



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF
STATE PLANNING COORDINATION

October 8, 2004

Mr. Richard C. Woodin
Woodin & Associates, LLC
5177 West Woodmill Drive, Ste. 6
Wilmington, DE 19808

RE: PLUS 2004-09-09; Kohl Property

Dear Mr. Woodin:

Thank you for meeting with State agency planners on September 22, 2004 to discuss the proposed plans for Kohl Property located on the north side of US Route 301, ½ mile west of US Route 301 and DE Route 299.

According to the information received, you are seeking rezoning from MI to C-3 to develop a 1,000,000 square foot retail/office center on 98 acres.

On September 14, 2004, this office commented to the Town of Middletown regarding the rezoning of this property. A copy of that letter is attached. The following comments reflect State agency comments relating to the development of the property.

Please note that changes to the plan, other than those suggested in this letter, could result in additional comments from the State. Additionally, these comments reflect only issues that are the responsibility of the agencies represented at the meeting. The developers will also need to comply with any Federal, State and local regulations regarding this property. We also note that as The Town of Middletown is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the Town.

This office has received the following comments from State agencies:

Office of State Planning Coordination – Contact: Herb Inden 577-5811

This proposal is located within the Town of Middletown, in an area classified as Investment Level 2 in the Strategies for State Policies and Spending. In Investment Level 2, the State policies encourage well-planned orderly growth and infill development. Our office has no objections to the proposed development of this project in accordance with the relevant City codes and ordinances. We are encouraged to see that the developer is working with DelDOT (see DelDOT's comments below) in an effort to master plan road improvements for the entire area. This seems to be a more practical and proactive approach than performing individual Traffic Impact Studies (TIS) given our knowledge of what could develop in this area. It also seems particularly relevant given that Westown is presented as a master planned development.

We want to note the importance of keeping with the design principles that have been presented to us with your early proposals especially with Westown being touted as a "Livable Delaware" initiative and discussions with our office in that regard. We feel it is particularly important for the Town and developer to incorporate the concepts included in the Westown Master Plan wherever possible. This will help assure compatibility with surrounding uses and the interconnections that facilitate pedestrian mobility. We would also recommend using some of the principles found in the State's new publication, *Better Models for Development in Delaware*.

State Historic Preservation Office (SHPO) – Contact: Anne McCleave 739-5685

There are two properties listed in the National Register of Historic Places that are located directly across Route 301 from the proposed project. These two properties are listed in the Register because of their historic significance associated with agriculture. Because the development will diminish the agricultural context and introduce visual barriers, it will adversely affect, physically and visually, the properties' historic significance and their listing in the Register. There are other National Register listed properties and a potential historic district in this area, all of which will be affected and their agricultural context diminished by this development. With that said, if the development occurs, it is suggested that landscaping be provided along Route 301 to provide some visual buffers. There is also a high probability for prehistoric and historic archaeological sites within the project area.

Department of Transportation – Contact: Bill Brockenbrough 760-2109

This project is included in Westown, a master planning concept encompassing several parcels on the west side of Middletown. In this effort, DelDOT has been working with the Town of Middletown and the developers of these parcels to design and build the transportation infrastructure using a comprehensive approach that allows development to occur along with the infrastructure.

It is expected that this developer will be contributing to the cost of off-site traffic improvements as a signatory to a Recoupment Agreement that assigns a specific contribution amount. This is in lieu of the standard DelDOT rules and regulations with respect to the land development process, which would have required a traffic impact study for each individual development.

DelDOT supports this proposal as part of the Westtown Master Plan, with the understanding that details regarding access to US Route 301 are currently being discussed.

DelDOT supports the developer's intent to provide bicycle, pedestrian and transit facilities as part of their project and the Town's intent to require them.

**The Department of Natural Resources and Environmental Control – Contact:
Kevin Coyle 739-3091**

Soils

According to the soil survey update, the following soils were mapped in the immediate vicinity of the proposed construction:

Well drained- Sassafras, Reybold-Sassafras complex & Reybold-Hambrook complex

Poorly drained (hydric) - Fallsington

Wetlands

Statewide Wetland Mapping Project (SWMP) maps indicate the presence of palustrine emergent wetlands on this site.

