



Working Together for the Public:

How Concurrency and Public Facility Laws Can Help SC and Your Community

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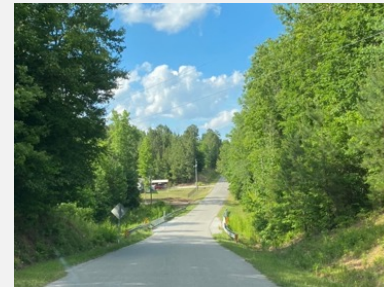
Tyson Smith, Esq., AICP, *White & Smith Planning and Law Group*

South Carolina Chapter of the
American Planning Association
October 23, 2024



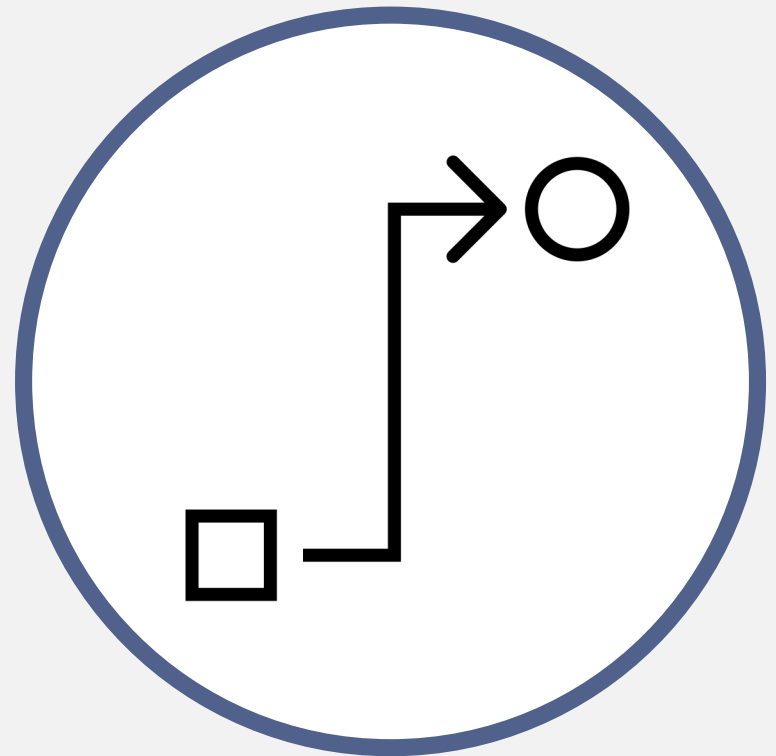
Presentation Overview

- Introduction
- The Local Government Challenge
- Context and the Proposed Legislation
- Political Challenge / Political Solutions
- Panel Discussion



Ross Appel – The Local Scene

- The Local Perspective
- Growth Politics
- What's the problem?
 - Land Development Approvals and Infrastructure are Decoupled
- Legal concerns
- Is this a local or state issue?
- Need for concurrency or APFO
- Incentivizing infrastructure funding, permitting reform, etc.



View from the Front Counter

"I feel like our roads can't handle more growth.
Right?"

"New growth should pay for new growth!"

"Didn't I hear the schools are crowded?"

"These costs will just get passed to the homeowner!
Won't they?"

House Bill 5562

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A BILL

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 6-29-720, RELATING TO ZONING ORDINANCES, SO AS TO DEFINE "CONCURRENCY PROGRAMS"; AND BY AMENDING SECTION 6-29-110, RELATING TO REGULATIONS, SO AS TO INCLUDE A REFERENCE TO AN ADOPTED CONCURRENCY PROGRAM.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 6-29-720(C) of the S.C. Code is amended to read:

(C) The zoning ordinance may utilize the following or any other zoning and planning techniques for implementation of the goals specified above. Failure to specify a particular technique does not cause use of that technique to be viewed as beyond the power of the local government choosing to use it:

(1) "cluster development" or the grouping of residential, commercial, or industrial uses within a subdivision or development site, permitting a reduction in the otherwise applicable lot size, while preserving substantial open space on the remainder of the parcel;

(2) "floating zone" or a zone which is described in the text of a zoning ordinance but is unannexed;

(3) "performance zoning" or zoning which specifies a minimum requirement or maximum limit on the effects of a land use rather than, or in addition to, specifying the use itself, simultaneously assuring compatibility with surrounding development and increasing a developer's flexibility;

