

ARTICLE 6. ADEQUATE PUBLIC FACILITIES

§6.1. Short Title

This section shall be known and may be cited as the Lincoln County "Adequate Public Facilities Program."

§6.2. Purpose, Intent and Provisions

A. The purpose and intent of this section is:

1. To implement the provisions of the comprehensive plan related to the adequacy of public facilities as new growth occurs.
2. To ensure that public facilities needed to support new development meet adopted level of service standards.
3. To ensure that the County and other responsible agencies maintain realistic capital improvements programs to accommodate new development based on their ability to provide adequate public facilities to that development.
4. To protect the character of the County and to conserve the value of buildings and encourage the most appropriate use of land throughout the County.
5. To ensure that no development proposal is approved that would cause a permanent reduction in the level of service for any public facilities established in this section below adopted guidelines, unless mitigation measures are proposed by the developer and approved by the responsible agency.
6. To ensure that adequate public facilities needed to support new development are available within a reasonable period of time as new development occurs.
7. To establish uniform procedures for the review of APF applications subject to the standards and requirements of this section.
8. To encourage the efficient development of land in Lincoln County.
9. To ensure that new growth occurs at a rate that is consistent with the County's and other responsible agencies' obligation and ability to provide public facilities.
10. To encourage development in areas where public facilities are adequate and/or planned in capital improvement programs.
11. To ensure that all applicable legal standards and criteria are incorporated in these procedures and requirements.
12. To ensure that proposed development will not adversely affect the public health, safety, and general welfare of existing and future residents of Lincoln County.

B. In adopting this section, the County hereby finds and determines as follows:

1. The public facilities subject to the provisions of this section are necessary for the public health, safety, and general welfare.

General

2. New growth and development within the County has an impact on the availability and capacity of public facilities, the capacity of which can be maintained if development is approved consistent with the adopted level of service standards.
3. The County or other responsible agency has prepared and adopted a capital improvements program to provide the public facilities needed to accommodate reasonable rates of growth and development, which cips will be reviewed and updated if necessary annually to reflect changes in the County's growth rate, available financial resources, and other relevant factors.
4. The level of service standards adopted for each public facility are necessary for the protection of the public health, safety and welfare, and will not unduly inhibit new growth and development within Lincoln County.
5. This section is necessary so that continued growth does not outstrip the County's and responsible agencies' ability to plan for and fund necessary public facilities.

§6.3. Applicability

§6.3.1. General

Except as provided in §6.3.2, the provisions of this section shall apply to development proposals, as follows:

A. Residential Development

A determination of adequacy is required for any proposed development, or phase thereof, where more than five residential lots or dwelling units will be created upon completion.

B. Nonresidential Development

1. A determination of adequacy is required prior to the approval of any proposed development, or phase thereof, which would establish more than 2,500 square feet of additional floor area.
2. A determination of adequacy is not required with respect to schools for the nonresidential component of any proposed development.

C. Consecutive or Sequential Applications

Consecutive or sequential applications that propose development below the thresholds established in this section, which would result in cumulative impacts on public facilities above these thresholds, are subject to the requirements of this section. If it is determined by the Director that previous submissions made after the effective date of this section, but which were exempt due to size, contribute to the cumulative impacts of the development, then the impacts of such previous submissions shall be considered in determining whether the threshold requirements of this section apply to the subsequent submission. The Director's decision must be based on the nature, size, phasing, proximity, ownership history, and location of a subsequent development application to previous applications. This section is presumed to apply to any application for development submitted within 18 months of a prior application for development on an adjacent parcel.

§6.3.2. Exemptions**A. No Sewer or Water Public Facilities Connections**

Proposed developments that are not required by other County ordinances to be served by public water or sewer lines are not required to receive a determination of adequacy for only the public facility for which there is no required service. All other requirements of this section shall apply.

B. Housing Not Impacting Public Schools

For a development proposal, or portion thereof, that does not create an impact on public schools; the determination of adequacy shall not consider the available capacity of school public facilities. However, this exemption shall not apply to any development proposal unless the applicant demonstrates that all housing units are subject to a recorded deed restriction ensuring no measurable impacts on public schools, based on the provisions in this section and applicable memoranda of understanding.

C. Essential Government Services

The provisions of this section shall not apply to any development proposal, or portion thereof, that includes the construction of buildings, structures, or facilities related to the provision of essential government services.

