

***NJ Department of Environmental
Protection***



**Consistency Review and Comments on the
Petition for Plan Endorsement**

Submitted by the
Town of Newton, Sussex County

May 10, 2008

This document constitutes the Department of Environmental Protection's component of the Consistency Review conducted as part of the Plan Endorsement process. Although the Department has made all reasonable efforts to address all significant issues known to the Department as of the date hereof, the ever-evolving nature of regulatory programs, natural conditions and the planning process dictates that the information contained within this document may need to be updated or otherwise revised going forward. The Department reserves the right to include further requirements or recommendations should additional information, or information differing from that now known to the Department, become available.

This document does not, and no portion of this document shall be interpreted to, grant any regulatory or planning approvals by the Department.

Petition for Initial Plan Endorsement

Submitted by the Town of Newton

NJ DEP Consistency Review and Comments

Introduction

The Town of Newton covers approximately 3.1 square miles in Sussex County, New Jersey. Newton is largely developed, with a large wetlands complex located in the eastern end of town, and undeveloped, intact forested areas throughout. The Town also includes a historic district listed on the State and National Registers, another local historic district and many historic and culturally significant sites. Newton is intersected by several State and County roads, acting as a “crossroads” for the region, and the County Seat of Sussex County.

The State Plan identifies Newton as within the Rural Environmentally Sensitive (PA4b) and Environmentally Sensitive (PA5) planning areas. Newton was also identified as part of the Newton-Hampton Regional Center on September 24, 1993. That agreement, along with the designated center, expired on January 8, 2008. As such, the petition for Plan Endorsement also proposes designation of Newton as a Regional Center.

Consistency Review

The Department’s review of a petition for Plan Endorsement uses the State Planning Commission’s Plan Endorsement Guidelines as the basis for review, with emphasis on the items, tasks, policies and goals identified by the State Development and Redevelopment Plan that relate to the Department of Environmental Protection’s mission to protect the State’s environmental resources. The review of the materials submitted by the Town of Newton is intended to determine if Newton’s planning portfolio and development goals and objectives are generally consistent with the environmental and natural resource policies in the State Plan and of the Department of Environmental Protection (DEP).

DEP Consistency Determination

DEP has reviewed the Town of Newton’s submission and has determined that the goals and policies included in Newton’s planning documents are generally sound and consistent with the State Development and Redevelopment Plan. However, the Department has concerns about the extent of consideration of environmental resources in the Town’s Master Plan. In addition, documents required in the Plan Endorsement process were not submitted as part of the Plan Endorsement petition. Finally, the boundary of any re-adopted center must still be negotiated. DEP cannot recommend a determination of consistency until such time that an updated center boundary consistent with both the State Plan and DEP policy is agreed upon. *As such, the Department recommends that the Office of Smart Growth deem the Town of Newton’s petition for Plan Endorsement inconsistent until such time that the Township is able to address the issues identified in this report.*

Missing Documents

Several documents identified in the Plan Endorsement Guidelines as requirements were not submitted as part of Newton’s petition for Plan Endorsement. Newton’s Municipal Self Assessment report makes reference to a draft Master Plan update. However, this draft update was not included in the Town’s Plan Endorsement submission materials, and we are therefore unable

to comment upon it for the purposes of Plan Endorsement. Further, the current, adopted Master Plan was also not submitted as part of the Plan Endorsement petition. As such, DEP reviewed the Master Plan Update adopted on March 20, 1996, May 1, 2003 Re-Examination Report, and May 8, 2003 Amendment for this review. However, the Update is not comprehensive enough to act as an actual Master Plan.

A number of Newton's required documents (such as a land use map) were identified in the Self-Assessment report, but were not submitted individually or as a part of the Master Plan. DEP will require that all of these items not currently adopted, be so prior to Plan Endorsement.

The submitted documents also reference a Flood Damage Control Ordinance – referenced in the Newton Revised General Ordinances at 20-5.11. However, this document does not appear in the submitted materials. This document should be reviewed for consistency.

Requirements/Recommendations:

1. Newton shall provide documentation showing that the required elements of the Plan Endorsement guidelines have been adopted, or should do so.
2. Newton shall submit its Flood Damage and Control Ordinance for consistency review.

