

# **Section 2**

## Implementation

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# 5.0 Level of Service Standards and the Planned Growth Strategy

## 5.1 Introduction

**I**n past years, the City of Albuquerque and Bernalillo County have struggled with the realities of high levels of growth. While growth produces many benefits, such as job creation and economic development, it also creates new demands and issues relating to infrastructure, urban design, environmental protection, and quality of life. The City and County have commissioned a Planned Growth Strategy to assess the impacts of this growth. The Planned Growth Strategy is a planning effort involving a number of engineering and planning consultants, using public participation and survey efforts to arrive at a Planned Growth Strategy for the community.

As part of the Planned Growth Strategy, the City and County have contracted with the planning and law firm of Freilich, Leitner & Carlisle to provide a bridge between the many planning efforts and implementation of those plans. The purpose of this chapter is to implement a portion of the contract between the City of Albuquerque and County of Bernalillo and Freilich, Leitner & Carlisle. The contract, in part, provides for recommendations about how to tie growth to level of service standards for infrastructure (quantifiable measures of needed infrastructure capacity). In particular, this chapter addresses how to vary level of service standards to encourage compact growth and to discourage sprawl. Specific standards are not provided in this chapter but may be developed later by staff or engineering firms retained by the City and County.

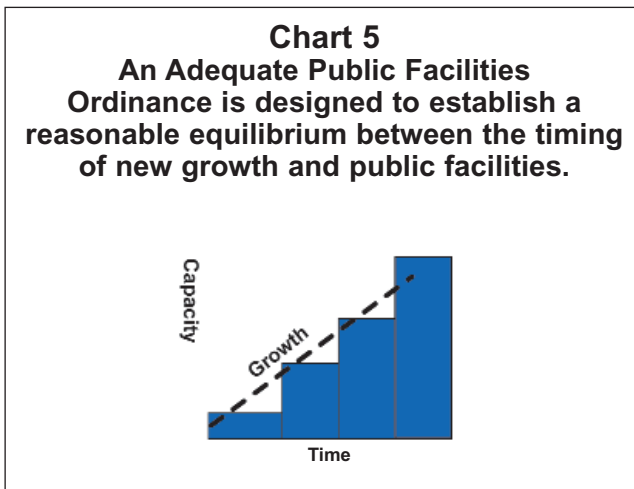
One of the issues relating to new development in the community is the timing and phasing of development. As new development occurs, it requires and places demands upon, public facilities such as roads, water, wastewater collection and treatment, drainage, parks, and other facilities. If new development occurs in locations where inadequate infrastructure

capacity exists, facilities become congested. In Town Hall meetings with the public conducted as part of the Planned Growth Strategy, citizens requested specific performance requirements for water, water reuse, air quality, drainage, and energy efficiency.

A reasonable equilibrium between the pace of development and the capacity of infrastructure can be achieved through three major regulatory strategies. First, the local governments can use their police powers to regulate the timing and sequencing of development. This concept, known commonly as “concurrency” or “adequacy of public facilities,” ties the approval of designated land use decisions to level of service standards for infrastructure. Second, the local governments can encourage development to occur in locations where services can be efficiently provided, rather than in locations where service provision is costly and inefficient. Finally, local governments can encourage development to occur in a form and a manner that uses services more efficiently. For example, in Town Hall meetings, the public expressed a desire to encourage infill development and to assure that infill development complements development on the periphery of built-up areas. Further, the public suggested that criteria for mixed-use development and increased densities are needed.

This chapter discusses each strategy and briefly relates them to the Planned Growth Strategy and other City/County planning efforts. Section 5.3 describes the concept of an Adequate Public Facilities Ordinance or concurrency system. This strategy ties development approval directly to infrastructure service levels. Sections 5.3 and 5.4 address strategies that indirectly address level of service issues. Section 5.4 describes locational strategies related to urban form. Section 5.5 describes community design regulations that produce efficiencies in the use of infrastructure.

Finally, Section 5.6 describes how these three concepts can be related to an overall Planned Growth Strategy implementation strategy for the City and County.