Impacts to Palustrine wetlands are regulated by the Army Corps of Engineers through Section 404 of the Clean Water Act. In addition, individual 404 permits and certain Nationwide Permits from the Army Corps of Engineers also require 401 Water Quality Certification from the DNREC Wetland and Subaqueous Land Section and Coastal Zone Federal Consistency Certification from the DNREC Division of Soil and Water Conservation, Delaware Coastal Programs Section. Each of these certifications represents a separate permitting process.

Because there is strong evidence that federally regulated wetlands exist on site, **a wetland delineation, in accordance with the methodology established by the Corps of Engineers Wetlands Delineation Manual, (Technical Report Y-87-1) should be conducted. Once complete, this delineation should be verified Corps of Engineers through the Jurisdictional Determination process.**

To find out more about permitting requirements, the applicant is encouraged to attend a Joint Permit Process Meeting. These meetings are held monthly and are attended by federal and state resource agencies responsible for wetland permitting. Contact Denise Rawding at (302) 739-4691 to schedule a meeting.

It is important to note that both DNREC and Army Corps of Engineers discourage allowing lot lines to contain wetlands to minimize potential cumulative impacts resulting from unauthorized and/or illegal activities and disturbances that can be caused by owners.

Vegetated buffers of no less than 100 feet should be employed from the edge of the wetland complex and other waterbodies on site.

TMDLs

With the adoption of Total Maximum Daily Loads (TMDLs) as a “nutrient-runoff-mitigation strategy” for reducing nutrients in the Inland Bays Watershed, reduction of nitrogen and phosphorus loading will be mandatory. A TMDL is the maximum level of pollution allowed for a given pollutant below which a “water quality limited water body” can assimilate and still meet water quality standards to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. Although TMDLs are authorized under federal code, states are charged with developing and implementing standards to support those desired use goals. The Jurisdictional authority for attaining these use goals will fall under the auspices of Section 11.5 of the State of Delaware’s Surface Water Quality Standards (as amended August 11, 1999), and will be achieved via nutrient reductions referred to as “pollution control strategies.”

Nutrient reductions prescribed under TMDLs are assigned to those watersheds or subwatersheds on the basis of recognized water quality impairments. In the Appoquinimink subwatershed, the primary source of water quality impairment is associated with nutrient runoff from agricultural and/or residential development. In order to mitigate the aforementioned impairments, a TMDL reduction level of 40 percent will be required for both nitrogen and phosphorus.

In order for the applicant to verify compliance with the TMDL mandate, a full nutrient accounting process known as nutrient budget should be prepared. The developer/consultant should contact Lyle Jones (739-4590) in the Department’s Watershed Assessment Section for further information regarding the acceptable protocol for calculating a nutrient budget.

The developer is encouraged to employ BMPs (or other pollution control strategies) such as stormwater management and riparian buffers to mitigate any potential nutrient runoff into an adjoining streams or watercourse.

Water Supply

Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.

All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take approximately four weeks to process, which allows the necessary time for technical review and advertising.

Should you have any questions concerning these comments, please contact Rick Rios at 302-739-3665.

Water Resource Protection Areas

The entire parcel is located in an excellent recharge area (see map). According to the State law that created the Source Water Protection Program, county and municipal governments will be required to enact ordinances to protect Water Resource Protection Areas. The following language has been excerpted from the draft Source Water Protection Guidance Manual for Local Governments, Supplement 1 - Ground-Water Recharge Design Methodology. While the language is currently draft and the local ordinances are not yet in place, the developer may find the language useful in modifying the site plan to protect the excellent recharge area.

Water Resource Protection Areas (WRPAs) are defined as (1) surface water areas such as floodplains, limestone aquifers, and reservoir watersheds, (2) wellhead areas, or (3) excellent recharge areas. The purpose of an impervious cover threshold is to minimize loss of recharge and protect the quality and quantity of ground and surface water supplies in WRPAs.

