



**STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION**

May 29, 2012

Mr. Morris Deputy
Town Manager, Town of Middletown
19 West Green Street
Middletown, DE 19709

RE: 2012-04-01; Town of Middletown comprehensive plan update

Dear Mr. Deputy:

Thank you for meeting with State agency planners on April 24, 2012 to discuss the proposed Town of Middletown draft comprehensive plan update.

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.

Certification Comments: These comments must be addressed in order for our office to consider the plan amendment consistent with the terms of your certification and the requirements of Title 22, § 702 of the Del. Code.

There are no certification issues regarding this comprehensive plan update.

Recommendations: Our office strongly recommends that the Town consider these recommendations from the various State agencies as you review your plan for final approval.

Office of State Planning Coordination – Contact: Herb Inden 739-3090

The Office of State Planning Coordination would like to congratulate the Town of Middletown for a very well done comprehensive plan update. The plan document and map series are very extensive, and represent a detailed vision for the future growth and development for the Town.

The Town's continued overall focus on a purposeful planning process is also to be commended. As a result of this focus (a kind of "shovel ready" approach), the Town has again shown the value that this type of planning brings to a local government as recently demonstrated by the Town being selected for several large scale development projects including: the site for one

million+ square foot Amazon distribution facility, a 400,000 + square foot expansion to the Johnson Control facility and a complex of health care facilities including a new Christiana Emergency Care facility. These types of developments are particularly important to this area (as they would be to other areas within the state) in that they not only help to diversify a tax base that is currently a largely residential base, but, this also helps to create jobs in this area which creates opportunities for residents of the area to work closer to home allowing for a reduction in personal transportation costs due to reduced vehicle miles traveled (VMTs) that in turn helps improve air quality along with many other benefits.

It is with this in mind that we feel Middletown can serve as a good model for other local governments to use a sensible, continuous and proactive planning process to attract the kind of development best suited to a community based on input garnered through the planning process and thus enhancing a communities quality of life.

As always our office is ready to assist you in implementing this comprehensive plan.

This office has received the following comments from State agencies:

Department of Transportation – Contact: Bill Brockenbrough 760-2109

- On page 3, in Section 1-2, two public meetings are mentioned. If attendance at these meetings can be quantified, even approximately, DeIDOT recommends that it be mentioned in the Plan. Doing so can help counter later suggestions the Plan was adopted without adequate public involvement.
- On page 18, the first sentence of Section 3-2, Key Issues, refers to “the current housing boom.” [emphasis added] Would it be more accurate to refer to the boom as “recent?”
- On page 31, in Section 6-2, Roads and Traffic, there is a reference to “Delaware Authority for Regional Transit (DART) buses.” In 1994, with the creation of the Delaware Transit Corporation, several State and quasi-State agencies were combined. The bus service, which had been operated by the Delaware Authority for Regional Transit (DART) was renamed DART First State to take advantage of the public’s recognition of the DART name, but the Authority ceased to exist as an organization.
- Pages 37 and 38, in Section 6-4, Planned Transportation Improvements and Studies, there are several items that should be updated or otherwise edited:
 - Under Middletown-Odessa Road, the first paragraph should be updated to reflect that the Town Council has adopted an “Eastown” plan for this corridor, similar to the Westown plan. It is described in the current draft as a “cost-sharing agreement” but is necessarily somewhat broader than that. Also the second sentence should be reworded to be clearer about funding. DeIDOT suggests

“However, there are no longer any state or federal funds programmed to complete the remaining 20 percent of the design or to do the construction.”

- Under Westtown, it should be mentioned that the east end of Bunker Hill Road and parts of Levels Road have been completed. We recommend that the next to last sentence be rewritten as follows, “~~Completion of Levels Road, Bunker Hill Road and Wiggins Mill Road is expected during 2014~~ will be completed when development creates the need.”
- In the discussion of US Route 301, it is worth mentioning that in “signing off” on the selected alternative, the Federal Highway Administration signed the Record of Decision (ROD) selecting that alignment. Their signature of the ROD allows DelDOT to proceed with property acquisitions and final design.
- Under either Cedar Lane Road or the Chesapeake & Delaware Canal Recreation Study, there should be some mention of the fact that the planned multi-use path on Cedar Lane Road is the first phase of a trail system planned to continue north on Jamison Corner Road and connect to trails along the Canal.
- Further regarding Cedar Lane, we recommend that the second sentence be amended as follows “~~Construction is scheduled to begin in 2015~~ will be phased with the pace of development in Southern New Castle County.”
- On page 39, in Section 6-5, Additional Transportation Issues, there is a discussion of ideas for alleviating truck traffic and congestion on SR 299. Any of them would require a more thorough discussion between DelDOT and the Town, but the initial responses are as follows. DelDOT is presently opposed to creating access to SR 1 in the Townsend area. Doing so would have land use and transportation impacts which the State, New Castle County, the Town of Townsend have not contemplated in detail, much less planned to address. While it is some years away, the completion of US Route 301 should have the desired effect on SR 299 without the unintended consequences associated with the ramps.

