

**Preliminary Land Use Service (PLUS) Application
Municipal Comprehensive Plans**

Delaware State Planning Coordination

122 Martin Luther King, Jr. Blvd • Dover, DE 19901 • Phone: 302-739-3090 • Fax: 302-739-5661

Please complete this "PLUS" application in its entirety. **All questions must be answered. If a question is unknown at this time or not applicable, please explain.** Unanswered questions on this form could lead to delays in scheduling your review. This form will enable the state staff to review the project before the scheduled meeting and to have beneficial information available for the applicant and/or developer at the time of review. If you need assistance or clarification, please call the State Planning Office at (302) 739-3090. Possible resources for completing the required information are as follows:

www.state.de.us/planning
www.dnrec.state.de.us/dnrec2000/
www.dnrec.state.de.us/DNRECEis/
datamil.delaware.gov
www.state.de.us/deptagri/

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| | |
|---------------------------------------------------------------|--------------------------------------------------|
| Name of Municipality: Town of Henlopen Acres | |
| Address: 104 Tidewaters Henlopen Acres, DE 19971 | Contact Person: Thomas Roth |
| | Phone Number: 302-227-6411 |
| | Fax Number: 302-227-3978 |
| | E-mail Address: townmgr@henlopenacres.com |

Date of Most Recently Certified Comprehensive Plan: July 9, 2004

Thomas Roth

| | |
|---------------------------------------------------------------|--------------------------------------------------|
| Information prepared by: Town of Henlopen Acres | |
| Address: 104 Tidewaters Henlopen Acres, DE 19971 | Contact Person: Thomas Roth |
| | Phone Number: 302-227-6411 |
| | Fax Number: 302-227-3978 |
| | E-mail Address: townmgr@henlopenacres.com |

| | |
|---------------------------------------------------------------------------------------------------------------------------|-------------------------------------------|
| Maps Prepared by: Institute for Public Administration | |
| Address: Institute for Public Administration University of Delaware 700 Pilottown Road Lewes, DE 19958 | Contact Person: Nicole Minni, GISP |
| | Phone Number: 302-645-4353 |
| | Fax Number: 302-645-4332 |
| | E-mail Address: nminni@udel.edu |

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General Plan Approval Process

- Step 1:** Draft prepared by local government.
- Step 2:** Planning Commission and/or Legislative Body approves to send to PLUS at the time the plan is released for public review.
- Step 3:** PLUS meeting, application submitted by 1st business day of the month for that month's meeting.
- Step 4:** State comments submitted to local government within 20 business days of meeting.
- Step 5:** Local government replies to state comments in writing and submits revised plan to Office of State Planning Coordination (O S P C) for review.
- Step 6:** OSPC requires 20 working days to reply to revised plan. State sends a letter accepting changes or noting discussion items.
- Step 7:** Once you receive the Office of State Planning Coordination letter stating that all certification items have been addressed, your 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.
- Step 8:** Send our office a copy of the ordinance (or other documentation) that formally adopts your plan along with an electronic or paper copy of the final plan. We will forward these materials to the Governor for consideration. At the discretion of the Governor a certification letter will be issued to your town. The plan is effective on the date of adoption.
- Step 9:** 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. It is suggested that you incorporate a copy of the State's PLUS letter and the Governor's certification letter into the final comprehensive plan document.

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Comprehensive Plan / Amendment Checklist¹

Please check yes or no as to whether the following information has or has not been included in the comprehensive plan and indicate page numbers where information may be found.

| Public Participation | Yes | No | Page # / Sections |
|------------------------------------------|-----------------------|-----------------------|--------------------------|
| Public Participation Summary and Results | <input type="radio"/> | <input type="radio"/> | 1 |

| Population Data and Analysis | Yes | No | Page # |
|-------------------------------------|----------------------------------|-----------------------|---------------|
| Past Population Trends | <input checked="" type="radio"/> | <input type="radio"/> | 9 |
| Population Projections | <input checked="" type="radio"/> | <input type="radio"/> | 11 |
| Demographics | <input checked="" type="radio"/> | <input type="radio"/> | 10 |
| Position on Population Growth | <input checked="" type="radio"/> | <input type="radio"/> | 11 |

