

**Sussex County 2007 Comprehensive Plan Update  
Future Land Use Element Draft (July 31, 2007)  
CAC Management Committee – Review, Comment & Recommendations**

This document presents the CIB CAC Management Committee's review, comments, and recommendations about the Future Land Use Element Draft dated July 31, 2007 (DRAFT) of the Sussex County 2007 Comprehensive Plan Update (SCCP 2007). This review is a follow-up to the Recommendations<sup>1</sup> made by the CAC Ad Hoc Subcommittee tasked with evaluating Land Use requirements for the SCCP 2007 Update, and subsequently adopted by the CIB Board of Directors. This review is based on these CIB Recommendations.

The CAC Management Committee reviewed the following documents to perform this analysis:

- The SCCP 2007 Future Land Use Element (Draft, July 31, 2007 )
- The Sussex County 2003 Comprehensive Plan Update (SCCP 2003) – Land Use Element
- Delaware Inland Bays Comprehensive Conservation Management Plan (CCMP)
- Pollution Control Strategy (Draft, April 2007)
- Sussex County Code, Zoning, Chapter 115

We first present comments regarding the general nature of the DRAFT including its incorporation of CIB Recommendations and its effectiveness for implementing ordinances and enforceable code. We then present a statement of concerns regarding the Inland Bays current environmental health status. Third, we present the further actions that we believe must be taken by the Sussex County Council in the Future Land Use Element of the SCCP 2007 to ensure the survivability of the Inland Bays environmental health, water quality, and Sussex County quality of life. CIB, other Inland Bay stakeholder organizations, and the citizenry of Sussex County must embrace these recommendations and demonstrate their significance to the County Council.

## **General Comments**

In the July 31 draft of the Future Land Use Element, the County indicates that it continues to subscribe to land use goals consistent with CCMP goals. On page 13, goals such as “protect critical natural resources...by guarding against over-development and permanently preserving selected lands” and “ensure that new developments incorporate preserved usable open space and other best practices in subdivision design” demonstrate that. However, it is only by enactment of ordinances and enforceable code that implementation of these goals by the County will be achieved.

Much of the DRAFT references or generally describes potential changes to the SCCP 2007 that are directly or indirectly related to the CIB Recommendations. These references are as follows:

- Restatement of Growth Management Districts with permitted uses, density, and infrastructure requirements (p. 14-24)
- Potential special protection of tidal wetlands where the County “may also consider” a “net” tract size reduction resulting in a reduced density for new developments within the Environmentally Sensitive Developing Area (ESDA) (p. 20)
- The potential conversion of the underlying ESDA zoning districts into “regular zoning districts” to legally implement the Density Bonus Program for the purpose of permanent preservation of a “substantial percentage of the tract” (p. 20)

---

<sup>1</sup> Recommendations entitled “Requirements for the 2007 SC Comprehensive Plan Update”, adopted June 15, 2007

**Sussex County 2007 Comprehensive Plan Update  
Future Land Use Element Draft (July 31, 2007)  
CAC Management Committee – Review, Comment & Recommendations**

- Retention of the rural environment in Low Density Areas (AR-1 zoning) through the use of “plant landscaped buffers”, additional incentives such as Transfer of Development Rights (TDR’s), and “significant open space” (p. 22)
- Potential establishment of an Agricultural zoning district (p. 24)
- “Special interest” topics such as TDR use in Density Bonus Incentives and consideration of State Resource Areas/Natural Areas (SRAs) maps in protection of open space and permanent land preservation (p. 26-29)
- Community Design criteria for cluster development planning that includes the identification of lands to be preserved through mapping of wetlands, flood-prone areas, etc. prior to drawing lot lines (p. 33)
- “Interest” in establishing eligible open space. This section describes valid purposes for open space and some criteria that may be used for assessing its value in a development. The main criterion for defining open space requirements is still based on volume (p. 33 )

The Committee regrets that the County did not address the following CIB Recommendations in the DRAFT:

- Establishment of buffer specifications for nontidal wetlands
- Utilization of Public water and sewer in all ESDA zoning districts
- The creation of a Wetlands/Critical Habitat Protection Element
- Restriction of growth in areas where there is no planned infrastructure or services
- The creation of an overall Sussex County Growth Plan through the analysis of land/environmental capacity versus development demand. The Growth Plan must evaluate population (current and future) and define infrastructure, nutrients, natural resources, sensitive areas, preservation areas, EMS, fire, police, public education, and Open Space requirements for the entirety of Sussex County
- Enforcement

### **Effectiveness of Future Land Use Element**

The CAC Management Committee notes that the County’s intent is commendable and is pleased to see references to TDR’s, SRAs preservation, and a listing of valid purposes for Eligible Open Space. However, the Committee is concerned that most of the DRAFT is non-binding and unenforceable as currently written. While the County’s goals are in line with the CCMP goals, the above references to the CIB Recommendations are just that – references and descriptions. In fact, the Committee finds that the DRAFT regresses from the 2003 SCCP<sup>2</sup>. There are simply no requirements included in the DRAFT to implement through enforceable ordinances the goals set out in the 2003 update. For example, the section on future growth in ESDA contains only suggestions such as: “The following major guidelines should apply to future growth in ESDA”, ...”It may be advisable for legal reasons to convert this overlay into regular zoning districts”, ...”The County may also consider an additional layer of protection in the ESDA”, ...Tidal wetland area could be subtracted from the total tract size...”. Another example is the section on TDR which is described as “a voluntary program” with a listing of “generalized guidelines”. Therefore, because of the extensive unmanaged and unregulated growth that has occurred in the Inland Bays causing significant damage to the ESDA watershed since the SCCP 2003, the CAC Management Committee believes that major revisions set forth below must be

---

<sup>2</sup> See SCCP 2007 – SCCP 2003 Comparison in Supplemental List

**Sussex County 2007 Comprehensive Plan Update  
Future Land Use Element Draft (July 31, 2007)  
CAC Management Committee – Review, Comment & Recommendations**

made to the 2007 SCCP.

