ORDINANCE 2012-_06_

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA AMENDING ARTICLE 2 OF THE LAND DEVELOPMENT CODE; ELIMINATING TRANSPORTATION CONCURRENCY AND PROPORTIONATE FAIR SHARE; CREATING AN INTERIM ADEQUATE PUBLIC FACILITIES SYSTEM IN RESPONSE TO HOUSE BILL 7207; PROVIDING FOR THE DEFINITION OF DE MINIMIS IMPACT; PROVIDING FOR THE ISSUANCE OF APF WARRANTS AND DURATION OF APPROVALS; PROVIDING FOR MEASUREMENT OF AVAILABLE CAPACITY FOR PUBLIC FACILITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in February 1999 Nassau County adopted a concurrency management system pursuant to Chapter 163, F.S.; and

WHEREAS, in March 2007 Nassau County adopted Article 2 of the Land Development Code streamlining and codifying its concurrency management system and fulfilling the proportionate fair share requirements of Senate Bill 360 (2005); and

WHEREAS, in May 2011 the Florida Legislature adopted HB 7207 making transportation concurrency optional for local governments; and

WHEREAS, the County's current transportation concurrency system treats property owners unequally; does not produce funding to support road expansion; overestimates the need for additional capacity and places Nassau County at a competitive disadvantage with respect to economic development; and

WHEREAS, Nassau County adopted amendments to the 2030 Comprehensive Plan pursuant to Section 163.3180(1)(a) eliminating transportation concurrency; and

WHEREAS, an Interim Ordinance must be put into place to comply with the corresponding amendments to the 2030 Comprehensive Plan while the Board of County Commissioners immediately pursues a permanent replacement to the concurrency system to maintain transportation levels of service.

WHEREAS, the Impact Fee and Concurrency Task Force and the Board of County Commissioners recognize this Interim Ordinance as a temporary measure; and

WHEREAS, the Impact Fee and Concurrency Task Force considered this ordinance and on December 5, 2011 voted to recommend approval ; and

WHEREAS, the Planning and Zoning Board conducted a public hearing on this interim Ordinance on January 3, 2012 and voted to recommend approval to the Board of County Commissioners; and

WHEREAS, public notice of this Ordinance has been provided in accordance with Chapter 125, F.S.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA:

SECTION 1. FINDINGS

This Ordinance is consistent with and furthers the goals, objectives and policies of the 2030 Nassau County Comprehensive Plan, as amended, in particular Policies, T.01.01, T.01.03, T.01.05, T.01.06, T.06.03, CI.02.01, CI.02.04, CI.05.01.

SECTION 2. AMENDMENT

Article 2 of the Nassau County Land Development Code is hereby amended and adopted to read as follows:

ARTICLE 2. - ~~CONCURRENCY AND PROPORTIONATE FAIR-SHARE~~ INTERIM ADEQUATE PUBLIC FACILITIES (APF) ORDINANCE

Section 2.01. – Applicability

This article shall apply to any vacant land, building permit, site plan approval, subdivision approval, PUD, PDD and MEC final development plan approval, application for D.R.I. development order, notice of proposed change to a previously approved development order and a development agreement entered into pursuant to Section 163.3220, F.S., authorizing the development of land within the unincorporated areas of Nassau County, Florida, and as otherwise provided by law. The ~~concurrency~~ APF review requirements of this article shall not apply to the following, which are presumed to have no impact or de minimus impact on public facilities and services or which have acquired statutory or common law vested rights:

A. *No impact permits.* Building permits issued solely for alteration, remodeling, reconstruction, or restoration of residential or non-residential units, provided that the building permits do not authorize an increase in the number of dwelling units. There may be a one-time only increase of ten percent (10%) of the first floor footprint of a non-residential building not to exceed two thousand (2,000) square feet. Such permits remain subject to access requirements and the payment of applicable impact fees.

B. *Single family and duplexes.* Building permits for an individual single family dwelling unit or duplex (two family dwelling) on a lot of record or family homestead pursuant to Section 163.3179, F.S., shall be exempt from ~~concurrency~~ APF requirements. Such permits remain subject to access requirements and the payment of applicable impact fees.

C. *Categorically exempt projects.*

1. Projects with valid final development permits issued prior to February 15, 1999.

2. Projects or part of projects within and consistent with current valid development orders for developments of regional impact issued pursuant to Florida Statutes Section 380.06.

3. Planned unit developments and portions of planned unit developments that have received final development plan approval and have commenced construction prior to February 15, 1999.

4. Projects with binding letters of interpretation from the Florida Department of Community Affairs pursuant to Florida Statutes Section 380.06(20), specifying that the project has vested rights.

5. Projects with an approved development agreement pursuant to Florida Statutes 163, which projects shall be governed by the terms and conditions of the development agreement.

6. Projects with an approved planning and regulatory agreement pursuant to Section 380.032(3), Florida Statutes.

D. *De minimis impacts.* Development meeting the requirements of [Florida Statutes] Section 163.3180(6) shall be allowed to proceed in accordance with the requirements of said statute.

E. Notwithstanding 2.01 (A-D) above no application for APF will be denied based on lack of transportation capacity

F. The right of any property owner to impact transportation facilities in the county is vested:

(1) If that right had been perfected prior to the enactment of this ordinance;

(2) Upon issuance of a building permit for specific phases, portions, or units (and which vesting will end if the building permit expires); or

(3) Upon execution of a valid local development agreement between the property owner and Nassau County, which development agreement provides for transportation impact vesting.