D. Agricultural and Farm Uses

Upon determination of the Director, the provisions of this section shall not apply to (i) any lands or structures dedicated to bona fide farm purposes or (ii) any agricultural, nonresidential building or structure that demands less than 250 gallons per day of potable water and generates less than 250 gallons per day of wastewater.

§6.3.3. Vested Rights

This section shall not be interpreted or deemed to affect any rights that have vested prior to the effective date of this section, nor shall any provision of this section be applied to a specific property or applicant in a manner that would result in a taking of property.

§6.4. Level of Service Standards

The level of service standards applicable to public facilities are as follows:

§6.4.1. Water Public Facilities

As more specifically provided for herein, there must be sufficient water treatment capacity to accommodate the proposed development, based on the following demand factors:

- A.** Nonresidential Uses: as established by State rule, by type of land use
- B.** Residential Uses: 360 GPD/dwelling unit

§6.4.2. Sewer Public Facilities

As more specifically provided for herein, there must be sufficient sewer treatment capacity to accommodate the proposed development, based on the following demand factors:

- A.** Nonresidential Uses: as established by State rule, by type of land use
- B.** Residential Uses: 240 GPD/dwelling unit

School Public Facilities

§6.4.3. School Public Facilities

The level of service for schools shall be as provided in a memorandum of understanding between the County and the responsible agency, consistent with State requirements.

§6.5. Application and Review Procedure; Transferability**§6.5.1. When Required**

Subject to the requirements of this section, a final determination of adequacy by the Director must be submitted in conjunction with any development proposal. No development proposal will be accepted by the County unless a final determination of adequacy is submitted with the application.

§6.5.2. Requirements for APF Application**A. Pre-application Meeting Required**

Prior to submission of an APF application, the applicant must meet with the Director to confirm the scope and applicability of this section and to identify potential public facility deficiencies that may need to be mitigated. At or following the pre-submittal meeting, the Director shall:

1. Provide the current APF schedule;
2. Identify planned and funded capital improvements that affect available capacity for the project;
3. Provide other relevant and available demand and capacity information for public facilities; and
4. Summarize the scope of the APF application requirements.

B. General APF Application Requirements

An APF application shall be submitted in accordance with §9.2.2, Application Requirements. At a minimum, the APF application shall include:

1. Description of the proposed development, including the type and amount of each proposed land use;
2. Phasing schedule, as applicable;
3. Description of any past or proposed public facility dedicated, constructed, or funded in order to mitigate the impacts of the proposed development;
4. Mitigation plan, if applicable, proposing any improvements to be completed by the applicant; and
5. Other information required by the Director or member of the APF committee needed in order to evaluate the APF application and to make a determination of adequacy.

§6.5.3. Completeness Review

Within ten days of its receipt, the Director shall determine whether the APF application is complete and complies with the submission requirements set forth in this section. If the APF application is complete and the submission requirements have been met, within ten days of said determination, the Director will forward the APF application to the members

of the APF committee for review. If the APF application is not complete, the Director will notify the applicant of its deficiencies in writing within 15 days of its receipt.

§6.5.4. Determination of Adequacy and Allocation of Capacity

- A.** Following receipt of the APF application from the Director, each APF committee member shall determine whether available capacity exists and whether a certificate of adequacy will be issued for the relevant public facility, based on the standards of this section and applicable memoranda of understanding, and forward same to the Director.
- B.** Once each APF committee member has submitted a certificate of adequacy to the Director or has determined that available capacity does not exist, the Director shall prepare a written report that:
 - 1.** Identifies existing and planned capital improvements and any available capacity of public facilities that serve the proposed development, pursuant to the terms of this section and applicable memoranda of understanding.
 - 2.** Describes capital improvements funded and assumed to be in place to serve the proposed development.
 - 3.** Identifies any previously dedicated, constructed, or funded public facility made in order to mitigate the impacts of the proposed development.
 - 4.** Sets forth findings and conclusions related to the impact of the proposed development on available capacity.
 - 5.** Based on the determinations of adequacy by each applicable responsible agency, states whether there is available capacity for each public facility sufficient to accommodate the proposed development.

