

**Memorandum of Understanding
between
Sussex County, Delaware
and the
Delaware Office of State Planning Coordination**

WHEREAS, the State of Delaware ("State") has determined that certain local land use decisions have far reaching and complex effects on the region, resulting in development which often requires the commitment of finite resources by the various levels of government as well as private investors; and

WHEREAS, coordinated review of certain development activities would result in a more efficient, effective, and timely use of resources and would also achieve consistency and coordination between the various levels of government and other interested parties; and

WHEREAS, under Chapter 92 of Title 29 of the *Delaware Code*, local land use planning actions by local governments are subject to pre-application review processes by the Office of the State Planning Coordination (OSPC); and

WHEREAS, under Chapter 92, Section 9205 (c) of Title 29 of the *Delaware Code*, the OSPC shall, through a Memorandum of Understanding, exempt a local jurisdiction from the provisions of the Land Use Act or modify the pre-application process when the local jurisdiction has a Certified Comprehensive Plan and imposes a more stringent review of projects; and

WHEREAS, Sussex County and the State previously executed a Memorandum of Understanding regarding State review of certain Development Activities in October of 2003 (the "2003 Memorandum"); and

WHEREAS, the State and Sussex County acknowledge that the 2003 Memorandum does not adequately address the process of State review of Comprehensive Plans or amendments thereto (including amendments to the Future Land Use Map contained therein); and

WHEREAS, Sussex County has an area comprising approximately 1,196 square miles, and the parties recognize that as a result of the size and scope of this area, adjustments to the mapping set forth in the Sussex County Comprehensive Plan may require adjustments from time to time; and

WHEREAS, the State and Sussex County desire to update the 2003 Memorandum and execute this new Memorandum of Understanding to more clearly address Development Activities governed by Chapter 92 of Title 29 of the *Delaware Code* and Comprehensive Plans governed by Chapter 68 of Title 9 of the *Delaware Code* and reviewed under Chapter 92. Subchapter 1 of Title 29 of the *Delaware Code*.

NOW, THEREFORE, BE IT RESOLVED, that Sussex County and the Office of the State Planning Coordination agree as follows:

I. Development Activities Requiring State Review.

The following development activities require OSPC review:

- A. Any Residential Planned Community or any other zoning districts that encourages master planning of site.
- B. Major residential subdivisions or conditional uses containing more than 50 dwelling units, as described in Section 9203 of Title 29 of the *Delaware Code*.
- C. Major non-residential subdivisions, site plans, and conditional uses with a cumulative total floor area exceeding 75,000 square feet.
- D. Any rezoning or conditional use within the Coastal Area identified in the current Sussex County Comprehensive Plan that would increase intensity or residential density.
- E. Applications for rezoning or conditional use that are inconsistent with the current Sussex County Comprehensive Plan.
- F. Any local land use regulation, ordinance, or requirement referred to the Office of State Planning Coordination ("OSPC") by Sussex County for the purpose of providing the County with advisory comments. These include the modifications to the County's zoning and subdivision ordinances that implement the Comprehensive Plan.
- G. Any amendment, modification, or update to the Sussex County Comprehensive Plan, as required by Ch. 68 of Title 9 of the *Delaware Code*, provided that minor variations will be reviewed by the process described in Section II below.
- H. Any other project which is referred to the State for Pre-Application review by Sussex County.

II. Process for Office of State Planning Coordination Review of Items I, A. through F.

The process for review of Items I., A. through F. above shall be governed by Title 29, Section 9204 of the *Delaware Code*, referred to as the Pre-Application Review Process in the Del. Code and commonly known as the Preliminary Land Use Service Process (PLUS).

III. Process for Office of State Planning Coordination Review of Amendments to the Comprehensive Plan.

The process for review of any amendment, modification, or update to the Sussex County Comprehensive Plan (the "Plan") including specifically the Future Land Use Map (the "FLUM") shall be as follows:

- A. Ten year updates to the Sussex County Comprehensive Plan shall be reviewed under the procedures found in Titles 9 and 29 of the Delaware Code.
- B. It is recognized that the Plan is expected to be updated every ten years in accordance with Section 6960 of Title 9 of the *Delaware Code*. As a result, the State and Sussex County acknowledge that there may be amendments to the Plan or the FLUM initiated by Sussex County, by property owners or by other interested parties within that ten-year period. The basis for such an amendment may include, but not be limited to, changes in circumstances surrounding the area or property in question, to correct an oversight or omission in the current Plan or other unforeseen or justifiable reasons.
- C. Unless the amendment is initiated by Sussex County, the process for an amendment to the Plan or FLUM shall first be initiated through Sussex County. In the case of an amendment requested by a property owner or other interested party (the "Applicant"), Sussex County, may request the property owner or their representative to speak at the PLUS meeting as a part of the county's presentation.
- D. Upon receipt of a completed Application Form, Sussex County shall schedule a public hearing before its Planning & Zoning Commission in accordance with Section 6911 of Title 9 of the *Delaware Code*.
- E. Following its public hearing of the Planning and Zoning Commission, the County will forward the plan amendment to the OSPC for PLUS Review in accordance with Section 9103(c) of Title 29 of the *Delaware Code*. All relevant materials presented to Planning and Zoning will accompany the PLUS application.
- F. Following the completion of the PLUS review and after receiving OSPC's response letter, the County shall schedule public meetings before its County Council in accordance with Section 6911 of Title 9 of the *Delaware Code*.
- G. Minor variations are comprehensive plan amendments where the amendment is of a minor, relatively insignificant nature. An amendment shall be considered a minor variation from the Comprehensive Plan when the following conditions are met:
 - a) The amendment is of a unique circumstance and cannot set precedence for other lands in the vicinity of the amendment.

- b) The relative size of the amendment or the variation from the land use recommended by the Comprehensive Plan is so minor that it would have no impact on the goals and objectives of the Comprehensive Plan, and
- c) The proposed amendment and subsequent rezoning is adjacent to or in the immediate vicinity of other similarly zoned lands and would not alter the pattern of development in the area.

Upon notification of a plan amendment that meets all of the above listed criteria, the OSPC will consider the request and will respond in writing to the County identifying whether it will agree to waive the PLUS review process for the specific request.

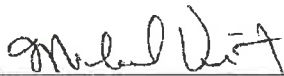
- H. And further, in accordance with Title 9, Section 9206(a) of the Delaware Code, Sussex County has "final decision-making authority over proposed local land use planning actions". Once Sussex County makes its final decision, it will notify OSPC of its decision as soon as possible. Title 9, Section 9206(b).
- I. In accordance with Title 29, Section 9103 (d) of the *Delaware Code*, Should the Office of State Planning Coordination make objection to any proposed comprehensive plan or amendments or revisions thereto, then the Office of State Planning Coordination shall immediately enter into negotiation with the county or municipality in an attempt to solicit agreement and resolution. Any agreements reached during these negotiations shall be incorporated into the public record and considered by the governing body prior to final action on the comprehensive plan. If the Office of State Planning Coordination and the county or municipality fail to reach agreement after a period of 45 days, the Office of State Planning Coordination shall report the extent of agreement and areas of continued disagreement to the Cabinet Committee on State Planning Issues ("Cabinet Committee") for dispute resolution.
- J. In accordance with Title 29, Section 9103(f) of the *Delaware Code*, Sussex County "shall have the right to accept or reject any or all of the recommendations" of the Cabinet Committee and "[t]he final decision on the adoption of the comprehensive plan is that of ... the county."
- K. In accordance with Title 9, Section 6958 (b) of the *Delaware Code*, the State shall not be obligated to provide state financial assistance or infrastructure improvements to support land use or development actions by Sussex County where Sussex County's adopted comprehensive plan or portions thereof are determined to be substantially inconsistent with State development policies.

IV. Waivers

In special circumstances, the Office of State Planning Coordination may waive the pre-application requirements of this chapter. Where such waiver is granted, the Office of State Planning Coordination shall provide a written explanation of the causes for the waiver to the relevant local

jurisdiction and the applicant. These circumstances may include, but are not limited to, local governments that impose a more stringent review of projects enumerated in § 9203(a) of Title 29 than required by this chapter, or for projects which will provide an extraordinary benefit to the State and the local jurisdiction through economic development, job creation, educational opportunities, public services or facilities, agricultural preservation or protection and enhancement of the natural environment.

BE IT FURTHER RESOLVED that this Memorandum of Understanding may be revised from time to time as circumstances warrant, only with the concurrence of both Sussex County and the Office of State Planning Coordination, or in relation to significant changes within the State Code.



President, Sussex County Council
Sussex County, Delaware



Director
Office of State Planning Coordination

3/5/24

Date

5/7/24

Date