

**ORDINANCE NO. 2300**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR LAND APPLICATION OF CLASS "B" SANITARY WASTE, NON-SANITARY FOOD PROCESSING RESIDUALS, AND POTABLE WATER IRON RESIDUALS TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN CEDAR CREEK HUNDRED, SUSSEX COUNTY, CONTAINING 259.08 ACRES, MORE OR LESS (Tax Map I.D. 3-30-3.00-7.00, and 3-30-4.00-1.00, 1.01 to 1.04, 1.08 to 1.16, 19.00, and 21.00)**

**WHEREAS, on the 12th day of September 2012, a conditional use application, denominated Conditional Use No. 1946 was filed on behalf of Clean Delaware, LLC; and**

**WHEREAS, on the 15th day of November 2012, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 10th day of January 2013, said Planning and Zoning Commission recommended that Conditional Use No. 1946 be approved with conditions; and**

**WHEREAS, on the 11th day of December 2012, a public hearing was held, after notice, before the County Council of Sussex County and the County Council of Sussex County determined, based on the findings of facts, that said conditional use is in accordance with the Comprehensive Development Plan and promotes the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of Sussex County, and that the conditional use is for the general convenience and welfare of the inhabitants of Sussex County.**

**NOW, THEREFORE, THE COUNTY OF SUSSEX HEREBY ORDAINS:**

**Section 1. That Chapter 115, Article IV, Subsection 115-22, Code of Sussex County, be amended by adding the designation of Conditional Use No. 1946 as it applies to the property hereinafter described.**

**Section 2. The subject property is described as follows:**

**ALL that certain tract, piece or parcel of land, lying and being situate in Cedar Creek Hundred, Sussex County, Delaware, and lying on both sides of Road 201 (McColley Road) and north of and across from Road 202 (Stockley Road) and being more particularly described as 17 parcels of land owned by Lynn A. McColley and Karen K. McColley, said parcels containing 259.08 acres, more or less.**

**This Ordinance shall take effect immediately upon its adoption by majority vote of all members of the County Council of Sussex County, Delaware.**

**This Ordinance was adopted subject to the following conditions:**

- A. All activity shall be as authorized by and in compliance with Clean Delaware, LLC's DNREC permit "Authorization to Operate a Land Treatment System for the Agricultural Utilization of Sludge and Waste Products" (State Permit No. AGU 1202-5-03, as amended).**
- B. This approval shall automatically terminate in the event the DNREC permit referenced in Condition "A" expires, terminates, or is found in non-compliance.**
- C. Land application activities shall be limited to the hours of 8:00 a.m. to 6:00 p.m. Monday through Friday.**
- D. No land application materials shall be stockpiled longer than 5 days on the site.**
- E. The sources of materials shall be limited to those identified in DNREC's letter to the Applicant dated January 1, 2012. Those sources shall be identified on a revised Preliminary Site Plan and the Final Site Plan for the project.**
- F. Buffer areas for surface application shall include the following as required by DNREC, and those buffer areas shall be shown on the Final Site Plan:**
  - 1. 200 feet from occupied off-site dwellings of which 50 feet will be vegetated.**
  - 2. 100 feet from occupied on-site dwellings and potable wells.**
  - 3. 25 feet from non-potable wells and public roads.**
  - 4. 50 feet from bedrock outcrops, streams, tidal waters, and other water bodies.**
  - 5. 25 feet from drainage ditches.**
  - 6. The vegetated buffer requirement referenced in "A" above is overlaid by the Sussex County Planning and Zoning Commission on the DNREC buffer requirement.**
- G. Buffer areas for subsurface injection shall include the following as required by DNREC, and those buffer areas shall be shown on the Final Site Plan:**
  - 1. 100 feet from occupied off-site dwellings of which 50 feet will be vegetated.**
  - 2. 50 feet from occupied on-site dwellings and potable wells.**
  - 3. 25 feet from non-potable wells.**
  - 4. 15 feet from public roads.**
  - 5. 25 feet from bedrock outcrops, streams, tidal waters, other water bodies and drainage ditches.**

