
ARTICLE IV

CONCURRENCY MANAGEMENT

I. CONCURRENCY MANAGEMENT FOR POTABLE WATER, SANITARY SEWER, SOLID WASTE, DRAINAGE (STORMWATER), AND PARKS AND RECREATION

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I. CONCURRENCY MANAGEMENT FOR POTABLE WATER, SANITARY SEWER, SOLID WASTE, DRAINAGE (STORMWATER), AND PARKS AND RECREATION

Sec. 4-1. SHORT TITLE

This Article may be referred to and cited as the "Clay County Concurrency Management System."

Sec. 4-2. AUTHORITY

This Article is adopted pursuant to Chapters 163 and 125, Florida Statutes; the Comprehensive Plan; and the Constitution of the State of Florida.

Sec. 4-3. FINDINGS AND INTENT

The Board finds and determines that:

- (1) The requirements and standards of this Subarticle I are necessary for the health, safety and welfare of the citizens of Clay County and the protection of the environment and natural resources of Clay County.
- (2) It is the intent of the Board to implement the goals, objectives and policies adopted in the Comprehensive Plan.
- (3) It is the intent of the Board that necessary Public Facilities be available concurrent with the impacts of development.
- (4) It is the intent of the Board that Final Development Orders and Permits be issued in a manner which does not result in a reduction of any LOS below the adopted LOS standards in the Comprehensive Plan.
- (5) It is the intent of the Board to adopt a Concurrency Management System in furtherance of the public benefit while at the same time ensuring that all property owners have a reasonable, beneficial and economic use of their property and that no property is taken without just compensation.
- (6) Not all Development or Development activity impacts are significant enough to cause the deterioration of the LOS adopted in the Comprehensive Plan. It is, therefore, further found that the establishment of a *de minimis* Developmental impact, which will not cause an unacceptable degradation of the LOS, is consistent with the goals, objectives and policies of the Comprehensive Plan. The application of this methodology by the establishment and recognition of certain types of *de minimis* Development is found to be substantially related to the preservation of individual property rights in accordance with the State Comprehensive Plan.

Sec. 4-4. APPLICABILITY

- (1) The regulations set forth herein shall apply to all lands and waters within the unincorporated areas of Clay County, Florida and subject to the jurisdiction of the Board. No Final Development Order or Final Development Permit shall be issued unless in accordance with the provisions of this Subarticle I. In order to develop land, the requirements of this Subarticle I shall be met and the procedures set forth herein shall be followed.
- (2) This Subarticle I is supplemental to and does not supersede any applicable state statutes and regulations.

Sec. 4-5. DEFINITIONS

In addition to the definitions set forth in Article I, the following definitions shall apply to this Subarticle I and this Subarticle I only, except where specifically noted. To the extent a conflict exists between the definitions in Article I and in this Subarticle I, the definitions in this Subarticle I shall apply.

- (1) *Available Capacity* means that portion of the Capacity that has not been used or allocated for use by Development.
- (2) *Capacity* means a maximum and quantifiable ability for a public facility to provide service to its users, calculated relative to a LOS infrastructure standard.
- (3) *Commenced* means that point at which actual physical construction of the Development begins in concert with the provision of necessary support infrastructure whether such infrastructure improvements are off-site or on-site.
- (4) *Concurrency* means that the necessary Public Facilities to maintain the adopted LOS standards are available when the impacts of Development occur.
- (5) *Concurrency/Impact Fee Coordinator* means the Director of the Department, or his or her designee.
- (6) *Concurrency Management System (CMS) Data Base* means the data collection, processing and analysis performed by the Department to determine the impacts of development on the adopted LOS standards for potable water, sanitary sewer, solid waste, drainage (stormwater), and parks and recreation.
- (7) *Concurrency Management System (CMS)* means the procedures and processes utilized by the County to assure that Final Development Orders and Final Development Permits are not issued unless the necessary Public Facilities to support the Development are available concurrent with the impacts of Development.
- (8) *Concurrency Reservation Certificate (CRC)* means the official document issued by the Department upon finding that an Application for the certificate in reference to a specific

Final Development Order or Final Development Permit for a particular Development will not result in the reduction of the adopted LOS standards for impacted potable water, sanitary sewer, parks and recreation, drainage (stormwater), and solid waste as set forth in the Comprehensive Plan.

