

ARTICLE XI CONCURRENCY MANAGEMENT

PART 11.00.00 GENERAL PROVISIONS

Sec. 11.00.01 Applicability / Application Period

This Article shall apply to any Development Order authorizing the development of land for residential development within the unincorporated area of St. Johns County, Florida, and as otherwise provided by law. An Applicant may apply for a concurrency review at any time during the development review process, but a Final 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 shall be obtained prior to approval of any Final Development Permit, provided that a Final Development Permit must be preceded by a Final Certificate of Concurrency for the maximum development allowed by such Final Development Permit. The provisions of this Article shall not apply to administrative rezonings initiated by the St. Johns County Board of County Commissioners as provided in Section 9.05.01 or to those Projects provided in Sections 11.00.02, 11.00.03 11.00.04, and 11.00.05 below, 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 or have been specifically exempted from the provisions of this Article.

Sec. 11.00.02 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 permanent dwelling units and non-residential uses, and do not authorize an increase in the square feet of the development.

Sec. 11.00.03 Single Family And Duplexes

Development Permits for a individual Single Family Dwelling Unit and duplexes not within subdivisions, Planned Unit Developments, Planned Special Developments, or Planned Rural Developments shall be exempt from the parks, drainage, solid waste, mass transit, and transportation concurrency requirements, but shall meet the potable water and wastewater concurrency requirements, as described in Part 11.03.00, and Sections 11.05.020 and 11.05.03 of this Article.

Sec. 11.00.04 Exempt Developments

Projects, Subdivisions, Parcels, or Lots defined as Categorically Exempt Developments or residential developments that are exempt from the school concurrency requirements of this Article as defined in Section 11.08.03 or that have previously received a "Concurrency Exemption Determination" pursuant to Part 11.08.00.

Sec. 11.00.05 Exemption for Non-Residential Developments (2018)

Non-Residential development shall be exempt from the requirements of this Article beginning August 7, 2018 to promote business and economic growth within St. Johns County. Non-

residential development shall meet all other provisions of this Code including but not limited to the drainage, potable water and wastewater requirements at the time of Construction Plan review. A detailed site access and operational analysis will be required prior to Construction Plan approval for all Non-residential developments generating 300 or more p.m. peak hour trips to determine if improvements are needed within the immediate impact area to provide for safe and efficient access to the proposed development.

PART 11.01.00 EFFECT ON OTHER ARTICLES 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, the 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 provisions of this Article hereby supersede all prior regulations of St. Johns County related to the implementation of Level of Service standards for public facilities and services. Where this Article conflicts with another County Ordinance or the Concurrency Procedures Manual, the provisions of this Article shall prevail to the extent of such conflict except as otherwise provided herein.

PART 11.02.00 CONCURRENCY REVIEW SYSTEM

The County Administrator shall be responsible for receiving and distributing the Applications for Concurrency Determination to the Evaluating Departments pursuant to Section 11.02.02.A. and for coordinating the findings of the Evaluating Departments pursuant to Section 11.02.02.C. and shall prepare a Concurrency Report as required by Section 11.02.04 of this Article. The County Administrator shall: review and approve Small Projects, as provided in Section 11.02.01.E; review and approve with the recommendations of the Evaluating Departments Projects which generate 11 to 50 average weekday peak hour trips (Minor Project); and review and compile a report with the recommendations of the Evaluating Departments for review and approval by the County Administrator for those Projects which generate more than 50 average weekday peak hour trips (Major Project).

Sec. 11.02.01 Applicability

- A. This Article shall not be applicable to non-residential developments submitted after August 7, 2018, categorically exempt Projects or Projects with valid Concurrency Exemption Determinations, or as provided in Part 11.08.00. School Concurrency requirements shall not be applicable to residential development considered exempt from the school concurrency requirements pursuant to Section 11.08.03 of this Article.
- B. Except as provided in Section 11.02.01.A., no Final Development Permit shall be granted, approved, or issued unless a Final Certificate of Concurrency has been issued by the County pursuant to this Article.
- C. All applications for a Final Development Permit shall be distributed upon receipt by the appropriate Evaluating Department to the County Administrator.
- D. Single-Family Dwelling Units and Duplexes: The determination of concurrency for potable water and wastewater facilities for single family dwelling unit or duplexes, which are not in Subdivisions, Planned Unit Developments, Planned Special Developments, or Planned Rural Developments, shall be made simultaneously with the processing of the Applicant's Building Permit, and a determination in accordance with Part 11.03.00 and Sections 11.05.02 and 11.05.03 shall be made by the County Administrator.
- E. Small Projects: The determination of concurrency for Small Projects which generate 10 or fewer average weekday peak hour trips, shall be made simultaneously with the processing of the Applicant's development permit, and a determination in accordance with Part 11.03.00 and Sections 11.05.02 and 11.05.03 of this Article shall be made by the County Administrator with determinations made by the Evaluating Departments as necessary and upon request by the County Administrator.
- F. Minor Projects: The determination of concurrency for Minor Projects, which generate 11 to 50 average weekday peak hour trips, shall be made simultaneously with the processing of the Applicant's development review application, as applicable, and a determination in accordance with Part 11.03.00 and Part 11.05.00 of this Article shall be made by the County Administrator with determinations made by the Evaluating Departments as necessary and upon request by the County Administrator. The applicant may be required to provide additional data to satisfy the minimum requirements for concurrency review, including but not limited to, applicable traffic data, as required by the County in accordance with the Traffic Impact Study Methodology and Procedures, Appendix "A" of this Code, or a water/sewer availability letter from the appropriate utility in accordance with Part

11.04.00 of this Article. An applicant for a Minor Project may file a concurrency application separately when a development review application is not proposed.

A project may also be classified as a Minor Project if determined by the County Administrator that it generates 50 PM peak hour trips or less after accounting adjustments for pass-by trips and compared to adjacent-street traffic volume. The pass-by trip total must be reduced if it exceeds 10% of the adjacent-street traffic volume.

- G. Major Projects (Residential): An Application for Concurrency Determination and a Traffic Impact Analysis (TIA) are required to be submitted to the Growth Management Department for review by the Evaluating Departments for all major residential projects, which generate more than 50 average weekday peak hour trips. The TIA shall follow the methodologies adopted in the Traffic Impact Study Methodology and Procedures, Appendix "A" of this Code.
- H. Developments of Regional Impact (DRIs): DRIs that have satisfied the transportation concurrency requirements by entering into a binding agreement to pay for or construct its proportionate share of required improvements, provided such proportionate share contribution or construction is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility consistent with provisions set forth in Section 163.3180, Florida Statutes, and have been approved by the St. Johns County Board of County Commissioners, are subject to concurrency requirements as a Major Project for all other concurrency public facilities and services. An Application for Concurrency Determination is required to be submitted to the Growth Management Department for review of these public facilities, and a transportation report shall be provided to facilitate the reservation of project trips on the Major Road Network in five (5) year increments or other approved DRI phasing schedule consistent with the DRI transportation review, the DRI Phasing Schedule, and the Traffic Impact Study Methodology and Procedures, Appendix "A" of this Code. The transportation concurrency report shall be updated every two (2) years until build out, consistent with the DRI biennial reporting schedule.

Sec. 11.02.02 Application for Concurrency Determination

A. Completeness Review

Within five (5) working days of receiving an Application for Concurrency Determination, the County Administrator shall determine whether the application is complete. An Application for Concurrency Determination for a residential development that is not exempt from the school concurrency requirement will be considered incomplete unless a companion Application for School Concurrency has been submitted to the St. Johns County School District. If the County Administrator finds that the Application is not complete, a letter shall be sent to the Applicant within five (5) working days identifying all additional or revised information which is required; the County Administrator shall take no further action on the application until the information is received. If the County Administrator finds that the application is complete, the application shall be forwarded to the Evaluating Departments.

B. Sufficiency Review by Evaluating Departments

Upon receipt of the application as described in Section 11.02.03.A., the Evaluating Departments shall have fifteen (15) working days to determine whether the application is

sufficient or sufficient with conditions. If additional or revised information is required, the Evaluating Department shall notify the County Administrator, which shall send a letter to the Applicant identifying all additional or revised information which is required. The Applicant shall have up to sixty (60) calendar days from the date the letter is sent to submit all additional or revised information. The County Administrator shall take no further action on the application until the requested information is received. If the Applicant does not submit the requested information within the described sixty (60) calendar days, the application will be deemed withdrawn.

If the Applicant submits additional information within the time limit specified herein, the County Administrator shall forward the additional information to the appropriate Evaluating Departments. If an Evaluating Department then determines that additional or revised information is required, the Evaluating Department shall notify the County Administrator, which shall send a letter to the Applicant identifying all additional or revised information that is required.

The Applicant shall have up to twenty (20) calendar days from the date the letter is sent to submit all additional or revised information as specified by the County Administrator. If such information does not meet the requirements specified by the County Administrator, the Evaluating Department shall notify the County Administrator, and the County Administrator shall notify the Applicant in writing that the Application is deemed withdrawn.

Upon a final determination by each Evaluating Department that the application is sufficient, each Evaluating Department shall provide the County Administrator with a letter or other instrument for each proposed Application for Concurrency Determination that determines the Level of Service of facilities which will be impacted by the Project, the extent of the impact generated by the Project and whether those facilities have sufficient capacity to serve the proposed Project at or above the adopted Level of Service.

The Evaluating Departments will issue to the County Administrator a written approval, approval with conditions, or denial for its portion of the application based upon Part 11.03.00 and Part 11.05.00 of this Article.

Sec. 11.02.03 Evaluating Departments

The Evaluating Departments or their successors, as designated by the County Administrator, shall be responsible for evaluating the adequacy of existing and planned facilities with regard to proposed Development Permits for developments generating 11.0 average weekday peak hour trips or more.

Sec. 11.02.04 Issuance Of Certificate Of Concurrency For Minor Projects

For Minor Projects that submit a formal Application for Concurrency Determination, a Final Certificate of Concurrency, Final Certificate of Concurrency with Conditions, or a denial shall be issued by the County Administrator within ten (10) working days of receipt of the recommendations from the Evaluating Departments; the ten (10) working day period can be extended upon approval of the Applicant for the purposes of addressing conditions to the Final Certificate of Concurrency or a pending denial. If the application is denied, the County Administrator shall issue a Denial Determination to the Applicant that identifies:

- A. The decision reached by each Evaluating Department and the reason(s) for denial, and

outlines.

- B. The procedures required to be followed in order to appeal the decision.

For Minor Projects reviewed in conjunction with Construction Plan review process, concurrency shall be considered approved with construction plan approval and shall remain valid with the approved construction plan.

Sec. 11.02.05 Issuance Of Certificate Of Concurrency For Major Projects

For Major Projects, a Final Certificate of Concurrency, Final Certificate of Concurrency with Conditions, or a denial shall be issued by the County Administrator within twenty (20) working days of receipt of the recommendations from the Evaluating Departments; the twenty (20) working day period can be extended upon approval of the Applicant for the purposes of addressing conditions to the Final Certificate of Concurrency or a pending denial. If the application is denied, the County Administrator shall issue a Denial Determination to the Applicant that identifies the decision reached by each Evaluating Department and the reason(s) for denial, and outlines the procedures required to be followed in order to appeal the decision.