(4) "planned development district" or a development project comprised of housing of different types and densities and of compatible commercial uses, or shopping centers, office parks, and mixed-use developments. A planned development district is established by rezoning prior to development and is characterized by a unified site design for a mixed use development;

(5) "overlay zone" or a zone which imposes a set of requirements or relaxes a set of requirements imposed by the underlying zoning district when there is a special public interest in a particular geographic area that does not coincide with the underlying zone boundaries;

(6) "conditional uses" or zoning ordinance provisions that impose conditions, restrictions, or limitations on a permitted use that are in addition to the restrictions applicable to all land in the zoning

[5562] 1

Adequate Public Facilities

In many localities, the rate of growth is so rapid that it is outstripping local governments' abilities to provide adequate capacity in schools and other public facilities for the new residents. Many localities have overburdened infrastructure and overcrowded classrooms, even though they are making large investments in new infrastructure and new schools. Much of this problem is due to the fact that growth rates have been much more rapid than local governments anticipated at the time of approving rezonings.

What is an Adequate Public Facilities Ordinance?

An adequate public facilities ordinance is a growth management approach that ties or conditions development approval to the availability and adequacy of public facilities and services, thus ensuring that new development does not take place unless the infrastructure is available to support it. An Adequate Public Facilities Ordinance (APFO) is an ordinance adopted by the local government that allows it to defer the approval of developments based upon a finding by the governing body that public facilities would not be adequate to support the proposed development at build out.

How It Works:

- The Adequate Public Facilities Ordinance is linked to the locality's Capital Improvement Program, which establishes a schedule of public facility construction over a five or six-year period and details how they should be financed.
- The ordinance identifies the types and levels of service that are needed to permit new development and establishes a policy about when the infrastructure and public services must be in place relative to the impact of development.
- The development must demonstrate that the required levels of public facilities and services are, or will be, available to the proposed project.
- Most Adequate Public Facilities Ordinances deal with only one or two types of facilities, such as roads or sewers that have caused critical problems in the community, while others apply such provisions to the full range of public facilities.

What are the components of an effective APF Ordinance?

- Identifies the types of public facilities to be considered.
- Limits the period of time during which the deferral on development imposed by an APFO can be in force.
- Requires the locality to have in place a capital facilities plan to remedy the infrastructure inadequacy that has been the basis for the development deferral.

from prior DHEC Website

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Priority Investment Element *required*

“...a priority investment element that analyzes the likely federal, state, and **local funds available for public infrastructure and facilities** during the next ten years, and **recommends the projects for expenditure of those funds** during the next ten years for needed public infrastructure and facilities such as water, sewer, roads, and schools. The recommendation of those projects for public expenditure must be done **through coordination with adjacent and relevant jurisdictions and agencies**. For the purposes of this item, "adjacent and relevant jurisdictions and agencies" means those counties, municipalities, public service districts, school districts, public and private utilities, transportation agencies, and other public entities that are affected by or have planning authority over the public project. ...”

Zoning

“in accordance with the comprehensive plan”

- General purpose of “**guiding** development in accordance with **existing and future needs ...**”
- to prevent the **overcrowding** of land, to avoid **undue concentration of population**
- to regulate the **density and distribution of populations** and the uses of buildings, structures and land
- to facilitate the **adequate provision or availability of** transportation, police and fire protection, water, sewage, schools, parks, and other recreational facilities, affordable housing,...
- LDR purposes “to assure the **timely provision of required streets, utilities, and other facilities and services to new land developments;**”

The Development Agreement Act

- Strengthens the public planning process, encourages **sound capital improvement planning** ... assists in assuring there are **adequate capital facilities for the development**, encourages **private participation** ... allows for the **orderly planning** of public facilities ... allows for the **equitable allocation of the cost of public services**.
- **Public benefits may be negotiated in return for the vesting** of development rights for a specific period.
- Land planning and development involve review and action by **multiple governmental agencies**. ... may facilitate the **cooperation and coordination** of the requirements and needs of the **various governmental agencies having jurisdiction**.
- Encourage a **stronger commitment to comprehensive and capital facilities planning**, ensure the **provision of adequate public facilities** for development, encourage the efficient use of resources, and reduce the economic cost of development.

