



STATE OF DELAWARE  
EXECUTIVE DEPARTMENT  
OFFICE OF MANAGEMENT AND BUDGET  
STATE PLANNING COORDINATION

January 18, 2006

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

RE: PLUS review – PLUS 2005-12-09; Westtown Marketplace – Phase 3

Dear Mr. Woodin:

Thank you for meeting with State agency planners on December 28, 2005 to discuss the proposed plans for the Westtown Marketplace – phase 3 project to be located on the north side of US 301 at the intersection of US Route 301, DE Route 299, and DE Route 15.

According to the information received, you are seeking site plan approval for 270,000 sq. ft. of commercial space on 30 acres.

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 Kent County is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the County.

**Executive Summary**

The following section includes some site specific highlights from the agency comments found in this letter. This summary is provided for your convenience and reference. The full text of this letter represents the official state response to this project. ***Our office notes that the applicants are responsible for reading and responding to this letter and all comments contained within it in their entirety.***

### **State Strategies/Project Location**

This project is part of the Westown master plan and is located in Investment Level 2 according to the State Strategies for Policies and Spending, and as such the State supports development in this area.

### **Street Design and Transportation**

Regarding specific aspects of the plan, DeIDOT offers one comment. The subject land excludes a small parcel at the intersection of Route 301 and Bunker Hill Road, which is separated from the subject land by a now-unused right-of-way once occupied by Bunker Hill Road. Because of its size and location, DeIDOT would prefer to have access for that small parcel occur through the proposed shopping center. Therefore they ask that the plan be modified to provide an easement at one end of the proposed stormwater management pond for that purpose.

### **Natural and Cultural Resources**

- Based on the New Castle County soil survey Reybold-Hambrook, Woodstown, and Fallsington were mapped on subject parcel. Reybold-Hambrook is a well-drained upland soil which, generally, has few limitations for development. Woodstown is a moderately well-drained soil of low-lying uplands that has moderate limitations for development. Fallsington is a poorly-drained wetland associated (hydric) soil that has severe limitations for development. Most of the soils on this development (approximately 70%) are poorly-drained wetland associated (hydric) Fallsington soils.

It should also be noted that siting a commercial development in naturally wet soils – such as proposed in this project - is likely to leave potential residents on and adjoining parcels, significantly more susceptible to flooding events – especially during extended periods of high intensity rainfall events associated with tropical storms/hurricanes or “nor’easters.” It is strongly recommended that the applicant avoid development on hydric soil mapping units as a means to prevent future flooding problems.

- The Watershed Assessment Section feels that the amount of imperviousness (approximately 75%) generated by this project is excessive and should be reduced. Research has consistently shown that once a watershed exceeds a threshold of 10 percent imperviousness, water and habitat quality irreversibly

decline. Since the amount of imperviousness generated by this project will be well over this 10 percent threshold, the applicant is strongly advised to pursue best management practices (BMPs) that mitigate or reduce some of its predictable impacts. Reducing the amount of surface imperviousness through the use of pervious paving materials (“pervious pavers”) in lieu of asphalt or concrete in conjunction with additional native tree and shrub plantings - are examples of practical BMPs that could easily be implemented to reduce surface imperviousness. Even better, reducing the amount of constructed structural imperviousness (i.e., building and parking lots) in the first place is probably the best BMP and should also be considered.

- Based on a preliminary evaluation of this project using said model, the development as currently conceived does **not meet** the TMDL reduction requirements for nitrogen and phosphorus. The applicant should realize that the creation of large amounts of impervious cover – such as proposed on subject parcel - can significantly reduce the possibility of attaining the required TMDL nutrient reductions. It is recommended, therefore, that the applicant consider some of the above-suggested BMPs (especially those that reduce surface imperviousness) in conjunction with other relevant or applicable redesign changes – as a means to meet said TMDL nutrient reduction requirements.
- The DNREC Water Supply Section has determined that the entire parcel falls within an area of excellent groundwater recharge (see the following map and attached map).The proposed development would change the total impervious cover from approximately 0% to approximately 75%.