- (9) *Department* is the Clay County Department of Economic and Development Services. The Department of Planning and Zoning within the Department of Economic and Development Services shall be primarily responsible for the receipt of Concurrency Applications and the processing of Concurrency Applications pursuant to this Subarticle I.
- (10) *Development Agreement* means an enforceable agreement entered into pursuant to Article X, as amended, of the Code,
- (11) *Development Order or Permit, or Final Development Order or Permit* as the context may require means any order issued by the County granting, denying or granting with conditions an application for a Development activity, including an application for a CRC.
- (12) *Director* shall mean the Director of the Clay County Department of Economic and Development Services, or his or her designee.
- (13) *Level of Service (LOS)* means an indicator of the extent or degree of service provided by, or proposed to be provided by, a Public Facility based on and related to the operational characteristics of the facility. Level of service shall indicate the Capacity per unit of demand for each Public Facility.
- (14) *Necessary Facilities* means Public Facilities necessary to accommodate the proposed Development while maintaining the adopted LOS standards.
- (15) *Public Facility* means those facilities specified in the Comprehensive Plan, for which LOS standards have been adopted: potable water, sanitary sewer, solid waste, drainage (stormwater), and parks and recreation.

Sec. 4-6. APPLICABILITY AND GENERAL PROVISIONS

- (1) . A CRC is required prior to the issuance of a Final Development Order, which term shall include, but is not limited to: a move-on Permit for a manufactured structure which shall include single-family mobile homes as well as mobile homes used for nonresidential purposes; a Permit for construction of a single-family dwelling unit; a Permit for an addition to any existing single-family dwelling unit; a Permit for any non-residential construction including the construction of any additional square footage to an existing non-residential structure; a Permit to move a building to a new site within the unincorporated area of the County; approval of final construction plans for subdivision development; final approval of plats; a home occupation Permit; and Permits for any modification to an existing structure or site where use or intensity is changed. A CRC is not required prior to the issuance of the following: a sign Permit; a roofing Permit; a plumbing Permit; an electrical Permit; a grading Permit; a site clearing Permit; a demolition Permit; a septic tank Permit; a tree removal Permit; a Permit for a residential

swimming pool; Permits for interior renovations in cases where the use or intensity is not changed; and all activities deemed not to constitute Development as defined in the Code.

- (2) For purposes of determining concurrency and issuing a CRC pursuant to a Final Development Order, the Department shall utilize the LOS standards set forth in the Comprehensive Plan.
- (3) A CRC will not be issued for a use or intensity that is inconsistent with the existing land use designation of the property contained on the Future Land Use Map Series in the Comprehensive Plan.
- (4) A CRC does not vest an Applicant with the right to obtain subsequent development approvals for a Development.
- (5) A Type I Development Agreement entered into between the Applicant and the County pursuant to the requirements of Article X shall be deemed a functional equivalent of a CRC for the purpose of obtaining a Final Development Order or a certificate of occupancy.
- (6) A non-residential plat may be approved for recording without a CRC. However, approval of a non-residential plat does not entitle or ensure a CRC for any vertical construction or Development within the non-residential plat. A CRC must be obtained prior to issuance of a Final Development Order or Permit authorizing vertical construction or Development.
- (7) The Director has the authority to issue a stop work order whenever the Director has determined that factual circumstances indicate that incorrect or inaccurate information was provided to obtain a CRC, or Development is occurring without a CRC.