Natural Resource Conservation

There is little in the way of natural resource consideration in Newton's Master Plan Update. While the document includes "Goals and Policies for the Future" related to a Conservation/Open Space Element, the listing of these goals is less than half a page long. The goals and policies for Conservation/Open Space that are included in the master Plan Update contain three bullet points outlining policies to achieve a goal to "protect environmentally sensitive area and insure a compatible balance between environmental and economic interest." These three policies are vague and insufficient to the task of recognizing, let alone protecting, the natural resources in Newton. The policies listed are:

- § *Conserve and protect environmentally sensitive areas (e.g. steep slopes, wetlands, and floodplains) in Newton to the extent practical, by permitting low intensity environmentally related uses on larger environmental tracts. For smaller parcels containing environmental features, require new development to be subject to realistic performance standards so as to mitigate any potential adverse environmental impacts.*
- § *Encourage the development of a Town-wide "park belt" which incorporates sensitive areas of the natural environment (e.g. floodplains, steep slopes, significant treed areas, etc.) through a coordinated active and passive network of open space.*
- § *Utilize modern water runoff control techniques to improve local drainage patterns from new development and to enhance the environment.*

While these are laudable and important goals, Newton will need to develop a comprehensive natural resource protection program. Two integral parts of this program – in fact, the very basis for this program – are a Natural Resource Inventory and a Conservation Plan. Both documents are absolute requirements of Plan Endorsement.

Natural Resource Inventory

A Natural Resource Inventory (NRI), otherwise referred to as an Environmental Resource Inventory, describes the municipality's natural and cultural resources, and the conditions and activities that impact them. The NRI is a factual document that provides a basis for policy decisions related to land use. The Plan Endorsement Guidelines provide a general description of

an NRI. DEP's Office of Planning & Sustainable Communities website also provides a link to detailed guidance on development of an NRI (<http://www.nj.gov/dep/opsc/envcbp.html#model>). DEP will provide technical assistance in development this document. The County of Sussex should also be able to provide assistance.

Conservation Plan

Based on the NRI, the Conservation Plan (Master Plan Element) provides for the preservation, conservation and sustainable utilization of natural resources. The Conservation Plan should explain how it relates to the conservation activities of adjacent towns and regional entities to better coordinate resource protection and land acquisition efforts. The Plan Endorsement Guidelines provide a summary of the issues that should be included in the Conservation Plan. As part of the Conservation Plan, Newton should also develop a Protection Plan for Stream Corridors, a Source Water Protection Plan, and an Environmental Justice Inventory. DEP will provide technical assistance in the development of these documents.

Protection Plan for Stream Corridors

This plan will establish a waterways map considering all waterways within or forming the boundary of a municipality and any state required setback, wetland transition area, riparian buffer, and the standard limits of construction disturbance for each waterway based on current information. If applicable, the plan should enable agriculture and forestry to continue in a way that protects these critical resources. The plan should identify present development that conflicts with the state required setbacks, wetlands transition areas, and riparian buffers, as well as identify locations with disturbed corridors and rehabilitation of these corridors. Additionally, plans should be consistent with the plans of neighboring municipalities that share stream corridors; cooperation and collaboration between municipalities that have stream corridors in common is critical.

Environmental Justice Inventory

DEP will provide petitioners with an inventory of sites known to emit pollution or be contaminated. Petitioners must cross-apply this information with demographic information to ensure that planning does not adversely or disproportionately affect minority and low income individuals. For example, a plan that considers environmental justice issues must avoid zoning, planning, and policies that disproportionately encourage low income housing near sites that pose environmental hazards. The Planning Board should also consider potential environmental justice issues as part of the review of development applications.

Source Water Protection Plan

A Source Water Protection Plan shall manage potential sources of contamination and threatening activities that occur within a source water protection area. Plans shall include delineation of the source water protection area, an inventory of known and potential contamination sources, a determination of water supply system susceptibility to these contaminants, public outreach and education about threats, implementation measures to prevent, reduce or eliminate threats, and contingency planning strategies to address with water supply contamination or service interruption emergencies. Source Water Protection Plans can be developed for the protection of either groundwater supplies of drinking water, wellhead protection areas or surface water supplies, intakes and reservoirs and their drainage.

Implementing Ordinances

In order to implement the Conservation Plan, Newton will be required to adopt a suite of resource conservation ordinances. These ordinances are designed to protect environmental features such as Natural Heritage Priority Sites, threatened and endangered species habitat, water quality and

quantity, stream corridors, and wellhead protection areas, for example. Newton will be required to adopt the following ordinances:

- § Water Conservation ordinance
- § Wellhead Protection ordinance
- § Stream Corridor Protection ordinance
- § Steep Slope ordinance
- § Environmental Assessment ordinance
- § Zoning and other development regulations must be consistent with all required conservation documents

Example ordinances are available on the DEP Office of Planning & Sustainable Communities website (<http://www.nj.gov/dep/opsc/envcbp.html#model>).