Sec. 11.02.06 Reserved

Sec. 11.02.07 Monitoring And Review Of Concurrency For Preliminary Development Permits

The County Administrator shall be responsible for monitoring and enforcing the conditions and stipulations contained in all Final Certificates of Concurrency that were completed during earlier steps of the Development review process. Monitoring will ensure that consistent concurrency review procedures are maintained and that unnecessary duplication is avoided.

Sec. 11.02.08 Withdrawal Of Application

The Applicant may withdraw an Application for a Concurrency Determination at any time by submitting a written request to the County Administrator. An application will be deemed withdrawn by the County Administrator due to incomplete or insufficient information pursuant to Section 11.02.02.C. of this Article. The withdrawal of an Application for a Concurrency Determination shall result in the forfeiture of all Administrative Fees paid by the Applicant for the processing of the Application.

PART 11.03.00 DETERMINATION OF CONCURRENCY

Sec. 11.03.01 No Final Development Permit Issued Until Finding Of Concurrency Is Made

No Final Development Permits for residential developments shall be approved until the County Administrator has issued a Final 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; or a Final Certificate of Concurrency approving the Project with conditions. If the determination indicates that there is no available capacity within the applicable traffic impact area or service area, the County Administrator shall either:

- A. Issue a Final Certificate of Concurrency, subject to one or more of the following conditions:
 - 1. Reducing the size, intensity, or density of the Project, or changing the phasing of the Project, to achieve available capacity.
 - 2. Provision of the Public Facilities and Services necessary to achieve available capacity. The commitment to construct or provide such Public Facilities and Services, pursuant to the requirements of Section 11.03.06, prior to the issuance of a Final Development Permit shall be included as a condition to the Final Certificate of Concurrency. The County may, at its option, provide for reimbursement to the Applicant for the cost of facilities providing capacity in excess of the capacity necessitated by the demands created by the Project.
- B. Deny issuance of a Final Certificate of Concurrency

The Applicant can reapply for concurrency when the Public Facilities and Services needed to achieve available capacity are provided as determined in Sections 11.03.06 and 11.03.07.

Sec. 11.03.02 Categories Of Concurrency Review

In order to ensure that adequate Public Facilities and Services are available concurrent with the impact of the Project, the binding effect of a concurrency determination shall be limited as follows:

- A. Informational Concurrency Determination

Upon payment of an Informational Concurrency Determination processing fee, any person may request a determination of available capacity for a specified parcel or parcels by the County Administrator. In its sole discretion, the County Administrator shall establish a time limit for the completion of an Informational Concurrency Determination. The County Administrator may issue an Informational Concurrency Determination which shall establish that the Public Facilities and Services are available at the time of issuance of the Informational Concurrency Determination but may not be available at the time of any subsequent concurrency determination review. An Informational Concurrency Determination shall not be construed to guarantee the availability of adequate facilities at the time that subsequent Development Permit applications are submitted. An Informational Concurrency Determination for a Major Project requires the Applicant to submit a traffic impact analysis per the Traffic Impact Study Methodology and Procedures (Appendix A of this Code). An Informational Concurrency Determination shall not form the

basis for the issuance of a Final Certificate of Concurrency nor shall it result in the reservation of capacity.

B. Final Concurrency Determination

A Final Concurrency Determination shall be obtained prior to the approval of any Final Development Permit for residential development pursuant to Section 11.00.00 of this Article. A Final Concurrency Determination shall result in the issuance of a Final Certificate of Concurrency and establish that:

1. The Public Facilities and Services are available at the time of issuance of the Final Certificate of Concurrency.
2. The Final Certificate of Concurrency is issued for the same amount of development for all public facilities.
3. That Public Facilities and Services will be available at all subsequent stages of the Development approval process up to the date of expiration of the Final Certificate of Concurrency or the extended capacity reservation, subject to the following conditions and time limits set:
 - a. Transportation, Solid Waste, Drainage, Parks and Recreation, Mass Transit Facilities, and Public Schools

For transportation, solid waste, drainage, parks/ recreation, and mass transit facilities, the Final Certificate of Concurrency shall guarantee that there will be a finding of concurrency at subsequent steps in the development approval process for a given property or a Project for a period of two (2) years for each phase following the approval of the Final Certificate of Concurrency. For public schools, the Final Certificate of Concurrency shall guarantee that there will be a finding of school concurrency at subsequent steps in the development approval process for a given property or a Project for a period of two (2) years (no phases) following the approval of the Final Certificate of Concurrency or modification of a previously approved Final Certificate of Concurrency to add school concurrency. If the Applicant with a valid, unexpired Final Certificate of Concurrency obtains Construction Plan approval, Final Subdivision Plat approval, or a Building Permit, as applicable, for horizontal or vertical Construction within the two (2) year period, the Final Certificate of Concurrency shall remain in effect until the expiration of the Building Permit, Final Subdivision Plat or Construction Plan approval to which it applies. If the Applicant fails to obtain such approval within the two (2) years, the Final Certificate of Concurrency may be extended for up to an additional three (3) year period provided the Applicant:

- (1) Pays the applicable reservation (impact) fee within two (2) years following the issuance of the Final Certificate of Concurrency and signs a waiver of rights for the refund of impact fees in consideration for the extension of the Final Certificate of Concurrency using one of the following options;

- (a) The applicant may pay 100% of the applicable impact fee in consideration of a three (3) year extension; or
 - (b) The applicant may pay one-third (1/3) of the applicable impact fee in consideration of a one (1) year extension. For each subsequent one-third payment, an additional one year extension may be granted, not to exceed a total of three (3) years extension.
- (2) Upon applying for a Building Permit, the Applicant pays the difference, if any, between the reservation fee paid in advance to extend the Final Certificate of Concurrency and the total impact fee, as determined at the time of permit application; and
 - (3) Submits documentation from the Utility Provider verifying water and sewer capacity is available for the additional three (3) years for the Equivalent Residential Connections (ERCs) required by the amount of Development contained in the Final Certificate of Concurrency.
- b. Water and Wastewater Facilities within the Service Area of the St. Johns County Water System or St. Johns County Wastewater Treatment System, or Municipal System, or Franchised Utility.

The payment of water and wastewater connection fees guarantees that there will be a finding of concurrency for water and wastewater facilities at subsequent steps in the development approval process for the amount of Development for which water and wastewater connection fees have been paid.

- c. Notwithstanding the above provisions, any Certificate of Concurrency period of efficiency may be extended by the County Administrator for a reasonable period not to exceed two (2) years during such period as the subject development or project is reasonably determined to be materially delayed by civil litigation directly addressing and restricting the allowed or permitted use or development of the subject land. Such litigation shall not include that which is principally based on real or alleged failure to pay any debt, bankruptcy of any entity or person, or ownership of the subject land, nor shall such litigation be that in which the developer or Certificate holder or any government agency is a plaintiff. Such Extended Certificate shall be made conditional on resolution of (i) the litigation in a manner determined by the County not to be contrary to the public interest; and (ii) the Extended Certificate not being used to authorize development until the litigation is in the opinion of the County so resolved or finalized. After the litigation on which extension is so resolved or finalized, then the remaining period of efficiency of the period of the Certificate shall be that which would have existed or been available had the Certificate not been so extended.

Sec. 11.03.03 Consistency Of Phased Projects With Final Certificates Of Concurrency

A. Multi-phase Projects

Multi-phase projects may have a Final Certificate of Concurrency effective for up to two (2) years for each phase with extensions as provided in Section 11.03.02.B not to exceed a total of five (5) years for all phases for all public facilities except schools. Phases must be consistent with PUD phasing, if applicable, such that each concurrency phase shall have the same amount of development as the corresponding PUD phase. Under no circumstances can any Final Certificate of Concurrency be extended beyond a total of five (5) years for all phases by pre-payment of impact fees pursuant to Section 11.03.02.B.

B. Developments of Regional Impact (DRIs)

DRIs that have satisfied the transportation concurrency requirements by entering into a binding agreement to pay for or construct its proportionate share of required improvements, provided such proportionate share contribution or construction is sufficient to accomplish one or more mobility improvements that will benefit a regionally significant transportation facility consistent with provisions set forth in Section 163.3180, Florida Statutes, shall have concurrency phases consistent with the phasing schedule approved in the DRI Development Order, conditioned upon compliance with all DRI Development Order requirements and conditions related to public facilities and services that are subject to concurrency.

Sec. 11.03.04 Effect Of Determination Of Concurrency For Preliminary Development Permits

A. Reservation of Capacity

The Applicant shall be required to pay the current reservation (impact) fee in order to extend the duration of a Final Certificate of Concurrency determination as provided in Section 11.03.02 provided, however, that a reservation (impact) fee paid by an Applicant at one stage of the Development approval process shall be credited towards the payment of a reservation (impact) fee normally required at the Certificate of Occupancy stage in the Development approval process and the payment of impact fees or connection fees applicable to the facilities for which capacity has been reserved. If a Final Certificate of Concurrency is voided because of the expiration of a reservation of capacity, the Applicant shall not be entitled to a refund of the reservation fees paid. The provision of public facilities pursuant to Section 11.03.01, in order to avoid the denial of a Final Certificate of Concurrency, shall be deemed to effectuate a reservation of capacity in accordance with the provisions and requirements of this Section.

B. Zoning Special Uses or Variances

Unless accompanied by a specific plan for Development, including the densities and intensities of the Project, or approval authorizing Construction, an Applicant for a zoning Special Use or Variance shall not be subject to concurrency review.

Sec. 11.03.05 Effect Of Final Determination Of Concurrency For Final Development Permits

In order to receive approval for a Final Development Permit for residential development, the Applicant must have a valid Final Certificate of Concurrency. If an Applicant with a valid, unexpired Final Certificate of Concurrency obtains Construction Plan, Final Subdivision Plat, or Building Permit approval for horizontal or vertical Construction, as applicable, within the time limit

specified in Section 11.03.02.B.3., the Final Certificate of Concurrency shall remain in effect as long as the Project continues in compliance with the phasing schedule approved in the Final Certificate of Concurrency provided, however, that the Final Certificate of Concurrency may be extended for an additional three (3) years if the Applicant pays the applicable reservation (impact) fee. If the Applicant fails to obtain a Final Development Permit within the time frames specified in Section 11.03.02.B.3., a new Final Certificate of Concurrency shall be required. Notwithstanding anything to the contrary contained in this Concurrency Management Article, a Final Certificate of Concurrency may be issued for a period of time of up to ten (10) years pursuant to and subject to the terms and conditions contained in a valid existing Development agreement entered into by the Applicant and the County pursuant to Sections 163.3220 through 163.3243, F.S., as amended.