(Ord. No. 2007-17, § 3, 7-9-07)

Section 2.02. - Effect on other ordinances and regulations.

This article shall not affect, in any manner, any other aspect of development and improvement standards or requirements, or any other aspect of the development of land or provision of public improvements subject to this Land Development Code and the Nassau County Comprehensive Plan, or other regulations of the county, which shall be operative and remain in full force and effect without

limitation with respect to all such development. The density, intensity and all ~~use of~~ development authorized in a ~~certificate of concurrency~~ APF Letter must be consistent with the comprehensive plan and Land Development Code.

(Ord. No. 2007-17, § 3, 7-9-07)

Section 2.03. - ~~Concurrency~~ APF review process.

A. ~~*Concurrency coordinator*~~ APF Planner. The person, as designated by the ~~engineering services~~ Growth Management director, responsible for receiving the ~~concurrency~~ APF applications and for coordinating the findings and preparation of the requests for information, and APF Letters ~~certificates and deferrals~~.

B. *Application and review.*

1. *Completeness review.* Within ten (10) working days of receiving a ~~concurrency~~ APF application, the ~~concurrency~~ APF ~~coordinator~~ Planner shall determine whether the application is complete. A letter shall be sent to the applicant within the ten (10) day period identifying if the application is complete or the additional or revised information required. The county shall take no further action on the application until the information is received. The review process and applicable timetables shall also stop until the ~~coordinator~~ planner finds the application complete. The applicant shall have 30 calendar days to respond.

2. ~~*Concurrency*~~ APF *review.* When the application is deemed to be complete, the county shall have ~~thirty (30) working~~ fifteen (15) days to determine whether it will grant a ~~certificate of concurrency~~ APF letter, issue a notification of ~~deferral~~ deficiency or request additional information. If additional or revised information is required, the ~~coordinator~~ planner shall notify the applicants identifying all additional or revised information that is required. The applicant shall have up to ~~sixty (60)~~ thirty (30) calendar days from the date the letter is sent to submit all additional or revised information. The department shall take no further action on the application until the requested information is received.

Upon submittal of the additional information within the time limit specified herein, the ~~coordinator~~ planner shall review the response within ~~thirty (30)~~ fifteen (15) working days and determine whether it will grant a ~~certificate of concurrency~~ APF letter ,issue a notification of ~~deferral~~ deficiency or request additional information.

~~The applicant shall have up to sixty (60) calendar days from the date the request for additional information is sent to submit all additional or revised information as specified. If such information does not meet the requirements specified by the county, the department shall notify the applicant in writing that the application is deemed withdrawn.~~

3. ~~*Certificate of concurrency*~~ APF Determination. Upon a determination that public facilities and services covered by this article are~~, or will be,~~ available at the adopted level of service ~~concurrent with the impacts of the development~~, the county shall issue ~~a decision granting~~ a ~~certificate of concurrency~~ APF letter. The letter ~~certificate~~ will include:

a. A description of the location, size and use(s) of the proposed development;

b. ~~Time limitation of approval or expiration date;~~ Notification that APF letter will not result in vesting until a building permit is issued and remains active and valid. Vesting will only be

achieved for those phases, portions, or units for which a building permit is active and valid. However, Class II and IV projects that receive Preliminary Binding Site Plan (PBSP) approval will be conditionally vested. This conditional vesting will expire concurrently with the PBSP or the Site Engineering Plans as scheduled by Section 5.07

~~c. Development construction schedule;~~

d. Traffic assigned to ~~impacted~~ roadway segments by APF Planner;

~~e. Potable water and sanitary sewer provider;~~

~~f. Provisions for parks and recreation.~~

~~g. A commitment to comply with applicable drainage regulations;~~

h. A statement incorporating by reference all factual representations in the application for ~~concurrency~~ APF ~~approval~~ determination.

4. ~~*Deferral determination.*~~ Deficiency. Upon a determination that public facilities and services covered by this article are not~~, or will not be,~~ available at the adopted level of service the county will issue a ~~concurrency deferral~~ deficiency determination. A deficiency determination cannot be made based on availability of transportation infrastructure. Such notification will include:

a. A description of the location, size and use(s) of the proposed development;

b. Identify the reason(s) for ~~deferral~~ deficiency

c. An outline of the procedures required to be followed in order to appeal the decision.

d. State the option of requesting a development agreement ~~or proportionate fair share agreement for transportation.~~

C. *Withdrawal of application.* The applicant may withdraw an application for a ~~concurrency~~ APF determination at any time by submitting a written request to the department. Failure to comply with requests for additional information or failing to file an appeal within thirty (30) days of a decision or will result in an application being deemed withdrawn. The withdrawal of an application for ~~concurrency~~ APF determination shall result in the forfeiture of all administrative fees paid by the applicant for the processing of the application.

D. *Appeals.*

1. General requirements. An applicant who has received a determination of ~~deferral~~ deficiency, a ~~final certificate of concurrency~~ APF which has been conditioned upon a reduction in the proposed density or intensity of the project, or the provision of public facilities pursuant to a ~~final certificate of concurrency~~/development agreement, may file an appeal with the board of county commissioners within fifteen (15) calendar days of such ~~deferral~~ deficiency or conditional ~~approval~~ determination after receipt from the county. This procedure supersedes any other appeal process set forth within this Code.

2. Form. The appellant shall file the appeal form established for such purpose by the department. Nothing herein shall be construed as a limitation on the authority of the board to require additional relevant information to be provided by the appellant.

