



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
OFFICE OF STATE PLANNING COORDINATION

March 24, 2015

Mr. Kevin Huey
2690 Williamsville Rd.
Houston, DE 19954

RE: PLUS review 2015-02-01, Lands of Kevin Huey

Dear Mr. Huey,

Thank you for meeting with State agency planners on February 25, 2015 to discuss the proposed plans for the Lands of Kevin Huey. According to the information received, you are seeking review of a proposed rezoning from AR to IG for land to be used as an industrial production facility in Kent County.

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

Strategies for State Policies and Spending

This proposal is located in Investment Level 4 according to the *Strategies for State Policies and Spending*. **The comments in this letter are technical, and are not intended to suggest that the State supports this development proposal. This letter does not in any way suggest or imply that you may receive or may be entitled to permits or other approvals necessary to rezone this property, construct the development you indicate, or any subdivision thereof on these lands.**

This project represents rezoning that will result in an Industrial use in an Investment Level 4 area according to the *Strategies for State Policies and Spending*. This project is also located outside of the Growth Zone according to Kent County's certified comprehensive plan. Investment Level 4 indicates where State investments will support agricultural preservation, natural resource protection, and the continuation of the rural nature of these areas. New development activities and suburban development are not supported in Investment Level 4. These areas are comprised

of prime agricultural lands and environmentally sensitive wetlands and wildlife habitats, which should be, and in many cases have been preserved.

From a fiscal responsibility perspective, development of this site is likewise inappropriate. The cost of providing services to development in rural areas is an inefficient and wasteful use of the State's fiscal resources. The project as proposed is likely to bring industrial activities to an area where the State has no plans to invest in infrastructure upgrades or additional services. The specific nature of this rezoning (i.e. only one portion of a larger parcel) appears to the Office of State Planning Coordination to be an instance of spot zoning. Should this rezoning be approved by Kent County it will likely do damage to the rural character of the surrounding area. The Office of State Planning Coordination is of the opinion such a rezoning would be an undesirable precedent that could lead to subsequent similar rezoning requests.

As the comments contained in this letter demonstrate, there will be many challenges to developing an industrial facility in this area. Although DEDO supports the jobs that this project could bring to Kent County (see attached letter), we hope that the Levy Court and the applicant seriously consider the difficulties presented by this location and the negative impacts that it could have for the surrounding area.

Because the development is inconsistent with the Strategies for State Policies and Spending, the State is opposed to this proposed rezoning.

Code Requirements/Agency Permitting Requirements

Department of Transportation – Contact Bill Brockenbrough 760-2109

- If the proposed rezoning is approved, the site entrance on Williamsville Road will need to meet DelDOT's commercial entrance standards, as contained in DelDOT's Standards and Regulations for Subdivision Streets and State Highway Access, which is available at http://www.deldot.gov/information/pubs_forms/manuals/subdivisions/pdf/Subdivision_Manual_Revision_1_proposed_060110.pdf. The existing entrance appears to be a residential driveway and would have been built to a lesser standard. Given the low volume of traffic proposed, it may be that only minimal changes will be needed but we recommend that the applicant have their engineer determine what those changes are before proceeding with the rezoning application.
- As identified by the Office of State Planning Coordination, creating an industrial zoning district in a Level 4 Investment Area is inconsistent with the Strategies for State Policies and Spending. Therefore it is not something DelDOT would support. Proposing to designate only part of the parcel for IG zoning does not help matters. Creating a situation in which two zoning designations apply to one parcel, commonly referred as split-zoning, tends to create problems with regard to administration and enforcement.

If the County finds the creation of the desired district appropriate, we would recommend that the applicant file a subdivision plan to create a separate parcel for that district before proceeding further with the rezoning application. As shown on the Conceptual Rezoning Plan, the industrial parcel would be landlocked, so it would be necessary to create a right-of-way as part of that subdivision.