| Housing | Yes | No | Page # |
|----------------------------|----------------------------------|----------------------------------|---------------|
| Housing Stock Inventory | <input checked="" type="radio"/> | <input type="radio"/> | 10 |
| Housing Pipeline | <input type="radio"/> | <input checked="" type="radio"/> | |
| Housing Needs Analysis | <input type="radio"/> | <input checked="" type="radio"/> | |
| Position on Housing Growth | <input checked="" type="radio"/> | <input type="radio"/> | 11 |
| Affordable Housing Plan | <input checked="" type="radio"/> | <input type="radio"/> | 11 |

| Annexation | Yes | No | Page # |
|-----------------------------------|----------------------------------|-----------------------|---------------|
| Analysis of Surrounding Land Uses | <input checked="" type="radio"/> | <input type="radio"/> | 12 |
| Annexation Plan | <input checked="" type="radio"/> | <input type="radio"/> | 12 |

| Redevelopment Potential | Yes | No | Page # |
|--------------------------------------------------|----------------------------------|-----------------------|---------------|
| Identification of Redevelopment Areas and Issues | <input checked="" type="radio"/> | <input type="radio"/> | 11 |
| Redevelopment Strategy | <input checked="" type="radio"/> | <input type="radio"/> | 11 |
| Community Development Strategy | <input checked="" type="radio"/> | <input type="radio"/> | 11 |

¹ Please go to the following website for detailed checklist information:
<http://www.state.de.us/planning/services/circuit.shtml>

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| Community Character | Yes | No | Page # |
|--------------------------------------|----------------------------------|----------------------------------|---------------|
| History of the Town or City | <input checked="" type="radio"/> | <input type="radio"/> | 2 |
| Physical Conditions | <input checked="" type="radio"/> | <input type="radio"/> | 2 |
| Significant Natural Features | <input checked="" type="radio"/> | <input type="radio"/> | 6 |
| Community Character | <input checked="" type="radio"/> | <input type="radio"/> | 6 |
| Historic and Cultural Resources Plan | <input checked="" type="radio"/> | <input type="radio"/> | 3 |
| Community Design Plan | <input type="radio"/> | <input checked="" type="radio"/> | |
| Environmental Protection Plan | <input checked="" type="radio"/> | <input type="radio"/> | 6 |

| Land Use Plan | Yes | No | Page # |
|----------------------|----------------------------------|-----------------------|---------------|
| Existing Land Use | <input checked="" type="radio"/> | <input type="radio"/> | 12 |
| Land Use Plan | <input checked="" type="radio"/> | <input type="radio"/> | 12 |

| Critical Community Development and Infrastructure Issues | Yes | No | Page # |
|-----------------------------------------------------------------|----------------------------------|----------------------------------|---------------|
| Review of Community Conditions | <input checked="" type="radio"/> | <input type="radio"/> | 16 |
| Inventory of Community Infrastructure | <input checked="" type="radio"/> | <input type="radio"/> | 16 |
| Inventory and Analysis of Community Services | <input checked="" type="radio"/> | <input type="radio"/> | 20 |
| Water and Wastewater Plan | <input checked="" type="radio"/> | <input type="radio"/> | 16 |
| Transportation Plan | <input checked="" type="radio"/> | <input type="radio"/> | 21 |
| Community Development Plan | <input type="radio"/> | <input checked="" type="radio"/> | |
| Community Facilities Plan | <input checked="" type="radio"/> | <input type="radio"/> | 20 |

| Intergovernmental Coordination | Yes | No | Page # |
|--------------------------------------------------------------|----------------------------------|----------------------------------|---------------|
| Description of Intergovernmental Relationships | <input checked="" type="radio"/> | <input type="radio"/> | 26 |
| Intergovernmental Coordination Strategy | <input checked="" type="radio"/> | <input type="radio"/> | 26 |
| Analysis and Comparison of Other Relevant Planning Documents | <input type="radio"/> | <input checked="" type="radio"/> | |

| Economic Conditions | Yes | No | Page # |
|---------------------------------|----------------------------------|----------------------------------|---------------|
| Economic Base / Major Employers | <input type="radio"/> | <input checked="" type="radio"/> | |
| Labor Market | <input type="radio"/> | <input checked="" type="radio"/> | |
| Income and Poverty | <input checked="" type="radio"/> | <input type="radio"/> | 10 |
| Economic Development Plan | <input type="radio"/> | <input checked="" type="radio"/> | |

| Open Space and Recreation | Yes | No | Page # |
|---------------------------------------------------|----------------------------------|-----------------------|---------------|
| Inventory of Open Space and Recreation Facilities | <input checked="" type="radio"/> | <input type="radio"/> | 20 |
| Open Space and Recreation Plan | <input checked="" type="radio"/> | <input type="radio"/> | 20 |