3. Grounds for appeal to the board of county commissioners. An appeal may be taken to the board in a de novo hearing only where the appellant claims the criteria for evaluating the impact of the proposed project on public facilities and services as set forth in this article were incorrectly applied, that the ~~deferral~~ deficiency determination of an application for ~~concurrency~~ APF was based upon incorrect data, or where the appellant claims that the application of the ~~concurrency~~ APF management system to the project would result in a taking of private property. The filing of an appeal on the basis of one of the grounds for appeal set forth herein shall not preclude the consideration of any additional grounds for appeals as prescribed in this section.

4. Completeness of application. Within ten (10) days after initial submission of an appeal, the ~~engineering services~~ Growth Management department shall determine whether it is complete and shall notify the county attorney. The county attorney shall notify the appellant within five (5) days of receipt of the determination of the department. If the county attorney disagrees with the department, he/she shall notify the department in writing and the department and the county attorney shall meet within five (5) days of the county attorney's notification to resolve any differences. If there is no agreement, the entire package will be sent to the board of county commissioners and a copy to the appellant.

5. If the appeal is found to be complete, the county attorney shall schedule the appeal for consideration by the board. If the appeal is determined to be incomplete, written notice shall be sent by the county to the appellant identifying all additional or revised information required, which shall be submitted by the appellant within sixty (60) calendar days from the date of mailing of the notice. Within ten (10) working days after receipt of such additional information, the ~~engineering services~~ Growth Management department shall determine whether the additional information submitted by the appellant allows for a determination of completeness and submit the determination to the county attorney. If then determined to be complete, the department shall so notify the appellant and the county attorney shall schedule the appeal for a hearing by the board. If still determined to be incomplete, the department shall send notice in writing to the appellant indicating whether initially required information has not yet been provided or whether the additional information provided has raised additional questions. The appellant may, within thirty (30) calendar days from the date of mailing of the notice, elect to submit additional information and/or respond to questions, or to submit the appeal to the board. If the appellant chooses to submit additional information, the department shall review the information for completeness within ten (10) working days after receipt of the additional information and notify the county attorney and he/she shall then schedule the appeal for a hearing by the board. If the appellant chooses to submit the appeal to the board, the county attorney shall schedule the appeal for a hearing by the board.

6. Decision of the board of county commissioners. The board shall approve in whole or in part or deny the appeal based upon the criteria set forth in this section and, if applicable, the report of the county attorney; or the board may postpone the matter for submission of additional information. If the matter is postponed for the submission of additional information, the appellant shall have sixty (60) calendar days from the date of postponement to submit all additional or revised information specified by the county attorney. If the appeal claims that the appellant's property has been taken, the county attorney shall consider the criteria set forth in subsection 7 below and shall issue a written recommendation to the board within fifteen (15) working days of the date complete information, as determined by the board, has been submitted. A decision shall be made by the board within the later of thirty (30) working days of the hearing or the issuance of the report of the county attorney. The decision of the board shall be in writing, shall contain findings of fact and conclusions of law, and shall refer specifically to the property or portion of

property to which it applies. The decision may contain reasonable conditions necessary to affect the purposes of this ordinance and the ~~concurrency~~ APF requirements of the plan. The decision shall state that it is subject to expiration in accordance with this or subsequent ordinances. The decision shall be filed with the department and a copy shall be provided to the appellant. The decision of the board shall be considered final for purposes of judicial appeal. Review of the decision or order of the board shall be initiated by filing a petition for writ of certiorari with the clerk of courts in accordance with applicable Rules of Appellate Procedures.

7. In acting upon an appeal claiming that the ~~deferral~~ deficiency determination or conditional ~~approval~~ determination of a final certificate of ~~concurrency~~ APF would result in a taking of private property, the board shall consider the ~~concurrency~~ APF report, the reports of the evaluating departments, the standards specified in this ordinance or in the comprehensive plan and shall determine whether the enforcement of the ~~concurrency~~ APF management ordinance would result in a taking of private property in violation of the federal and Florida Constitutions. In making its determination, the county attorney and the board may consider all relevant state and federal case law concerning regulatory takings.

8. Any appellant challenging a decision, determination or result made under this ordinance as a temporary or permanent taking of private property must exhaust the appeal process provided by this section and any other subsequently enacted administrative procedures for appeal or relief before proceeding with judicial review.

E. *Data requirements.*

1. *Developer submissions.* All applications for a ~~concurrency~~ APF determination shall provide sufficient information to determine the impact of such development pursuant to the procedures and standards of this article. The application shall be made on the current form(s) as established by resolution of the board of county commissioners and accompanied by a fee to defray costs as established by resolution of the board of county commissioners.

2. *~~Concurrency~~ APF information base.* The county shall develop and maintain an information base in order to monitor the availability of public facilities and services subject to ~~concurrency~~ APF review. This data will be updated regularly and will be designed to provide incremental data pertaining to existing, approved and committed development. The ~~concurrency~~ APF information base shall be designed to provide support to appropriate county departments engaged in development review and monitoring, ~~concurrency reviews~~, comprehensive plan updates and in the planning and/or provision of public facilities.

