

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
KENT COUNTY, DELAWARE  
AND THE  
DELAWARE OFFICE OF STATE PLANNING COORDINATION**

**WHEREAS**, the State of Delaware has determined that local land use decisions may 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 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 Title 29, Chapter 92 of the Delaware Code, local land use planning actions by local governments are subject to pre-application review processes, referred to as the Preliminary Land Use Service (PLUS) and administered by the Office of State Planning Coordination (OSPC); and

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

**NOW, THEREFORE, IT IS HEREBY AGREED AND UNDERSTOOD** by and between Kent County, Delaware and the Office of State Planning Coordination as follows:

- A. Nothing in this agreement shall be construed to deny Kent County its final decision-making authority over proposed land use planning actions in the unincorporated portions of Kent County. Additionally, any comments received from state agencies, pursuant to Title 29, Chapter 92 of the Delaware Code, shall not exempt applicants from the responsibility of meeting all requirements set forth in Kent County's adopted land use regulations.
- B. Distribution to state agencies of materials for review meetings shall be accomplished by the OSPC. More detailed plans may be requested from Kent County or the applicant whose project is in question.
- C. The following land use planning actions are and shall remain subject to State review under Title 29, Chapter 92, Delaware Code:

Major residential subdivisions or land developments containing 50 or more dwelling units, and located outside the boundaries of Kent County's growth

overlay zone as defined in Chapter 205 of the Kent County Code, as amended from time to time.

2. Major residential subdivisions or land developments containing 200 or more dwelling units, and located inside the boundaries of Kent County's growth overlay zone as defined in Chapter 205 of the Kent County Code, as amended from time to time.
3. Any non-residential subdivision or site plan involving new construction of structures or buildings with a total floor area equal to or exceeding 75,000 square feet.
4. Any application for rezoning that is inconsistent with the land use recommendations set forth in the current certified Kent County Comprehensive Plan, except where the non-conformity is of a minor, relatively insignificant nature. A rezoning shall be considered a *minor variation* from the Comprehensive Plan when the following conditions are met as determined by the Kent County Director of Planning Services:
  - a. The rezoning is of a unique circumstance and can not set a precedence for other lands in the vicinity of the rezoning.
  - b. The relative size of the rezoning 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.
  - c. The proposed zoning is adjacent to or in the immediate vicinity of other similarly zoned lands and would not be divergent from the predominant pattern of development in the area.

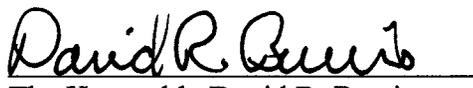
Upon notification of a rezoning in Kent County that meets these criteria, the OSPC will concur in writing to the County thereby waiving the PLUS review process in that instance. Such written concurrence from the OSPC shall not be arbitrarily or unreasonably withheld.

5. Any proposed local land use regulation, ordinance or requirement referred to the Office of State Planning Coordination by Kent 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. The submission of proposed ordinances for review under this provision is voluntary on the part of Kent County.

6. Any amendment, modification or update to the Kent County Comprehensive Plan, as required by Title 9 of the Delaware Code, excluding comprehensive plan amendments associated with approved rezoning applications as per item C, 4 above.
  7. Any project of any size proposed to the east of Delaware Route 1 that would require formal processing through the Regional Planning Commission and/or Levy Court. The term "formal processing" shall be defined as any project requiring site plan, conditional use site plan, or major subdivision review and approval under the criteria established in the Kent County Zoning and Subdivision ordinances, as amended from time to time.
  8. Any owner of record, or equitable owner, of a property, that is the subject of a formal site plan, conditional use, subdivision, or rezoning application request, may choose to voluntarily submit his/her proposal to the PLUS process, even if not required to do so under the terms of this Memorandum of Understanding.
  9. Any other project or item which is required to be referred to the Office of State Planning Coordination for pre-application review by Kent County regulations.
- D. Kent County shall, at the time of their required pre-application meeting, identify those projects meeting the criteria defined in this agreement for State review, direct applicants whose projects meet State review criteria to submit necessary documents to OSPC in order to initiate the Preliminary Land Use Service (PLUS) review process, and not accept applications for those projects requiring PLUS review until such time as the OSPC has issued comments, as defined in Title 29, Section 9204 (c) of the Delaware code, to the applicant and Kent County.
- E. In special circumstances, the Office of State Planning Coordination may waive the pre-application requirements of Title 29, Chapter 92 of the Delaware Code. 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, a local government's imposition of a more stringent review of projects enumerated in §9203(a) than required by Title 29, Chapter 92 of the Delaware Code, and/or projects expected to 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.

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- F. This Memorandum of Understanding may be revised from time to time, at any time, as circumstances warrant, only with the concurrence of both Kent County and the Office of State Planning Coordination.
- G. This Memorandum of Understanding will be reviewed annually on or before the anniversary of adoption by the County and the Office of State Planning Coordination to ensure that the process is working effectively and efficiently for both parties.

  
The Honorable David R. Burris  
President, Kent County Levy Court  
Kent County, Delaware

3/23/04  
Date

  
Constance C. Holland, Director, AICP  
Office of State Planning Coordination  
State of Delaware

4/05/04  
Date

  
Robert S. McLeod  
County Administrator  
Kent County, Delaware

3/23/04  
Date

  
Michael Petit de Mange, AICP  
Director of Planning Services  
Kent County, Delaware

3/23/04  
Date