Sec. 4-7. APPLICATION CONTENT AND SUBMITTAL REQUIREMENTS

- (1) All Applicants for a CRC shall file a completed Application in order to determine whether their Development complies with the LOS Concurrency criteria contained in this Subarticle I and in the Comprehensive Plan. An Application for a CRC shall provide sufficient information to determine the impact of such Development consistent with the Concurrency standards, criteria and procedures set forth herein and in the Comprehensive Plan. An Application must be accompanied by a filing fee. The filing fee is set forth in the County's Development Services and Related Fees Resolution and may be adjusted or refunded as set forth therein. An Application must include the following information, at a minimum:
 - (a) Name, address, and phone number of Owner(s), Developer and agent, as well as the Owner's written authorization to the agent to act on his or her behalf;
 - (b) Property location, including parcel identification numbers;
 - (c) Development description, including type and amount of Development; and
 - (d) The following attachments:
 1. Proof of ownership (copy of deed or purchase agreement);

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2. Legal description;
 3. General site plan including the property boundaries, all Development on property with use and intensity at a level of detail sufficient to identify impacts;
 4. Phasing schedule, if applicable.

(e) After the effective date of the Ordinance adopting these amendments to Subarticle I, an Application for a CRC involving 400 or more units will not be required to meet transportation concurrency but will be required to submit a P.M. Peak Hour trip generation estimate of the number of vehicle trips likely to be generated by the Development's particular land uses. The P.M. Peak Hour trip generation estimate of the number of vehicle trips shall be based on the latest edition of the ITE Trip Generation Report, published by the Institute of Transportation Engineers (ITE) and which includes the *Project Threshold Table* containing example maximum development sizes by land use category for the project classification based on the Trip Generation Parameters Table. For the purpose of complying with this paragraph (e), *P.M. Peak Hour* means, typically, the sixty-minute period between 4:00 p.m. and 6:00 p.m. with the greatest sum of traffic volumes on a roadway segment, which may be different depending on the type of Development.

- (2) The burden of showing compliance with the LOS standards adopted in the Comprehensive Plan shall be upon the Applicant.
- (3) In order to demonstrate compliance with the criteria required by this Subarticle I, the applicant for a CRC must utilize the most recent County data provided by the Department.
- (4) An Application may be submitted at any time in the Development review process but a CRC must be obtained prior to the issuance of a Final Development Order, as provided for herein.
- (5) An Applicant may withdraw its Application for a CRC at any time by submitting a written request to the Department. The withdrawal of an Application will result in the forfeiture of all fees paid and the immediate release of any Capacity allocations.

Sec. 4-8. CONCURRENCY RESERVATION/ISSUANCE PROCEDURES

- (1) All Applications shall be reviewed on a first-come, first-serve basis. Within 7 business days of an Application submittal, the Department will determine whether the Application is complete. If an Application is determined to be incomplete, the Department will notify the Applicant in writing of any deficiencies. No further review will be made until the deficiencies of the Application are remedied and the time limits for performing under this Subarticle I will be tolled during this remedial process. If any deficiencies in the Application are not remedied by the Applicant within 30 days of receipt of the above referenced written notification, the Application will be deemed withdrawn.

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- (2) Once the Department determines an Application is complete, the Department will review and determine whether to approve or deny the Application within 60 days. Upon mutual consent of the Applicant and the Department, the review period may be extended for a maximum of 30 days. For Major Developments, the review period is 90 days. Upon mutual consent of the Applicant and the Department, the review period may be extended for a maximum of 30 days.
- (3) A determination of Concurrency will be made by the Department in accordance with the following procedure:
- (a) Public Facilities that would serve and are impacted by the proposed Development will be determined;
 - (b) The Available Capacity for each Public Facility will be determined;
 - (c) The proposed Development's Capacity demand for each Public Facility will be determined; and
 - (d) A comparison of the proposed Development's Capacity demand with the Available Capacity for each Public Facility will be made:
 - 1. If the proposed Development's Capacity demand is less than or equal to the Available Capacity for each Public Facility, the Application is approved.
 - 2. If the proposed Development's Capacity demand is greater than the Available Capacity for each Public Facility, the Application is denied.
- (4) If an Application is approved, a CRC shall be issued. The CRC shall include the following, as a minimum:
- (a) Development name;
 - (b) Property location including parcel identification number(s);
 - (c) Approved uses and intensities;
 - (d) Date of issuance;
 - (e) Expiration periods; and,
 - (f) Conditions, if applicable.
- (5) If an Application is denied, the Applicant shall be notified in writing of the decision reached for each Public Facility.
- (a) Within 30 days of the date of denial notification, the Applicant may select one of the following options:

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- (1) Accept denial of the Application;
 - (2) Reduce the size of the Development to a scale for which available Capacity is sufficient; or,
 - (3) Submit a notice of intent to submit additional data for reconsideration. The additional data must be completed and submitted to the Department within 30 days of the date of denial. Any additional data shall be subject to the review of the Department and the Department shall make a decision within 30 days of its submittal. The time for choosing to submit a notice of appeal shall be tolled during the time the Department spends reviewing any additional data furnished by the Applicant.
- (b) Within 45 days of the date of denial notification, the Applicant may also select one of the following options:
 - (1) Submit a notice of appeal; or,
 - (2) Attend a pre-application meeting for a Development Agreement pursuant to Article X.
 - (b) If no selection is made by the Applicant within 30 or 45 days as applicable, it shall act as an acceptance of the denial.

Sec. 4-9. CRC EXPIRATION, EXTENSION, AND MODIFICATION

- (1) A CRC shall expire for any portion of the approved Development that meets any of the following conditions:
 - (a) For non-residential and multifamily uses, a building Permit has not been issued within twenty-four months of CRC issuance;
 - (b) For non-residential and multifamily uses, construction has not commenced within thirty-six months and a certificate of occupancy has not been issued within forty-eight months of CRC issuance;
 - (c) For residential uses and multifamily uses subject to platting requirements, a Final Plat has not been approved by the Board and recorded in the public records within thirty-six months of CRC issuance;
 - (d) The Development is completed as evidenced by the issuance of a certificate of occupancy for all buildings and/or residential units within the Development;
 - (e) The Final Development Order expires or is revoked by the County; or

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- (f) The Development Agreement authorizing the Development expires or is revoked by the County.
 - (2) An Applicant may request an extension prior to the expiration of a CRC. One extension up to twelve months for each expiration deadline may be granted by the Concurrency/Impact Fee Coordinator.
 - (3) An Applicant may request a modification to the approved uses and intensity of CRC. A modification will not alter or extend the expiration period associated with the CRC. Any modification, either individually or cumulatively with other changes, that results in a decreased Capacity demand will be immediately reflected in the CMS Data Base. A modification, either individually or cumulatively with other changes, that would result in an increase Capacity demand for roads will require a new Application to be submitted and a new Concurrency review to be performed.
 - (4) A CRC runs with the land and is transferable from Owner to Owner of the real property for which it was issued. The current property Owner may voluntarily surrender a CRC in writing. Upon surrender, any applicable Capacity allocations will be immediately released and will be reflected in the CMS Data Base.

Sec. 4-11. CONCURRENCY CRITERIA – SOLID WASTE, DRAINAGE (STORMWATER), POTABLE WATER, AND SANITARY SEWER FACILITIES

- (1) For purposes of ensuring that the adopted LOS standards for sanitary sewer, solid waste, drainage (stormwater) and potable water facilities are maintained, the Application for a CRC must demonstrate that one or more of the following criteria have been met:
 - (a) The Necessary Facilities are in place and available to serve the Development at the time the CRC Application is filed; or
 - (c) At the time the CRC Application is filed, the Necessary Facilities are guaranteed in an enforceable Development Agreement under the terms of Article X of the Code, or a Development Order issued pursuant to Chapter 380, Florida Statutes, to be in place at the time a certificate of occupancy is issued.
- (2) **Solid Waste.** The adopted LOS standard for solid waste facilities is maintained on a countywide basis. A proposed Development is presumed to be concurrent with the LOS standard for solid waste facilities. The issuance of a CRC does not absolve the Owner from paying any applicable solid waste user fees.
- (3) **Drainage (Stormwater).** A proposed Development is presumed to be concurrent with the LOS standard for drainage (stormwater) facilities provided the Applicant signs an affidavit stating that the drainage calculations and construction plans for the proposed Development will adhere to the adopted LOS standard in the Comprehensive Plan.
- (4) **Potable Water.** For the purposes of this Subarticle I, the Available Capacity for a Potable Water facility will be calculated as the Maximum Capacity plus Improvement

