

**ORDINANCE NO. 2589**

**AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR AN ELECTRICAL GENERATION AND NUTRIENT RECOVERY FACILITY TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN DAGSBORO HUNDRED, SUSSEX COUNTY, CONTAINING 16.71 ACRES, MORE OR LESS**

**WHEREAS, on the 31<sup>ST</sup> day of August 2017, a conditional use application, denominated Conditional Use No. 2113, was filed on behalf of CleanBay Renewables, LLC Sussex I; and**

**WHEREAS, on the 25th day of January 2018, a public hearing was held, after notice, before the Planning and Zoning Commission of Sussex County and on the 8th day of February 2018, said Planning and Zoning Commission recommended that Conditional Use No. 2113 be approved with conditions; and**

**WHEREAS, on the 31st day of July 2018, 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. 2113 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 Dagsboro Hundred, Sussex County, Delaware, and lying on the southwest corner of DuPont Boulevard (Route 113) and Breasure Road, and being more particularly described per the attached deed prepared by Moore & Rutt, P.A., said parcel containing 16.71 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 improvements for nutrient recovery and electrical generation shall be constructed and maintained in accordance with the Delaware Department of Natural Resources and Environmental Control, the State Fire Marshal, and any other state or federal agencies that have any jurisdiction over the development and use of the site.**
- B. As proffered by the applicant, all buildings on the site shall have an agricultural appearance. This shall not apply to the generators, holding and treatment tanks or towers located on the site.**
- C. The generators must have sound suppression measures in place and they must be located as far as possible from Breasure Road.**
- D. No entrance to the site shall be to or from Breasure Road.**
- E. All trucks entering or leaving the site shall be completely enclosed at all times.**
- F. All materials brought to the site shall be offloaded from trucks using a conveyor system. No open dumping shall be permitted.**
- G. No chicken litter or other materials brought to the site or the end-product from the use shall be stored outside on the site. All materials brought to the site shall be immediately offloaded from trucks into the facility's closed system.**
- H. Truck deliveries to the site shall be limited to the hours between 7:00 a.m. and 7:00 p.m., Monday through Saturday. No deliveries shall occur on Sunday, and no trucks containing materials shall remain on the site beyond the delivery hours or on Sundays.**
- I. The Final Site Plan shall include a thirty-foot wide "Forested and/or Landscaped Buffer Strip" meeting the planting requirements of Section 99-5 of the Code of Sussex County. Section 99-5 dictates the types of trees and vegetation, the density of the required trees and other plantings, minimum heights, and other requirements. The Final Site Plan shall contain a landscaping plan for these buffer areas.**
- J. The Applicant shall comply with all DelDOT requirements for roadway and entrance improvements.**
- K. One lighted sign shall be permitted on the site. The sign shall not exceed 32 square feet per side. Small directional signs shall also be permitted at the entrances to the site. The location of the signage shall be shown on the Final Site Plan.**
- L. Any violations of the conditions of approval may result in the termination of this Conditional Use.**
- M. The Final Site Plan shall contain the approval of the Sussex Conservation District regarding drainage and stormwater management requirements.**
- N. Any security lighting shall be designed so that it is downward screened so that it does not shine on neighboring properties or roadways. In addition, all exterior lighting shall automatically be dimmed between 9:00 p.m. and 6:00 a.m.**
- O. Prior to Final Site Plan approval, the applicant shall obtain a baseline water quality sample and the report from that shall be submitted to the Office of Planning and Zoning to confirm the groundwater quality prior to any development of the site.**
- P. The Final Site Plan shall be subject to the approval of the Sussex County Planning and Zoning Commission.**

**I DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF ORDINANCE NO. 2589 ADOPTED BY THE SUSSEX COUNTY COUNCIL ON THE 31ST DAY OF JULY 2018.**

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**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:**

