

2019

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 (“DeIDOT”) 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 DeIDOT 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 DeIDOT and Sussex County in land use decisions; and

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

WHEREAS, ~~the~~ DeIDOT 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 DeIDOT to coordinate land development with transportation needs.

NOW, THEREFORE,

BE IT RESOLVED that Sussex County Council and DeIDOT 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.

46 FEE IN LIEU - DeIDOT regulations define an Area Wide Study Fee that, under certain conditions,  
47 DeIDOT may accept when it would otherwise require a TIS. The fees accepted are used by  
48 DeIDOT to subsidize the preparation of studies of larger areas than a TIS would normally address;  
49 they are not used to build improvements. Payment of the fee does not relieve a developer of  
50 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 DeIDOT, 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 - An evaluation by DeIDOT, in terms of the proposed  
60 trip generation, to determine whether a Traffic Impact Study is necessary with regard to a proposed  
61 land use approval.

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63 TRAFFIC IMPACTS:

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

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

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

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

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77 TRAFFIC IMPACT STUDY (TIS) – A study conducted during the development approval process,  
78 in accordance with applicable DeIDOT 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 DeIDOT 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**

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- 94 1. Sussex County will make the final decisions on all matters of land use.
- 95 2. 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 negligible, minor, or major. This shall not be required where the County
- 98 Planning and Zoning staff, in concurrence with DelDOT staff, finds that the proposed
- 99 change in land use will have a diminutive impact upon the road system. Unless more time
- 100 is required given the size or complexity of the land use application, DelDOT shall endeavor
- 101 to provide a Preliminary Traffic Analysis within twenty days after receiving the Analysis
- 102 request.

103 ~~3. Given the seasonal nature of high volume traffic volume in Sussex County, and since the~~

104 ~~“season” has expanded beyond just Memorial Day through Labor Day, with very high~~

105 ~~traffic volumes on seasonal weekends, it is important for DelDOT to take into account~~

106 ~~these high volumes in any analysis that it performs. To be effective, low volume off season~~

107 ~~volumes should not be utilized where they will artificially lower average traffic volumes.~~

108 4.3. Unless waived as set forth in Paragraph 2 above, Sussex County will not consider an

109 application until DelDOT supplies Sussex County with the above information.

110 5.4. When it is determined that the traffic impact would be diminutive or negligible, no further

111 traffic analysis will be necessary. DelDOT has the authority to make such a determination

112 where (based on the full development of the property as limited by either the zoning code

113 or other factors) the expected average daily traffic (ADT) of the site will not exceed five

114 hundred (500) trips. When DelDOT determines negligible impact will occur, they will

115 provide projected traffic volumes in support. Sussex County may approve land use

116 applications with negligible impact at its discretion.

117 6.5. When DelDOT determines the traffic impact to be minor, the traffic analysis shall include

118 the feasibility of providing safe access and the condition, pavement, and the geometry of

119 the nearby roadways and intersections relative to the traffic the subject property could

120 generate. Where any of these are deemed inadequate, DelDOT shall comment to this effect,

121 and identify roadway improvements that shall be required by the Developer. An Area

122 Wide Study Fee (AWSF) letter will be generated to document the developer’s obligations

123 to construct identified roadway improvements or fund road improvements as required by  
124 DelDOT. In addition, DelDOT may require further study if necessary.

125 ~~7.6.~~When DelDOT determines that the traffic impact will be major, the developer will be  
126 required to conduct an in-depth Traffic Impact Study (TIS) (at the developer’s expense) to  
127 DelDOT standards. In addition, Sussex County, at its own initiative, may require a  
128 developer to conduct a TIS. DelDOT shall provide a technical evaluation of the TIS in  
129 the form of written comments in a Traffic Impact Study Review Letter (TISRL).  
130 DelDOT’s scoping requirements for the TIS and its TISRL should ~~The TIS will also~~  
131 consider the effects of active or proposed transportation improvements in the adopted Six  
132 (6) Year Capital Improvements Program, Current Transportation Plans, and Committed  
133 Off-Site Improvements, and the current Sussex County Comprehensive Plan and  
134 recommend phasing for development as may be appropriate given the location of the  
135 project. ~~establish staging for development as needed. DelDOT will provide a technical~~  
136 ~~evaluation of the TIS.~~ Alternatively DelDOT may allow a Traffic Operational Analysis  
137 (TOA) instead of a TIS.