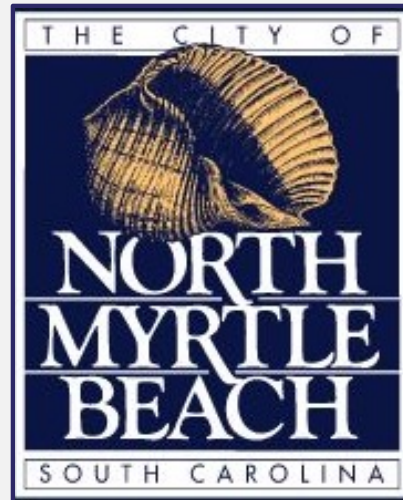
What Concurrency is not:

1. **Impact Fees:** Impact fees are a *funding* tool
2. **Moratorium:** Moratoria *stop development* by legislative act
3. **More Staff:** Unlikely to trigger the need for additional staff
4. **A delegation of Authority:** All decision-making remains with the local government, despite intergovernmental partnerships
5. **More Bureaucratic:** Typically doesn't add much "process" during review/approval and reduces wasted and potentially misguided effort through clarity, adopted standards

***May be similar to what you're doing
now.***

North Myrtle Beach

- (d) Whether adequate public school facilities, roads and other public services exist or can be provided to serve the needs of the development likely to take place as a result of such change, and the consequence of such change.



Sec. 23-4. Amendments.

- (1) *Amendment authorization and procedure:* This zoning ordinance, including the zoning map(s), may be amended from time to time by the city council, but no amendment shall become effective unless it shall have been proposed by or shall have first been submitted to the planning commission for review and recommendation. The planning commission shall have thirty (30) days within which to submit its report. If the commission fails to submit a report within the thirty-day period, it shall be deemed to have approved the requested amendment. Any communication purporting to be an application for a change shall be regarded as mere notice to seek relief until it is made in the form required. Upon receipt of any communication, the interested parties shall be supplied with the proper form for presenting their application by the zoning administrator.
- (2) *Initiation of amendment:* Proposed changes or amendments may be initiated as follows:
- (a) An amendment to the zoning map may be initiated by city council; planning commission; board of zoning appeals; city administration; or property owners for their own property.
 - (b) An amendment to the zoning ordinance text may be initiated by city council; planning commission; board of zoning appeals; or city administration.
- Before any action shall be taken on an amendment request initiated by a property owner, the party or parties proposing or recommending said amendment shall, with the application for such change, deposit the required fee with the zoning administrator at the time the application is filed to cover publication and other miscellaneous cost for said change; under no condition shall said fee or any part thereof be refunded for failure of said amendment to be adopted.
- (3) *Planning commission report:* The planning commission shall prepare a report and make recommendations on any proposed amendment, stating its findings and its evaluation of the request. In making its report, the commission shall consider the following factors:
- (a) The relationship of the request to the comprehensive plan.
 - (b) Whether the request violates or supports the plan.
 - (c) Whether the uses permitted by the proposed change would be appropriate in the area concerned.
 - (d) Whether adequate public school facilities, roads and other public services exist or can be provided to serve the needs of the development likely to take place as a result of such change, and the consequence of such change.
 - (e) Whether the proposed change is in accord with any existing or proposed plans for providing public water supply and sanitary sewer to the area.
- (4) *Declaration of policy:* As a matter of policy, no request to change the text of the ordinance or the map shall be acted upon favorably except:
- (a) Where necessary to implement the comprehensive plan, or
 - (b) To correct an original mistake or manifest error in the regulations or map, or
 - (c) To recognize substantial change or changing conditions or circumstances in a particular locality, or
 - (d) To recognize changes in technology, the style of living, or manner of doing business.
- (5) *Public hearing and notice thereof:* Before action by city council on an amendment to this ordinance, the planning commission shall hold a public hearing thereon, at least fifteen (15) days' notice of the time and place which shall be published in a newspaper of general circulation in North Myrtle Beach. When a proposed amendment affects the district classification of property, conspicuous notice shall be posted on or

(Supp. No. 96)

Created: 2023-05-22 14:54:08 [EST]

Interagency Coordination



James N. Epps, Jr., Ph.D
Superintendent

Office of Superintendent

March 29, 2022

Ms. Diane Dil
York County Planning and Development Services
18 W. Liberty Street
P. O. Box 96
York, South Carolina 29745-0096

Re: TM 6550000011, 6550000057, and 6550000083

Dear Ms. Dil:

Please accept this letter in response to your letter of March 28, 2022 to rezone three parcels that are located within the boundaries of the Fort Mill School District. The property is located off Coltharp Road and are referred to as TM 6550000011, 6550000057, and 6550000083. They are currently zoned Agricultural Conservation and Residential Mixed-10 and contain a total of four single family homes. The proposal is to rezone the property to Residential Mixed-6 in order to construct 48 townhomes.