Memoranda of understanding with major employers regarding the timing of deliveries and shift changes is a legitimate means of transportation demand management and they are worth pursuing in many instances. DelDOT lacks sufficient information to quantify the benefits of specific agreements in this case.

Creation of a pair of one-way streets downtown was examined briefly in the early planning for Easttown. Some operational benefits could be obtained by making Lake Street one way westbound and Main Street one way eastbound. However, there would be significant social, economic and environmental impacts associated with such a change. As the Town has not expressed a strong interest in pursuing this change, DelDOT does not plan to pursue it either.

- On page 68, in Section 11-2, Recommendations for Consideration, under Transportation Considerations, there is a recommendation to “Review parking and landscaping requirements in the zoning and subdivision ordinance to ensure that commercial and institutional sites continue to be designed to be pedestrian and bike-friendly.” While it is important to make recommendations in this section sufficiently broad, it is also important to be clear. DeIDOT recommends adding some examples, such as “to include requirements that commercial and institutional sites provide sidewalks along their street frontage and pedestrian paths through their parking lots as part of any new construction or any redevelopment that changes their parking lot or the footprint of their building.”
- DeIDOT also recommends three edits to Map 2, Transportation Network:
 - The north end of the alignment of US301 should curve toward Business 301. The correct alignment can be viewed at www.deldot.gov/information/projects/us301/.
 - The black lines for Levels Road and St Anne’s Church Road should be adjusted to reflect their current alignments.
 - The connection of Ashland Street to New Street should be shown.
- On Map 4, a trail is shown along the alignment of the US 301 Spur. DeIDOT recommends that the Town contact our US Route 301 Project Manager, Mr. Mark Tudor, to verify that this trail is still planned. Mr. Tudor may be contacted at (302) 760-2275. Also, sidewalks are planned for Business Route 301. Mr. Tudor can provide specific information in this regard as well.
- Finally, the Town should be aware that DeIDOT uses a minimum criterion of Level of Service D in determining whether transportation improvements are needed to support proposed developments (See Sections 2.9.12.2 through 2.9.12.7 in DeIDOT’s Standards and Regulations for Subdivision Streets and State Highway Access). Exceptions are permitted in certain circumstances. Notably, Paragraphs 3 and 4 in Section 2.9.12.1 respectively permit exceptions for locations where the Comprehensive Plan has identified a lower standard as being applicable, and for locations designated as redevelopment sites. If there are locations where the Town believes DeIDOT should consider a lower standard for Level of Service, e.g. parts of the downtown area, DeIDOT would recommend that the Town identify those locations and the Level(s) of Service that they consider appropriate in the Comprehensive Plan. These locations could reasonably be identified in Chapter 6, Chapter 7 or Chapter 10.

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

DNREC offers several comments and suggestions to improve conservation and protection of the Town’s resources. While the cumulative impact of various program suggestions and concerns may sound negative, the intent is to improve the Plan elements related to environmental protection, open space, recreation and water quality and supply. DNREC would welcome the opportunity to meet with the Town in a collaborative manner to discuss these recommendations and possible future ordinances.

Recommendations for Comprehensive Plan Revisions

Chapter 7, Economic Development and Redevelopment

Potential Brownfield Sites

- Brownfields are real property that may be vacant, abandoned or underutilized as a result of a reasonably-held belief that they may be environmentally contaminated (7 Del.C., § 9103(3)). Productive use of these idle properties provides “new” areas for economic development, primarily in former industrial/urban areas with existing utilities, roads and other infrastructure. DNREC encourages the development of Brownfields and can provide grant funding and other assistance when investigating and remediating Brownfield sites.

