

The State's Role in Sustainable Development

In Delaware, as in most other states, local land-use authority is delegated to county and municipal governments. However, land-use decisions are not just a local matter. The effects of land-use decisions are felt by all Delawareans, both fiscally and in the livability of our state.

Delaware provides many services and almost all of the infrastructure throughout the state government. The state provides social services, prisons, the largest police force, approximately 70 percent of school funding, 50 percent of library construction funding, and 60 percent of paramedic funding. The cost of providing these services is greatly impacted by the patterns of land use in the state. The state is also charged with protecting the quality of air, land, and water resources, which are all greatly impacted by the patterns of land use.

The patterns of land use that have occurred in recent decades have put a strain on Delaware's resources, both fiscal and natural. In recent years, state policies have attempted to direct growth in order to more effectively manage taxpayers' dollars and to protect Delaware's agricultural and natural resources.

What You Need to Know About TMDLs and Pollution Control Strategies

What are TMDLs and Pollution Control Strategies, and why are they important?

You will often hear the term "TMDL" in water-pollution discussions, because many of the actions we take to reduce pollution are based on this scientific measurement. TMDL stands for Total Maximum Daily Load, which is the maximum daily amount of a pollutant that a body of water can absorb without violating water quality standards. A nonscientific definition for TMDL could be "pollution limit." TMDLs are required under section 303(d) of the federal Clean Water Act, which requires states to identify and prioritize water bodies unable to meet or maintain applicable water quality standards for pollutants of concern. This list is known as the state's 303(d) List.

Pollutants of concern in Delaware waters are often chemicals, such as nitrogen and phosphorus from fertilizer runoff, but TMDLs could also be set for such other pollutants as bacteria, sediments, or even heat – anything that can adversely affect a waterway's natural health. Pollutants can come from specific "point" sources, such as sewage treatment plants, or from "nonpoint" sources, such as runoff from lawns, farms, parking lots, and golf courses.

TMDLs are established for much of the state, but all of Delaware's impaired waters must have a TMDL by the end of 2007. A Pollution Control Strategy, or PCS, is a plan to achieve the pollutant reductions required in the TMDL. It is a plan that primarily addresses nonpoint sources of pollutants. The plans will contain both voluntary and regulatory actions.

Why do I need to know about TMDLs and PCSs?

Everything we do impacts water quality – from government policy decisions on development and agriculture, to how we treat and landscape our homes and what we put down our drains. Everyone who works, plays, resides, or does business in an impaired watershed is or will be impacted by a TMDL and a PCS.

As a local policy maker, it becomes important for you to take water quality impacts into consideration before making policy decisions. Once a TMDL is in place, land-use decisions will need to consider water quality impacts locally and cumulatively within the watershed. Guidance or mandates may be created by the PCS. In order to meet TMDLs, we need to consider and change the way we do things on the land in our state.