~~F. *Sale of property.* Pursuant to the sale of any portion of the land subject to the concurrency APF certificate, the certificate holder on the parent parcel shall notify the growth management department of the sale of property so that the county can track the concurrency for the subject property. This notification shall be made by submitting an application for intra-parcel relocation of transportation concurrency APF.~~

(Ord. No. 2007-17, § 3, 7-9-07; Ord. No. 2009-32, § 1, 11-9-09)

~~**Section 2.04. - Minimum requirements, effect and duration of approval.**~~

~~A. *No permit issued until finding of concurrency APF is made.* No building permit, site plan approval, subdivision approval, PUD final development plan approval, D.R.I. development order or development agreement, except as exempted in section 2.01, shall be approved until the county has issued a~~

~~certificate of concurrency finding that adequate public facilities are or will be available at adopted levels of service concurrent with the impact of the project.~~

~~B. *Duration of certificate of concurrency* APF. A certificate of concurrency APF shall guarantee that there will be a finding of concurrency APF at subsequent steps in the development approval process for a given property or a project for a period of two (2) years following the issuance of the certificate of concurrency APF. If the applicant with a valid, unexpired certificate of concurrency APF obtains construction plan approval or a building permit, as applicable, for horizontal or vertical construction within the two (2) year period, the certificate of concurrency APF shall remain in effect until the expiration of the building permit or construction plan approval to which it applies.~~

~~The board of county commissioners may grant a one-time extension for a duration of up to twelve (12) months for hardship demonstrated by the applicant who carries the burden of proof by competent, substantial evidence.~~

~~C. *Capacity reservation.* If the certificate of concurrency APF, development or proportionate fair share agreement expires, the unused reserved capacity shall be reassigned to the county. The transfer of concurrency APF between two (2) or more separate properties is prohibited, except in the following circumstances:~~

~~1. When transfers are otherwise provided for in an approved development agreement; or~~

~~2. When transfers are within board designated industrial centers where the proximity of the properties are such that the county can track concurrency APF because the impacted infrastructure is the same (e.g., when the trips generated on one (1) property impact the same facility as the trips generated on the other properties). In any proposed transfer pursuant to this subsection 2., the transfer shall not be effective unless the board determines that there is a bona fide public benefit resulting from the transfer.~~

D. *Minimum requirements.* In order to ensure that adequate public facility and service capacity is available concurrent with the impact of a project, the following minimum requirements shall apply:

1. *Sanitary sewer, potable water, solid waste and drainage facilities.* At a minimum, a proposed project shall meet the following standards to satisfy the ~~concurrency~~ APF requirements:

a. If a development order or permit is issued subject to the condition that at the time of the issuance of a certificate of occupancy or its functional equivalent, the necessary facilities and services are in place and available to serve the proposed development; or

b. If at the time the development order or permit is issued, the necessary facilities and services are guaranteed in an enforceable development agreement, as presently provided in Section 163.3220, F.S., or development order issued pursuant to Chapter 380.06, F.S., to be in place and available to serve the proposed project at the time of issuance of a certificate of occupancy or its functional equivalent and one of the following criteria is met:

i. The proposed project is located in an area in which a community water system and central sanitary sewerage system is presently available to serve, and will serve, the proposed development; or

ii. A community water system and central sanitary sewerage system will be provided to the proposed development pursuant to a funded binding written agreement or an

enforceable development agreement.

c. All applicants shall, prior to the issuance of a certificate of ~~concurrency~~ APF, or a building permit for exempt developments, provide evidence from the applicable public water supply provider that adequate water supplies will be available to serve the new development no later than the anticipated date of the issuance of a certificate of occupancy or its functional equivalent.

2. *Parks and recreation.* At a minimum, a proposed project shall meet the following standards to satisfy the ~~concurrency~~ APF requirement:

a. Prior to the issuance of a certificate of occupancy, the acreage required for the necessary facilities and services is dedicated to, or acquired by, the county; and

b. The development order or building permit(s) is issued subject to the condition that the necessary facilities and services to serve the proposed project are in place or under actual construction no later than one year after the issuance of the certificate of occupancy and completed to the satisfaction of the county within three (3) years from the date of issuance.

~~3. *Transportation facilities (roads).* At a minimum, a proposed project shall meet the following standards to satisfy the concurrency APF requirement:~~

~~a. At the time a development order or permit is issued, the necessary facilities and services are in place or are fully funded and under construction; or~~

~~b. If a development order or permit is issued, subject to the conditions that the necessary facilities and services to serve the new development will be in place or under construction not more than three (3) years after the issuance of a building permit or its functional equivalent that results in traffic generation provided such construction is fully funded within the first three (3) years of the county's schedule of capital improvements or the adopted Florida Department of Transportation Five Year Work Program; or~~

~~c. The development is the subject of a proportionate fair share agreement entered into as provided for in this article and authorized by Section 163.3180(16), F.S.~~

~~(Ord. No. 2007-17, § 3, 7-9-07; Ord. No. 2009-32, § 2, 11-9-09)~~

Section 2.05. - Intergovernmental coordination.

In the interest of intergovernmental coordination the shared responsibilities for managing development and ~~concurrency~~ APF, the county may enter into an interlocal agreement with one or more adjacent local governments to address cross jurisdictional impacts of development. Interlocal agreements can address regional impacts on any facility or service subject to ~~concurrency~~ APF review or may be specific to a particular ~~transportation~~ impact.

A. *Agreements and evaluation.* If part of the applicable service area ~~or traffic impact area~~ lies within an adjacent county or a municipality within Nassau County, only those facilities lying within the unincorporated county shall be evaluated; provided, however, that the facilities and services lying within the adjacent county or of Nassau County may be evaluated if the county has entered into an interlocal agreement with such county or municipality providing for ~~concurrency~~ APF review. The agreement shall provide for a methodology to address the cross jurisdictional impacts of development. If the county has entered into an interlocal agreement providing for ~~concurrency~~

APF review, the adopted level of service standard for those facilities lying within the adjacent county or municipality shall be those adopted by such county or municipality. The evaluation of level of service includes the impact of development within municipalities and may consider impacts from adjacent counties.

