

1                   2020  
2                   SUSSEX COUNTY/DELAWARE DEPARTMENT OF TRANSPORTATION  
3                   MEMORANDUM OF UNDERSTANDING  
4                   FOR LAND DEVELOPMENT COORDINATION  
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6                   WHEREAS, Title 9, Section 6962 of the *Delaware Code* “Highway Capacity” obligates Sussex  
7                   County to “establish an agreement with the Department of Transportation to provide a procedure  
8                   for analysis by the Department of Transportation (“DelDOT”) of the effects on traffic of each  
9                   rezoning application; and

10                  WHEREAS, This Memorandum of Understanding is intended to comply with the foregoing  
11                  requirements of Title 9, Section 6962 of the Delaware Code; and

12                  WHEREAS, Land development has the potential to impact adjacent highways and Sussex County  
13                  and DelDOT recognize that an analysis of the effects upon traffic is important in all types of land  
14                  use decisions (Residential Planned Communities, Major Subdivisions, Conditional Uses) and not  
15                  just rezoning applications; and

16                  WHEREAS, The 2018 Sussex County Comprehensive Plan promotes greater coordination  
17                  between DelDOT and Sussex County in land use decisions; and

18                  WHEREAS, Sussex County is solely responsible for land use decisions in Sussex County; and

19                  WHEREAS, DelDOT is responsible for the operation, maintenance, and construction of State-  
20                  maintained roads as well as the regulation of all entrance and roadway improvements required as  
21                  part of new development; and

22                  WHEREAS, it is the desire of Sussex County and DelDOT to coordinate land development with  
23                  transportation needs.

24                  NOW, THEREFORE,

25                  BE IT RESOLVED that Sussex County Council and DelDOT hereby adopt the following  
26                  Memorandum of Understanding:

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28                  **DEFINITIONS**

29                  COMMITTED OFF-SITE IMPROVEMENTS – Road improvements for the benefit of safety  
30                  and/or capacity that are generally beyond the limits of the site entrance and frontage that are  
31                  required to be built by an approved land development project. Such improvements do not include  
32                  auxiliary lanes that serve the site entrance, but may include roadway widening along the frontage  
33                  of the site.

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46 AREA WIDE STUDY FEE (AWSF)– DelDOT regulations define an Area Wide Study Fee that,  
47 under certain conditions, DelDOT may accept when it would otherwise require a TIS. The fees  
48 accepted are used by DelDOT to subsidize the preparation of studies of larger areas than a TIS  
49 would normally address; they are not used to build improvements. Payment of the fee does not  
50 relieve a developer of responsibility to build or contribute toward transportation.

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52 LEVEL OF SERVICE (LOS) - A quantitative stratification of a performance measure or measures  
53 representing how well a transportation facility or service operates from a traveler's perspective.  
54 For each type of facility or service there are six levels of service, ranging from A to F, with A  
55 representing the best operating condition and F the worst operating conditions. Except as may be  
56 specified by DelDOT, LOS shall be determined in accordance with the current edition of the  
57 Highway Capacity Manual, a publication of the Transportation Research Board.

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59 PRELIMINARY TRAFFIC ANALYSIS – A request made by Sussex County Planning and  
60 Zoning Department for an evaluation by DelDOT, in terms of the proposed trip generation, to  
61 determine the Traffic Impact with regard to a proposed land use approval.

62 TRAFFIC IMPACTS:

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64 DIMINUTIVE - The proposed land use is expected to increase the trip generation of the  
65 subject land by fewer than 50 vehicle trips per day.

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67 NEGLIGIBLE - The proposed land use is expected to increase the trip generation of the  
68 subject land by fewer than 50 vehicle trips in any hour and fewer than 500 vehicle trips per  
69 day.

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71 MINOR - The proposed land use is expected to increase the trip generation of the subject  
72 land by at least 50 vehicle trips in any hour but fewer than 200 vehicle trips in any hour or  
73 at least 500 vehicle trips per day, but fewer than 2,000 vehicle trips per day.

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75 MAJOR - The proposed land use is expected to increase the trip generation of the subject  
76 land by more than 200 vehicle trips in any hour or more than 2,000 vehicle trips per day.

77 TRAFFIC IMPACT STUDY (TIS) – A study conducted during the development approval process,  
78 in accordance with applicable DelDOT regulations, to determine the impacts that traffic generated  
79 by the proposed development will have on the surrounding street network and the improvements  
80 needed to the transportation system in order to mitigate those impacts.

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82 TRAFFIC OPERATIONAL ANALYSIS (TOA) – An evaluation, or series of evaluations,  
83 conducted during the review of subdivision, land development and entrance plans, in accordance  
84 with applicable DelDOT regulations, primarily intended to determine site entrance location and  
85 movements to be allowed at the site entrance. These evaluations may include; Queuing Analysis,  
86 Highway Capacity Manual Analysis, and Crash Analysis.

