

VI. Chapter 05

SENSITIVE AREAS PLAN

As mentioned earlier, the Maryland Economic Growth, Resource Protection and Maryland Planning Act of 1992 added the requirement to Article 66B and Delaware law requires that the comprehensive plan for Delmar contain a Sensitive Areas Element that describes how the Town will protect the following sensitive areas:

- a) Streams and stream buffers,
- b) 100-year floodplain,
- c) endangered species habitats,
- d) steep slopes, and
- e) other sensitive areas the jurisdiction wants to protect from the adverse impacts of development.

In addition to the “Sensitive Areas” highlighted in the 1992 State Planning Act, the Town of Delmar is also interested in developing strategies to protect its wellhead, and preserve its historical and cultural resources. Delaware law also requires that environmental protection be included in the comprehensive plan, and that by 2007, comprehensive plans and local ordinances must address wellhead protection and the protection of excellent recharge areas. Recommendations to protect and preserve these resources are included in this chapter.

A. SENSITIVE AREAS RECOMMENDATIONS

Streams and Stream Buffers

Streams and their buffers are important resources. Streams provide drinking water for local communities, natural drainage and irrigation for farmers. Streams are prime spots for recreation, for fishing and serve as spawning areas for sport and commercial fish stock, and wildlife areas. Development near streams could be subject to flooding that could result in the loss of life and property.

Streams and adjacent areas are home to countless species of animals and transport valuable nutrients, minerals and vitamins to the Chesapeake Bay and its tributaries. The floodplains, wetlands and wooded slopes along streams are important parts of the stream ecosystem. Natural growth adjacent to our streams often serves as a natural screen between different types of land use.

As development activity becomes more intense, a large amount of land, forests and natural vegetation along streams is diminished. The cumulative loss of large amounts of open space and natural land has reduced the ability of remaining land along streams to buffer the effects of such intrusions as high stormwater runoff.

Buffers serve as protection areas placed adjacent to streams to preserve some of the biological and hydrological integrity of the stream basin. These areas act as run off and groundwater pollution control systems by filtering pollutants through the soil and root zone of natural growth. For example, microscopic organisms that inhabit the soils in a forested buffer assist in the decomposition of pollutants, much like microbes in a sewage treatment plant.

There are potentially five (5) stream corridors in the Delmar planning area that are classified as perennial streams as established by critical area definitions. These are Connelly Mill Branch to the west side of town, Wood Creek to the south (extending into the town), Leonard Pond Run to the south, Jackson Branch to the east (within the corporate limits), and Mayer Branch to the east. It is recommended that the Town define a stream corridor as all land and water areas within 100 feet of these stream banks. Any development occurring within this area should be evaluated for its potential impact on adjacent streams. The minimum stream buffer requirement for areas that are already subdivided into lots where a 100 buffer is not possible should be at least twenty-five (25) feet from the bank of all streams. For undeveloped areas the stream buffer should be a minimum of one hundred (100) feet from the bank of all perennial streams and fifty (50) for all intermittent streams. Where possible the stream buffer should be vegetated in a manner that reduces run-off from adjacent land. The stream buffer should be expanded beyond the minimum if the Town determines it to be in the best interest of protecting the stream. The Town will comply with all Maryland and Delaware laws and requirements.

Floodplains

Flood destruction and associated losses are created by structures inappropriately located, inadequately elevated or otherwise unprotected and vulnerable to floods or by development which increases flood damage to other lands or development. The biological values of floodplains, particularly tidal and non-tidal wetlands, can be adversely affected by floodplain development.

The Town has the responsibility under the Maryland Flood Control and Watershed Management Act, Section 8-9A-01 et seq., Natural Resources Article of the Annotated Code of Maryland, to control floodplain development in order to protect persons and property from danger and destruction and to preserve the biological values and the environmental quality of the watersheds or portions thereof under its jurisdiction. In addition, the Town has the responsibility under the National Flood Insurance Act of 1968, as amended, and the Flood Disaster Protection Act of 1973, as amended, to adopt and enforce floodplain management regulations in order to participate in the National Flood Insurance Program and remain eligible for federally subsidized flood insurance, federal disaster relief, and federal and State financial assistance.