DNREC Water Supply Section recommends that that portion of the new development within the excellent recharge area not exceed 20% impervious cover. Further, some allowance for augmenting ground-water recharge should be considered if the impervious cover exceeds 20% but is less than 50% of that portion of the parcel within this area

The following are a complete list of comments received by State agencies:

**Office of State Planning Coordination – Contact: Herb Inden 577-5188**

This project is part of the Westown master plan and is located in Investment Level 2 according to the State Strategies for Policies and Spending, and as such the State supports development in this area.

**Division of Historic and Cultural Affairs – Contact: Alice Guerrant 739-5685**

Because of the former presence of a burial ground on one section of the property, the Division of Historical and Cultural Affairs recommends the property owner/developer consider undertaking a cultural resource study of the project area before proceeding, if this has not already been done. This will insure that additional remains will not be encountered during construction.

Burials, both marked and unmarked, are protected by Delaware law. Please refer to the following sections of the Delaware State Code: (1) Title 11 Sub-Chapter 1340, titled “Desecration of Burial Places”; and (2) Title 7 Chapter 54, known as the “Delaware Unmarked Human Remains Act”. For more information about these laws and the implications for the project, contact Craig Lukesic or Faye Stocum of this office at 302-736-7400. The Division provides a list of qualified consultants on the web site at <http://www.state.de.us/shpo/PDF/Consultants.pdf>. If one was completed, please send a copy of the report for their records.

**Department of Transportation – Contact: Bill Brockenbrough 760-2109**

- 1) 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.
- 2) 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.
- 3) DelDOT supports this proposal as being consistent with the size and usage studied in the Westown Circulation Plan. At 270,000 square feet, the usage is 40,000 square feet less than was studied, but that is an acceptable difference.
- 4) Regarding specific aspects of the plan, DelDOT offers one comment. The subject land excludes a small parcel at the intersection of Route 301 and Bunker Hill Road, which is separated from the subject land by a now-unused right-of-way once occupied by Bunker Hill Road. Because of its size and location, DelDOT would prefer to have access for that small parcel occur through the proposed shopping center. Therefore they ask that the plan be modified to provide an

easement at one end of the proposed stormwater management pond for that purpose.

- 5) 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 739-9071**

**Soils**

Based on the New Castle County soil survey Reybold-Hambrook, Woodstown, and Fallsington were mapped on subject parcel. Reybold-Hambrook is a well-drained upland soil which, generally, has few limitations for development. Woodstown is a moderately well-drained soil of low-lying uplands that has moderate limitations for development. Fallsington is a poorly-drained wetland associated (hydric) soil that has severe limitations for development. Most of the soils on this development (approximately 70%) are poorly-drained wetland associated (hydric) Fallsington soils.

It should also be noted that siting a commercial development in naturally wet soils – such as proposed in this project - is likely to leave potential residents on and adjoining parcels, significantly more susceptible to flooding events – especially during extended periods of high intensity rainfall events associated with tropical storms/hurricanes or “nor’easters.” It is strongly recommended that the applicant avoid development on hydric soil mapping units as a means to prevent future flooding problems.

**Impervious Cover**

The Watershed Assessment Section feels that the amount of imperviousness (approximately 75%) generated by this project is excessive and should be reduced. Research has consistently shown that once a watershed exceeds a threshold of 10 percent imperviousness, water and habitat quality irreversibly decline. Since the amount of imperviousness generated by this project will be well over this 10 percent threshold, the applicant is strongly advised to pursue best management practices (BMPs) that mitigate or reduce some of its predictable impacts. Reducing the amount of surface imperviousness through the use of pervious paving materials (“pervious pavers”) in lieu of asphalt or concrete in conjunction with additional native tree and shrub plantings - are examples of practical BMPs that could easily be implemented to reduce surface imperviousness. Even better, reducing the amount of constructed structural

imperviousness (i.e., building and parking lots) in the first place is probably the best BMP and should also be considered.