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| Implementation Strategies | Yes | No | Page # |
|---------------------------------------------|-----------------------|-----------------------|---------------|
| Evaluation of Current Codes and Ordinances | <input type="radio"/> | <input type="radio"/> | 14 |
| Zoning Map Revisions | <input type="radio"/> | <input type="radio"/> | |
| Zoning and Subdivision Code Revisions | <input type="radio"/> | <input type="radio"/> | 15 |
| Implementation Plan | <input type="radio"/> | <input type="radio"/> | 22 |
| Coordination with Other Government Agencies | <input type="radio"/> | <input type="radio"/> | 26 |

| Other State Programs, Policies, and Issues | Yes | No | Page # |
|---------------------------------------------------|----------------------------------|-----------------------|---------------|
| Total Maximum Daily Loads | <input type="radio"/> | <input type="radio"/> | 17 |
| Corridor Capacity Preservation Program | <input type="radio"/> | <input type="radio"/> | |
| Agricultural Preservation Program | <input type="radio"/> | <input type="radio"/> | |
| Sourcewater Protection | <input checked="" type="radio"/> | <input type="radio"/> | 16 |

Additional Comments:

~~Page numbers are listed where discussion of the topic appears. However, certain topics or issues recur throughout the document.~~

~~Included along with a cover letter are additional documents relevant to the Rehoboth Art League non-conformance.~~

~~Included is Ordinance adopting the Comprehensive Plan by the Board of Commissioners.~~

Summary:

~~Please see cover letter.~~

Town of Henlopen Acres

104 Tidewaters
Henlopen Acres, Delaware 19971

302-227-6411
Fax: 302-227-3978

Mayor
David Lyons

Commissioners:
Andrew Brittingham
Timothy Hidell
Frank Jamison
Joni Reich
Beatrix Richards
John Staffier

July 17, 2015

Ms. Constance Holland, State Planning Director
Office of State Planning Coordination
122 William Penn Street, Suite 301
Dover, DE 19901

Town Manager:
Thomas Roth

RE: Comprehensive Plan

*Maintenance
Manager:*
Alexander McClure

Dear Ms. Holland:

*Security
Supervisor:*
Lee Stewart

Thank you for your March 24, 2015 written compilation of the comments received at our February 25, 2015 meeting with State agency planners regarding the ten year update of the Comprehensive Plan of the Town of Henlopen Acres, which was submitted to your office by the Town on January 12, 2015. The attached final version of the update was formally adopted by the Town's Planning Commission and Board of Commissioners at public meetings held on July 10, 2015. A copy of the ordinance adopting the plan, which was enacted unanimously by the Town's Board of Commissioners, is attached hereto for your use. This plan fully addresses and incorporates the Certification Comments in your letter regarding Public Participation, Intergovernmental Coordination and Wastewater Treatment. It also addresses most, if not all, of the Recommendations set forth in your letter.

Town Solicitor:
Glenn C. Mandalas,
Baird Mandalas
Brockstedt, LLC

In response to your Comments on the Rehoboth Art League¹, (RAL), we have clarified the legend of the Existing Land Use map (Map 6) to show that the RAL property is "Residential – Subject to Legal Non-Conforming Use." Map 6, therefore, is now fully consistent with the Henlopen Acres Zoning Code and Zoning map, and accurately reflects the current status of the RAL property.

Member:
Association of
Coastal Towns

*Sussex County
Association of
Towns*

*Delaware Rural
Water Association*

*Delaware League of
Local Governments*

¹ We must note at the outset that the Town was disappointed that the State Historic Preservation Office ("SHPO") chose to resubmit its March 2, 2012 comments on this subject without modification and that your office chose to accept those comments without raising any concerns. Former Henlopen Acres Mayor Davis provided comments and documentation to your office on March 22, 2012 showing that the SHPO's 2012-submission, and the self-serving history of the RAL prepared by former RAL board member Richard E. Poole that was attached thereto, were inaccurate and unsubstantiated in several important respects. Nevertheless, the SHPO has now simply re-adopted its entire 2012 submission, with no apparent effort to verify its accuracy. The Town submits that in these circumstances, both the SHPO comments and the attached Poole history should be stricken and disregarded.