The Delaware Brownfields Marketplace is an interactive database that contains a list of market-ready Brownfield sites throughout Delaware. The inventory is designed to make it easier for potential buyers and developers to locate available Brownfield properties. Cleaning up and reinvesting in these properties protects the environment, reduces blight, and helps to create jobs for Delaware citizens, while preserving Delaware’s precious green space and natural resources.

There is 1 Brownfields site listed on DNREC’s Brownfields Marketplace inventory within the proposed comprehensive plan amendment area. However, please note that many more properties within the municipality may qualify as “Brownfield” sites.

Recommendation: To add sites in your municipality to the Marketplace (with owner approval) or to determine if any sites in your municipality are Brownfields, please contact Melissa Leckie at DNREC’s Site Investigation and Restoration Section at (302) 395-2600 or by e-mail at Melissa.Leckie@state.de.us . For more information online, please visit:

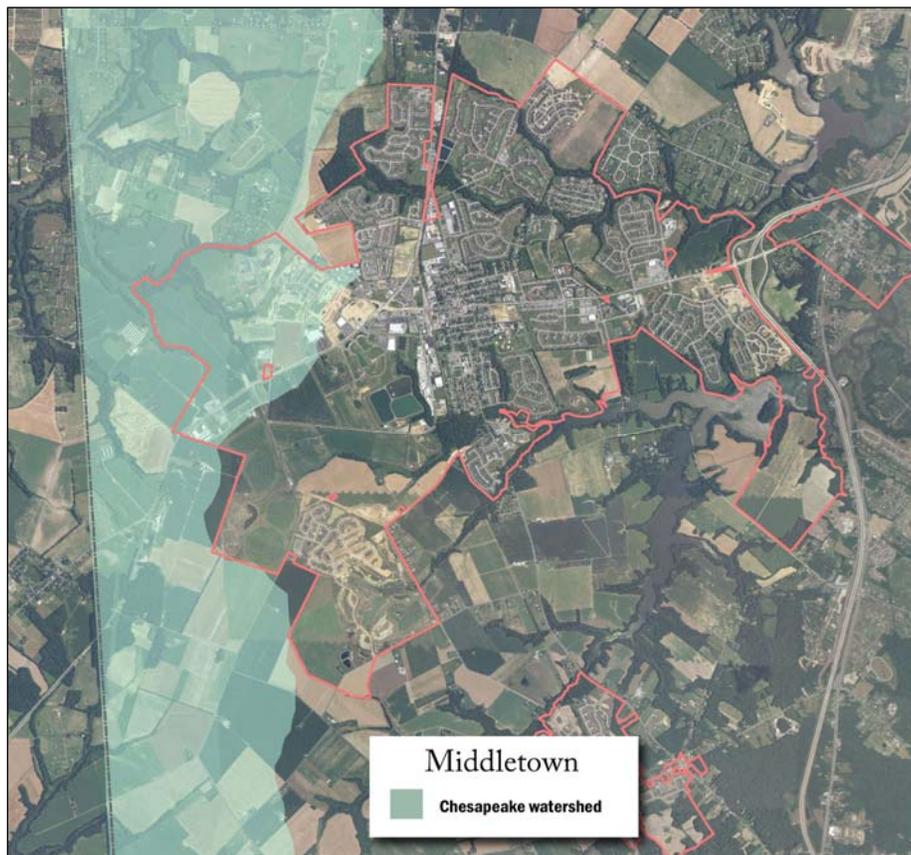
<http://apps.dnrec.state.de.us/BFExt/BFExtMain.aspx>

Chapter 8. Natural Resources

Page 46, Section 8-3.a. Surface-Water Protection – Total Maximum Daily Loads (TMDLs). Chesapeake TMDL

- While most of the Town is located in the Appoquinimink watershed, far western portions are part of the Chesapeake watershed (see map). Under Delaware’s Watershed Implementation Plan approved by the EPA, Delaware is obligated to reduce loadings of nitrogen, phosphorous and sediment from agriculture and development in the Chesapeake watershed. Any proposed new growth that increases loadings of these pollutants (via stormwater runoff) must either be managed on the parcel or offset, according to revised state stormwater regulations scheduled to be in place by January 2012. The Department offers several recommendations below for protecting natural resources such as wetlands, habitat and groundwater that would also limit increased loads of nitrogen, phosphorous and sediment. The Town should seek to limit annexations and increases in impervious cover in that watershed and perhaps consider expanding its Transfer of Development Rights program to further protect water quality and the headwaters of the Bohemia River.