- A. To the extent the reserve capacity issued to the Development through the Final Certificate of Concurrency is not demanded by the completed or modified development, the unused capacity is released, phase by phase, as applicable. If the Final Certificate of Concurrency expires for any phase, then, upon expiration, the reserved capacity for the expired phase and any subsequent phases is released for use by other Applicants.
- B. If the underlying Final Development Permit to the Final Certificate of Concurrency is revoked, denied or expires, the reserve capacity is released for use.

Sec. 11.03.06 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.

A. Category 1 Criteria

For wastewater, potable water, solid waste and drainage facilities, at a minimum, a proposed Project shall meet the following standards to satisfy the concurrency requirements.

1. If a Development Permit is issued subject to the condition that, at the time of 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.
2. If at the time the Development Permit is issued, the necessary facilities and services are guaranteed in an enforceable Development Agreement, as presently provided in Section 163.3220, F.S., and as may be provided in future updates to Florida Statutes, or an agreement 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 the issuance of a Certificate of Occupancy or its functional equivalent. (Section 163.3180(2), F.S.).

B. Category 2 Criteria

For parks and recreation facilities, at a minimum, a proposed Project shall meet the following standards to satisfy the concurrency requirement.

1. If at the time the Development Permit is issued, the necessary facilities and

services are in place or under Construction.

2. If a Development Permit is issued subject to the condition that, at the time of the issuance of a Certificate of Occupancy or its functional equivalent, the acreage for the necessary facilities and services to serve the proposed Project is dedicated or acquired by the County, or funds in the amount of the developer's fair share are committed.
 - a. A Development Permit is issued subject to the conditions that the necessary facilities and services needed to serve the proposed Project are scheduled to be in place or under actual Construction not more than one (1) year after the issuance of a Certificate of Occupancy or its functional equivalent as provided in the Five Year Schedule of Capital Improvements.
 - b. At the time the Development Permit is issued, the necessary facilities and services are the subject of a binding executed agreement which requires the necessary facilities and services to serve the proposed Project to be in place or under actual Construction not more than one (1) year after the issuance of a Certificate of Occupancy or its functional equivalent.
 - c. At the time the Development Permit is issued, the necessary facilities and services are guaranteed in an enforceable Development Agreement.

C. Category 3 Criteria

For transportation facilities (roads and mass transit facilities designated in the adopted St. Johns County Comprehensive Plan), at a minimum, a proposed Project shall meet the following standards to satisfy the concurrency requirement, except as otherwise provided in this Article.

1. If at the time the Development Permit is issued, the necessary facilities and services are in place or under Construction.
2. If a Development Permit is issued subject to the conditions that the necessary facilities and services to serve the new development are scheduled to 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. Transportation projects that are financially secure or are included in the first three (3) years of the applicable, adopted Florida Department of Transportation Five Year Work Program satisfy this requirement.
3. If at the time a Development Permit is issued, the necessary facilities and services are the subject of a binding executed agreement which requires the necessary facilities and services to serve the new development to be in place or under actual Construction no more than three years after the issuance of a Building Permit or its functional equivalent that results in traffic generation.
4. If at the time a Development Permit is issued, the necessary facilities and services are guaranteed in an enforceable Development Agreement, pursuant to Section 163.3220, F.S., as may be amended from time to time, to be in place or under actual Construction not more than three years after issuance of a Building Permit

or its functional equivalent that results in traffic generation; and one of the following criteria is met:

- a. The proposed Project is located within a Development Area designated on the Future Land Use Map of the St. Johns County Comprehensive Plan.
 - b. The proposed Project is located in an area in which a community water system and central wastewater system is presently available to serve, and will serve the proposed Development.
 - c. A community water system and central wastewater system will be provided to the proposed Development pursuant to a binding written agreement or an enforceable Development Agreement.
5. For the purpose of issuing a Development Permit, a proposed urban redevelopment Project located within a defined and mapped Existing Urban Service Area as established in the Comprehensive Plan pursuant to Section 163.3164(29), F.S., shall not be subject to the concurrency requirements for up to 110 percent of the transportation impact generated by the previously existing Development. For the purposes of this provision, a previously existing Development is the actual previous built Use which was occupied and active within a time period established in the Comprehensive Plan.
6. The County may allow a landowner to proceed with Development of a specific Parcel of land notwithstanding a failure of the Development to satisfy transportation concurrency, when all the following factors are shown to exist:
- a. The County's adopted Comprehensive Plan is in compliance.
 - b. The proposed Development would be consistent with the Future Land Use Map designation for the specific property and the goals, objectives and policies of the adopted County Comprehensive Plan.
 - c. The County has adopted into its Comprehensive Plan a process for assessing, receiving, and applying a proportionate fair share of the cost of providing the transportation facilities necessary to serve the proposed Development through a binding commitment. The assessment shall bear a direct relationship to the transportation impact that is generated by the proposed Development.
 - d. The developer executes a legally binding commitment to provide mitigation proportionate to the transportation impact generated by the actual development of the property.

D. Category 4 Criteria

For public school facilities, at a minimum, a proposed residential Project shall meet the following standards to satisfy the concurrency requirement.

1. The School District's findings indicate adequate school facilities will be in place or under actual construction in the affected concurrency service area (CSA) within

three (3) years after the issuance of the subdivision plat or site plan for each level of school;

2. Adequate school facilities are available in an adjacent CSA or under actual construction within three (3) years and the impacts of development shall be shifted to that area. If capacity exists in more than one CSA or school within a CSA, the School District shall determine where the impact shall be shifted;
3. The developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by the actual development of the property subject to the final plat or site plan, as provided in this element.
4. In the event that there is not sufficient capacity in the affected concurrency service area or an adjacent concurrency service area, the developer shall also have the option to delay approval to a date when capacity and level of service can be assured.

Intergovernmental Coordination

The Minimum Requirements shall apply only to those facilities within the unincorporated area of the County. If a portion of the applicable service area or Traffic Impact Area lies within an adjacent County or a local government within St. Johns County, only those facilities lying within the unincorporated County shall be evaluated; provided, however, that the Public Facilities and Services lying within the adjacent County, local government of St. Johns County, or the St. Johns County School District may be evaluated if the County has entered into an interlocal agreement with such County or local government providing for concurrency review. If the County has entered into an interlocal agreement providing for concurrency review, the Adopted Level of Service standard for those facilities lying within the adjacent County, local government, or the St. Johns County School District shall be those adopted by such adjacent County, local government, or School District. A certification from the adjacent County or local government that the issuance of the Development Permit will not cause a reduction in the Level of Service standards for those facilities lying within the adjacent County, local government, or School District shall be required prior to the issuance of a Final Certificate of Concurrency.

Sec. 11.03.07 Determination of Available Capacity for Applications for Concurrency Determinations

For the purpose of evaluating the available capacity of Public Facilities and Services for proposed Projects, the following calculation methodology shall apply:

- A. Ascertain total capacity
 1. The method to individually determine total capacity of wastewater, solid waste, drainage, and potable water facilities will be consistent with the Category 1 Criteria.
 2. The method to individually determine total capacity of parks and recreation facilities will be consistent with Category 2 Criteria.
 3. The method to individually determine total capacity of road and mass transit

facilities will be consistent with Category 3 criteria.

4. The method to individually determine total capacity of public school facilities will be consistent with Category 4 criteria.
- B. Ascertain available capacity by subtracting from the total capacity the sum of:
1. The demand for the Public Facilities and Services created by existing Development.
 2. The demand for the Public Facilities and Services created by the anticipated completion of approved Developments based upon the annually adjusted background growth rate.
 3. The demand for the Public Facilities and Services created by the anticipated completion of the Project under consideration for concurrency determination.

Sec. 11.03.08 Modification of Approved Projects With Final Certificates of Concurrency

A modification to an existing Final Certificate of Concurrency is required for approval by the County Administrator prior to the approval of a modification to a Development Permit where a change in Use, intensity, or density of the approved Project, which, either individually or cumulatively with other changes, results in increased impacts to public facilities and services by the modification.

- A. A new Final Certificate of Concurrency is required if the modification generates 4.0 or more average weekday peak hour trips.
- B. A change in the legal description and acreage shall require an amendment to the Final Certificate of Concurrency.
- C. A new Final Certificate of Concurrency shall be required if the new Project boundary or change in acreage results in additional impacts or impacts different public facilities and services.
- D. An updated School Concurrency Determination letter from the St. Johns County School District will be required for any increase in residential units for all residential developments that are subject to school concurrency.

PART 11.04.00 DATA REQUIREMENTS

Sec. 11.04.01 Developer Submissions

All Applications for Concurrency Determination shall provide sufficient information to determine the impact of such Development pursuant to the concurrency evaluation procedures. The application shall be made on a form established by the County Administrator. Such information shall include, but shall not be limited to:

- A. The total number and type of Dwelling Units for residential Development applications.
- B. The type and intensity of non-residential Use(s), where appropriate, at a level of detail consistent with the type of Development application.
- C. The location of the Project and the identification of facilities impacted by the Project pursuant to the provisions of Part 11.05.00 of this Article.
- D. The identification of Project phasing, where applicable.
- E. Any other appropriate information as required pursuant to Part 11.05.00 of this Article.

Sec. 11.04.02 Concurrency Information Base

The County shall develop and maintain an inventory of existing land Uses and projected land Uses, based upon Final Development Permit approvals, in order to monitor the impact of Final Development Permit approvals on the availability of public facilities. This data will be updated annually and will be designed to provide incremental data pertaining to existing, approved and planned Development. At a minimum, the information base shall contain the following information:

- A. Final Development Permits issued during the past year.
- B. Concurrency Exemption Determinations issued during the past year.
- C. The number of residential Dwelling Units and square feet of non-residential Development for which Final Development Permits or Concurrency Exemption Determinations have been issued during the past year.
- D. The number of expired or abandoned Final Development Permits.
- E. Dwelling Units and non-residential square footage completed.
- F. Dwelling Units and non-residential square footage under Construction.
- G. The capacity of existing Public Facilities and Services.
- H. The capacity created by the anticipated completion of Public Facilities and Services included in the Schedule for the current year.
- I. The impact created by existing Development on Public Facilities and Services based on standard units of demand.

- J. The impact created by the anticipated completion of Developments with approved Development Permits on Public Facilities and Services.

Sec. 11.04.03 Relationship to Information Base

The County Administrator shall be responsible for developing and maintaining the County's Concurrency Information Base. The Concurrency Information Base shall be designed to provide support to appropriate County departments engaged in Development Order review and monitoring, Concurrency reviews, Plan updates and in the planning and/or provision of public facilities.

PART 11.05.00 MEASUREMENT OF LEVEL OF SERVICE STANDARDS

Sec. 11.05.01 Transportation

A. Level of Service (LOS) Standards

Consistent with the Comprehensive Plan Adoption Document, Traffic Circulation Policies and Capital Improvements Level of Service Policies, the LOS Standards shall serve as the minimum criteria for determining whether available capacity exists on Arterial and Collector roads within a Traffic Impact Area impacted by a Proposed Development and which are maintained by either the County or the Florida Department of Transportation.