### **TMDLs**

With the adoption of Total Maximum Daily Loads (TMDLs) as a “nutrient-runoff-mitigation strategy” for reducing nutrients in the Appoquinimink River 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 support desired use goals such as, swimming, fishing, drinking water and shell fish harvesting. Nutrient reductions prescribed under TMDLs are assigned to those watersheds or basins on the basis of recognized water quality impairments. In the Appoquinimink watershed, 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 60 percent will be required for both nitrogen and phosphorus. Documentation of the compliance with post-development TMDL nutrient load reductions will be assessed via nutrient budget protocol. The nutrient budget protocol is a computer-based model that quantifies post-development nutrient loading under a variety of land use scenarios in combination with a variety (or absence) of BMP types and intensities. This post-development loading rate is then compared with the pre-development loading rate as a means to assess whether the project meets the acceptable TMDL reduction levels.

Based on a preliminary evaluation of this project using said model, the development as currently conceived does **not meet** the TMDL reduction requirements for nitrogen and phosphorus. The applicant should realize that the creation of large amounts of impervious cover – such as proposed on subject parcel - can significantly reduce the possibility of attaining the required TMDL nutrient reductions. It is recommended, therefore, that the applicant consider some of the above-suggested BMPs (especially those that reduce surface imperviousness) in conjunction with other relevant or applicable redesign changes – as a means to meet said TMDL nutrient reduction requirements. DNREC suggests that the applicant verify their project’s compliance with the specified TMDL loading rates by running the model themselves. Please contact Lyle Jones of Watershed Section at 739-9939 for the acceptable model protocol. We request that the applicant obtain the nutrient budget protocol to see for themselves whether their development meets the prescribed TMDL nutrient reductions. Please contact Lyle Jones at 739-9939 for further information about obtaining this protocol.

### **Water Resource Protection Areas**

The DNREC Water Supply Section has determined that the entire parcel falls within an area of excellent groundwater recharge (see the following map and attached map).

The proposed development would change the total impervious cover from approximately 0% to approximately 75%. These numbers were provided by the developer on the PLUS application. This number far exceeds the values set forth by New Castle County. The parcel is located in the Town of Middletown. Currently, the Town of Middletown does not have a Source Water Protection Component to their comprehensive plan.

DNREC Water Supply Section recommends that that portion of the new development within the excellent recharge area not exceed 20% impervious cover. Further, some allowance for augmenting ground-water recharge should be considered if the impervious cover exceeds 20% but is less than 50% of that portion of the parcel within this area. The purpose of an impervious cover threshold is to minimize loss of recharge (and associated increases in storm water) and protect the quality and quantity of ground water and surface water supplies.

Should the Town of Middletown approve the development plan as proposed, DNREC Water Supply Section strongly recommends that augmentation of groundwater recharge be required through engineering to achieve the impervious cover goals. Recommended engineering includes rooftop run-off systems that limit the potential for contamination of precipitation. These recommendations are made due to existence of the parcel entirely within an excellent recharge area and close proximity to a wellhead protection area.

For more information refer to the Final [Source Water Protection Guidance Manual for the Local Governments of Delaware](#)

<http://www.wr.udel.edu/swaphome/phase2/SWPguidancemanual.html>

and

[Ground-Water Recharge Design Methodology](#)

[http://www.wr.udel.edu/swaphome/phase2/Publications/swapp\\_manual\\_final/swapp\\_guidance\\_manual\\_supp\\_1\\_2005\\_05\\_02.pdf](http://www.wr.udel.edu/swaphome/phase2/Publications/swapp_manual_final/swapp_guidance_manual_supp_1_2005_05_02.pdf).

**Westown Marketplace Phase II (PLUS 2005-10-10) with excellent recharge in green and affected parcels outlined in light blue**



**Water Supply**

The project information sheets state that the Town of Middletown will be used to provide water for the proposed project. Records indicate that part of the project (tax map number 23-021.00-119) is located within the public water service area granted to Artesian Water Company under Certificate of Public Convenience and Necessity number 02-CPCN-02, yet on the other part of the project (tax map number 23-022.00-002) public water service is not available. It is recommended that the developer contact Artesian Water Company to determine the availability of public water. Any questions concerning CPCNs should be directed to the Public Service Commission at 302-739-4247. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing any well(s).

