

# **FUTURE LAND USE ELEMENT**

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### **Existing Land Use**

Sussex County includes nearly half (48%) of the land area in Delaware. Most commercial activity and the majority of the County's population reside near three major roadway corridors. Each of these routes extend from the County's northern border with Kent County to its southern boundary with Maryland. State Route 1 runs along the Atlantic coastline through or near the County's major resort towns. U.S. 113 extends through the center of Sussex County from Milford to Georgetown and south to Selbyville. U.S. 13 connects the Town of Greenwood in the northern portion of the County to several western Sussex County towns and to Salisbury, MD. U.S. 13 also parallels a Norfolk Southern rail line and is located close to the Nanticoke River.



### **Incorporated Municipalities**

Sussex County contains 25 incorporated municipalities. The beach resorts along the Atlantic coast are the most populous and highly developed of these towns. However, other incorporated towns and cities and the areas immediately adjacent to them serve as population and commerce centers in locations throughout the County.



The Sussex County government strives to work closely with the incorporated municipalities, especially on annexation and utility services. But in the end, each incorporated town makes its own land use planning and other policy decisions. The incorporated towns in Sussex County include the following:

- Bethany Beach
- Bethel
- Blades
- Bridgeville
- Dagsboro
- Delmar
- Dewey Beach
- Ellendale
- Fenwick Island
- Frankford
- Georgetown
- Greenwood
- Henlopen Acres
- Laurel
- Lewes
- Milford
- Millsboro
- Millville
- Milton
- Ocean View
- Rehoboth Beach
- Seaford
- Selbyville
- Slaughter Beach
- South Bethany

The coastal and inland bay areas are Sussex County’s busiest regions in terms of tourism, new construction and seasonal traffic. The most serious traffic congestion problems occur during warm weather weekends, particularly along major east-west roads. Sussex County’s central and western sectors are less developed and more rural, but have seen proposals for many developments involving thousands of new housing units. Outside of the incorporated towns and cities, much of central and western Sussex County is still in forest or farmland and thousands of acres have been permanently preserved.

### **Existing Land Use Mapping**

The *Existing Land Use* map on the next page depicts the incorporated municipalities, farming areas and prevailing development patterns in Sussex County. A second map, entitled *Developed and Protected Lands* then shows developed areas compared with lands already preserved and the location of major developments proposed in recent years.

**Map: Existing Land Use**

**Map: Developed and Protected Lands**

## Pace of Development

The Sussex County Planning and Zoning Department reviews new development proposals in areas outside of incorporated towns and cities. The following table shows how the number of proposed residential developments reviewed and the total number of proposed lots involved dropped in 2006 relative to 2005.



Nationwide, the housing market slumped in late 2006. This trend has affected Sussex County. However, the County has a backlog of housing approved but not yet constructed. Sussex County records show that through 2006, a total of 26,233 residential lots have been recorded but not yet developed. That number includes approvals that may have expired under the County’s five-year sunset period for approved but undeveloped parcels. That number also includes both incorporated and unincorporated areas. A large number of additional lots were in the development review and approval process, but had not yet been recorded.

**Table 6  
New Development Proposals Peaked in 2005**

	2004	2005	2006
Proposed Developments Reviewed	61	100	76
Total Lots	4609	12027	4213

## Location of Development

While many large developments are proposed in the central and western parts of the County, the majority of the new home construction continues to occur in the areas closest to the inland bays and the coastal communities. Four Sussex County tax assessment districts in particular accounted for 51% of all residential building permits issued from 2003 through 2006. As shown on the accompanying *Assessment Districts* map, these assessment districts are all in eastern Sussex County.

From January 2003 to December 2006, building permits were issued for 13,706 new housing units. Of this total, 3,035 were manufactured (“mobile”) homes that were built under Federal manufactured home standards (as opposed to standard building codes).

Section 99-40 of the Sussex County Subdivision Ordinance stipulates that any “major subdivision” approval granted by the County is null and void unless substantial construction is underway within five years from the date the subdivision is approved.

A “major subdivision” is a subdivision proposing a new street or extension of an existing street. “Substantial construction” means that:

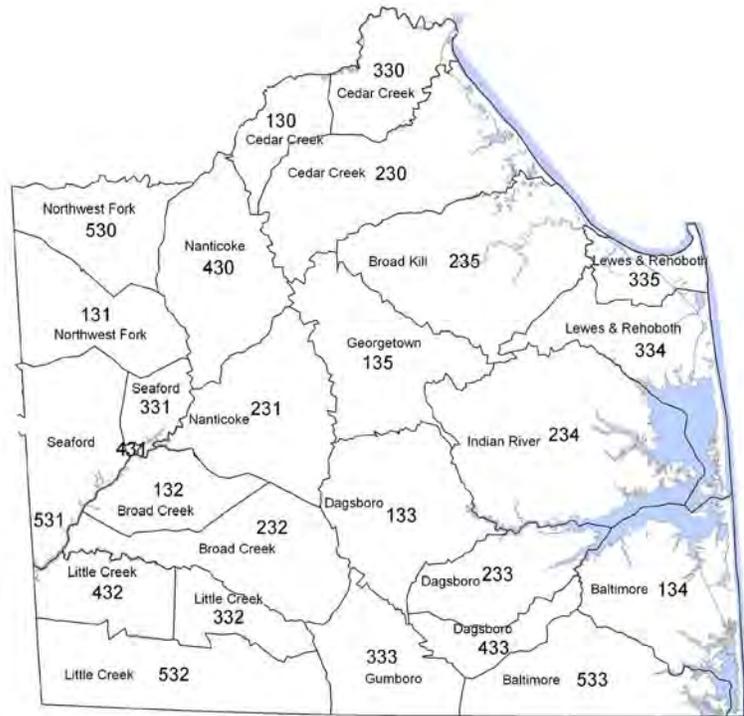
- right-of-way has been cleared;
- the roadway has been rough graded;
- drainage / stormwater facilities have been rough graded; and
- erosion control measures are in place and being actively maintained.