B. Data Requirements and Concurrency Evaluation

The data requirements and concurrency evaluation shall be performed in accordance with Section 11.03.07 of this Article and the Traffic Impact Study Methodology and Procedures Manual (Appendix A). The traffic analysis shall be submitted simultaneously with the Concurrency Application.

1. A traffic impact study for a multi-phase Project shall be submitted in conjunction with the first Application for Concurrency Determination for the Project and shall include all future Development phases. The traffic study shall remain valid and in effect for a one (1) year period. Subsequent Development phases seeking a Final Concurrency Determination shall be required to update the traffic impact study with current data if the Application for Concurrency Determination for said Development phases is submitted more than one (1) year from the Project's original Application for Concurrency Determination.
2. Phased Projects will be required to perform a traffic study which analyzes both the impact of the phase(s) seeking a Certificate of Concurrency and the ultimate build out of the entire Project. The analysis of the total build out of the Project will be performed as part of the concurrency application for the first phase of the Project in order to assess the ultimate transportation needs of the entire Project, but shall not be used as a basis for a determination of transportation concurrency or for issuance of a Certificate of Concurrency. The methodology for performing the analysis shall be based on the following:
 - a. The Study Area of the total build out of the Project will be determined by the extent of all impacted segments for the total Project, including future phases and phases which have previously received a Certificate of Concurrency or Concurrency Exemption. The phase(s) of the Project seeking a Certificate of Concurrency will be evaluated for transportation concurrency based only on the Traffic Impact Area using the criteria contained in Appendix A of this Code for the phase(s) seeking the Certificate of Concurrency and shall include the Development for which a Certificate of Concurrency is being sought and the cumulative Development within the Project for which a Certificate of Concurrency has been issued subsequent to March 4, 1991.
 - b. Projects that consist of an expansion or an addition to existing

Development previously permitted will be analyzed based upon the cumulative impact of all Development for which a Final Certificate of Concurrency has been previously issued; however if existing Development has been constructed, the expansion or addition will be analyzed based only on the impact of the expansion or addition.

Sec. 11.05.02 Potable Water

A. Level of Service (LOS) Standards

The Adopted LOS Standards shall be the LOS standards identified in the Capital Improvements Element of the Comprehensive Plan.

B. Conditions

A finding of concurrency with respect to the Adopted LOS Standards shall not preclude the placement of conditions on Development Permits regarding potable water service including, but not limited to, fire flow standards, sizing of distribution and transmission lines, and peak capacity.

C. Availability of Adequate Capacity

Applications for Concurrency Determinations shall be analyzed with respect to the availability of adequate potable water which shall be determined pursuant to the following information:

1. 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:
 - a. System capacity;
 - b. Capacity of wellfield, or other source of raw water supply;
 - c. Historical average flow of potable water;
 - d. Historical peak flow of potable water;
 - e. Number of hookups and the estimated potable water demand per hook-up;
 - f. Number of hook-ups for which contractual commitments have been made;
2. Project data pertaining to the proposed Development Permit under consideration which shall be provided by the Applicant, subject to verification by the Evaluating Department, Utilities Authority, or community water supply system operator and which shall, at a minimum, contain the following:
 - a. The specific location of the Project, including the identification of the entity expected to provide service to the Project.
 - b. The proposed land Uses and land Use intensities.

- c. Total potable water demand and peak demand projected to be generated by the Proposed Development.
- d. Project phasing information, if applicable.

3 Certification

- a. Projects Within the Service Area of a Publicly-Owned Water Supply System

If the Project is within the service area of the County Utilities Department, the County Utilities Department shall certify that potable water facilities are available at the Adopted Level of Service, consistent with Section 11.03.06 of this Article. If the proposed service provider is other than the County Utilities Department, documentation must be submitted by the provider indicating that the Project is within its service area and that adequate capacity is available to serve the Project as proposed at the adopted Level of Service. If the ability of a provider to serve a Proposed Development is contingent upon planned facility expansion, details regarding available financing and timing of such planned improvements shall be submitted.

- b. Projects Within the Service Area of a Community Water System or Franchised Water Utility.

If the Project is within the service area of a community water system or franchised water utility, the Applicant shall submit a letter and information from that entity verifying that adequate capacity is available to satisfy the demand for water created by the proposed Development and to satisfy the Adopted LOS Standards for water as identified in the Comprehensive Plan. Such information shall include, at a minimum, if applicable, the Florida Department of Environmental Protection permit number issued pursuant to a completed Notice of Intent to Use General Permit for Wastewater Collection/Drinking Water Distribution System {Form No. 17-555.910(7)} and, if applicable, an Application to Construct a Public Drinking Water System {Form No. 17.555.910(1)}

- c. Applicants Served by Wells

Where community water is not available, the Applicant shall comply with all applicable Permits or approvals from the St. Johns County Environmental Health Department or the St. Johns River Water Management District, as appropriate.

- 4. Prior to the issuance of a Certificate of Occupancy by the County, the Applicant shall be required to provide evidence of the reservation of capacity through the payment of water and wastewater connection fees for publicly owned utilities and non-franchised community water systems or a letter from a franchised utility verifying that a Utility Agreement has been executed. The Department of Environmental Protection Permit number as provided in Section 11.05.02.C.3.(b) shall be provided if applicable.

D. Concurrency Analysis for Potable Water

Relying upon the data provided pursuant to Section 11.05.02.C, the Evaluating Department shall evaluate the impacts of the Proposed Development to determine whether the potable water facilities within the service area of the Proposed Development have available capacity to accommodate the Proposed Development. In the event that the data described in Section 11.05.02.C. are not available in their entirety, the required data may be provided by the Applicant subject to verification by the Evaluating Department.

Sec. 11.05.03 Wastewater

A. Level of Service (LOS) Standard

The Adopted LOS Standards shall be the sanitary sewer LOS standards identified in the Capital Improvements Element of the Comprehensive Plan.

B. Conditions

A finding of concurrency with respect to the Adopted LOS Standards shall not preclude the placement of conditions on Development Permits regarding wastewater service including, but not limited to, sizing of collection and transmission lines, and peak capacity.

C. Availability of Adequate Capacity

Applications for Concurrency Determination shall be analyzed with respect to the availability of adequate wastewater capacity which shall be determined pursuant to the following information:

1. An inventory of all central wastewater systems serving the unincorporated area of the County, which includes, at a minimum, the following data for each system:
 - a. System capacity.
 - b. Historical average daily flow of treated wastewater.
 - c. Historical peak flow of treated wastewater.
 - d. Number of hook-ups and the estimated wastewater demand per hook-up.
 - e. Number of hook-ups for which contractual commitments have been made.
2. Project data pertaining to the proposed Development Permit under consideration which shall be provided by the Applicant, subject to verification by the County Utilities Department, Utilities Authority, municipal system, or privately owned wastewater treatment plant operator and which shall, at a minimum, contain the following:
 - a. The specific location of the Project, including the identification of the entity expected to provide service to the Project.
 - b. The proposed land Uses and land Use intensities.

- c. Total wastewater treatment demand and peak demand projected to be generated by the Proposed Development.
 - d. Project phasing information, if applicable.
3. Certification
- a. Projects within the Service Area of a Publicly-Owned Wastewater Treatment Plant

If the Project is within the service area of the County Utilities Department, the County Utilities Department shall certify that wastewater facilities are available at the Adopted LOS Standards, consistent with Section 11.03.06 of this Article. If the proposed service provider is other than the County Utilities Department, documentation shall be submitted by the provider indicating that the Project is within its service area and adequate capacity is available to serve the Project as proposed at the adopted LOS Standards. If the ability of a provider to serve a Proposed Development is contingent upon planned facility expansion, details regarding such planned improvements shall be submitted.
 - b. Projects Within the Service Area of a Privately-Owned Wastewater Treatment Facility

If the Project is within the service area of an individually-owned, community-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 wastewater created by the proposed Development and to satisfy the Adopted Level of Service Standard for wastewater as identified in the Comprehensive Plan. Such information shall include, at a minimum, if applicable, the Florida Department of Environmental Protection Permit number issued pursuant to a completed Notice of Intent to Use General Permit for Wastewater Collection/Drinking Water Distribution System {Form No. 17-555.910(7)} and a copy of the latest applicable Operation and Maintenance Performance Report and, if applicable, Capacity Analysis Report prepared pursuant to Florida Administrative Code Chapter 17-600.405 or any successor regulation(s).
 - c. Projects Served by Septic Tanks or Package Treatment Plants

Projects served by septic tanks or package treatment plants shall comply with all applicable Permits or approvals from the St. Johns County Environmental Health Department or a Florida Department of Environmental Protection Package Sewer Treatment Plant Permit as appropriate.
4. Prior to the issuance of a Certificate of Occupancy by the County, the Applicant shall be required to provide evidence of the reservation of capacity through the payment of water and wastewater connection fees for publicly owned utilities or central system or a letter from a franchised utility verifying a Utility Agreement has

been executed. The Department of Environmental Protection Permit number shall be referenced as provided in Section 11.05.03.C.3(b).

D. Concurrency Analysis for Wastewater Facilities

Relying upon the data provided pursuant to Section 11.05.03.C. above, the Evaluating Department shall evaluate the impacts of the Proposed Development to determine whether the wastewater facilities within the service area of the Proposed Development have available capacity to accommodate the Proposed Development. In the event that the data described in Section 11.05.03.C. are not available in their entirety, the required data may be provided by the Applicant subject to verification by the Evaluating Department.

Sec. 11.05.04 Parks / Open Space

A. Level of Service (LOS) Standard

Consistent with the Recreation and Open Space Element and the Capital Improvements Element of the Comprehensive Plan, the following Adopted LOS Standards shall serve as the minimum criteria for determining whether available parks/open space acreage and recreation capacity exists.

1. For neighborhood parks, two (2) acres per 1,000 residents.
2. For community parks, three (3) acres per 1,000 residents.
3. For district parks, three (3) acres per 1,000 residents.
4. For regional parks/open space, twenty (20) acres per 1,000 residents.

B. Availability of Adequate Parks/Open Space Acreage

Adequate capacity of parks and recreational facilities shall apply only to Development Permits, or those portions of Development Permits, which propose residential Development. Applications for Concurrency Determinations shall be analyzed with respect to the availability of adequate parks/open space acreage which shall be determined pursuant to the following information:

1. An inventory of all parks and open space acreage, including undeveloped park land, owned by the County and including, at a minimum, the following data for each facility, to be developed by the County:
 - a. Type of park (i.e., Neighborhood, Community, District or Regional Park/Open Space).
 - b. The demand for park/open space acreage, calculated by multiplying the existing population by the Adopted LOS Standard for each park type.
 - c. The acreage of each park facility, by type.
2. Project data pertaining to the proposed Development Permit under consideration which shall be provided by the Applicant, subject to verification by the Evaluating Department and which shall, at a minimum, contain the following:

- a. The specific location of the Project.
- b. The total number of residential Dwelling Units proposed, by type.
- c. The total estimated residential population of the Proposed Development consistent with the average household size established by the Evaluating Department, based on latest census information or population estimates prepared by the University of Florida Bureau of Economic and Business Research.
- d. Project phasing information, if applicable.

