

2020
SUSSEX COUNTY/DELAWARE DEPARTMENT OF TRANSPORTATION
MEMORANDUM OF UNDERSTANDING
FOR LAND DEVELOPMENT COORDINATION

WHEREAS, Title 9, Section 6962 of the *Delaware Code* “Highway Capacity” obligates Sussex County to “establish an agreement with the Department of Transportation to provide a procedure for analysis by the Department of Transportation (“DelDOT”) of the effects on traffic of each rezoning application; and

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

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

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

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

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

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

NOW, THEREFORE,

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

DEFINITIONS

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

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

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

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

TRAFFIC IMPACTS:

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

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

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

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

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

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

LAND USE COORDINATION

1. Sussex County will make the final decisions on all matters of land use.
2. Preliminary Traffic Analysis:
 - a. The Sussex County Planning and Zoning Department will request a Preliminary Traffic Analysis from DelDOT for each land use application to determine if the resulting traffic impact will be diminutive, negligible, minor, or major. This shall not be required where the County Planning and Zoning staff, in concurrence with DelDOT staff, finds that the proposed change in land use will have a diminutive impact upon the road system.
 - b. DelDOT shall provide a Preliminary Traffic Analysis within twenty (20) working days after receiving the Analysis request. If more time is needed, a written request explaining the reason for the additional time will be required.
 - c. Unless waived as set forth in Paragraph 2.a. above, Sussex County will not consider an application until DelDOT supplies Sussex County with the above information.
3. Diminutive Impact:
 - a. When it is determined that the impact would be diminutive, no further traffic analysis will be necessary.
4. Negligible Impact:
 - a. When DelDOT determines the traffic impact to be negligible it will provide projected traffic volumes in support and no further traffic analysis will be necessary.
 - b. DelDOT may still identify the need for a TOA in a subsequent plan review process.
5. Minor Impact:
 - a. When DelDOT determines the traffic impact to be minor, the Preliminary Traffic Analysis shall include the feasibility of providing safe access and the condition, pavement, and the geometry of the nearby roadways and intersections relative to the traffic the subject property could generate. Where any of these are deemed potentially inadequate, DelDOT shall comment to this effect, and identify roadway improvements that shall be required by the Developer.
 - b. When DelDOT determines that the traffic impact will be minor, the developer will be required to pay an Area Wide Study Fee (AWSF). An AWSF letter will be generated to document the developer's obligations to construct identified roadway improvements or fund road improvements as required by DelDOT.

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

6. Major Impact:

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

7. Elements of the Traffic Impact Study:

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

8. Level of Service Standards:

- a. Sussex County and DelDOT shall endeavor, where possible, to maintain a Level of Service of D on roads and intersections affected by a land use application. However, Sussex County and DelDOT recognize that:
 - Level of Service of D is not always attainable;
 - That this threshold may create an undue burden on a property owner looking to develop a property given the prior development that has occurred in an area contributing to the existing Level of Service;
 - Other relevant factors (such as the size of the property, type or importance of the development) may mitigate against maintaining a Level of Service D.
- b. If the existing Level of Service is below D prior to the impact of the proposed land use, in no event shall the existing Level of Service be degraded. .
- c. When DelDOT determines that the traffic impact of the proposed land use causes the threshold level of service to be exceeded, the County will not approve the land use application unless:
 - The developer takes appropriate measures to maintain operations at the threshold level of service; or,
 - Sussex County finds that there are sufficient reasons why the threshold level of service should not be maintained. Sussex County, in this case, shall set forth in writing their reasons for approving the land use application.

9. Coordination:

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

- c. If, in DelDOT's opinion, there are appropriate conditions of approval that should be imposed upon a land use decision, DelDOT shall offer those conditions as part of its TISRL, AWSF Letter or as part of its Technical Advisory Committee review for consideration by Sussex County. Any such proposed conditions shall be clearly summarized by DelDOT prior to the Preliminary Site Plan hearing. Sussex County shall consider the proposed conditions but shall not be obligated to include them as part of any approval.
- d. Phasing of land development with highway capacity and safety improvements to restore and maintain a level of service "D" may be recommended by DelDOT. Such phasing may refer to sections or areas of the development or to a specific number of building permits. To accomplish this, DelDOT should clearly and concisely state what phasing is appropriate for the proposed land use application so that Sussex County may impose all or part of those recommendations into its various approvals as appropriate. DelDOT's recommended phasing of the project may include (but is not limited to) consideration of the following:
- A delay of all or part of the development until specific roadway improvements are made by DelDOT or others;
 - Whether the required roadway improvements are being funded, designed and/ or constructed at the developer's own expense;
 - Whether the developer is participating in, and/or funding, transit or traffic mitigation strategies.

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

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

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

REZONINGS (WITHOUT SITE PLANS OR CONDITIONS OF APPROVAL)

1. Sussex County and DelDOT acknowledge that on a rezoning to a new zoning district where a specific site plan is not under consideration, and where the County cannot impose conditions as part of the rezoning approval, a TIS may not be possible (with the exception of rezoning's to Residential Planned Communities and C-4, where specific site plans are considered and conditions can be imposed). This is because the various zoning districts have several permitted uses that are allowed once a rezoning occurs; as a result DelDOT cannot determine, at the time of rezoning, what the actual use will be nor what the traffic and possible roadway improvements will be as a result of it. This requires greater coordination on the part of both Sussex County and DelDOT.
2. Whenever possible, DelDOT shall endeavor to provide as much information as possible about the general impacts of the rezoning upon area traffic and roadways as required in the preceding section prior to the public hearing before Sussex County Council and the Planning & Zoning Commission. This shall include, but is not limited to, recent studies performed on roadways in the immediate area, including any TIS's that may exist; information about the existing LOS in the immediate area based on prior studies; planned roadway improvements in the immediate area; the impacts and required improvements of approved, but not yet completed developments in the immediate area; and any other relevant information in DelDOT's possession that can assist Sussex County in making a rezoning decision.
3. Whenever DelDOT is approached by a developer with a specific project in mind, DelDOT and that developer may enter into an agreement to obtain a TIS for the project as part of the rezoning process so that the information required as part of the TIS may be included in the record of the public hearings of the rezoning application. Because other possible uses of the property may be permitted under the proposed new zoning, Sussex County is not bound by this information in making its decision on the rezoning. However, if the use that the TIS is based upon changes after the rezoning occurs, another TIS may be required and if so, Sussex County shall not approve any Preliminary or Final Site Plan for the property until the new TIS is completed with all necessary traffic and roadway improvements determined by DelDOT. Alternatively, if no TIS is performed on a specific project, DelDOT or Sussex County shall have the ability to request a TIS based upon the most impactful permitted use available under the new zoning classification that is sought.

SITE PLAN COORDINATION

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

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 the Resolution.


Adopted by the County Council of Sussex County on September 22, 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