Fort Mill School District opposes this request and ask that you deny this proposal. If approved, the following schools would be affected accordingly:

	<u>August, 2022 Projected Enrollment</u>	<u>Capacity</u>
Pleasant Knoll Elementary School	829	900
Pleasant Knoll Middle School	1026	1000
Nation Ford High School	1911	2400

The district is considering implementing enrollment freezes at Pleasant Knoll Elementary School and Pleasant Knoll Middle School prior to August, 2022. With the growth issues we are facing within our school district, we cannot support this rezoning request.

Thank you for the opportunity to provide feedback to this rezoning application.

York County's Current Plat Approval Factors

§ 154.320 APPROVAL CRITERIA.

(A) **In General.** The Planning Commission will approve a preliminary plat when the following findings are made:

- (1) The developer has provided willingness and capability letters from the applicable water and sewer service provider;
- (2) If the development will be served by individual wells and septic systems, the developer has placed a note on the plat that indicates permits will be obtained through SCDHEC;
- (3) The proposed land use and density complies with the Zoning District requirements;
- (4) The applicant agrees to adequately mitigate the impacts to the transportation network, as identified in the Traffic Impact Analysis;
- (5) The development provides adequate street connectivity and pedestrian facilities to address public health and safety;
- (6) The required open space and buffers have been provided; and
- (7) All other applicable requirements of this Chapter and [Chapter 155: Zoning Code](#) have been satisfied.



ARTICLE 8 – ADEQUATE PUBLIC FACILITIES

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ARTICLE 8 – ADEQUATE PUBLIC FACILITIES

8.3.4 Determination

8.3.4.1 Adequacy Report
The Director shall prepare a staff report evaluating the availability and adequacy of public facilities at the adopted LOS. If the Director determines that public facilities are not available and adequate at the adopted LOS, or will not be available concurrent with the completion of the development project, the application shall be denied.

8.3.4.2 Determination and Approval

8.3.4.2.1 For those applications that may be approved administratively, a determination by the Director that public facilities are available and adequate at the adopted LOS or will be available concurrent with the completion of the development project will authorize the approval of the application for the purposes of this Article.

8.3.4.2.2 For those applications that require Planning Commission review and approval the Director shall prepare a staff report along with a recommendation to the Planning Commission.

8.3.4.2.3 The Director or the Planning Commission, as applicable, shall determine:
a. That the application may be approved because public facilities and services are adequate and available at the adopted LOS or will be concurrent with the completion of the development project;
b. That the application shall be denied because public facilities and services are not available at the adopted LOS or the demand for services generated by the development project would result in the adopted level of service being exceeded; or
c. That the application shall be approved subject to the deferral of development until all public facilities are available and adequate if public facilities in the Impact Area are not adequate to meet the adopted LOS for the entire proposed development, consistent with the requirements of Table 8-1, Adopted LOS Standards.

8.3.4.3 Advancement of Capacity
In order to avoid undue hardship, the applicant may propose to construct or to secure funding for the public facilities necessary to provide capacity to accommodate the proposed development at the adopted LOS and at the time that the impact of the development will occur (advancement of capacity) as an alternative to the deferral of development (including the approval of subdivision and site development plans and issuance of building permits) consistent with the requirements of §8.3.6.

8.3.4.4 Rezoning
The determination of adequacy for a rezoning application will not be the sole determinant in a decision to approve or deny the rezoning application. A proposed rezoning which could result in a range of potential impacts shall be reviewed as if the greatest increase in impact would result. The review of adequacy of public facilities for the application for a rezoning shall compare the capacity of public facilities to the maximum projected demand which may result from the proposed rezoning based upon the potential density and intensity of development in the affected area pursuant to the rezoning.

ARTICLE 8 – ADEQUATE PUBLIC FACILITIES

f. At the option of the City Council in each case and only if the planned capital improvement proffered by the applicant will provide capacity exceeding the demand generated by the proposed development, reimbursement may be offered to the applicant for the pro rata cost of the excess capacity.