C. Concurrency Analysis for Parks/Open Space Acreage

Relying upon the data provided pursuant to Section 11.05.04.B. above, the Evaluating Department shall evaluate the impacts of the Proposed Development to determine whether the park and open space acreage within the County have sufficient acreage to accommodate the Proposed Development. In the event that the data described in Section 11.05.04.B. are not available in their entirety, the required data may be provided by the Applicant subject to verification by the Evaluating Department.

Sec. 11.05.05 Drainage

A. Level of Service (LOS) Standard

Consistent with Level of Service policies of the Surface Water Management Sub-Element, and the Capital Improvements Element of the Comprehensive Plan, the following Adopted LOS Standards shall serve as the minimum criteria for determining whether available drainage capacity exists:

- 1. Projects shall be required to construct a complete drainage system sufficient to mitigate the impacts of a 10-year, 24-hour design rainfall event using the Soil Conservation Service type 2 modified rainfall curves.
- 2. Post Development runoff shall not exceed pre-Development runoff unless a maximum discharge rate has been adopted for the applicable drainage basin and the discharge does not exceed that rate. If a maximum discharge rate has not been adopted for the applicable drainage basin, post Development discharge may not exceed pre-Development discharge.

B. Availability of Adequate Capacity

Applications for Concurrency Determinations shall be analyzed with respect to the availability of adequate stormwater management system capacity which shall be determined pursuant to the following information:

- 1. Project data pertaining to the proposed Development Permit under consideration which shall be provided by the Applicant, consistent with the provisions of Article VI this Code.

2. Project phasing information, if applicable.

C. Concurrency Analysis for Drainage Facilities

Relying upon the data provided under Section 11.05.05.B. above, the Evaluating Department shall evaluate the impacts of the Project to determine whether the drainage facilities within the service area of the Project have available capacity to accommodate the Project.

Sec. 11.05.06 Solid Waste

A. Level of Service (LOS) Standard

Consistent with the Capital Improvements Element of the Comprehensive Plan, the following Adopted LOS Standard shall serve as the minimum criteria for determining whether available solid waste collection and disposal capacity exists:

1. The ability of the County to provide facilities sufficient to accommodate 4 pounds of solid waste per capita per day.

B. Availability of Adequate Capacity

Applications for Concurrency Determinations shall be analyzed with respect to the availability of adequate solid waste collection and disposal system capacity which shall be determined pursuant to the following information:

1. Documentation prepared by the Evaluating Department projecting annual usage rates of solid waste disposal through the expected life of the County Solid Waste Complex, using population projections consistent with those developed by the University of Florida Bureau of Economic and Business Research.

2. Project data pertaining to the proposed Development Permit under consideration which shall be provided by the Applicant, subject to verification by the Evaluating Department, in sufficient detail to determine the annual impact of the Project on the solid waste facilities, including at a minimum:

a. The number and type of residential Dwelling Units proposed and the estimated generation of solid waste from such units.

b. The type and intensity of non-residential Uses and the estimated generation of solid waste from such Uses.

c. Project phasing information, if applicable.

C. Concurrency Analysis for Landfill Capacity

Relying upon the data provided pursuant to Section 11.05.06.B. above, the Evaluating Department shall annually prepare a statement that available landfill capacity exists to meet existing and projected solid waste disposal requirements through the activation date of the County Solid Waste Complex. This statement will serve as the finding of concurrency for all Final Development Permits issued during the subsequent year.

Sec. 11.05.07 Mass Transit

A. Level of Service (LOS) Standard

Consistent with the Mass Transit Element, and the Capital Facilities Element of the Comprehensive Plan, the following Adopted LOS Standard shall serve as the minimum criteria for determining whether available capacity exists. This LOS standard shall apply only to residential Projects.

The ability of the County to provide transportation disadvantaged services sufficient to accommodate 95,000 passenger trips per year.

B. Applications for Concurrency Determinations shall be analyzed with respect to the availability of adequate mass transit facility capacity which shall be determined by analyzing Project data pertaining to the proposed Project provided by the Applicant, subject to verification by the Evaluating Department in sufficient detail to determine the annual impact of the Project on mass transit facilities, including, at a minimum:

1. The number of persons within the Project expected to utilize transportation disadvantaged services.
2. The number of transit vehicles providing service to the transportation disadvantaged within the County.
3. The number of seats for each transit vehicle owned and operated by the transportation disadvantaged services provider.

C. Concurrency Analysis for Transportation Disadvantaged Services

Relying upon the data provided pursuant to Section 11.05.07.B. above, the Evaluating Department shall evaluate the impacts of the Project to determine whether the transportation disadvantaged services within the service area of the Project have available capacity to accommodate the Project, taking into consideration the number of transit vehicles within the County; the seating capacity of individual transit vehicles; the maximum number of daily and yearly passenger trips made by each vehicle, and the number of persons expected to utilize transportation disadvantaged services which shall be determined by multiplying the current unincorporated County population by 0.015.

Sec. 11.05.08 Public Schools

A. Level of Service (LOS) Standard

Consistent with the Public School Facilities Element and the Capital Improvements Element of the Comprehensive Plan, the following Adopted LOS Standard shall serve as the minimum criteria for determining whether available public school capacity exists within a School Concurrency Service Area. This LOS standard shall apply only to residential Projects.

The districtwide level of service standards are initially set as the 100% of the Permanent Florida Inventory of School House (FISH) Capacity based on the utilization rate as established by the State Requirements for Educational Facilities (SREF), effective August

2005.

Leased Relocatables shall be utilized to maintain the LOS on a temporary basis when construction to increase capacity is planned and in process. The temporary capacity provided by relocatables shall not exceed 20% of the Permanent FISH capacity and shall not be used for a period to exceed five years. Relocatables may also be used to accommodate special education programs as required by law.

It is the intent of the School District that new schools be designed and constructed based on the following design capacities:

New Elementary (K-5)	Design Capacity of 700
New Middle (6-8)	Design Capacity of 1000
New K-8	Design Capacity of 1000
New High (9-12)	Design Capacity of 1500

B. Data Requirements and Concurrency Evaluation

The concurrency evaluation shall be performed in accordance with Section 11.03.07 of this Article pursuant to the Application for School Concurrency filed with the St. Johns County School District. The Application for School Concurrency submitted to the School District shall be submitted simultaneously with the Application for Concurrency Determination to be submitted to the County such that neither the Application for Concurrency Determination submitted to the County nor the Application for School Concurrency submitted to the School District can be processed unless the other has also been submitted.

C. Concurrency Analysis for Public School Facilities

Adequate capacity of public schools shall apply only to Development Permits, or those portions of Development Permits, which propose residential Development. Applications for Concurrency Determinations shall be analyzed with respect to the availability of adequate public school facility capacity by the St. Johns County School District:

1. The number of school age children within the Project expected to utilize public school facilities.
2. The availability of capacity in the applicable school concurrency service area for each level of school.
3. The availability of capacity in the adjacent school concurrency service area for each level of school.

PART 11.06.00 APPEALS

Sec. 11.06.01 General Requirements

An Applicant for a Final Certificate of Concurrency or an “adversely affected person” as defined in Section 9.07.01 of this Code may file an Appeal with the Board of County Commissioners of any decision made by the County Administrator within thirty (30) days from the date the action was taken.

A. Form

The Appellant shall file the appeal on a form established for such purpose by the County Administrator.

B. Additional Information

Nothing herein shall be construed as a limitation on the authority of the County Administrator or the Board of County Commissioners to require additional relevant information to be provided by the Appellant.

Sec. 11.06.02 Grounds for Appeal to the Board of County Commissioners

An Appeal may be taken to the Board of County Commissioners in a de novo hearing only where the Appellant claims that the Criteria for evaluating the impact of the proposed Project on Public Facilities and Services as set forth in Part 11.03.00 and Part 11.05.00 of this Article were incorrectly applied, that the denial of a Final Certificate of Concurrency was based upon incorrect data, or where the Appellant claims that the application of the Concurrency Management Article to the Project would result in a taking of private property without lawful compensation. 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 Appeal as prescribed in this Section.

Sec. 11.06.03 Completeness of Application

Within ten (10) working days after initial submission of an Appeal, the County Administrator shall determine whether it is complete and shall so notify the Appellant in writing.

A. Complete Application for Appeal

If the Appeal is determined to be complete, the County Administrator shall schedule the Appeal for consideration by the Board of County Commissioners.

B. Incomplete Application for Appeal

If the Appeal is determined to be incomplete, written notice shall be sent by the County Administrator 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 County Administrator shall determine whether the additional information submitted by the Appellant allows for a determination of completeness.

If then determined to be complete, the County Administrator shall so notify the Appellant and shall schedule the Appeal for a hearing by the Board of County Commissioners. If still determined to be incomplete, the County Administrator 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 request in writing that the appeal be submitted to the Board of County Commissioners. If the Appellant chooses to submit additional information, the County Administrator shall review the information for completeness within ten (10) working days after receipt of the additional information and then schedule the Appeal for a hearing by the Board of County Commissioners. If the Appellant chooses to submit the Appeal to the Board of County Commissioners, the County Administrator shall schedule the Appeal for a hearing by the Board of County Commissioners.

Sec. 11.06.04 Decision of the Board of County Commissioners

The Board of County Commissioners shall approve in whole or in part or deny the Appeal based upon the criteria set forth in this Article and, if applicable, the report of the County Attorney; or the Board of County Commissioners 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 Section 11.06.06 of this Article and shall issue a written recommendation to the Board of County Commissioners within fifteen (15) working days of the date complete information, as determined by the Board of County Commissioners, has been submitted. A Decision shall be made by the Board of County Commissioners 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 of County Commissioners 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 effect the purposes of this Article and the Concurrency Requirements of the Plan. The Decision shall be filed with the County Administrator and a copy shall be provided to the Appellant. The Decision of the Board of County Commissioners shall be considered final for purposes of judicial appeal. Review of the Decision or Order of the Board of County Commissioners shall be initiated by filing a petition for writ of certiorari with the Clerk of Courts in accordance with applicable Rules of Appellate Procedures.

Sec. 11.06.05 Application of Concurrency Management System Criteria

If the grounds for Appeal are that the criteria for evaluating the impact of the Project on Public Facilities and Services as set forth in Part 11.03.00 and Part 11.05.00 of this Article were incorrectly applied, or that the denial of a Final Certificate of Concurrency was based upon incorrect data, the Board of County Commissioners shall consider only the concurrency report and the reports of the Evaluating Departments and no additional evidence may be considered or received.

Sec. 11.06.06 Takings

A. Criteria

In acting upon an Appeal claiming that the denial of a Final Certificate of Concurrency or conditional approval of a Final Certificate of Concurrency would result in a taking of private property without lawful compensation, the Board of County Commissioners shall consider the concurrency report, the reports of the Evaluating Departments, the standards specified in this Article or in the Comprehensive Plan, and other relevant evidence, and shall determine whether the enforcement of the Concurrency Management Article 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 of County Commissioners may consider all relevant state and federal case law concerning regulatory takings.