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Again,
DNREC
would
welcome

opportunity to meet with the Town in a collaborative manner to discuss these issues, recommendations and possible future ordinances.

Page 47, Source Water Assessment and Protection (SWAP) Program

- In keeping with the standards agreed upon in the Memorandum of Understanding (MOU) between Office of State Planning Coordination and Division of Water dated July 2011, the text of the comprehensive plan must include the description of source water requirements in 7 Del. C. 6082(b), and include goals and objectives related to the protection of the resource and shall be placed within the water and sewer element of the local government's comprehensive plan, as prescribed by Title 9 or Title 22 of the Delaware Code.

***Recommendation:* DNREC recommends moving this elements from Section 8-3b (Source Water Assessment and Protection (SWAP) Program to Section 4-4 (Water Supply, Wastewater Disposal, and Stormwater Management).**

Rare species and wetlands

- The ecological importance of wetlands is described in this chapter; however, the importance of upland buffers needed to adequately protect wetlands and water bodies are not addressed. The majority of the rare, threatened and endangered plants and animal species known to occur within Town boundaries (and areas to be annexed) occur within these buffer areas. Therefore, maintaining buffers of adequate size are especially important to the continued persistence of these species in those locations.

It should also be noted that wetlands occur on several parcels included in the Proposed Annexations on Map 7: 1) a fairly large area of wetlands that span several parcels to be annexed as 'residential 'near Rt. 301 on the northern side of town, 2) a tributary of the Appoquinimink River borders several parcels to be annexed as residential on the southwestern part of town and 3) forested wetlands occur on a fairly large parcel to be annexed as 'mixed-use' on the east side of Rt. 15. All of these areas have wetlands that warrant protection and this is an opportunity for the Town to follow through on their goal of protecting these resources.

***Recommendation:* Direct impacts to wetlands should be avoided and adequate upland buffers should be required. For water quality protection, buffers are recommended to be *at least* 100 feet in width, although buffers necessary to support some wildlife species can be much wider. Current state and federal regulatory protections do not include requirements for 100-foot buffers in most cases; therefore, the Town should consider an ordinance or implement more stringent buffer requirements for proposed developments.**

Key Wildlife Habitat

- A few areas within current Town boundaries are mapped as Key Wildlife Habitat (KWH) in the Delaware Action Plan¹ (DEWAP) because it supports species of concern or is a habitat of concern. KWH can support the full array of species across the landscape and the maps in DEWAP show areas of the State where conservation efforts can be focused. Although designation as KWH is non-regulatory, these maps are intended to help guide site-specific conservation planning efforts. Most of the KWH mapped in Middletown consists of riparian buffer areas as there are few remaining large forest blocks.

Federally-listed Species

- Bog Turtle. A review of our GIS database reveals numerous wetland areas that could potentially support the federally listed bog turtle (*Glyptemys muhlenbergii*). There is also an area where bog turtles have been historically documented and could still persist. 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. The bog turtle is a federally listed species, protected under the Endangered Species Act so their presence (or the presence of potential habitat) could impact the scope of work proposed in areas where these wetlands occur. To ensure that proposed land-use changes will not impact bog turtles or their habitat, Phase I surveys for bog turtle habitat and/or Phase II surveys for bog turtles should be conducted in those areas identified by the Delaware Natural Heritage and Endangered Species Program (DNHESP), Division of Fish and Wildlife-DNREC.
- Bald Eagle. There is an active Bald Eagle (*Haliaeetus leucocephalus*) nest on or adjacent to land designated as agricultural on Map 7. Bald eagles and their nests are protected under the federal Bald and Golden Eagle Protection Act (BGEPA) and by Title 7 of Delaware Code (7 Del. C. § 739). The U.S. Fish and Wildlife Service (USFWS) developed *National Bald Eagle Management Guidelines*, to help landowners and others minimize impacts to eagles, including disturbance, which is prohibited by the BGEPA. The guidelines focus on minimizing disturbance through the use of suggested buffer zones (330 feet to 660 feet from a nest) and time-of-year restrictions for certain activities in several categories. Determinations of allowable activities within protection distances are evaluated on a case-by-case basis by USFWS biologists. The USFWS has jurisdiction regarding Bald Eagles protection via BGEPA and works with landowners

