

ORDINANCE NO.: 2006-19

AN ORDINANCE AMENDING CHAPTER 23 (PLANNING), ARTICLE VIII (ADEQUATE PUBLIC FACILITIES) OF THE HERNANDO COUNTY CODE OF ORDINANCES REGARDING ADEQUATE PUBLIC FACILITIES AND CONCURRENCY; ADDING NEW PROPORTIONATE FAIR SHARE MITIGATION SECTION; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; PROVIDING FOR INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY, FLORIDA:

SECTION 1. Amending Chapter 23 (Planning), Article VIII (Adequate Public Facilities), Sec. 23-255 through 23-267. Chapter 23 (Planning), Article VIII (Adequate Public Facilities), Sec. 23-255 through 23-267 is amended to read as follows, with underlined matter added and struck-through matter deleted:

Sec. 23-255. Short title.

This article shall be known and may be cited as the "Adequate Public Facilities Ordinance."
(Ord. No. 91-27, § 1, 7-31-91)

Sec. 23-256. Findings.

The Hernando County Board of County Commissioners finds that:

- (1) ~~Chapter Section~~ 163.3167, Florida Statutes, required Hernando County, Florida, to prepare and adopt a comprehensive plan as scheduled by the Department of Community Affairs; and
- (2) The board of county commissioners conducted public hearings relating to the adoption of the county comprehensive plan in accordance with ~~chapter~~ Section 163.3167, Florida Statutes; and
- (3) It is the responsibility of the board of county commissioners to adopt regulations that adequately plan for and guide growth and development within the county; and
- (4) Section 163.3202, Florida Statutes, requires that the county adopt land development regulations to provide that public facilities and services meet or exceed the adopted level of service standards set forth in the county comprehensive plan; and,

1 (5) Rule 9J-5.0055, Florida Administrative Code, establishes the minimum
2 requirements necessary to ensure the facilities and services needed to support
3 development are available concurrent with the impacts with such development;
4 and,

5
6 (6) The board of county commissioners, in adopting this article, is establishing the
7 sole procedure for determining the adequacy of public facilities at the time of
8 development.

9
10 (7) The proportionate fair-share program provides a method by which the impacts of
11 development on transportation facilities can be mitigated by the cooperative
12 efforts of the public and private sectors.

13
14 (Ord. No. 91-27, § 2, 7-31-91)

15
16 **Sec. 23-257. Intent and purpose.**

17
18 It is the intent of this article to establish minimum criteria for the concurrency
19 management system and authorize the preparation of an administrative procedure for determining
20 that public facilities and services meet or exceed the adopted level of service standards set forth
21 in the county comprehensive plan.

22
23 (Ord. No. 91-27, § 3, 7-31-91)

24
25 **Sec. 23-258. Definitions.**

26
27 *Available capacity review:* A preliminary review conducted by the county to determine if
28 an application for a rezoning or special exception is consistent with the comprehensive plan.
29 Adequate public facilities for potable water, sewage treatment, drainage, solid waste, recreation
30 and transportation must be available in order to deem the request consistent with the county
31 comprehensive plan.

32
33 *Certificate of concurrency:* The certificate issued by the county upon finding that an
34 application for a development permit meets the standards set forth in the county comprehensive
35 plan for public facilities and services.

36
37 *Concurrency management system:* The procedures and/or process that the local
38 government will utilize to assure that development orders and permits are not issued unless the
39 necessary facilities and services are available concurrent with the impacts of development.

40
41 *Development:* The carrying out of any building activity, the making of any material
42 change in the use or appearance of any structure or land, or the dividing of land into two (2) or
43 more parcels.

1 *Equivalent residential unit (ERU)*: The numerical value associated with the average
2 household size of single-family dwelling units.

3
4 *Public facilities and services*: The following facilities and services for which level of
5 service standards have been established in the county comprehensive plan:

- 6
7 (1) Potable water.
8
9 (2) Sewage treatment.
10
11 (3) Drainage.
12
13 (4) Solid waste disposal.
14
15 (5) Parks.
16
17 (6) Transportation.

18
19 (Ord. No. 91-27, § 4, 7-31-91)

20
21 **Sec. 23-259. Available capacity review.**

22
23 (a) In order to determine if an application for a rezoning or special exception is
24 consistent with the provisions of the comprehensive plan, an available capacity review will be
25 conducted by the county. This procedure is a review and does not constitute a binding
26 determination by the county.

27
28 (b) The following public facilities will be reviewed for adequacy to the subject site:
29 potable water, sewage treatment, drainage, solid waste, parks and transportation.

30
31 (c) The applicant shall be required to sign an affidavit stating it is understood that the
32 available capacity review is not a concurrency determination and does not relieve the applicant
33 from applying for a concurrency determination.

34
35 (d) Any person may request an available capacity review at any time for the public
36 facilities identified in this article.

37
38 (e) An available capacity review fee will be established by the board of county
39 commissioners.