- B. Any Appellant challenging a Decision, determination or result made under this Article 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.

Sec. 11.06.07 Vested Rights or Exemptions

This Part shall not apply to any claim based upon vested rights, equitable estoppel, or an exemption from this Concurrency Management System (Article XI). All such claims shall be processed and determined in accordance with the Concurrency Exemptions provisions of Part 11.08.00 of this Article.

PART 11.07.00 DEVELOPMENT AGREEMENTS

The County may, but under no circumstances is it required to, enter into a Development Agreement as authorized by Sections 163.3220 through 163.3243 F.S., as amended, which ensure that adequate Public Facilities and Services will be available concurrent with the impacts of a proposed development. The County Administrator shall, with the consultation of the Appropriate Departments, review and recommend approval, approval with changes, or denial to the Board of County Commissioners. No Development Agreement may be entered into by the County unless the Public Facilities and Services to be constructed by the Developer pursuant thereto are secured and guaranteed by such security as approved by the County Administrator and the Clerk of Courts as appropriate. Any funds or contributions received by the County pursuant to a Development Agreement shall be applied towards or spent solely on the Projects specified in the Development Agreement. Notwithstanding anything to the contrary contained in this Article, a Development Agreement may allow development to proceed notwithstanding failure of the developer to satisfy transportation concurrency when all of the requirements of Section 11.03.06.C.6. of this Article are met.

PART 11.08.00 CONCURRENCY EXEMPTIONS

Sec. 11.08.01 Applicability

This Part shall apply to all claims of exemption from, or vested rights or equitable estoppel as to ordinances and regulations adopted pursuant to the Objectives of the Capital Improvements Element of the Comprehensive Plan. This Part shall apply to the unincorporated area of St. Johns County only. This Part is not intended to apply to claims by property owners that the Comprehensive Plan or Land Development Regulations constitute a taking of property for which compensation is due. However, if a property owner bases a taking claim in part or completely on facts that relate to the administrative process for or standards applicable to a Concurrency Exemption Determination, the owner must avail himself of the procedures set forth in this Part prior to bringing any claim for an unconstitutional taking.

Sec. 11.08.02 Purpose

The purposes of this Part are: (1) to expedite the process of concurrency review by identifying types of Development which shall be categorically exempt from the concurrency requirements of the St. Johns County Comprehensive Plan and implementing Parts; (2) to prevent the waste of public resources that would result from processing applications for Certificates of Concurrency for Projects with vested rights and for Projects as to which the County is equitably estopped from applying the provisions of Part 11.00.00 through Part 11.07.00; and (3) to provide a procedure for identifying, processing and estimating the impacts of exempt Projects on the capacity of public facilities and services.

Sec. 11.08.03 School Concurrency Exemptions

The following residential development shall be considered exempt from the school concurrency requirements of this Article:

- A. Developments of Regional Impact (DRIs) for which a development order has been issued prior to the effective date of SB 360 or for which a development of regional impact application was submitted prior to May 1, 2005.
- B. Single family lots of record existing prior to the effective date of the Public School Facilities Element of the St. Johns County Comprehensive Plan (PSFE).
- C. Any residential development that has site plan, final subdivision approval, or the functional equivalent prior to the effective date of the PSFE, but only to the extent of the number of residential units that had such approval prior to the effective date of the PSFE.
- D. Amendments to residential development approvals, which have received site plan, final subdivision approval, or the functional equivalent prior to the effective date of the PSFE, and which do not increase the number of residential units or change the type of residential units proposed.
- E. Age restricted development that are subject to deed restrictions prohibiting the permanent occupancy of residents under the age of eighteen (18). Such deed restrictions must be recorded and must be irrevocable for a period of at least thirty (30) years.

- F. Group quarters including residential type of facilities such as local jails, prisons, hospitals, nursing homes, bed and breakfast, motels and hotels, temporary emergency shelters for the homeless, adult halfway houses, firehouse dorms, college dorms exclusive of married student housing, and religious non-youth facilities.

Sec. 11.08.04 Categorical Exemptions

Upon request, the County Administrator will issue a Concurrency Exemption Determination for categorically exempt Projects. The following are categorically exempt from Part 11.00.00 through Part 11.07.00 of this Article:

- A. Subdivisions that have been approved by the Board of County Commissioners and recorded prior to June 19, 1978, as defined in Article XVI, the grandfather clause of the Residential Subdivision Regulations for St. Johns County, Florida, Ordinance No. 78-38, as amended.
- B. Subdivisions that have received final plat approval by the Board of County Commissioners pursuant to Section 72.0 of the Residential Subdivision Regulations for St. Johns County, Florida, Ordinance No. 78-38, prior to March 4, 1991, the effective date of the Concurrency Management Ordinance.
- C. Planned Special Developments and portions of Planned Unit Developments that have received Final Development Plan approval by the Board of County Commissioners prior to March 4, 1991.
- D. Projects with Final Local Development Permits issued prior to March 4, 1991.
- E. Projects or parts of Projects within and consistent with current valid Development Orders for Developments of Regional Impact issued pursuant to Section 380.06, F.S., prior to September 14, 1990 including:
 - 1. Projects with binding letters of interpretation from the Florida Department of Community Affairs pursuant to Section 380.06(20), F.S., specifying that the Project has vested rights.
 - 2. Projects for which Development has been authorized by a preliminary Development Agreement entered into pursuant to Section 380.06(8), F.S.
 - 3. Projects with local government Development Orders issued pursuant to Section 380.06(6), F.S.
 - 4. Projects with incremental Development Orders issued pursuant to Section 380.06 (21)(b), F.S., and within a Master Development Order.
 - 5. Development of Regional Impact Projects or parts of DRI Projects with only the following authorizations **shall not be categorically exempt**: a written agreement with the Northeast Florida Regional Council entered into pursuant to a pre-application conference; a recommendation and regional report submitted by the Northeast Florida Regional Council, including the recommendations submitted by other agencies as a part of the regional report during the local government review process under Section 380.06, F.S.; or a master Development Order issued

pursuant to Section 380.06(21), F.S., without incremental Development Orders.

Sec. 11.08.05 Concurrency Exemption Determination

Necessity for Application

All Projects other than those previously granted a Concurrency Exemption Determination or which are categorically exempt shall be subject Part 11.00.00 through Part 11.07.00 of this Article.

Sec. 11.08.06 Criteria for Issuance of Concurrency Exemption Determination

A. Modification of Exempt Projects

A Concurrency Exemption Determination may be granted for Projects or parts of Projects which are modifications of Categorically Exempt Projects or Projects with existing Concurrency Exemption Determinations regardless of whether the modifications are minor, major, or substantial deviations so long as the modification does not increase the impacts of the Project on Public Facilities and Services or alter the location or timing of those impacts in a way that would result in the projected operating Levels of Service being reduced below the projected operating Level of Service without the modification, or in any way that would impact on any Public Facility or Service that was not previously impacted.

B. Other Grounds for Concurrency Exemption

A Concurrency Exemption Determination may be granted, absent a determination of vested rights and/or equitable estoppel pursuant to Section 11.08.06.A, above, if the Applicant demonstrates:

1. Prior Development approvals granted by the County were subject to a thorough analysis of the impacts of the proposed Project on the applicable public facilities.
2. Public facility conditions have not changed substantially since the issuance of the prior Development approvals, or that the impacts on applicable public facilities have been specifically addressed in the Comprehensive Plan and the Five Year Capital Improvements Program or that the prior Development approvals have been expressly conditioned upon assuring concurrency.
3. Such conditions make it unnecessary or unreasonable to apply Part 11.00.00 through Part 11.07.00 of this Article.

Sec. 11.08.07 Effect of Concurrency Exemption Determinations

- A. Issuance of a Concurrency Exemption Determination shall relieve the Applicant from being subject to the provisions of Part 11.00.00 through Part 11.07.00 of this Article provided, however, that the proposed Project shall be subject to all governmental requirements relating to availability and adequacy of public facilities which were in effect prior to March 4, 1991, the effective date of the Concurrency Management Ordinance.
- B. A Concurrency Exemption Determination shall have no effect on other applicable governmental requirements.

C. Duration

1. Categorical Exemptions

- a. Subdivisions that were recorded prior to June 19, 1978 shall not be subject to Part 11.00.00 through Part 11.07.00 of this Article.
- b. Subdivisions that have received final plat approval by the Board of County Commissioners prior to March 4, 1991, shall not be subject to Part 11.00.00 through Part 11.07.00 of this Article.
- c. The categorical exemptions for Planned Special Developments and portions of Planned Unit Developments that have received Final Development Plan Approval by the Board of County Commissioners prior to March 4, 1991 shall be extended for one additional year through October 30, 1997. A Construction status report shall be submitted by May 1, 1997 and annually thereafter through build out. The report shall be examined to determine whether that Development has commenced and is continuing in good faith and is consistent with its phasing schedule. Those Developments or portions of Developments which have not commenced, or continued physical Construction in the reporting year, or have failed to receive a Final Development Plan, plat, or Building Permit, or are not developing in good faith and according to the phasing schedule shall be subject to Part 11.00.00 through Part 11.07.00 of this Article.
- d. Projects with Final Local Development Orders issued prior to March 4, 1991 shall not be subject Part 11.00.00 through Part 11.01.00 of this Article unless physical Construction has not commenced. If physical Construction has not commenced, the Project shall be subject to Part 11.00.00 through Part 11.07.00 of this Article. (Final Local Development Order is defined as a currently valid Building Permit issued by the County Building Department).
- e. Projects or parts of Projects within and consistent with current valid Development Orders for Developments of Regional Impact issued prior to September 14, 1990 shall not be subject to Part 11.00.00 through Part 11.07.00 of this Article except as otherwise allowed by Florida law and County ordinance. Substantial Deviations as defined by 380.06(19) F.S. shall be subject to Part 11.00.00 through Part 11.07.00 of this Article to the extent allowed by Florida law and County ordinance.
- f. Appeal

A determination by the Growth Management Director of a Development's failure to otherwise obtain vesting in order to continue Development without meeting the requirements of concurrency may be Appealed to the County Administrator. The County Administrator may grant such vesting upon a determination that the Project qualifies for an exemption under this Article or the Project qualified for common law vesting. The County Administrator may grant an extension of time to file the required annual report upon a showing by the Applicant, or successor, that strict enforcement would

cause undue hardship because of circumstances beyond the Applicant's or successor's control. Requests for extension shall be submitted to the Growth Management Director thirty (30) days prior to the due date for the annual report.