¹ The Delaware Wildlife Action Plan (DEWAP) is a comprehensive strategy for conserving the full array of native wildlife and habitats-common and uncommon- as vital components of the state's natural resources. Congress challenged the states to demonstrate comprehensive wildlife conservation. Delaware, along with all of the other states and provinces throughout the country are working to implement their wildlife action plans. DEWAP can be viewed via the Natural Heritage and Endangered Species program website at <http://www.fw.delaware.gov/dwap/Pages/default.aspx>. This document also contains a list of species of greatest conservation need, Key Wildlife Habitat Maps, and species-habitat associations.

regarding eagle disturbance issues. The USFWS coordinates with the DNHESP to identify eagle nesting locations in Delaware

Chapter 9, Page 54, 9-6 Preserving Open Space:

- This chapter states *“Perhaps the best opportunity to obtain these amenities is to continue utilizing Middletown’s Subdivision Regulations that require developers to dedicate open space as a condition for development-plan approval. As pointed out earlier, these regulations also ensure that existing vegetation and trees are preserved. The flood damage–prevention ordinance ensures that flooding is not exacerbated by development.”*

The Plan indicates that the required amount of open space in the Town’s subdivision regulation is based on the type and size of the development. Unless there is a requirement in the regulations to preserve existing forested areas, a developer could meet the required open space acreage while still clearing forested areas. There are currently very few forested areas remaining within town or within areas proposed for annexation. Most of the remaining forested areas occur along wetlands or other water bodies and form an upland buffer that protects water quality and provides wildlife habitat.

In addition, a site could be designed to include the required amount of open space, but the open space could occur as small, fragmented sections located throughout a development behind lots, on corners and in other ‘left over’ spaces. Larger, connected areas of open space are in general more valuable and beneficial to wildlife and may be more useful to the residential community as well. These habitat connections or ‘corridors’ support the survival of many species as they move across the landscape by providing sources of food and water, providing 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.

Recommendation: The Town should require open space to include wetland/riparian buffers of at least 100 feet in width or more, otherwise upland buffers, especially forested areas, could still be cleared or could contain lot-lines and infrastructure. In addition, the Town should include a provision for site design that ensures that habitat connections are left intact across the landscape to provide a corridor for wildlife as they travel during daily and migratory activities.

Chapter 11, Implementation and Intergovernmental Coordination, 11-2 Recommendations for Consideration, Environmental Resources

- In order to protect natural resources it is important to determine what those resources are and where they are located. The Town should consider coordinating with the Natural Heritage and Endangered Species Program (NHESP) to determine which areas support

species of concern or are valuable to wildlife in general. NHESP can provide technical assistance regarding potential for state-rare, federally listed and Species of Greatest Conservation Need² (SGCN). NHESP can also work with developers on site specific protection measures. Most of the habitat within the planning area has not been surveyed and in some cases a site visit may be requested by NHESP in order to provide the necessary information.

Contact information:

c/o Environmental Review Coordinator
Natural Heritage and Endangered Species Program
DNREC-Division of Fish and Wildlife
4876 Hay Point Landing Rd
Smyrna, DE 19977
(302) 735-8654
Edna.Stetzar@state.de.us

Environmental-Protection Ordinance

- The Town was considering adopting an environmental ordinance as per the pre-update review (PLUS 2011-06-03). This was a good step toward minimizing impacts to natural resources of concern; however, it is not specifically mentioned in the current document. Perhaps the text could include a follow-up on the Town's progress on developing this ordinance?

Recommendations for Ordinances and Plan Implementation

Wetlands Delineations:

- *Recommendation:* Require all applicants to submit to the Town a copy of the development site plan showing the extent of State-regulated wetlands (as depicted by the State Wetland Regulatory Maps), and a United States Army Corps of Engineers (USACE) approved wetlands delineation as conditional approval for any new commercial and/or residential development. Additionally, the site plan should depict all streams and ditches which are jurisdictional pursuant to the Subaqueous Act (7 Del. C., Chapter 72) as determined by DNREC.

² Species of greatest conservation need (SGCN) are indicative of the overall diversity and health of the State's wildlife resources. Some may be rare or declining, others may be vital components of certain habitats, and still others may have a significant portion of their population in Delaware. SGCN are identified in the Delaware Wildlife Action Plan (DEWAP).

