

Heiden Road Development in the Town of Thompson

<https://thompsonny.munlicollab.com/planning-board/projects/heiden-road-riverside-warehouse-24-1-312-et-al-p-202-040/dashboard>

THIS IS THE WORKING LINK (as of 2/18/.26) TO ALL DOCUMENTS

<https://thompsonny.munlicollab.com/planning-board/projects/heiden-road-riverside-warehouse-24-1-312-et-al-p-202-040/tasks>

January 27, 2026

Project Identification, County Oversight, and SEQRA Context

This letter explains the purpose of the attached questions for the proposed Heiden Road development in the Town of Thompson, Sullivan County, New York, consisting of an approximately 1.5 million-square-foot warehouse and trucking terminal on approximately 390 acres near Route 17, as proposed by Kroeger USA, LLC. The project is currently undergoing environmental review pursuant to the State Environmental Quality Review Act (SEQRA). The Town of Thompson Planning Board has issued a Positive Declaration, requiring preparation of a Draft Environmental Impact Statement (DEIS).

No tenant, operator, or end user has been identified, and key operational characteristics including occupancy levels, hours of operation, intensity of use, security infrastructure, and wastewater generation-remain undefined. How they [the buildings and grounds,] maybe used by members of the public, journalists, advocacy organizations, and elected officials [need to be defined] to ensure transparency and accountability in the review of the Heiden Road warehouse proposal.

Purpose of the Attached Questions

The attached questions are not an accusation and do not **assert** that any particular tenant or use is planned for the Heiden Road project. Their purpose is to address a structural issue in land-use review that arises when a large industrial facility is proposed without an identified end user.

When a project of this scale proceeds without a disclosed tenant, environmental and land-use impacts necessarily depend on assumptions about future use. If those assumptions are left undefined, a project maybe approved based on low-intensity scenarios while still legally retaining the ability to accommodate much higher-impact uses later, without further meaningful public review.

The questions are designed to ensure that approvals are based on explicit, binding assumptions, rather than on silence or ambiguity.

How the "Lawful Ambiguity" Mechanism Works

In land-use and environmental review, it is legally permissible for developers to seek approval for a facility before identifying a tenant. This is common and not inherently improper.

However, when approvals are granted without use-based limitations, a mechanism sometimes emerges whereby:

1. A project is reviewed as a generic "warehouse" or "industrial facility"
2. Environmental impacts are modeled using relatively low-intensity operational assumptions
3. No binding conditions are adopted to limit future use
4. A later tenant with substantially different impacts can argue that:
 - o the use is still "industrial" or "warehouse" and
 - o no new discretionary approval is required

This creates what is often referred to informally as plausible deniability: no one has claimed a specific high-impact use, but nothing legally prevents it either.

The attached questions are designed to close that gap by requiring clear, on-the-record answers and, where appropriate, binding conditions.

Why DHS/ICE or For-Profit Custodial Uses Are Specifically Relevant

Facilities involving detention, secure holding, or involuntary confinement—whether operated by government agencies or private contractor—have materially different impacts than conventional warehousing, including;

- significantly higher and continuous occupancy
- 24-hour staffing and operations
- different water and wastewater profiles
- different emergency services demands
- security infrastructure and controlled egress

If such uses are not explicitly excluded or analyzed, they remain legally possible even if no one asserts they are planned.

The attached questions do not allege that such a use is intended. They ask whether the developer and the Planning Board are willing to affirmatively foreclose that possibility as a condition of approval.

Commented [1]:

Commented [2]:

How the Attached Questions Can Be Used

The attached questions are intentionally framed so that they can be used by multiple actors without speculation or accusation.

They may be used to:

- ask the developer to make binding commitments on the public record
- determine whether the Planning Board is approving a project with open-ended future uses
- inform press coverage focused on transparency and governance rather than conjecture
- assist elected officials in evaluating whether local control is being preserved
- support SEQRA findings that approvals are based on clearly disclosed assumptions

Critically, these questions force binary outcomes:

- If the developer answers yes, certain uses are excluded permanently.
- If the developer answers no, the public is entitled to understand what uses remain possible.

Either outcome improves transparency and reduces the risk of approvals being granted under incomplete assumptions.

Why This Matters

Once a project of this scale receives final land-use approvals without use-based limitations, the ability of the community to influence future outcomes is significantly diminished. Federal preemption, contractual arrangements, and change-of-tenant arguments can limit local oversight after the fact.

Commented [3]:

Asking these questions now, during the environmental review and approval process, is the last moment when meaningful clarity can be achieved without litigation.

Conclusion

The attached questions are a lawful, constructive tool to ensure that the Heiden Road project is reviewed and approved—if at all—based on what it can actually become, not only on what it is currently described to be.

They are offered in the interest of transparency, environmental protection, and informed decision-making, and may be used or cited by any party concerned with responsible land-use governance.