2. Concurrency Exemption Determinations

a. The exemptions for Projects which have received Concurrency Exemption Determinations through December 31, 1995, and which have not built out, and which have been extended by the Board of County Commissioners through October 30, 1996 shall be extended through October 30, 1997. A Construction status report shall be submitted by May 1, 1997 and annually thereafter through build out. The report shall be examined to determine whether Development has commenced and is continuing in good faith and is consistent with its phasing schedule. Subject to this paragraph, after October 30, 1997 those Projects or portions of Projects which have not commenced physical Construction or have failed to receive a Final Development Plan, plat, or Building Permit, or are not developing in good faith and according to their phasing schedules, shall be subject to Part 11.00.00 through Part 11.07.00 of this Article.

b. For Projects which received Concurrency Exemption Determinations in 1996, a Construction status report shall be submitted by May 1, 1998 and annually thereafter until build out. The report shall be examined to determine whether Development has commenced and is continuing in good faith, and is consistent with its phasing schedule. Subject to this paragraph, after May 1, 1998, those Projects or portions of the Projects which have not commenced physical Construction or have failed to receive a Final Development Plan, plat, or Building Permit, or are not developing in good faith and according to their phasing schedules, shall be subject to Part 11.00.00 through Part 11.07.00 of this Article.

c. Appeal

A determination by the Growth Management Director of a Development's failure to otherwise obtain vesting in order to continue Development without meeting the requirements of concurrency may be Appealed to the County Administrator. The County Administrator may grant such vesting upon a determination that the Project qualifies for an exemption under this Article or the Project qualified for common law vesting. In addition, the Growth Management Director may grant an extension of time to file the required annual report upon a showing by the Applicant, or successor, that strict enforcement would cause undue hardship because of circumstances beyond the Applicant's or successor's control. Requests for extensions shall be submitted to the Growth Management Director thirty (30) days prior to the due date for the annual report.

D. Sale of Lots or Parcels

Nothing herein shall preclude the sale of a Parcel with a Concurrency Exemption Determination. A successor in interest shall have all the rights and responsibilities resulting from, and shall be bound by, the Concurrency Exemption Determination.

E. Amendment of Development Orders

The Concurrency Exemption Determination shall not be construed as a limitation on the ability of the Owner or a successor in interest to seek an amendment of a Development Order; provided, however, that any increased impact resulting from such amendment may be subject to Part 11.00.00 through Part 11.07.00 of this Article.

F. Geographic Scope

The Concurrency Exemption Determination shall apply only to the particular Parcel(s) for which application was made. In the case of Developments of Regional Impact with preliminary Development Agreements, the exemption shall extend only to the preliminary Development area identified in the agreement, and shall not extend to areas that are not included within the preliminary Development area.

G. Reconsideration/Revocation of Concurrency Exemption Determination

A Concurrency Exemption Determination may be reconsidered and revoked by the County Administrator notwithstanding any other provision of this Part, if the County Administrator determines that the decision on the Concurrency Exemption Determination was based on materially inaccurate or incomplete information and that correct and complete information was reasonably obtainable by the Applicant.

PART 11.09.00 PROPORTIONATE FAIR SHARE PROGRAM

Sec. 11.09.01 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, to be known as the Proportionate Fair Share Program, as required by and in a manner consistent with Chapter 163.3180, F.S.

Sec. 11.09.02 Findings

The Board of County Commissioners finds and determines that transportation capacity is a commodity that has a value to both the public and private sector and that the County's Proportionate Fair Share Program:

- A. Provides a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors;
- B. Allows developers to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their proportionate fair share of the cost of a transportation facility,
- C. Contributes to the provision of adequate public facilities for future growth and promotes a strong commitment to comprehensive facilities planning, thereby reducing the potential for moratoria or unacceptable levels of traffic congestion;
- D. Maximizes the use of both private and public funds for the provision of adequate transportation facilities to serve future growth. This may, in certain circumstances, allow the County to expedite transportation improvements by supplementing funds currently allocated for transportation improvements in the Capital Improvements Element,
- E. Is consistent with Chapter 163.3180, F.S. and supports the objectives and policies in the County's Comprehensive Plan.

Sec. 11.09.03 Applicability

The Proportionate Fair Share Program may apply to all residential Developments in the County that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility in the County's Concurrency Management System, except for Developments of Regional Impact (DRI) using proportionate share under Chapter 163.3180, F.S., and Developments exempted from concurrency as provided in Part 11.08.00, Concurrency Exemptions.

The Proportionate Fair Share Program is intended to apply to roadway link deficiencies. If an intersection deficiency was identified in the concurrency denial determination and the improvements required to remedy that insufficiency can be incorporated into a link improvement for which a proportionate fair share is being calculated under Section 11.09.06, then the costs and proportionate fair share may be included in the link improvement and proportionate fair share calculation as defined in Section 11.09.06. The Proportionate Fair Share Program does not apply to minor intersection improvements such as signal retiming, installing traffic signals and constructing turn lanes required to remedy a deficiency that are not part of a roadway link

proportionate fair share as defined in Section 11.09.06. The County Administrator may consider and approve major intersection improvements such as grade separations, interchanges and through movement capacity improvements as eligible for the Proportionate Fair Share Program.

Sec. 11.09.04 General Requirements

A. An Applicant whose project meets the criteria of Section 11.09.03 may choose to satisfy the transportation concurrency requirements of the County by making a proportionate fair share contribution, pursuant to the following requirements:

1. The proposed Development is consistent with the comprehensive plan and applicable land development regulations.
 - a. For proposed Developments that are not consistent with the comprehensive plan and apply for a comprehensive plan amendment, Applicants may apply for the Proportionate Fair Share Program concurrent with the comprehensive plan amendment review process. The proportionate fair share agreement shall comply with the requirements as established herein. Applicants submitting proportionate fair share agreements with comprehensive plan amendments shall not pay the proportionate fair share amount until the comprehensive plan amendment is approved. The Applicant shall be required to finalize the proportionate fair share process as part of the actual application for concurrency and may be required to revise the proportionate fair share agreement based upon the final concurrency determination and review of the Proportionate Fair Share Program requirements.
2. The County Administrator has determined that years four and five of the Five-Year Schedule of Capital Improvements in the County's Capital Improvements Element (CIE) or an adopted long-term schedule of capital improvements for a long-term concurrency management system includes funding through construction completion for one or more transportation improvements that, upon completion, will satisfy the requirements of the County transportation Concurrency Management System for those transportation facilities upon which the transportation concurrency denial was based.
3. The proportionate fair share obligation shall be calculated according to the formula established in Chapter 163.3180, F.S. and Section 11.06.06. The County Administrator shall exercise final approval of the improvement to which the fair share payment shall be applied.

Notwithstanding the above requirements, upon recommendation by the County Administrator and finding by the Board of County Commissioners that the proposed project compromises public health, safety or welfare, proportionate fair share eligibility may be denied.

B. 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 Five-Year Schedule of Capital Improvements in the County's adopted CIE or an adopted long-term schedule of capital improvements for a long-term concurrency management system, providing that:

1. The Board of County Commissioners holds an advertised public hearing to consider the proportionate fair share agreement and corresponding future changes to the adopted Five-Year Schedule of Capital Improvements in the County's CIE, and
 2. The County adopts, by Ordinance, a commitment to add the improvement(s) to the Five-Year Schedule of Capital Improvements in the County's CIE no later than the next regularly scheduled update and to complete the improvement(s) within a specified timeframe not to exceed ten years. To qualify for consideration under this section, the proposed improvement(s) must be reviewed by the County Administrator and determined to:
 - a. Either provide improvement(s) to each of the facilities upon which transportation concurrency was denied or to other facilities demonstrated to provide relief to the facilities upon which transportation concurrency was denied ; and
 - b. Be financially feasible pursuant to Chapter 163.3180, F.S., consistent with the Comprehensive Plan and in compliance with the provisions of this ordinance. Financial feasibility for this section means that additional contributions, payments or revenue sources to fund the improvement project(s) are reasonably anticipated during a period not to exceed 10 years.
 - c. The Five-Year Schedule of Capital Improvements shall be reviewed annually and updated as necessary to reflect proportionate fair share contributions.
 - d. The County is responsible for funding all capital improvements in the adopted Five-Year Schedule of Capital Improvements for which proportionate fair share payments are collected for specific roadway capacity improvements.
- C. If the funds allocated for the adopted Five-Year Schedule of Capital Improvements in the County's CIE are insufficient to fully fund construction of a transportation improvement identified as needed to satisfy the deficiencies identified from the concurrency denial of the development, 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 Administrator or FDOT District Secretary or his/her designee), significantly benefit the impacted transportation system, providing that:
1. The Board of County Commissioners holds an advertised public hearing to consider the proportionate fair share agreement and corresponding future changes to the adopted Five-Year Schedule of Capital Improvements in the

County's CIE; and

2. The improvement or improvements funded by the proportionate fair share agreement must be adopted into the Five-Year Schedule of Capital Improvements of the CIE of the comprehensive plan at the next annual capital improvements element update; and
3. The Applicant agrees to construct and/or fully fund all costs of the improvement(s) proposed as mitigation for the project impacts at the option of the County. The County may, but shall not be obligated to, accept funding of all costs of 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 standards of the County for locally maintained roadways or those of the Florida Department of Transportation (FDOT) for the State Highway System.

Sec. 11.09.05 Application Process

- A. Upon notification of a failure to satisfy transportation concurrency, Applicants shall be notified in writing whether they may be eligible to satisfy transportation concurrency through a proportionate fair share contribution. Applicants shall submit to the County an Initial Determination request in writing within 30 days of the receipt of the denial determination indicating their desire to enter into a proportionate fair share agreement and requesting a pre-application meeting. The applicant may proceed to proportionate fair share mitigation bypassing the Initial Determination process after a denial determination is issued, and therefore, waive the right to appeal the denial determination.
- B. Prior to submitting an application for a proportionate fair share agreement, a pre-application meeting shall be held to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. If the impacted facility is on a State Road, then the Florida Department of Transportation (FDOT) may as appropriate be notified and invited to participate in the pre-application meeting or submit comments regarding the provisions of the proportionate fair share agreement.
- C. Proportionate Fair Share Agreements shall follow the procedures in Section 3.10 Proportionate Fair Share Agreements of the St. Johns County Development Review Manual.

Sec. 11.09.06 Determining Proportionate Fair Share Obligation

- A. 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.
- B. 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.
- C. The proportionate fair-share mitigation that is payable by the Applicant shall be determined per segment for each improvement needed to achieve an acceptable level-of-service on facilities for which transportation concurrency was denied and calculated as provided for in 163.3180 F. S., as follows:

“The cumulative number of trips from the proposed development expected to reach roadways during peak hours from the complete buildout of a stage or phase being approved (including the cumulative impacts of prior approvals from the same development), 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. “

OR

Proportionate Share = $\sum [((\text{Total Development Trips}_i) / (\text{SV Increase}_i)) \times \text{Cost}_i]$

(Note: This is the sum of all necessary improvements.)

Where:

Total Development Trips_i = Total PM peak hour trips from the development that are assigned to roadway segment i including cumulative impacts from prior phases of the same development.

The total development trips on a segment may exclude project trips for previous phases of a project if:

1. A Final Certificate of Concurrency was issued for that phase of development prior to the effective date of the Proportionate Fair Share Agreement, and
2. The project trips for the previously approved phase(s) significantly impacted the segment and were reserved in the concurrency management system on the roadway segment.

