

## **CHAPTER 1300. CONCURRENCY AND IMPACT FEES**

### **SECTION 1301. CONCURRENCY**

#### **1301.1. Intent and Purpose**

Concurrency facilities include drainage, potable water, water supply, sanitary sewer, solid waste, parks and recreation, and school facilities. The Board of County Commissioners (BCC) has established Level of Service (LOS) standards for such facilities in the Comprehensive Plan. The purpose of these regulations is to allow the County, or the School District as to school concurrency, to determine whether or not there is sufficient capacity of concurrency facilities to meet the Comprehensive Plan LOS standards concurrent with proposed development and ensure consistency with the Capital Improvements Plan (CIP), Capital Improvements Element (CIE), and/or the School District's Facilities Work Program for school concurrency.

#### **1301.2. Applicability**

For purposes of timing applicability for all public facilities other than schools, this section shall apply to nonexempt Initial or Final Certificates of Capacity or Initial or Final Certificate of Capacity development orders for which the complete application has been filed, resubmitted after expiration or denial, or substantially amended on or after December 1, 2006, unless the applicant and the County agree to an earlier application date. For purposes of timing applicability for school facilities, this section shall apply to nonexempt Initial and Final Certificate of Capacity development orders for which a complete application has been filed, resubmitted after expiration or denial, or substantially amended on or after January 1, 2010, unless the applicant and the County agree to an earlier application date. Pending complete applications for preliminary site plans (PSP), preliminary plans, and residential subdivisions into more than one (1) dwelling unit per lot that are exempt from an Initial Certificate of Capacity that includes school facilities concurrency are not automatically exempt from the requirement to obtain a Final Certificate of Capacity that includes school facilities concurrency. Pending complete applications for Building Permits and plats as of January 1, 2010, are not subject to this section. Any project not subject to the school facility provisions of this section shall continue to comply with all school facility requirements in effect or imposed at the time the project was submitted, unless the project qualified for an exemption from such requirements.

The transportation concurrency provisions of this section shall only be applicable to mobility fee, opt-out developments pursuant to this Code, Section 1302.2.

Except for those opt-out developments, projects with existing transportation concurrency obligations set forth in any development approval or Certificate of Capacity for the project, including any proportionate-share payment obligations, are relieved of those obligations. However, if such obligations are set forth in a development agreement or Development of Regional Impact (DRI) Development Order, the project shall not be relieved of such obligations unless the development agreement or DRI Development Order is amended or rescinded by the BCC. In addition, if any proportionate-share obligation has already been paid, or committed through an enforceable performance guarantee, the project shall not be relieved of such obligation, unless the BCC specifically grants relief from such obligation. No

project shall be entitled to a refund for any proportionate-share payment paid, or proportionate-share project constructed, prior to the effective date of the Urban Service Area/Transportation Concurrency Exception Area exemption or the elimination of transportation concurrency requirements, as applicable. Any transportation-related build-out date; transportation concurrency expiration date; or Traffic Impact Study (TIS) reevaluation date set forth in the development approvals or Certificate of Capacity for the project are hereby eliminated, unless such dates are regional or State build-out or reevaluation dates in a DRI Development Order, in which case, such dates shall not be eliminated unless the DRI Development Order is rescinded or amended by the BCC.

The elimination of transportation concurrency does not guarantee that all projects will be approved upon payment of a mobility fee. Development has other site-specific and cumulative impacts on the transportation system that are regulated through other portions of this Code including, but not limited to, regulations relating to transportation corridor management, collector and arterial spacing, access management, substandard roads, timing and phasing, and secondary access. Projects shall not be relieved of such requirements, even if such requirements are or were based on a TIS.

### 1301.3. **Exemptions**

- A. Subject to this Code, Section 1301.3.D, the following projects are permanently exempt from obtaining a Certificate of Capacity:
  1. For Other Than School Concurrency:
    - a. The portion of any project that has received final subdivision plat approval as a residential subdivision into one (1) dwelling unit per lot as of December 1, 2006.
    - b. Any building or structure that has received a Certificate of Occupancy (CO) as of December 1, 2006.
    - c. Any public school with an approved site plan or approved Comprehensive Plan consistency review as of December 1, 2006.
    - d. The portion of any project or area subject to a BCC-approved public facility infrastructure financing plan and special district to finance such infrastructure; provided, however, the scope of the concurrency exemption for such project(s) or area shall be defined in the BCC approval.
  2. For School Concurrency:
    - a. The portion of any project that has received final subdivision plat approval as a residential subdivision into one (1) dwelling unit per lot as of January 1, 2010.

- b. Any residential dwelling unit that has received a CO as of January 1, 2010.
  - c. Any age-restricted community intended to provide housing for persons who are fifty-five (55) years of age or older that prohibits the permanent residency of individuals under the age of twenty-two (22) by deed restrictions meeting the requirements of the School Impact Fee Ordinance. Said deed restrictions are required to be executed and recorded prior to granting this exemption.
- B. Subject to this Code, Section 1301.3.D, the following projects are exempt from obtaining a Certificate of Capacity, but such exemption is subject to expiration:
- 1. For Other than School Concurrency:
    - a. The portion of any project in possession of a valid, unexpired, Certificate of LOS Compliance; however, such exemption shall expire upon the expiration of the Certificate of LOS Compliance, or upon default of any conditions of the Certificate of LOS Compliance, unless such project, or portions of such project, remains exempt pursuant to another exemption provision.
    - b. The portion of nonresidential projects, residential projects not requiring a subdivision plat, or residential subdivisions into more than one (1) dwelling unit per lot that have received a Building Permit as of December 1, 2006; however, such exemption shall expire upon expiration of the Building Permit if the building subject to the Building Permit has not received at least one (1) inspection as of December 1, 2006, unless such project, or portions of such project, remains exempt pursuant to another exemption provision.
    - c. DRI Development Orders approved prior to April 9, 1991; however, such exemption shall expire for any phase of the development order on the date such phase is subject to an additional concurrency review, or for the entire development order upon expiration of the development order, or upon any material default of the mitigation conditions of such development order or a related Development Agreement (DA), unless such project, or portions of such project, remains exempt pursuant to another exemption provision.
  - 2. For School Concurrency:
    - a. The portion of residential projects not requiring a subdivision plat, or residential subdivisions into more than one (1) dwelling unit per lot that have received a Building Permit as of the effective date of the Pasco County School Concurrency

