STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION

September 16, 2011

Mr. Jeff Stone
Delaware Economic Development Office
99 Kings Highway
Dover, DE 19901

RE: PLUS review – 2011-08-02; Site Investigation - Middletown Auto Mall Site

Dear Mr. Stone:

Thank you for meeting with State agency planners on August 24, 2011 to discuss the feasibility of placing a 1 million sq. ft. commercial building on 241 acres located on the south side of Middletown-Warwick Road, between Levels Road and Industrial Drive within the Town of Middletown.

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.

Based on the information received, the following is a list of comments and information received from State agencies regarding the development of this site.

Strategies for State Policies and Spending

This parcel is located within Levels 1 and 2 according to the *2010 Strategies for State Policies and Spending* document. In addition, it is located within the Town of Middletown. Investment Level 1 reflects areas that are already developed in an urban or suburban fashion, where infrastructure is existing or readily available, and where future redevelopment or infill projects are expected and encouraged by State policy. Investment Level 2 reflects areas where growth is anticipated by local, county, and State plans in the near term future. State investments will support growth in these areas.

Code Requirements/Agency Permitting Requirements

State Historic Preservation Office – Contact Terrence Burns 736-7404

- The Cochran Grange (N-117), as shown on the attached map is a national registered historic property and is located on the western side of this property. In addition, right next to this parcel on the west is another historic property called Hedgelawn (N-118). According to the Pomeroy and Beers Atlas of 1868, The USGS Topographic Map of 1931 also indicated that there were structures or dwellings in this vicinity or area, and it is possibility that there might other cultural or historic resources, such as archaeological remains associated with the Cochran Grange (N-117) on this parcel as well. With this in mind, it is important that developer be aware of the Unmarked Human Burials and Human Skeletal Remains Law of 1987 (Delaware Code: Title 7, Chapter 54), which pertains to the discovery and disposition of such remains in the State of Delaware.

- Abandoned or unmarked family cemeteries are very common in Delaware. Especially on historic farm sites, rural areas, and open space lands. Disturbing unmarked burials triggers Delaware's Unmarked Human Burials and Human Skeletal Remains Law of 1987 (Delaware Code: Title 7, Chapter 54), and such discoveries can result in substantial delays while the procedures required under this law are carried out. The Division of Historical & Cultural Affairs recommends that owners and/or developers have a qualified archaeological consultant investigate their project area for the presence of such a cemetery. If one is discovered and delineated, it is very costly to have it archaeologically excavated and the burials moved. In the event of such a discovery, the Division of Historical & Cultural Affairs also recommends that the plans be re-drawn to leave the cemetery on its own parcel or in the open space area of the development, with the responsibility for its maintenance lying with a homeowners association or development. For further information, please see following websites at:
  www.history.delaware.gov/preservation/umhr.shtml and
  www.history.delaware.gov/preservation/cemeteries.shtml

- Prior to any demolition or ground-disturbing activities, the developer should consider hiring an archaeological consultant to examine the parcel for potential archaeological sites, a cemetery or unmarked human remains.

- In addition, if there is any federal involvement with the project, in the form of licenses, permits, or funds, the federal agency, often through its client, is responsible for complying with Section 106 of the National Historic Preservation Act (36 CFR 800) and must consider their project's effects on any known or potential culture or historic resources. Owners and developers who may plan to apply for an Army Corps of Engineers permit or for federal funding, such as HUD or USDA grants, should be aware of the National Historic Preservation Act of 1966 (as amended). Regulations promulgated for Section 106 of this Act stipulate that no ground-disturbing or demolition activities should take place before the Corps or other involved federal agency determines the area

of potential effect of the project undertaking. These stipulations are in place to allow for comment from the public, the Delaware State Historic Preservation Office, and the Advisory Council for Historic Preservation about the project's effects on historic properties. Any preconstruction activities without adherence to these stipulations may jeopardize the issuance of a permit or receipt of funding if it is determined that such opportunity to comment has been foreclosed. For further information on Section 106 and the Advisory Council's role, please review the Advisory Council's website at www.achp.gov

Department of Transportation – Contact Bill Brockenbrough 760-2109

- The handout distributed at the meeting shows a well-defined area for the proposed development, relative to the more general area shown on the PLUS application exhibit. The fee to be paid to the Town for development in the Westown Infrastructure Development Area is based on acreage, so to the extent that the developer can reduce their site area, they can reduce that cost for this site.
- The handout suggests that the developer would build South Merrimac Avenue as their primary access. That is a good approach. While the site would, and should, have access by way of Vintage Drive and Automall Drive, we believe South Merrimac Avenue should be the primary site access.
- Depending on how the employment figures on the handout translate into peak hour trips, improvements not contemplated in the current Westown plan may be needed.