6. The vegetated buffer requirement referenced in "A" above is overlaid by the Sussex County Planning and Zoning Commission on the DNREC buffer requirement.
- H. The Final Site Plan shall show all avoidance areas due to flooding or high water tables.
- I. In addition to the buffers required by DNREC (Condition G), there shall be a buffer of at least 100 feet between any lands where materials are applied and any adjacent lands used for agricultural production. As proposed by the Applicant, this buffer area shall contain bio-swales or filter strips to prevent run-off onto adjacent crop lands. This buffer area and the bio-swales or filter strips shall be shown on the revised Preliminary Site Plan and Final Site Plan.
- J. All entrances and roadway improvements shall be constructed in accordance with DelDOT requirements.
- K. All entrances shall be improved and stabilized with pavement, crusher run or similar materials to decrease dust or other materials on County roadways.
- L. The location for the temporary stockpile of materials shall be shown on the site plan. It shall be located on the site to minimize any impacts on residences, neighboring properties, and the Mispillion River.
- M. Because the Mispillion River has an important environmental, ecological and eco-tourism role in Sussex County, there shall be a planted vegetated buffer between the area used for land application and the River to screen the use from the River. This vegetated buffer can coincide with the separation buffers required by DNREC.
- N. There shall be means and methods in place to eliminate pest and insect infestation that may result from this use.
- O. The Applicant shall submit a revised Preliminary Site Plan to the Office of Planning and Zoning incorporating or listing these conditions on it.
- P. The Final Site Plan shall be subject to the review and approval of the Planning and Zoning Commission.
- Q. The Applicant shall be required to relocate the access roads away from the chicken houses to another location that is as far removed as possible on the site from the chicken houses; the location is to be shown on the Final Site Plan.
- R. The Applicant shall comply with the requirement in the Cotten Engineering LLC letter dated February 6, 2013 to place a perimeter earthen berm on the down slope

in the areas of the concentrated drainage flow patterns and having the rim elevation of that berm approximately 2 feet above the existing grade. The location of the berm shall be shown on the Final Site Plan.

- S. The use shall be reviewed by DNREC every 5 years to confirm compliance with their permit and any new regulations. DNREC shall notify Sussex County of its findings.

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2300 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 16TH DAY OF APRIL 2013.**

  
ROBIN A. GRIFFITH  
CLERK OF THE COUNCIL

The Council found that the Conditional Use was appropriate legislative action based on the following Findings of Fact:

1. The Secretary of the Delaware Department of Agriculture has stated in a letter that the Department of Agriculture does not oppose the application if the applicant complies with all DNREC regulations.
2. The Delmarva Poultry Industry, Inc. has no objection to the proposed use and the proposed use will have minimal poultry health risks on Delmarva's chicken industry or nearby chicken growers, particularly concerning virus or bacteria transmissions.
3. Correspondence was received from J.G. Townsend, Jr. and Co. stating that they do not have any restrictions upon contract planting based upon the application of bio-solids on fields adjacent to those used for their purposes.
4. The use will be fully regulated by the Delaware Department of Natural Resources and Environmental Control (DNREC).
5. The recycling of bio-solids has several benefits, including the replenishment of organic matter of soil that has been depleted over time, improved crop yields, reduction in the need for chemical fertilizers, and it is economically efficient and environmentally appropriate.
6. The use is consistent with the existing agricultural use of the cleared fields on the subject parcel in that it will continue to be farmed.

- 7. The site will not be used continuously for land application of bio-solids; instead, the site will be part of a rotation of lands used for this purpose by Clean Delaware, LLC.**
- 8. There is a need in Sussex County for bio-solid land application sites.**
- 9. This use provides a service to Sussex County businesses, industries, municipalities, and developments in Sussex County by the reuse through land application of bio-solids and food by-products.**
- 10. This use is similar to land applications by Sussex County, Kent County, the City of Rehoboth, the Town of Georgetown, and other sites.**
- 11. With the conditions and limitations placed upon this use, there will be no adverse impacts on neighboring properties or the community.**
- 12. There was expert testimony presented by Clean Delaware, LLC that this site is particularly well suited since there are fine textured soils and deep groundwater levels. DNREC field approval was given on January 5, 2012.**
- 13. Land application of bio-solids and other similar materials have occurred on farms for years and this use will be no different from other types of farming operations where fertilizers and other similar products are applied – only there will be more regulation and monitoring of this use.**