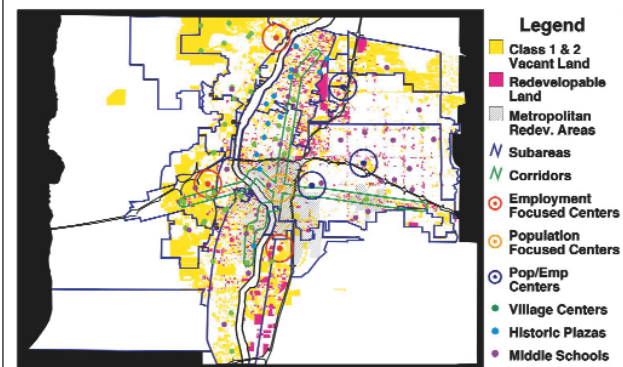
## 5.2 The Planned Growth Strategy

The Planned Growth Strategy is a strategy designed, in part, to address the linkage between infrastructure and population and employment growth in the region. The Planned Growth Strategy has six major guiding principles, as follows:

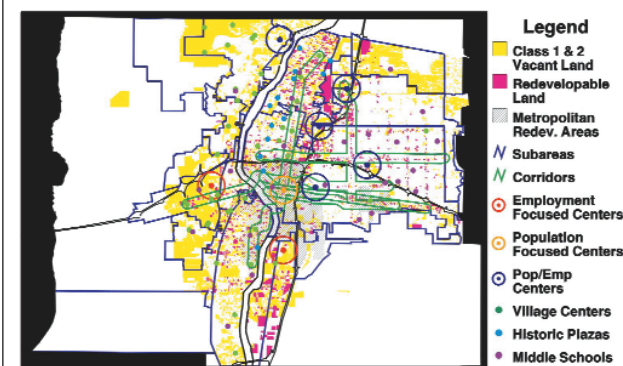
1. The location of population and employment growth should be phased and timed to achieve community goals. These goals are represented by the Planned Growth Strategy Preferred Alternative.
2. Critical infrastructure capacity (streets, parks, schools, water, sewer, and storm drainage) is available to support urban growth.
3. The needs of growth, rehabilitation, and the correction of existing infrastructure deficiencies are fully funded.
4. Implementation is guided by adopted plans, e.g., corridor plans, sector (neighborhood) plans, redevelopment plans, and area plans.
5. Charges for infrastructure to support growth reflect the costs of growth to the community.
6. The system is flexible.

As part of the process, short-term (1-10 years) and medium-term (10-25 years) growth areas have been identified.<sup>1</sup> These growth areas can be viewed in several different ways. The areas reflect the community's objectives for the location and density of development. These areas reflect the community's goals for the timing and sequencing of development. In other words, while the fully served areas may be more appropriate for higher densities, it is also

**Figure 30**  
**Planned Growth Strategy Short-Term Preferred Alternative (2000-2010)**



**Figure 31**  
**Planned Growth Strategy Long-Term Preferred Alternative (2010-2025)**



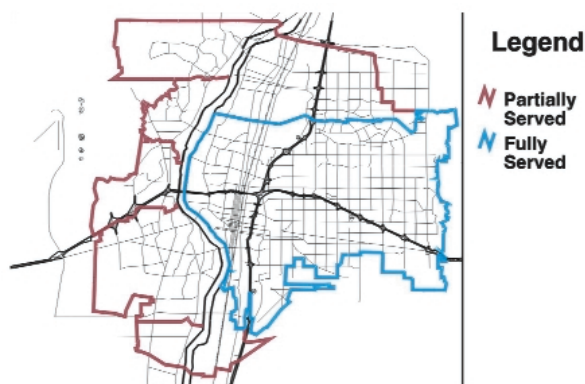
appropriate that served areas develop before new development occurs in the unserved areas. This chapter is primarily directed toward the second objective, although it has implications about the first objective as well.