New development in WRPAs may exceed the 20 % impervious cover threshold, but be no more than 50 % impervious, provided the applicant submits an environmental assessment report recommending a climatic water budget and facilities to augment recharge. The environmental assessment must document that post-development recharge will be no less than predevelopment recharge when computed on an annual basis.

Commonly, the applicant offsets the loss of recharge due to impervious cover by constructing recharge basins that convey relatively pure rooftop runoff for infiltration to ground water.

The Department recommends the following (ranked in order of preference):

- 1) Preserve WRPA's as open space and parks by acquisition or conservation easement.
- 2) Limit impervious cover of new development to 20 % by right within WRPA's.
- 3) Allow impervious cover of new development to exceed 20% within WRPA's (but no more than 50% impervious) provided the applicant develops recharge facilities that directly infiltrate rooftop runoff.
- 4) Allow impervious cover of new development to exceed 20% within WRPA's (but no more than 50% impervious) provided the applicant develops recharge facilities that infiltrate stormwater runoff from forested and/or grassed surfaces with pretreatment.

Stormwater Management

The sediment and stormwater plan for this project will be reviewed by the Town of Middletown's consulting engineer, KCI Technologies, Inc. Contact Todd Frey, P.E., at (302) 731-9176 to determine what information is necessary to be submitted for review. Due to the significant amount of impervious cover that is proposed for the site, you are encouraged to use of practices that promote recharge of stormwater such as infiltration, bioretention, biofiltration, filter strips, and open swales to mitigate the huge increase in stormwater volume that could potentially be released from this site. Discharges to the DelDOT right-of-way will require the approval of DelDOT. Permanent easements will be necessary to discharge to private ditches outside of the boundaries of the property.

Recreation

It is recommended that sidewalks be built along the existing and proposed roads as well as between the proposed buildings. A complete system of sidewalks will: 1) fulfill the recreation need for walking and biking facilities 2) provide opportunities for neighbors to interact in the community and 3) facilitate safe, convenient off-road access to neighboring communities, public mass transit stops, schools, stores, work, etc.

Revegetation/Landscaping

DNREC requests that no invasive species be used in the revegetation of disturbed areas. A list of species considered invasive in Delaware can be found on the DNHP web site, www.dnrec.state.de.us/fw/invasive.htm. They further recommend the use of native plants and the DNREC Botanist, Bill McAvoy can be contacted at (302) 653-2880 to assist you in developing a plant list.

Nuisance Species

The ponds within the project will likely attract waterfowl like resident Canada geese and mute swans that will create a nuisance for community residents. Although small numbers of these species are enjoyed by residents, geese and swans can quickly multiply and overwhelm the area. High concentrations of waterfowl in ponds create water-quality problems, leave droppings on lawn and paved areas and can become aggressive during the nesting season. The pond within the subdivision plan should be landscaped to deter nuisance species. Short manicured lawns around ponds provide an attractive habitat for these species. However, native plantings, including tall grasses, wildflowers, shrubs, and trees at the edge and within a buffer area around ponds, are not as attractive to geese because they do not feel as safe from predators and other disturbance when their view of the area is blocked. The Division of Fish and Wildlife does not provide goose control services, and if problems arise, residents or the home-owners association will have to accept the burden of dealing with these species (e.g., permit applications, costs, securing services of certified wildlife professionals). Solutions can be costly and labor intensive; however, with proper landscaping, monitoring, and other techniques, geese problems can be minimized.

Underground Storage Tanks

There are no LUST sites located near the proposed project. However, should any underground storage tank or petroleum contaminated soil be discovered during construction, the Tank Management Branch must be notified as soon as possible. It is not anticipated that any construction specifications would be need to be changed due to petroleum contamination. However, should any unanticipated contamination be encountered and PVC pipe is being utilized, it will need to be changed to ductile steel in the contaminated areas.