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

- **Wetlands.**

Waters of the U.S. regulated by the U.S. Army Corps of Engineers ARE likely to be located on this property based on a review of aerial photographs, SWMP maps, Soil Surveys and/or USGS topographic maps. A wetland delineation by a consultant and contact with the U.S. Army Corps of Engineers is recommended. Waters of the United States include the following: navigable waters of the United States; wetlands; tributaries to navigable waters of the United States, including adjacent wetlands and lakes and ponds; interstate waters and their tributaries, including adjacent wetlands; and all other waters of the United States not identified above, such as isolated wetlands, intermittent streams, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States, where the use, degradation or destruction of these waters could affect interstate or foreign commerce. The extent of Federal jurisdiction over Waters of the United States is determined by the U.S. Army Corps of Engineers and is based on site specific conditions. Therefore, an on-site inspection by an environmental consultant is recommended to determine if Waters of the U.S. are located on the property and the limits of Federal jurisdictional. The U.S. Army Corps of Engineers can be contacted at (215) 656-6728 or online at <http://www.nap.usace.army.mil/cenap-op/regulatory/regulatory.htm>.

Catherine Bronson, (302) 739-9383, Catherine.Bronson@state.de.us



- **Wastewater**

According to the Regulations Governing the Design, Installation and Operation of On-Site Wastewater Treatment and Disposal Systems:

- Section 5.3.3.8 Industrial wastewater shall not be discharged into a septic tank unless prior approval is obtained from the Department.
- Section 6.3.2.3.1.2.1 The Department will evaluate all industrial wastewaters to determine the required level of treatment. All industrial system permit applications must contain copies of work place chemical lists. Treatment requirements will be based on factors including, but not limited to, wastewater constituency, odors, nuisance conditions and adverse impacts to groundwater or soil, such as clogging and runoff.
- Section 6.8.3.2 Wastewater systems receiving industrial process wastes or water treatment facility residuals may be required to monitor metals, salts or other

pollutants in soils and vegetation. The parameters and monitoring frequencies will be determined on a case by case basis.

- While the sections referenced above pertain to large systems, the same requirements would apply to small systems as well. Specific requirements will be based upon the exact composition and strength of the wastewater being generated. More frequent monitoring and sampling will be required.
- **TMDLs.**

The project is located in the greater Delaware River and Bay drainage area, specifically within the Mispillion River watershed. In this watershed, the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets for nitrogen, phosphorus, and bacteria (under the auspices of Section 303(d) of the Clean Water Act). 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 Mispillion River watershed calls for a 57 percent reduction in nitrogen and phosphorus from baseline conditions. The TMDL also calls for an 87 percent reduction in bacteria from baseline conditions.

A nutrient management plan is required under the *Delaware Nutrient Management Law* (3 *Del.C.*, 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>.
John Martin, (302) 739-9939, John.Martin@state.de.us

- **Water Supply.**

The project information sheets state that individual on-site well(s) will be used to provide water for the proposed project. Our records indicate that the project is not located in an area where public water service is available. Should an on-site Industrial, 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 central sewer lines, septic tank and sewage disposal area, and at least 150 feet from the outermost boundaries of the project. The Division of Water Resources will consider applications for the construction of on-site wells provided the wells can be constructed and located in compliance with all requirements of the current Regulations Governing the Construction and Use of Wells. A well construction permit must be obtained prior to constructing each and every well(s).

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

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

Rick Rios, (302) 739-9944, Ricardo.Rios@state.de.us

- **Sediment and Stormwater Program.**

It is strongly recommended for the owner and consultant to contact the Kent Conservation District to ascertain if there are submittal requirements for the change in zoning from AR to IG as the site was constructed using an Agriculture Exemption. Contact Jared Adkins, Program Manager, at the Kent Conservation District at (302) 741-2600, ext. 3 for details regarding submittal requirements and fees. (Title 7, Delaware Code, Chapter 40 and Delaware Regulations, Title 7, Administrative Code, 5101).

James Sullivan, (302) 7390 9921, James.Sullivan@state.de.us

- **Air Quality.**

The applicant shall comply with all applicable Delaware air quality regulations. Please note that the following regulations in Table 1 – Potential Regulatory Requirements may apply to your project:

Table 1: Potential Regulatory Requirements	
Regulation	Requirements
7 DE Admin. Code 1102 - Permits	<ul style="list-style-type: none"> • Report and obtain approval of equipment which has the potential to discharge air contaminants into the atmosphere • Submit any relevant information that the DAQ may request. Relevant information includes information that, in the DAQ’s opinion, is relevant to any permit application/registration or that is necessary to determine the applicability of or compliance with any State or Federal requirement, any permit term or condition, or any condition of registration. Such information also includes a permit application or a registration form, or a corrected or supplemented application/registration.