**Table 7**  
**Strongest Growth in Construction of New**  
**Housing Units is in Eastern Areas of Sussex County**

<b>Assessment District</b>	<b>Building Permits Issued 2003 – 2006</b>	<b>Assessment District</b>	<b>Building Permits Issued 2003 – 2006</b>
130	112	432	142
230	469	532	202
330	205	133	398
430	364	233	173
530	103	333	48
131	99	433	10
231	240	533	1,230
331	196	134	1,182
431	0	234	2,501
531	134	334	1,628
132	251	135	187
232	192	235	761
332	95	335	387
<b>TOTAL</b>			<b>11,309</b>

**Note:** Data is for unincorporated area only.

## Tax Assessment Districts



## Importance of the Future Land Use Plan

The Future Land Use Plan (also called the Future Land Use Element) is probably the most influential part of this Comprehensive Plan. The County's zoning regulations are intended to carry out the Future Land Use Plan. The Future Land Use Plan also designates which parts of the County are to be considered growth areas. Being labeled a growth area has implications in County zoning, including designating areas where it is possible to use incentives that can increase housing densities. The location of growth areas designated by Sussex County also influences Delaware state policy on: a) where the State hopes to apply certain growth management strategies; and b) how the state allocates its infrastructure spending.

## Goals and Purposes of the Future Land Use Plan

Sussex County's future land use policies are based on the following important goals:

- Direct development to areas that have community services or can secure them cost effectively.
- Conserve the County's agricultural economy by promoting farming and preserving agricultural land values.
- Protect critical natural resources, such as the inland bays and others, by guarding against over-development and permanently preserving selected lands.

- Encourage tourism and other responsible commercial and industrial job providers to locate and invest in the County.
- Expand affordable housing opportunities, particularly in areas near job centers.
- Ensure that new developments incorporate preserved usable open space and other best practices in subdivision design.
- Make Sussex County’s growth and conservation policies clear to relevant Delaware State agencies, neighboring counties and Sussex County’s incorporated municipalities.

Sussex County will use this new Future Land Use Plan to makes selected updates to the County’s zoning and subdivision codes, and help plan for future public infrastructure.

## **The Future Land Use Plan and Zoning**

This updated Future Land Use Plan divides the County into planning areas. These planning areas provide the logic and rationale for the County’s zoning, which is one of the primary purposes of a comprehensive plan. However, it is important to clarify that: a) these planning areas are not zoning districts; and b) land within these planning areas includes parts of two or more zoning districts in most cases. The Future Land Use Plan chapter of this Comprehensive Plan Update describes the County’s policies on land development and land conservation. The zoning ordinance contains the detailed regulations for implementing these policies and includes the map that delineates Sussex County’s zoning district boundaries.

## **The Structure of the Future Land Use Plan**

The Future Land Use Plan divides Sussex County into two types of planning areas: Growth Areas and Rural Areas. The Growth Areas and the Rural Areas each include sub-categories as outlined below:

### ***Growth Areas:***

- Municipalities
- Town Centers
- Developing Areas
- Environmentally Sensitive Developing Areas
- Mixed Residential Areas
- Highway Commercial Areas
- Planned Industrial Areas

### ***Rural Areas:***

- Low Density Areas
- Protected Lands

- Agricultural Preservation Districts Under the State Program (which would be considered Low Density Areas if the landowners would withdraw from the program).

The following descriptions explain each of these planning areas.

## **Growth Areas**

This Plan seeks to direct the County’s most concentrated forms of new development to Growth Areas, including most higher density residential development and most business development. The County used the following guidelines to help determine where Growth Areas should be located:

- Proximity to an incorporated municipality or a municipal annexation area.
- Presence of existing public sewer and public water service nearby.
- Plans by the County to provide public sewage service within five years.
- Location on or near a major road.
- Character and intensity of surrounding development, including proposed development.
- Location relative to major preserved lands.
- The area’s environmental character.
- How the area ranks according to the “Delaware Strategies for State Policies and Spending” document (Level 1, Level 2, Level 3, or Level 4).

In designating Growth Areas, Sussex County applied these guidelines broadly. The County views these guidelines as important but not absolute. The guidelines are helpful criteria but they are not meant to be inflexible standards that all growth areas must fully meet. In particular cases, the County is signaling that selected new growth areas may be needed to accommodate future development in places the State does not currently view as growth centers. Following the *Annexation Areas* map on the next page, there is the *State Funding Priorities* map as it applies to Sussex County. An explanation is then provided about the “Delaware Strategies for State Policies and Spending” document.

**Map: Annexation Areas & Areas of Concern**

**Map: Strategies for State Policies and Spending**

## **Delaware Strategies for State Policies and Spending**

The purpose of the “Delaware Strategies for State Policies and Spending” document prepared by the State in 2004 is to help coordinate local land use decision making with State decisions made about funding infrastructure, such as the schools and roads needed to support appropriate development. By updating this document every five years, the State strives to ensure that:

- State spending promotes quality, efficiency and compact growth.
- State policies foster orderly growth and resource protection, not degradation.

The State’s Strategies for State Policies and Spending map classifies land areas as being part of Investment Level 1, Investment Level 2, Investment Level 3, or Investment Level 4. These four levels clarify the State’s policies and priorities for the expenditure of State funds on infrastructure.