Department of Natural Resources and Environmental Control – Contact Kevin Coyle 739-9071

Requirements

Wetlands

- Based on a desktop review of aerial photography and other mapping sources, a stream channel and adjacent federally regulated wetlands appear to be present at the outlet of the large stormwater management pond on the northeastern portion of the property – on Tax Parcel 2301000048. This channel is not the result of discharge from the pond, but has been a feature at least since 1937. It appears that a headwater portion of these channel/wetlands was filled between 2002 and 2007. No other wetlands or streams are observed based on aerial photography. This information is only background information. We recommend that field evaluation to delineate any regulated feature be completed.

  Any work in stream would require a Subaqueous Lands permit from DNREC's Wetlands and Subaqueous Lands Section (302.739.9943). Both the stream and the wetlands are likely be regulated by the Army Corps of Engineers. The developer may want to contact the Army Corps of Engineers (215.656.6728) regarding federal wetland regulations.

TMDLs

- The project is located in the greater Delaware River and Bay drainage: specifically, within the Appoquinimink watershed. In this watershed, under the auspices of Section 303(d) of the 1972 Clean Water Act, the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets for nutrients (e.g., nitrogen, phosphorus), and bacteria. 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 State water quality standards (e.g., dissolved oxygen, nutrients, and bacteria; *State of Delaware Surface Water Quality Standards, as amended July 11, 2004*) to the extent necessary to support use goals such as, swimming, fishing, drinking water and shell fish harvesting. The TMDL for the Appoquinimink watershed calls for a 60 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for an 8 percent reduction in bacteria from baseline conditions.

- A nutrient management plan is required under the *Delaware Nutrient Management law (3 Del. Chapter 22)* for all persons or entities who apply nutrients to lands or areas of open space in excess of 10 acres. This project's open space may exceed this 10-acre threshold. Please contact the Delaware Nutrient Management Program at 739-4811 for further information concerning compliance requirements or view the following web link for additional information: http://dda.delaware.gov/nutrients/index.shtml

Water Supply

- The project information sheets state that being a site investigation, water provider has not been determined to supply this project. Our records indicate that the project is located within the public water service area granted to Artesian Water Company under Certificate of Public Convenience and Necessity 03-CPCN-24. DNREC recommends that the developer contact Artesian Water Company to determine the availability of public water.

  Any public water utility providing water to the site must obtain a Certificate of Public Convenience and Necessity (CPCN) from the Public Service Commission. Information on CPCN's and the application process can be obtained by contacting the Public Service Commission at 302-739-4247. Should an on-site Public/Miscellaneous Public well be needed, a minimum isolation distance of 150 feet is required between the well and any potential source of contamination, such as a septic tank and sewage disposal area, and it must also be located at least 150 feet from the outermost boundaries of the project. The Division of Water 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 wells.

- 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.

Sediment and Stormwater Program

Be advised the Sediment and Stormwater Program is currently undergoing revisions to the sediment and stormwater regulations. The new regulations should be promulgated in early 2012.

- A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. Contact the reviewing agency to schedule a project application meeting to discuss the sediment and erosion control and stormwater management components of the plan as soon as practicable. 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. The plan review and approval as well as construction inspection will be coordinated through the Town of Middletown. Contact the Town of Middletown at (302) 378-9120 for details regarding submittal requirements and fees. (Title 7, Delaware Code, Chapter 40 and Delaware Regulations, Title 7, Administrative Code, 5101)

Hazardous Waste Sites

- If it is determined by the Department that there was a release of a hazardous substance on the property in question and the Department requires remediation pursuant to the Hazardous Substance Cleanup Act, the provisions of 7 Del.C. Chapter 91, Delaware Hazardous Substance Cleanup Act and the Delaware *Regulations Governing Hazardous Substance Cleanup* shall be followed.

Tank Management Branch Please be aware:

- If a release of a Regulated Substance occurs at the proposed project site, compliance of 7 Del.C. Chapter 60, 7 Del.C., Chapter 74 and DE Admin. Code 1351, State of Delaware *Regulations Governing Underground Storage Tank Systems* (the UST Regulations) is required.