Water Conservation ordinance

This ordinance sets water conservation guidelines that protect the community's drinking water supply, industrial and agricultural needs, recreational activities, and the natural systems that rely on specific water levels. DEP will provide technical assistance in making appropriate modifications to the example ordinance.

Wellhead Protection ordinance

This ordinance will protect the public health, safety and welfare through the protection of ground water resources underlying the municipality to ensure a supply of safe and healthful drinking water.

Stream Corridor/Riparian Protection ordinance

Riparian lands adjacent to streams, lakes, or other surface water bodies that are adequately vegetated provide an important environmental protection and water resource management benefit. This ordinance seeks to protect and maintain the beneficial character of riparian areas by implementing specifications for the establishment, protection, and maintenances of buffers along the surface water bodies.

Steep Slope ordinance

Disturbance of steep slopes should be restricted or prevented based on the impact disturbance of steep slopes can have on water quality and quantity, and the environmental integrity of landscapes.

Environmental Assessment ordinance

This ordinance would apply to all development in the municipality (major site plans and subdivisions) and, at a minimum, includes performance standards for vegetation and landscaping, and wildlife habitat to protect critical natural resources. The example ordinance available on the DEP Office of Planning & Sustainable Communities website will require modification to recognize the center boundary and any associated Critical Environmental Sites. The ordinance will first be modified so that an environmental assessment for applicable development proposals not located within the designated center may not be waived. In the case that environmentally sensitive areas are included in the center, and Critical Environmental Site designations are adopted for these areas, the Environmental Assessment ordinance will be modified to require that lands within Critical Environmental Sites may also not be waived.

The Environmental Assessment ordinance should also include a review of local demographic information to determine whether a proposed development may disproportionately impact low income or minority residents.

Zoning & Development Regulation Consistency

Upon development of a Natural Resource Inventory and Conservation Plan, Newton's zoning ordinance and development regulations may require adjustment. DEP will provide technical assistance and review at that time. However, a review of Newton's existing Revised General Ordinances identified the following issues.

Newton's general ordinances include a section dedicated to environmental concerns. This includes section 20-5.4 - Environmental Considerations; Environmental Assessments. As with the goals outlined in the Master Plan, the definition of environmentally sensitive lands appears to be limited to "naturally occurring steep slopes, wetlands and flood plains". These examples fail to address a number of important environmental features, including Natural Heritage Priority Sites, threatened and endangered species habitat, stream corridors, and Wellhead Protection Areas, for example.

The Town's zoning ordinance provides some environmental resource protection at section 20-5.14 (a), which provides for gross density of F.A.R. adjustments on parcels containing environmentally critical areas. However, F.A.R. is not necessarily protective of environmental resources. DEP recommends modifying this language to place a limit on the amount of impervious surface permitted on site. Impervious surface limitations are directly linked to water quality and serve to limit the impact to such resources as forest and threatened and endangered species habitat.

Because Newton is largely developed, the Town may consider creating an Environmentally Sensitive Overlay Zone, and associated development restrictions, to provide additional protection in especially sensitive areas. DEP will provide technical assistance if Newton chooses to make such a change.

Section 19-7.8 of the Town's general ordinances requires that shade trees be Norway Maple, London Plate [sic] and other types acceptable to town specifications. Norway Maple is a non-native invasive species and should be removed from this list. In fact, the ordinance should reference or include a list of native, non-invasive plant species appropriate for the soil types identified on site, as identified in the *County Soil Survey*.

The 1996 Master Plan mentions concerns about the M-1 district between Brooks Plaza and Hicks Avenue, as well as the area around Paterson Avenue. DEP data shows the area between Brooks Plaza and Hicks Avenue to include threatened and endangered species habitat. Small patches of threatened and endangered species habitat are also identified near Paterson Avenue. It is not clear that these concerns regarding the zoning and the potential for development in this area have been addressed since the 1996 update.