The following synopsis descriptions are excerpted from the FY 2004 “Delaware Strategies for State Policies and Spending” document.

### ***Investment Level 1***

It is the State’s intent to use its spending and management tools to maintain and enhance community character, to promote well-designed and efficient new growth, and to facilitate redevelopment in Investment Level 1 Areas.

### ***Investment Level 2***

It is the State’s intent to use its spending and management tools to promote well-designed development in these areas. Such development provides for a variety of housing types, user-friendly transportation systems, and provides essential open spaces and recreational facilities, other public facilities, and services to promote a sense of community.

### ***Investment Level 3***

It is the State’s intent is to acknowledge that while development in Investment Level 3 Areas may be appropriate, there are significant considerations regarding the timing, phasing, site characteristics, or Agency programs that should be weighed when considering growth and development in these areas. Some lands designated Investment Level 3 are longer term growth areas, and are not necessary to accommodate expected population, household, and employment growth in the next five years (or more). In these areas there are likely to be other competing priorities for State resources during this planning period.

Other areas designated as Investment Level 3 represent lands in the midst of rapidly growing areas designated Investment Levels 1 or 2 that are somehow impacted by natural resource, agricultural preservation, or other infrastructure issues. Development of these areas in the near term future may be appropriate, as long as State Agencies and local governments with land use

authority investigate and accommodate the relevant issues on the sites and in the surrounding areas.

In Sussex County’s case, much of the Environmentally Sensitive Developing Area is designated as Level 3. This designation acknowledges that these areas are part of the County’s future growth zone. However, this designation also suggests that special scrutiny should be applied to spending decisions and development proposals within these areas to ensure these activities are consistent with State and local development and preservation policies.

#### ***Investment Level 4***

It is the State’s intent to discourage additional development in Investment Level 4 areas unrelated to the areas’ needs. It will do so through consistent policy decisions and by limiting infrastructure investment, while recognizing that state infrastructure investments may be appropriate where state and local governments agree that such actions are necessary to address unforeseen circumstances involving public health, safety, or welfare.

## **Seven Types of Growth Areas**

The seven types of Growth Areas designated in this Comprehensive Plan Update are described below:

### ***1. Municipalities***

Sussex County strongly favors directing development to the incorporated municipalities that desire it. With exceptions, these are some of the County’s most densely developed areas and the areas most fully served by public sewer and public water facilities. The specific permitted uses and densities governing new construction within an incorporated municipality will continue to be governed by that municipality’s zoning ordinance, its public water and sewer capacities, and its comprehensive planning policies.

This Plan seeks that the municipalities consider participating in the County’s programs of using density bonuses for developments that result in the preservation of land elsewhere in the County (as described later in this chapter).

### ***2. Town Centers***

Significant growth is proposed to be clustered around incorporated municipalities in unincorporated areas just beyond municipal borders. Many of these locations are part of areas that municipalities have formally designated as future annexation areas, where the municipality would be receptive to annexation requests in the future. Some municipalities have policies that they avoid extending public water and sewage systems beyond their borders, while other municipalities do allow these extensions.

The following major guidelines should apply to future growth in the Town Centers:

- Permitted Uses – A range of housing types are appropriate in Town Centers, including single-family homes, townhouses and multi-family units. Commercial uses should serve the daily needs of residents, workers and visitors. Retail and office uses compatible with adjacent areas are appropriate. However, large intense shopping centers are encouraged in Highway Commercial areas. Some smaller scale, low-impact industrial operations may be appropriate, but larger industrial uses are proposed to be directed to General Industrial areas. Appropriate mixtures of residential, institution and light commercial uses should be allowed.
- Densities – Medium to high density residential development is encouraged. This should range from 4 to 12 homes per acre. Compatible commerce should also be allowed. A clustering option permitting smaller lots and additional flexibility in dimensional standards should continue to be provided on tracts of a certain minimum size, provided significant permanent common open space is preserved and the development is connected to central water and sewer service. Specific regulations governing cluster developments need to be designated by zoning district.

The County also hopes to adopt two additional incentives that will direct future growth to Town Centers:

- An increase in maximum density from 4 units per acre to 6 units per acre for cluster developments locating in Town Center areas. This incentive would be available provided that: a) the applicant contributes additional open space fees commensurate with the density bonus received; and b) the applicant secures conditional use approval.
- An increase in the maximum building height and an increase in permitted density to 12 units per acre for mixed use developments locating in Town Center Areas. This incentive would be available provided that: a) the applicant received certification under a County-adopted LEED-type program that rewards the use of green building techniques; and b) the applicant secures conditional use approval.
- Infrastructure – Central water and sewer facilities are strongly encouraged. If central utilities are not possible, densities should be limited to 2 units per acre.

### **3. *Developing Areas***

The Developing Areas are newer, emerging growth areas. They are often located near main arterial roads that connect major destinations within the County. Most of the proposed Developing Areas are adjacent to municipalities and most are within potential future annexation areas of a municipality. In some cases, the developing areas are not yet served by sewer and water systems but have the potential to secure these services either from public or private providers that provide service to nearby locations.