- The following confirmed leaking underground storage tank (LUST) projects are located within a quarter mile from the proposed area:

- Wawa Food Market #843, Facility: 3-001912, Project: N1105105 (Inactive)
- One Stop Shop, Facility: 3-000247, Project: N9212292 (Inactive)
- Shore Stop #235, Facility: 3-000219, Project: N9807103 (Inactive)
- Shore Stop #263, Facility: 3-000227 Projects: N9111274 (Inactive), N9201019 (Inactive), N9306113 (Inactive)

No environmental impact is anticipated; however, per the **UST Regulations: Part E, § 1. Reporting Requirements**:

- "Any indication of a Release of a Regulated Substance that is discovered by any Person, including but not limited to environmental consultants, contractors, utility companies, financial institutions, real estate transfer companies, UST Owners or Operators, or Responsible Parties shall be reported within 24 hours to:

  - The Department's 24-hour Release Hot Line by calling 800-662-8802; and
  - The DNREC, Tank Management Branch by calling 302-395-2500."

Recommendations

Additional information on wetlands

- DNREC recommends that the developer avoid impacts to wooded land parcels 2301000048 and 2301000049. DNREC recommends that the developer provide additional riparian buffer to the streams, including the planting of trees, to promote good water quality and habitat connectivity. They also suggest that additional green space, with native species, be included in the design. Reforestation in the southeasterly lot would provide an expansion of a large tract of forested land, which is lacking in the Middletown area.

Additional information on TMDLs

- A Pollution Control Strategy (PCS) is the regulatory directive requiring the implementation of various best management practices (BMPs) that help reduce transport of nutrient and bacterial pollutant runoff from all waters draining into a "greater" common watershed, with the ultimate objective of achieving the obligatory TMDL reduction requirements for that watershed. However, the PCS for the Appoquinimink watershed has not been formally completed to date. In absence of a current PCS, the applicant is strongly urged to reduce nutrient and bacterial pollutants through the voluntary commitment to the implementation of the following recommended BMPs:

  - Maximize open space by establishing maintaining and/establishing additional tree cover on this parcel.

- 100-foot upland buffers (planted with native vegetation) should be established from wetlands and/or water bodies

- The applicant should calculate post-construction surface imperviousness with all forms of created surface imperviousness (e.g., rooftops, driveways, parking lots, sidewalks, open-water storm water management structures, and roads) included in the calculation.

- Since this is a commercial project that will likely generate large amounts of impervious cover, the use of pervious paving materials (instead of conventional asphalt and concrete) as a BMP to reduce the impacts associated with surface imperviousness, wherever practicable, is encouraged.

- Rain gardens and green-technology storm water management structures (in lieu of open-water management structures) should be utilized as BMPs to reduce nutrient pollutant impacts.

- The applicant should voluntarily assess nutrient and bacterial pollutant loading at the preliminary project design phase. To this end, the Watershed Assessment Section has developed a methodology known as the "Nutrient Load Assessment protocol." The protocol is a tool used to assess changes in nutrient (e.g., nitrogen and phosphorus) and bacterial loading that result from the conversion of individual or combined land parcels to a different land use(s), while providing applicants with quantitative information about their project's impact(s) on baseline water quality. We strongly encourage the applicant/developer use this protocol to help them design and implement the most effective BMPs. Please contact Lyle Jones at 302-739-9939 for more information on the protocol.

Water Resource Protection Areas

- DNREC's Ground Water Protection Branch has determined that a significant portion of the project falls within an excellent ground-water recharge potential area for Town of Middletown (see map).

  Although the Town of Middletown's Source Water Protection Ordinance meets the minimum standards of protection, this protection does not limit impervious cover in excellent ground-water recharge potential areas. Impervious cover prevents precipitation from infiltrating through the soil to the water table aquifer. Impervious cover refers to structures including but not limited to roads, sidewalks, parking lots, and buildings. Any impervious cover within an area of excellent ground-water recharge potential area has the potential to have a negative effect the quality and quantity of drinking water available.

  Excellent Ground-Water Recharge Areas are those areas mapped by the Delaware Geological Survey where the first 20 feet of subsurface soils and geologic materials are

exceptionally sandy. These soils are able to transmit water very quickly from the land surface to the water table. This map category (excellent) is an indicator of how fast contaminants will move and how much water may become contaminated (Andres, 2004). Land use activities or impervious cover on areas of excellent ground-water recharge potential may adversely affect ground water in these areas.