Requirements/Recommendations:

1. Newton shall develop and adopt a Natural Resources Inventory.
2. Newton shall develop and adopt a Conservation Plan element of the Master Plan. To include specific sections including:
 - § Protection Plan for Stream Corridors
 - § Environmental Justice Inventory
 - § Source Water Protection Plan
3. Newton shall adopt a suite of resource protection ordinances, including:

- § Water Conservation ordinance
 - § Wellhead Protection ordinance
 - § Stream Corridor Protection ordinance
 - § Steep Slope ordinance
 - § Environmental Assessment ordinance
4. Upon adoption of a Natural Resources Inventory and Conservation Plan, Newton shall make necessary modifications to its Master Plan, zoning ordinance and development regulations to be consistent with those documents.
 5. The 2003 Update mentions that the Town has identified environmentally sensitive areas to permanently protect. Where are these areas identified and what protection measures has the town outlined? All of this information should be tied together in the Conservation Element, Natural Resources Inventory, and implementation ordinances.
 6. Expand, or clarify, the definition of environmentally sensitive areas in Newton's general ordinances to reference those resources identified in the Natural Resources Inventory and Environmental Assessment ordinance, including, but not limited to, Natural Heritage Priority Sites, threatened and endangered species habitat, wellhead protection areas, and groundwater recharge areas.
 7. Modify general ordinances to reflect expanded definition of environmentally sensitive areas. This modification may include allowing for certain types of development in the presence of certain features, e.g. certain forms of development are acceptable within Wellhead Protection Areas.
 8. Remove Norway Maple from the list of acceptable street trees. Modify ordinance to reference or include a list of native, non-invasive plant species appropriate for the soil types identified on site, as identified in the *County Soil Survey*.
 9. Consider development of an Environmentally Sensitive Overlay Zone in which specific development standards must be met. These could include vegetative clearing standards, re-vegetation standards, native landscaping standards, residential clustering, non-contiguous density transfer, and impervious surface limits.
 10. DEP will provide technical guidance on development of planning documents and municipal ordinances.

Sustainability

All master plan elements shall be consistent with the State Plan's vision for sustainability. Sustainable planning means incorporating policies and actions into the various elements of the master plan that will meet the needs of the present generation without compromising the ability of future generations to meet their own needs.

Newton, by virtue of its historic development patterns, is already well-situated to become a sustainable municipality. The town's mixed use downtown, sidewalks, and pedestrian-friendliness will enable Newton to develop its local economy while taking advantage of existing infrastructure.

While Newton has provided the required Sustainability Statement as part of its petition for Plan Endorsement, this document makes little mention of the town's energy consumption, renewable energy programs, energy reduction efforts, water conservation, green purchasing programs, solid waste reduction programs, local farming initiatives, landscaping education for property owners, etc. The Town's Municipal Self Assessment Report states that several sustainability-related goals

are included in the draft Master Plan Update but, again, this document was not provided and there is no discussion of how the Town intends to achieve these goals. The Department urges Newton to further explore these issues and develop concrete implementation strategies for achieving these goals.

Presently, the Community Design Element lacks any policies regarding sustainable design guidelines. This should be amended to incorporate a design goal that encourages and facilitates the use of green design in the construction of new homes and buildings and the renovation of older structures. This could take the form of granting variances for those design techniques that reduce energy consumption and/or take advantage of solar orientation. General Ordinances Section 20-5.7 f - Lot arrangements - appears to permit developers to align houses to maximize solar energy. The Town should consider amending this section to include stronger language permitting developers to arrange buildings to maximize use of solar power and/or breezes to minimize energy consumption and heating and cooling expenses.

Requirements/ Recommendations

1. DEP recommends that Newton conduct an energy and Green House Gas (GHG) emissions audit and begin to evaluate how it will meet its energy needs and reduce greenhouse gas emissions in the coming decades. The Board of Public Utilities will be implementing a grant program to perform such a task.
2. Newton should prepare a Greenhouse Gas Emissions Reduction Plan that sets GHG reduction targets and identifies strategies, including an implementation process, for reducing GHG emissions associated with municipal operations, and residential, commercial, industrial and transportation sectors. Projected GHG reduction targets should be consistent with and supportive of State of NJ GHG reduction goals as stated in the NJ Global Warming Response Act. In addition, each municipality should identify, 1) projected major impacts to municipal quality of life resulting from anticipated global warming effects, and, 2) discuss how municipal planning and policies will begin to address these impacts. When available, DEP recommends that Newton apply for funding to the DEP Regional Green House Gas Emissions grant program. DEP will notify Newton when this grant program becomes active.
3. Amend the Community Design Element to explicitly include green and sustainable design as an objective. Remove impediments to green design in general ordinances.
4. Encourage and facilitate the development of farmers' markets and other businesses using local resources.
5. Develop education program for local residents, homeowners, and property owners on ecologically sound landscaping techniques, composting, etc.
6. At such time that the Legislature authorizes municipal planning boards to adopt a green buildings and environmental sustainability municipal master plan element, Newton shall develop and adopt such a document. DEP will provide technical assistance.