~~B. *Interlocal proportionate fair-share agreements.* Upon identification of failure of a regional transportation facility, or portion thereof, lying within an adjacent local government jurisdiction, the county will notify the affected adjacent local government of the opportunity to derive an additional proportionate fair share contribution based upon the projected impacts of the proposed development. The adjacent local government shall have up to forty five (45) working days to notify Nassau County of its intention to participate in a joint proportionate fair share agreement with Nassau County and the applicant; or its intent to negotiate a separate agreement with the applicant. If the adjacent local government pursues a separate agreement, it must provide the county with:~~

~~1. Reasonable justification that the amount of the payment and its intended use comply with the requirements of Section 163.3180(16), F.S.~~

~~2. If development approvals are subsequently approved by the county, the approval may include a condition that the applicant provides, prior to the issuance of any permit covered by the approval, evidence that the proportionate fair share obligation to the adjacent local government has been satisfied.~~

~~3. The county shall request the adjacent local government to declare, by resolution or ordinance, its intent for the use of the concurrency~~ APF ~~funds paid by the applicant.~~

~~(Ord. No. 2007-17, § 3, 7-9-07)~~

Section 2.06. - Measurement of available capacity.

Determination of available capacity for applications for ~~concurrency~~ APF determination. For the purpose of evaluating the available capacity of public facilities and services for proposed projects, the following general calculation methodology shall apply. Ascertain available capacity by subtracting from the total capacity at the adopted LOS the sum of:

1. The demand for the public facilities and services created by existing development annually adjusted for growth; and

2. The demand for the public facilities and services created by the anticipated completion of approved developments; and

3. The demand for the public facilities and services created by the anticipated completion of the project under consideration for ~~concurrency~~ APF determination.

A. *Transportation.*

1. *Level of service standards.* The County, c~~C~~onsistent with the comprehensive plan, the traffic circulation element policies and capital improvements element ~~policies shall serve~~ shall continue to require transportation data and analysis regarding ~~as~~ the ~~minimum levels of service for determining whether available capacity exists~~ trip generation on arterial and collector roads impacted by a proposed development.

2. *Data requirements.* The transportation data and analysis requirements and ~~concurrency~~ shall be provided simultaneously with the APF ~~evaluation shall be performed~~ application in accordance with generally accepted methodology. The transportation ~~impact~~ data and analysis shall identify the project's proposed land uses and their trip generation for daily and peak hour conditions and assign those trips to ~~the roadway network~~ arterial and collector roads within a two-mile radius. ~~this article and the Traffic Impact Study Methodology and Procedures adopted by resolution of the board of county commissioners and available upon request from the county. The traffic analysis shall be submitted simultaneously with the concurrency~~ APF application. ~~A traffic impact study for a single or multi-phase project shall be submitted in conjunction with the application for concurrency~~ APF ~~determination for the project and shall include all development phases.~~ Traffic data and analysis is not required for projects generating ~~less~~ fewer than 50 net PM peak hour trips.

3. *Availability of adequate facilities.* The county will review the impact of development traffic on the major road network within the study area and determine if there is available capacity to accommodate the proposed development at the adopted LOS.

B. *Potable water.*

1. *Level of service standard.* The adopted level of service standard shall be the standard identified in the capital improvements element of the comprehensive plan. The adopted level of service standard shall not preclude the placement of conditions on development orders regarding potable water service including, but not limited to, fire flow standards, sizing of distribution and transmission lines, and peak capacity.

2. *Availability of adequate capacity.* Applications for ~~concurrency~~ APF determinations shall be analyzed with respect to the availability of adequate potable water which shall be determined pursuant to the following information provided by the applicant and subject to verification:

a. An inventory of all community water systems serving the unincorporated areas of the county, which includes, at a minimum, the following data for each system:

i. System capacity as rated by F.D.E.P.;

ii. Capacity of wellfield, or other source of raw water supply as indicated by the SJRWMD;

iii. Historical average daily and peak flows of potable water;

iv. Capacity for which contractual or other commitments have been made.

b. Project data pertaining to the proposed development under consideration which shall be provided by the applicant, subject to verification by the county and which shall, at a minimum, contain the following:

i. The specific location of the project, including the identification of the entity expected to provide service to the project; and

ii. Total potable water demand and peak demand projected to be generated by the proposed development; and

iii. Project phasing information, if applicable.

c. Written documentation shall be provided prior to the issuance of a certificate of ~~concurrency~~ APF providing evidence from the applicable public water supply provider that adequate water supplies will be available to serve the new development no later than the anticipated date of the issuance of a certificate of occupancy.

C. *Sanitary sewer.*

1. Level of service standard. The adopted level of service standard shall be the standard identified in the Capital Improvements Element of the Nassau County Comprehensive Plan for the applicable service provider.

2. Projects within the service area of a publicly owned wastewater treatment plant. If the project is within the service area of an individually-owned or franchised wastewater system, the applicant shall submit a letter and information from that entity verifying that adequate capacity is available to satisfy the demand for waste water created by the proposed development and to satisfy the adopted level of service standard for wastewater. Such information shall include, at a minimum, the Florida Department of Environmental Protection permit number and rated daily and peak treatment capacity; information from the last one year's monthly operating reports; and, if applicable, capacity analysis report.

3. Prior to the issuance of a certificate of ~~concurrency~~ APF by the county, written documentation shall be provided from the applicable sanitary sewer provider that adequate wastewater collection and treatment capacity will be available to serve the new development no later than the anticipated date of the issuance of a certificate of occupancy.