7 DE Admin. Code 1106 - Particulate Emissions from Construction and Materials Handling	<ul style="list-style-type: none"> • Use dust suppressants and measures to prevent transport of dust off-site from material stockpile, material movement and use of unpaved roads. • Use covers on trucks that transport material to and from site to prevent visible emissions.
7 DE Admin. Code 1113 – Open Burning	<ul style="list-style-type: none"> • Prohibit open burns statewide during the Ozone Season from May 1-Sept. 30 each year. • Prohibit the burning of land clearing debris. • Prohibit the burning of trash or building materials/debris.
7 DE Admin. Code 1135 – Conformity of General Federal Actions to the State Implementation Plan	<ul style="list-style-type: none"> • Require, for any “federal action,” a conformity determination for each pollutant where the total of direct and indirect emissions would equal or exceed any of the de minimus levels (See Section 3.2.1)
7 DE Admin. Code 1141 – Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products	<ul style="list-style-type: none"> • Use structural/ paint coatings that are low in Volatile Organic Compounds. • Use covers on paint containers when paint containers are not in use.
7 DE Admin. Code 1144 – Control of Stationary Generator Emissions	<ul style="list-style-type: none"> • Ensure that emissions of nitrogen oxides (NO_x), non-methane hydrocarbons (NMHC), particulate matter (PM), sulfur dioxide (SO₂), carbon monoxide (CO), and carbon dioxide (CO₂) from emergency generators meet the emissions limits established. (See section 3.2). • Maintain recordkeeping and reporting requirements.
7 DE Admin. Code 1145 – Excessive Idling of Heavy Duty Vehicles	<ul style="list-style-type: none"> • Restrict idling time for trucks and buses having a gross vehicle weight of over 8,500 pounds to no more than three minutes.

For a complete listing of all Delaware applicable regulations, please look at our website: <http://www.awm.delaware.gov/AQM/Pages/AirRegulations.aspx>.

Rachel Yocum, (302)739-9402, rachel.yocum@state.de.us

- **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.

Krystal Stanley, (302) 395-2644, Krystal.Stanley@state.de.us

- **Regulatory Advisory Service.**

Because your project has several permitting issues (water supply, wastewater, sediment and stormwater management, air emissions, solid and hazardous waste, etc.), we strongly recommend that you take advantage of the Regulatory Advisory Service, designed to help business owners with environmental permits and other requirements and regulations that may apply to your new or expanding business. To schedule an RAS meeting, contact Michelle Jacobs at 302-739-9069 or by email at michelle.jacobs@state.de.us.

State Historic Preservation Office – Contact Terrence Burns 736-7404

- As the developer is aware, this parcel is in a Level 4 area. By policy and precedent, we do not support any rezoning or development in a Level 4 area. Should development proceed, the developer should be aware of the Unmarked Human Burials and Human Skeletal Remains Law, in Chapter 54 of Title 7, of the Delaware Code (7 Del. C. Ch. 54).
- Abandoned or unmarked family cemeteries are very common in the State of Delaware. They are usually in rural or open space areas, and sometimes near or within the boundary of an historic farm site. Even a marked cemetery can frequently have unmarked graves or burials outside of the known boundary line or limit. Disturbing unmarked graves or burials triggers the Delaware's Unmarked Human Burials and Human Skeletal Remains Law (7 Del. C. Ch. 54), and such remains or discoveries can result in substantial delays while the procedures required under this law are carried out. If there is a discovery of any unmarked graves, burials or a cemetery, it is very costly to have them archaeologically excavated and the burials moved. The Division of Historical & Cultural Affairs recommends that owners and/or developers have a qualified archaeological consultant investigate their project area, to the full extent, to see if there is any unmarked cemetery, graves, or burial sites. In the event of such a discovery, the Division of Historical & Cultural Affairs also recommends that the plans be re-drawn to leave the full extent of the cemeteries or any burials on its own parcel or in the open space area of the development, with the responsibility for its maintenance lying with the landowner association or development. If you would like to know more information pertaining to unmarked human remains or cemeteries, please check the following websites for additional information: www.history.delaware.gov/preservation/umhr.shtml and www.history.delaware.gov/preservation/cemeteries.shtml
- Furthermore, 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 cultural 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. Furthermore, any preconstruction activities without adherence to these stipulations may jeopardize the issuance of any permit or funds. If you need further information or additional details pertaining to the Section 106 process and the Advisory Council's role, please review the Advisory Council's website at www.achp.gov.