Management Ordinance; however, such exemption shall expire upon expiration of the Building Permit if the building subject to the Building Permit has not received at least one (1) inspection as of January 1, 2010, unless such project, or portions of such project, remains exempt pursuant to another exemption provision.

- b. Unless an applicant elects otherwise in writing, the provisions of this ordinance shall not apply to any DRI for which a Development Order has been issued prior to July 1, 2005, or for which a DRI application has been submitted prior to May 1, 2005. Any exempt DRI which files a notice of proposed change for an extension of the date of build-out or any phase thereof which is presumed to be substantial deviation shall comply with this division for any portion of the development so extended, unless such project, or portion of such project, remains exempt pursuant to another exemption provision.
  - c. The portion of any project that is the subject of a binding and enforceable DA or other agreement that specifically exempts such project from school concurrency requirements; however, such exemption shall expire upon expiration of the DA, or upon any material default of the school mitigation conditions of such DA or agreement, unless such project, or portions of such project, remains exempt pursuant to another exemption provision.
  - d. The County Administrator or designee shall determine whether an exemption applies and, if an exemption is granted, refer same to the School District for review. If the School District objects to the granting of an exemption, the School District shall notify the County in writing within fourteen (14) days of receipt of the exemption determination and include in the objection notice the reasons why the School District believes that the exemption does not apply. Should the County Administrator, or designee, uphold the exemption, the School District may appeal such decision pursuant to this Code. Should the County Administrator or designee deny the exemption, the applicant may appeal such decision pursuant to this Code. If the School District objects to an exemption determination within the fourteen (14) day objection period, the exemption determination, and any Initial or Final Certificate that is issued based on the exemption, shall not be considered final or appealable for purposes of this Code until the County Administrator or designee issues a final determination after the School District's written objection.
- C. The foregoing exemptions shall not apply if a material change is made to the exempt portion of any project, building, or structure. The term "material change" shall mean a change that results in an increased demand for or impact on the concurrency facility or facilities for which the project is exempt.

However, in the event a project exempt pursuant to this Code, Section 1301.3.A or 1301.3.B.1.b, loses exemption status solely as a result of a material change, the Certificate of Capacity, and the applicable review standards and de minimis thresholds shall apply only to that portion of the project that has resulted in an increased demand for or impact on the concurrency facility; and such project shall only be subject to concurrency review for those facilities with increased impacts. All other exempt projects that make a material change or that lose exemption status for the reasons set forth in the exemptions shall become subject to all applicable requirements of this Code.

- D. Before the County Administrator or designee determines that any exemption shall expire based on a material default of a condition, agreement, or Development Order, the County shall provide thirty (30) days prior written notice of the planned expiration to all property owners that would be subject to a new Certificate of Capacity upon such expiration. During such thirty (30) day period, any property owner notified of the planned expiration may either (1) cure the default; or (2) appeal the planned expiration pursuant to this Code. In the event of an appeal of the planned expiration, the expiration shall be stayed until such time that the BCC determines that the Certificate of Capacity shall expire.

#### 1301.4. **Limited Exemptions**

- A. The BCC, or the County Administrator or designee may administratively exempt any of the following "limited exemption projects" from any provision of these regulations that is more stringent than minimum State law requirements:
1. Public schools governed by the Public School Facilities Element of the adopted Comprehensive Plan, as amended, and community colleges and universities governed by Chapter 1013, Florida Statutes.
  2. Governmental uses, including Federal, State, and County-owned or leased buildings or land.
  3. Target businesses, which are defined for the purposes of these regulations as businesses identified by Enterprise Florida's Qualified Target Industry Tax Refund Program, and those targeted businesses identified in the Pasco Economic Development Council's Economic Development Target Industry List, as may be amended from time to time. The County may impose additional zoning restrictions and/or private deed restriction requirements to ensure that target businesses remain target businesses.
  4. The corporate business park, targeted primary business, or industrial use portion of an EC (Employment Center) Future Land Use Classification, or the corporate business park, targeted primary business, or industrial-use portion of another Land Use Classification, which are developed in accordance with the County's EC-MPUD Employment Center Master Planned Unit Development requirements.

These uses include the preferred uses listed in this Code, Chapter 500, Zoning. Accessory and ancillary uses allowed within an EC-MPUD shall not be considered limited exemption uses, unless such uses are specifically determined by the BCC or County Administrator to be an integral part of the preferred uses. The County may impose additional zoning restrictions and/or private deed-restriction requirements to ensure that preferred EC uses remain preferred EC uses.