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 302-739-9944.

### **Sediment and Erosion Control/Stormwater Management**

A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. The plan review and approval as well as construction inspection will be coordinated through Town of Middletown. Contact Town of Middletown at (302) 378-9120 for details regarding submittal requirements and fees.

A Notice of Intent (NOI) for Stormwater Discharges Associated with Construction Activity must be submitted to DNREC Division of Soil and Water Conservation along with the \$195 NOI fee prior to plan approval.

Applying practices to mimic the pre-development hydrology on the site, promote recharge, maximize the use of existing natural features on the site, and limit the reliance on structural stormwater components, such as maintaining open spaces, should be considered in the overall design of the project as a stormwater management technique. Green Technology BMPs must be given first consideration for stormwater quality management. Each stormwater management facility should have an adequate outlet for release of stormwater.

It is strongly recommended that you contact the reviewing agency to schedule a preliminary meeting to discuss the sediment and erosion control and stormwater management components of the plan. The site topography, soils mapping, pre- and post-development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion.

### **Nuisance Waterfowl**

It is unclear how many stormwater management ponds are planned, but ponds can attract waterfowl like resident Canada geese and mute swans. 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. Short manicured lawns around ponds provide an attractive habitat for these species. DNREC recommends native plantings of tall grasses, wildflowers, shrubs, and trees at the edge and within a buffer area (50 feet) around the perimeter. Waterfowl do not feel safe when they can not see the surrounding area for possible predators. These plantings should be completed as soon as possible as it is easier to deter geese when there are only a few than it is to remove them once they become plentiful. 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 site(s) 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 with nitrile rubber gaskets in the contaminated areas.

### **State Fire Marshal's Office – Contact: John Rossiter 323-5365**

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 Road and Bunker Hill Road 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.
  - The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.
  - The local Fire Chief, prior to any submission to our Agency, shall approve in writing the use of gates that limit fire department access into and out of the development or property.
- 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](http://www.delawarestatefiremarshal.com), technical services link, plan review, applications or brochures.

**Department of Agriculture - Contact: Milton Melendez 698-4500**

The Delaware Department of Agriculture has no objections to the Westtown Marketplace Phase III application. The site is located in a long-range designated controlled development area. The *Strategies for State Policies and Spending* encourages responsible development in areas within a Growth Level 2 Zone. This site is a part of an “excellent recharge” area. DNREC has mapped all ground water potential recharge areas. An “excellent” rating is the highest rating and designates an area as having important groundwater recharge qualities. Maintaining pervious cover in “Excellent” and “Good” recharge areas is crucial for the overall environmental health of our state and extremely important to efforts which ensure a safe drinking water supply for future generations. Retention of pervious cover to ensure an adequate future water supply is also important for the future viability of agriculture in the First State. The loss of every acre of land designated as “excellent” and “good” recharge areas adversely impacts the future prospects for agriculture in Delaware. DDA strongly encourages the developer to consider limiting impervious cover during the community design phase of the project development.

### ***Right Tree for the Right Place***

The Delaware Department of Agriculture Forest Service encourages the developer to use the “Right Tree for the Right Place” for any design considerations. This concept allows for the proper placement of trees to increase property values in upwards of 25% of appraised value and will reduce heating and cooling costs on average by 20 to 35 dollars per month. In addition, a landscape design that encompasses this approach will avoid future maintenance cost to the property owner and ensure a lasting forest resource.

### ***Native Landscapes***

The Delaware Department of Agriculture and the Delaware Forest Service encourages the developer to use native trees and shrubs to buffer the property from the adjacent land-use activities near this site. A properly designed forested buffer can create wildlife habitat corridors and improve air quality to the area by removing six to eight tons of carbon dioxide annually and will clean our rivers and creeks of storm-water run-off pollutants. To learn more about acceptable native trees and how to avoid plants considered invasive to our local landscapes, please contact the Delaware Department of Agriculture Plant Industry Section at (302) 698-4500.

