

Livable Delaware Activity

Activity/Policy/Program name: LUPA (Land Use Planning Act) Reviews

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Purpose: LUPA Review is a process that requires all the state agencies that have to make decisions in response to new developments, look at new development proposals in a coordinated way. As they look at and review the proposed development plans, they are supposed to be checking to see how well the proposal fits with the statewide strategies, rules, and policies.

Enabling Laws: 29 Del. C.c. 92, as amended by House Bill 506, signed by Governor Thomas Carper on July 18, 1996. This chapter establishes the LUPA process generally. DelDOT is only one of the participating Cabinet agencies.

Policies: Where the action being reviewed is an annexation, the Municipal Annexation Policy (Policy Implement Number O-05) is relevant.

History: In 1996 DelDOT began to provide comments through the LUPA review process.

Current Situation: Departmental responses are prepared for a variety of Land Use Planning related items submitted to the Department by the Office of State Planning Coordination, for review in compliance with the Land Use Planning Act. Most of the items reviewed are municipal annexations, rezoning applications, or conditional use applications. However, county and municipal comprehensive plans, regulatory changes to county codes, State and county capital budgets, and other actions are also included. The Department's Long Range Transportation Plan documents received review under this process.

Notably absent from the above list of items are subdivision and land development plans. Most developments that occur are ones that can be built "as of right," meaning that no annexation, rezoning, or conditional use is needed. The LUPA process excludes these developments.

The Support Facilities Report and Traffic Impact Study processes (discussed separately) duplicate the LUPA Review process to some extent and often occur before the LUPA review itself. Because the LUPA reviews are supposed to be the State's response to these items, the Department of Transportation often finds itself ahead of the response and in some instances, having responded in a manner inconsistent with the State's overall response.

A significant aspect of the LUPA process is that the review comments are advisory. The various state and local agencies that receive these comments do not have to abide by them.

A continuing issue with regard to our LUPA comments on annexations, and one not clearly addressed in the Municipal Annexation Policy is that of functional enclaves. An enclave is an isolated parcel, or group of parcels, of land under one jurisdiction that is completely surrounded by land under a different jurisdiction. A functional enclave is a parcel, or group of parcels, of

land that is contiguous to lands under the same jurisdiction but accessible only through a different jurisdiction.

The Department has opposed the creation of functional enclaves on the basis that they lead to the duplication of utilities within our rights-of-way, e.g. City and non-City electrical lines along the same section of road. They can also complicate law enforcement efforts and the delivery of services such as street sweeping. However, this position is unpopular with municipalities, who find it difficult to expand their boundaries without creating such enclaves on at least a temporary basis.

As part of the review process, the Department comments on the consistency of proposed actions with the Strategies for State Policies and Spending and with our Statewide Long Range Transportation Plan. To the extent that our comments influence the local governments involved, we can direct investment and future development (Goal #1), encourage redevelopment (Goal #6), and promote mobility (Goal #9). Implicit in the process is the coordination of public policy planning and decisions among state, counties and municipalities (Goal #11).

Revisions/Actions Needed: As indicated above, the LUPA process excludes subdivision and land development plans. Presently, the Counties and some of the municipalities already have processes for obtaining State agency comments on those plans. Therefore to simply add those plans to the list of LUPA items would be duplicative. Unless there is a need to better coordinate those comments before providing them to local governments, the existing system should be maintained.

As indicated above, there is a sequencing problem with LUPA reviews, support facilities reports, and traffic impact studies. The LUPA review, however, seems to be properly located relative to the County and municipal land use processes in which it comments. It is the support facilities reports and traffic impact studies that need to be changed. As discussed in detail elsewhere, it seems appropriate to eliminate support facilities reports and to have traffic impact studies occur later in the land use processes, more specifically as part of the subdivision and land development processes.

The Municipal Annexation Policy should be revised to indicate the conditions under which the creation of a functional enclave would be acceptable. Those conditions are: 1) that none of the municipal utilities serving the functional enclave would occupy State-maintained rights-of-way; and 2) that the municipality would not seek to enforce its traffic laws in the area of the enclave.

Resources needed to create/revise: ± 30 person-hours to draft and process a revised policy implement.

Process for creation/revision: Draft revisions to the policy in consultation with the Assistant Director for Policy and the Deputy Attorney General; circulate draft policy for internal review; and submit it to the Policy Committee for review and approval.

Schedule: - Start Date: July 2, 2001
- Circulate draft policy for internal review: July 9, 2001

- Send revised draft policy to Policy Committee: July 23, 2001
- Completion Date: August 31, 2001

Measures to guide progress: Percentages of rezoning, conditional use applications, and annexations on which all of DelDOT's LUPA recommendations are followed. Municipal Annexation Policy updated to address functional enclaves.

Interactions or inter-relationships with other agencies or units of government: The LUPA review process is detailed in its enabling legislation and is managed by the Office of State Planning Coordination. The Department will work closely with the Office of State Planning Coordination and the Cabinet Committee on State Planning Issues to revise this important process. Changing the Municipal Annexation Policy is entirely an internal matter.