5. Portions of projects developed as a traditional neighborhood design, transit-oriented design, or TC (Town Center) designated development in accordance with this Code.
  6. Affordable housing projects, which are defined for purposes of this section as projects that provide housing that is affordable to a family with a median income that does not exceed eighty (80) percent of the median income for the Tampa-St. Petersburg-Clearwater Standard Metropolitan Statistical Area. To qualify as an affordable housing project, the project must be designated as affordable by the County's Community Development Manager, consistent with the foregoing definition and applicable Federal, State, and local income and expense criteria for affordable housing, and must be sold or leased to a family that satisfies the foregoing income criteria, as determined by the Community Development Manager. The County shall impose deed restrictions, mortgage requirements, and/or liens that ensure that any affordable housing projects that are granted one (1) or more limited exemptions pursuant to these regulations remain affordable. The owner of any dwelling unit or building in an affordable housing project granted a limited exemption that resells or leases such dwelling unit or building at a price or rent that is no longer affordable, or resells or leases such dwelling unit or building to a family that does not satisfy the foregoing income criteria, as determined by the Community Development Manager consistent with the foregoing definition, shall be required to pay to the County the difference between (1) the County estimated pro-rata share of the proportionate-share obligation of the affordable housing project with any limited exemptions granted such project; and (2) the County estimated pro-rata share of the proportionate-share obligation of the affordable housing project without any limited exemptions at the time that such dwelling is resold. Failure to pay the difference shall be considered a violation of this Code punishable in accordance with this Code, in addition to any other remedies of the County as set forth in the County-imposed deed restrictions, mortgage requirements, and/or liens.
- B. The limited exemptions for limited-exemption projects may include, but are not limited to, one (1) or more of the following:
1. Extension of expired Certificates of Capacity without additional review to the extent allowed by law.

2. In this Code, Sections 1301.6.D.1.a and 1301.6.D.1.b, replacement of "during the fiscal year" with "within three fiscal years of the date."
3. Waiver of County traffic study requirements pursuant to this Code, Section 1301.6.D.1.b, regardless of the de minimis thresholds in this Code, Section 1301.6.D.1.c.
4. Payment of transportation impact fees or mobility fees as the project's proportionate share.
5. The County and School Board may address proportionate-share contributions and concurrency obligations for public schools in the Interlocal Agreement for Coordination of Planning Activities, as amended, or other Interlocal Agreement between the County and the School Board.

The BCC acknowledges that the provision of limited exemptions to limited-exemption projects does not relieve the County from complying with CIE requirements, or from ensuring that adequate concurrency public facilities are available to achieve Comprehensive Plan adopted LOS.

#### 1301.5. **Generally**

##### A. **Certificates of Capacity**

A Certificate of Capacity, as used in these regulations, is a determination that all concurrency review requirements are satisfied for the proposed development and that a specified quantity of concurrency facilities capacity is reserved for the proposed development for the duration of the Certificate of Capacity, subject to the requirements of these regulations, and any conditions imposed with the Certificate of Capacity. A Certificate of Capacity is issued if all adopted LOS standards can be maintained during and following the proposed development, or the impacts of the proposed development are mitigated consistent with the Comprehensive Plan and these regulations. Any Certificate of Capacity may be issued with conditions to ensure the adopted LOS standards can be maintained during and following the proposed development, or to ensure that the impacts of the proposed development are mitigated consistent with the Comprehensive Plan and these regulations. Certificates of Capacity shall be issued by the County on a form designed by the County and relating to a specific development project, or project phase, on a specific parcel of real property. Certificates of Capacity shall run with the parcel(s) of real property upon which they are issued, and the rights and obligations set forth therein shall be binding on subsequent property owners of such real property. Certificates of Capacity may not be transferred to other parcels or property.

##### B. **Certificate of Capacity Information**

Each Certificate of Capacity shall include, at a minimum, a statement as to specific land uses, the number of units, and the floor area or square footage for all nonresidential structures or other areas that will be used for display,

storage of goods, or dedicated to the performance of services as applicable or relevant to the estimation of impacts for purposes of meeting the intent of these regulations. For phased projects, or projects with interim uses that utilize concurrency public facilities, this information shall be provided for each phase or interim phase. The Certificate of Capacity shall also include, at a minimum, the location of the project, including Parcel Identification Numbers. The County Administrator or designee may establish application forms requiring additional information or request supplemental information for specific concurrency public facilities. In addition, information supplied by the applicant in any related development approval application(s) may be used for the Certificate of Capacity determination. For school concurrency, each applicant not exempt from school concurrency shall submit a School Concurrency Application to the School District and comply with the School District's Concurrency Implementation Procedures Manual adopted by the School District pursuant to Chapter 120, Florida Statutes, and found at <http://pasco.k12.fl.us/planning/concurrency> (the *School Concurrency Implementation Procedures Manual*).

C. Capacity Determination Procedures

Initial Certificates of Capacity: For sanitary sewer, potable water, water supply, solid waste, and parks and recreation, an Initial Certificate of Capacity shall be required prior to the issuance or approval of one (1) of the following development orders for any project or project phase (the Initial Certificate of Capacity Development Orders):

1. PSP;
2. Preliminary Development Plan;
3. Nonresidential Subdivision; or
4. Residential subdivision into more than one (1) dwelling unit per lot.

For school facilities, an initial Certificate of Capacity shall be required prior to the issuance or approval of one (1) of the following development orders for any project or project phase:

5. Preliminary Development Plan - Residential (PDP-R); or
6. Residential subdivision into more than one (1) dwelling unit per lot.

Initial Certificates of Capacity shall be valid and reserve capacity for a period of six (6) years from the date of issuance except for school facilities.

For school facilities, Initial Certificates of Capacity shall be valid and reserve capacity for a period of three (3) years from the date of issuance of the Initial Certificate of Capacity, unless a longer time period is approved in accordance with the requirements of the School Concurrency Implementation Procedures Manual. The foregoing expiration periods for Initial Certificates of Capacity are subject to the additional review and revocation requirements set forth



below. Initial Certificates of Capacity that expire may be renewed only upon compliance with all applicable application and review requirements set forth in these regulations. Initial Certificate of Capacity Development Orders shall not require a new Initial Certificate of Capacity if the project or project phase has a valid and unexpired Initial Certificate of Capacity at the time of issuance or approval of the Initial Certificate of Capacity Development Order.