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92     **LAND USE COORDINATION**

93     1. Sussex County will make the final decisions on all matters of land use.

94     2. Preliminary Traffic Analysis:

95       a. The Sussex County Planning and Zoning Department will request a Preliminary Traffic  
96           Analysis from DelDOT for each land use application to determine if the resulting traffic  
97           impact will be diminutive, negligible, minor, or major. This shall not be required where  
98           the County Planning and Zoning staff, in concurrence with DelDOT staff, finds that  
99           the proposed change in land use will have a diminutive impact upon the road system.

100      b. DelDOT shall provide a Preliminary Traffic Analysis within twenty (20) working days  
101           after receiving the Analysis request. If more time is needed, a written request  
102           explaining the reason for the additional time will be required.

103      c. Unless waived as set forth in Paragraph 2.a. above, Sussex County will not consider an  
104           application until DelDOT supplies Sussex County with the above information.

105     3. Diminutive Impact:

106       a. When it is determined that the impact would be diminutive, no further traffic analysis  
107           will be necessary.

108     4. Negligible Impact:

109       a. When DelDOT determines the traffic impact to be negligible it will provide projected  
110           traffic volumes in support and no further traffic analysis will be necessary.

111       b. DelDOT may still identify the need for a TOA in a subsequent plan review process.

112     5. Minor Impact:

113       a. When DelDOT determines the traffic impact to be minor, the Preliminary Traffic  
114           Analysis shall include the feasibility of providing safe access and the condition,  
115           pavement, and the geometry of the nearby roadways and intersections relative to the  
116           traffic the subject property could generate. Where any of these are deemed potentially  
117           inadequate, DelDOT shall comment to this effect, and identify roadway improvements  
118           that shall be required by the Developer.

119       b. When DelDOT determines that the traffic impact will be minor, the developer will be  
120           required to pay an Area Wide Study Fee (AWSF). An AWSF letter will be generated  
121           to document the developer's obligations to construct identified roadway improvements  
122           or fund road improvements as required by DelDOT.

- 124        • Alternative to an Area Wide Study Fee, the developer may elect to conduct an  
125        in-depth Traffic Impact Study (TIS) (at the developer's expense) to DelDOT  
126        standards.  
127        • Payment of the fee does not exempt the developer from the responsibility to  
128        make off-site improvements or from preparing a Traffic Operational Analysis  
129        (TOA) if DelDOT identifies a need for a TOA in the plan review process.  
130        c. DelDOT may require a TIS if necessary, given the particular circumstances of a land  
131        use application.

132        6. Major Impact:

- 133        a. When DelDOT determines that the traffic impact will be major, the developer will be  
134        required to conduct an in-depth Traffic Impact Study (TIS) (at the developer's  
135        expense) to DelDOT standards. In addition, Sussex County, at its own initiative, may  
136        require a developer to conduct a TIS.  
137        b. Additionally, DelDOT may ask for a Traffic Operational Analysis (TOA) to  
138        supplement an existing TIS.  
139        c. As an alternative to the TIS or TOA process set forth above, when DelDOT has  
140        determined that the area in question has already been the subject of sufficient study, a  
141        new TIS or TOA may not be required. Instead, DelDOT may require an AWSF to be  
142        paid by the developer to DelDOT to recoup all or a portion of the cost of the prior  
143        studies relied upon by DelDOT in lieu of a new TIS or TOA. The AWSF is unrelated to  
144        the developer's subsequent obligations to construct or fund road improvements as  
145        required by DelDOT and the "Fee in Lieu" is not a waiver of those requirements. A  
146        TISRL or AWSF letter will be generated to document the developer's obligations.

147        7. Elements of the Traffic Impact Study:

- 148        a. The TIS will consider the effects of active or proposed transportation improvements in  
149        the adopted Six (6) Year Capital Transportation Program, Current Transportation  
150        Plans, and Committed Off-Site Improvements, committed developments approved by  
151        Sussex County and the current Sussex County Comprehensive Plan and establish  
152        staging for development as needed.  
153        b. DelDOT will provide a technical evaluation of the TIS in the form of written comments  
154        in a Traffic Impact Study Review Letter (TISRL).