Currently, the Town has no 100-year floodplains in its corporate boundaries. However, in the case that future annexations may have floodplains, the Town will take the appropriate steps, which could include prohibiting development within the floodplain, in order to protect human life and private property and preserve the vital watershed sensitive resources of these areas.

The purpose of floodplain regulation is to protect human life and health and to minimize public and private property damage. Regulatory provisions are designed to encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future and to protect individuals from unwittingly buying lands and structures which are unsuited for intended purposes because of the flood hazards. The public health purpose of floodplain regulation is to protect water quality, sanitary sewage disposal, and natural drainage and to reduce financial burdens imposed on the community by preventing the unwise design and construction of development in areas subject to flooding. The resource protection objective of regulations is to provide for the biological and environmental quality of the watersheds or portions thereof located in the Town of Delmar.

Threatened and Endangered Species Habitat

No threatened or endangered species and habitat related to them have been identified in the Town of Delmar. However, to ensure the protection and continued existence of potential endangered species within the Town's jurisdiction, zoning and subdivision ordinances should include the following protective measures.

1. Require that anyone proposing development activities must address protection of State and federally designated endangered species. The developer must determine through contact with the Town and the Maryland Fish, Heritage and Wildlife Administration (MFHWA) or The Delaware Natural Heritage Program whether proposed activities will occur within or adjacent to identified endangered species habitats and whether the activities will affect the area.
2. If it is established that an activity will occur within or adjacent to an endangered species habitat, the Town should require that the developer provide protection measures in the project design. A written environmental assessment including site design plans and a description of measures to be taken to protect the endangered species should be submitted to the Town as part of the development review process. The developer must work with the MFHWA and/or Delaware Natural Heritage Program in establishing species/site-specific protection measures. Protection measures may include:

Designation of protection areas around the essential habitat of the designated species. Development activities or other disturbances will be prohibited in the protection area, unless it can be shown that these activities or disturbances will not have or cause adverse impact on the habitat. The protection area designation will be made with input from the MFHWA.

Implementation of design strategies that work to protect the species and essential habitat. These strategies should include (but are not limited to) restrictions on siting of structures, use of cluster design, establishment of undisturbed open space areas, restrictive covenants, and restrictions on noise levels and timing of construction activities.

Steep Slopes

Although there are no steep slopes in Delmar, placement of structures or impervious surfaces should be severely limited on any slope with a grade of twenty-five (25) percent or more. On slopes between fifteen (15) and twenty-five (25) percent, development should also be strongly discouraged. However, if development does occur, good engineering practices should be required to insure sediment and erosion control and slope stabilization before, during and after disturbance activities and to minimize cut and fill.

Wellhead Protection

The State of Delaware Source Water Protection (SWAP) Law of 2001 (7 Del. C. 6081, 6082, 6083) requires government jurisdictions with year – round populations of 2,000 residents or greater to implement measures to protect both the quality and quantity of public water, wellhead, and ground-water recharge areas by 2007.

The goal of the SWAP is to identify and delineate the sources of public drinking water and evaluate the susceptibility of each source to known potential contaminants. The Delaware SWAP outlines the three main tasks required by the USEPA:

- 1) Delineate the boundaries of the source water areas
- 2) Develop a contaminant inventory within the delineated areas, and
- 3) Assess the susceptibility to contamination of each public drinking water source.

Town of Delmar Wellhead Protection Ordinance (1962 and 1997) RESOLUTION # 1997-5: Wellhead Protection Delineation Area/ORDINANCE NO. 40: The Town of Delmar, recognizing the need for source water protection, established wellhead protection areas through ordinance and provided water use regulations (with enforcement) covering the misuse of the water supply in lawn watering, using hoses to clean sidewalks, and car washing.

The protection of public sources of water is a critical function of local governments. The Town of Delmar, Delaware has a wellhead that provides a public source of drinking water to its residents. The Town should take proactive measures to protect the wellhead to insure there is no future contamination of the drinking water source.

The development of a wellhead protection area would help in protecting this drinking water supply. A wellhead protection area consists of land in the vicinity of a public water supply well chosen for special protection to prevent pollution of the ground water by nearby surface and sub-surface activities. Public wells include community wells - both those owned by governments

and those owned privately - serving residential customers and a variety of wells serving the public in locations such as restaurants, schools and industry.

The size of the protection areas can be a function of the hydrogeology in the vicinity of the well, its daily withdrawal rate, land use activities existing or likely in the areas, and assessment of replacement or other options if the well were to become polluted. The area could range from a few acres to several square miles or more.