7. Opt-out developments. An Initial Certificate of Capacity is required prior to DRI of Florida Quality Development pursuant to Chapter 380, Florida Statutes, and zoning amendments (excluding zoning amendments to I-1 Light Industrial Park, I-2 General Industrial Park, PO-1 Professional Office, and PO-2 Professional Office, in addition to those applications identified in a. above. For opt-out developments, the capacity reservation for arterial and collector transportation facilities shall depend on whether the Initial Certificate of Capacity requires a traffic study in accordance with these regulations and the TIS Guidelines, or traffic study in accordance with Chapter 380, Florida Statutes, to determine capacity for arterial and collector transportation facilities (traffic study). Initial Certificates of Capacity requiring a traffic study shall be valid and reserve capacity from the date of issuance through the build-out date of the traffic study, which shall be no less than two (2) years. Unless otherwise approved by the Planning Commission (PC) or the BCC, the build-out date of the traffic study shall be no greater than fifteen (15) years from the date of the initial traffic study methodology submittal for DRI and Florida Quality Developments and no greater than ten (10) years from the date of the initial traffic study methodology submittal for all other developments requiring a traffic study. Initial Certificates of Capacity that do not require a traffic study in accordance with these regulations shall be valid and reserve capacity for a period of two (2) years from the date of issuance; however, any Initial Certificate of Capacity applicant that is not required to complete a traffic study may voluntarily complete a traffic study pursuant to these regulations and Section 901.5 and be subject to the capacity reservation periods for projects required to complete a traffic study.

8. Final Certificates of Capacity

For drainage, sanitary sewer, potable water, water supply, solid waste, parks and recreation, and school facilities, a Final Certificate of Capacity shall be required prior to the issuance or approval of one (1) of the following development orders for any project or project phase (Final Certificate of Capacity development orders):

- a. Building Permit issuance for nonresidential development, residential development not requiring subdivision plat, or residential subdivisions into more than one (1) dwelling unit per lot.
- b. Final plat approval for residential subdivisions into one (1) dwelling unit per lot.

For public schools, site plan approval to the extent required by the Interlocal Agreement between the County and the School Board.

Any project or project phase with a valid and unexpired Initial Certificate of Capacity at the time of issuance or approval of the Final Certificate of Capacity development order shall be entitled to issuance of a Final Certificate of Capacity without further analysis or review for the portion of the project with the valid and unexpired Initial Certificate of Capacity, subject to the additional review and revocation requirements set forth below; provided, however, issuance of a Final Certificate of Capacity shall be subject to additional review for drainage concurrency regardless of whether an Initial Certificate of Capacity has been issued. Projects or project phases without a valid and unexpired Initial Certificate of Capacity shall require additional review in accordance with these regulations. Final Certificates of Capacity, once issued, shall not expire and shall constitute a permanent reservation of capacity, subject to the additional review and revocation requirements set forth below.

9. Additional Review and Revocation Requirements

Any project or project phase that changes the number of units, the type of land use, the floor area or square footage for all nonresidential structures, or other areas that will be used for display or storage of goods, or dedicated to performance of services, after an Initial or Final Certificate of Capacity has been issued, shall be subject to additional review in accordance with these regulations if the change results in an increased demand for or impact on any concurrency facility.

Any opt-out development project or project phase requiring a traffic study shall be subject to additional traffic study review in accordance with these regulations if, after the issuance of the Initial or Final Certificate of Capacity, the build-out date, land-use assumptions, or on-site circulation or access provisions in the traffic study for the project or project phase have been changed to the extent that they result in an increased impact on arterial and collector transportation facilities.

However, in the event a project or project phase becomes subject to additional review after it has received a Final Certificate of Capacity, such project or project phase shall be subject to additional review only for that portion of the project that has resulted in an increased demand for or impact on the concurrency facility, and such project shall only be subject to concurrency review for those facilities with increased impacts.

An Initial or Final Certificate of Capacity may be revoked if the County Administrator or designee determines that (1) the application information used as a basis for the issuance of the Certificate of Capacity was inaccurate and such inaccuracy was material to the

capacity determination; or (2) a condition of the Initial or Final Certificate of Capacity has not been fulfilled by the time period required in such condition, or in the absence of a time period, by the issuance of the first CO for the project or project phase that received the Certificate of Capacity. However, before the County Administrator or designee revokes a Certificate of Capacity, the County shall provide thirty (30) days prior written notice of the planned revocation to all property owners that would be subject to a new Certificate of Capacity upon such revocation. During such thirty (30) day period, any property owner notified of the planned revocation may either: (1) cure the inaccuracy or noncompliance; or (2) appeal the planned revocation pursuant to this Code. In the event of an appeal of the planned revocation, the revocation shall be stayed until such time that the BCC determines that the Certificate of Capacity shall be revoked. As to school facilities, the School District may formulate, adopt, and enforce its own rules of revocation of a Concurrency Capacity Letter in the *School Concurrency Implementation Procedures Manual*. The School District's revocation of a Concurrency Capacity Letter shall be a basis for the County to revoke an Initial or Final Certificate of Capacity.