Recycling

Newton's Recycling Ordinance is referenced in the Town's general ordinances but was not provided with Plan Endorsement submission materials. The petition also appears to be missing the required recycling statement of consistency with the County Solid Waste Management Plan. It is therefore impossible for the Department to determine consistency with the recycling goals of the State Plan at this time. Both items are absolute requirements for Plan Endorsement.

In general, DEP encourages municipalities to go beyond the basic recycling requirements and encourage innovative ways for citizens to reduce the quantity of waste sent to landfills. Possibilities include providing education on household composting, product re-use, use of recycled materials in construction, and minimizing excess packaging material.

Requirements/Recommendations:

1. Newton shall submit the municipal Recycling Ordinance.
2. Newton shall submit a statement of consistency with the County Solid Waste Management Plan, including municipal strategies to achieve the State's Recycling Goals and reduce municipal solid waste.
3. DEP recommends that Newton consider innovative ways for reduction of waste and promotion of recycling. DEP will provide technical support toward these efforts.

Open Space

The submitted Master Plan Update lacks an Open Space and Recreation Element, which is an absolute requirement of Plan Endorsement. An Open Space and Recreation Plan articulates a local government's vision of open space and recreation. It should establish a philosophical and practical justification for the protection and preservation of open space and recreation opportunities. The purpose of an Open Space and Recreation Plan is to provide a framework for implementation. The Plan Endorsement Guidelines include a summary of issues to be addressed in the Plan.

The 1996 Master Plan Update has stated goals of improving parks and recreation, including providing pathways and open space and protecting and enhancing the natural landscape for new residential development. The Master Plan Update also includes a policy of creating better pedestrian and bicycle circulation. It is not clear how these policies have been implemented in the interim. This document also includes as a goal to: "*Encourage the development of a Town-wide "park belt" which incorporates sensitive areas of the natural environment (e.g. floodplains, steep slopes, significant treed areas, etc.) through a coordinated active and passive network of open space*". DEP data and that provided by the Town, does not appear to indicate any such "belt". Have steps been taken to implement this goal?

The Town's Self Assessment Report notes that there are six parks in Newton covering approximately 38 acres of land. Using the Town's numbers showing a population of approximately 8,244, this translates to approximately 0.0046 acres of open space per Newton resident, or 217 residents per acre. This is a relatively low ratio of park space to residents. Given Newton's relatively small size and the availability of park space in surrounding municipalities it is safe to assume that Newton residents utilize park space outside of town. Nonetheless, to ensure universal, easy access to parks the Town should seek to develop neighborhood parks, pocket parks and areas of open space within the center of the Town.

Recommendations/Requirements

1. Newton shall develop an Open and Space and Recreation Plan, consistent with Plan Endorsement guidelines. The Plan should be used to prioritize open space preservation acquisition efforts and coordinate efforts with County of Sussex, State and Federal agencies and not-for-profit groups. A Recreation and Open Space Inventory (ROSI) should also be developed and submitted to DEP to enable funding.
2. The Town should demonstrate what efforts and policies have been adopted to preserve and protect open space, including the greenbelt discussed in the Master Plan Update.

3. While there is open space around the outer edges of the municipality, Town should work to make sure that recreation and open space opportunities exist within the more central areas of town. Opportunities for smaller neighborhood and pocket parks should be identified.
4. Target maintenance and enhancement of neighborhood-level parks and recreation facilities. Pedestrian and bicycle connections between residential areas and these facilities shall be a key part of the strategy.

Contaminated Sites/Redevelopment/Brownfields

There are a number of Known Contaminated Sites in Newton, including three with a remediation level of D, which indicates a high level of complexity and the potential to pose a direct threat to human health. The three level D sites are:

1. Elizabethtown Gas Coal
2. Molecular Rearrangement
3. Newton Coal Gas (2)

The three level D sites and several of the lower remediation level sites are close to or within the proposed redevelopment area. Newton will need to work closely with the Responsible Parties to ensure that all redevelopment and remediation activities are closely coordinated. Failure to closely coordinate these activities can hinder remediation and lead to costly delays. Of particular concern with residential development projects are vapor intrusions and direct contact with contaminated soils.

Requirements/Recommendations:

1. Newton will need to work closely with the Responsible Parties and the DEP to ensure that all redevelopment plans are consistent with and coordinated with the remediation being conducted at the Known Contaminated Sites with the redevelopment area.

Community Facilities Plan

The Community Facilities Plan identified in the Master Plan Update table of contents (pages 38-43) is missing from the file provided.

