



**STATE OF DELAWARE**  
**OFFICE OF MANAGEMENT AND BUDGET**  
**OFFICE OF STATE PLANNING COORDINATION**

April 25, 2024

Mariaelena Rivera  
Town of Townsend  
141 Main Street  
Townsend, DE 19734

RE: PLUS review – 2024-03-03; Townsend Comprehensive Plan Amendment

Dear Ms. Rivera,

Thank you for meeting with State agency planners on March 27, 2024 to discuss the proposed Townsend comprehensive plan amendment. According to the application, the Town desires to amend the Future Land Use & Growth & Annexation Areas Map within the certified Comprehensive Plan to show an additional 106 parcels adjacent to the town boundary as possible annexation areas.

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.

This office has received the following comments from State agencies:

Office of State Planning Coordination – Contact: Samantha Bulkilvish 302-739-3090

The Town of Townsend is proposing to add an additional 106 parcels to their Future Land Use & Growth & Annexation Areas Map of the comprehensive plan. The parcels being added to the annexation area have a proposed future land use of commercial, residential, and farmland.

After review of the amendment and the discussion at the PLUS meeting, our office has some concerns which may impact this proposal moving forward. The town has not provided any evidence of intergovernmental coordination with New Castle County and the Town of Middletown.

Lastly, multiple parcels are currently located in Investment Level 4 of the *Strategies for State Policies and Spending*, The Department of Natural Resources and Environmental

Control has identified environmental concerns on many of the parcels, and the Department of Agriculture highly suggests the removal of the two parcels in the Farmland Preservation program be removed from the proposed annexation area. The Town has not provided rationale to help our office evaluate whether it is justified to support these lands moving into a growth and annexation area.

While the State understands the Town's desire to control the growth happening around its existing borders, we request that the Town put a pause on moving forward with this amendment and work with New Castle County and other State Agencies to amend the annexation areas further.

Please address the following before moving forward with this Comprehensive Plan Amendment:

1. Meet with New Castle County and the Town of Middletown to work out boundary differences. Provide documentation that through this intergovernmental coordination both jurisdictions concerns and comments have been addressed.
2. Given the suggestions of the Department of Agriculture below consider the removal of the parcel in active Agricultural Land Preservation. Meet with the Department of Agriculture to discuss possibilities for additional ag land protections within the Town of Townsend. If the removal of the parcels from the proposed annexation area is not feasible, please provide the Office of State Planning Coordination with appropriate rationale.
3. Please provide the Office of State Planning Coordination with documentation of the environmental protections the Town of Townsend has in place to ensure the future of a green belt and to protect agricultural lands in the future. The Department of Natural Resources and Environmental Control has provided a list of environmental assets you may wish to review to ensure the ordinances you have in place will sufficiently protect these areas.
4. Further describe in detail the rationale for the inclusion of parcels that are in State Strategies Level 4 areas.

Please reach out to our office should you need help to facilitate a meeting with any of the above-mentioned entities. The Office of State Planning Coordination is here to help you move through this process to help the Town of Townsend reach their goals while also helping to guide land use planning across the State.

Department of Transportation – Contact Stephen Bayer 302-760-4834

- DelDOT has no comments on the proposed amendment.

Department of Natural Resources and Environmental Control – Contact Beth Krumrine 302-735-3480

Staff from the Delaware Department of Natural Resources and Environmental Control (DNREC) reviewed the project submitted for PLUS review. The absence of comments regarding specific resources does not indicate that there are not additional constraints or environmental issues, nor does it indicate DNREC support of a project.

Summary

This annexation request includes 106 parcels representing a near doubling of the acreage included within Townsend’s municipal boundary. Such a large proposal should be undertaken only as a part of a comprehensive update to a comprehensive plan. It is even more important in this case because of the environmental sensitivity of most of the proposed parcels for annexation. Under their current jurisdiction, the environmental protections for these parcels are robust under New Castle County rules. If the proposed parcels are annexed into Townsend under the town’s current environmental requirements, those protections will be severely undermined.

Much of the lands proposed to be incorporated into Townsend contain statewide and regionally important habitat that is part of a larger ecological network vital for the survival of migrating birds, waterfowl, and other wildlife. Disturbance to these areas would have lasting regional impacts as well as potentially having continental environmental impacts well beyond the extent of Townsend’s border. In addition, many of these parcels contain non-tidal wetlands which provide regional benefits for water quality and flood attenuation.