In our January 12, 2015 cover letter transmitting the then current version of the ten year update to your office for PLUS review, we recounted in detail (both in the letter itself and in the timeline attached thereto) the considerable time and effort that the Town had devoted to resolving the RAL issue. We reported that in October, 2014 we had provided the RAL with a draft Memorandum of Understanding ("MOU") intended (1) to clarify the scope of the RAL's current legal non-conforming use status, (2) to provide the RAL with reasonable assurance that it would be able to re-build its structures in the event of a catastrophic loss, and (3) to implement and memorialize the RAL's repeated public statements that it has no desire or intent to expand its activities or its structures in Henlopen Acres. We reported further that as of January 12, 2015, the RAL had not yet provided any comments on the draft MOU.

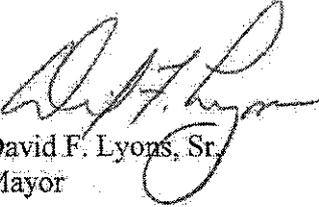
The situation has not significantly changed since then. Encouraged perhaps by the unfortunate and, we believe, incorrect statement in your March 24 letter that your office "cannot move this plan forward for certification until an agreement is reached between the Town and the Rehoboth Art League" (see discussion below), the RAL has continued its refusal to provide comments on the MOU. Instead, it has simply stated that it has been advised by its attorney that the MOU would constitute illegal contract zoning and has reiterated its long standing demand for a new zone, without providing any specifics regarding permitted activities or structures. The "contract zoning" claim is at odds both with the Town's legal advice and with your March 24 letter, which specifically recognized the MOU as a legitimate basis for discussions between the Town and the RAL.

If the RAL was to provide the Town with good faith, written comments on the MOU, explaining what changes it believes would be necessary to accurately clarify its current status and implement and memorialize its "no expansion" position, the Town would certainly be willing to engage in further substantive discussions with the RAL. That process could include an attorneys' meeting such as you suggested in your March 24 letter. Until the RAL provides a meaningful response, however, such a meeting would be pointless.

Going forward, the door remains open for further discussions with the RAL and if an agreement is ultimately reached that requires changes to the Town's Comprehensive Plan, the Plan can and will be amended at that time. The Town, however, has no reason to believe that such an agreement will be reached anytime soon. As indicated above, the Town strongly disagrees with your view that in the absence of such an agreement, your office "cannot move this plan forward for certification". Holding the plan hostage in that way is inconsistent with Subsection 9103(f) of Title 29 of the Delaware Code which confirms that "The final decision on the adoption of the comprehensive plan [or update thereof] is that of the municipality..." and with Subsection 9206(a) of the Code which confirms that nothing in the State's planning process "shall be construed to deny local jurisdictions their final decision-making authority over proposed local land use planning action." It is also inconsistent with the procedures set forth in Subsection 9103(d) of the Code which provide that when your office objects to a plan and does not reach agreement within the filing county or municipality within 45 days thereafter, it must forward the matter to the Cabinet Committee on State Planning Issues for resolution.

The Town hopes that you will reconsider your prior position on the RAL issue and will certify the updated plan to the Governor for approval. If you do not, however, then, the Town requests that you follow the procedures set forth in Section 9103(d) of the Code and forward the Town's updated plan and your report thereon to the Cabinet Committee on State Planning Issues for dispute resolution and further processing.

Respectfully submitted,



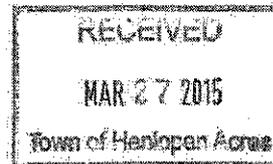
David F. Lyons, Sr.
Mayor

enclosures



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION

March 24, 2015



Mr. Thomas Roth
Town of Henlopen Acres
104 Tidewaters
Henlopen Acres, DE 19971

RE: PLUS review 2015-02-07, Town of Henlopen Acres Comprehensive Plan

Dear Mr. Roth,

Thank you for meeting with State agency planners on February 25, 2015 to discuss the proposed Comprehensive Plan for the Town of Henlopen Acres.

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.

- **Public Participation Section (p. 1)** – The town noted in the plan that 13 meetings were held between 2011 and 2014. Please expand the public participation section to include what was discussed at those meetings, what were the public comments at those meetings, and what the Town did to address the issues brought forth in the meetings. In addition, the plan should include specific information about the meetings regarding the Rehoboth Art League, where the town is in those discussions, and the path forward for resolving those issues.
- **Intergovernmental Coordination (p 26)** – The plan states that the neighboring jurisdictions were notified regarding the update and that the City of Rehoboth made numerous comments regarding the plan. Please expand the Intergovernmental Coordination section to include what comments were made and if any revisions were made to the draft plan as a result of those comments.