Requirements/Recommendations:

1. Newton shall submit the missing documentation for review.

Stormwater

The stormwater management rule at N.J.A.C. 7:8-4.2(c)8 requires municipalities to evaluate the extent to which the municipality's entire Master Plan, official map and development regulations (including the zoning ordinance) implement the principles of nonstructural stormwater management strategies. In order to promote the use of low impact development, Newton should identify the portions of the master plan that need to be amended to incorporate nonstructural strategies and include a time frame for incorporation of amendments to the master plan and/or land use and zoning ordinances.

Requirements/Recommendations:

1. Newton shall perform this evaluation and make any necessary changes to its planning documents or ordinances.

Wastewater Treatment

As DEP noted in its Opportunities & Constraints Assessment Report, the Newton Wastewater Treatment Plant (NJPDES permit number NJ0020184) currently retains capacity to support growth. The annual average discharge for the Newton Wastewater Treatment Plant from 2005-2007 was approximately 1.028 mgd; the Newton Plant is permitted for 1.4 mgd. As such, approximately 0.372 mgd is available for further development/redevelopment in Newton. Based on the assumption that a residential unit uses 300 gpd, the remaining flow for this facility could accommodate approximately 1,240 single-family residential units.

However, the proposed Water Quality Management Planning (WQMP) Act rule (N.J.A.C. 7:15) – which is expected to be adopted in May, 2008 – may result in changes to these assumptions. Sussex County is currently working with DEP to develop a county-wide Wastewater Management Plan (WMP) consistent with the proposed WQMP rule. The mapping provisions and buildout analysis included in the rule proposal, and the end result of the Sussex County WMP, may alter the development potential within Newton. The Sussex County WMP, and Newton-specific chapter of that WMP, will include more detailed information than can be included in this analysis.

In addition, amendments to the Groundwater Quality Standards (N.J.A.C. 7:9C) have also been proposed. These amendments establish a 2 mg/L (or parts per million, or ppm) nitrate as representative of the existing groundwater quality statewide, for the purpose of evaluating compliance with the antidegradation policy at N.J.A.C. 7:9C-1.8(a). The implications of this proposal are that DEP will not approve a wastewater plan amendment unless first determining that the existing ground water quality of 2 mg/L nitrate will be maintained on a HUC 11 watershed basis. Based on this proposal, the Department has developed a "septic density" for each HUC 11 watershed in the State that identifies what the *comparable residential zoning density* would be in order to meet the groundwater quality goal. Newton falls within two (2) HUC11 watersheds – Paulins Kill (above Stillwater Village) (HUC11-8) and Pequest River (above and including Bear Swamp) (HUC11-19). The following table indicates the residential density allowed under the two different nitrate limits.

HUC11 Watershed	2 mg/L nitrate limit
Paulins Kill (above Stillwater village) HUC11-8	4.8 acres/ residential unit
Pequest River (above and including Bear Swamp) HUC11-19	4.5 acres/ residential unit

The Newton Municipal Self Assessment Report, submitted in January 2008, notes that “The entire town is within the service area for...sewer. All buildings within the Town limits are required to be connected to...sewer lines.” This statement is inconsistent with the extent of the Sewer Service Area included in the adopted Sussex County-Wide Wastewater Management Plan. In addition, this statement will may remain inconsistent with the Sussex County Wastewater Management Plan currently under development.

Requirements/Recommendations:

1. Newton should work with Sussex County to ensure that it is properly represented in the proposed Sussex County Wastewater Management Plan.
2. Newton shall provide sufficient and appropriate data (zoning, treatment plant data, etc.) to Sussex County to assist in development of the Sussex County Wastewater Management Plan.
3. Upon adoption of the Sussex County Wastewater Management Plan, Newton shall take any actions necessary to ensure consistency with that plan.
4. DEP recommends that areas not included within a Sewer Service Area meet the new “septic density” standards in the Ground Water Quality Standards.
5. Newton shall identify wastewater alternatives for those buildings within the Town that are not located within a Sewer Service Area. Buildings with a design flow of >2,000 gpd will need a NJPDES-Discharge to Groundwater permit and a plan amendment.
6. Newton shall identify those buildings not located in the existing Sewer Service Area that may/have connected to existing sewer lines. Alternatively, Newton shall supply to DEP an “existing area served” map (preferably in GIS format) showing the extent and location of sewer pipes that are currently installed/built and buildings served.
7. For areas not included in Sewer Service Area or “existing areas served”, Newton shall adopt a septic management plan and/or ordinance. Sussex County may be able to provide additional assistance, consistent with Plan Endorsement of the Sussex County Strategic Growth Plan PIA.
8. DEP will provide technical assistance, and identify potential financial sources to fund, reduction of nuisance odor emissions from the Town’s sewage treatment plan.
9. DEP will provide technical assistance for development of all items identified above.