The following would be required by the Tank Management Branch (TMB) in order to install underground storage tanks (USTs) for a service station:

- 1) If the tanks are 110 gallons in size or larger and for the storage of gasoline, diesel, or used motor oil, they must be installed by a State of Delaware-certified installation contractor. Heating oil tanks used solely for heating a building are not regulated until they exceed 1,100 gallons in capacity.
- 2) A written plan detailing the proposed installation must be submitted to and approved by the TMB.
- 3) If the facility will store gasoline in any of the USTs and will exceed a monthly throughput of 10,000 gallons in any given month, it must also be permitted for Stage I and Stage II Vapor Recovery (VR). Construction Permits should be applied for at the time that installation plan is submitted.

The applicable regulations for numbers 1 and 2 would be Delaware's Regulations Governing Underground Storage Tank Systems. Number 3 would be governed by Delaware's Regulations Governing the Control of Air Pollution. Please be aware that the gasoline VR program is administered through the TMB, even though it is regulated under the Air Regulations, not the UST Regulations.

Please contact the TMB at 302-395-2500 if further information is required.

State Fire Marshal's Office – Contact: John Rossiter 323-5366

These comments are intended for informational use only and do not constitute any type of approval from the Delaware State Fire Marshal's Office. At the time of formal submittal, the applicant shall provide; completed application, fee, and three sets of plans depicting the following in accordance with the Delaware State Fire Prevention Regulation (DSFPR):

- a. **Fire Protection Water Requirements:**
 - Water distribution system capable of delivering at least 1500 gpm for 2-hour duration, at 20-psi residual pressure is required. Fire hydrants with 800 feet spacing on centers.
 - Where a water distribution system is proposed for (Storage/Industrial/Mercantile) sites, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.

- b. **Fire Protection Features:**
 - All structures over 10,000 Sq. Ft. aggregate will require automatic sprinkler protection installed.
 - Buildings greater than 10,000 sq.ft., 3-stories or more or over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements.
 - Show Fire Department Connection location (Must be within 300 feet of fire hydrant), and detail as shown in the DSFPR.
 - Show Fire Lanes and Sign Detail as shown in DSFPR

- c. **Accessibility**
 - All premises which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. This means that the access road to the subdivision from Middletown-Warwick Rd must be constructed so fire department apparatus may negotiate it.
 - Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.

- Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn around.
 - If the use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.
- d. **Gas Piping and System Information:**
- Provide type of fuel proposed, and show locations of bulk containers on plan.
- e. **Required Notes:**
- Provide a note on the final plans submitted for review to read “ All fire lanes, fire hydrants, and fire department connections shall be marked in accordance with the Delaware State Fire Prevention Regulations”
 - Proposed Use
 - Alpha or Numerical Labels for each building/unit for sites with multiple buildings/units
 - Square footage of each structure (Total of all Floors)
 - National Fire Protection Association (NFPA) Construction Type
 - Maximum Height of Buildings (including number of stories)
 - Note indicating if building is to be sprinklered
 - Name of Water Provider
 - Letter from Water Provider approving the system layout
 - Provide Lock Box Note (as detailed in DSFPR) if Building is to be sprinklered
 - Provide Road Names, even for County Roads

Preliminary meetings with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: www.delawarestatefiremarshal.com, technical services link, plan review, applications or brochures.

Public Service Commission - Contact: David Bonar 739-4247

The information provided indicates that the Town of Middletown will provide water to the proposed annexation project(s) through a central public water system. Our files reflect that the Town of Middletown does not currently hold a certificate of public convenience and necessity (CPCN) to provide public water in these areas. According to SB 135 that was signed on June 30, 2003 by Governor Minner, the municipality is required to give notice to the Public Service Commission when the annexation is

complete. Information on CPCN requirements and applications can be obtained by contacting the Public Service Commission at (302)739-4247.

Any expansion of natural gas or installation of a closed propane system must fall within Pipeline Safety guidelines. Contact: Malak Michael at (302) 739-4247.