Strategies for State Policies and Spending

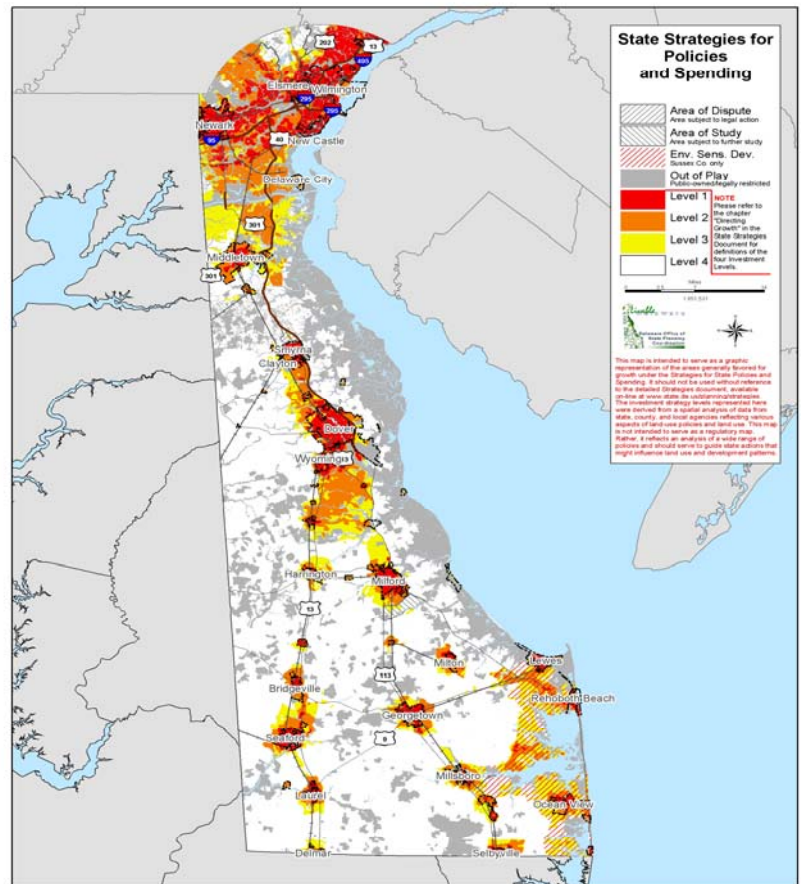
The Strategies for State Policies and Spending have been the centerpiece of the state's efforts to direct growth. First approved by the Cabinet Committee on State Planning Issues in 1999 and updated in 2004, these strategies direct how state investments will be made relevant to growth and preservation.

The 2004 update of the strategies document shows four "investment levels" that detail how state policies and investments will be used either to support development or to discourage development and support preservation. The following is a brief description of each investment level; a small version of the map is provided below. For detailed information on the Strategies for State Policies and Spending, including an interactive version of the map, visit www.state.de.us/planning.

Σ **Investment Level 1** – These are most often municipal areas which are the traditional hubs of development (shown in red on the map below). Density in these areas is typically higher than in outlying areas. A variety of transportation options are often available, including public transportation and bicycle and pedestrian systems. In these areas, state policies support investment in infrastructure, such as transportation, water, and wastewater; development and redevelopment activities; and open space investments for urban parks, recreational areas, waterfronts, and greenways. The state encourages mixed uses with a variety of transportation options to reduce reliance on cars for travel.

Σ **Investment Level 2** – These are the less developed areas within municipalities or unincorporated developments (shown in orange on the map below). They are often rapidly growing areas with opportunities for infill development. Similar to Level 1, state policies in these areas support investment in infrastructure, development and redevelopment activities, protection of critical waterways, and open-space investments for urban and suburban parks and greenways. The state encourages mixed uses with a variety of transportation options to reduce reliance on cars for travel.

Σ **Investment Level 3** – These are areas with "leap frog" development that is discontinuous from existing



infrastructure or areas designated in municipal and county comprehensive plans as long-term growth (shown in yellow on the map). In some cases, they reflect areas that would be otherwise suitable for growth, but have environmental constraints on or around the site. State policies in these areas provide for limited infrastructure investments that are logical extensions of existing infrastructure. The proper phasing, timing, and design of growth is important in these areas. State policies encourage protection of critical waterways, establishment of greenways, and providing a transition between Level 3 and Level 4 (rural) areas.

- Σ **Investment Level 4** – These areas include rural areas, areas where counties and municipalities have not planned for growth, and areas with sensitive natural resources (shown in white on the map). State policies in these areas support preservation of natural and agricultural resources. State infrastructure investments will be limited to investments necessary to protect public health, safety, and welfare.

In addition to directing state investments, the Strategies for State Policies and Spending are used as a guide for reviewing local comprehensive plans and development proposals through the Preliminary Land Use Service (PLUS) process.

Preliminary Land Use Service (PLUS)

The PLUS process went into effect in February 2004, changing the way that the state reviews land-use proposals. The new PLUS process replaces the former Land Use Planning Act.* It gives state agencies an opportunity to review development proposals early in the development process, providing opportunities for natural resource protection, among other things. Being early in the process allows developers to incorporate changes based on comments made by state agencies before too much money has been invested in a particular design.