The construction phase of storm water management ponds requires excavation, hauling, and grading. The heavy equipment used in this phase has the capacity to compact and degrade the structure of the strata that defines the area as an excellent ground-water recharge area (Schueler, 2000). Changes to the structural soil properties may cause significant reduction in recharge capacity. Installing storm-water management ponds in excellent ground-water recharge areas has the potential to contaminate the ground water beneath it and infiltrate into the aquifer.

- The Ground Water Protection Branch recommends:
  - Keep impervious cover to less than 50%
  - Perform an environmental assessment report showing that *water quality* as well as *water quantity* of post development recharge is equal to or greater than pre-development recharge (Kaufmann, 2005).
  - Quantify amount of recharge lost due to impervious cover and provide for onsite infiltration of water at least equal to or greater than pre-development recharge (Kaufmann, 2005).
  - Pretreatment of parking area runoff to remove dissolved chemical and nutrient loads prior to infiltration
  - Use Better Management Practices in the design, construction, and maintenance of a storm water management system designed to address water quality with respect to nutrient and other pollutant loads.
- In addition, because the excellent ground water recharge area can readily affect the underlying aquifer if contaminants are spilled or discharged across the area, the storage of hazardous substances or wastes should not be allowed within the area unless specific approval is obtained from the relevant state, federal, or local program.

References

Andres, A. Scott, 2004, Ground-Water Recharge Potential Mapping in Kent and Sussex Counties, Delaware: Delaware Geological Survey Report of Investigations No. 66, p. 14. http://www.udel.edu/dgs/Publications/pubform.html#nvestigations

Kauffman, G.J., Wozniak, S.L., and Vonck, K.J., 2005, *Delaware Ground-Water Recharge Design Manual*: Newark, DE, Water Resources Agency, University of Delaware, p. 31.

http://www.wr.udel.edu/swaphome/Publications/SWPguidancemanual.html

Schueler, T. R., 2000, The Compaction of Urban Soils, *in* Schueler, T.R., and Holland, H.K., eds., The Practice of Watershed Protection: Ellicott City, MD, Center for Watershed Protection, p. 752.

Additional information on hazardous substances

- The Site Investigation and Remediation Section (SIRS) strongly recommends that the land owner perform environmental due diligence of the property by performing a Phase I Environmental Site Assessment **(including a title search to identify environmental covenants)** in accordance to Section 9105(c) (2) of the Delaware Hazardous Substance Cleanup Act (HSCA). While this is not a requirement under HSCA, it is good business practice and failure to do so will prevent a person from being able to qualify for a potential affirmative defense under Section 9105(c) (2) of HSCA.

  Additional remediation may be required if the project property or site is re-zoned.

- Should a release or imminent threat of a release of hazardous substances be discovered during the course of development (e.g., contaminated water or soil), construction activities should be discontinued immediately and DNREC should be notified at the 24-hour emergency number (800-662-8802). SIRS should also be contacted as soon as possible at 302-395-2600 for further instructions.

Additional information on tank management

- When contamination is encountered, PVC pipe materials should be replaced with ductile steel and nitrile rubber gaskets in the contaminated areas.
- If any aboveground storage tanks (ASTs) less than 12,500 gallons are installed, they must be registered with the TMB. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by the TMB.
- Should the municipality anticipate being more restrictive than Delaware's Regulations Governing Underground Storage Tank Systems or Delaware's Regulations Governing Aboveground Storage Tanks, please be aware that the municipality shall be responsible for enforcing the more restrictive rules.

Delaware State Fire Marshall's Office – Contact Duane Fox 739-4394

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):

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 sites, the infrastructure for fire protection water shall be provided, including the size of water mains for fire hydrants and sprinkler systems.

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, 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 Delaware State Fire Prevention Regulations

- Special requirements apply to "Large Area" buildings that are in excess of 100,000 square feet.

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 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.

- 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.

Gas Piping and System Information:

- Provide type of fuel proposed, and show locations of bulk containers on plan.

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

Suggestions

- 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.statefiremarshal.delaware.gov, technical services link, plan review, applications or brochures.

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

Sincerely,

Constance C. Holland, AICP
Director, Office of State Planning Coordination

CC: Town of Middletown