- A. This is the application of CleanBay Renewables, LLC, Sussex I, to consider the Conditional Use of land in an AR-1 Agricultural Residential District for an electrical generation and nutrient recovery facility to be located on a certain parcel of land lying and being in Dagsboro Hundred, Sussex County, containing 16.71 acres, more or less (located at the southwest corner of DuPont Blvd. (Route 113) and Breasure Road) (Tax I.D. No. 133-6.00-123.00 (portion of) (911 Address: None Available).**
- B. Based on testimony before the Planning & Zoning Commission (“Commission”) and the public hearing before the Sussex County Council (“Council”), Council found that the following were present on behalf of this application: Dennis Schrader, Attorney with Morris James Wilson Halbrook & Bayard LLP, and Dr. Kristi Shaw, a doctor of Environmental Science and a Maryland certified Nutrient Management Consultant, were present at the Commission and Council hearings, Thomas Spangler, Principal of CleanBay Renewables, LLC, was present at the Commission hearing and Andy Hallmark was present at the Council hearing; that the site is 16.71 acres and is located adjacent to a borrow pit and former airport; that the Applicant proposes a public utility generation plant; that per the Comprehensive Plan, the site is low density; that it is in the Level 4 State Strategies; that they are not encouraging state spending; that this process has been through State PLUS review; that a letter from Delaware Electric Cooperative was submitted; that there are residences across Breasure Road to the north; that to the west of the property is the former airport and a borrow pit; that a solar farm is proposed across Route 113 to the east; that Breasure Road is used for local residences and for truck access to the Borrow Pit and Melvin Joseph construction site; that the property is currently used for agricultural purposes and contains a dwelling; that the dwelling is old and not habitable and would cost a lot of money to rehab; and that the initial plan is to demolish the house.**
- C. Council also found that the proposed plant would convert poultry litter and other poultry waste streams into energy; that Breasure Road would be used for trucks and employee entrance; that they would self-impose delivery hours six (6) days a week from 7:00 am to 7:00 pm; that DelDOT minimized the use of Route 113 for an entrance; that the type of trucks used are tractor trailers; that there will be 12 trucks per day maximum and each truck carries 23 tons of poultry litter; that half of those trucks exit empty and the other half exit with a saleable soil amendment by-product similar to what can be found in local garden stores; that they have a contract with litter brokers to obtain material; that the quantity of litter that goes through the facility is approximately 250 tons per day; that the service areas of the litter are generally within 50 miles of litter brokers; that the trucks come in and unload into a hopper type system which goes into enclosed tanks; that the entire process is a closed loop system; that liquid goes into tanks that breaks down the products then goes to other tanks to create gas to electrical generation which connects into the Delaware Electric Cooperative Substation; that some material is piped to the nutrient recovery building and creates approximately one truck load of struvite pellets per day; that they have separated the phosphorous; that they are then left with a soil amendment (nitrogen, potassium and a small amount phosphorous); that it is used as soil amendment for farm use with approximately five truckloads going out daily; that the gas on-site is a wet gas and it is not explosive; that the tanks on site are not explosive; that they would not explode if hit by an airplane; that the adjacent airport is closed; and that the chance of fire or explosion is very low.**