There are both regulatory and non-regulatory management approaches useful for protection groundwater sources from contamination. Such approaches include zoning limitations on the types of land uses allowed, performance standards to contain and manage potential pollutants, business outreach and educational programs.

Several steps can be taken to design a wellhead protection program that suits the needs of Delmar. These steps include:

1. *Form a Community Planning Team* - The planning team, which should represent all community interests, should define clear goals and objectives for measuring progress;
2. *Delineate Wellhead Protection Areas* - The planning team should first define an area around the drinking water well where contaminants could enter and pollute the well - this area is called the wellhead protection area. DNREC has delineated the wellhead protection area around 2 wells that serve the Town of Delmar in the Source Water Assessment. The Town of Delmar was provided with 3 copies of this plan in September 2002. A wellhead protection area for a third well that served the Town of Delmar will be provided by DNREC Water Supply Source Water Protection.
3. *Inventory Contaminants* - Next, the planning team should identify existing and potential sources of contamination in the wellhead protection area. This inventory can include commercial and industrial operations that generate pollutants, underground storage tanks, homes and industrial discharging to septic systems, agricultural operations, hazardous or solid waste disposal facilities, and abandoned wells. DNREC has developed an inventory of contaminants and should be consulted for this project. See for example www.dnrec.state.us/dnreceis for more information. The Source Water Assessment for the Town of Delmar includes the contaminant inventory for 2 wells utilized in 2002. The contaminant inventory for the third well that serves as the Town of Delmar will be provided by DNREC Water Supply, Source Water Protection.
4. *Manage Your Wellhead Protection Area* - Educating citizens about their water supply through an educational program is one-technique communities can use to manage the wellhead protection areas. Purchasing of land around the wellhead, zoning the land to discourage industrial and commercial land uses in the area, and encouraging polluters to adopt best management practices are other management techniques.

5. *Plan for the Future* - Develop short and long-term strategies for replacing the water supply in the event the source of drinking water is unexpectedly contaminated or the supply is disrupted.
6. *Site New Wells Carefully* - Communities should propose new well locations where there is little risk of contamination from existing or future land uses.

B. HISTORIC FEATURES

History can be kept alive through education and preservation, both of which can take many forms and vary in intensity. History is something one lives in daily and is not only a “do not touch” museum. Old homes can be restored such that they are comfortable homes of today or they could be refurbished as an office. Historic sites can honor the past while providing a place for leisure activities. An old church can still hold worship services similar to those held one hundred years ago. A number of programs exist to help individuals and groups temporarily or permanently protect sites and structures considered significant. The past is a building block for the future and, if a plan is to be comprehensive, it must incorporate that past as a key element of planning for the future.

Historic preservation is a program that involves the inventorying, researching, restoration, and ongoing protection of sites and structures having a significant local or national historic interest. Continued historic and cultural resource preservation and enhancement through sensitive land use planning and other administrative means would provide Delmar with a number of benefits including:

1. Promotion of a strong sense of community pride for Town residents;
2. Maintain the integrity of the historic significance and character of the older structures.
3. Community revitalization through the renovation or adaptive reuse of older structures;
4. Increased property values and tax revenues as a result of renovation and restoration; and
5. Increased revenues generated from tourism.

There are a number of structures and sites within the Town that are of historic, cultural, or architectural significance. These structures, given proper concern and recognition, have tremendous potential to serve as physical reminders of the history and heritage of our past.

In recent years, there has been considerable public concern that the vestiges of our heritage will be irretrievably lost. It has been found that an active historic and architectural preservation program could have beneficial social, economic and aesthetic impacts on the area. Therefore, rather than permit demolition, destruction, or abandonment of our rich heritage, an active historic preservation program is recommended. Such a program should permit the continued use of the

identified sites and structures while simultaneously discouraging inappropriate exterior alterations. The development of a Historic Preservation Program for the Town should be the result of a cooperative effort between the public and private sectors of the community.

The following programs and strategies are designed to facilitate achieving this Plan's goal of preserving and enhancing the Town's rich cultural and historic heritage.

Inventory

The Town should continue to identify significant historic structures and sites within the corporate limits. Once sites are identified, there are a number of actions the Town can take to insure that these cultural resources are preserved for future generations.

