



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

September 21, 2017

Mr. Rob Meding
3697 Bay Road
Milford, DE 19963

RE: PLUS review 2017-08-03; Kay-De Did Commercial

Dear Rob:

Thank you for meeting with State agency planners on August 23, 2017 to discuss the Kay-De Did Commercial project. According to the information received you are seeking review of a rezoning and comprehensive plan amendment of 25 acres from AC to BG along Milford Neck Road 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 as Kent County is the governing authority over this land, the developers will need to comply with any and all regulations/restrictions set forth by the County.**

Strategies for State Policies and Spending

This application is located in a Level 4 area according to the *2015 Strategies for State Policies and Spending*. Investment Level 4 indicates areas 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 areas. 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 will bring a new commercial business to an area where the State has no plans to invest in infrastructure upgrades or additional services. The

intended development will need access to services and infrastructure such as police, and transportation. To provide some examples, the State government funds 100% of road maintenance and drainage improvements for the transportation system, and 100% of the cost of police protection in the unincorporated portion of Kent County where this development is proposed. Over the longer term, the unseen negative ramifications of this development will become even more evident as the cost of maintaining infrastructure and providing services increases.

This rezoning request is for a parcel located along the Route 1 corridor between two major transportation infrastructure investments, the South Frederica and Thompsonville grade separated intersections. In addition, this parcel is in the vicinity of “The Turf” sports complex that is intended to provide a positive economic development impact for Kent County.

This is the third such request in recent months, the others being the “Lands of Ching” reviewed as PLUS 2016-08-07 and “Murphy Commercial” reviewed as PLUS 2017-02-01. It is unwise to continue to consider these commercial rezoning requests in a piecemeal, incremental fashion without a larger plan for the corridor. As such, it is strongly recommended that action on this request be deferred until the County can develop a more cohesive plan for the corridor, perhaps through the ongoing comprehensive plan update process. A well planned overall approach to the future development of this corridor which considers transportation infrastructure, environmental concerns, market demand for new commercial uses, and economic potential is preferable to individual, incremental rezoning requests such as this one.

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

With that said, the comments in this letter are technical, and are not intended to suggest that the State supports this rezoning and comprehensive plan amendment. 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 build on this property, construct any development, or any subdivision thereof on these lands.

Code Requirements/Agency Permitting Requirements

Department of Transportation – Contact Bill Brockenbrough 760-2109

- Because the subject property adjoins Delaware Route 1 between Dover Air Force Base and US Route 9 at Five Points, it is subject to DelDOT’s Corridor Capacity Preservation Program (CCPP). See Section 1.2 of the Development Coordination Manual and Section 145, Title 17 of the Delaware Code. The goal of the Program is to maintain the capacity of the existing highway by managing access along it.

According to the Office of State Planning Coordination’s *Strategies for State Policies and Spending* document, the property is located within a Level 4 Investment Area. In this area, State policies will encourage the preservation of a rural lifestyle.

In accordance with the CCPP policy (available at http://www.deldot.gov/Publications/manuals/corr_cap/index.shtml) no new or expanded direct access to SR1 will be permitted in a Level 4 Investment Area. Access will be permitted to the existing secondary road. In this case, the property owner can develop a full access along Milford Neck Road (Kent Road 120).