**Statements of Concern<sup>3</sup> Regarding Inland Bay Environmental Health and Actions Required**

- Whereas, the Delaware Inland Bays Estuary was declared “an estuary of national significance” by the US Congress;
- Whereas, there exist numerous instances of government inconsistencies and lapses in application and enforcement of policies, laws, and regulations;
- Whereas, improving water quality in the Inland Bays is vital to maintaining the tourism and recreation of eastern Sussex County;
- Whereas, in the Delaware Surface Water Quality Standards, the Inland Bays were designated “waters of exceptional ecological and recreational significance”;
- Whereas, only 29% of the streams feeding the Inland Bays fully support aquatic life designated use;
- Whereas, the waters of the Inland Bays are highly enriched with nitrogen and phosphorous;
- Whereas DNREC warns visitors to various State Parks that “Waters of the Inland Bays may contain organisms that could be harmful to your health. Swimming could result in an increase risk of rashes, infections or gastrointestinal distress. Especially during and after rainfall.”<sup>4</sup>;
- Whereas, the primary activities maintaining a eutrophic condition in the Inland Bays are agriculture and urbanization;
- Whereas, aquatic life and primary contact recreation uses are not supported in each of the Inland Bays;
- Whereas, the Sussex County population increased 56% between 1990 and 2005, not including approximately 37,000 homeowners who live in other states;
- Whereas, most of that growth has been concentrated near already congested communities Rehoboth Beach, Bethany Beach, and Fenwick Island;
- Whereas, growth will put people and buildings closer to sensitive natural areas, increasing the potential for their degradation;
- Whereas, urban areas with high relevant percentages of impervious surface contributed to significant pollution loads in waterways;
- Whereas Sussex County records show that through 2006, a total of 26,233 residential lots have been approved and recorded but not yet developed;
- Whereas, promulgation of a Pollution Control Strategy for the Inland Bays has repeatedly been delayed;

---

<sup>3</sup> Sources: Pollution Control Strategy (Draft April 2007); SCCP 2007 Future Land Use Element (Draft, 7/31/2007); Delaware WAVE; DNREC; Sussex County Zoning Code (Chapter 115)

<sup>4</sup> Source: DNREC, Fenwick Island State Park signage

**Sussex County 2007 Comprehensive Plan Update  
Future Land Use Element Draft (July 31, 2007)  
CAC Management Committee – Review, Comment & Recommendations**

- Whereas, the Sussex County 2007 Comprehensive Plan Update makes no reference to achieving TMDL's and does not include the SCCP 2003 requirement of identifying and mitigating the impact of a proposed ESDA development on TMDL's<sup>5</sup>;
- Whereas, the Sussex County Council signed the CCMP and in doing so, promised to enact policy that meets its goals, objectives, and tactics, including the Land Use Action Plan, which requires Inland Bays reduction of nutrients and habitat protection;

**NOW THEREFORE,**

It is the recommendation of the CAC Management Committee that the CIB Board approves and forwards the following recommendations to the Sussex County Council for implementation:

Until such time that:

1. That Sussex County Council specifies in the SCCP 2007 Update a mandate for ordinances and enforceable code defining **new** zoning districts explicit to development within the ESDA at a minimum, but desirably the entire Inland Bays Watershed, that accomplish the following:
  - a. Requires a minimum of 100' effective buffers for tidal wetlands within the ESDA
  - b. Requires functional, effective<sup>6</sup> buffers for ESDA non-tidal wetlands
  - c. Utilizes Public sewer and water for all land uses in all ESDA zoning districts
  - d. Mandates implementation of the State Pollution Control Strategy (PCS) when legislated, and achieves established TMDL's utilizing DNREC's Nutrient Loading Protocol as part of the approval process
  - e. Creates and codifies an overlay of the State Resource Area/Natural Areas Maps that delineates protection areas, requires Environmental Impact Assessments (EIA's) and supporting mitigation for those critical areas impacted within and/or adjacent to ESDA
  - f. Codifies "Open Space" definition; categorizes types of Open Space by the habitat quality, sensitivity, and protective value; requires the calculation of housing density and Open Space for all development on the protective value of the Open Space, not just area; and codifies and enforces recommended wetland and other critical habitat removal from density calculation
  - g. Codifies a TDR program in conjunction with Density Ordinance #1920 and Open Space acquisition that creates interconnecting habitat corridors, restores/protects contiguous habitat, and requires the limit for sending tracts and receiving tracts in ESDA to be within the Inland Bays Watershed

---

<sup>5</sup> See SCCP 2007 – SCCP 2003 Comparison in Supplemental List

<sup>6</sup> As specified and/or endorsed by the CIB Science and Technical Advisory Committee (STAC)