The following major guidelines should apply to future growth in the Developing Areas:

- Permitted Uses – A range of housing types are appropriate in most Developing Areas, including single family homes, townhouses and multi-family units. In selected areas, commercial uses should be allowed. A variety of office uses would be appropriate in many areas. Portions of the Developing Areas with good road access and few nearby homes should allow for business and industrial parks. Careful mixtures of homes with light commercial and institutional uses can be appropriate to provide for convenient services and to allow people to work close to home.
- Densities – The County envisions base density in these areas to be 2 units per acre, with the option to go to 4 units per acre if the developer uses optional density bonuses. Those optional bonuses may involve payment of fees that fund permanent land preservation elsewhere in the County, or other options. In addition, consideration should be given to possible density bonuses if a developer funds a major road improvement that otherwise would not be required. That type of bonus may require conditional use approval by County Council and may not be allowed in the Environmentally Sensitive Developing Area. Smaller lots and flexibility in dimensional standards should be allowed if the developer uses a cluster option that results in permanent preservation of a substantial percentage of the tract.
- Infrastructure – Central water and sewer facilities are strongly encouraged. If central utilities are not possible, permitted densities should be limited to 2 units per acre. The Developing Areas are largely based upon areas where public sewage service is already available or where the County plans upon providing public sewage service within five years.

#### **4. *Environmentally Sensitive Developing Areas***

Sussex County has designated large areas around Rehoboth Bay, Indian River Bay, and Little Assawoman Bay (the inland bays) as Environmentally Sensitive Developing Areas. This designation recognizes two characteristics of these areas. First, these regions are among the most desirable locations in Sussex County for new housing, as reflected in new construction data and real estate prices. Second, these regions contain ecologically important wetlands and other coastal lands that help absorb floodwaters and provide extensive habitat for native flora and fauna. These areas also have great impacts upon the water quality of the bays and inlets and upon natural habitats.

The challenge in these regions is to safeguard genuine natural areas and mitigate roadway congestion without stifling the tourism and real estate markets that: a) provide many jobs; b) create business for local entrepreneurs; and c) help keep local tax rates reasonable. The County has major initiatives to extend public sewer service to replace failing on-site systems in many of these areas. Very careful control of stormwater runoff is an extremely important concern to keep sediment and other pollutants out of the inland bays.

The following major guidelines should apply to future growth in Environmentally Sensitive Developing Areas:

- Permitted Uses – Environmentally Sensitive Developing Areas are areas that can accommodate development provided special environmental concerns are addressed. A range of housing types should be permitted in Environmentally Sensitive Areas, including single-family homes, townhouses and multi-family units. Retail and office uses are appropriate but larger shopping centers and office parks should be confined to selected locations with access to arterial roads. Careful mixtures of homes with light commercial and institutional uses can be appropriate to provide for convenient services and to allow people to work close to home. Major new industrial uses are not proposed in these areas. Industrial zones are regulated by the Delaware Coastal Zone Act, which restrict heavy industry and bulk transfer.
- Densities – The Environmentally Sensitive Developing Areas function as an “overlay” area to several underlying zoning districts. It may be advisable for legal reasons to convert this overlay area into regular zoning districts, while maintaining the current standards. Most of the Environmental Sensitive Developing Areas should continue to allow 2 homes per acre. The option should exist to go up to 4 units per acre if the developer uses optional density bonuses. Smaller lots and flexibility in dimensional standards should be allowed if the developer uses a cluster option that results in permanent preservation of a substantial percentage of the tract.

The County may also consider an additional layer of protection in the Environmentally Sensitive Developing Areas. Tidal wetland area could be subtracted from the total tract size so that “net” tract size is used as the basis for calculating how much development is allowed.

All applicants for developments of a minimum size (as specified in zoning) should continue to be required to provide information that analyzes the development’s potential environmental impacts, including effects on stormwater runoff, nitrogen and phosphorous loading, wetlands, woodlands, wastewater treatment, water systems, and other matters that affect the ecological sensitivity of the inland bays.

- Infrastructure – Central water and sewer facilities are strongly encouraged. If central utilities are not possible, permitted densities should be limited to 2 units per acre.

## **5. *Mixed Residential Areas***

The Mixed Residential Areas mainly consist of existing residential development and lands where residential developments are proposed under the current General Residential and Medium Density Residential zoning districts. These areas already exist in current zoning and are scattered throughout the County.

The following major guidelines should apply to future growth in Mixed Residential Areas:

- Permitted Uses – The full range of housing types are appropriate in these residential areas, including single-family homes, townhouses and multi-family units. Non-residential development is not encouraged.
- Densities – The current densities in these areas range from a maximum of 4 homes per acre for single-family detached housing to a maximum of 12 dwellings units per acre for multi-family housing.
- Infrastructure – Central water and sewer facilities are strongly encouraged. If central utilities are not possible, densities should be limited to 2 units per acre.

#### **6. *Highway Commercial Areas***

Highway Commercial Areas include concentrations of retail and service uses that are mainly located along highways. As opposed to small, traditional downtown areas that are often historic and pedestrian-friendly, Highway Commercial Areas include highway commercial corridors, shopping centers and other large commercial vicinities geared towards vehicular traffic. In addition to primary shopping destinations, this area would also be the appropriate place to locate hotels, motels, car washes, auto dealerships, lumberyards and other larger scale commercial uses not primarily targeted to the residents of immediately adjacent residential areas.

#### **7. *Planned Industrial Areas***

Planned Industrial Areas are lands devoted to concentrations of larger industrial uses including heavier industry, light industry, warehousing, and flex space. Appropriate development in these areas could take the form of conventional industrial parks or planned business parks with a unified design that incorporate a combination of light industry and other business uses. Large, more intensive stand-alone industrial uses should also be directed to these areas.

### **Rural Areas**

As explained above, the various types of Growth Areas identified in this Plan are designed to accommodate concentrated levels of development. In contrast, Sussex County envisions the remainder of the County as a predominantly rural landscape where farming co-exists with appropriate residential uses and permanently preserved property.