- Because the subject property adjoins Milford Neck Road, which is part of Delaware's Bayshore Byway, it is subject to restrictions on outdoor advertising associated with the Delaware Byways Program. See Section 1110, Title 17 of the Delaware Code for specific restrictions. The goals of the program include the identification, promotion, preservation and enhancement of Delaware roadways with at least one of the following intrinsic qualities: scenic, historic, natural, cultural, recreational and archaeological. More information on the program is available at <http://www.deldot.gov/Programs/byways/index.shtml>.
- The site access on Milford Neck Road must be designed in accordance with DelDOT's Development Coordination Manual (formerly the Standards and Regulations for Subdivision Streets and State Highway Access), which is available at <http://www.deldot.gov/Business/subdivisions/index.shtml?dc=changes>.
- Pursuant to Section P.3 of the Manual, a Pre-Submittal Meeting is required before plans are submitted for review. The form needed to request the meeting and guidance on what will be covered there and how to prepare for it is located at http://www.deldot.gov/Business/subdivisions/pdfs/Meeting_Request_Form.pdf?08022017.
- Section P.5 of the Manual addresses fees that are assessed for the review of development proposals. DelDOT anticipates collecting the Initial Stage Fee when the record plan is submitted for review and the Construction Stage Fee when construction plans are submitted for review.
- Per Section 2.2.2.1 of the Manual, Traffic Impact Studies (TIS) are warranted for developments generating more than 500 vehicle trip ends per day or 50 vehicle trip ends per hour in any hour of the day. From the PLUS application, it is likely that the total daily trips would exceed 500 vehicle trip ends per day and 50 vehicle trip ends per hour during the peak hour but reliable estimates cannot be made until a specific land use is known. Therefore, DelDOT recommends that Kent County consider the subject rezoning application without a TIS and evaluate the need for a TIS when a subdivision or land development plan is proposed.
- Section 3.2.4.2 of the Manual addresses the placement of right-of-way monuments (markers) along the roads on which a property fronts, in this case Delaware Route 1 and Milford Neck Road. Monuments sufficient to re-establish the permanent rights-of-way after the dedication discussed below should be shown on the plan and provided in the field in accordance with this section.

- As necessary, in accordance with Section 3.2.5 and Figure 3.2.5-a of the Manual, DelDOT will require dedication of right-of-way along the site's frontage on Delaware Route 1 and Milford Neck Road. By this regulation, this dedication is to provide a minimum of 30 feet of right-of-way from the outermost edge of the through lanes on Route 1 and 40 feet of right-of-way from the road centerline on Milford Neck Road. The following right-of-way dedication note is required, **"An X-foot wide right-of-way is hereby dedicated to the State of Delaware, as per this plat."**
- In accordance with Section 3.2.5.1.2 of the Manual, DelDOT will require the establishment of a 15-foot wide permanent easement across the property frontage on Delaware Route 1 and Milford Neck Road. The location of the easement shall be outside the limits of the ultimate right-of-way. The easement area can be used as part of the open space calculation for the site. The following note is required, **"A 15-foot wide permanent easement is hereby established for the State of Delaware, as per this plat."**
- In accordance with Section 3.4 of the Manual, a record plan shall be prepared prior to issuing "Letter of No Objection". The following information will be required for the "Letter of No Objection" review:
 - Initial Stage Fee Calculation Form
 - Initial Stage Review Fee
 - Gate-Keeping Checklist – Site Plan
 - Design Checklist - Record Plan
 - Sight Distance Spreadsheet
 - Owners and Engineers' name and e-mail address
 - Record Plan
 - Conceptual Entrance Plan
 - Submission of the Area-Wide Study Fee (If applicable)
- Referring to Section 3.4.2.1 of the Manual, the following items, among other things, are required on the Record Plan:
 - A Traffic Generation Diagram. See Figure 3.4.2-a for the required format and content.
 - Depiction of all existing entrances within 300 feet of the proposed entrance.
 - Notes identifying the type of off-site improvements, agreements (signal, letter) contributions and when the off-site improvements are warranted. .
- Section 3.5 of the Manual provides DelDOT's requirements with regard to connectivity. Section 3.5.7.4, in particular addresses connectivity between non-residential uses. The applicant should expect a requirement that they provide for a connection to the adjacent

Murphy Commercial property to the south (Tax Parcel No. 5-00-152.00-01-2200-00001 and others).