8.3.6.3 The construction or funding of only a portion of a public facility needed to meet the adopted LOS shall be approved by the Planning Commission only where:
a. The public facility will be able to provide the capacity needed to meet the adopted LOS, and will be fully useable and operational, due to the characteristics of the facility; or
b. The construction or funding of the balance of the public facility which is needed to meet the adopted LOS will be accomplished from other sources.

8.4 METHODOLOGY AND CRITERIA FOR DETERMINING AVAILABILITY AND ADEQUACY OF PUBLIC FACILITIES

8.4.1 Generally
No determination as to compliance with this Article shall be determined by the Director or recommended by the Director and determined by the Planning Commission unless public facilities within the impact areas set forth in Column C of Table 8-1, Adopted LOS standards are:
a. Adequate, as measured by the adopted LOS, as set forth in §8.4.2 and Column B of Table 8-1; and
b. Available, as set forth in §8.4.3 and Column E of Table 8-1.

8.4.2 Level of Service (LOS) Standards
Compliance with LOS standards shall be measured for each public facility set forth in Column A of Table 8-1, Adopted LOS Standards, in accordance with the corresponding standards set forth in Column C of Table 8-1. The LOS for each application for development approval shall be measured within the Impact Area set forth in Column D of Table 8-1, for each corresponding facility in Column A. Column E of Table 8-1 indicates whether planned capacity may be included in determining whether the improvements are available. Rules for interpretation of Table 8-1 are set forth in §§8.7 through 8.13, and Appendix A, Definitions.

8.4.3 Adequacy of Public Facilities
Public facilities are adequate if they have available capacity to accommodate the demand generated by the proposed development, or will have available capacity concurrent with the implementation of the development in accordance with the following calculation methodology, unless otherwise indicated herein:
8.4.3.1 Calculate total capacity by adding together the total capacity of public facilities including planned capital projects consistent with §8.4.2 herein.
8.4.3.2 Calculate available capacity by subtracting from the total capacity the sum of:
a. The demand for each public facility created by existing development;
b. The demand for each public facility created by the anticipated completion of committed development; and

<https://www.northaugustasc.gov/home/showpublisheddocument/24642/638386822894370000>



Berkeley County (2023 update)

1. “Large-scale” developments seek “authorization to proceed,” unless by-right (Council Land Use Committee)
2. Rezoning – frequently PDD (PC role)
3. Subdivision submitted to Staff (incl. consistency with PDD) (PC on waivers)
4. Building Permits
5. Concurrency inquiry is a consideration among others (e.g. compatibility)
6. Contributions & Dedications made to BCSD

https://berkeleycountysc.gov/wp-content/uploads/docs/23-07-40_for_distribution.pdf

DRAFT AMENDMENTS
- CODE OF ORDINANCES
APPENDIX A - ZONING
ARTICLE 8. PLANNED DEVELOPMENT DISTRICTS

ARTICLE 8. PLANNED DEVELOPMENT DISTRICTS

8.1. General provisions.

8.1.1. *Description.* The planned development districts of this section are intended to encourage innovative land planning and site design that ensures natural resource and environmental protection, high-quality appearance, open space preservation, the provision of amenities and other county goals by:

- A. Reducing or eliminating the inflexibility that sometimes results from strict application of zoning standards;
- B. Allowing greater freedom in selection of means to provide access, light, open space, and design amenities; and
- C. Promoting quality design and environmentally sensitive development by allowing developers to take advantage of special site characteristics, locations, and land use arrangements.

8.1.2. *Intent.* The intent of the planned development districts is to achieve:

- A. Greater choice in the type of environment and living units available to the public;
- B. Increased flexibility for proposed development within the ordinance;
- C. Creation and retention of open space;
- D. A creative approach to the use of land and related physical development;
- E. An efficient use of land resulting in smaller networks of utilities and streets and thereby lower housing costs; and
- F. Implementation of the goals and policies outlined in the comprehensive plan.

8.2. Available districts.

8.2.1. *Regional commercial (PD-RC).* This district is established to permit the development of large-scale commercial centers that provide a wide range of retail, office, and service uses, with one or more anchor stores, to the regional market. Transportation facilities, public services, and site design should be carefully planned so as to ensure regional centers promote and reinforce the identity of the community and commercial facilities in the surrounding area. A mixing of residential and commercial uses may be permitted if the developer shows how the uses will be compatibly blended into the overall development.