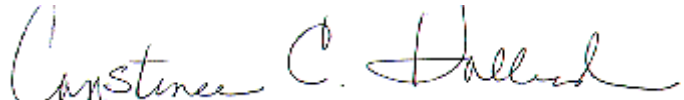
Delaware Emergency Management Agency – Contact Don Knox 659-3362

Due to the potential for a large number of persons to frequent the retail establishments, and work in the office buildings, a significant impact to public safety is foreseen by implementation of this project. The developer should notify the police, fire service, and emergency medical response organization serving the Town of Middletown, to keep them apprised of all development activities.

Following receipt of this letter and upon filing of an application with the local jurisdiction, the applicant shall provide to the local jurisdiction and the Office of State Planning Coordination a written response to comments received as a result of the pre-application process, noting whether comments were incorporated into the project design or not and the reason therefore.

Thank you for the opportunity to review this project. If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland".

Constance C. Holland, AICP
Director

CC: Town of Middletown

Attachments: September 14, 2004 letter to Middletown regarding zoning
DNREC map



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF
STATE PLANNING COORDINATION

September 14, 2004

The Honorable Kenneth L. Branner, Jr.
Mayor, Town of Middletown
216 North Broad Street
Middletown, De 19709

RE: Rezoning of Kohl Property

Dear Mayor Branner:

Rick Woodin has been in contact with this office regarding the proposed rezoning of 98 acres known as the Kohl property from MI to C-3. Per the information received, Woodin & Associates would like to rezone this property for the purpose of building a 1,000,000 square foot commercial area with retail and office space.

Mr. Woodin has submitted a Preliminary Land Use Services (PLUS) application and the State agencies will review the site plan for this site on September 22, 2004 at 8:30 am. This meeting is to discuss the proposed site plan and give State agency comments regarding that site plan. A copy of these comments will be forwarded to the Town for your review as the site plan moves forward.

Normally these meetings address both the proposed rezoning and the site plan review at the same time, however because the public hearing for this project has been scheduled for late September, Mr. Woodin has asked that the State comment on the rezoning separately from the site plan. It should be noted that comments made in this letter reflect the rezoning of this land and does not support or object to the proposed site plan. As noted, those comments will follow after the September 22, 2004 meeting.

The Office of State Planning notified the Delaware Economic Development Office and requested comments regarding the rezoning. Their comments were as follows:

A few years ago, Delaware Economic Development Office (DEDO) was very supportive of the annexation of the Kohl Property along with several other adjacent farms into the Town of Middletown which were zoned light industrial for

the purpose of creating an employment center for Middletown. At that time, DEDO was actively marketing our State as a location for a computer chip manufacturer. Middletown was very supportive of the effort to attract a major employer to the town at that time. Both DEDO and the Town believed that from an economic development perspective it was important that Middletown create new job opportunities that could provide citizens of Middletown with quality jobs (i.e. jobs that are full time and pay the sustainable wage level for New Castle County as well as offer benefits including health insurance). Traditionally, manufacturers are the type of employers, which create these types of quality jobs in a community and once these jobs are in place in the community the commercial employers usually grow in the community based on the buying power of the citizens employed in these quality jobs.

DEDO suggests that Middletown review the economic development strategy for their town before approving the rezoning of this property from industrial to commercial. The town should consider the following:

1. Will the town still have enough properly zoned land available for a large manufacturing/light industrial user if this property is rezoned C-3 Commercial? If this property is rezoned, could the town replace the 98 acres of industrial zoned property somewhere else within the City Limits to allow for future development of a large light industrial based business opportunity?
2. If the new zoning is approved, can the property be dedicated to the attraction of corporate businesses that would provide full time quality jobs and not just retail jobs with mostly part-time employment opportunities?
3. Is Middletown dedicating an appropriate amount of commercially zoned land within the Town or is the development of this new commercial zoned property going to create abandonment of other existing shopping centers and potentially create vacancy blight in their adjacent neighborhoods? Also, how will competition with the Kohl Property, if rezoned to commercial, impact the downtown development emphasis that has been part of Middletown's Main Street Program for revitalization?
4. How will Middletown assist in the marketing of this change in type of opportunity for employment? DEDO would like to encourage the land owner to include the property in the real estate data base used by DEDO and New Castle County (currently using CoStar), so that potential office users and other interested job creation businesses will have the opportunity to review the site as they are comparing available real estate properties in the region.