40
41 (Ord. No. 91-27, § 5, 7-31-91)

1 **Sec. 23-260. Certificate of concurrency.**
2

3 (a) A valid certificate of concurrency must be issued to a property owner or his
4 designated representative prior to the issuance of the following development orders:

- 5
6 (1) Zoning permit.
7
8 (2) Building permit.
9
10 (3) Conditional subdivision plat approval.
11
12 (4) Final subdivision plat approval.
13
14 (5) Development orders for DRI's.
15
16 (6) Construction drawing approval.
17

18 (b) The property owner or his designated representative shall apply for a certificate of
19 concurrency by filing a technically complete sworn application and application fee with the
20 department of planning upon a form to be provided by the department.
21

22 (c) The board of county commissioners shall establish an appropriate fee structure by
23 resolution and such fees shall be filed with the application for a certificate of concurrency.
24

25 (d) If the application is deemed concurrent, a certificate of concurrency will be issued by
26 the county. If a development requires more than one (1) development permit, the issuance of the
27 certificate of concurrency shall occur prior to the issuance of the initial development permit. For
28 developments requiring multiple development permits, the certificate of concurrency will be
29 valid to project completion provided development continues in accordance with the standards
30 and time frames authorized by the initial development permit.
31

32 (e) If the application is deemed not to be concurrent, the applicant will be notified in
33 writing by the county.
34

35 (f) The burden of meeting the concurrency test shall be upon the applicant. The county
36 will direct the applicant to the appropriate staff to assist in the preparation of the necessary
37 documentation and information for inclusion into their application.
38

39 (Ord. No. 91-27, § 6, 7-31-91)
40

41 **Sec. 23-261. Concurrency certificate validity.**
42

43 (a) An application for a development order must be initiated within three (3) months
44 from the date the certificate of concurrency is issued to remain valid. If the development order

1 has not been obtained within one (1) year from the date the certificate of concurrency was issued,
2 the certificate shall expire.

3
4 (b) If a development order has not been secured within one (1) year from the date of the
5 issuance of the certificate of concurrency, the applicant may apply to the county to extend the
6 certificate's validity period. The application to extend the validity period must be received by the
7 county at least thirty (30) days prior to the expiration of the certificate of concurrency. The
8 applicant must demonstrate just cause exists for the extension. The county will consider the
9 following factors in making the determination:

- 10
11 (1) The inability to secure a development order was due to actions of a regulatory
12 agency following submission of a complete application;
13
14 (2) The applicant was required to redesign the project as a result of conditions
15 attached to permits issued by regulatory agencies; or
16
17 (3) Any other relevant circumstances beyond the control of the applicant.

18
19 Upon meeting any of the above criteria, county staff may extend the applicant's certificate for a
20 period not to exceed ninety (90) days. The decision of the county staff is appealable to the board
21 of county commissioners.

22
23 (c) The certificate of concurrency shall apply to the land and is therefore transferable
24 from owner to owner of the subject project and parcel.

25
26 (d) Any alteration in scope, magnitude, location, project traffic circulation and/or
27 distribution for the subject property must be reported to and approved by the county for
28 certificate re-evaluation. If such alterations are not reported, the certificate of concurrency will
29 be subject to revocation.

30
31 (e) Public facilities must serve land development adequately according to adopted level
32 of service standards contained within the county comprehensive plan. This certificate verifies
33 adequacy and will reserve capacity until it expires. It offers no other assurance, does not approve
34 any development order, and does not grant any development rights.

35
36 (Ord. No. 91-27, § 7, 7-31-91)

37
38 **Sec. 23-262. Exemption from adequate public facilities review and concurrency review.**

39
40 The purpose of the concurrency review is to determine a project's impact on the provision
41 of public facilities/services. The following will be exempt from the concurrency review: single-
42 family home or duplex and nonresidential projects consisting of less than one thousand five
43 hundred (1,500) square feet, generating less than twenty (20) average daily trips (ADT), and
44 using less than five hundred (500) gallons of water per day.
45

1 (Ord. No. 91-27, § 8, 7-31-91)

2 **Sec. 23-263. Minimum requirements for concurrency.**

3
4 A development order will be issued only if the proposed development does not lower the
5 existing level of service of a facility/service below the adopted level of service in the county
6 comprehensive plan or which results in only de minimus impacts as defined in Section
7 163.3180(6), Florida Statutes, as such section may be amended or renumbered. The minimum
8 criteria to satisfy concurrency requirements have been established in Rule 9J-5.0055, Florida
9 Administrative Code.