- Section 3.5.4.2 of the Development Coordination Manual addresses requirements for shared-use paths and sidewalks. For projects in Level 4 Investment Areas, installation of paths or sidewalks along the frontage on State-maintained roads is at the discretion of DelDOT's Subdivision Engineer if the project does not abut an existing facility. DelDOT does not require a path or sidewalk in this instance.
- In accordance with Section 3.8 of the Manual, storm water facilities, excluding filter strips and bioswales, shall be located a minimum of 20 feet from the ultimate State right-of-way along Delaware Route 1 and Milford Neck Road.
- Referring to Section 4.3 of the Manual, an entrance plan shall be prepared prior to issuing entrance approval. The following information will be required for Entrance Plan review:
 - Construction Stage Fee Calculation Form
 - Construction Review Fee
 - Gate-Keeping Checklist – Entrance Plan
 - Design Checklist - Entrance Plan
 - Auxiliary Lane Spreadsheet
 - Entrance Plan
 - Pipe/Angle Spreadsheet (If applicable)
 - SWM Report and Calculations (If applicable)
- In accordance with Section 5.2.5.6 of the Manual, a separate turning template plan shall be provided to verify vehicles can safely enter and exit the site entrance. As per Section 5.2.3 of the Manual, the entrance shall be designed for the largest vehicle using the entrance.
- In accordance with Section 5.2.9 of the Manual, the Auxiliary Lane Worksheet should be used to determine whether auxiliary lanes are warranted at the site entrance and how long those lanes should be. The worksheet can be found at <http://www.deldot.gov/Business/subdivisions/index.shtml>.
- In accordance with Section 5.4 of the Manual, sight distance triangles are required and shall be established in accordance with American Association of State Highway and Transportation Officials (AASHTO) standards. A spreadsheet has been developed to assist with this task. It can be found at <http://www.deldot.gov/Business/subdivisions/index.shtml>.
- In accordance with Section 5.14 of the Manual, all existing utilities must be shown on the plan and a utility relocation plan will be required for any utilities that need to be relocated.

- Section 6.4.3 of the Manual, which pertains to the inspection and acceptance of commercial entrances, applies. Construction inspection responsibilities shall be in accordance with Figure 6.4.3-a.
- Section 7.7.2 of the Manual addresses the need to provide 20-foot wide drainage easements for all storm drainage systems, open or closed, that fall outside the existing right-of-way or the drainage/utility easement. In accordance with this section, metes and bounds and total areas need to be shown for any drainage easements. The easements should be shown and noted on the record plan.

Department of Natural Resources and Environmental Control – Contact Michael Tholstrup 735-3352
Executive Summary.

Although the applicant does not have immediate plans to develop this parcel once the zoning is changed from AC to BG, future development which may be allowed within the BG zone will result in increased impervious surface and new sources of greenhouse gas emissions. DNREC's comments reflect the potential effects of development and opportunities to reduce the environmental impact on-site through appropriate use of pollution control strategies and consideration of the wetland on the southern border of the parcel. DNREC has outlined a number of best management practices to assist in protecting these resources and the overall health of the community. Waste reduction and resource conservation measures will also improve the long term sustainability and future needs of the community.

The State of Delaware is threatened by climate change and has a goal of reducing greenhouse gas emissions by 30 percent by 2030. Appropriate development that provides access to public transportation, opportunities to walk and bike to shopping and recreation, and that employs energy efficient building standards are among key strategies to meet these goals. DNREC encourages the use of high performance building standards and consideration of alternative energy sources to promote clean sustainable energy and reduce greenhouse gas emissions. This could mean siting the buildings to take advantage of solar and geothermal systems, and/or including infrastructure for electric vehicle charging stations (funding assistance may be found at www.de.gov/cleantransportation). DNREC further recommends an abundant use of native vegetation and shade trees throughout the landscape, as well as pervious pavement and green infrastructure, where practicable, to absorb carbon dioxide, protect water quality and provide relief to residents on hot days.

The following pages provide information about applicable regulations and detailed recommendations associated with this project, from various DNREC Divisions. DNREC would like to be a partner in creating appropriate development that protects and highlights the environment as a natural amenity of the landscape. The Department has resources and expertise that are available to help make this a reality, often at no expense to the landowner.

Water Quality and TMDLs.

- The project is located in the greater Delaware River and Bay drainage area, specifically within the Murderkill River watershed. In this watershed, the State of Delaware has developed specific Total Maximum Daily Load (TMDL) pollutant reduction targets which call for a 30 percent reduction in nitrogen and a 50 percent reduction in phosphorus from baseline conditions. The TMDL also calls for a 32 percent reduction in bacteria from baseline conditions. A TMDL is the maximum level of pollution allowed for a given pollutant below which a “water quality limited waterbody” 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.
- 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; the area of open space may exceed this 10 acre threshold. Please contact the Delaware Nutrient Management Program at (302) 739-4811 for further information concerning compliance requirements, or view additional information here: <http://dda.delaware.gov/nutrients/index.shtml>