An applicant may voluntarily relinquish any Initial or Final Certificate of Capacity that has been issued to the applicant, in which case, the capacity reservation for the project, or project phase, shall terminate, and such project or project phase shall be subject to all procedures and review standards set forth in these regulations. However, an applicant may not relinquish any condition or mitigation required by an Initial or Final Certificate of Capacity if such condition or mitigation is guaranteed by a security instrument, such as a bond or Letter of Credit, and voluntary relinquishment by the applicant shall not entitle the applicant to a refund or credit for any payment or mitigation provided to the County as a condition of the relinquished Initial or Final Certificate of Capacity. As to school facilities, the School District may formulate, adopt, and enforce its own rules pertaining to relinquishment of a Concurrency Determination Letter in the *School Concurrency Implementation Procedures Manual*.

D. Effect of Certificate of Capacity Subject to Additional Review, Revocation, or Expiration

The County shall withhold issuance of new development orders, permits, or CO for any project or project phase: (1) with an expired or revoked Initial or Final Certificate of Capacity; (2) with an Initial or Final Certificate of Capacity subject to additional review in accordance with these regulations; or (3) that did not obtain an Initial or Final Certificate of Capacity where required by these regulations.

Initial and Final Certificates of Capacity may be subject to additional review or revocation for all concurrency facilities or for specific concurrency facilities. In addition, Initial Certificates of Capacity may have a different expiration period for arterial and collector transportation facilities and/or school facilities than

other concurrency facilities. If an Initial or Final Certificate of Capacity is subject to additional review, revocation, or expiration only for a specific concurrency facility, or specific concurrency facilities, it shall not affect the validity of the Initial or Final Certificate of Capacity for purposes of the other concurrency facilities not subject to additional review, revocation, or expiration.

1301.6. **Specific Review Standards**

The following review standards shall apply to all nonexempt projects or project phases seeking an Initial Certificate of Capacity or Final Certificate of Capacity, or projects with Initial or Final Certificates of Capacity subject to additional review, or that have been revoked or expired.

A. **Potable Water, Sewer, Solid Waste, Water Supply, and Drainage**

For potable water, sewer, solid waste, water supplies, and drainage, the facilities needed to serve the project applying for the Certificate of Capacity and to maintain the adopted LOS standards shall be in place and available no later than the issuance of the Final Certificate of Capacity, or the conditions of the Final Certificate of Capacity ensure that such facilities will be in place and available no later than the issuance of the first CO for the project. For water supply, the County shall consult with the applicable water supplier prior to the issuance of the Final Certificate of Capacity to determine whether adequate water supplies to serve the project applying for the Certificate of Capacity and to maintain the adopted LOS standards will be available prior to the issuance of the Final Certificate of Capacity.

B. **Parks and Recreation**

1. For Parks and Recreation, the necessary facilities to serve the residential development and maintain the adopted LOS shall be in place or under actual construction no later than one (1) year after the issuance of the Final Certificate of Capacity, or the acreage for such facilities shall be dedicated to or acquired by the County prior to the issuance of the Final Certificate of Capacity or funds in the amount of the developer's fair share shall be committed no later than the issuance of the Final Certificate of Capacity.

C. **Schools**

As to school concurrency, Concurrency Determination Letters, Preliminary Concurrency Deficiency Letters, and Final Concurrency Deficiency Orders shall be issued by the School District pursuant to the *School Concurrency Implementation Procedures Manual*. The County shall not issue Initial and Final Certificates of Capacity until the School District issues its Concurrency Determination Letter, unless the project is exempt from school concurrency, pursuant to the provisions of this Code. For school facilities, the necessary facilities to serve the residential development and to maintain the adopted LOS shall be in place or under actual construction no later than three (3) years after the issuance of a Concurrency Capacity Letter.

1. De minimis and aggregation determinations shall be made by the School District. Projects that consist of less than the number of dwelling units required to generate one (1) student are de minimis. De minimis projects are those projects and aggregated projects, as defined in the School District's *School Concurrency Implementation Procedures Manual*, that do not generate one (1) or more student(s).
2. In the event that there is not capacity available at the adopted LOS to serve projected student populations of a proposed development, the developer may elect to negotiate with the School District on proportionate-share mitigation options. The methodology used to calculate School Concurrency Proportionate Share Mitigation shall be adopted by the School District in the *School Concurrency Implementation Procedures Manual*.
3. Proportionate-share mitigation options include, but are not limited to, the following:
  - a. Contribution of land for an entire school site meeting the applicable School Siting Standards or adjacent to an existing school site.
  - b. Provision of additional permanent student stations through the donation of permanent buildings for use as a primary or alternative public school facility, provided that such buildings meet State Requirements for Educational Facilities (SREF) standards and provided that such student stations are not relocatable or other temporary classrooms.
  - c. Provision of additional permanent student stations through the renovation of existing buildings for use as public school facilities.
  - d. Construction of permanent student stations or core facilities.
  - e. Construction of a school in advance of the time set forth in the District Facilities Work Plan (DFWP).
  - f. Creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity created.
  - g. The contribution of funds or other financial or financing initiatives acceptable to the School District to ensure that the financial feasibility of the DFWP can be maintained by the implementation of the mitigation options.
  - h. Construction of a charter school that (1) provides permanent student stations, (2) is constructed in accordance with SREF

standards, (3) limits admission to students residing within the County, and (4) includes provision for its continued existence.

- i. The contribution of funds or other financial or financing initiatives acceptable to the School District to ensure that infrastructure improvements to support a public school facility that are the obligation of the School District will be in place when necessary.
4. The foregoing proportionate-share mitigation options shall be implemented through a proportionate-share mitigation agreement. The developer, School District, and BCC shall all be parties to a proportionate-share mitigation agreement. Final Certificates of Capacity shall not be issued in the interim.
5. Proportionate-share payments or in lieu of payment improvements or contributions shall be applied as a credit against impact fees in accordance with the credit provisions of this Code. The portion of any proportionate-share payment that is equivalent to the school impact fees due shall be considered a payment of school impact fees and shall be budgeted and expended in accordance with this Code. Any proportionate-share payments in excess of the school impact fees due shall be considered a concurrency proportionate-share payment and shall be budgeted and expended in accordance with the School Board's capital improvements schedule of the DFWP.

