditioning systems and save on energy costs.

**Providing shade for surface lot parking areas.**

- Approaches may include architectural devices, vegetation, or solar panels. Providing shade for parking areas helps to reduce heat island impacts, and, by extension, helps to minimize the potential for localized ground-level ozone formation. Such measures can also have the additional benefit of channeling or infiltrating stormwater.

**Encouraging the use of safe multimodal transportation.**

- This measure can significantly reduce mobile source emissions. For every vehicle trip that is replaced by the use of a sidewalk or bike path, 7 pounds of VOC and 11.5 pounds of NOx are reduced each year. Attention should be paid particularly to those areas connecting to schools and to the Town's proposed Downtown Development District.

**Using retrofitted diesel engines during construction.**

- This includes equipment that is on-site as well as equipment used to transport materials to and from site.

**Using pre-painted/pre-coated flooring, cabinets, fencing, etc.**

- These measures can significantly reduce the emission of VOCs from typical architectural coating operations.

**Planting trees in vegetative buffer areas, particularly those between the site and adjacent residential areas.**

- Trees reduce emissions by trapping dust particles and replenishing oxygen. Trees also reduce energy emissions by cooling during the summer and by providing wind breaks in the winter, whereby reducing air conditioning needs by up to 30 percent and saving 20 to 50 percent on fuel costs.

Should the Town have any questions, the Division of Air Quality point of contact is Rachel Yocum, and she may be reached at (302) 739-9402 or [Rachel.Yocum@state.de.us](mailto:Rachel.Yocum@state.de.us).

**Department of Agriculture – Contact: Scott Blaier 698-4532**

- The Department of Agriculture has reviewed the town’s amendment and update to its 2008 Comprehensive Plan. The department congratulates the town on several meaningful and worthwhile updates. Specifically, with regard to agriculture, the department offers the following suggestions and comments.
  - Page 4, Item 4: The text is correct, the “Wright Farm” (parcel number 1502600026) has been enrolled in Aglands program. However, its status has changed. This property was selected for permanent preservation in 2014, and pending a successful settlement with the owner, it will become permanently preserved as a farm in 2015.
  - The department encourages the town to periodically update its GIS layer with the latest changes and additions to the Agricultural Lands Preservation Program. Please contact Milton Melendez at 698-4530.
  - Page sixteen: The Department appreciates the town’s consideration of farmland preservation when considering annexation of new land.

**Department of Housing – Contact: Karen Horton 739-4263**

- The proposed Plan Amendment to the Town’s existing certified 2008 Comprehensive Plan includes, among other items, the designation of a Downtown Development District (DDD). Although the Town was not successful in its November 2014 application for DDD designation, its application will remain on file until 2018. This Plan Amendment incorporates the DDD boundaries, goals, and priority projects into Clayton’s Comprehensive Plan. The priority projects mentioned in the Plan Amendment were identified during discussion as being no longer being viable as they are already being developed. DSHA recommends updating the priority projects to reflect the priority projects that are most likely if the Town were to receive a DDD designation. Also, while

there were several references to the DDD Plan and a summary of its elements, DSHA recommends adding the DDD Plan as an appendix to the Comprehensive Plan to further demonstrate consistency among the Town's planning documents.

**State Historic Preservation Office – Contact Terrence Burns 736-7404**

- The Town of Clayton has a historic core that is important in the history of the State of Delaware. The St. Joseph's Industrial School property, now Providence Creek Academy and St. Joseph's at Providence Creek (K05054) is listed in the National Register of Historic Places. Clayton was identified as an eligible historic district in 1990, but was not listed on the National Register of Historic Places.

A major benefit of being listed on the National Register makes properties eligible for financial incentives in the form of federal, state, and county historic preservation tax credits and occasional grants. Such financial incentives will help in the maintenance of the aging housing stock, which is one of the Plan's concerns and recommendations.

Please note that changes to the plan could result in additional comments from the State.

Once a decision has been reached on this proposed comprehensive plan amendment, please forward the adopting ordinance or other documentation and 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 any maps that were updated as well as any text that was approved in amending the comprehensive plan.

Thank you for the opportunity to review this Comprehensive Plan amendment. If you have any questions, please contact me at 302-739-3090.

Sincerely,



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