The Preferred Alternative is based, in part, on the availability of infrastructure in the community. The location of infrastructure is divided into three broad “tiers.” First, the “Fully Served Areas” are areas that contain the full range of urban infrastructure. The Fully Served Areas for water have been divided further into areas with excess water capacity and areas without excess water capacity. Second, “Partially Served Areas” have some, but not all, of the necessary infrastructure and services. Outside of the Fully Served Areas and Partially Served Areas lie the “Unserved Areas,” which lack all or most of the needed infrastructure and services. These areas are shown in Figures 32–35 for water, wastewater, hydrology, and streets.

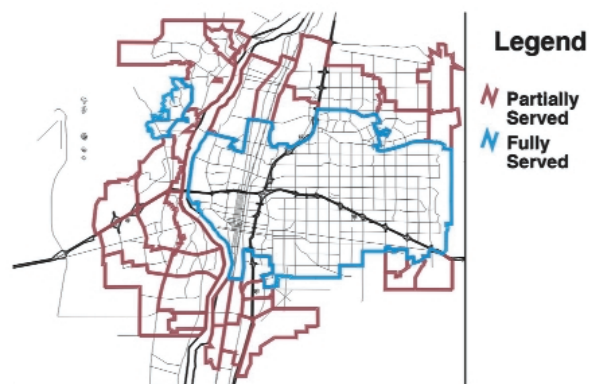
The following tools have been identified to implement the Planned Growth Strategy:

- Capital Improvements Programs
- Service Standards and Concurrency or Adequate Public Facilities Ordinances
- Development Impact Fees
- Development Agreements

**Figure 32  
Water Tiers**



**Figure 33  
Wastewater Tiers**



**Figure 34  
Hydrology Tiers**



**Figure 35  
Street Traffic Sheds**





- Development Incentives and Inducements
- Community Plans

Under the consultant's contract, the scope of this chapter relates primarily to the first and second tools listed above. Those tools directly tie new capital improvements and development to level of service standards. Impact fees are addressed in a separate contract with Growth Management Analysts, Inc. (Chapter 6). Accordingly, this chapter will focus on the use of an Adequate Public Facilities Ordinance and Capital Improvements Program as tools to implement the Planned Growth Strategy. The relationship with the other tools will be explained later in the chapter.

Implementation of the Planned Growth Strategy requires several concrete actions by the City and County. First, an adequate planning basis must be established for the implementation tools. While some have called for an update of the City/County Comprehensive Plan, the community has developed a large number of plans with little implementation in the context of land use controls. The existing plans provide ample basis for moving from planning to implementation. A comprehensive tool, such as an Adequate Public Facilities Ordinance, could tie together many of the policies scattered among the City/County Comprehensive Plan, the Sector Plans, Area Plans, and infrastructure master plans into one set of standards. This not only provides a bridge from the community's land use and infrastructure policies to new development proposals, but it also offers predictability for service providers and developers who now face a bewildering array of policies when undertaking service expansion or development decisions.

Second, the Capital Improvements Program/Adequate Public Facilities Ordinance approach is sufficiently flexible to be mandatory or incentive-based, or to use a combination of both approaches. A purely mandatory system would directly tie issuance of development permits to level of service standards for infrastructure. A purely incentive-based system would tie the level of service only to increases in density or other regulatory or financial incentives. In practice, most communities use

a mandatory system. Some communities (such as Montgomery County, Maryland and Orlando, Florida) use a sophisticated blend of mandates and incentives.

The degree to which the policies focus on mandates or incentives is a policy decision for the community, not for the consultant. However, mandatory systems are generally more effective but less acceptable to the development community. In practice, a system of incentives is advisable to tailor the Adequate Public Facilities Ordinance to the locational and design policies of the Planned Growth Strategy and to offset some unintended negative consequences of the system. For example, a Transfer of Development Rights system (as discussed in Chapter 7) could be used to direct growth to desired development areas and to create incentives for the conservation of areas with a low priority for development. Another example is the use of exemptions or capacity set-asides for affordable housing, which are used by Montgomery County and Orlando to achieve this and other policy outcomes.