D. Transportation Facilities for Opt-Out Developments

1. For arterial and collector transportation facilities, the Certificate of Capacity determination shall be in accordance with one of the following provisions:
  - a. The facilities and services necessary to serve the project or project phase and to maintain the adopted LOS standard will be (1) in place or under actual construction at the time of traffic study methodology approval or are scheduled by the County, Florida Department of Transportation (FDOT), or other transportation agency or authority to be in place or under actual construction during the fiscal year the traffic study methodology will be approved for those projects required to or electing to complete a traffic study pursuant to these regulations; or (2) in place or under actual construction at the time the Certificate of Capacity will be issued or are scheduled by the County, FDOT, or other transportation agency or authority to be in place or under actual construction during the fiscal year that the Certificate of Capacity will be issued, for those projects not required to or not electing to complete a traffic study pursuant to these regulations; or
  - b. The facilities necessary to serve the project or project phase and maintain the adopted LOS are guaranteed in an

enforceable DA, or an agreement, or development order issued, pursuant to Chapter 380, Florida Statutes. The agreement must guarantee, through an enforceable Letter of Credit or other security instrument acceptable to the County, that the necessary facilities to serve the project or project phase and maintain the adopted LOS will be (1) in place or under actual construction at the time of the traffic study methodology approval or are scheduled by the County, FDOT, or other transportation agency or authority to be in place or under actual construction during the fiscal year the traffic study methodology will be approved, for those projects required to or electing to complete a traffic study pursuant to these regulations; or (2) in place at the time of issuance of the Certificate of Capacity or will be in place or under actual construction during the fiscal year that the Certificate of Capacity will be issued, for those projects not required to or not electing to complete a traffic study pursuant to these regulations; or

- c. The project or project phase is determined to be de minimis pursuant to this Code, Section 1301.6.D.3; or
- d. The project or project phase satisfies the proportionate-share mitigation requirements of this Code, Section 1301.6.D.4, and Section 163.3180, Florida Statutes.

## 2. Establishment of TIS Procedures

All projects or project phases not considered de minimis pursuant to this Code, Section 1301.6.D.3, shall demonstrate compliance with the review standards of this Code, Section 1301.6.D, through completion of a TIS. All TIS shall be prepared in accordance with this Code, Section 901.5; however, DRIs and Florida Quality Developments completing a transportation analysis in accordance with Chapter 380, Florida Statutes, shall comply only with those portions of Section 901.5 identified as applicable to DRIs, in addition to all requirements imposed, pursuant to Chapter 380, Florida Statutes. The TIS shall analyze the transportation impact of the entire project, including any interim uses within the project that generate traffic. Notwithstanding the foregoing, for DRIs and Florida Quality Developments, the scope of the project for purposes of a TIS, mitigation and aggregation requirements shall be determined in accordance with applicable laws and policies administered by the Florida Department of Community Affairs (FDCA), or successor agency, Tampa Bay Regional Planning Council, and/or the County. Specifically, where transportation review of an extension of a build-out date for a DRI or Florida Quality Development is required only by the County, and the DRI or Florida Quality Development is not seeking credit for any prior transportation mitigation performed, the project shall be defined for traffic mitigation purposes, but not traffic study purposes, as only those portions of the DRI or Florida Quality

Development that (1) have not received a Final Certificate of Capacity in accordance with this Code, Section 1301.5.C; or (2) are not exempt pursuant to this Code, Section 1301.3.A or 1301.3.B.1.b.

3. De Minimis Determinations

a. Direct Connection definition. For purposes of applying the de minimis determination rules in this Code, Sections 1301.6.D.3 and 1301.6.D.4, and the TIS requirements of this Code, the term "direct connection" shall mean:

- (1) Any project that is contiguous with and has a driveway connection with the regulated roadway.
- (2) Any project having a primary or secondary access connection to any road where such access is within 1,000 feet travel distance from that connection to the regulated roadway.
- (3) Any project having access connection(s) to any local road(s) where such connection(s) is/are more than 1,000 feet travel distance from the regulated roadway, and 100 percent of the development traffic (excluding travel on substandard roads) destined to Major County Roads travels on local roads to the regulated roadway.

For purposes of this definition, the term "regulated roadway" shall be defined as a ninety (90) percent roadway, 110-percent roadway, or hurricane evacuation roadway, as applicable to the threshold or rule utilizing the term "direct connection."

b. De Minimis Requirements

A project impact is de minimis for transportation concurrency purposes if it would not affect more than one (1) percent of the maximum volume at the adopted LOS of the affected transportation facility. However, no project impact may be de minimis if the sum of existing roadway volumes and the projected volumes from approved projects on a transportation facility would exceed 110 percent of the maximum volume at the adopted LOS of the affected transportation facility or 100 percent of the capacity of the maximum volume at the adopted LOS standard for any affected designated hurricane evacuation route.

