



**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 – 2011-08-08; Site Investigation - Middletown Site 2

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 158 acres located at the end of 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.

State Historic Preservation Office – Contact Terrence Burns 736-7404

- There are no known cultural or historic resources such as a national registered listed property, archaeological site, or historic structure or dwelling on this parcel (property). However, nearby, towards the east west side, right next to this parcel is the H. Reading House (N05220), which is a mid to late 19th-century structure. The Pomeroy and Beers Atlas of 1868 (an historical map) also shows and indicate structure associated with a H. Reading, and the USGS Topographic Map of 1931 indicated one near the same location as well. Although there are no known cultural or historic resources on this parcel, it is still 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 archaeological sites, such as 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

- DelDOT understands that the primary access would be by way of South Merrimac Avenue with Industrial Road subsequently to be extended over to South Merrimac Avenue by the Town. Use of Industrial Road as a secondary access is reasonable and appropriate. Use of Industrial Road as a primary access would have consequences not anticipated in the development of the Westown plan.
- 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

DNREC Requirements

Wetlands

- Based on a desktop review of aerial photography and other mapping sources, there is evidence that a stream channel bordering the southern boundaries of the three parcels and perhaps the western boundary of Parcel 2304200011 is jurisdictional. Any work in streams would require a Subaqueous Lands permit from the Wetlands and Subaqueous Lands Section (302.739.9943) and the Army Corps of Engineers (215.656.6728).

It appears that federally regulated wetlands may be present on the site, particularly adjacent to streams. DNREC recommends that a wetlands delineation be performed before any design plan is completed. 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.

Bog Turtle

- A review of our database has revealed that there may be suitable habitat for the federally listed bog turtle (*Glyptemys muhlenbergii*) within the proposed project area. Wetlands associated with Deep Creek could be either directly impacted or indirectly impacted by this project depending on the scope of work and limits of disturbance. Bog turtles typically occur in freshwater wetlands with open canopies, mucky soils, and tussock vegetation; however, they can occur in more marginal habitats as well. Because the bog turtle is a federally listed species, protected under the Endangered Species Act, its presence can affect the scope of work. To ensure that the project will not impact bog turtles or their habitat, Phase I surveys for bog turtle habitat should be conducted.
- Phase I surveys can be conducted any time of year when ice and/or snow cover is not present. If potential habitat is found, however, please note there is a time of year restriction during which Phase II surveys for bog turtles must be conducted. A Delaware approved bog turtle surveyor must be used to conduct the surveys. Please contact Holly Niederriter (302-735-8670) to obtain a list of contacts to conduct Phase I and, if necessary, Phase II surveys.
- If potential bog turtle habitat is found during Phase I surveys, you are required to either:
 - 1) Completely avoid all direct and indirect project impacts to the wetland, in consultation with the U.S. Fish and Wildlife Service and Delaware Division of Fish and Wildlife; or
 - 2) Have Phase II surveys conducted to determine if bog turtles are present.

In accordance with Delaware's bog turtle site survey procedures, surveys must be conducted by a State-approved bog turtle surveyor between April 15 and June 15.

- In addition, wetland buffers along Deep Creek are important for protection of water quality and providing habitat for wildlife. Corridors adjacent to streams and wetlands support the survival of many species by providing sources of food and water, protective cover from predators, shelter from harsh weather, and reconnecting isolated populations. Research studies show a great number of songbirds, game birds, small mammals, reptiles and amphibians, and other wildlife use corridors as a regular part of their life cycles.
- The planning of this project should include provisions for leaving at least a 100ft upland buffer along the creek given the large scale of this development and potential to impact water quality. To be most effective, this buffer should not include impervious surfaces, mowed lawn, parking lots, roadways, structures, or stormwater facilities. If the current buffer is less than 100ft, plantings of Delaware native trees, shrubs and wildflower species to a width of 100ft could be considered.

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.
- The proposed project includes an environmental covenant executed pursuant to 7 Del. C. Chapter 79, Subchapter II, Uniform Environmental Covenants Act. It shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to 7 Del. C. Section 7910(a), subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees. It may be enforced pursuant to 7 Del. C. Section 7916.
- Failure to timely enforce compliance with this Environmental Covenant or the use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Secretary of DNREC from exercising any authority under applicable law. There shall be no interference with this environmental covenant, such as any land disturbing activities, without the prior written approval of the Department.

DNREC Recommendations

Additional comments on wetlands.

- DNREC further recommends that the developer provide additional riparian buffer to the streams, including the planting of trees, to promote good water quality, habitat connectivity and general visual improvements to the campus. They suggest that additional green space, with native species, be included in the design. Reforestation in the most easterly lot would provide an expansion of a large tract of forested land, which is so 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.

Additional information on hazardous substances

- There are 3 SIRS sites found within a ½-mile radius of the proposed project:
 1. Middletown Landfill (DE-0196) is located adjacent to the eastern boarder of the proposed project. A Preliminary Assessment was conducted 1990 followed by a Facility Evaluation in 1994 to determine if the landfill posed a threat. It was determined that the Site did not pose significant risk to human or environmental health, and was given a No Further Action designation in 1996.
 2. Middletown Sewer Plant Dump (DE-0213) located 0.22 miles east of the proposed project. A Preliminary Assessment was performed followed by a Site Investigation in 1989. The Site continues to have annual groundwater monitoring of three production wells by the Town of Middletown.
 3. Delaware Department of Transportation Department Site (DE-0098) is located 0.40 miles east of the proposed project. A Preliminary Assessment was performed in 1987 and it was recommended by the EPA and DNREC that No Further Action on the site was needed.
- 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.

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

DSFMO Regulations/Code Requirements

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

DSFMO 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,

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

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

CC: Town of Middletown