### **Three Types of Rural Areas**

#### **1. *Low Density Areas***

All lands designated in this Plan as Low Density Areas are currently zoned AR-1. Under that zoning designation, single family detached homes are permitted at 2 homes per acre on lots containing a minimum of ½ acre if the tract connects to central sewers. Where on-site septic systems are used, single-family detached homes are permitted on minimum 3/4-acre lots. AR-1 zoning regulations also permit an average of 2 homes per acre where a cluster-style site plan is used and 30% of the tract is preserved in permanent open space. Using these zoning regulations and additional incentives discussed in the next section of this Future Land Use chapter, Sussex County hopes to retain the rural environment of Low Density Areas and set aside significant open space.

In Sussex County, many farmland owners located in the Low Density Areas have built up significant equity in their land – in numerous cases through multiple generations. This equity is a liquid asset that can serve as collateral to secure operating loans. It is also equity that can be realized through land sales if and when these landowners no longer desire to continue farming. For this reason, the Sussex County Council supports State and local land use policies that will preserve the value of farmland. The Sussex County approach emphasizes the following policies and actions to help sustain agriculture, maintain the rural landscape and sustain reasonable development rights:

- The County strongly supports voluntary farmland preservation and has worked jointly with the State to facilitate the acquisition of development rights to agricultural land.
- The County uses zoning to mandate that a certain portion of a residential subdivision must be permanently preserved in common open space.
- The County provides density bonuses, under certain conditions, to developers who agree to pay into a fund that Sussex County uses to acquire open space.
- The County requires developers to plant landscaped buffers to physically separate new development from the surrounding countryside.
- As described later in this chapter, the County also desires to explore techniques such as Transfer of Development Rights (TDR), which gives developers the right to build at higher densities in other, more suitable locations if they agree to permanently preserve certain rural lands.

The following major guidelines should apply to future growth in Low Density Areas.

- Permitted Uses – The primary uses envisioned in Low Density Areas are agricultural activities and single family detached homes. Business development should be largely confined to businesses addressing the needs of these two uses. Industrial uses that support or depend on agriculture should be permitted. The focus of retail and office uses in Low Density Areas should be providing convenience goods and services to nearby residents. Commercial uses may require conditional use approval from County Council. The types of commercial uses in these residential areas should be

limited in their location, size and hours of operation. More intense commercial uses, such as auto repair and gasoline sales, should be avoided in these areas.

- Densities – Base densities in Low Density Areas should be unchanged from the current zoning provisions. The minimum lot size should be  $\frac{3}{4}$  acre for lots served by on-lot septic systems and  $\frac{1}{2}$  acre for lots with central sewers. The cluster option permitted in Low Density Areas should continue to permit overall site densities of up to 2 units per acre, provided significant open space is set aside and the tract connects to public sewers.
- Infrastructure – Development where lots are no smaller than  $\frac{3}{4}$  acre can be accommodated in this planning area without central sewers. Other development should require central sewer service.

## **2. *Protected Lands***

Protected Lands are permanently preserved properties. These tracts are “out of play” and cannot be further developed because they are:

- Federally-owned, State-owned, or other land preserves;
- Under conservation easements (such as easements on mostly forested land or easements by private conservancies); or
- Under agricultural preservation easements that were purchased by the State and/or County.

## **3. *Agricultural Preservation Districts Under the State Program***

Farmland owners who want to sell their development rights to the State must first enroll in an Agricultural Preservation District. Under State rules, Agricultural Preservation Districts have to be a minimum of 200 contiguous acres, but allow smaller parcels within a three-mile radius to join. In exchange for real estate tax breaks and protection against nuisance complaints, participating land owners cannot develop their property for at least ten years except for agricultural uses and a certain very limited number of homes. The landowners voluntarily agree to enter into the program, and can leave or renew their participation when the agreements expire. Therefore, these areas can be considered temporarily but not permanently preserved.

The County should consider establishing an Agricultural zoning district within portions of these State Agricultural Preservation Districts. The intent is that landowners would voluntarily ask to be within this zoning district. The zoning provisions could mirror or cross-reference the existing State provisions. This district could include some incentives, such as more permissive provisions for livestock, poultry and agricultural processing activities.

## **The Future Land Use Map**

The *Future Land Use* map on the following page shows the locations of the Growth Areas and the Rural Areas described above. The starting point for this map was the Future Land Use map included in the 2003 Sussex County Comprehensive Plan. This latest version of the map includes some changes in the classification of certain areas to reflect the following:

- Lands added to the annexation areas of certain incorporated municipalities, as shown in comprehensive plans adopted by these municipalities and certified by the State.
- Zoning map changes approved by Sussex County Council since the previous plan was completed.
- A few selected new “Developing Areas” that are intended to provide locations where density might be increased from the current zoning if the developer uses density bonus options.

Despite these refinements, the new *Future Land Use* map does not represent a significant revision in the County’s land use policy. This Draft Plan also does not signal a shift in the County Council’s overall view about the future of land development and land preservation in the County.