Capacity less Used Capacity less Pending Capacity less Reserved Capacity, assuming the following values:

- (a) The Maximum Capacity is the design Capacity for the facility;
 - (b) The Improvement Capacity is the additional Capacity resulting from a Guaranteed Improvement scheduled to be in place or under actual construction within one year of the date of the CRC Application;
 - (c) The Used Capacity is the peak flow of the facility as provided in the most recent Annual Capacity Statement;
 - (d) The Pending Capacity is the estimated demand for proposed Developments for which a final determination has not been made on its Concurrency Application, or Development Agreement Application, or appeal; and
 - (e) The Reserved Capacity is the amount of reserved flow for actual connections that are prepaid or are the subject of a binding agreement with the utility provider, plus demand from proposed Developments that have a valid, unexpired CRC.
- (5) **Sanitary Sewer.** For the purposes of this Subarticle I, the Available Capacity for a sanitary sewer facility will be calculated as the Maximum Capacity plus Improvement Capacity less Used Capacity less Pending Capacity less Reserved Capacity, assuming the following values:
- (a) Maximum Capacity is the design Capacity for the facility;
 - (b) Improvement Capacity is the additional Capacity resulting from a Guaranteed Improvement scheduled to be in place or under actual construction within one year of the date of the CRC Application;
 - (c) Used Capacity is the peak flow of the facility as provided in the most recent Annual Capacity Statement;
 - (d) Pending Capacity is the estimated demand for proposed Developments for which a final determination has not been made on its Concurrency Application, or Development Agreement Application, or appeal; and
 - (e) Reserved Capacity is the amount of reserved flow for actual connections that are prepaid or are the subject of a binding agreement with the utility provider, plus demand from proposed Developments that have a valid, unexpired CRC.
- (6) The Owner of a proposed Development shall be responsible for entering into a binding agreement with the utility provider for extending and connecting to water and sewer facilities. The Owner shall be responsible for the payment of all related fees and charges.

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- (7) The Owner of a proposed Development served by a private well or septic tank must provide all applicable approvals from the Clay County Health Department or other applicable permitting agency, as appropriate, when obtaining a Final Development Order or Permit.

Sec 4-12. CONCURRENCY CRITERIA – PARKS AND RECREATION FACILITIES

- (1) For purposes of ensuring that the minimum LOS standards for Parks and Recreational Facilities set forth in the Comprehensive Plan are maintained, the Application for a CRC must demonstrate that one or more of the following criteria have been met:
- (a) The Necessary Facilities are in place and available to serve the Development at the time the CRC Application is filed; or
 - (b) The Necessary Facilities are under construction at the time the CRC Application is filed; or
 - (c) At the time the CRC Application is filed, the Necessary Facilities are guaranteed in an enforceable Development Agreement under the terms of Article X of the Code, or a Development Order issued pursuant to Chapter 380, Florida Statutes, to be in place at the time a certificate of occupancy is issued.
 - (d) At the time the CRC Application is filed:
 - 1. acreage for the Necessary Facilities is dedicated or acquired by the County or secured funds are committed by the Developer, with the form of security being at the discretion of the County; and
 - 2. the Necessary Facilities are scheduled to be in place or under actual construction not more than one year after a certificate of occupancy is issued as provided in the County's Five Year Schedule of Capital Improvements, a binding executed agreement, or an enforceable Development Agreement, under the terms of Article X of the Code or a Development Order issued pursuant to Chapter 380, Florida Statutes.
- (2) The adopted LOS standard for Parks and Recreational Facilities is maintained on a countywide basis.
- (3) Nonresidential Developments are not required to meet the LOS standard for Parks and Recreational Facilities.
- (4) If the County is unable to maintain the adopted LOS standard for Parks and Recreational Facilities, each Applicant for a residential Development proposal will be required to submit data on the Development's parks and recreation demand. A residential Development shall be presumed concurrent with the parks and recreational LOS if the surplus inventory is equal to or greater than the Development's demand. If the Development's demand exceeds the surplus inventory, a CRC may be issued subject to the condition that the Necessary

Facilities are dedicated to or acquired by the County at the time a certificate of occupancy is issued for the proposed Development. .