While DNREC reviewers acknowledge that certain measures exist within Townsend’s current city limit to protect riparian forest buffers, as it stands, the code is inadequate to protect the greater expansive network of critical habitat that exists in this area. Currently these areas fall under New Castle County Code, where Critical Natural Areas and forested wetlands are offered 100% protection, with extensive protections and mitigation requirements for mature forest. Annexing these parcels into Townsend will ultimately result in eliminating high-value habitat in the future without implementing additional environmental protection measures.

For these reasons, annexation as proposed should only take place after a thorough update to the Townsend Comprehensive Plan, whereby existing protective measures are evaluated, and proper codes and ordinances are adopted prior to annexation of such lands. Annexation of such lands should only be contemplated if the Town of Townsend can provide a strict development code, matching or surpassing

environmental protections offered through New Castle County.

The table below identifies parcels of concern proposed to be annexed into Townsend.

These parcels:

- Lie within the Appoquinimink River Natural Area or the Blackbird Natural Area;
- Possess mature forest and contiguous forest; or
- Hold unique habitat types known to support a high diversity of plant and animal species.

<b>North side of Route 13 (Area A and north)</b>		
<b>Parcel ID</b>	<b>Natural Area on parcel</b>	<b>Area of concern</b>
1401200034	NA	Forested areas (northern portion)
1401600003	Appoquinimink Natural Area	Forested areas (entire parcel)
1401200171	Appoquinimink Natural Area	Forested areas (edge)
1401200170	Appoquinimink Natural Area	Forested areas (northern portion)
1401200173	Appoquinimink Natural Area	Forested areas (northern portion)
1401200172	Appoquinimink Natural Area	Forested areas (northern portion)
1401200194	Appoquinimink Natural Area	Forested areas (northern portion)
1401200185	Appoquinimink Natural Area	Forested areas (northern portion)
1401200175	Appoquinimink Natural Area	Forested areas (northern portion)
<b>North side of Route 13 (Area A and south)</b>		
<b>Parcel ID</b>	<b>Natural Area on parcel</b>	<b>Area of concern</b>
1401600058	Blackbird Natural Area	Forested areas (most of parcel)
1401600066	Blackbird Natural Area	Forested areas (northern two thirds of parcel)
1401600067	Blackbird Natural Area	Forested portion of parcel (norther third of parcel), coastal seasonal pond, forested wetlands
1401600068	Blackbird Natural Area	Forested area (majority of parcel), forested wetlands, perennial stream and existing buffer along stream
1401600070	Blackbird Natural Area	
1401600071	Blackbird Natural Area	Forested areas and wetlands, existing buffer along stream
1401600078	Blackbird Natural Area	Entire parcel, perennial stream and existing buffer along stream
1401600107	Blackbird Natural Area	Forested areas and wetlands, perennial stream and existing buffer along stream
<b>South side of Route 13 (Area B and north)</b>		
<b>Parcel ID</b>	<b>Natural Area on parcel</b>	<b>Area of concern</b>
1401600210	Blackbird Natural Area	Forested areas (Southern edge)

1401600283	Blackbird Natural Area	Forested areas and wetlands
1401600049	Blackbird Natural Area	Forested areas and wetlands
1401600047	Blackbird Natural Area	Forested areas and wetlands
1401600045	Blackbird Natural Area	Forested areas and wetlands
1401600043	Blackbird Natural Area	Forested areas and wetlands
1401600042	Blackbird Natural Area	Forested areas and wetlands
1401600041	Blackbird Natural Area	Forested areas and wetlands
1401600008	Blackbird Natural Area	Entire parcel
1401600009	Blackbird Natural Area	Forested areas and wetlands
1401500031	NA	Contiguous forest and freshwater forested wetlands
<b>South side of Route 13 (Area C and north)</b>		
<b>Parcel ID</b>	<b>Natural Area on parcel</b>	<b>Area of concern</b>
Areas of concern within this cluster of parcels include those containing existing forest, forest buffers surrounding perennial streams, and areas containing freshwater forested wetlands		

**Natural Areas**

Twenty-six of the parcels proposed for annexation lie within the Blackbird Natural Area and Appoquinimink River Natural Area, as outlined above. Natural Areas contain lands of statewide significance identified by the Governor’s Natural Areas Advisory Council as containing high quality natural features unique to Delaware.

Under New Castle County development code, Critical Natural Areas are offered 100% protection from development activities. Under the existing Townsend code, there are no specific development protections or requirements for these unique and important areas.