- Rehoboth Art League – The comprehensive plan Existing Land Use Map shows the Rehoboth Art League property as “Institutional”. However, the zoning map/code for the Town of Henlopen acres does not include an “Institutional District”. The Town must work to rectify this nonconforming issue before the plan can be certified.

According to the 130-17, permitted uses of the residential district in your zoning code art galleries, art studios, and art classrooms, theater and theater classrooms, are permitted when authorized as a special exception, except where one of the principal activities is one which is customarily carried on for profit as a business.

Your 2004 comprehensive plan recommended (section 2.3b) “recommends that the Special Exception process for allowing land use activities in addition to those land uses by right be replaced by a conditional use process.....” In addition, section 2.3b states “that this would allow the Town Commissioners to (1) set conditions on how the property will be used, limits on changes to the property and structure and (2) require review if the property owner changes or the organization engaged in the use changes.”

To date, the town has not completed this recommendation, leaving the Rehoboth Art League as a special use exception in your residential section.

It is our understanding that The Rehoboth Art League has sought, through the town, a change of zone or a conditional use for their property, because, as it stands, they have been unable to work with the town for decision regarding needed repairs to the structure. The State is aware that the Rehoboth Art League and the Town of Henlopen Acres have been in communication regarding his issue but there has been no resolution reached. The Office of State Planning cannot move this plan forward for certification until an agreement is reached between the Town and the Rehoboth Art League.

During the PLUS meeting, I suggested that the attorney for the Town of Henlopen Acres and the attorney for the Rehoboth Art League set a meeting to discuss a Memorandum of Understanding that has been drafted and/or to resolve this issue.

- As noted by Sussex County, on page 11 of this letter, the plan should note that Sussex County operates the waste water system that serves the Town of Henlopen Acres. Page 18 of the plan states the Town’s waste water is connected to the Rehoboth Beach facility at Wolf’s Neck. This is incorrect. Waste water from the Henlopen Acres Sanitary Sewer District (HASSD) is conveyed to the Rehoboth Beach Sewage Treatment Plan (RBSTP). The RBSTP treats and disposes wastewater into the Lewes-Rehoboth Canal. The facility is located at 20543 Roosevelt Street, on the bank of the Lewes-Rehoboth Canal. Wolf Neck plant references should be deleted and RBSTP data included.

Recommendations

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

Office of State Planning Coordination – Contact Dorothy Morris 302-739-3090

The Town of Henlopen Acres comprehensive plan calls for the building of new homes or the development of existing homes to be of a certain character such as no more than 2 story and not over 6,000 square feet and to maintain the current character and retain the current design of housing.

In 2012 lawsuit the U.S. Department of Justice (DOJ) filed a lawsuit against Sussex County for violations of the Fair Housing Act. According to Press release dated November 2012 (in part) "the settlement requires that the county take affirmative steps to provide for future affordable housing, communicate its commitment to fair housing, and establish mechanisms to ensure affordable and fair housing in Sussex County." Among other things, the county must formulate an affordable and fair housing marketing plan to encourage the development of housing opportunities that are available and accessible to all residents of Sussex County regardless of race, color or national origin, appoint a fair housing compliance officer, and ensure that county officials and staff undergo fair housing training.

The State would argue that allowing only single family detached homes in the Town of Henlopen Acres would not promote affordable housing. While we understand the town is small and nature and would want to keep the character of their town intact, being a municipality carries with it the responsibility to allow for all citizens the opportunity to live within the town. The comprehensive plan should discuss affordable housing and how that would be accommodated if a developer sought to build a mixed use structure in your town.

Department of Transportation – Contact Bill Brockenbrough 760-2109

On page 24, the Plan recommends that "The Town consider a traffic study to provide baseline information" but does not state how that information should be used. We support the recommendation and suggest that it could be used to identify needed or desirable transportation improvements. For example, the Transportation section on page 21 states that "The Town maintains a pedestrian friendly atmosphere that equally accommodates both bicycle and car." That may be but the Town streets have narrow lanes, no marked bike lanes and no sidewalks. Some of the busier blocks may warrant such features. The study could identify any such locations.

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.