4. Projects served by septic tanks or package treatment plants. Projects served by septic tanks or package treatment plants shall, prior to the issuance of construction plan approval or building permit, comply with and provide all applicable permits or approvals from the Nassau County Health Department or a Florida Department of Environmental Protection Domestic Wastewater Treatment Plant permit.

5. ~~Concurrency~~ APF analysis for sanitary sewer facilities. The applicant shall provide average and peak daily demand based upon the proposed development plan using generally accepted methodology and adopted LOS to calculate the projected gallons per day and equivalent residential units. The county shall evaluate the impacts of the proposed development to determine whether the sanitary sewer facilities have available capacity to accommodate the proposed development concurrent with the impact of the development.

D. *Parks/open space.*

1. *Level of service standard.* The adopted level of service standard shall be those standards identified in the capital improvements element of the comprehensive plan.

2. *Availability of adequate parks/open space acreage.* Adequate capacity of parks and recreational facilities shall apply only residential development (one and two family, multi-family, condominiums and town homes, resorts, hotels, etc.). Applications for ~~concurrency~~ APF determinations shall be analyzed with respect to the availability of adequate parks/open space acreage which shall be determined pursuant to the following methodology:

a. Inventory all parks and open space acreage, including undeveloped park land, owned by the county, by classification and service radii.

b. Estimate acreage demand of the proposed development by multiplying the number of dwelling units times the average household size established by the latest Decennial Census and multiplying that product by the adopted LOS standard.

c. ~~Concurrency~~ APF analysis for parks/open space acreage. Once the demand on parks and open space has been calculated, it shall be compared to the available capacity of parks and open space. Available capacity shall be determined by subtracting:

i. Existing demand as determined by the most current population estimate of the Bureau of Economic and Business Research; and

ii. The demand created by developments that have previously reserved capacity from the total available acreage

d. Dedication of acreage or money in lieu thereof. If the ~~concurrency~~ APF analysis indicates that the demand created by the proposed development exceeds the available capacity, the additional land shall be dedicated to the county prior to the issuance of a certificate of occupancy for any unit creating the excess demand. The land shall be deemed suitable by Nassau County for the intended park or open space use. In lieu of conveyance of suitable land, the county may accept a monetary contribution for park and open space acquisition equal to the current appraised value of the required acreage.

E. *Solid waste.*

1. Level of service standard. The adopted level of service standard shall be the standard identified in the capital improvements element of the comprehensive plan.

2. Availability of adequate capacity. Applications for ~~concurrency~~ APF determinations shall be analyzed with respect to the availability of adequate solid waste collection and disposal system capacity.

3. For non-residential developments, the Nassau County Solid Waste Department or, at the election of the applicant, other duly licensed solid waste disposal facility, shall be identified on the ~~concurrency~~ APF application.

F. *Drainage.*

1. Level of service standard. The adopted level of service standard shall be the standard identified in the Capital Improvement Element of the Comprehensive Plan and in Nassau County Ordinance 99-17, as amended. If a master drainage plan is duly adopted by the board of county commissioners, the applicable requirements shall apply.

2. For drainage, the following standards must be met to satisfy the ~~concurrency~~ APF requirement and to receive a certificate of ~~concurrency~~ APF:

a. The necessary facilities and services are in place at the time a development permit is issued; or

b. The necessary facilities are under construction at the time a development permit is issued or will be in place prior to the issuance of the first certificate of occupancy; or

c. The necessary facilities and services are guaranteed in an enforceable development

agreement. An enforceable development agreement may include, but is not limited to:

(1) Development agreements pursuant to section 163.3220, Florida Statutes, or

(2) An agreement or development order issued pursuant to Chapter 380, Florida Statutes. Any such agreement must guarantee that the necessary facilities and services are in place prior to the issuance of the first certificate of occupancy.

(Ord. No. 2007-17, § 3, 7-9-07)

~~**Section 2.07. - Proportionate fair-share.**~~

~~A. *Purpose and intent.* The purpose of this part is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors as required by and in a manner consistent with Chapter 163.3180(16), F.S.~~

~~B. *Applicability.* Proportionate fair-share may be applied to a concurrency application that has been issued a deferral determination based on transportation concurrency failure, except for Developments of Regional Impact (DRI) using proportionate share under Chapter 163.3180(12), F.S.~~

~~C. *Intersections.* Proportionate fair-share is intended to apply to roadway segment deficiencies. If an intersection deficiency was identified in the concurrency deferral determination and the improvements required to remedy that insufficiency can be designed into and increase capacity of that segment improvement of which it is a part and for which a proportionate fair-share is being calculated, then the costs and proportionate fair-share may be included in the segment improvement and proportionate fair share calculation. Proportionate fair-share agreements do not apply to minor intersection improvements such as signal retiming, installing traffic signals and constructing turn lanes required to serve the access requirements of the development. Nassau County may consider and approve major intersection improvements such as grade separations, interchanges and through movement capacity improvements as eligible for a proportionate fair-share agreement.~~

~~D. *Existing fourth and fifth year capital improvements.* An applicant receiving a deferral determination due to failure of a roadway segment included in the fourth or fifth year of the schedule of capital improvements may choose to satisfy transportation concurrency requirements by making a proportionate fair-share contribution calculated according to the formula established herein.~~

~~E. *New improvements.* The county may choose to allow an applicant to satisfy transportation concurrency deficiencies through the proportionate fair-share program by the developer contributing to an improvement or improvements that, upon completion, will create sufficient capacity to accommodate the additional traffic generated by the proposed development if the required improvements are not contained in the schedule of capital improvements, providing that:~~