- (5) For the purpose of determining Concurrency, the surplus inventory for Parks and Recreational Facilities is calculated as current inventory plus improvement inventory less Countywide demand, assuming the following values:
- (a) The Current Inventory includes all facilities within the County that are owned and operated by local, state, or federal agencies or have been dedicated to the County from private sources;
 - (b) The Improvement Inventory is the additional Parks and Recreational Facilities that will be dedicated or owned and operated by local, state, or federal agencies as programmed in the first year of the CIE, a binding executed contract, or an enforceable Development Agreement under the terms of Article X;
 - (c) Countywide demand means the Parks and Recreational Facilities needed to support the projected county population in a given year. The population projections provided in the most recent Annual Capacity Statement shall be used; and
 - (d) The Development's demand is the demand needed to support the population of the proposed Development. The proposed Development's population is calculated by multiplying the number of dwelling units by the median person per dwelling unit as provided for in the Comprehensive Plan.

Sec. 4-13. EXEMPTIONS

The following Development is exempt from the provisions of this Subarticle:

- (1) A Development vested pursuant to the Clay County Vested Rights Ordinance (the Ordinance). The Department shall verify compliance with the Ordinance. Further, the Owner or Developer of the property shall be required to obtain a Vested Property Certificate (VPC) in accordance with the procedures adopted in the Clay County Vested Rights Ordinance.
- (2) Applications for Permits or approvals that do not fall within the definition of Development;
- (3) A Single-family residence or duplex on a Lot in an existing or approved subdivision, or on a Lot of record;

Sec. 4-14. DE MINIMIS DETERMINATION

Not all Development or developmental activity impacts are significant enough to cause deterioration in the LOS as adopted in the Comprehensive Plan. An Applicant may submit an Application in the form specified by the Department for a determination of a proposed

Development's *de minimis* classification. The Department shall review the Development proposal and render a decision within ten (10) working days.

Sec. 4-15. INFORMAL CONCURRENCY REVIEW

For all Development, an Applicant may request an informal Concurrency review that provides Available Capacity information for a Development. Within 10 business days, the Department will issue a report pertaining to the availability of Public Facilities at the time of issuance. The report will be non-binding and state that Public Facilities may not be available at the time of any subsequent Concurrency review or Application. An informal Concurrency review will not be construed to guarantee the availability of adequate facilities at the time that subsequent Development Permit Applications or Concurrency Applications are submitted. An informal Concurrency review will not form the basis for the Application or issuance of a CRC nor will it result in the reservation of Capacity.

Sec. 4-16. ADMINISTRATIVE

In order to provide potential CRC Applicants or other interested parties with information on Available Capacity and in order to administer this Subarticle I, the Department shall maintain records of all CRCs as inputted into a CMS Data Base and shall develop and maintain procedures to monitor cumulative Concurrency Capacity reservations and to maintain system security. The Department shall maintain and make available to the public the following inventories and reports:

- (1) *Annual Capacity Statement.* The Department shall publish an Annual Capacity Statement indicating current Capacity information for each Public Facility. The Annual Capacity Statement shall be adopted in January of each year.
- (2) *Potable Water Inventory* - The inventory shall contain the following information for each water treatment facility: facility name, Maximum Capacity, Improvement Capacity, Used Capacity, Pending Capacity, and Reserved Capacity.
- (3) *Sanitary Sewer Inventory* - The inventory shall contain the following information for each water treatment facility: facility name, Maximum Capacity, Improvement Capacity, Used Capacity, Pending Capacity, and Reserved Capacity.
- (4) *Parks and Recreation Inventory* - The inventory shall contain the following information for each park and recreational facility: type of facility, Current Inventory, Improvement Inventory, and countywide demand.