- 10
11 (1) For potable water, sewer, solid waste and drainage the following standards must
12 be met, at a minimum, to satisfy the concurrency requirement:
- 13
14 a. The necessary facilities and services are in place at the time a development
15 permit is issued; or
 - 16
17 b. A development permit is issued subject to the condition that the necessary
18 facilities and services will be in place when the impacts of the
19 development occur; or
 - 20
21 c. The necessary facilities are under construction at the time a permit is
22 issued; or
 - 23
24 d. The necessary facilities and services are guaranteed in an enforceable
25 development agreement. The agreement must guarantee that the necessary
26 facilities and services will be in place when the impacts of the
27 development occur.
- 28
29 (2) For parks the criteria under subsection (1) above may be applied or the following
30 minimum standards may be applied:
- 31
32 a. At the time the development permit is issued, the necessary facilities and
33 services are the subject of a binding executed contract which provides for
34 the commencement of actual construction of the required facilities or the
35 provision of services within one (1) year of the issuance of the
36 development permit; or,
 - 37
38 b. The necessary facilities and services are guaranteed in an enforceable
39 development agreement which requires commencement of actual
40 construction of the facilities or the provision of services within one (1)
41 year of the issuance of the applicable development permit. An enforceable
42 development agreement may include, but is not limited to, development
43 agreements pursuant to section 163.3220, Florida Statutes, or an
44 agreement or development order issued pursuant to chapter 380, Florida
45 Statutes.

1
2 (3) For transportation facilities designated in the adopted county comprehensive plan,
3 the concurrency requirement may be satisfied by following the criteria under
4 subsections (1) or (2) above. For transportation facilities included in the county's
5 five-year schedule of capital improvements, the concurrency requirement can be
6 satisfied by meeting at a minimum the following provisions:

7
8 a. Necessary public facilities are in the five-year schedule of capital
9 improvements and construction is scheduled to commence in or before the
10 third year; provided, that the capital improvements element and the five-
11 year schedule of capital improvements continue to be:

12
13 1. A capital improvements element and a five-year schedule of capital
14 improvements which, in addition to meeting all of the other
15 statutory and rule requirements, must be financially feasible. The
16 capital improvements element and schedule of capital
17 improvements may recognize and include transportation projects
18 included in the first three (3) years of the applicable adopted
19 Florida Department of Transportation five-year work program.

20
21 2. A five-year schedule of capital improvements which must include
22 both necessary facilities to maintain the adopted level of service
23 standards to serve the new development proposed to be permitted
24 and the necessary facilities required to eliminate those portions of
25 existing deficiencies which are a priority to be eliminated during
26 the five-year period under the local government plan's schedule of
27 capital improvements.

28
29 3. A five-year schedule of capital improvements which must include
30 the estimated date of commencement of actual construction and the
31 estimated date of project completion.

32
33 4. A five-year schedule of capital improvements which must
34 demonstrate that the actual construction of the road and the
35 provisions of services are scheduled to commence in or before the
36 third year of the five-year schedule of capital improvements.

37
38 (3) Transportation.

39
40 (a) Transportation supply (capacity). Transportation supply shall be
41 determined on a segment by segment basis. For concurrency purposes, all
42 segments on the county's thoroughfare plan shall be considered. Capacity
43 for segments will be based either on FDOT's generalized capacity tables or
44 individual segment capacity studies approved by the county planning
45 director. Transportation supply for each segment is:

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1. The segment's existing peak hour, peak season, peak direction capacity; or
2. The segment's new roadway capacity if facility expansion for the segment is proposed and if:
 - a. At the time the development order or permit is issued, the facility expansion is under construction; or
 - b. A development order or permit is issued subject to a condition that the facility expansion needed to serve the new development is included in the county's adopted five-year schedule of capital improvements and is scheduled to be in place or under actual construction not more than three (3) years after issuance of the project's first building permit or its functional equivalent. For purposes of this section, the county may recognize and include transportation projects included in the first three years of the adopted Florida Department of Transportation five year work program. In order to apply this provision to a facility expansion project, the Capital Improvements Element (CIE) must include the following policies:
 - i. The estimated date of commencement of actual project construction and the estimated date of project completion, and
 - ii. A provision that a plan amendment is required to eliminate, defer, or delay construction of any road which is needed to maintain the adopted level of service standard and which is listed in the five-year schedule of capital improvements of the County's adopted comprehensive plan; or
 - c. At the time a development order or permit is issued, the facility is the subject of a binding executed agreement which requires the facility to be in place or under actual construction no more than three (3) years after the issuance of the project's first building permit or its functional equivalent; the agreement may assign all or a portion of the created capacity; or
 - d. At the time a development order or permit is issued, the facility is guaranteed in an enforceable development agreement, pursuant to Section 163.3220, Florida Statutes,

1 or an agreement or development order issued pursuant to
2 Chapter 380, Florida Statutes, to be in place or under actual
3 construction not more than three years after issuance of a
4 building permit or its functional equivalent. [Section
5 163.3180(2)(c), Florida Statutes]; the agreement may assign
6 all or a portion of the created capacity; or

7
8 e. The segment is the subject of a proportionate fair-share
9 agreement. In such case, the segment capacity increase
10 reflected in the proportionate fair share agreement shall be
11 available only to the parties to a proportionate fair share
12 agreement.

13
14 (4) In determining the availability of services or facilities, a developer may
15 propose and the county may approve developments in stages or phases so
16 that the facilities and services needed for each phase will be available in
17 accordance with the standards required by this section.