### ***Tree Mitigation***

The Delaware Forest Service encourages the developer to implement a tree mitigation program to replace trees at a 1:1 ratio within the site and throughout the community. This will help to meet the community’s forestry goals and objectives and reduce the environmental impacts to the surrounding natural resources. To learn more, please contact our offices at (302) 349-5754.

### **Public Service Commission - Contact: Andrea Maucher 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.

**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.**

PLUS 2005-12-09

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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". The signature is written in black ink and is positioned above the printed name and title.

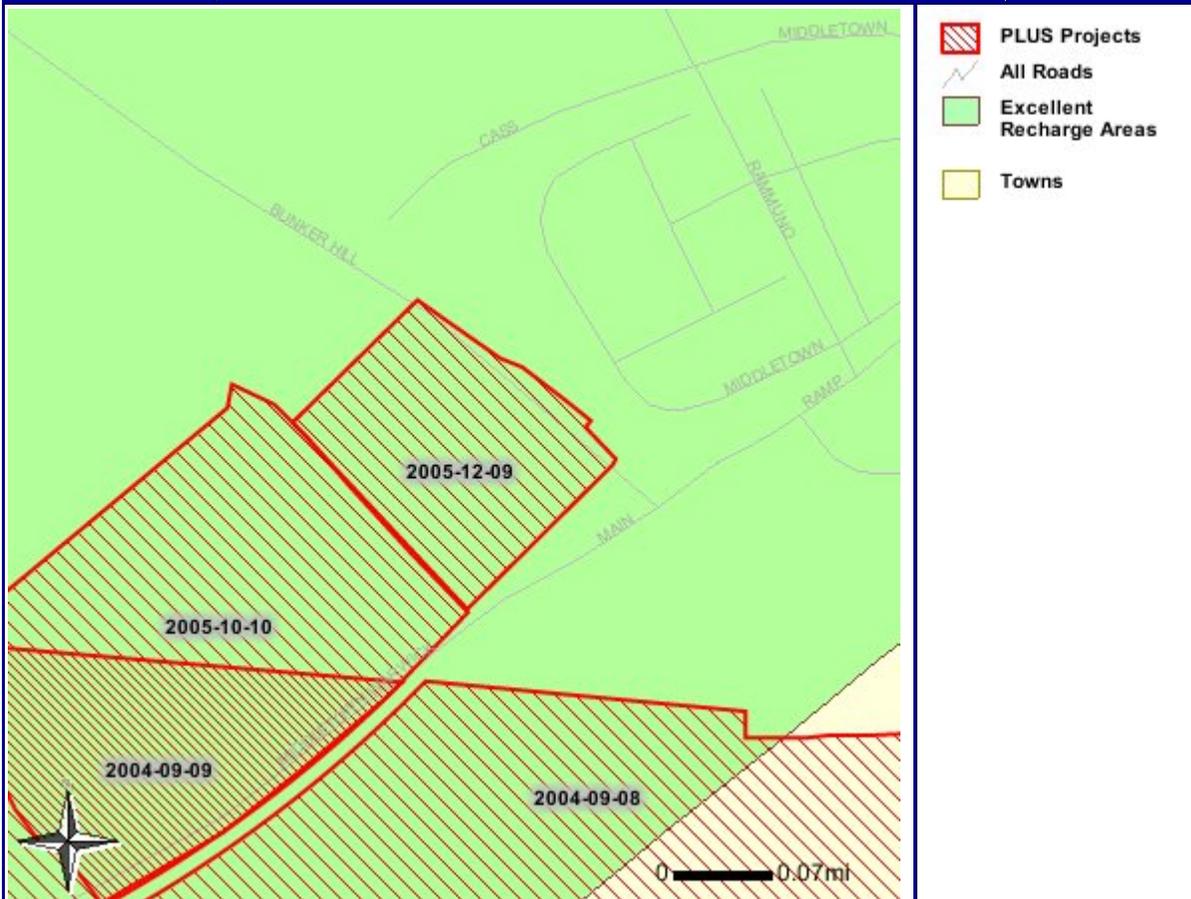
Constance C. Holland, AICP  
Director

CC: Town of Middletown



# Westown/Westown Marketplace Phase III

2005-12-09



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