In conclusion, since this rezoning would be consistent with your current comprehensive plan, the State has no objections to this rezoning. We do encourage the Town to consider

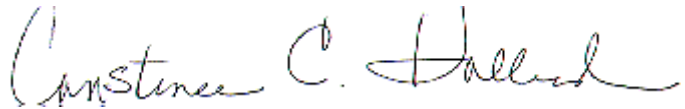
Town of Middletown
Kohl Property rezoning
September 14, 2004
Page 3 of 3

the comments made by the Delaware Economic Development Office when reviewing this rezoning. The Office of State Planning invites the Town of Middletown staff to join the State agencies on the 23rd to discuss the site plan for this site.

Thank you for the opportunity to comment on this proposed rezoning and we look forward to working with the Town in the future as you continue to up date and implement your comprehensive plan.

If you have any questions, please contact me at 302-739-3090.

Sincerely,

A handwritten signature in cursive script that reads "Constance C. Holland".

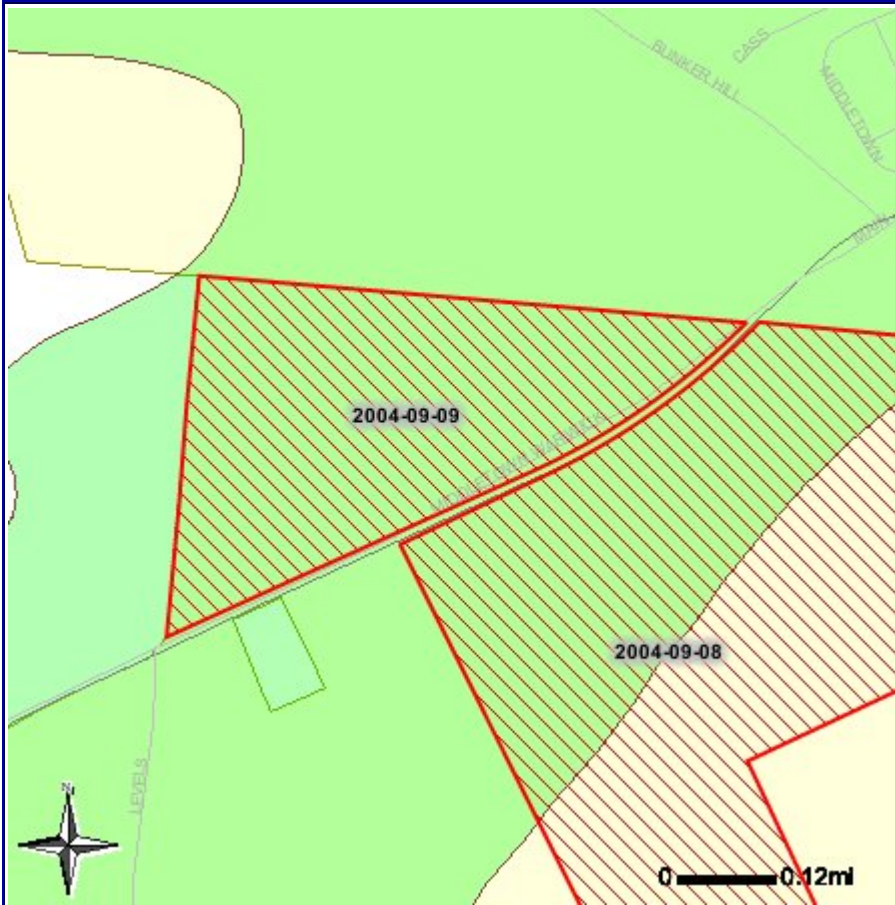
Constance C. Holland, AICP
Director

CC: Rick Woodin
Joe Corrado



Kohl Property

2004-09-09



- PLUS Projects
- All Roads
- Major Roads
- Excellent Recharge Areas
- Towns

This map was produced by the Delaware Department of Natural Resources and Environmental Control.