Freshwater Wetlands Protections:

- *Recommendation:* Implement regulations to protect freshwater wetlands where regulatory gaps exist (i.e., isolated wetlands and headwater wetlands).

100 Foot Upland Buffer:

- Based on a review of existing buffer research by Castelle et al. (Castelle, A. J., A. W. Johnson and C. Conolly. 1994. *Wetland and Stream Buffer Requirements – A Review*. J. Environ. Qual. 23: 878-882.), an adequately-sized buffer that effectively protects water quality in wetlands and streams, in most circumstances, is about 100 feet in width. In recognition of this research and the need to protect water quality, the Watershed Assessment Section recommends that the applicant maintain/establish a minimum 100-foot upland buffer (planted in native vegetation) from all water bodies (including ditches) and wetlands.
- *Recommendation:* Require a 100-foot upland buffer width from all delineated wetlands (approved by the USACE and DNREC) or water bodies (including ditches).

Total Maximum Daily Loads (TMDLs)

- All open space land uses should be designed and managed in a manner that mitigates or reduces nutrient pollutant loading and its damaging impacts to water quality. Since changes in land use often increase runoff of nutrient pollutants into nearby waterways (including wetlands) draining to a common watershed, these nutrient pollutant loading impacts should be assessed at the preliminary project design phase. To this end, the Watershed Assessment Section has developed a methodology known as the “Nutrient Load Assessment Protocol” to assess such impacts. The protocol is a tool used to assess changes in nutrient loading that result from the conversion of individual or combined land parcels to a different land use(s), and serves as a “benchmark indicator” of that project’s likely impacts to water quality. It is the intention of this protocol to inform those relevant governmental entities (i.e., State, county, and municipal) how a given project will affect water quality in their jurisdictions, while informing/encouraging developers of the need to incorporate better conservation practices (i.e., BMPs) in their project designs to help improve water quality.
- *Recommendation:* Require completion of a Nutrient Budget protocol before granting preliminary approval for any proposed projects/developments.

Open Space

- We note that it might be helpful to have a consistent definition of “open space” in your comprehensive plan and/or Town ordinances. In a guidance document that DNREC is developing for the PLUS and other local technical review processes, we have defined open space as those areas with public value in a predominantly natural state and undeveloped condition. Such areas may contain, but are not limited to, wildlife and native plant habitat, forest, farmland, meadows, wetlands, floodplains, shorelines, stream corridors, steep slopes, and other areas that have species or habitats of conservation concern.

Open Space may be preserved, enhanced and restored in order to maintain or improve the natural, ecological, hydrological, or geological values. An important design element to consider when incorporating Open Space in a development is to take maximum advantage of adjoining Open Space areas. This will advance the goal of an interconnected network of habitat corridors for wildlife and provide for future potential linkages.

Open Space is not:

- impervious surfaces (e.g., roads, parking lots, sidewalks, buildings)
- swimming pools or ponds that are lined or contain an impervious substrate
- stormwater management structures
- wastewater treatment systems

Types of Recreational Open Space:

Passive-Passive recreation areas include only low-impact activities having little or no disturbance on natural features.

Active-Active recreation areas (e.g., ball fields, playgrounds) should be placed only in Open Space areas that do not already contain natural habitat.

Forest Protection and Habitat Restoration

- The Town’s consideration in adopting an environmental ordinance is a good step toward minimizing impacts to natural resources of concern. The text does not mention the need for forest protection other than forested riparian buffers.
- *Recommendation*: While protection of forested riparian buffers is desired and would benefit wildlife, the Town should also consider provisions that would protect remaining forested areas as there is very little forest left within current or future Town boundaries.

Equally important are ensuring that habitat connections are left intact to provide cover, shelter and space for wildlife to move across the landscape during daily and migratory activities. These ‘travel corridors’ are typically areas of natural vegetation left intact

amongst a developed, fragmented landscape that serve to connect two or more larger areas of undeveloped habitat.

- *Recommendation:* The Town should also consider areas where perhaps reforestation or habitat restoration would enhance these corridors or riparian buffer areas.