156 8. Level of Service Standards:

- 157 a. Sussex County and DelDOT shall endeavor, where possible, to maintain a Level of  
158 Service of D on roads and intersections affected by a land use application. However,  
159 Sussex County and DelDOT recognize that:
- 160 • Level of Service of D is not always attainable;  
161 • That this threshold may create an undue burden on a property owner looking to  
162 develop a property given the prior development that has occurred in an area  
163 contributing to the existing Level of Service;  
164 • Other relevant factors (such as the size of the property, type or importance of the  
165 development) may mitigate against maintaining a Level of Service D.
- 166 b. If the existing Level of Service is below D prior to the impact of the proposed land use,  
167 the existing Level of Service must at least be maintained.
- 168 c. When DelDOT determines that the traffic impact of the proposed land use causes the  
169 threshold level of service to be exceeded, the County will not approve the land use  
170 application unless:
- 171 • The developer takes appropriate measures to maintain operations at the threshold  
172 level of service; or,  
173 • Sussex County finds that there are sufficient reasons why the threshold level of  
174 service should not be maintained. Sussex County, in this case, shall set forth in  
175 writing their reasons for approving the land use application.

176 9. Coordination:

- 177 a. The Sussex County Planning and Zoning Department is responsible for coordinating  
178 all required information with Sussex County Council and the Planning and Zoning  
179 Commission.
- 180 b. No public hearing on the land use application shall occur until one of the following  
181 conditions are met:
- 182 • It is determined that the application will have a diminutive impact as described  
183 above; or,  
184 It is determined that the application will have a negligible impact as described  
185 above; or,  
186 • Sussex County receives the AWSF Letter from DelDOT; or,  
187 • Sussex County receives the TISRL from DelDOT.

188       c. If, in DelDOT's opinion, there are appropriate conditions of approval that should be  
189       imposed upon a land use decision, DelDOT shall offer those conditions as part of its  
190       TISRL, AWSF Letter or as part of its Technical Advisory Committee review for  
191       consideration by Sussex County. Any such proposed conditions shall be clearly  
192       summarized by DelDOT prior to the Preliminary Site Plan hearing. Sussex County shall  
193       consider the proposed conditions but shall not be obligated to include them as part of  
194       any approval.

195       d. Phasing of land development with highway capacity and safety improvements to  
196       restore and maintain a level of service "D" may be recommended by DelDOT. Such  
197       phasing may refer to sections or areas of the development or to a specific number of  
198       building permits. To accomplish this, DelDOT should clearly and concisely state what  
199       phasing is appropriate for the proposed land use application so that Sussex County may  
200       impose all or part of those recommendations into its various approvals as appropriate.  
201       DelDOT's recommended phasing of the project may include (but is not limited to)  
202       consideration of the following:

- 203       • A delay of all or part of the development until specific roadway improvements  
204       are made by DelDOT or others;
- 205       • Whether the required roadway improvements are being funded, designed and/or  
206       constructed at the developer's own expense;
- 207       • Whether the developer is participating in, and/or funding, transit or traffic  
208       mitigation strategies.

209       The phasing requirements shall be included as part of the Final Site Plan. Phasing tied  
210       to other types of site plan approval is addressed in a following Section of this MOU  
211       regarding Site Plan Coordination.

212       e. When Sussex County believes that expert testimony regarding transportation issues is  
213       required to make a land use decision (such as a rezoning, major subdivision, conditional  
214       use or Residential Planned Community), DelDOT will provide a suitable representative  
215       to attend meetings of the Planning and Zoning Commission and/or County Council.  
216       The representative should be someone with specific technical knowledge of the project  
217       in particular and ongoing projects in the area of Sussex County where the project is to  
218       occur.

- 220 f. In addition to the project-specific information referenced in the preceding paragraph,  
221 DelDOT shall provide regular updates to Sussex County about the status of ongoing  
222 and future roadway and transportation projects in the County, so that County Council  
223 and the Planning & Zoning Commission have an up-to-date understanding of their  
224 status. This shall include both developer-funded and DelDOT-initiated and -funded  
225 projects. During these updates, Sussex County will also have an opportunity to discuss  
226 other transportation improvements that may be needed in the future.
- 227 g. Whenever possible during the implementation of the foregoing items, Sussex County  
228 and DelDOT should encourage master planning for large scale developments on large  
229 parcels or groups of parcels in the Town Center, Coastal Area, Developing Area and  
230 commercial areas as set forth in the Comprehensive Land Use Plan to provide greater  
231 flexibility in design and/or the installation of additional roadways and  
232 interconnectivity.
- 233 h. Sussex County shall be invited to participate in the scoping meetings and the  
234 conversations leading to the issuance of the TISRL, the AWSF Letter or TOA as to  
235 roadway improvements associated with a project. Sussex County may provide input  
236 into those negotiations, but DelDOT shall be entitled to make the final determination as  
237 to all required roadway improvements and negotiated agreements with a developer.  
238 Any agreement reached between a developer and DelDOT as to roadway  
239 improvements, phasing of a development and funding of roadway improvements shall  
240 be timely forwarded to Sussex County for its records with regard to the development.  
241 Any subsequent changes or amendments to a DelDOT and developer agreement shall  
242 likewise be timely forwarded to Sussex County. Provided, however, that DelDOT  
243 acknowledges that if a specific requirement (such as phasing) is incorporated into a  
244 land use decision (such as a major subdivision, conditional use or Residential Planned  
245 Community), this may not be enforceable by Sussex County without an amendment to  
246 the subdivision approval or the ordinance that approved a Residential Planned  
247 Community, Conditional Use or certain other rezonings where conditions can be  
248 imposed.