Recommendations for Comprehensive Plan Revisions

Key Wildlife Habitat (pp. 6-7). In addition to the Species of Greatest Conservation Need that were identified in the Comprehensive Plan, other species to consider are big brown bats and corn snakes:

- **Bats.** Some residents may have bats (most likely big brown bats) in their homes. Bats are an important part of our ecosystem and an animal group that provides a service to humans by eating insect pest species such as mosquitos, beetles and moths. The value of the pest-control services to agriculture provided by bats in the US alone range from a low of \$3.7 billion to a high of \$53 billion a year, estimated in a 2011 study by scientists from the University of Pretoria (South Africa), US Geological Survey, University of Tennessee and Boston University. Bats will return to the same structure each summer. Bats raise their pups (young bats) in structures and flightless pups can be present from mid-May through mid-August. Despite the benefits of having bats in the area, they are not welcome in most human-made structures. If a bat eviction (called an exclusion) is needed, there are ways to do them to minimize long-term impacts to the animals. Doing an exclusion to keep bats out of the structure or destroying the structure during this time period will likely result in killing young bats. We recommend waiting until September 1st to evict bats. This provides time for the young bats to learn survival skills before dispersing from their maternity colony. If bats become a problem for homeowners, they can contact the Holly Niederriter at 302-735-8651 for assistance or visit the Delaware bat program's website: <http://www.dnrec.delaware.gov/fw/bats/>
- **Corn Snakes.** Corn snake(*Elapha guttata guttata*) are a state-endangered species that may occur within Henlopen Acres. They feed on rodents and are generally harmless. They are most active at dusk, and tend to be secretive during the day. They are often confused with copperheads because of their markings, but unlike copperheads (which are not likely to occur in Henlopen Acres) corn snakes are not venomous. DFW recommends adding this species to the list of species for consideration in the town's comprehensive plan.
- **Shore Birds.** In order to protect shorebirds and terns, the town may consider placing signage along the beach to encourage beachgoers to avoid disturbing the birds that may

be roosting or feeding in the beach habitat. Promoting rules like keeping dogs leashed or off the beach entirely would also be beneficial.

Air Quality (pp. 7-8). The Town concedes that there are concerns with current conditions for pedestrian and bicycle traffic. Specifically, beach traffic is a seasonal safety issue. DNREC recommends that the Town consider improvements for safe multimodal transportation, beyond the proposed traffic study that is indicated in this Comprehensive Plan Update. **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, thereby improving air quality. Delaware currently violates federal health-based air quality standards for ozone, and both VOC and NOx are precursors to ground-level ozone formation.**

Tree Canopy (p. 8). DNREC supports the Town's desire to maintain and even grow, where possible, its current tree canopy which is more than 43%. As noted in the Comprehensive Plan Update, trees provide important air quality and other environmental benefits to the residents of Henlopen Acres, as well as to the surrounding communities. The plan recommends studying the best trees for tree canopy development and come up with a plan to plant trees on all right of way areas that have insufficient trees. Please note that our program botanist, Bill McAvoy, can provide technical assistance to Henlopen Acres if needed. Bill has extensive knowledge of native plants throughout the State and can provide recommendations of appropriate species to be planted in this area. He can be reached at William.McAvoy@state.de.us or 302-735-8668.

Similarly, DNREC supports the Town's recommendation to maintain, as codified, a minimum of 60% green cover per lot, as well as the Town's recommendation to encourage renewable energy use. In addition to planting trees, the Town may consider promoting the use of native plants in landscaping. In particular, native nectar plants for butterflies, such as seaside goldenrod, would be beneficial. In the late summer, millions of monarchs cross the Delaware Bay from Cape May and feed on the nectar of the seaside goldenrod that is in bloom at Cape Henlopen State Park. Additionally, planting beach plum (*Prunus maritima*) would provide good habitat for song birds.

Water Supply (p. 16). The Town has expressed the need to develop a source water protection ordinance to protect wellheads. 7 Del. C. §6082(c) states in part that "municipalities with populations of less than 2,000 persons, with the assistance of the Department, may adopt by ordinance the overlay maps delineating, as critical areas, source water assessment, wellhead protection, and excellent ground-water recharge potential areas. Furthermore, the ordinance shall include regulations governing the use of land within those critical areas designed to protect those critical areas from activities and substances that may harm water quality and subtract from overall water quantity". The Department is available to assist at the Town's request.