SV Increase_i = Service volume increase provided by the improvement necessary to maintain the adopted level of service on roadway segment i. Service volume increase shall be determined using maximum services volumes at the level of service standard for before and after proposed improvement from the appropriate Generalized Peak Hour Two-Way Volume Tables from the most recent release of the FDOT *Quality/Level of Service Handbook* or an alternative methodology approved by the County Administrator. The service volume increase shall be based on interrupted flow service volumes unless the facility is a limited access facility or the County Administrator determines that the roadway presently and is projected to meet the uninterrupted flow definition in the most recent release of the FDOT *Quality/Level of Service Handbook*.

Cost_i = Adjusted cost of the improvement to segment i.

Cost shall include all improvements and associated costs, such as design, land acquisition, planning, engineering, permitting, inspection, associated physical development costs directly associated with construction including utilities and project financing. For the purposes of determining proportionate share obligations, the County shall determine improvement costs based upon the actual cost of the improvement as obtained from the County's Capital Improvements Program or Florida Department of Transportation Work Program. If a project is not included in the County's Capital Improvements Program or FDOT Work Program, then improvement costs may be determined using one of the following methods:

1. A cost estimate from a previously approved Proportionate Fair Share Agreement

completed within the previous twelve months.

2. The Applicant shall prepare and submit with the application a certified and sealed engineer's cost estimate based on a preliminary design of the proposed improvements sufficient to quantify all costs as noted above and the amount of right-of-way required for the improvement including a statement of the number of residential structures and businesses anticipated to require relocation. The cost estimate for all costs exclusive of right-of-way shall be approved by the County Engineering Division prior to calculation of the proportionate fair share obligation. Right-of-way costs shall be approved by the County Real Estate Division prior to calculation of the proportionate fair share obligation. The final cost estimate shall then be adjusted to the projected construction year based on the following formula using growth rates calculated from the most recent three years Annual Average Construction Cost Index as published by the Engineering News-Record or other inflation adjustment procedure approved by the County Administrator:

$$\text{Cost}_n = \text{Cost}_0 \times (\text{Cost_growth}_{3\text{yr}})^n$$

Where:

Cost_n = The cost of the improvements in year n;

Cost₀ = The cost of the improvement in the current year;

Cost_{growth3yr} = The growth rate of costs over the last 3 years;

n = The number of years until the improvement is constructed.

The three-year growth rate is determined by the following formula:

$$\text{Cost_growth}_{3\text{yr}} = [\text{Cost_growth}_{-1} + \text{Cost_growth}_{-2} + \text{Cost_growth}_{-3}]/3$$

Where:

Cost_{growth3yr} = The growth rate of costs over the last 3 years;

Cost_{growth-1} = The growth rate of costs in the previous year;

Cost_{growth-2} = The growth rate of costs two years prior;

Cost_{growth-3} = The growth rate of costs three years prior.

If through the approval of a previous phase of a Development, a proportionate fair share obligation pursuant to this program was required on a roadway segment and that obligation was satisfied, the trips mitigated by that phase of Development may be subtracted from the total trips on the same roadway segment for future phases of the same development.

- D. If the County has accepted an improvement project proposed by the applicant, then the value of the improvement shall be determined using the methods provided in Section 11.09.06 C.
 1. If the estimated value of a proportionate fair share improvement proposed by the applicant is less than the County's estimated total proportionate fair share obligation for that development, then the applicant must also pay the difference in the form of a Monetary Payment or an equivalent improvement. Monetary Payment is the equivalent of cash, check, money order, or certified check.
 2. Where an Applicant constructs a transportation facility that exceeds the Applicant's proportionate fair share obligation calculated under Section 11.09.06 C, then the

County may reimburse the Applicant for the excess contribution using proportionate fair share payments from other future Applicants for that specific scheduled CIE improvement and/or through some other means acceptable to 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, such as, but not limited to, gas tax proceeds, the Applicant's acquisition of consulting and contractor services for the 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, impact fee credits and payments by future Applicants, shall be as determined by the County in negotiation with the Applicant. The Applicant must also provide the County with sufficient documentation (i.e. contract documents, invoices, etc.) to demonstrate the actual construction cost of the transportation improvement to the satisfaction of the County Administrator in order to receive a refund. This agreement may include a time limit for reimbursement. The service volume increase provided by the improvement shall not be added to the concurrency management system until the reimbursement amount is received or the reimbursement period ends, whichever comes first, and shall only be available to Applicants contributing a proportionate fair share payment toward the improvement during the reimbursement period.

- E. If the County has accepted right-of-way dedication for all or part of the proportionate fair share payment, credit for the dedication of the non-site related right-of-way shall be established by an independent appraisal report prepared by an appraiser with an MAI designation at no expense to the County. If the value of the proposed right-of-way dedication is \$500,000 or more, a second appraisal will be required at no expense to the County. The appraisal report(s) must be accepted and approved by the Land Management Systems Department. Alternatively, the Just (Market) Value contained in the St. Johns County Property Appraisers Valuation Report may be used. The applicant shall supply a drawing and legal description of the land and a certificate of title or title search of the land at no expense to the County.
1. If the estimated value of the right-of-way dedication proposed by the applicant is less than the County's estimated total proportionate fair share obligation for that development, then the applicant must also pay the difference. If the right-of-way dedication is included in the proportionate fair share calculations, then the final proportionate fair share obligation shall reflect the appraised right-of-way value.
 2. If the estimated value of the right-of-way dedication proposed by the applicant is more than the County's estimated total proportionate fair share obligation for that development, then the County may reimburse the Applicant for the excess contribution using proportionate fair share payments from other future Applicants for that specific scheduled CIE improvement and/or through some other means acceptable to the County and the Applicant. If the right-of-way dedication is included in the proportionate fair share calculations, then the final proportionate fair share obligation shall reflect the appraised right-of-way value. The refund shall be conveyed after the land is conveyed to and accepted by the County or State, whichever is applicable.
- F. Proportionate Fair Share contributions shall be applied as a credit toward the road impact fees for the development project. The road impact fee credit shall be reduced by up to

20% based on the projects percentage utilization of the additional capacity provided by the improvement(s) for which the proportionate share was calculated. 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.

Sec. 11.09.07 Proportionate Fair Share Agreements

- A. Upon execution of a Proportionate Fair Share Agreement (Agreement) the Applicant shall receive a certificate of concurrency approval and all trips attributable to the development shall be considered vested and shall be added to the concurrency management tracking system for the impacted facilities.
- B. If the proportionate fair share mitigation is in the form of a Monetary Payment or construction of a transportation improvement(s), then payment of the proportionate share contribution is due in full as follows:
 - 1. For proposed Developments that are not consistent with the comprehensive plan and apply for a comprehensive plan amendment, the proportionate fair share Monetary Payment will not be required until the agreement is finalized upon application for a rezoning and a Final Certificate of Concurrency as applicable under sub-section 2 following.
 - 2. For projects that are consistent with the Comprehensive Plan, the proportionate fair share Monetary Payment shall be due in full or a security instrument committing the financial obligation to construct the required transportation improvement(s) shall be provided to the County no later than the amendment to the County Five-Year Schedule of Capital Improvements or two (2) years from the approval of the Proportionate Fair Share Agreement, whichever comes first. Provided however, prior to construction plan approval for non-residential or final plat approval for residential, a proportionate fair share payment based on the percentage of development proposed on construction plan or final plat is required.

If the proportionate fair share payment is not received as required in this section and/or the approved proportionate fair share agreement, then the Agreement shall be considered null and void, the trips shall be removed from the concurrency management tracking system, and the applicant shall be required to reapply. Proportionate fair share payments shall be nonrefundable and the improvements to be contributed by the applicant as mitigation under the terms of the Agreement shall not be incorporated into the Five-Year Schedule of Capital Improvements in the County's CIE until the payment has been received as required by this section.

- C. The term of a Proportionate Fair Share Agreement shall not exceed the term of the companion Final Certificate(s) of Concurrency. A Proportionate Fair Share Agreement may be extended if the companion Final Certificate of Concurrency is extended pursuant to Sections 11.03.02.B and 11.03.04 of the Land Development Code. If applicable, the proportionate fair share payment shall count as a credit toward the prepayment of transportation impact fees required to extend the Final Certificate of Concurrency.
- D. All developer improvements authorized under this program must be completed prior to issuance of a final development permit or construction plan approval, or as otherwise

established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure the completion of all required improvements.

- E. Dedication of necessary right-of-way for facility improvements pursuant to a Proportionate Fair Share Agreement must be completed prior to issuance of the final development permit or construction plan approval.
- F. Any requested modification to a Development Permit subject to a Proportionate Fair Share Agreement that would require a new Final Certificate of Concurrency as defined in Sec. 11.03.08 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.
- G. 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.
- H. The County may establish multiparty Proportionate Fair Share Agreements for selected corridors to facilitate collaboration among multiple applicants on improvements to a mutually impacted transportation facility.

Sec. 11.09.08 Proportionate Fair Share Fund

- A. There is hereby created a new special revenue fund called the Proportionate Fair Share Fund where individual projects will be established and to which proportionate fair share payments shall be made pursuant to this Program. Revenue from this fund 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 Proportionate Fair Share Agreement(s).
- B. In the event a scheduled facility improvement is removed from the CIE, then the proportionate fair share revenues collected for its construction may be applied toward the implementation of one or more alternative improvement(s) that would mitigate the impacts to the transportation system pursuant to the requirements of Section 11.09.04.

Sec. 11.09.09 Cross Jurisdictional Impacts

- A. In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the County may enter an agreement with one or more adjacent local governments to address cross jurisdictional impacts of development on regional transportation facilities. The agreement shall provide for a methodology to address the cross jurisdictional transportation impacts of development.
- B. Upon identification of an impacted regional facility pursuant to Section 11.09.09.A, the County shall notify the applicant and the affected adjacent local government in writing of the opportunity to derive an additional proportionate fair-share contribution, based on the projected impacts of the proposed development on the impacted adjacent facility.
 - 1. The adjacent local government shall have up to ninety (90) days in which to notify the County of a proposed specific proportionate fair-share obligation, and the intended use of the funds when received. The adjacent local government must

provide reasonable justification that both the amount of the payment and its intended use comply with the requirements of Section 163.3180, F.S. Should the adjacent local government decline proportionate fair-share mitigation under this section, then the provisions of this section would not apply and the applicant would be subject only to the proportionate fair share requirements of the County.

2. If the subject application is subsequently approved by the County, the approval shall include a condition that the applicant provides, prior to the issuance of any building permit covered by that application, evidence that the proportionate fair-share obligation to the adjacent local government has been satisfied. The County may require the adjacent local government to declare, in a resolution, ordinance, or equivalent document, its intent for the use of the concurrency funds to be paid by the applicant.

History: Ord. 2003-22; Ord. 2004-22; Ord. 2006-131; Ord. 2009-48; Ord. 2010-18; Ord. 2011-15; Ord. 2012-23; Ord. 2014-19; Ord. 2018-44