§6.5.5. Approval of Determination of Adequacy

- A.** Where each responsible agency has issued a certificate of adequacy, the Director shall issue a determination of adequacy.
- B.** Upon issuance of a determination of adequacy by the Director, the Director shall:
 - 1.** Notify the applicant in writing within ten business days of the determination of adequacy and APF allocation; and
 - 2.** Record the APF allocation on the adequate public facilities schedule.
- C.** If a determination of adequacy is based on an advanced facility, the APF allocation and the certificate of adequacy shall be conditioned on the timely completion of the advanced facility.

§6.5.6. Duration and Effect of a Determination of Adequacy

- A.** Unless an extension is granted as provided in subsection B., below, a determination of adequacy and the issuance of an APF allocation shall be deemed to indicate that:
 - 1.** Available capacity exists at the time of the determination of adequacy by the Director; and
 - 2.** Except as provided in subsection A.3, below, a determination of adequacy shall remain valid provided that the final plat is recorded or a building permit is issued, as applicable, within two years of the determination of adequacy.

Non-availability of Capacity Mitigation Plans

3. A determination of adequacy issued as provided above shall expire if subdivision site improvements are not completed within one year of final plat approval or, for multi-family and nonresidential developments, if certificates of occupancy are not issued within one year of building permit issuance.
- B. Upon the request of the applicant, the Board may extend the duration of a determination of adequacy. No extension will be granted except upon a showing by the applicant that the application is actively continuing through the development process, by demonstrating such factors as:
1. Whether building permits for the development proposal have been issued and remain active;
 2. Whether the applicant can demonstrate unique hardship or extenuating circumstances not created by the applicant; or
 3. Whether site improvements and development have progressed during the duration of the initial determination of adequacy.
- C. A determination of adequacy shall not affect the need for the applicant to meet all other requirements set forth in the zoning, subdivision, sewer use ordinances or any other lawfully adopted ordinance or law of the County, including the requirement that sewage flow acceptance and water capacity letters be issued, as appropriate, prior to issuance of a building permit.

§6.5.7. Non-availability of Capacity Mitigation Plans

- A. If the APF committee determines that available capacity does not exist for a particular public facility and no mitigation plan has been proposed pursuant to subsection C.3, below, the Director shall deny the APF application and no determination of adequacy or APF allocation shall be entered.
- B. Upon denial of an APF application, the Director shall notify the applicant in writing within ten business days of the denial and shall state the reasons for the denial and any actions that the applicant may take voluntarily to receive a determination of adequacy.
- C. Where there is no available capacity or upon a denial of an APF application, the applicant may:
1. Submit a development proposal that has a reduced amount of development for which available capacity exists;
 2. Submit a phased development proposal that includes the following:
 - (a) A proposed phasing schedule setting forth the amount, location, and timing of development associated with each proposed phase;
 - (b) A showing that available capacity will exist for each phase of development;
 - (c) Where advanced facilities are proposed, the location and timing of the proposed facilities based on the phasing schedule and mitigation plan as provided in subsection C.3., below; and
 - (d) Other additional information or materials identified by the APF committee as necessary to ensure the timely and adequate provision of public facilities; or

- (e) Propose a mitigation plan that provides advanced facilities, consistent with applicable memoranda of understanding, which would mitigate the impact of the proposed development on public facilities.
- 3. Any mitigation plan that proposes the provision of advanced facilities must provide an estimate of the incremental cost of providing the advanced facilities, a schedule for commencement and completion thereof, and a description of how the advanced facilities will mitigate the impact of the proposed development. In order for a mitigation plan to be accepted, it must be approved by the responsible agency.

§6.5.8. Transferability

- A. A determination of adequacy may be transferred from the property from which it was assigned originally by the APF committee, in accordance with the following provisions:
 - 1. No determination of adequacy may be transferred to a property that is not otherwise in compliance with the terms of this section or outside of the subarea upon which the original determination of adequacy was made, pursuant to this section or a memorandum of understanding;
 - 2. The transfer or assignment occurs prior to the expiration of the determination of adequacy; and
 - 3. The development proposal to which the determination of adequacy would be transferred and/or assigned is determined by the APF committee to be comparable in impact to the development proposal from which the determination of adequacy is proposed to be transferred and/or assigned.
- B. Any transfer or assignment of a determination of adequacy from the property for which it was originally approved must receive approval of the APF committee based on the above criteria.