~~1. The proposed development is consistent with the comprehensive plan and applicable land development regulations.~~

~~2. The board of county commissioners holds two (2) advertised public hearings to consider the adoption of an ordinance entering into the proportionate fair-share agreement; and~~

~~3. The county adopts, as part of the proportionate fair-share agreement, a commitment to include the improvement(s) to the five-year schedule of capital improvements no later than the next regularly scheduled amendment cycle pursuant to Section 163.3187, F.S., and to complete the improvement(s) within three (3) years after the issuance of a building permit within the~~

proposed development. To qualify for consideration under this section, the proposed improvement(s) must be determined to:

a. Provide improvement(s) to each of the facilities upon which transportation concurrency APF was denied or to other facilities demonstrated to provide adequate relief to the facilities upon which transportation concurrency was denied; and

b. Be financially feasible, consistent with the comprehensive plan and in compliance with the provisions of this article. Financial feasibility for this section means that additional contributions, payments or revenue sources to fund the improvement project(s) are reasonably anticipated to complete the improvements required to fully mitigate impacts on transportation facilities within three (3) years after approval of a building permit within the development subject to the proportionate fair share agreement.

F. *Partial mitigation.* If funds allocated for the first three years of the schedule of capital improvements are insufficient to fully fund construction of a transportation improvement identified as needed to satisfy the deficiencies identified from the concurrency deferral of the development or if the improvements are not included in the schedule, the county may still enter into a binding proportionate fair share agreement with the applicant authorizing construction of that amount of development on which the proportionate fair share is calculated if the proportionate fair share amount in such agreement is sufficient to pay for one or more improvements which will, in the opinion of the governmental entity or entities maintaining the transportation facilities (County or FDOT), significantly benefit the impacted transportation system, providing that:

1. The board of county commissioners holds two (2) advertised public hearings to consider the proportionate fair share agreement; and

2. The improvement or improvements funded by the proportionate fair share agreement must be adopted into the first three (3) years of the schedule of capital improvements of the CIE of the comprehensive plan at the next scheduled update; and

3. The applicant agrees to construct and fully fund all costs associated with the improvement(s) proposed as mitigation for the project impacts. Any improvement project(s) proposed to meet an applicant's proportionate fair share obligation must meet design requirements of the county for locally maintained roadways.

G. *Application process.* Within ninety (90) days of the receipt of the deferral determination, applicants shall file an application and fee indicating their desire to enter into a proportionate fair share agreement and requesting a preliminary negotiation meeting.

1. The preliminary negotiation meeting shall be held to discuss eligibility, supporting documentation, potential mitigation options, and related issues. If an impacted facility is a state road, then the Florida Department of Transportation (FDOT) will be notified and invited to participate in the meeting or submit comments regarding the provisions of the proportionate fair share agreement.

2. Proportionate fair share mitigation for development impacts to facilities on the Strategic Intermodal System (SIS) requires the concurrence of the FDOT. Where such facilities are impacted, the applicant shall submit documentation of an agreement between the applicant and FDOT for inclusion in the proportionate fair share agreement or when development agreements are utilized that FDOT must concur with the agreement between the county and the applicant.

H. *Determining proportionate fair share obligation.*

1. Proportionate fair share mitigation for concurrency impacts may include, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities.

2. A development shall not be required to pay more than its proportionate fair share. The fair market value of the proportionate fair share mitigation for the impacted facilities shall not differ regardless of the method of mitigation.

3. Section 163.3180(12), F.S., "The cumulative number of trips from the proposed development expected to reach roadways during peak hours from the complete build out of a stage or phase being approved divided by the change in the peak hour maximum service volume (MSV) of roadways resulting from construction of an improvement necessary to maintain the adopted level of service, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted level of service."

4. Proportionate fair share formula.

Segment Development Trips (SDT) = Those p.m. peak hour trips that have triggered a concurrency deficiency calculated from the application for a proposed development that are assigned to the failing roadway segment.

Segment SV Increase (SSVI) = Service volume increase provided by the eligible improvement to a roadway segment

Cost (C) = Adjusted cost of the improvements to the segment. Cost shall include all improvements and associated costs, such as design, right-of-way acquisition, planning, engineering, inspection, stormwater requirements and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred. An average of the most recent three years Annual Average Construction Cost Index published by the Engineering News-Record shall determine the inflation rate.

Proportionate Fair Share = (SDT/SSVI) X C

Cumulative Impact: If more than one segment has triggered a transportation concurrency APF deficiency, cost will be the sum of each Proportionate Fair Share calculated for each failing segment.

Sample calculation: A proposed development impacts a roadway segment that has 55 available p.m. peak hour trips. The proposed development adds 135 p.m. peak hour trips to the segment, triggering a concurrency deferral. The cost of improvements to maintain the adopted LOS on the segment in the year of the proposed improvements is $1.5m. The improvement will add 400 p.m. peak hour trips to the service volume.