18
19 (Ord. No. 91-27, § 9, 7-31-91)

20
21 **Sec. 23-264. Facilities/services subject to concurrency determination.**

22 A concurrency determination shall be made for the following public facilities/services:

- 23
24 (1) Potable water.
25
26 (2) Sewage treatment.
27
28 (3) Drainage.
29
30 (4) Solid waste disposal.
31
32 (5) Parks.
33
34 (6) Transportation.
35

36
37 (Ord. No. 91-27, § 10, 7-31-91)

38
39 **Sec. 23-265. Facility/service demand calculations.**

40
41 The following calculations shall be used to determine the projected demand of the
42 proposed project described in an application for a development permit on the public facilities and
43 services. The calculations are listed by public facility and service type. The information
44 necessary to enable the county to perform the facility/service demand calculations in the
45 following shall be provided by the applicant to the county.

1 (1) *Potable water:*

2
3 Adopted LOS = 350 gal./day/Equivalent Residential Unit (ERU)

4
5 350 gal × _____ ERU's = demand

6
7 (2) *Sewage treatment:*

8
9 Adopted LOS = 280 gal./day/ERU

10
11 280 gal × _____ ERU's = demand

12
13 (3) *Drainage:*

14
15 Adopted LOS = post development runoff shall be no greater than predevelopment
16 runoff based on 25-year frequency, 24-hour duration; rainfall intensity curve-zone
17 8, Florida Department of Transportation Drainage Manual, 1979.

18
19 (4) *Solid waste:*

20
21 Adopted LOS = 5 lbs./day/person (nonresidential uses are included in the adopted
22 LOS)

23
24 Solid waste will be calculated on a county-wide basis at regular intervals.

25
26 Current estimate 5 lbs. per capita

27
28 Population × per day = Demand

29
30 (5) *Parks:*

31
32 Total LOS = 4.00 acres/1,000 people with 2.00 acres/1,000 for user-oriented
33 facilities 2.00 acres/1,000 for open space

34
35 Parks will be calculated on a county-wide basis at regular intervals.

36
37 User-Oriented Facilities:

38 Current estimate

39 Population/1,000 × 2 acres = Demand (acres)

40
41 Open Space:

42
43 Current estimate

44 Population/1,000 × 2 acres = Demand (acres)

1 (6) *Transportation:*
2

3 Refer to the county comprehensive plan for the adopted level of service standards.
4

5 a. Determine the number of trips generated by the proposed project during
6 the P.M. peak hour, using the most recent edition of ITE's Trip Generation,
7 with no adjustment for internal capture or passerby trips.
8

9 b. If the project is calculated to generate more than fifty (50) P.M. peak-hour
10 trips, a transportation study shall be done. The report shall be signed
11 and/or sealed by a registered professional engineer.
12

13 1. If a transportation study is not required as per section 23-261(b) of
14 this article, the applicant is required to provide only the existing
15 plus project directional P.M. peak-hour traffic volumes distributed
16 to the closest functionally classified roadway link(s) from all
17 project entrances.
18

19 2. The data shall be in conformance with notes 5(C)(2)a-c of Existing
20 Conditions below.
21

22 c. If a transportation study is required, it shall be obtained and submitted by
23 the applicant for a development permit at the applicant's expense.
24

25 d. "Unacceptable degradation," for the purpose of evaluating transportation
26 impacts on backlogged facilities, means that the number of vehicular trips
27 per day generated by the development on the impacted link(s) exceeds two
28 (2) percent of LOS "D" for the functional classification of the thoroughfare
29 as given in the FDOT LOS Maximum Volume generalized tables.
30

31 e. Requirements of transportation study:
32

33 1. *Preapplication meeting.* A preapplication meeting between the
34 County and the applicant is strongly recommended. The purpose
35 of this meeting will be to review the transportation study
36 methodology and procedure and to determine the study period.
37 This will typically include a P.M. peak-hour analysis; however,
38 other time periods may also be required in the analysis.
39

40 2. *Define study area.* The study area is defined as roadways impacted
41 by the project at four and one-half (4 ½) percent of daily LOS "D"
42 capacity.
43

44 3. *Existing conditions.* The following existing transportation network
45 information shall be provided:

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- i. Existing directional P.M. peak-hour traffic volumes and level of service on all county-designated collectors and arterials within the study area.

- ii. Existing turning movement volumes at the impacted intersection(s) and intersection(s) level(s) of service.
Notes:
 - a. The above-required data shall be no older than the previous calendar year. The data must be the most recent available from the county or from another approved source. Volumes shall be adjusted to reflect annual conditions using current FDOT seasonal adjustment factors for the county or other adjustment factors approved by the county.

 - b. The above-required level(s) of service for roadways shall be determined in accordance with current FDOT Generalized Level of Service Procedures.

 - c. The above-required intersection capacity(s) shall be determined using computer software based on the most recent edition of the highway Capacity Manual, Special Report 209, Transport Research Board, National Research Counsel.