c. Non-De Minimis Roadway List

The County shall maintain a list of transportation facilities that are estimated, based on County estimates of existing roadway volumes and projected volumes from approved projects, to



exceed (1) ninety (90) percent of the maximum volume at the adopted LOS of the facility (ninety [90] percent roadways), (2) 110 percent of the maximum volume at the adopted LOS of the facility (110 percent roadways), and (3) 100 percent of the maximum volume at the adopted LOS for designated hurricane evacuation routes (hurricane evacuation roadways). The list of ninety (90) percent roadways, 110 percent roadways, and hurricane evacuation roadways is hereinafter referred to as the "non-de minimis roadway list." Except as set forth in this Code, Section 1301.6.D.3.d.(4), the non-de minimis roadway list shall be used to determine whether a project applying for a Certificate of Capacity can be de minimis for transportation concurrency purposes, and for purposes of the requirement to complete a TIS.

d. De Minimis Determination

- (1) A project shall be considered de minimis for purposes of the requirement to complete a TIS, pursuant to this Code, Section 1301.6.D.2, and for transportation concurrency purposes if:
  - (a) The project is a single-family home on an existing lot; or
  - (b) The project does not exceed the thresholds set forth in Exhibit 901.5.B entitled Size of Development that Generates 1,200 Daily Driveway Trips and does not have a direct connection to a roadway on the non-de minimis roadway list; or
  - (c) The project does not exceed the thresholds set forth in Exhibit 901.5.A entitled Size of Development that Generates 600 Daily Driveway Trips and does not have a direct connection to a 110 percent roadway or hurricane evacuation roadway.
- (2) A project shall be considered de minimis for purposes of the requirement to complete a TIS, pursuant to this Code, Section 1301.6.D.2, but not for transportation concurrency purposes if the project does not exceed the thresholds set forth in Exhibit 901.5.A entitled Size of Development that Generates 600 Daily Driveway Trips, but does have a direct connection to a 110 percent roadway or hurricane evacuation roadway.

- (3) The foregoing de minimis determination rules are illustrated in the following table:

<b>Roadway Capacity</b>			
Daily Trips	≤90 Percent	>90 Percent (90 Percent ≤ 100 Percent for Hurricane Evacuation Roadway)	>110 Percent (or >100 Percent for Hurricane Evacuation Roadway)
≤600	Traffic Study De Minimis and Concurrency De Minimis	Traffic Study De Minimis and Concurrency De Minimis	Traffic Study De Minimis; not Concurrency De Minimis <sup>1</sup>
>600≤1,200	Traffic Study De Minimis and Concurrency De Minimis	Not De Minimis*	Not De Minimis*
>1,200	Not De Minimis*	Not De Minimis*	Not De Minimis*
*Subject to optional de minimis determination in Section 1301.6.D.3.d(4).			
<sup>1</sup> Does not include single-family home on an existing lot, which is concurrency de minimis.			

- (4) Land uses that are not specifically listed on Exhibit 901.5.A or 901.5.B shall utilize the thresholds of the most similar land use listed on those exhibits. If a similar land use is not listed, then trip-generation rates from the most recent edition of the *Institute of Transportation Engineers Trip Generation Manual* (ITE Manual) shall be used to determine whether the land use exceeds 600 daily driveway trips or 1,200 daily driveway trips, as applicable. If the land use is not listed in the ITE Manual, then the trip generation rates of the most similar land use in the ITE Manual shall be used to determine trip-generation rates.

e. Optional De Minimis Determination

In general, de minimis determinations pursuant to this Code, Section 1301.6.D.3.d, shall be made based on the non-de minimis roadway list, Exhibits 901.5.A and 901.5.B, and where applicable, the ITE Manual. However, any applicant for a Certificate of Capacity or the County may elect to demonstrate through a technical transportation analysis, one (1) or more of the following:

- (1) That the roadway or roadways to which the project has direct connections are not ninety (90) percent roadways, 110 percent roadways, or hurricane evacuation roadways, as applicable.
- (2) That the project does not generate 600 or 1,200 daily driveway trips, as applicable.
- (3) That the project would not affect more than one (1) percent of the maximum volume at the adopted LOS of the affected transportation facilities.

The technical transportation analysis performed by an applicant to make one (1) or more of these demonstrations shall be in accordance with the de minimis determination requirements of Section 901.5. If the County Administrator or designee determines that the applicant or County has adequately demonstrated this Code, Section 1301.6.D.3.e(1), (2), or (3) above, the de minimis determination rules set forth in this Code, Section 1301.6.D.3.d shall be applied to make the de minimis determination; however, the demonstration of this Code, Section 1301.6.D.3.e.(1)(a), shall be used in lieu of the non-de minimis roadway list, the demonstration of this Code, Section 1301.6.D.3.e(2), shall be used in lieu of Exhibit 901.5.A or 901.5.B or the ITE Manual, as applicable, and the demonstration of this Code, Section 1301.6.D.3.e(3), shall be considered a determination that the project is de minimis for both transportation concurrency purposes and TIS purposes, unless the project has a direct connection to a 110 percent roadway or hurricane evacuation roadway, in which case, the project shall be considered de minimis for TIS purposes only.

f. Effect of De Minimis Determination

All projects not considered de minimis for traffic study and transportation concurrency purposes pursuant to this Code, Section 1301.6.D.3.d or 1301.6.D.3.e, shall be required to complete a TIS, pursuant to this Code, Sections 901.5 and 1301.6.D.2, and shall be required to demonstrate compliance with this Code, Section 1301.6.D.1.a, 1301.6.D.1.b, or 1301.6.D.1.d. All projects considered de minimis for TIS purposes, but not for transportation concurrency purposes, pursuant to this Code, Section 1301.6.D.3.d or 1301.6.D.3.e, shall not be required to complete a TIS pursuant to this Code, Section 1301.6.D.2, but shall be required to demonstrate compliance with this Code, Section 1301.6.D.1.d; however,

such projects may elect to complete a TIS and demonstrate compliance with this Code, Section 1301.6.D.1.a, 1301.6.D.1.b, or 1301.6.D.1.d. All projects, regardless of their de minimis status, shall be required to comply with all other Certificate of Capacity requirements in these regulations, unless exempt pursuant to this Code, Section 1301.3. All projects, regardless of their de minimis status, shall also be required to comply with all nonconcurrency transportation requirements of this Code including, but not limited to, regulations and requirements relating to access management and substandard roads, unless such projects are exempt pursuant to such regulations.