Water Availability

As DEP noted in its Opportunities & Constraints Assessment Report, the Newton Water & Sewer Utility is close to its Water Allocation permitted limits. The Newton Municipal Assessment Report recognizes this as well, noting, “An examination of current and future water needs revealed that a larger water allocation will be needed for the Town, if the Vision Plan is to be implemented.” An understanding of this issue has been complicated by the fact that Newton’s source of water is from Morris Lake in Sparta Township, located within the Highlands Region. However, in this case, the responsibility falls within DEP’s purview. A request for an increase of surface water supply above the limit established in Newton’s existing water allocation permit will require a Safe Yield determination by DEP’s Division of Water Supply. Any increased allocation associated with that Safe Yield increase, will require a major modification of Newton’s allocation permit. Because Morris Lake is located within the Highlands Preservation Area, where DEP’s Highlands Water Protection and Planning Act rules (N.J.A.C. 7:38) govern, this allocation permit will come in the form of a Highlands Preservation Area Approval (HPAA). Newton’s engineering staff has already contacted DEP and should be able to relay this information. Further information on DEP’s Highlands permitting program can be found at <http://www.nj.gov/dep/highlands/>.

In addition, pursuant to NJAC 7:38-3.2(d), DEP cannot grant an HPAA for an increased diversion unless water conservation measures are implemented. These measures include ensuring that the water system has a maximum unaccounted-for water of no greater than 15 percent. When

processing Newton's water allocation permit renewal in 2002, Newton's unaccounted-for water was determined to be 27.5 percent. Therefore, before an HPAA could be considered for approval, Newton will need to demonstrate that their unaccounted-for water has been reduced to 15 percent.

DEP notes that its Water Purveyor Mapping data is outdated, being last revised in 1998. Unless Newton has sold franchising rights, the service area for the Newton Water & Sewer Facility is the entirety of the Town. DEP requests that Newton provide an updated map (preferably in GIS format) showing existing service area/area currently served.

Requirements/Recommendations:

1. At such time as deemed necessary or prudent, Newton shall apply to the DEP Division of Water Supply for an increased water allocation. DEP will provide technical assistance at this time.
2. Newton shall adopt a Water Conservation ordinance. An example ordinance is available on DEP's website at <http://www.nj.gov/dep/opsc/envcbp.html#model>.
3. DEP will provide assistance, at Newton's request, in identifying potential financial sources to fund conservation measures. DEP recommends Newton review the information at <http://www.nj.gov/dep/watersupply/loanprog.htm>.

Historic Preservation

The Town of Newton has a comprehensive historic preservation program that should be applauded. The State Historic Preservation Office (SHPO) has provided a grant to Newton, and is working with the Town, to make appropriate revisions to the Historic Preservation Element of the Newton Master Plan.

While the current ordinance is consistent with the requirements of a Certified Local Government, DEP recommends that Newton consider making their Historic Preservation Commission a "Strong Commission" by removing the "advisory" function and giving them the power of final decision on appropriate development applications. This enhancement of the Commission's review would not apply to those development applications referred to them by the Planning Board or Zoning Board of Adjustment, consistent with N.J.S.A. 40:55D-110. Such a change in the role of the Commission would require modification to the Historic Preservation ordinance at Chapter 20A of Newton's general ordinances. Specifically, language specifying that the Historic Preservation Commission report to the Planning Board would be modified so that the Commission would instead report to the Administrative Officer. The Municipal Land Use Law (N.J.S.A. 40:55D-111) provides guidance in this area.

DEP notes that there is overlap between a proposed redevelopment area and both the Town Plot and Local Historic Districts. DEP is concerned that provisions in any redevelopment plan for this area may negatively impact the historic districts and structures within. Without the benefit of seeing such a redevelopment plan, if one yet exists, DEP is unable to determine if it is consistent with the protection of historic resources. If the redevelopment plan currently, exists, Newton shall provide a narrative with specific examples documenting the consistency of the redevelopment plan with the protection of historic resources. If a redevelopment plan for this area does not yet exist, Newton shall work with DEP in ensuring consistency with historic resource protection.

The Municipal Self Assessment Report submitted by Newton notes the existence of a 1985 Historic and Cultural Resource Survey. This document was not submitted as part of the Plan Endorsement petition, although the SHPO has a copy. The SHPO recommends that surveys be updated, at a minimum, every 6-10 years. Because resources over 50-years old are generally

defined as potentially eligible, there may be a number of historic resources in Newton not included in the 1985 survey that are now eligible. In addition, current guidance on surveys is more extensive than what is included in the 1985 document, and should also result in a GIS coverage of the resources. As a Certified Local Government, Newton may apply for funding for development/updates of surveys, guidelines, ordinance and master plan revisions.