PFS = (135-55*) / 400 X $1,500,000.00

* Use 0 if segment already failing

PFS = $300,000.00

5. If the county may accept a transportation improvement project in lieu of monetary payment.

a. If the value of an improvement proposed by the applicant is less than the proportionate fair share obligation for that development, then the applicant must also pay the difference in the form of a monetary payment.

b. Where an applicant constructs a transportation facility that exceeds the applicant's proportionate fair share obligation, then the county may reimburse the applicant for the excess contribution using proportionate fair share payments from other future applicants for that specific scheduled improvement and/or through some other means agreed to by the county and the applicant. The refund shall not be conveyed until after construction of the transportation facility is completed and accepted by the county or state, whichever is applicable. In order to be eligible for a refund utilizing state generated revenue, acquisition, design, permitting and construction of the transportation improvement must comply with state law requirements. Eligibility for a refund utilizing local sources of revenue including, but not limited to, contributions in aid to construction by future applicants shall be as established by agreement. The applicant must also provide the county with sufficient documentation (e.g. contract documents, invoices, etc.) to demonstrate the actual construction cost of the transportation improvement to the satisfaction of the county in order to receive a refund. The service volume increase provided by the improvement shall not be added to the concurrency APF management system until the reimbursement amount is received and shall only be available to applicants contributing a proportionate fair share payment toward the improvement during the reimbursement period established in the agreement.

6. The county may accept non-site related right-of-way dedication for all or part of the proportionate fair share obligation. Such right-of-way shall be valued on the date of the dedication by fair market value established by an independent appraisal report prepared by an appraiser approved by the county at no expense to the county. The applicant shall supply a survey and legal description of the land and a certificate of title and title search of the land to the county at his/her expense.

a. If the agreed upon value of the right-of-way dedication is less than the proportionate fair share obligation for that development, then the applicant must also pay the difference.

b. If the agreed upon value of the right-of-way dedication exceeds the proportionate fair share obligation, the county may reimburse the applicant for the excess contribution using proportionate fair share payments from other future applicants for that specific segment.

7. Proportionate fair share contributions shall be eligible for a credit toward the transportation impact fees assessed to the development project. The credit shall for that portion of the impact fee that applies to the segment or facility that is the subject of the payment. If the applicant's proportionate fair share obligation is less than the development's total road impact fee, then the applicant must pay the difference. Because the proportionate fair share obligation is intended to mitigate the transportation impacts of a proposed development at a specific location, any impact fee credit provided pursuant to this section shall not be eligible for transfer to any other location.

8. Transportation Concurrency Management Areas—Reserved.

9. Transportation Concurrency Backlog Authority—Reserved.

l. *Proportionate fair share agreements.*

1. Upon execution of a proportionate fair share agreement the applicant shall receive a

~~certificate of concurrency.~~

~~2. If the proportionate fair share mitigation is in the form of a monetary payment in whole or in part, the proportionate fair share monetary payment shall be due in full by certified funds or an irrevocable letter of credit prior to the earlier of:~~

~~a. Construction plan approval; or~~

~~b. The amendment of the schedule of capital improvements to reflect the improvement that is subject of the agreement; or~~

~~c. One year from the date of county approval of the agreement.~~

~~If the proportionate fair share payment is not received as required in this section, then the agreement shall be considered null and void, the trips shall be removed from the concurrency management tracking system and schedule of capital improvements, and the applicant shall be required to reapply. Proportionate fair share payments shall be nonrefundable.~~

~~3. Transportation improvement projects in lieu of monetary payment authorized under this program must be completed within three (3) years of the issuance of the first building permit or a shorter time if required by the agreement.~~

~~4. Dedication of necessary right-of-way for transportation improvements pursuant to a proportionate fair share agreement must be conveyed by warranty deed, title insurance and accompanying documentation in a form acceptable to the county attorney prior to issuance of the first building permit for vertical construction within the subject development.~~

~~5. Any requested modification to a development permit subject to a proportionate fair share agreement that would require a new certificate of concurrency APF as defined herein shall be subject to recalculation of both impacts to the transportation system and proportionate fair share obligation and may require additional proportionate fair share contributions.~~

~~6. Applicants may submit a letter to withdraw from the proportionate fair share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs to the county will be nonrefundable.~~

~~7. The county may establish multi-party proportionate fair share agreements for selected corridors to facilitate collaboration among multiple applicants and/or units of local government on improvements to a mutually impacted transportation facility.~~

~~8. The agreement shall establish eligible impact fee credits.~~

~~J. *Use of proportionate fair share funds.*~~

~~1. Proportionate fair share payments and interest earned thereon, henceforth referred to as proportionate fair share revenues, shall be segregated and tracked by project in an appropriate capital projects fund. Fair share payment revenues shall be used toward funding of scheduled improvements in the capital improvements element of the comprehensive plan, or as otherwise established in the terms of the proportional fair share agreements(s).~~

~~2. Fair share sector area transportation improvements revenues received pursuant to Nassau County Ordinance 2001-36 shall be recorded in an appropriate capital projects fund and utilized to~~

~~plan, permit and construct transportation improvements that, upon completion, will benefit the major road network.~~

~~3. In their proportionate share agreement, the parties may provide that in the event a scheduled facility improvement is removed from the schedule of capital improvements, then the proportionate fair share revenues collected for its construction may be applied toward the implementation of one or more alternative improvement(s) reasonably related to the demands created by the development that would mitigate the impacts to the transportation system.~~

~~(Ord. No. 2007-17, § 3, 7-9-07)~~

SECTION 3. EFFECTIVE DATE

This ordinance shall take effect upon filing with the Secretary of State as provided in Section 125.66, Florida Statutes.

Adopted this 13th day of February, 2012 by the Board of County Commissioners of Nassau County, Florida.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA

Stacy T. Johnson
Its: Chair

ATTEST as to Chairman's Signature:

John A. Crawford
Its: Ex-Officio Clerk

2/14/12

Approved as to form by the
Nassau County Attorney:

David A. Hallman,
County Attorney