138 ~~8.7.~~As an alternative to the TIS or TOA process set forth above, when DelDOT has determined  
139 that the area in question has already been the subject of sufficient study, a new TIS or TOA  
140 may not be required. Instead, DelDOT may require a “Fee in Lieu” to be paid by the  
141 developer to DelDOT to recoup all or a portion of the cost of the prior studies relied upon  
142 by DelDOT in lieu of a new TIS or TOA. The “Fee in Lieu” is unrelated to the developer’s  
143 subsequent obligations to construct or fund road improvements as required by DelDOT  
144 and the “Fee in Lieu” is not a waiver of those requirements. A TIS or AWSF letter will be  
145 generated to document the developer’s obligations.

146 ~~9.8.~~Sussex County and DelDOT shall endeavor, where possible, to maintain a Level of Service  
147 of D on roads and intersections affected by a land use application. However, Sussex  
148 County and DelDOT recognize that: (a) a Level of Service of D is not always attainable;  
149 (b) that this threshold may create an undue burden on a property owner looking to develop  
150 a property given the prior development that has occurred in an area contributing to the  
151 existing Level of Service; or (c) other relevant factors (such as the size of the property, type  
152 or importance of the development) may mitigate against maintaining a Level of Service D.

153 If the existing Level of Service is below D prior to the impact of the proposed land use, the  
154 existing Level of Service must at least be maintained.

155 ~~10.9.~~ No public hearing on the land use application shall occur until: (a) Sussex County  
156 receives the approved TIS from DelDOT; (b) Sussex County receives the approved TOA  
157 from DelDOT; (c) DelDOT advises that a “Fee in Lieu” (described in Paragraph 8 above)  
158 is appropriate instead of a TIS; or (d) the application will have a diminutive, negligible or  
159 minor impact (with no requirement for a TIS) as described above.

160 ~~11.10.~~ ~~When-If~~ DelDOT determines, on the basis of a TIS or TOA or studies previously  
161 performed as part of the “Fee in Lieu” process, that a land use decision could cause the  
162 threshold level of service to be exceeded, the County will not approve the land use  
163 application unless the developer takes appropriate measures to maintain operations at the  
164 threshold level or unless Sussex County finds that there are sufficient reasons why the  
165 developer should not be responsible for all or part of the measures necessary to maintain  
166 the threshold level of service. Sussex County, in the latter case, shall set forth in writing  
167 their reasons for approving the land use application.

168 ~~12.11.~~ ~~Sussex County does not have the ability to determine what, if any, conditions of~~  
169 ~~approval related to roadway improvements or traffic would be appropriate in a given land~~  
170 ~~use application. Therefore, if, If,~~ in DelDOT’s opinion, there are appropriate conditions of  
171 approval that it recommends should be imposed upon a land use decision, DelDOT shall  
172 offer those conditions as part of its TISRL or as part of its Technical Advisory Committee  
173 review for consideration by Sussex County. Any such proposed conditions shall be clearly  
174 summarized by DelDOT in its analysis of the TOA, the TISRL or other written comments  
175 it provides. Preliminary Traffic Analysis. After considering all relevant information  
176 regarding the land use application, Sussex County shall consider the proposed conditions  
177 but shall not be obligated to include them as part of any approval.