- A. *Intent.* The following guidelines are intended to accomplish the following:
 1. Provide for the proper sizing and location of new regional commercial centers.
 2. Improve on- and off-site vehicular, pedestrian, and nonvehicular circulation and safety.
 3. Improve the compatibility and coordination of regional commercial centers with existing and proposed land uses in the surrounding area.
- B. The following guidelines are further intended to supplement the planning commission and the ~~county~~ **Council** review process. The applicant will be expected to address these issues by:

Berkeley County, South Carolina, Code of Ordinances
(Supp. No. 30)



8
9 **A BILL**
10

11 TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 6-29-720,
12 RELATING TO ZONING ORDINANCES, SO AS TO DEFINE "CONCURRENCY PROGRAMS";
13 AND BY AMENDING SECTION 6-29-1130, RELATING TO REGULATIONS, SO AS TO
14 INCLUDE A REFERENCE TO AN ADOPTED CONCURRENCY PROGRAM.
15

16 Be it enacted by the General Assembly of the State of South Carolina:

17
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21 implementation of the goals specified above. Failure to specify a particular technique does not cause
22 use of that technique to be viewed as beyond the power of the local government choosing to use it:

23 (1) "cluster development" or the grouping of residential, commercial, or industrial uses within a
24 subdivision or development site, permitting a reduction in the otherwise applicable lot size, while
25 preserving substantial open space on the remainder of the parcel;

26 (2) "floating zone" or a zone which is described in the text of a zoning ordinance but is unmapped.
27 A property owner may petition for the zone to be applied to a particular parcel meeting the minimum
28 zoning district area requirements of the zoning ordinance through legislative action;

29 (3) "performance zoning" or zoning which specifies a minimum requirement or maximum limit
30 on the effects of a land use rather than, or in addition to, specifying the use itself, simultaneously
31 assuring compatibility with surrounding development and increasing a developer's flexibility;

32 (4) "planned development district" or a development project comprised of housing of different
33 types and densities and of compatible commercial uses, or shopping centers, office parks, and mixed-
34 use developments. A planned development district is established by rezoning prior to development and
35 is characterized by a unified site design for a mixed use development;

36 (5) "overlay zone" or a zone which imposes a set of requirements or relaxes a set of requirements
37 imposed by the underlying zoning district when there is a special public interest in a particular
38 geographic area that does not coincide with the underlying zone boundaries;

39 (6) "conditional uses" or zoning ordinance provisions that impose conditions, restrictions, or
40 limitations on a permitted use that are in addition to the restrictions applicable to all land in the zoning

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https://www.scstatehouse.gov/query.php?search=DOC&search_text=5562&category=LEGISLATION&session=125&conid=48968233&result_pos=0&keyval=1255562&numrows=10



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(8) “concurrency programs” in which the governing authority conditions approval of land development activities on public facility and service adequacy. A concurrency program also may be referred to as an “adequate public facility program”.

(a) Concurrency programs must ensure public facilities and services necessary to support development are adequate to serve that development, based on reasonable and locally documented level of service standards and proportionate share methodologies.

Adequacy

Demand

	Current Enrollment	Approved Plats	APF Reservations	New Plat	Total Demand
Elementary School	800	100	50	20	970
Middle School	1100	100	50	10	1260
High School	2000	100	50	15	2165

Supply

	Current Stations	Stations Under Construction	Stations - Funding Encumbered	Planned, not funded	Total Supply	Adequacy
Elementary School	800	0	100	100	900	-70
Middle School	1200	100	100	0	1400	140
High School	1900	100	100	70	2100	-65

Demand

	Current Enrollment	Approved Plats	APF Reservations	New Plat	Total Demand
Elementary School	800	100	50	20	970
Middle School	1100	100	50	10	1260
High School	2000	100	50	15	2165

Supply

	Current Stations	Stations Under Construction	Stations - Funding Encumbered	Planned, not funded	Total Supply	Adequacy
Elementary School	800	0	200	0	1000	30
Middle School	1200	100	100	0	1400	140
High School	1900	100	170	0	2170	5



Level of Service

Elementary School Levels of Service

	Building SF	Land
LOS per Student (current enrollment)	127.89	0.0302
LOS per Student (current capacity)	94.86	0.0224