- iii. The Florida Department of Transportation (FDOT) Tables of Generalized Daily Level-of-service Maximum Volumes or associated highway capacity software will be used to determine initial highway capacities. The measurement of capacity may also be determined by substantiation in the form of engineering studies signed and sealed by a licensed professional engineer. Traffic analysis techniques must be technically sound and justifiable as determined by FDOT. Alterations to capacity on the state highway system beyond ranges established by agreement between the county and FDOT shall require FDOT review and approval.

- 4. *Projection of background traffic.* Volume(s) shall be projected for the year of the project completion. Volumes can be determined using one (1) of the following procedures:
 - i. Multiplying existing volumes by an annual growth factor provided by the county. Traffic generated by any major

1 project approved since the traffic counts were conducted
2 shall be included as background traffic.

3
4 ii. Multiply existing volumes by an annual growth factor
5 approved by the county. This growth factor must be based
6 on data collected on three (3) roadways in the vicinity of
7 the project over at least the last two (2) years. Traffic
8 generated by any major project approved since the traffic
9 counts were conducted shall be included as background
10 traffic.

11
12 iii. Develop a gravity model.

13
14 5. *Project traffic generation.* The following procedures and
15 information shall be provided:

16
17 i. To determine project traffic generation, the current edition
18 of ITE's Trip Generation shall be used.

19
20 ii. Identify all project land uses, amount of development and
21 trip rates.

22
23 iii. Trip rates may be obtained from studies of comparable sites
24 in the county or using data from previous traffic generation
25 studied and are subject to the approval of the county.

26
27 iv. Any proposed reduction factors for capture of trips between land
28 uses of a mixed use project or for passerby trips shall be provided
29 by the applicant at a pre-application/methodology meeting and
30 approved by the county.

31
32 6. *Project traffic distribution.* One of the following methods shall be
33 used:

34
35 i. If the project generates fewer than one hundred (100) peak-
36 hour trips, the distributions can be developed based on
37 those of similar projects.

38
39 ii. For any project, manual gravity model distribution can be
40 developed. The travel-time method described in chapter 3
41 of ITE Transportation and Land Development shall be used.

42
43 iii. For any project, a county-approved computerized
44 distribution model, such as FSUTMS or QRS-II, can be
45 developed.

1 (Ord. No. 91-27, § 11, 7-31-91)
2

3 **Sec. 23-266. Alternative demand calculations.**
4

5 If the applicant claims the standards provided in the demand calculations are not
6 applicable to the proposed project, the applicant shall submit appropriate documentation
7 supporting the proposed alternative demand calculation to the county. Any alternative
8 calculation standard shall be subject to approval of the county.
9

10 (Ord. No. 91-27, § 12, 7-31-91)
11

12 **Sec. 23-267. Appellate procedures.**
13

14 Any appeal of a denial of a certificate of concurrency shall be to the board of county
15 commissioners within thirty (30) days of the decision.
16

17 **SECTION 2. Amending Chapter 23 (Planning), Article VIII (Adequate Public Facilities),**
18 **adding Sec. 23-268 (Proportionate Fair Share Mitigation).** Chapter 23 (Planning), Article
19 VIII (Adequate Public Facilities) is amended to read as follows, with underlined matter added
20 and struck-through matter deleted:
21

22 **Sec. 23-268. Proportionate Fair-Share Mitigation.**
23

24 (1) Purpose and Intent
25

26 The purpose of this section is to establish a method whereby the impacts of
27 development on transportation facilities can be mitigated by the cooperative
28 efforts of the public and private sectors, to be known as the Proportionate Fair-
29 Share Program, as required by and in a manner consistent with §163.3180(16),
30 Florida Statutes.
31

32 (2) Findings
33

34 (a) Hernando County Board of County Commissioners finds and determines
35 that transportation capacity is a commodity that has a value to both the
36 public and private sectors and that the county Proportionate Fair-Share
37 Program:
38

39 1. Provides a method by which the impacts of development on
40 transportation facilities can be mitigated by the cooperative and
41 creative efforts of the public and private sectors;
42

43 2. Allows developers to proceed under certain conditions,
44 notwithstanding the failure of transportation concurrency, by

1 contributing their proportionate fair share of the cost of expanding
2 or improving a transportation facility;

3
4 3. Contributes to the provision of adequate public facilities for future
5 growth and promotes a strong commitment to comprehensive
6 facilities planning, thereby reducing the potential for moratoria or
7 unacceptable levels of traffic congestion; and

8
9 4. Maximizes the use of public funds for adequate transportation
10 facilities to serve future growth, and may, in certain circumstances,
11 allow the county to expedite transportation improvements by
12 supplementing funds currently allocated for transportation
13 improvements in the Capital Improvements Element.

14
15 (3) Applicability

16
17 The Proportionate Fair-Share Program shall apply to any development project in
18 Hernando County where the project's traffic impact study or the county planning
19 director (or his designee) determines that there is insufficient capacity on one or
20 more segments to satisfy the development project's transportation concurrency
21 requirements. The Proportionate Fair-Share Program does not apply to
22 developments of regional impact (DRIs) using proportionate fair share under
23 §163.3180(12), Florida Statutes, or to developments exempted from concurrency
24 as provided in this article.