Contact: DNREC Division of Parks and Recreation, Office of Nature Preserves at (302) 739-9039. Website: <https://dnrec.delaware.gov/parks/natural-areas/> or <https://dnrec.delaware.gov/parks/open-space/conservation-easements/>

**Mature Forest**

Parcels located within both the Delaware Ecological Network and Critical Natural Areas have also likely maintained some degree of forest cover since 1937 and could be considered mature forest. Mature forests possess the potential for rare, threatened, or endangered species that rely on this type of habitat. These mature forests also filter water for improved water quality, absorb nutrients, infiltrate stormwater, moderate temperatures, and store atmospheric carbon which would otherwise contribute to climate change.

These forests currently have extensive protections and mitigation requirements under the New Castle County Code.

Contact: DNREC Division of Fish and Wildlife, Species Conservation and Research Program at (302) 735-3600. Website: <https://dnrec.delaware.gov/fish-wildlife/contact-information/>

### **Forested Wetlands**

Freshwater forested wetlands exist on a large majority of the parcels proposed for annexation, including several parcels identified as containing a rare wetland habitat, the coastal plain seasonal pond. Such areas provide habitat for plants and animals, many of which are considered rare in the state. Some rare amphibian species only breed in these types of wetlands because the lack of fish to prey upon their eggs and larvae.

Limited state or federal rules currently exist protecting such freshwater forested wetlands. These wetlands are not afforded regulatory protection but have high ecological value. Existing Townsend code speaks to certain wetland requirements being triggered when a permit is needed by the U.S. Army Corps of Engineers. Federal permitting requirements have changed substantially in recent years.

Forested wetlands currently have 100% protection from development under the New Castle County Code. Townsend should evaluate current environmental codes against updated federal permitting requirements to ensure that these areas are protected. The most recent U.S. Army Corps of Engineers update from March 22, 2024 can be found at: <https://api.army.mil/e2/c/downloads/2024/03/21/a3846e04/memo-on-cw-actions-on-waters-and-wetlands-22-march-2024.pdf>.

State Contact: DNREC Wetlands and Waterways Section at (302) 739-9943.  
Website: <https://dnrec.delaware.gov/water/wetlands-subaqueous/>

### **Delaware Ecological Network**

Twenty-four of the parcels proposed for annexation lie within the Delaware Ecological Network, a statewide network of interconnected lands having significant ecological value. This GIS data layer helps to identify and prioritize areas for natural resource protection, including forests, wetlands, streams, and high-quality habitat for rare plants and animals. Larger, connected areas of natural habitat are beneficial to wildlife, allowing for safer movement and migration from one area to another and reducing roadway mortality.

Contact: DNREC Wildlife Species Conservation and Research Program at (302) 735-3600.  
Website: <https://dnrec.delaware.gov/fish-wildlife/contact-information/>

### **Key Wildlife Habitat**

Many of the parcels of concern identified as having mature forest, wetlands, and lie within the Delaware Ecological Network are also mapped as a Key Wildlife Habitat in the

Delaware Wildlife Action Plan because it is part of a larger forest block that can support an array of plant and animal species across the landscape.

Contact: DNREC Wildlife Species Conservation and Research Program at (302) 735-3600.

Website: <https://dnrec.delaware.gov/fish-wildlife/contact-information/>

### **Threatened, Endangered or Protected Species**

A review of our database indicates that habitat suitable for bog turtles exists on many of the parcels proposed for annexation. This turtle is protected under the Federal Endangered Species Act.

Contact: DNREC Division of Fish and Wildlife, Species Conservation and Research

Program at (302) 735-3600. Website: <https://dnrec.delaware.gov/fish-wildlife/conservation/>

### **State Endangered and Rare Species**

The following animals are listed as State of Delaware rare, threatened, or endangered species, and have been documented on several parcels proposed for annexation or immediately adjacent to these parcels.

- State-endangered amphibians (tiger salamander and barking tree frog)
- State-rare snake (rough greensnake) and amphibian (spotted salamander)

Contact: DNREC Division of Fish and Wildlife, Species Conservation and Research

Program at (302) 735-3600. Website: <https://dnrec.delaware.gov/fish-wildlife/conservation/>

### **Department of Agriculture – Contact Milton Milendez 302-698-4500**

- The Delaware Department of Agriculture strongly discourages the annexation or consideration for such of properties that are active participants in Delaware’s Farmland Preservation Program. This proposed Amendment identifies at least two properties within the future annexation areas to be in the Farmland Preservation Program. The R&A Farm District (N-98-05-197 Parcel 1401500245), and the J&R Expansion (N-98-10-197A Parcel 1401500022) are both within the described area. As such we would recommend that further consideration is given to exclude these properties as they are active productive farms.
- The Delaware Department of Agriculture welcomes the opportunity to provide recommendations for this municipal comprehensive plan. Agriculture is the State’s largest industry and its most significant land use.