The PLUS process changes the state agencies' voice in land use. Previously, state agencies reviewed projects late in the land-use process. Therefore, comments came to the local agency when the local jurisdiction's role was to approve or deny a project. Under the new process, developers and local governments receive the concerns of state agencies early in the process when changes can be made to accommodate concerns. This allows for more informed decisions to be made. In some cases, the governing body can choose to apply conditions to a proposal based on the state comments.

In many cases, the expertise on issues such as natural resources, traffic, cultural resources, and other areas resides in the state agencies. Comments shared through the PLUS process often make developers aware of natural resource constraints on a project site, such as the presence of wetlands, wellhead protection areas, excellent recharge areas, and rare or endangered species. Comments also provide recommendations for protection of natural features, such as riparian buffers, tree preservation and mitigation, and impervious cover thresholds. Local government staff, planning commissions, and elected bodies rely on this expertise. The PLUS process puts this expertise at the front of the process.

*The PLUS process is detailed in 29 Del. Code Ch. 92.

Important Questions to Ask

- Σ In which strategy level is the land-use proposal located?
- Σ If the proposal is located within Investment Level 3 or 4, and otherwise within a growth area, are there specific natural resources or environmental constraints on the parcel that need protection?

The following are questions and answers that municipal officials might have about the PLUS process:

- Σ *What projects need to go through PLUS review?*

The thresholds for PLUS review are set in Title 29, Chapter 92; however, local jurisdictions with certified comprehensive plans can sign a memorandum of understanding (MOU) with the Office of State Planning Coordination to change the thresholds based on the local jurisdiction's needs. According to Title 29, Chapter 92, the following projects are subject to PLUS review:

- (1) Major residential subdivisions with internal road networks and more than 50 units, excluding previously recorded residential subdivisions of any size which have not been sunsetted.
- (2) Any nonresidential subdivision involving structures or buildings with a total floor area exceeding 50,000 square feet, excluding any previously approved and recorded nonresidential subdivision regardless of floor area size, or any site plan review involving structures or buildings with a total floor area exceeding 50,000 square feet, excluding any previously approved and recorded nonresidential site plan review regardless of floor area size.
- (3) Rezoning, conditional uses, site plan reviews, and/or subdivisions within environmentally sensitive areas, as identified within any local jurisdiction's comprehensive plan as certified under 29 Del. Code § 9103.
- (4) Annexations inconsistent with the local jurisdiction's comprehensive plan as certified under 29 Del. Code § 9103.
- (5) Applications for rezoning if not in compliance with the local jurisdiction's comprehensive plan as certified under 29 Del. Code § 9103.
- (6) Any other project which is required to be referred to the state for pre-application review by local jurisdiction regulations.
- (7) Any local land-use regulation, ordinance, or requirement referred to the Office of State Planning Coordination by a local jurisdiction for the purpose of providing the jurisdiction with advisory comments. The land-use regulations, ordinances, or requirements that are to be referred to the Office of State Planning Coordination may be specified in a jurisdiction's memorandum of understanding.
- (8) County and municipal comprehensive plans as required by Titles 9 and 22.

- Σ *When should the project go through the PLUS process?*

The project should be reviewed through PLUS prior to formal application to the municipal or county government.

- Σ *Do local jurisdictions have to provide written correspondence on each land-use decision?*

Yes, local jurisdictions have to notify the Office of State Planning Coordination. This allows the state to more closely track land-use changes and help state agencies improve the services they provide to local jurisdictions based on land-use change.

- Σ *Who submits the PLUS application to the Office of State Planning Coordination?*

The landowner or developer applying to the local jurisdiction is responsible for submitting the PLUS application to the Office of State Planning Coordination. However, each jurisdiction can specify the procedures by which applicants must abide in that jurisdiction.

For Further Information

Office of State Planning Coordination

www.state.de.us/planning

(302) 739-3090