25
26 (4) General Requirements

27
28 (a) An applicant whose project meets the criteria of this section may choose to
29 satisfy transportation concurrency requirements by making a proportionate
30 fair share contribution, pursuant to the following requirements:

31
32 1. The proposed development is consistent with the comprehensive
33 plan and applicable land development regulations, and

34
35 2. The five-year schedule of capital improvements in the county
36 Capital Improvements Element (CIE) includes one or more
37 transportation improvements that, upon completion, will provide
38 sufficient capacity for the deficient segments to accommodate the
39 traffic generated by the proposed development.

40
41 (b) The county may choose to allow an applicant to satisfy transportation
42 concurrency for a deficient segment, through the Proportionate Fair-Share
43 Program, by the developer contributing to an improvement that, upon
44 completion, will create additional capacity on the deficient segment
45 sufficient to accommodate the additional traffic generated by the

1 applicant's proposed development even if the improvement project for the
2 deficient segment is not contained in the 5-year schedule of capital
3 improvements in the CIE where:

- 4
- 5 • The Board of County Commissioners holds an advertised public
6 hearing to consider the proportionate share agreement and
7 corresponding future changes to the 5-year CIE, and
8
- 9 • The county adopts, by ordinance or resolution, a commitment to
10 add the improvement to the 5-CIE. To qualify for consideration
11 under this section, the proposed year schedule of capital
12 improvements in the improvement must be reviewed by the Board
13 of County Commissioners, and determined to be financially
14 feasible pursuant to §163.3180(16)(b)1, Florida Statutes, consistent
15 with the comprehensive plan, and in compliance with the
16 provisions of this ordinance. Financial feasibility for this section
17 means that additional contributions, payments or revenue sources
18 to fund the improvement project are reasonably anticipated during
19 a period not to exceed 10 years.

20

21 (c) If the funds allocated for the five-year schedule of capital improvements
22 are insufficient to fully fund construction of a transportation improvement
23 required by the concurrency management system, the county may still
24 enter into a binding proportionate fair-share agreement with the applicant
25 authorizing construction of that amount of development on which the
26 proportionate fair share is calculated if the proportionate fair share amount
27 in such agreement is sufficient to pay for one or more improvements
28 which will, in the opinion of the government entity or entities maintaining
29 the transportation facilities, significantly benefit the impacted
30 transportation system.

31

32 (d) Improvements funded by the proportionate fair-share component must be
33 adopted into the 5 year capital improvements schedule at the next annual
34 capital improvements update.

35

36 (e) Any improvement project proposed to meet a developer's fair-share
37 obligation must meet design standards of the county for locally maintained
38 roadways and those of the Florida Department of Transportation (FDOT)
39 for the state highway system.

40

41 (5) *Application Process*

42

43 (a) Upon identification of a lack of capacity to satisfy transportation
44 concurrency, an applicant may choose to satisfy transportation concurrency

1 through the proportionate fair-share program pursuant to the requirements
2 of this section.

3
4 (b) Prior to submitting an application for a proportionate fair-share agreement,
5 the applicant shall attend a pre-application meeting with planning and
6 traffic engineering staff to discuss eligibility, application submittal
7 requirements, potential mitigation options, and related issues. If the
8 impacted facility is on the Strategic Intermodal System (SIS), then the
9 Florida Department of Transportation (FDOT) will be notified and invited
10 to participate in the preapplication meeting.

11
12 (c) Eligible applicants shall submit an application to the county that includes
13 an application fee as established by resolution and the following:

14
15 1. Name, address, and phone number of owner(s), developer and
16 agent;

17
18 2. Property location, including parcel identification numbers;

19
20 3. Legal description and survey of property;

21
22 4. Project description, including type, intensity, and amount of
23 development;

24
25 5. Phasing schedule, if applicable;

26
27 6. Description of requested proportionate fair-share mitigation
28 method(s);

29
30 7. Copy of concurrency application;

31
32 8. Copy of the project's Traffic Impact Statement (TIS) or Traffic
33 Impact Analysis (TIA); and

34
35 9. Location map depicting the site and affected road network.

36
37 (d) Within 10 business days, planning staff shall review the application and
38 certify that the application is sufficient and complete. If an application is
39 determined to be insufficient, incomplete, or inconsistent with the general
40 requirements of the proportionate fair-share program as indicated in this
41 section, then the applicant shall be notified in writing of the reasons for
42 such deficiencies within 10 business days of submittal of the application.
43 If such deficiencies are not remedied by the applicant within 30 days of
44 receipt of the written notification, then the application shall be deemed
45 abandoned. The Board of County Commissioners may, in its discretion,

grant an extension of time not to exceed 60 days to cure such deficiencies, provided that the applicant has shown good cause for the extension and has taken reasonable steps to effect a cure.

(e) Pursuant to §163.3180(16)(e), Florida Statutes, proposed proportionate fair-share mitigation for development impacts to facilities on the Strategic Intermodal System requires the concurrence of the Florida Department of Transportation (FDOT). If an SIS facility is proposed for proportionate share mitigation, the applicant shall submit evidence of an agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.