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252 **REZONINGS (WITHOUT SITE PLANS OR CONDITIONS OF APPROVAL)**

- 253 1. Sussex County and DelDOT acknowledge that on a rezoning to a new zoning district where a  
254 specific site plan is not under consideration, and where the County cannot impose conditions  
255 as part of the rezoning approval, a TIS may not be possible (with the exception of rezoning's  
256 to Residential Planned Communities and C-4, where specific site plans are considered and  
257 conditions can be imposed). This is because the various zoning districts have several permitted  
258 uses that are allowed once a rezoning occurs; as a result DelDOT cannot determine, at the time  
259 of rezoning, what the actual use will be nor what the traffic and possible roadway  
260 improvements will be as a result of it. This requires greater coordination on the part of both  
261 Sussex County and DelDOT.
- 262 2. Whenever possible, DelDOT shall endeavor to provide as much information about the general  
263 impacts of the rezoning upon area traffic and roadways as required in the preceding section prior  
264 to the public hearing before Sussex County Council and the Planning & Zoning Commission.
- 265 3. Whenever DelDOT is approached by a developer with a specific project in mind, DelDOT and  
266 that developer may enter into an agreement to obtain a TIS for the project as part of the  
267 rezoning process so that the information required as part of the TIS may be included in the  
268 record of the public hearings of the rezoning application. Because other possible uses of the  
269 property may be permitted under the proposed new zoning, Sussex County is not bound by this  
270 information in making its decision on the rezoning. However, if the use that the TIS is based  
271 upon changes after the rezoning occurs, another TIS may be required and if so, Sussex County  
272 shall not approve any Preliminary or Final Site Plan for the property until the new TIS is  
273 completed with all necessary traffic and roadway improvements determined by DelDOT.  
274 Alternatively, if no TIS is performed on a specific project, DelDOT or Sussex County shall have  
275 the ability to request a TIS based upon the most impactful permitted use available under the  
276 new zoning classification that is sought.

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282    **SITE PLAN COORDINATION**

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- 284    1. Sections 115-220C and 221C of the Sussex County Zoning Code allow Sussex County to  
285    approve certain site plans “subject to conditions”. In any site plan reviewed pursuant to Section  
286    115-220 of the Sussex Zoning Code, Sussex County, with the assistance of DelDOT, may  
287    impose conditions regarding phasing and the timing of building permits in conjunction with  
288    completion of necessary roadway improvements.
- 289    2. In all site plan reviews, DelDOT will review the site plans in accordance with its rules and  
290    regulations for access and roadway improvements. Sussex County will withhold any site plan  
291    approval until DelDOT has provided a Letter of No Contention (LONC) or a Letter of No  
292    Objection to Recordation (LONOR). Provided, however, that this requirement may be waived  
293    by Sussex County for minor amendments to existing site plans that changes the trip generation  
294    by less than 50 trips per day.
- 295    3. Sussex County shall withhold the issuance of any building permit until DelDOT has issued the  
296    entrance permit associated with the project.
- 297    4. Unless bonded in accordance with DelDOT’s requirements, DelDOT will withhold an entrance  
298    permit until the developer has agreed to construct the access point(s) to Department standards  
299    and to provide off-site improvements as may be required to maintain acceptable traffic  
300    operation on roadways.
- 301    5. Sussex County will withhold issuance of the Certificate of Compliance until DelDOT has  
302    received appropriate bonding or accepted the entrance construction as substantially completed.
- 303    6. The coordination described in this section shall take into consideration any phasing of the land  
304    use project.

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## **TRANSPORTATION IMPROVEMENT DISTRICTS**

1. In the event that a land use application falls within an approved Transportation Improvement District (“TID”), the requirements of the TID, as set forth in the TID Agreement, shall supersede the requirements set forth in this MOU.

IT IS FURTHER RESOLVED that the Secretary of the Delaware Department of Transportation and the County Administrator will affirm this agreement by affixing their signature to this Resolution.

Adopted by the County Council of Sussex County on \_\_\_\_\_, 2020.

## President of the County Council of Sussex County

The following signatures concurring herein:

## **For Sussex County:**

Todd F. Lawson, Sussex County Administrator

Robert Wheatley, Chairman, Sussex County  
Planning & Zoning Commission

Jamie Whitehouse, Director of Planning & Zoning

## **For the Department of Transportation:**

Jennifer Cohan, Secretary