**Table 8  
Recommended Densities and Uses**

Comprehensive Plan Use	Applicable Zoning Districts
<p><b>Low Density</b> Agricultural / Residential Area Allowable units based on three-quarter acre lot size Clustering allowed to 1/2-acre lot size</p>	<p>Agricultural Preservation Districts and Preservation Easements Agricultural Residential District (AR-1) Neighborhood Business District (B-1) Bio-Tech Industry Agriculturally Related Industries Commercial-Residential District (CR-1)</p>
<p><b>Low to Medium Density</b> Environmentally Sensitive Developing Area Density is based on underlying zone</p>	<p>Agricultural Preservation Districts and Preservation Easements Agricultural Residential District (AR-1) Neighborhood Business District (B-1) Medium Density Residential District (M-R) General Residential District (GR) Commercial-Residential District (CR-1) Marine District (M) Limited Industrial District LI-1) Light Industrial District (LI-2)</p>
<p><b>Medium Density</b> Developing Areas Four dwelling units/acre base density. (Higher densities may be permitted if area is adjacent to Town Center or other High Density Developed Areas)</p>	<p>Agricultural Preservation Districts and Preservation Easements Agricultural Residential District (AR-1) Neighborhood Business District (B-1) Medium Density Residential District (MR) General Residential District (GR) High Density Residential District (HR-1 &amp; HR-2) Commercial-Residential District (CR-1) Marine District (M) Limited Industrial District (LI-1) Light Industrial District (LI-2) Heavy Industrial District (HI-1) New Commercial District</p>
<p><b>High Density</b> Town Center Four to twelve dwelling units/acre gross density. (Or highest density allowed in adjacent municipality)</p>	<p>Neighborhood Business District (B-1) Medium Density Residential District (MR) General Residential District (GR) High Density Residential District (HR-1 &amp; HR-2) Commercial-Residential District (CR-1) Marine District (M) Limited Industrial District (LI-1) Urban Business District (UB) New Commercial District</p>
<p><b>Commercial District</b></p>	<p>Neighborhood Business District (B-1) Commercial-Residential District (CR-1) New Commercial District</p>
<p><b>Industrial District</b></p>	<p>Limited Industrial District (LI-1) Light Industrial District (LI-2) Heavy Industrial District (HI-1)</p>

**Map: Future Land Use Plan**

## **Other Important Land Use Topics**

The following land use planning topics, among others, continue to generate special interest throughout Delaware:

- Transfer of Development Rights (TDR)
- Agricultural Preservation
- Resource Protection Programs
- Manufactured Housing
- Community Design Guidelines
- Eligible Open Space

Sussex County's perspective on these issues is highlighted below.

### ***Transfer of Development Rights (TDR)***

TDR is a method that can use dollars paid by developers to permanently preserve land. It is a completely optional program that works through incentives. Under TDR, a developer pays the owner of a rural property to permanently preserve that property. In return, that developer can “transfer” the number of homes that would have been allowed on the preserved tract to the developer's own tract so that the developer can build more homes than would otherwise be permitted on that tract. The developer and the rural landowner negotiate how much the developer must pay to purchase the rural landowner's density rights. Under TDR, private sector market forces dictate the related cost. This helps landowners obtain full value for preserving their property and is an alternative to the below-market values offered to landowners under the State's agricultural easement program.

New Castle and Kent Counties have each established new TDR programs. Successful TDR programs are also in place in several counties in Maryland, as well as parts of Pennsylvania and New Jersey. The Delaware Office of State Planning Coordination supports this technique and has been active in promoting it throughout the State as part of the Livable Delaware initiative. Potential exists in Sussex County to establish a voluntary TDR program that will help preserve land and sustain agriculture by re-directing some new development from rural areas to designated “receiving areas” that have the roads, schools and utilities to better accommodate growth.

Sussex County has a variation of TDR in place. If a developer of a tract situated in a designated Growth Area pays a fee into an open space fund, the County permits the developer to build additional density on that tract. The County uses the money collected in this fund to preserve land in other parts of the County. Under the Sussex County system, the price per additional house is fixed by ordinance, not negotiated. The County (with guidance from the Sussex County Land Trust) selects the properties to be preserved. Sussex County will retain this incentive and continue to refine how and where it applies in the County. Any TDR program established in Sussex County would augment the current density bonus option, not replace it.

Guidelines for Considering TDR in Sussex County

Sussex County would need to amend its zoning ordinance to implement TDR. The specific language in that zoning amendment would spell out all the terms and condition about how TDR would operate in the County. The following are generalized guidelines for developing a voluntary TDR program and establishing effective procedures to govern its operation:

- The “sending areas” would be areas where land owners are allowed to sell their development rights. That should include all or almost all of the AR-1 zoning district.
- The receiving areas are areas where additional density could be possible under TDR. The receiving areas would include areas shown on the Future Land Use Plan as Developing Areas and Town Center Areas.
  - It is recommended that the TDR option not be allowed to increase densities in the Environmentally Sensitive Developing Areas. This would recognize that area’s fragile environment.
  - A second option could establish a limit stating that the sending tract and the receiving tract cannot be more than a maximum number of miles apart, such as eight miles. This refinement would help address the potential concern that under TDR, the schools, roads, utilities, and neighborhoods in the eastern section of the County could be overloaded from having to support growth pressure that originate in the western section where open land is more plentiful and less costly.
- A yield plan should be required for TDR developments to show how many homes are actually possible on the sending tract (the property to be preserved) under existing conventional zoning. The yield plan would govern how much density can be transferred from the sending tract to the receiving tract. Several jurisdictions give density bonuses to encourage developers to participate in TDR. Otherwise, developers may conclude that they can accomplish their yield objectives by relying on existing underlying zoning without becoming involved in TDR.
- Some jurisdictions, such as Kent County and others, offer density bonuses as part of their TDR programs if high priority farms or natural areas are being preserved. With the proper definitions in place, this option could help Sussex County preserve contiguous blocks of farmland, lands of extraordinary environmental importance and/or lands clearly vital to recharging groundwater supplies.
- Intergovernmental agreements and amendments to municipal zoning ordinances could be enacted that would allow development rights to be transferred from areas outside incorporated municipalities to areas inside incorporated municipalities, if the specific municipality is amenable.