Third, while no system can assure that all costs are fully funded, the variable Capital Improvements Program/Adequate Public Facilities Ordinance approach increases the likelihood that critical infrastructure capacity will be available to serve urban growth. Expansion of infrastructure is tied to level of service standards that make sense for particular areas of the community, rather than a uniform approach. Areas where capacity cannot be expanded for policy reasons can be assigned a lower level of service or exempted from an Adequate Public Facilities Ordinance altogether. This creates an incentive for the development of infill areas, such as the Redevelopable Lands, Population/Employment Centers, and Community and Village Centers by removing a step in the development approval process. By using a reasonable, long-term Capital Improvements Program in other areas of the community and a combination of public and private financing, resources otherwise committed to post-hoc capacity in low priority areas can be committed to maintenance and rehabilitation. Further, a long-range constrained

Capital Improvements Program assures that the community is also making land available for future development to accommodate an expanding population and employment base.

Finally, a varied level of service approach assures that infrastructure charges reflect the true costs to the community. Development approvals specified in the system cannot proceed unless the level of service standards will be met.<sup>2</sup> The cost of providing the facilities needed to meet the level of service will be identified in the Capital Improvements Program. Developers can choose to phase their development to match the build out of infrastructure, based on the area's level of service, or to voluntarily advance the facilities with a development agreement. It also provides a basis for determining whether an area "may be provided with municipal services" for purposes of evaluating annexation proposals under the Municipal Boundary Commission legislation and similar statutory requirements.<sup>3</sup>

The balance of this chapter addresses how a varied level of service can be established, how it works with related tools such as development agreements and impact fees, and how potential problems with the system may be addressed.

### **5.3 Timing and Sequencing: Adequate Public Facilities**

An Adequate Public Facilities Ordinance<sup>4</sup> is a recognized comprehensive plan implementation technique designed to assure that necessary public facilities and services to support new development are available and adequate, based on adopted level of service standards, at the time that the impacts of new development occur. An Adequate Public Facilities Ordinance is generally implemented by a general purpose local government, which exercises land use regulatory authority, whether or not that unit of government is the facility or service provider. Implementation is through the land use regulatory process (i.e., master plan amendments, subdivision approval, rezonings, development plans and/or building permits) and a capital improvements program for public facilities.

In practice, most communities tie some development approvals to infrastructure capacity on an ad-hoc basis. Rezonings and subdivision plats are routinely denied in many communities where concerns about "traffic congestion" or other capacity shortfalls arise. The City's Water and Sewer Extension Policy also has limited concurrency concepts in that it prohibits extensions which would exceed the capacity of the system (Ordinance No. 20-1984, § 14). An Adequate Public Facilities Ordinance simply expands and refines concepts routinely enforced by the City and other jurisdictions throughout the nation, in order to integrate them with the planned growth strategy policies and to provide certainty and predictability for the private development community and service providers.

An Adequate Public Facilities Ordinance would augment the City/County Comprehensive Plan, which currently incorporates goals and policies regarding adequacy of public facilities and services, and the land development regulations.<sup>5</sup> While the Plan contains numerous references to the necessity for the availability and adequacy of public facilities as a precondition to development,<sup>6</sup> it does not presently accomplish the key objectives of a Adequate Public Facilities Ordinance because (1) no level of service standards are included by which "adequacy" can be measured, (2) there are no present measurements of some facility capacities to determine whether capacity is "available" to serve a proposed development, and (3) there is no formal mechanism for adequate public facilities review as a systemic part of the development review and approval process.<sup>7</sup>

The seven major objectives of an Adequate Public Facilities Ordinance are:

1. To link the provision of key public facilities and services with the type, amount, location, density, rate, and timing of new development.
2. To properly manage new growth and development so that it does not outpace the ability of service providers to accommodate the development at established level of service standards.

3. To coordinate public facility and service capacity with the demands created by new development.
4. To discourage sprawl and leapfrog development patterns and to promote more infill development and redevelopment consistent with the adopted Comprehensive Plan and the Planned Growth Strategy Preferred Alternative.
5. To encourage types of fringe development especially in the Partially Served Area that incorporate community building principles as identified in the Planned Growth Strategy and reflect Traditional Neighborhood Development approaches.
6. To assure that the provision of public facilities and services to new development does not cause a reduction in the levels of service provided to existing residents.
7. To guarantee that new residents receive all necessary public facilities and services.