Delaware State Fire Marshall's Office – Contact Duane Fox 856-5298

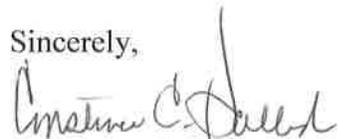
- The State Fire Marshall's Office has no official comments for zoning related requests. The information provided here will be relevant if the plans described in the application and discussed at the meeting are formally submitted in the future.
- **Fire Protection Water Requirements:**
 - Since the structures of the complex are proposed to be served by individual on-site wells (No Central or Public Water System within 1000' of property), set back and separation requirements may apply.
- **Fire Protection Features:**
 - All structures over 10,000 Sq. Ft. aggregate will require automatic sprinkler protection installed.
 - Buildings greater than 10,000 sqft, 3-stories or more, over 35 feet, or classified as High Hazard, are required to meet fire lane marking requirements
 - Show Fire Lanes and Sign Detail as shown in DSFPR
- **Accessibility**
 - All premises, which the fire department may be called upon to protect in case of fire, and which are not readily accessible from public roads, shall be provided with suitable gates and access roads, and fire lanes so that all buildings on the premises are accessible to fire apparatus. This means that the access road to the building from the main thoroughfare must be constructed so fire department apparatus may negotiate it.
 - Fire department access shall be provided in such a manner so that fire apparatus will be able to locate within 100 ft. of the front door.
 - Any dead end road more than 300 feet in length shall be provided with a turn-around or cul-de-sac arranged such that fire apparatus will be able to turn around by making not more than one backing maneuver. The minimum paved radius of the cul-de-sac shall be 38 feet. The dimensions of the cul-de-sac or turn-around shall be shown on the final plans. Also, please be advised that parking is prohibited in the cul-de-sac or turn around.
 - The use of speed bumps or other methods of traffic speed reduction must be in accordance with Department of Transportation requirements.

- The local Fire Chief, prior to any submission to our Agency, shall approve in writing the use of gates that limit fire department access into and out of the development or property.
- **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
 - Provide Lock Box Note (as detailed in DSFPR) if Building is to be sprinklered
 - Provide Road Names, even for County Roads
- **Preliminary meetings** with fire protection specialists are encouraged prior to formal submittal. Please call for appointment. Applications and brochures can be downloaded from our website: www.statefiremarshal.delaware.gov, technical services link, plan review, applications or brochures.

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

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

Sincerely,



Constance C. Holland, AICP

Director, Office of State Planning Coordination

CC: Kent County
Attachment



STATE OF DELAWARE
EXECUTIVE DEPARTMENT
DELAWARE ECONOMIC DEVELOPMENT OFFICE

Alan B. Levin
Director

February 25, 2015

Ms. Connie Holland
Director of State Planning
State of Delaware Office of State Planning Coordination
122 William Penn Street
Dover, DE 19901

Re: Review and Discussion: Lands of Kevin Huey (PLUS 2015-02-01)

Dear Ms. Holland:

I am writing to formally express the Delaware Economic Development Office's (DEDO) general support to review and discuss zoning options for the Lands of Kevin Huey on Williamsville Road in Houston, DE.

DEDO supports the growth of manufacturing jobs in Kent County and zoning change could bring upwards of twenty manufacturing jobs to the area. Manufacturing jobs help strengthen a community and give residents an opportunity for a strong career. By rezoning the property it would allow K2H to move their injection molding business and job opportunities from South Carolina to Kent County, DE.

Let me know if you need additional information.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "A. Levin".

Alan B. Levin
Director

ABL:jdz