### ***Farmland Preservation***

The Sussex County Council strongly supports efforts by the State, conservation organizations, and local landowners to preserve farmland through voluntary purchase of development rights. The State's Agricultural Land Preservation Program is the primary mechanism for permanently protecting farmland in Delaware. Landowners who wish to participate in this voluntary program and sell their development rights to the State must first be enrolled in an Agricultural Preservation District.

Agricultural Preservation Districts must consist of at least 200 contiguous acres devoted to farming and related uses, with provisions available to also include smaller parcels within a three-mile radius. Regulations prohibit participating landowners from developing their property for at least ten years except for agriculture, related uses, and certain very limited numbers of homes. In return, the landowners receive real estate tax benefits and "right-to-farm" protection against certain nuisance complaints.

The State and Sussex County fund the purchase of farmland development rights. Several factors influence decisions about where to spend these funds. Soil quality, the environmental significance of the site and opportunities to expand blocks of preserved land into contiguous locations are among the primary criteria.

The Sussex County Council has funded over \$2 million towards the purchase of farmland preservation easements on approximately 2,471 acres in Sussex County. The County determines which farmland preservation easements to purchase based on recommendations from the Sussex County Land Trust. The Sussex County Land Trust recommendations are based on inclusion of the properties within the grand preservation loop (see following map), amongst other factors. The goal is to provide a loop of contiguous properties that are preserved as open space in the County.

As of January 2007, the Delaware Agricultural Lands Preservation Foundation had acquired the development rights to 171 Sussex County farms that totaled 26,766 acres. At that time, the acquisition of development rights were pending for an additional 36 Sussex County farms comprising 5,754 acres. A total of 249 Sussex County farms containing 49,744 acres were enrolled in Agricultural Preservation Districts as of January 2007. District locations are shown on the *Future Land Use Map*. Sussex County is second to Kent County in both farmland acres preserved and farmland acres enrolled in Agricultural Preservation Districts. The Sussex County Council views the voluntary sale of farmland development rights to the Delaware Agricultural Lands Preservation Foundation as an important tool for preserving the County's rural environment. The description of Low Density planning areas included earlier in this chapter describes additional strategies Sussex County now uses to help preserve the County's agricultural heritage.

***Resource Protection Programs***

Sussex County residents should also be aware of a number of Federal State, County and private sector programs that facilitate the voluntary preservation of eligible natural lands. These are summarized below from information Sussex County makes readily available in brochure form to interested parties.

*USDA Natural Resource Conservation Service*

*Wetlands Reserve Program* – Controls wetland losses nationwide through permanent and 30-year easements; 10-year minimum restoration cost-shares available.

*Farm and Ranch Lands Protection Program* – Purchase of agricultural conservation easements. Lands must be threatened and hold agricultural significance.

- Other easements through grassland and healthy forest preservation programs.

*Delaware Agricultural Lands Preservation Foundation*  
*(Delaware Department of Agriculture)*

*Preservation Districts* – Agricultural easements include farmlands, historic structures and wildlife habitats.

- Exemptions from real estate transfer fees, county and school taxes.
- Protection from nuisance complaints.

*Delaware Wild Lands, Inc.*

- Dedicated conservation and preservation of natural, strategic parcels; fee-simple and donated acquisitions.
- Tracts concentrated near Great Cypress Swamp are most desirable. Currently, lands comprise 10,000 acres of sustainable forest under routine stewardship.
- Timber management supports commercial logging and enhances traditional recreational activities.
- Works through private, government partnerships.

*Sussex County Land Trust*

- Programs to purchase property and protective easements.
- Parcel donations accepted.
- Aims to create “Grand Preservation Loop” to provide connectivity to other preserved parcels, open tracts (see accompanying map).
- Partnership through Sussex County Council and the Sussex County Land Trust provides funding from both private and public contributions for preservation, protection of open space.

*US Fish and Wildlife (Service Partners for Fish and Wildlife)*

- Wetlands and estuary habitat management for minimum 10 years.
- Includes financial assistance to landowner.

*Delaware Forest Land Preservation Program (Delaware Forest Service)*

- Perpetual conservation easements prohibit development but protect working forests.
- Minimum 10 acres and 10-year contract required.
- Right-to-farm provision and substantial compensation for preservation.
- Cost-shares for tree planting and timber stand improvement.

*Ducks Unlimited Conservation Easement Program*

*Habitat Stewardship Program* – 90% cost-share for wetlands restoration and management, agreement restricts type and amount of development. Land owner retains ownership.

*Wetlands American Trust* – Accepts donated easements in perpetuity.

*Sussex Conservation District*

*Agricultural Cost-Share* – Incentives for numerous programs, including field wetlands, erosion and animal waste.

- Up to 75% payments and 15-year contracts.

*Tax Ditch Maintenance* – 50% cost-share for one-time service and equipment provisions.

*The Nature Conservancy (For the Delaware Bay Watershed)*

- Accepts donations of land and conservation easements in public-private partnerships.
- Provides natural lands management services.

*US Forest Service Forest Legacy Program*

- Assists states in securing conservation easements for threatened lands.
- Minimum 75% forest cover required.
- Land is protected as working forest.

**Sussex County Land Trust Map**

### ***Manufactured Homes***

Manufactured homes continue to be a popular alternative to site-built housing in Sussex County. County zoning regulations delineate where these homes are allowed. However, the County's jurisdiction is limited in two main ways:

- Federal law effectively states that the County must allow manufactured homes wherever conventionally built single-family detached homes are permitted.
- Federal law governs the construction details and related specifications to which manufactured homes must be built.