Prior to adopting an adequate public facilities/concurrency management ordinance, a number of policy issues must be addressed by the City and County. In addition, the adequate public facilities/concurrency management ordinance must be carefully coordinated with other development review and approval processes.

The major structural components of an Adequate Public Facilities Ordinance are as follows:

1. The areas, and subareas, of the community within which the Adequate Public Facilities Ordinance will apply.
2. The public facilities and services that will be included in the Adequate Public Facilities Ordinance.
3. The level of service standard for each public facility or service to be included in the Adequate Public Facilities Ordinance.
4. Current and projected public facility and service capacities.
5. The types of developments/land uses to which the Adequate Public Facilities Ordinance will apply.

6. The types of development approvals/permits to which the Adequate Public Facilities Ordinance will apply.
7. The point in the development approval process when adequacy of public facilities will be determined.
8. The effect of failing to meet a level of service standard.
9. The conditions and mitigation requirements that may be attached to concurrency approval.
10. The reservation of facility capacity.

### **5.3.1 How a Concurrency or Adequate Public Facilities Ordinance is Structured**

#### *Capital Facilities and Level of Service Standards*

The cornerstone of an Adequate Public Facilities Ordinance is the adoption of a level of service standard for each facility subject to the ordinance. The adopted level of service will govern both the amount and timing of growth and development that will be permitted as well as the level of public/private investment needed in order to achieve and maintain that standard. In Florida, where concurrency has been part of the state's growth management legislation for nearly a decade, "level of service" is defined as follows:

"Level of service" means an indicator of the extent or degree of service provided by, or proposed to be provided by a 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.<sup>8</sup>

As a means of measuring performance, a level of service standard should take into consideration both the capacity of a public facility and the demand currently placed and potentially placed on the public facility from existing

development, approved developments, and projected future growth. By comparing the demand to the capacity of a public facility, the local government may determine how much of the capacity of a given facility may be allocated to development within a designated area upon project approval.

In establishing level of service standards, the City and County should consider their relationship to health, safety, and welfare; political acceptability; availability of funding; feasibility of construction and right-of-way acquisition; external factors (such as regional pass-through traffic for roads); and the period of time over which the standard is to be achieved. The components of the facility and how the level of service standard is to be measured should be carefully defined in the Adequate Public Facilities Ordinance

For most public facilities, there will be more than one measure of capacity that requires analysis; and there will likely be alternative methodologies for measuring concurrency. For some public facilities, such as water, and services, such as fire, there are several critical levels of analysis that should be performed in order to determine whether the level of service standard will be achieved. In addition, there are alternative methodologies for measuring the capacity of the facility. The base unit of demand is typically an equivalent residential unit or an equivalent dwelling unit. This figure is based upon the rate at which one single-family dwelling generates a facility need and, therefore, allows a planner or decision-maker to equate different types of residential dwelling units as well as residential to non-residential square footage. The carrying capacity of the public facility may then be applied uniformly to both residential and non-residential development based upon logical equivalency rates.

### *Water and Sewer*

Water and sewer systems play a critical role in determining where growth occurs on the urban fringe.<sup>9</sup> The City's water (and wastewater) system is regional in scope. The metropolitan

area is split essentially into ten "trunks" which essentially constitute independent water systems. Each trunk is divided into pressure zones, which are the basic unit for which water service is provided. A pressure zone within a trunk may be the most costly single element of infrastructure system expansion. The reason for this is that opening a pressure zone generally requires a new well, reservoir, pump stations, and water transmission lines. The total cost for these items is about \$7 to \$8 million dollars. One important consideration is that opening a new pressure zone provides a "block" of capacity to serve approximately 10,000 persons.