(f) When an application is deemed sufficient, complete, and eligible, a proposed proportionate fair-share obligation and binding agreement will be prepared by the county or the applicant with direction from the county and delivered to the appropriate parties for review, including a copy to the FDOT for any proposed proportionate fair-share mitigation on a Strategic Intermodal System (SIS) facility, no later than 60 days from the date at which the application was determined to be sufficient and no fewer than 14 days prior to the Board of County Commissioners meeting when the agreement will be considered.

(g) The county shall notify the applicant regarding the date of the Board of County Commissioners meeting at which the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the Board of County Commissioners.

(6) *Determining Proportionate Fair-Share Obligation*

(a) Proportionate fair-share mitigation for concurrency impacts may include, separately or collectively, private funds, contributions of land, and construction and contribution of facilities as provided in §163.3180(16)(c), Florida Statutes.

(b) A development shall not be required to pay more than its proportionate fair share. The fair market value of the proportionate fair-share mitigation for the impacted facilities shall not differ regardless of the method of mitigation as provided in §163.3180(16)(c), Florida Statutes.

(c) The methodology used to calculate an applicant's proportionate fair-share obligation shall be as provided for in Section 163.3180(12), Florida Statutes, as follows:

The cumulative number of peak hour, peak direction trips from the complete build out of the proposed development, or build out of the stage

1 or phase being approved, that are assigned to the proportionate share
2 program segment divided by the change in the peak hour directional
3 maximum service volume (MSV) of the proportionate share program
4 segment resulting from construction of the proportionate share program
5 improvement, multiplied by the anticipated construction cost of the
6 proportionate share project in the year that construction will occur.

7
8 This methodology is expressed by the following formula:

9
10 Proportionate Fair Share = Σ [(Development Trips_i) ÷ (SV Increase_i)] X
11 Cost_i]

12
13 (Note: In the context of the formula, the term “cumulative” does not include a previously
14 approved stage or phase of a development.)

15
16 Where:

17
18 Σ = Sum of all deficient links proposed for
19 proportionate fair-share mitigation for a
20 project.

21
22 Development Trips_i = Those trips from the stage or phase of
23 development under review that are assigned
24 to roadway segment “i” and have triggered a
25 deficiency per the concurrency management
26 system.

27
28 SV Increase_i = Service volume increase provided by the
29 eligible improvement to roadway segment
30 “i”.

31
32 Cost_i = Adjusted cost of the improvement to
33 segment “i”. Cost shall consist of all
34 improvements and associated costs,
35 including design, right-of-way acquisition,
36 planning, engineering, inspection, and
37 physical development costs, directly
38 associated with construction at the
39 anticipated cost in the year that construction
40 will occur.

41
42 (d) For purposes of determining proportionate fair-share obligations, the
43 county shall determine improvement costs based upon the actual and/or

1 anticipated costs of the improvement in the year that construction will
2 occur. These costs will be determined by the county's public works
3 department. Accepted sources for determining improvement costs may
4 include, but not be limited to, the most recent issue of FDOT
5 Transportation costs, as adjusted, based upon the type of cross-section, and
6 locally available data from recent projects.

7
8 (e) If the county has accepted an improvement project proposed by the
9 applicant, then the value of the improvement shall be based on an
10 engineer's certified cost estimate provided by the applicant and approved
11 by the county's public works director or other method approved by the
12 county's public works director.

13
14 (f) If the county has accepted right-of-way dedication for the proportionate
15 fair share payment, credit for the dedication of the non-site related right-
16 of-way shall be valued on the date of the dedication at 120 percent of the
17 most recent assessed value by the county property appraiser or, at the
18 option of the applicant, by fair market value established by an independent
19 appraisal approved by the county and at no expense to the county. Said
20 appraisal shall assume no approved development plan for the site. The
21 applicant shall supply a drawing and legal description of the land and a
22 certificate of title or title search of the land to the county at no expense to
23 the county. If the estimated value of the right-of-way dedication proposed
24 by the applicant (based on a county-approved appraisal) is less than the
25 county estimated total proportionate fair-share obligation for that
26 development, then the applicant must also pay the difference. If the
27 estimated value of the right-of-way dedication proposed by the applicant
28 (based on a county-approved appraisal) is more than the county estimated
29 total proportionate fair-share obligation for the development, then the
30 county will give the applicant roads impact fee credit for the difference.

31
32 (7) Impact Fee Credit for Proportionate Fair-Share Mitigation

33
34 (a) Proportionate fair-share mitigation payments for a development project
35 shall be applied as a credit toward the roads impact fees assessed to that
36 development project to the extent that all or a portion of the proportionate
37 fair-share mitigation is used to address the same capital infrastructure
38 improvements contemplated by the county's impact fee ordinance.

39
40 (b) Impact fee credits for a proportionate fair-share contribution will be
41 determined when the roads impact fee obligation is calculated for the
42 proposed development. If the applicant's proportionate fair-share
43 obligation is less than the development's anticipated roads impact fee for

the specific stage or phase of development under review, then the applicant must pay the remaining impact fee amount.