Total Maximum Daily Loads (p. 17). We strongly recommend that the Plan contain a narrative about Total Maximum Daily Loads (TMDLs) as a "stand alone" section (currently located in the Stormwater section). Please consider the following:

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 waterbody from all point, nonpoint, and natural background sources, thus enabling that waterbody 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 waterbody'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 Inland Bays consists of regulatory requirements for stormwater and wastewater with only voluntary recommendations for agriculture. The regulatory requirements for the Inland Bays PCS can be retrieved from the following web link:

http://www.dnrec.state.de.us/water2000/Sections/Watershed/ws/ib_pcs.htm

The Town of Henlopen Acres is located within the greater Inland Bays Basin. Within this Basin, the designated nutrient (nitrogen and phosphorus) and bacterial TMDL load reduction requirements are displayed in Table 1.

| | N | P | Bacteria |
|-------------------|------------------------|------------------------|-----------------|
| Inland Bays Basin | 40% Low Reduction zone | 40% Low Reduction zone | 40% Fresh |

Table 1: TMDL reduction requirements for the Inland Bays

Stormwater (pp. 17-18). 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.

The Town of Henlopen Acres should mention the updated regulations in your plan.

Parks and Recreation. In August of 2011, the Delaware Division of Parks and Recreation conducted a telephone survey of Delaware residents to gather information and trends on outdoor recreation patterns and preferences as well as other information on their landscape perception. These findings are the foundation of the 2013-2018 Statewide Comprehensive Outdoor Recreation Plan (SCORP) providing guidance for investments in needed outdoor recreation facilities and needs within county and municipal comprehensive plans. For the purpose of refining data and research findings, Delaware was divided into five planning regions. The Town of Henlopen Acres is located within SCORP Planning Region 5.

When looking at the findings from the 2011 telephone survey, it is apparent that Delawareans place a high importance on outdoor recreation. Statewide, 93% of Delaware residents indicated that outdoor recreation had some importance in their lives, while 67% said it was very important to them personally. These findings are very close to the results of the same question asked in the 2008 public opinion telephone survey, indicating a continued demand for outdoor recreation opportunities throughout the State.

Placing high importance on outdoor recreation resonates throughout the five SCORP regions. In Region 5 (Eastern Sussex County), 65% said it was very important to them personally.

Outdoor Recreation Needs/Priorities

Based on the public opinion survey, the most needed outdoor recreation facilities in Region 5 include:

High facility needs:

- Walking and Jogging Paths
- Bicycle Paths
- Public Swimming Pools
- Community Gardens
- Fishing Areas
- Off-Leash Dog Areas
- Picnic Areas
- Basketball Courts
- Playgrounds

Moderate facility needs:

- Hiking Trails
- Boat Access
- Canoe/Kayak Launches
- Camping Areas
- Ball Fields
- Football Fields
- Public Golf Courses
- Soccer Fields
- Tennis Courts

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 Office Of State Planning Coordination 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 Henlopen Acres and its surroundings will be subject to direct and permanent inundation from sea level rise (<http://de.gov/slrmap>).

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, increased risk of flood damage during storms and increased frequency of nuisance flooding (DNREC, 2012).

Sea level rise may accelerate the rate of salt water intrusion into ground water and affect water supplies.

Recommendations:

1. The City should consider additional land use controls for the areas subject to 1.5 meter of sea level rise.
2. 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.
3. 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.

Recommendations for Ordinances and Plan Implementation

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 Sussex Conservation District, Sussex 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.

Sussex County – Contact Janelle Cornwell 855-7878.

The plan should note that Sussex County operates the waste water system that serves the Town of Henlopen Acres. Page 18 of the plan states the Town's waste water is connected to the Rehoboth Beach facility at Wolf's Neck. This is incorrect. Waste water from the Henlopen Acres Sanitary Sewer District (HASSD) is conveyed to the Rehoboth Beach Sewage Treatment Plan (RBSTP). The RBSTP treats and disposes wastewater into the Lewes-Rehoboth Canal. The facility is located at 20543 Roosevelt Street, on the bank of the Lewes-Rehoboth Canal. Wolf Neck plant references should be deleted and RBSTP data included.

The proposed comprehensive plan update is consistent wastewater plans developed by Sussex County to serve the HASSD. Based on a review of the comprehensive plan update, Sussex County feels it will be able to meet the needs of the town of Henlopen Acres.

State Historic Preservation Office – Contact Terrence Burns 736-7404

Please see the attached letter from the State Historic Preservation Office.

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.