178 ~~13.12.~~ Phasing of land development with highway capacity and safety improvements to  
179 restore and maintain a level of service “D” may be required-recommended by DelDOT.  
180 To accomplish this, DelDOT should clearly and concisely state what phasing is appropriate  
181 for the subject land use application ~~and clearly state that phasing requirement to Sussex~~  
182 ~~County~~ so that Sussex County ~~can clearly incorporate it may impose that recommendation~~  
183 into its various approvals as appropriate. Sussex County may then impose that phasing

184 requirement as part of its approval of a land use application. Phasing of the project may  
185 include (but is not limited to) a consideration the following:

- 186 a. A delay of all or part of the development until specific highway improvements are  
187 made by DelDOT or others;
- 188 b. Whether the required highway improvements are being funded or constructed at the  
189 developer's own expense;
- 190 c. Whether the developer is participating in, and/or funding, transit or traffic  
191 mitigation strategies.

192 The phasing requirements shall be included as a Plan Sheet at the time of Final Site Plan  
193 approval. However, whenever possible, DelDOT shall endeavor to state whether a phasing  
194 recommendation is likely (with specific details to follow) as part of the TISRL process  
195 prior to the Preliminary Site Plan or other public hearing process so that Sussex County,  
196 the developer and the public can have an expectation that phasing may be considered as  
197 part of the project development. Phasing tied to other types of site plan approval is  
198 addressed in a following Section of this MOU regarding Site Plan Coordination.

199 ~~14. Where measures to maintain operations are agreed upon by a developer, both DelDOT and  
200 Sussex County shall assure that these measures are carried out.~~

201 ~~15.~~13. When Sussex County believes that expert testimony regarding transportation issues  
202 is required to make a land use decision (such as a rezoning, major subdivision, conditional  
203 use or Residential Planned Community), DelDOT will provide a suitable representative to  
204 attend meetings of the Planning and Zoning Commission and/or County Council. The  
205 representative should be someone with specific technical knowledge of the project in  
206 particular and also ongoing projects in the area of Sussex County where the project is to  
207 occur.

208 ~~16.~~14. In addition to the project-specific information referenced in the preceding  
209 paragraph, DelDOT shall provide regular updates to Sussex County about the status of  
210 ongoing and future roadway and transportation projects in the County, so that County  
211 Council and the Planning & Zoning Commission have an up-to-date understanding of their  
212 status. This shall include both developer-funded and DelDOT-initiated and -funded  
213 projects. During these updates, Sussex County will also have an opportunity to discuss  
214 other transportation improvements that may be needed in the future.

215 ~~17.15.~~ Whenever possible during the implementation of the foregoing items, Sussex  
216 County and DelDOT should encourage master planning for large scale developments on  
217 large parcels or groups of parcels in the Town Center, Coastal Area, Developing Area and  
218 commercial areas as set forth in the Comprehensive Land Use Plan to provide greater  
219 flexibility in design and/or the installation of additional roadways and interconnectivity.

220 ~~18.16.~~ The Sussex County Planning and Zoning Department is responsible for  
221 coordinating all required information with Sussex County Council and the Planning and  
222 Zoning Commission.

223 ~~19.17.~~ Sussex County shall be entitled to participate in any negotiations between a  
224 developer and DelDOT as to roadway improvements. Sussex County may provide input  
225 into those negotiations, but DelDOT shall be entitled to make the final determination as to  
226 all required roadway improvements and negotiated agreements with a developer. Any  
227 agreement reached between a developer and DelDOT as to roadway improvements,  
228 phasing of a development, funding of roadway improvements, etc. shall be immediately  
229 forwarded to Sussex County for its records with regard to the development. Any  
230 subsequent changes or amendments to a DelDOT/developer agreement shall likewise be  
231 immediately forwarded to Sussex County. Provided, however, that DelDOT recognizes  
232 that if a specific requirement (such as phasing) is incorporated into a land use decision  
233 (such as a major subdivision, conditional use or Residential Planned Community), this may  
234 not be enforceable by Sussex County without an amendment to the subdivision approval  
235 or the ordinance that approved a Residential Planned Community, Conditional Use or  
236 certain other rezonings where conditions can be imposed.