DEP also recommends that Newton consider some innovative historic preservation planning and incentives. For example, Fanwood Borough is implementing a Transfer of Development Rights program for historic resources. In addition, Newton might consider tax exemptions or credits to incentivize historic preservation in its historic districts.

It is the understanding of DEP that the original hospital building at the Newton Memorial Hospital is potentially eligible for listing on the Federal and State Registers of Historic Places. This site does not appear to be included as “potentially significant buildings for consideration as eligible” in the Newton Master Plan.

Requirements/Recommendations:

1. Newton shall continue working with the State Historic Preservation Office in making appropriate revisions to the Historic Preservation Element of its Master Plan and meet the requirements of the related grant.
2. Newton should consider enhancing the role of their Historic Preservation Commission to a "Strong Commission" making the necessary amendments to Chapter 20A of their Revised General Ordinances.
3. For the area where the Town Plot and Local Historic Districts intersect with proposed redevelopment areas, Newton shall provide a narrative with specific examples documenting the consistency of the redevelopment plan (if one exists) with the protection of historic resources. If a redevelopment plan for this area does not yet exist, Newton shall work with DEP in ensuring consistency with historic resource protection in development of the Plan.
4. Newton shall update their Historic and Cultural Resource Inventory consistent with current guidance. DEP will provide technical assistance and, at Newton’s request, identify potential financial sources to fund this action.
5. DEP recommends that Newton consider innovative historic preservation planning and incentive programs.
6. DEP will provide technical assistance, at Newton’s request, in efforts in expanding the Town’s Historic District and determining the eligibility of potentially historic sites for listing on the National and State Registers of Historic Places.

Proposed Center & CES/CEHS

Newton’s designation as a Regional Center in the State Plan expired on January 8, 2008. In its planning documents, Newton repeatedly refers to its status as a Regional Center. While not explicitly noted in Newton’s Plan Endorsement petition, DEP acted under the assumption that Newton would like this designation re-approved. Based upon DEP review of the environmental resources in Newton, it is including with this Report, a proposed center boundary for Newton.

Consistent with the State Plan and DEP policy, DEP removed contiguous areas identified as environmentally constrained from the previously designated center boundary. In particular, the large wetlands complex in the eastern third of Newton was removed from the center. This area is identified in DEP data as wetlands, flood prone, headwaters for a proposed Category One

waterway, and threatened and endangered species habitat. Further, both the 'Hyper Humus' and 'Site 564' Natural Heritage Priority Sites intersect these areas. The undeveloped area in the extreme southwest corner of Newton has also been removed from the center, as it is identified as the 'Muchshaw Ponds' Natural Heritage Priority Site. In addition, the undeveloped, wooded area running between Newton Memorial Hospital, across Shady Lane, to approximately Route 519, was removed from the center boundary as it is identified as threatened and endangered species habitat.

DEP recognizes that Newton may wish some of these areas be included in the center boundary. DEP policy is that environmentally sensitive features may be included in a center so long as appropriate ordinances and policies are adopted by the municipality to protect environmentally sensitive resources in the 'environs'. As Newton has no 'environs' to speak of, such an exchange may not be simple. However, designation as a Regional Center denotes some a level of consideration of issues on a regional level. While such planning may not be fully within the power of Newton, a regional entity, in this case the County of Sussex and the State can certainly provide assistance in this regard. DEP notes that the county-wide Wastewater Management Plan currently under development by Sussex County may be an appropriate venue for this activity, as the same policy requiring 'environs' protections exists in that venue as well. Upon adoption of the Sussex County Wastewater Management Plan with appropriate 'environs' protections, or if appropriate 'environs' protections are enacted through any other process, DEP will consider modification to the center boundary. DEP policy will remain, that should environmentally sensitive areas be included within the center boundary, appropriate protections of the 'environs' is necessary.

In addition, DEP has identified potential Critical Environmental Sites for Newton. The extent of these Critical Environmental Sites should be determined by the final extent of the center boundary – areas proposed as Critical Environmental Sites but not included in the center would be unnecessary. These proposed Critical Environmental Sites include areas identified as wetlands, flood prone areas, and threatened and endangered species habitat. DEP also recommends that the Town Plot historic district be identified as a Historic and Cultural Site (HCS).