Sec. 4-16. APPEALS

- (1) An Applicant for a CRC may appeal any technical determination made by the Department regarding Concurrency criteria applied under this Subarticle I. The appeal shall be made by filing a notice of appeal with the Department within 30 days of the issuance of the written decision being appealed. The notice of appeal shall include:

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- (a) A statement of the determination to be reviewed and the date of the determination;
 - (b) The specific error alleged as the grounds of the appeal; and,
 - (c) Supplemental information supporting the appeal, if any.
- (2) A hearing on the appeal before a hearing officer shall be scheduled for a date no more than ninety (90) days subsequent to the filing of a notice of appeal accompanied by a receipt evidencing payment of the required fee. The filing fee is provided for in the County's Development Services and Related Fees Resolution, as amended from time to time. The Applicant shall be given at least fifteen (15) days written notice of the scheduled hearing date.
 - (3) The Applicant shall have the burden of proof to establish by a preponderance of the evidence that there was an error in the technical determination made by the Department or any of the reviewing entities in applying the adopted LOS standard.
 - (4) No person aggrieved by any technical determination by the Department or any reviewing entity in applying the provisions of this Subarticle I to any Application or request for the issuance of a Final Development Order or Final Development Permit may apply to the court for relief unless he or she has first exhausted all administrative remedies provided for herein.
 - (5) The Department shall utilize a hearing officer supplied by the state Department of Administrative Hearing (DOAH), or a hearing officer who is mutually agreed upon by the Department and the Applicant. Upon the appointment of a hearing officer in an appeal, the Applicant, the Department and review personnel are prohibited from communicating ex parte with the hearing officer regarding the pending appeal. No Hearing Officer shall act as agent or attorney or be otherwise involved with any matter, which will come before the County during the term of the Hearing Officer's appointment. Further, no Hearing Officer shall initiate or consider ex parte or other communication with any party of interest to the hearing concerning the substance of any proceeding to be heard by the Hearing Officer.
 - (6) All hearings conducted by a Hearing Officers shall be in accordance with the following; and with such other procedures as the Board may adopt and amend from time to time by resolution, and as the parties may otherwise stipulate.
 - (a) The Department will be custodian of all documents, including the Application, the Concurrency decision, and the record of the proceedings. The Department will provide for the recording and preservation of all testimony in the proceeding electronically. If any party desires to obtain a full or partial transcript of the hearing, such person shall provide a certified court reporter and shall pay all related costs.
 - (b) At the hearing the Applicant shall present evidence in support of the Application or appeal. The burden shall be upon the Applicant to show entitlement to the requested CRC.

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- (c) At the Applicant's option and with the concurrence of the Hearing Officer, stipulations and sworn affidavits may be submitted in lieu of testimony before the Hearing Officer, provided all matters asserted in sworn affidavits are supported or corroborated by other non-hearsay testimony.
 - (d) The Applicant and appropriate county staff, and witnesses with relevant testimony shall appear and may be heard at the hearing. Testimony shall be limited to matters directly relating to the Concurrency criteria standards set forth herein. Reasonable cross-examination of witnesses shall be permitted, but questioning shall be confined as closely possible to the scope of direct testimony.
 - (e) The Hearing Officer shall be guided by the adopted Comprehensive Plan, the Code, this Subarticle I, and established case law.
 - (f) Within thirty (30) calendar days of the conclusion of the hearing, the Hearing Officer shall issue to the Department a written decision that shall affirm, affirm with conditions relating to the application of the Concurrency criteria, reverse, or remand for further consideration the decision of the Department. The Hearing Officer's determination shall include appropriate findings of fact, conclusions of law, and decisions in the matter. A copy of the decision shall be provided to the Clerk of the Board and the Applicant.
 - (g) The decision of the Hearing Officer shall be final, subject to judicial review.
- (7) In addition to the requirements of paragraph (6) above, the Hearing Officer shall have the authority and responsibility to:
- (a) Determine the manner and order in which evidence will be presented; determine the applicability and relevance of all materials, exhibits, and testimony; and to exclude irrelevant immaterial, or repetitious matter;
 - (b) Administer oaths to witnesses;
 - (c) Determine the length of time to be allowed for the presentation of a case, and provide for a reasonable amount of cross-examination of witnesses; and
 - (d) Determine whether or not to allow the parties to submit written findings of fact and conclusions of law following the hearing, and set a timetable for so doing, if allowed.

[Exhibits 1 and 2 are deleted from Subarticle I]