#### 4. Mitigation of Transportation Impacts

The options below are identified as options for the possible mitigation of arterial and collector transportation facility LOS transportation impacts; however, the final mitigation required for any development will be subject to approval by the County Administrator or designee, PC, and/or BCC, as applicable to the Initial or Final Certificate of Capacity being reviewed. Procedures to further establish how each of the mitigation options below will be demonstrated are included in this Code, Section 901.5.

- a. Restoration of adopted LOS standard. The developer may identify and implement an improvement that restores LOS to the adopted standard for the "future year with development traffic" condition, as described in Section 901.5, and consistent with the requirements of this Code, Section 1301.6.D.1.a or 1301.6.D.1.b.
- b. Proportionate-share mitigation. Proportionate-share mitigation shall be available to all opt-out developments in the unincorporated County, in accordance with Section 163.3180(5)(h)3, Florida Statutes.
- c. Completion of the proportionate-share obligation; e.g., cash payment, posting of improvement performance guarantees, dedication of right-of-way, etc., shall be in accordance with the time periods and conditions of the Certificate of Capacity and/or Initial or Final Certificate of Capacity; and in the absence of any such time periods or conditions, shall be completed prior to the issuance of the Final Certificate of Capacity. Proportionate-share payments or mitigation, once made, constitute a commitment for transportation capacity for the duration set forth in these regulations and are, therefore, nonrefundable. If the payment or mitigation is submitted or provided more than ninety (90) days from the date of acceptance, then the proportionate-share cost shall be indexed to the fiscal year of payment by the adopted indices in the mobility fee regulations.

1301.7. **Concurrency Extensions**

Concurrency extensions without additional review or mitigation. Consistent with the one (1) year extension (from December 1, 2007, to December 1, 2008) that the State Legislature granted local governments to adopt a financially feasible CIE, the BCC granted a one (1) year extension to the expiration date of all concurrency Certificates of Capacity, Certificates of LOS Compliance, and concurrency exemption periods for all projects in the County that did not receive a concurrency extension of one (1) year or longer from the PC or the BCC after December 1, 2006. This one (1) year extension shall commence on the expiration date of the Certificate of Capacity, Certificate of LOS compliance, or concurrency exemption period, and terminate one (1) year from such date, regardless of the date that the extension is requested or adopted. Notwithstanding any provision of this section or any development order or development approval condition to the contrary, this one (1) year extension does not require any additional concurrency review, analysis, or mitigation and applies to all concurrency public facilities. In the event that the FDCA or a court of competent jurisdiction makes a final determination (which is not appealed) that certain DRIs are entitled to a concurrency extension of longer than one (1) year, the longer concurrency extension period shall replace the one (1) year extension period set forth above and shall not be in addition to the one (1) year extension. The BCC may adopt additional concurrency extensions and concurrency extension criteria by resolution. Unless otherwise required by State law for DRIs, the extension granted pursuant to this subsection shall be implemented by the County Administrator or designee as an administrative amendment to the Certificate of Capacity, Certificate of LOS compliance, or development order approval containing the expiration date, and does not require any additional approval by the PC or BCC. The County may charge an administrative processing fee for the implementation of extensions granted pursuant to this subsection, which shall be established by resolution.

Relief for any provision of this section that is not based on a minimum standard of State law or the Comprehensive Plan may be requested pursuant to the requirements of this Code, Section 407.4. Proposed requests to school facilities concurrency requirements shall also be submitted to the School District for review and recommendation prior to being heard by the PC. Disagreements between the School District and the County regarding the granting of relief for school facilities concurrency requirements shall be subject to Chapter 164, Florida Statutes, and shall be initiated by the School District within thirty (30) days of the written decision of the PC. If the School District has timely initiated the Chapter 164, Florida Statutes, process, the relief shall not be effective until the Chapter 164, Florida Statutes, process is complete and any appeals exhausted.

1301.8. **Appeals, Vested Rights, and Appeals of Exemption Denials**

Any determination made pursuant to this section may be appealed in accordance with this Code including, but not limited to, Certificate of Capacity determinations, de minimis determinations for transportation concurrency, determinations related to proportionate share, and determinations related to exemptions and limited exemptions. Notwithstanding the foregoing, appeals of technical issues addressed in Section 901.5 shall be addressed in accordance with the appeal procedures of that section. Further, notwithstanding the foregoing, de minimis and aggregation

determinations for school concurrency, and School Concurrency Determination, Preliminary Concurrency Deficiency Letters and Final Concurrency Deficiency Orders may be appealed to the School District pursuant to Chapter 120, Florida Statutes, and the *School Concurrency Implementation Procedures Manual*. Proposed vested rights determinations and appeals of exemption denials relating to school facilities concurrency requirements shall also be submitted to the School District for review and recommendation prior to being heard by the BCC. Disagreements between the School District and the County regarding the BCC's granting of a vested right or exemption relating to school facilities concurrency requirements shall be subject to Chapter 164, Florida Statutes, and shall be initiated by the School District within (30) days of the written decision of the BCC. If the School District has timely initiated the Chapter 164, Florida Statutes, process, the vested rights determination or exemption shall not be effective until the Chapter 164, Florida Statutes, process is complete and any appeals exhausted.