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

Sincerely,



Constance C. Holland, AICP

Director, Office of State Planning Coordination

Attachment

**ORDINANCE OF THE MAYOR AND COMMISSIONERS
OF THE TOWN OF HENLOPEN ACRES
ADOPTING THE 2014 COMPREHENSIVE PLAN UPDATE
AND REQUESTING THAT THE GOVERNOR OF DELAWARE CERTIFY THE PLAN**

WHEREAS, Title 22, Section 702(a) of the Delaware Code provides, in relevant part, that “[a] planning commission established by any incorporated municipality under this chapter shall prepare a comprehensive plan for the city or town or portions thereof as the commission deems appropriate.”

WHEREAS, the Comprehensive Plan of the Town of Henlopen Acres was certified by the State of Delaware on July 9, 2004.

WHEREAS, Title 22, Section 702(e) of the Delaware Code provides, in relevant part, that “[a]t least every 5 years a municipality shall review its adopted comprehensive plan to determine if its provisions are still relevant given changing conditions in the municipality or in the surrounding areas. The adopted comprehensive plan shall be revised, updated and amended as necessary, and re-adopted at least every 10 years.”

WHEREAS, Title 22, Section 702(f) of the Delaware Code provides, in relevant part, that “[t]he plan shall be subject to the state review and certification process set forth in § 9103 of Title 29.”

WHEREAS, Title 29, Section 9103(e) of the Delaware Code provides, in relevant part, that “the Office of State Planning Coordination shall submit a final comprehensive plan report and recommendation to the Governor or designee for certification.”

WHEREAS, Title 29, Section 9103(e) of the Delaware Code further provides, in relevant part, that “If there is a finding that such a plan, amendment, revision or update is inconsistent or if there is a dispute, the report and the plan are to be forwarded to the Cabinet Committee for State Planning Issues and shall follow the same process as for the certification of county plans.”

WHEREAS, the Town of Henlopen Acres has been actively engaged in preparing and finalizing the ten year Comprehensive Plan update since 2011.

WHEREAS, the Planning Commission conducted public hearings to accept public comment on the draft 2014 Comprehensive Plan update on December 7, 2011 and June 27, 2014.

WHEREAS, the Mayor and Commissioners held public Commission meetings and accepted public comment on the draft 2014 Comprehensive Plan update on October 10, 2014 and December 12, 2014.

WHEREAS, a final draft of the 2014 Comprehensive Plan update is attached hereto as Exhibit A.

WHEREAS, the Planning Commission reviewed and approved the 2014 Comprehensive Plan update attached hereto as Exhibit A at a public meeting on July 10, 2015.

WHEREAS, the 2014 Comprehensive Plan update has been reviewed and considered by the Mayor and Commissioners of the Town of Henlopen Acres.

WHEREAS, the Mayor and Commissioners find that the 2014 Comprehensive Development Plan amply meets the Town's obligation under Title 22, Section 702(a) "to encourage the most appropriate uses of the physical and fiscal resources of the municipality and the coordination of municipal growth, development, and infrastructure investment actions with those of other municipalities, counties, and the State through a process of municipal comprehensive planning."

NOW THEREFORE, BE IT ORDAINED by the Mayor and Commissioners of the Town of Henlopen Acres, in session met, this 10th day of July, 2015, as follows:

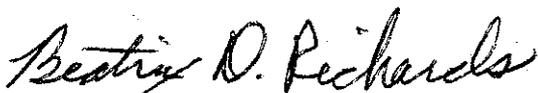
Section 1. The Mayor and Commissioners of the Town of Henlopen Acres hereby adopt the 2014 Comprehensive Plan update, attached hereto as Exhibit A.

Section 2. The Mayor and Commissioners of the Town of Henlopen Acres hereby request that the Governor of Delaware or his designee certify the 2014 Henlopen Acres Comprehensive Development Plan.

Section 3. This Ordinance shall be effective immediately upon its adoption and the 2014 Comprehensive Plan update attached hereto as Exhibit A shall be effective on the earlier of (1) the date on which the Governor of Delaware certifies the 2014 Comprehensive Plan update, or (2) the date on which a majority of the Mayor and the Commissioners of the Town of Henlopen Acres act to accept or reject any recommendations forwarded to the Town by the Governor pursuant to Subsection 9103(f) of Title 29 of the Code of Delaware, or (3) November 13, 2015.

Adopted by a majority of
the Commissioners of the
Town of Henlopen Acres

July 10, 2015



Secretary of the Commissioners of the
Town of Henlopen Acres