Source: Dorchester School District 2

*Enrollment as of May, 2024

Intermediate and Middle School Levels of Service

	Building SF	Land
LOS per Student (current enrollment)	154.49	0.0319
LOS per Student (current capacity)	114.06	0.0236

Source: Dorchester School District 2

*Enrollment as of May, 2024

High School Levels of Service

	Building SF	Land
LOS per Student (current enrollment)	122.06	0.0266
LOS per Student (current capacity)	112.77	

Source: Dorchester School District 2

*Enrollment as of May, 2024



Table 11.3. Adopted Level of Service Standards

Facility	Level of Service	Impact Area	Year Planned Capacity Will Be Available
Streets – Tier 1	LOS E	One-quarter (¼) mile	Third (3rd) year of CIP
Streets – Tier 2	LOS D	One-half (½) mile	Second (2nd) year of CIP
Streets – Tier 3	LOS C	One-half (½) mile	First (1st) year of CIP
Water	As established by SCDHEC, S.C. Code Regs. §61-58.4 (Finished Water Pumping, Storage and Distribution Facilities)	City water service area	First year of CIP
Sewer	As established by SCDHEC, S.C. Code §61-67 (Standards for Wastewater Facility Construction)	City sewer service area	First year of CIP
Community Parks and Open Space	See §11.3	City limits	Third year of CIP
Greeneways	0.78 miles per 1,000 Equivalent Residential Units (4 lineal feet per ERU)	City limits	Third year of CIP
Stormwater Management	See Article 15	Drainage basin	

Sources: Comprehensive Plan; B.P., Barber & Associates, Water Distribution System Study (D); Parks, Recreation and Leisure Services 2001 Master Plan

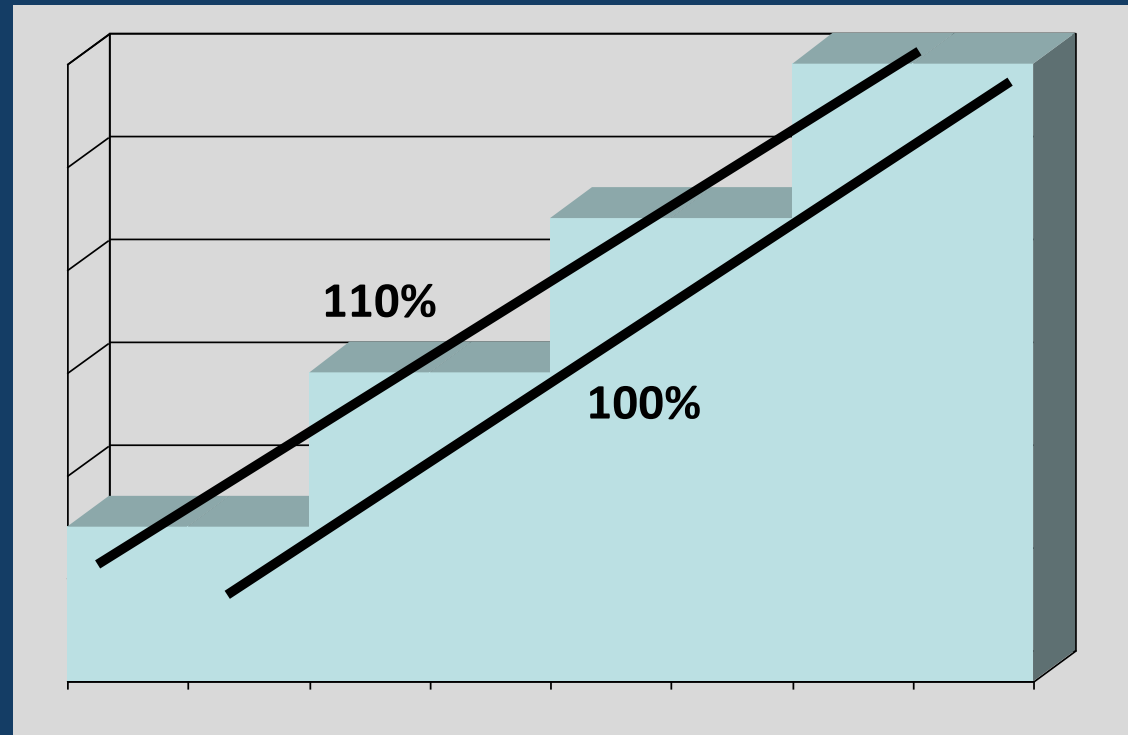


Level of Service - Schools

(a) Schools.