§6.6. Public Facilities for which County is the Responsible Agency

This section shall apply to any public facility for which the County is the responsible agency. The County staff member designated to serve on the APF committee shall determine whether the County's public facilities have the capacity to accommodate the proposed development, pursuant to the provisions of this section.

§6.6.1. Water Treatment Facilities

The Director of Public Works, or his designee, shall serve as the County's designee on the APF committee for purposes of determining whether adequate water treatment facilities exist pursuant to the provisions of this section. The Director of Public Works shall issue a certificate of adequate water facilities (CAWF) where there is available capacity to serve the proposed development, based on the following calculation methodology:

A. Total Capital Improvements Calculation

Calculate total capital improvements by adding:

- 1. Capacity provided by existing capital improvements, based on the LOS standards set forth in §6.4; and

Sewer Treatment Facilities

2. Capacity of any planned capital improvements, which shall include capital improvements that are funded on the CIP and are under contract to be completed within one year of the APF determination.

B. Available Capacity Calculation

Calculate available capacity by subtracting from the total capital improvements the sum of:

1. Used capacity, which includes (a) habitable structures and existing land uses served by public water treatment facilities, as applicable, at the time of the APF determination; (b) capacity reserved pursuant to an APF allocation, which has not received a water capacity letter; and (c) proposed land uses that have been issued a water capacity letter, which remains valid at the time of the APF determination;
2. Reserved capacity; and
3. Demand on water treatment capacity created by the proposed development.

§6.6.2. Sewer Treatment Facilities

The Director of Public Works, or his designee, shall serve as the County's designee on the APF committee for purposes of determining whether adequate sewer treatment facilities exist pursuant to the provisions of this section. The Director of Public Works shall issue a certificate of adequate sewer facilities (CASF) where there is available capacity to serve the proposed development, based on the following calculation methodology:

A. Total Capital Improvements Calculation

Calculate total capital improvements by adding:

1. Capacity provided by existing capital improvements, based on the LOS standards set forth in §6.4; and
2. Capacity of any planned capital improvements, which shall include capital Improvements that are funded on the water & sewer CIP and are under contract to be completed within one year of the APF determination.

B. Available Capacity Calculation

Calculate available capacity by subtracting from the total capital Improvements the sum of:

1. Used capacity, which includes (1) habitable structures and existing land uses served by public sewer treatment facilities at the time of the APF determination; (2) capacity reserved pursuant to an APF allocation, which has not received a flow acceptance letter; and (3) proposed land uses that have been issued a flow acceptance letter, which remains valid at the time of the APF determination;
2. Reserved capacity; and
3. Demand on sewer treatment capacity created by the proposed development.

§6.7. Capital Improvements Program and APF Monitoring Reports

§6.7.1. Capital Improvements Program (CIP)

A. Purpose

The CIP is the mechanism by which Lincoln County and other responsible agencies provide new and expanded public facilities capacity needed to accommodate anticipated future population and employment at the adopted level of service standards. Through the implementation of cips and cooperation with responsible agencies through memoranda of understanding, the County will use all reasonable means to ensure that the provision of public facilities capacity is sufficient to accommodate new growth and development, consistent with the reasonable availability of revenue sources, contributions of capital Improvements, and physical, environmental, or topographical constraints on the expansion of the capacity of public facilities.

B. Requirements for Monitoring and Evaluation

The County shall maintain a CIP for the facilities for which it is the responsible agency, shall review and comment on applicable cips as provided for in memoranda of understanding, shall implement this section based on cips, and shall prepare and/or coordinate with responsible agencies in the development of and amendments to applicable cips.

§6.7.2. Monitoring Reports

A. The APF committee shall prepare an annual report addressing the following:

1. The available capacity of public facilities.
2. Anticipated increases in residential and nonresidential development within the County and any incorporated municipality.
3. The current need for any public facilities resulting from changes in population increase, employment growth, or other relevant factors.
4. The development of lots approved prior to the effective date of this section.
5. Other matters or actions recommended to effectuate the purpose and intent of this section, including any related to demand assumptions, need factors, and other matters recommended by the APF committee for reconsideration or revision.
6. The projected financing for any additional capacity resulting from the factors set forth in subsections 1 through 5, above.

B. The monitoring reports shall be made available to each responsible agency and the Board of Commissioners.

§6.8. Appeals

An applicant may appeal a determination by the Director or other County official or agency made pursuant to the terms of this section, to the Board of Adjustment, as provided in §9.19.