Impervious Surface Mitigation Plan:

- *Recommendation:* Require the calculation for surface imperviousness (for both commercial and residential development) take in to account all constructed forms of surface imperviousness - including all paved surfaces (roads, parking lots, and sidewalks), rooftops, and open-water storm water management structures.
- *Recommendation:* To encourage compact development and redevelopment in the Town's central business area, require an impervious surface mitigation plan for all residential and commercial developments exceeding 20% imperviousness outside that area, or at least in excellent recharge areas outside that area. The impervious surface mitigation plan should demonstrate that the impervious cover in excess of 20% will not impact ground water recharge, surface water hydrology, and/or water quality of the site and/or adjacent properties. If impacts to groundwater recharge, surface water hydrology will occur, the plan should then demonstrate how these impacts will be mitigated. If the impacts cannot be mitigated, the site plan should then be modified to reduce the impacts from impervious cover. .

Poorly Drained (Hydric) Soils:

- *Recommendation:* Prohibit development in poorly or very poorly-drained (hydric) soil mapping units. Building in such areas predictably leads to flooding and drainage concerns from homeowners, as well as significant expense for them and, often, taxpayers. Proof or evidence of hydric soil mapping units should be provided through the submission of the most recent NRCS soil survey mapping of the parcel, or through the submission of a field soil survey of the parcel by a licensed soil scientist.

Green Technology Stormwater Management:

- *Recommendation:* Require the applicant to use “green-technology” storm water management in lieu of “open-water” storm water management ponds whenever practicable.

Stormwater Utility:

- *Recommendation:* Explore the feasibility of a stormwater utility to fund upgrades to existing stormwater infrastructure. Upgrades to the stormwater system may reduce pollutant loads and help reach the established total maximum daily load for nitrogen,

phosphorus, and bacteria. Reach out to the New Castle Conservation District, New Castle County, Kent County, Kent Conservation District and the Delaware Clean Water Advisory Council as partners in funding stormwater retrofits.

Drainage Easements:

- *Recommendation:* The Town should pursue drainage easements along waterways and storm drains where currently there is none.

Source Water Protection

- The Town has developed a source water protection ordinance that meets the minimum level of protection of the resource in compliance with 7 Del. C. 6082(b). However, in keeping with the Town's statement that it is important to protect these areas, the ordinance can be made more protective. Though the Town's source water ordinance (No. 09-03-01) meets the minimum standards of protection it does not limit impervious cover and it allows for the storage of hazardous materials in excellent groundwater recharge potential areas.
- *Recommendation:* DNREC suggests the Town consider revising their existing source water protection ordinance to limit impervious cover and prohibit hazardous materials in excellent recharge potential areas. In addition, underground and aboveground storage of petroleum and petroleum products should be prohibited in these areas.

State Fire Marshal's Office – Contact: Duane Fox 856-5298

At this time, this Agency has no objection to, and makes no comments regarding, the Comprehensive Plan, an amendment to a Comprehensive Plan, or Ordinances.

The Delaware State Fire Marshal's Office has the responsibility to review all commercial and residential subdivisions for compliance with the Delaware State Fire Prevention Regulations. This Agency asks that a MOU be established and be maintained between the Delaware State Fire Marshal's Office and the Town of Middletown. The State Fire Marshal's Office would be issuing approvals much like DelDOT and DNREC. This Agency's approvals are based on the Delaware State Fire Prevention Regulations only.

Department of Agriculture - Contact: Scott Blaier 739-4811

- Please reference Map 7: Future Land Use and Annexation Areas, and Map 4: Parks and Open Space. The Department of Agriculture asks that properties permanently preserved through state's Agricultural Lands Preservation Program be shown in the legend as their own color, preferably dark blue.

A GIS layer with permanently preserved properties can be downloaded at the link below. This layer is updated frequently as new properties are added to the program.

<http://66.173.241.168/dda/downloads.html>

- As the town expands (especially west), it is important to identify permanently preserved agricultural areas, and make sure future growth is as compatible, to the extent possible, with agriculture.

For example, the following restrictions will apply when a new subdivision is created near a parcel enrolled in the Agricultural Lands Preservation Program.

Activities conducted on this preserved property are protected by the agricultural use protections outlined in **Title 3, Del. C., Chapter 9**. These protections effect adjoining developing properties. The 300 foot notification requirement affects **all new deeds** in a subdivision located in whole or part within 300 feet of an Agricultural District. Please take note of these restrictions as follows:

§ 910. Agricultural use protections.