(c) A proportionate fair-share contribution is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any roads impact fee credit based upon proportionate fair-share contributions for a proposed development may not be transferred to any other location.

(d) The amount of roads impact fee (RIF) credit for a proportionate fair-share contribution may be up to but shall not exceed the project's proportionate fair share amount and will be determined based on the following formula:

RIF Credit = [(Proportionate fair share impacted roadways' VMT) ÷ (Total Project VMT)] X (Total Project Roads impact Fee Liability)

Where:

VMT (Vehicle miles of travel on a link) = (length of link) X (number of trips assigned to that link)

Total Project VMT = Total vehicle miles of travel on all links impacted by proportionate fair share project

(e) A proportionate fair share impact fee credit shall be applied consistent with the following formula:

Applicant payment = [(Total project roads impact fees assessed) + (Proportionate Share Payment)] – (RIF CREDIT)

(8) Proportionate Fair-Share Agreements

(a) Upon executing a proportionate fair-share agreement (Agreement) and satisfying other concurrency requirements, an applicant shall receive county certificate of concurrency approval. Should the applicant fail to apply for building permits within the time frame provided for in the county concurrency certificate, then the project's concurrency vesting shall expire, and the applicant shall be required to reapply. Once a proportionate share payment for a project is made and other impact fees for the project are paid, no refunds shall be given. All payments, however, shall run with the land.

1 **(b)** Payment of the proportionate fair-share contribution for a project and
2 payment of other impact fees assessed to that project shall be due and must
3 be paid prior to the effective date of the proportionate fair share
4 agreement. The effective date shall be specified in the agreement and shall
5 be the date the agreement is approved by the Board or its designee.

6
7 **(c)** All developer improvements accepted as proportionate fair share
8 contributions must be completed within 3 (three) years of the issuance of
9 the first building permit for the project which is the subject of the
10 proportionate fair share agreement and be accompanied by a security
11 instrument that is sufficient to ensure the completion of all required
12 improvements. The security instrument shall conform to the subdivision
13 construction security requirements utilized by the county development
14 department. It is the intent of this article that any required improvements
15 be completed within 3 (three) years of the issuance of the first building
16 permit for the project which is the subject of the proportionate fair share
17 agreement.

18
19 **(d)** Dedication of necessary right-of-way for facility improvements pursuant to
20 a proportionate fair-share agreement must occur prior to the effective date
21 of the proportionate fair share agreement.

22
23 **(e)** Any requested change to a development project subsequent to issuance of
24 a development order shall be subject to additional proportionate fair-share
25 contributions to the extent the change would increase project costs or
26 generate additional traffic that would require mitigation.

27
28 **(f)** Applicants may withdraw from a proportionate fair-share agreement at any
29 time prior to the execution of the agreement. The application fee and any
30 associated advertising costs to the county are nonrefundable.

31
32 **(g)** The county may enter into proportionate fair-share agreements for selected
33 corridor improvements to facilitate collaboration among multiple
34 applicants on improvements to a shared transportation facility.

35
36 **(9)** *Appropriation of Fair-Share Revenues*

37
38 **(a)** Proportionate fair-share revenues shall be placed in the appropriate project
39 account for funding of scheduled improvements in the county capital
40 improvements element, or as otherwise established in the terms of the
41 proportionate fair-share agreement. Proportionate fair-share revenues may
42 also be used as the 50% local match for funding under the FDOT
43 Transportation Regional Incentive Program (TRIP).

(b) In the event a scheduled facility improvement is removed from the Capital Improvements Element (CIE), then the proportionate fair share revenues collected for its construction may be applied toward the construction of alternative improvements within that same corridor or sector where the alternative improvement will mitigate the impacts of the development project on the congested roadway(s) for which the original proportionate fair share contribution was made.

Secs. 23-2689 – 23-279. Reserved.

SECTION 3. Severability. It is declared to be the intent of the Board of County Commissioners that if any section, subsection, clause, sentence, phrase, or provision of this ordinance is for any reason held unconstitutional or invalid, the invalidity thereof shall not affect the validity of the remaining portions of this ordinance.

SECTION 4. Repeal of Conflicting Ordinances. The provisions of any other Hernando county ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.


SECTION 5. Inclusion in the Code. It is the intention of the Board of County Commissioners of Hernando County, Florida, and it is hereby provided, that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Hernando County, Florida. To this end, any section or subsection of this Ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate designation.

SECTION 6. Effective date. This ordinance shall take effect immediately upon filing with the Department of State.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF HERNANDO COUNTY in Regular Session this 21st day of November, 2006.

BOARD OF COUNTY COMMISSIONERS
HERNANDO COUNTY, FLORIDA

By: *Diane B. Rowden*
DIANE B. ROWDEN
CHAIRPERSON

 *Karen Nicolai*
KAREN NICOLAI
CLERK

Approved as to Form and Legal Sufficiency

By: *[Signature]* 11/15/06
Assistant County Attorney 6TK