As an economic force the agriculture/food system provides more jobs and impacts in the state's economy than any other sector. In addition to the direct economic impacts throughout the state, agriculture and forestry provide billions of dollars in environmental services to the citizens of Delaware in the form of air and water cleansing, weather moderation, carbon sequestration, outdoor recreation, wildlife habitat, scenic vistas – and the list goes on. These services are largely uncompensated and represent a significant contribution to the quality of life and the health of Delaware's citizens and visitors.

Agriculture and forestry are the state's most important land uses. The majority of the state's private lands are farms. Farms and forests dominate the landscape. This fact alone dictates that these land uses must be a crucial part of the future land use planning in every comprehensive plan. Over three-quarters of the private open space in Delaware is in farms. The maintenance of these land uses is crucial to our future quality of life and the orderly and pleasing development of the state. In addition, the State of Delaware is investing millions of taxpayer dollars in the permanent preservation of these lands and all the attendant benefits they provide. Every comprehensive land use plan should account for these factors in balancing future development, preservation of farmland and forest, and the enhancement of the economic activities associated with our working lands.

Undoubtedly future generations will judge our effectiveness at land use planning by what they see around them. Like Delawareans today they will expect us to balance growth and development with the preservation and enhancement of agriculture and forestry.

- The following proposed steps provides municipal governments with directives that can be implemented to maximize the preservation and longevity of agriculture in your surrounding areas.

## AGRICULTURE

- 1) Identify areas within the municipality where agriculture is considered the highest priority land use
- 2) Encourage the protection of prime agricultural land
- 3) Discourage development activities and capital projects incompatible with modern agriculture
- 4) Encourage separation of residential and agricultural areas through the zoning and subdivision process (this includes significant buffering and setback requirements for lands adjacent to agricultural operations)



- 5) Encourage, support, and maintain existing and proposed agricultural support enterprises and ag-related businesses
- 6) Encourage the development of local markets for locally grown foods
- 7) Encourage agricultural use protections and strong right-to-farm policies in agricultural areas
- 8) Establish and support financial incentives that encourage and allow landowners to remain in agriculture
- 9) Promote policies that maintain and foster economic viability within the agricultural sector

#### DENSITY AND EFFICIENT LAND DEVELOPMENT

- 1) Encourage maximum use of existing and planned infrastructure
- 2) Designate infill areas & project number of units to be constructed in those areas
- 3) Discourage development patterns that promote inefficient use of land (i.e., discourage developments where lots frequently exceed minimum lot size requirements).
- 4) In conjunction with population projections, project acres of residential land needed for a given time period and discourage consumption of land in excess of that need with allowance for reasonable market competition
- 5) Direct growth toward existing population centers.

#### Delaware Emergency Management Agency – Contact Phillip Cane 302-659-2325

- DEMA has no comments or objections for the Comprehensive Plan Amendment as this is not our area of expertise.

#### State Historic Preservation Office – Contact Carlton Hall 302-736-7400

- There are known sites on neighboring parcels of some of the parcels proposed and there may be archaeological potential in some of the annexation areas.
- If development is proposed as a result of the annexation, our office would like the opportunity to comment on the development of the annexation areas.

#### Delaware State Fire Marshall's Office – Contact Duane Fox 302-739-4394

- The DE State Fire Marshal's Office has the responsibility to review all commercial and residential subdivisions for compliance with the DE State Fire Prevention Regulations. This Agency asks that a MOU be established between the DE State Fire Marshal's Office and the Town of Townsend. The State Fire Marshal's Office would be issuing approvals much like DelDOT, Kent Conservation, and DNREC.

This Agency's approvals are based on the DE State Fire Prevention Regulations only.

- The DE State Fire Marshal's Office has no objection to the annexation growth and boundaries.

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 black ink, appearing to read "D. Edgell". The signature is fluid and cursive, with a large initial "D" and a long, sweeping underline.

David L. Edgell, AICP  
Director, Office of State Planning Coordination