- D. Council also found that the architect is designing the facility as an agricultural type campus and will incorporate screening and landscaping for the site; that the plant is a 24 hour 7 day use; that it will provide security lighting and proper signage; that Dr. Shaw stated that the main environmental concerns are stormwater management and they are working with DNREC; that some wetlands are on-site and will be avoided; that the facility will be in compliance with air quality regulations; that the site will be monitored by DNREC for air, water and soil and will obtain proper permits; that Delaware Electric Cooperative supports this site; that the site is adjacent to Route 113 and due to the Corridor Protection status, DelDOT supports truck traffic on Breasure Road entrance; that the facility is a positive facility for the agricultural business community use in the County; that it is in compliance with the Comprehensive Plan to support agricultural use; that Mr. Spangler stated Breasure Road is the main truck access from Melvin Joseph borrow pit and asphalt plant; that the loads coming in are covered and don't have to be uncovered to unload; that they are willing to request them to remain covered while unloading; that it is a hooded conveyor (completely enclosed) while unloading the litter; that the generators are sound suppressed; that the generators will approximately be 300-500 feet from the nearest house; that the noise they would have is 60 decibels at 33 feet away from the containers, which is approximately the sound of air conditioner unit or dishwasher; that they have four generators that are 2.4 megawatts (2,400 kw) per generator; that it is an active sound dampening system containers for the generators which are off the shelf products; that two of the generators are sitting outside of a patient room at Salisbury Hospital; that the soil amendment by-product is pathogen free as a result of the process and will be a valuable commodity for local farmers; and that the homes should not feel or hear anything.**
- E. Council further found that the Applicant will take DAF and hatchery waste; that they have mitigated the smell while unloading by using an injector type system; that the unloading area is covered by an overhang with a carbon air filtration system approximately 300 feet away from Breasure Road; that screening around the site as well as the design of the facility will also help mitigate smells; that any odor that escapes from the unloading process will fall off by 100 feet from processing area according to odor experts; that it is a 15 minute controlled exposure going into a liquid based system and it is completely different than spreading on a farm field; that DelDOT came up with 84 trips per day based on employees and truck usage; that there will be three shifts; that the number of employees will be 15 to 17 on the major shift; that there will be a landscape buffer with trees and bushes with height; that they would like a 32 square foot lighted sign at the Breasure Road and Rt. 113 intersection or at facility entrance; that there will be security lighting which is motion activated; that it is highly mechanized and automated system; that outside lighting is unexpected after dark; that the trailers back in; and that a three foot height wall will be around the perimeter of unloading area for containment.**
- F. Based on the record and recommendation of the Planning and Zoning Commission and the Planning and Zoning Commission's Findings (1 through 11) and Conditions (12A through P), as amended, Council found that:**
- 1. The proposed Conditional Use is to establish a facility for nutrient recovery and conversion of poultry litter into electrical generation. The use and process of electrical generation will not include any incineration or composting of poultry waste.**
  - 2. The site is a 16.71-acre parcel of land with frontage on Route 113, which is one of the 3 major north-south truck routes through Sussex County. The site is also in close proximity to the existing electrical power grid. This is an appropriate and necessary location for this type of use.**
  - 3. The proposed use is consistent with other existing uses in the immediate vicinity, which include a large borrow pit, an asphalt plant, a large construction contractor equipment yard and an airstrip.**

4. **The proposed use is an agribusiness use which takes chicken litter, a byproduct of the Delmarva poultry industry, and converts it to electrical energy. This is a benefit to the agricultural industry of Sussex County through the re-use of chicken litter. It is also a benefit to residents and businesses within Sussex County by creating an economical alternative energy source for Sussex County and Delaware utility providers.**
5. **The entire process occurs within a closed system, from the time that the material delivered to the site arrives via truck through the end of the process when the pelletized remnants are removed from the site. There is no open storage of any material on site at any time.**
6. **There was nothing in the record to indicate that there will be significant odors from the site. And, given the current AR-1 zoning of the site, there are reasonable expectations that the site could currently be used for agricultural purposes that do generate odors associated with farming and poultry operations.**
7. **While there were concerns about traffic generated by the use, the actual amount of traffic is relatively minor given the prominent location of the site along Route 113 adjacent to other existing heavy uses. The Applicant testified that there are no more than 12 truck deliveries to the site per day and there are few employees associated with the use. And, the Delaware Department of Transportation will dictate entrance and roadway improvements necessitated by the use.**
8. **The Applicant testified that the use does not generate an extensive amount of noise. Any noise coming from the conversion process or the generators is comparable to the noise already created by traffic along Route 113.**
9. **The Applicants will be required to obtain all necessary permits and approvals from the Delaware Department of Natural Resources and Environmental Control, particularly those relating to air and water quality controls, and other agencies, prior to any operations on the site.**
10. **This parcel is appropriate for development given its proximity to the highway and being surrounded by other heavy commercial types of uses. This particular use, with the conditions and limitations placed upon it, will not have an adverse impact upon neighboring properties or the community.**
11. **This proposed use supports one of the primary goals of the current Sussex County Land Use Plan as stated on page 1 of that document: Conserve the County's agricultural economy. This goal is also restated in the Future Land Use Element of the Plan. This agribusiness use provides a market for the chicken litter byproduct of poultry operations which benefits and helps conserve the agricultural economy of Sussex County.**
12. **Based on the record and recommendation of the Planning & Zoning Commission, the Conditional Use is approved subject to sixteen (16) conditions (A - P), as amended, which will serve to minimize any potential impacts on the surrounding area and adjoining properties.**