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 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, stormwater management pond 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 any well(s).
- Should dewatering points be needed during any phase of construction, a dewatering well construction permit must be obtained from the Water Supply Section prior to construction of the well points. In addition, a water allocation permit will be needed if the pumping rate will exceed 50,000 gallons per day at any time during operation.
- All well permit applications must be prepared and signed by licensed water well contractors, and only licensed well drillers may construct the wells. Please factor in the necessary time for processing the well permit applications into the construction schedule. Dewatering well permit applications typically take four weeks to process,

which allows the necessary time for technical review and advertising. Should you have any questions concerning these comments please contact Rick Rios, at (302) 739-9944.

- Potential Contamination Sources do exist in the area, and any well permit applications will undergo a detailed review that may increase turnaround time and may require site specific conditions/recommendations. In this case there is a Groundwater Management Zone site named: Kent County Frederica Sludge Farm located within 1000 feet of the proposed project. Should you have any questions concerning these comments, please contact Rick Rios, at (302) 739-9944.

Sediment and Erosion Control/Stormwater Management

- A detailed sediment and stormwater plan will be required prior to any land disturbing activity taking place on the site. Contact the reviewing agency to schedule a pre-application meeting to discuss the sediment and erosion control and stormwater management components of the plan. The site topography, soils mapping, pre- and post-development runoff, and proposed method(s) and location(s) of stormwater management should be brought to the meeting for discussion. The plan review and approval as well as construction inspection will be coordinated through the Kent Conservation District. Contact Jared Adkins, Program Manager, at (302) 741-2600, ext. 3, for details regarding submittal requirements and fees.

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 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>.

Tank Management.

- 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 Leaking Underground Storage Tank project is located within the proposed project area:
 - Litton Special Devices Facility ID: 1-000462, Project: K9609158, (Inactive)
- 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 (800) 662-8802; and
 - The DNREC Tank Management Section (302) 395-2500.
- If any aboveground storage tanks (ASTs) less than 12,500 gallons are installed, they must be registered with the Tank Management Section. If any ASTs greater than 12,500 gallons are installed, they are also subject to installation approval by DNREC.
- For more information, go to: <http://www.dnrec.delaware.gov/tanks/Pages/default.aspx> or contact Ross D. Elliott with further questions at (302) 395-2500, or Ross.Elliott@state.de.us

Recycling.

- Delaware Law (7 *Del.C.*, §6053) and Regulations (7 *Del. Admin. C.* §1305) specify that the ‘commercial sector’ shall participate in a comprehensive recycling program. As such, all those involved with the planning of new development should give consideration to space for collection of recyclables that would be typically generated. For example, space for a recycling dumpster should be provided adjacent to each trash dumpster. For more information or assistance related to recycling requirements, benefits, tools, and assistance, please call (302) 739-9403.

State Historic Preservation Office – Contact Terrence Burns 736-7404

- We support no development, or rezoning of any kind, for any proposed project, in a Level-4 area. On the parcels, east of Bay Road (SR1), are two known houses (K07579; K07645). The parcels are a part of the South Frederica Grade Separated Intersection survey (43918) and US113 North-South Study survey reports (1000126, 100127), but the houses are not eligible for listing in the National Register of Historic Places. There are also other houses northwest of the parcels, west of Milford Neck Road, and east of Bay Road (K04768; K07562; K07564; K07508; K07644). They were also a part of the South Frederica Grade Separated Intersection and US113 North-South Study survey, but not eligible for listing in the National Register of Historic Places. There should also be sufficient landscaping between the development and the houses, to block adverse noise and visual effects.
- If any project or development proceeds, be aware of the Unmarked Human Burials and Human Skeletal Remains Law. 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 (Del. C. Title 7, 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 see more information, please review the following websites:
www.history.delaware.gov/preservation/umhr.shtml and
www.history.delaware.gov/preservation/cemeteries.shtml.

Therefore, prior to any demolition or ground-disturbing activities, the developer should hire an archaeological consultant, to examine the parcel for archaeological resources and plan to avoid those sites or areas.

- If there is federal involvement, 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 the following: www.achp.gov.

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