Protection and Preservation Programs

A number of existing programs provide assistance in protection or preservation, offer tax benefits, provide professional historical/architectural consulting, and so forth. More detailed information on programs including the National Historic Landmark, National Register of Historic Places, Conservation and Preservation Easements, and Historic Overlay Districts can be found from various historic preservation organizations such as the Maryland Historical Trust and its local chapter in Wicomico County and the Delaware State Historic Preservation Office.

National Register of Historic Places: In 1966, Congress established the National Register of Historic Places as the Federal Government's official list of properties, including districts, significant in American history and culture. In Maryland, the Register is administered by the Maryland Historical Trust. Some benefits resulting from a listing in the National Register include the following:

1. National recognition of the value of historic properties individually and collectively to the Nation.
2. Eligibility for Federal tax incentives and other preservation assistance.
3. Eligibility for a Maryland income tax benefit for the approved rehabilitation of owner-occupied residential buildings.
4. Consideration in the planning for federally and state assisted projects.

Listing does not interfere with a private property owner's right to alter, manage or dispose of property.

Maryland Historical Trust: The Maryland Historical Trust (MHT) surveys historic buildings, structures and archaeological sites to determine eligibility of being listed on the state register. As with being on the National Register of Historic Places, listing does not limit or regulate the

property owner in what can or cannot be done with the property. In order to be considered for listing on the National Register or having an easement on the property to be accepted by the MHT, the site usually must first be listed on the Maryland Register of Historic Properties.

Maryland Historic Preservation Easement: A state-held historic preservation easement monitored by the MHT is an excellent means of perpetually preserving a historical structure and property for future generations. Regulations state that easements may be assignable to other parties or run with the land. The benefits for a property owner to donate his land to the MHT include income, estate, inheritance, gift and property tax benefits. In exchange, the owner gives the MHT the final word regarding proposed alterations. However, for properties whose fair market value is largely based on the value of development rights, this method of preservation may not be the most financially expedient for the property owner or for the MHT.

Delaware State Historic Preservation Office: The Delaware State Historic Preservation Office is part of the Division of Historical and Cultural Affairs. The State Historic Preservation Officer is responsible for the administration of the programs and policies of the National Historic Preservation Act, as amended, assisted by the staff of the Delaware State Historic Preservation Office. The historians, architectural historians, and archaeologists who make up the staff must meet qualifications established by the Secretary of the Interior for state staffs nationwide. Working in concert with academic and professional communities, preservation organizations, concerned citizens, and all levels of government, the Delaware State Historic Preservation Office coordinates preservation efforts throughout Delaware and serves as an advocate for the preservation of Delaware's historic places and unique cultural identity.

Local Historic Overlay Zone: A third, but separate, type of designation is the locally zoned historic district, which is an overlay on the existing zoning ordinance of a specified area. This district, legally allowed by Section 8.01 of Article 66B in the Annotated Code of Maryland is designed in order to maintain the visual character of the community. In 1995, the Maryland Legislature made changes to Article 66B relative to the local historic overlay zone. The main purpose of local historic area zoning is now:

1. to safeguard the heritage of Delmar by preserving the sites, structures, or districts therein which reflect elements of cultural, social, economic, political, archaeological, or architectural history;
2. to stabilize or improve property values of such sites, structure, or districts;
3. to foster civic beauty;
4. to strengthen the local economy;
5. to promote the preservation and appreciation of sites, structures, and districts for the education and welfare of the residents of Delmar.

Adaptive Re-Use. The Town should adopt zoning provisions that promote the adaptive reuse of historic structures for public and private uses including, but not limited to, bed and breakfast establishments, craft/gift shops, museums, and studio space for artisans, when such uses minimize exterior structural alteration.

Support Owners. The Town should encourage, through the use of various incentives, the preservation of historic structures. Include tax incentives for major structural or exterior renovation or the donation of protective historic easements.

Local Historic Districts. The Town may, through the use of various incentives, encourage the establishment of local historic districts in the Town. Incentives may include tax incentives and recognition through the awarding of plaques.

Development Proposal Review. The Zoning Ordinance and Subdivision Regulations for the Town should require developers to identify cemeteries/burial grounds/archaeological sites/historical structures on a property prior to any disturbance of the site and support archaeological and historical research through preservation of significant sites.