[1] Preliminary approval. Preliminary subdivision plans exceeding 5 lots and Site Plans for multi-family residential developments exceeding 5 dwelling units shall not be approved at locations where either of the following conditions exists:

- [a] The enrollment at the elementary school which serves the site is greater than 110% of the State rated capacity or is projected to be greater than 110% within 3 years; or
- [b] The enrollment of either the middle school or high school which serves the site is greater than 110% of the State rated capacity or is projected to be greater than 110% within 3 years.



HARFORD COUNTY

WHITE &
SMITH, LLC
PLANNING AND
LAW GROUP

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PROPORTIONATE SHARE AGREEMENT

This Proportionate Share Agreement (hereinafter "Agreement") is made and entered into this _____ day of _____, 20____, by and between Palm Beach County, a political subdivision of the State of Florida (hereinafter "County"), and *identify and describe developer* (hereinafter "Developer").

WITNESSETH

WHEREAS, the Board of County Commissioners has implemented the Proportionate Share Program as required by and in a manner consistent with section 163.3180(5)(h), Florida Statutes; and

WHEREAS, the Proportionate Share Program allows developers to proceed with development notwithstanding a failure of transportation concurrency, by contributing their proportionate share to one or more regionally significant transportation facilities; and

WHEREAS, in order to conform to the requirements of this Program, the County and the Developer agree to the conditions, rights and obligations established in this Agreement; and

WHEREAS, To the extent that any of the conditions of this Agreement constitute monetary or property exactions that are subject to Nollan v. California Coastal Comm'n, 483 U. S. 825 (1987), and Dolan v. City of Tigard, 512 U. S. 374 (1994), the applicant/owner, and successors and assigns (a) agrees that there is a nexus and rough proportionality between such conditions and the impacts of this project/development, and that such conditions are necessary to ensure compliance with the criteria of the Palm Beach County Unified Land Development Code and Comprehensive Plan that are applicable to this approval, and (b) waives any claims based on such conditions; and

WHEREAS, the Board of County Commissioners of Palm Beach County has delegated to the County Administrator or his or her designee the authority to enter into this Agreement on behalf of the County; and

NOW, THEREFORE, in consideration of the promises, mutual covenants, and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Agreement agree as follows:

Section 1. Recitals

The above recitals are true and correct and form a part of this Agreement.

Section 2. Project Identification

The proposed Project is known as *include the name of the Project here if it is known at this point; if not, provide location* and is located at *provide property location*.

(b) A governing authority adopting concurrency may require public facility and service contributions sufficient to offset a development's proportionate share impacts on facilities and services and also may accept excess capacity contributions made pursuant to a written agreement with the property owner.

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(c) However, under this subsection, the governing authority **must** take into consideration any **contributions** made by payment of **development impact fees or other instruments for the same impacts on relevant facilities and services.**

Contractual

Proffered Excess Capacity

Regulatory

APF proportionate Share

Regulatory

Impact Fees

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(d) Local governing authorities and property owners may enter into **written proportionate share, cost sharing, or other similar agreements** to facilitate exercise of any authority or requirement under **this subsection.**

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SECTION 2. Section 6-29-1130(A) of the S.C. Code is amended to read:

Section 6-29-1130. (A) When at least the community facilities element, the housing element, and the priority investment element of the comprehensive plan as authorized by this chapter have been adopted by the local planning commission and the local governing body or bodies, the local planning commission may prepare and recommend to the governing body or bodies for adoption regulations governing the development of land within the jurisdiction. These regulations may provide for the

streets; for the size of blocks and lots; for the dedication or reservation of land for streets, school sites, and recreation areas and of easements for utilities and other public services and facilities, including by an adopted concurrency program; and for the distribution of population and traffic which will tend to

View from the State House

- Wearing 2 Hats: Wetmore Law Firm & SC State House
- H5562: Placeholder Bill for Discussion
- Building Consensus
- Stakeholder Discussions & Anticipating Objections



What to Expect in 2025

- **The 2025 Legislative Session:**
 - Legislative Timeline
 - Politics
 - Leading the Effort
- **What Planners can/should do**
 - Identify municipalities already doing this work (CIP's, Impact, etc)
 - Identify and communicate challenges/needs/goals
 - Work with elected officials to communicate with their delegation



Panel Discussion