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

240 1. Sussex County and DelDOT acknowledge that on a rezoning to a new zoning district where  
241 a specific site plan is not under consideration, and where the County cannot impose  
242 conditions as part of the rezoning approval, a TIS may not be possible (with the exception  
243 of rezonings to Residential Planned Communities and C-4, where specific site plans are  
244 considered and conditions can be imposed). This is because the various zoning districts  
245 have several permitted uses that are allowed once a rezoning occurs; as a result DelDOT

246 cannot determine, at the time of rezoning, what the actual use will be nor what the traffic  
247 and possible roadway improvements will be as a result of it. This requires greater  
248 coordination on the part of both Sussex County and DelDOT.

249 2. Whenever possible, DelDOT shall endeavor to provide as much information about the  
250 general impacts of the rezoning upon area traffic and roadways as required in the preceding  
251 Section prior to the public hearing before Sussex County Council and the Planning &  
252 Zoning Commission.

253 3. Whenever DelDOT is approached by a developer with a specific project in mind, DelDOT  
254 and that developer may enter into an agreement to obtain a TIS for the project as part of  
255 the rezoning process so that the information required as part of the TIS may be included in  
256 the record of the public hearings of the rezoning application. Because other possible uses  
257 of the property may be permitted under the proposed new zoning, Sussex County is not  
258 bound by this information in making its decision on the rezoning. However, if the use that  
259 the TIS is based upon changes after the rezoning occurs, another TIS shall be required and  
260 Sussex County shall not approve any Preliminary or Final Site Plan for the property until  
261 the new TIS is completed with all necessary traffic and roadway improvements determined  
262 by DelDOT. Alternatively, if no TIS is performed on a specific project, DelDOT or Sussex  
263 County shall have the ability to request a TIS based upon the most impactful permitted use  
264 available under the new zoning classification that is sought.

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266 **SITE PLAN COORDINATION**

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268 1. Section 115-220D of the Sussex County Zoning Code allows Sussex County to approve  
269 certain site plans “subject to conditions”. In any site plan reviewed pursuant to Section  
270 115-220 of the Sussex Zoning Code, Sussex County, with the assistance of DelDOT, may  
271 impose conditions regarding phasing and the timing of building permits in conjunction  
272 with completion of necessary roadway improvements.

273 2. In all site plan reviews, DelDOT will review the site plans in accordance with its rules and  
274 regulations for access and roadway improvements. Sussex County will withhold any site  
275 plan approval until DelDOT has approved all necessary roadway improvements and  
276 entrance design requirements. Provided, however, that this requirement may be waived by

277 Sussex County for minor amendments to existing site plans that changes the trip generation  
278 by less than 50 trips per day.

279 3. Sussex County shall withhold the issuance of any building permit until DelDOT has issued  
280 the entrance construction permit associated with the project.

281 4. Unless bonded in accordance with DelDOT requirements, DelDOT will withhold an  
282 entrance permit until the developer has agreed to construct the access point(s) to  
283 Department standards and to provide off-site improvements as may be required to maintain  
284 acceptable traffic operation on highways.

285 5. Sussex County will withhold issuance of the Certificate of Compliance until DelDOT has  
286 received appropriate bonding or has accepted the entrance construction and issued the  
287 notice to the owner that the entrance construction permit has been satisfied.

288 ~~5.6.~~The coordination described in this section shall take into consideration any phasing of the  
289 land use project.

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291 **TRANSPORTATION IMPROVEMENT DISTRICTS**

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

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

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301 Adopted by the County Council of Sussex County on \_\_\_\_\_, 2019.

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President of the County Council of Sussex County

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308 The following signatures concurring herein:

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310 **For Sussex County:**

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Todd Lawson, Sussex County Administrator

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**For the Department of  
Transportation:**

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Robert Wheatley, Chairman, Sussex County  
Planning & Zoning Commission

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Janelle Cornwell, Director of Planning & Zoning

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Jennifer Cohan, Secretary