(a) Normal agricultural uses and activities conducted in a lawful manner are preferred and priority uses and activities in Agricultural Preservation Districts. In order to establish and maintain a preference and priority for such normal agricultural uses and activities and avert and negate complaints arising from normal noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations, land use adjacent to Agricultural Preservation Districts shall be subject to the following restrictions:

(1) For any new subdivision development located in whole or in part within 300 feet of the boundary of an Agricultural Preservation District, the owner of the development shall provide in the deed restrictions and any leases or agreements of sale for any residential lot or dwelling unit the following notice:

This property is located in the vicinity of an established Agricultural Preservation District in which normal agricultural uses and activities have been afforded the highest priority use status. It can be anticipated that such agricultural uses and activities may now or in the future involve noise, dust, manure and other odors, the use of agricultural chemicals and nighttime farm operations. The use and enjoyment of this property is expressly conditioned on acceptance of any annoyance or inconvenience which may result from such normal agricultural uses and activities."

(2) For any new subdivision development located in whole or in part within 50 feet of the boundary of an Agricultural Preservation District, no

improvement requiring an occupancy approval shall be constructed within 50 feet of the boundary of the Agricultural Preservation District.

(b) Normal agricultural uses and activities conducted in accordance with good husbandry and best management practices in Agricultural Preservation Districts shall be deemed protected actions and not subject to any claim or complaint of nuisance, including any such claims under any existing or future county or municipal code or ordinance. In the event a formal complaint alleging nuisance related to normal agricultural uses and activities is filed against an owner of lands located in an Agricultural Preservation District, such owner, upon prevailing in any such action, shall be entitled to recover reasonably incurred costs and expenses related to the defense of any such action, including reasonable attorney's fees (68 Del. Laws, c. 118, § 2.).

In addition, if any wells are to be installed, **Section 4.01(A)(2) of the Delaware Regulations Governing the Construction and Use of Wells** will apply. This regulation states:

(2) For any parcel, lot, or subdivision created or recorded within fifty (50) feet of, or within the boundaries of, an Agricultural Lands Preservation District (as defined in Title 3, Del. C., Chapter 9); all wells constructed on such parcels shall be located a minimum of fifty (50) feet from any boundary of the Agricultural Lands Preservation District. This requirement does not apply to parcels recorded prior to the implementation date of these Regulations. However, it is recommended that all wells be placed the maximum distance possible from lands which are or have been used for the production of crops which have been subjected to the application of land applied federally regulated chemicals.

Delaware State Housing Authority – Contact Karen Horton 739-4263

- On page 30, the reference to the *Delaware Analysis of Impediments to Fair Housing Choice* should be updated to reference the most recent analysis completed July 2011, *Statewide Analysis of Impediments to Fair Housing Choice*, a collaborative effort by the Cities of Wilmington and Dover, New Castle County, and the Delaware State Housing Authority.

<http://www.destatehousing.com/FormsAndInformation/pubs.php>

- DSHA has no objections and supports this plan. The Housing Chapter provides a good analysis of Middletown's housing stock to identify relevant housing needs and issues of the town, and contains appropriate goals and objectives in response.
- DSHA offers technical assistance to the Town in implementing any of the recommendations outlined in the Plan.

- Additionally, DSHA has developed a website, **Affordable Housing Resource Center**, to learn about resources and tools to help create housing for households earning 100% of median income or below. Our website can be found at: www.destatehousing.com "Affordable Housing Resource Center" under Other Programs.

Approval Procedures:

1. Once all edits, changes and corrections have been made to the plan, please submit the completed document (text and maps) to our office for review. **Your PLUS response letter should accompany this submission.** Also include documentation about the public review process. In addition, please include documentation that the plan has been sent to other jurisdictions for review and comment, and include any comments received and your response to them.
2. The town should forward a letter letting this office know if any changes were made based on the PLUS comments received. As there are no certification issues, this plan is ready for adoption by the Planning Commission and Council pending State certification. We strongly recommend that your Council adopt the plan by ordinance. The ordinance should be written so that the plan will go into effect upon receipt of the certification letter from the Governor.
3. Send our office a copy of the adopted plan along with the ordinance (or other documentation) that formally adopts your plan. We will forward these materials to the Governor for his consideration.
4. At his discretion, the Governor will issue a certification letter to your City.
5. Once you receive your certification letter, please forward two (2) bound paper copies and one electronic copy of your plan to our office for our records.

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