Within these limitations, Sussex County encourages using manufactured housing as one way to help provide affordable housing, especially in residential areas close to job centers. County Council is keenly aware that many jobs in Sussex County do not pay enough for workers to afford the average priced home now available to buy in Sussex County, especially in the eastern part of the County. In addition to continuing to provide density bonuses to developers who build certain affordable housing, the County supports manufactured housing as an effective way to help meet the needs of moderate income people trying to become home owners. Sussex County will closely examine potential revisions to County regulations governing the following topics when the County begins its zoning and subdivision code updates following adoption of this Comprehensive Plan Update:

- The use of single-wide homes.
- The effective lot size needed to place a manufactured home.
- Prohibitions against relocating or placing manufactured homes built more than five years ago.

This Plan urges local town officials to ensure incorporated municipalities are not unduly restricting manufactured housing. The County also looks forward to hearing from large private sector employers and manufactured housing advocates about how companies might consider participating in manufactured housing projects that would help provide work force housing for interested employees.

### ***Community Design Criteria***

The County Zoning Ordinance requires that cluster developments be of “superior design”. The following guidelines provide updated criteria for helping the County evaluate the design merits of plans submitted as cluster developments.

- Homes should be clustered on the most suitable portions of a site, and important natural areas should be singled out for preservation before lot lines are engineered.

- Through a County-approved density bonus, the number of homes possible on a tract under clustering should be 15 to 20 percent higher than would be allowed on the same tract in a conventional development with 3/4-acre lots. This is because the minimum lot size would be lower. This modest density bonus will encourage developers to preserve the open space.
- Make sure cluster development is not misused to generate a dramatic increase in the number of homes allowed on a tract. A "Yield Plan" should be required that accurately shows the number of homes that would actually be possible on the same tract under conventional development regulations.
- Make sure the proposed open space can benefit the residents of the development, instead of being fragments of "leftover" lands with little development or recreation value.
- Direct buildings away from steep slopes, wetlands, waterways and other important natural features.
- Require thick natural vegetation to be preserved along creeks. This is essential to help filter out eroded soil and other pollutants from stormwater runoff before it enters the creek. This vegetation along creeks is also important to maintain high quality fishing habitats.
- Require that homes be placed on portions of the tract that are most environmentally suitable for development—as opposed to being evenly spread across the land.
- Preserve scenic features so that homes can be placed on less visible portions of a tract, while maintaining scenic views. For example, some ordinances mandate that developers set back homes from main through-roads and limit placement of homes on major ridgelines.
- Poor and natural drainage areas should be located early in the design process to save time and money by minimizing future design issues, protecting natural resources and reducing future drainage and flooding problems during and after construction.
- The following four-step process is recommended in the design of new development in order to emphasize land conservation principles.

*1. Identify Lands that Should Be Preserved.*

The mapping should not only consider the area proposed for development, but also any future phases of development, plus the areas that are immediately adjacent to the development site on other lots.

First, the areas that are most worthy of preservation should be mapped, including wetlands, flood-prone areas, creek valleys, and very steeply sloped lands. Then, other features that are important for conservation should be mapped, such as woodlands, tree lines, scenic views, historic buildings, and prime farmland. The areas with the fewest important natural, scenic and historic features should be considered the "Potential Development Area."

2. *Locate Home Sites.*

Next, the most appropriate locations for homes should be chosen. Zoning regulations should establish maximum overall density for the site, but should not include overly strict lot requirements that may prevent flexibility in the site layout. Home sites should be chosen to avoid the important features mapped in the first step. Home sites should also take advantage of scenic views within the tract.

3. *Locate Roads and Trails.*

After the home sites are selected, then a road system should be designed that serves those homes. A trail system could also be provided that links homes to destinations outside of the tract.

4. *Draw in the Lot Lines.*

The last sketch plan step is to draw in lot lines. In conventional development, with strict standardized minimum lot requirements, this is often the first step and done before any consideration of natural features of the site.

### ***Eligible Open Space***

Sussex County is interested in establishing standards to ensure preserved open space is well-located and serves a public function. In many cases, mature woods, steep slopes and creek valleys should be preserved in their natural state. In other cases, the open spaces may be intended for active recreation. In still other cases, trees should be planted in the open spaces and trails should be installed. The key is to avoid “open space” that is simply the land left over after the most economical layout of lots and roads is completed.

Valid public purposes for open space include:

- To preserve land for agriculture, hayfields, orchards and tree farms.
- To preserve environmentally sensitive areas.
- To manage stormwater in a more attractive and naturalistic manner that protects water quality, as opposed to engineered channels and traditional fenced-in detention basins.
- To provide usable recreation area or important links in a trail system.
- To preserve large contiguous swaths of open space in visible locations that maintain a feeling of open space and that provide a visual relief between developments. At best, some open space would be preserved along exterior roads.

The following are useful criteria for assessing the value of open space areas proposed as part of a new development:

- In most cases, at least half of the required open space should be in one contiguous area.
- With the exception of tax ditches, isolated areas (such as less than one acre) and narrow areas of land (such as less than 75 feet wide) should not be counted as open space. However, more narrow stretches may be suitable for trail use.
- Detention basins should not be considered open space unless they are designed as a major scenic asset (such as a natural appearing pond) or are clearly suitable for recreation.
- Roads and parking should not count as open space, except for small parking areas that are necessary to serve non-commercial recreation uses.
- It may be appropriate to establish a maximum percentage of open space that can be covered by impervious surfaces.
- If not intended for active recreation, open space should be landscaped in trees, shrubs and other attractive vegetation, including native vegetation.
- Most types of commercial recreation, other than a golf course, should not count as common open space.
- Buildings should not count as open space, except for buildings that only serve recreational purposes.
- If appropriate and if possible, open space could be interconnected with common open space areas and/or trail areas on abutting parcels.