In order to understand how to provide water service to support growth efficiently, it is useful to break down the system into the types of improvements needed to provide service. These include: wells, water rights, SCADA computer control system, reservoirs, pump stations, transmission lines between the wells and the reservoirs, large "master plan" distribution lines, smaller distribution lines which run in the streets, and service connections between the street distribution lines and the lot.

The metropolitan area can be divided into three broad categories of water service in terms of the future increment of cost necessary to support new growth. The first area is nearly completely developed with all the types of water infrastructure and, according to utility engineers, has excess water capacity to support growth (Fully Served Areas). Water trunks with excess capacity include the Montgomery Trunk, Freeway Trunk, and Ridgecrest Trunk. The identification of excess capacity addresses water supply. The second area has a number of important infrastructure items constructed, such as reservoirs and transmission lines, but other types of infrastructure would have to be built to support growth, such as large and small distribution lines and service connections (Partially Served Areas). The third area currently has no service. The full range of new infrastructure would need to be built to support new growth in these pressure zones (Unserved Areas).



This situation is indicated Table 41.

This categorization of the metropolitan area is consistent with the Town Hall participants' support for the provision of infrastructure in an efficient and cost effective manner and the preference that development should occur in areas where existing services are available "as a first priority," Comprehensive Plan policy, and the recommendation that an urban infrastructure services area be defined.

In order to achieve greater efficiency, the Planned Growth Strategy is concerned with fully utilizing the urban water system capacity already constructed. The approach includes the facilities of the City of Albuquerque's water and wastewater utility and of New Mexico Utilities, Inc. However, it does not address small community systems that are not designed for and do not have the capacity to support full urban development.

The same approach was taken with regard to understanding the wastewater utility (and also

for streets and hydrology infrastructure) as it relates to the establishment of the Preferred Alternative. The utility has divided its service area into units called wastewater basins (e.g., Uptown, Coors, Four Hills) and sub-basins (UP-01, UP-02, CO-01). More recently, the utility has moved to a more general model of east side and west side of the Rio Grande basins with sub-basins used to compute capacity. As with water service, the metropolitan area can be divided into three general areas in terms of the cost to support new growth with sewer service. The first area is nearly completely developed with all the sewer infrastructure elements needed to support growth. The second area already has an interceptor line constructed, but collection lines and service connections are needed, and treatment plant capacity is required. The third area has no service at present, and the full range of new infrastructure would need to support new growth. This situation is indicated in Table 42.

Since infrastructure efficiency primarily relates to the utilization of facilities already construct-

**Table 41 Categories of Water Service**

	Fully Served with Excess Capacity*	Fully Served Areas	Partially Served Areas	Unserved Areas
Wells		X	X	X
Water Rights		X	X	X
SCADA	X	X	X	X
Reservoirs				X
Pump Stations				X
Transmission Pipelines				X
Master Plan Distribution Lines (10"–16")			X	X
Distribution Lines in Street (6"–8")			X	X
Service Connections	X	X	X	X

\* The Montgomery, Freeway, and Ridgecrest Trunks have excess water capacity.

**Table 42 Categories of Wastewater Service**

	Fully Served Areas	Partially Served Areas	Unserved Areas
Master Plan Sewer Lines – Interceptors			X
Small Collection Lines		X	X
Lift Station and Odor Control			X
Treatment Plant	X	X	X
Service Lines	X	X	X

ed, from this standpoint, the Planned Growth Strategy is not concerned with unserved infrastructure franchise areas.

For central water facilities, there may be three levels of analysis that should be performed in order to assess whether adequate supplies are available. First, the physical supply of the underlying surface or groundwater source must be sufficient to accommodate demand. The capacity of groundwater/surface water resources ultimately dictates the community's ability to accommodate new growth. This type of provision requires reliable information pertaining to the amount of ground and surface water available. The applicant for development approval should indicate the source of water to be used. Local governments must usually rely on the state procedures for adjudicating and allocating groundwater and surface water resources in order to determine their availability to support a proposed development.<sup>10</sup>

Accordingly, the second level of analysis should require an applicant for development approval to present documentation that indicates the entity that has committed to providing water to the development and proof that the entity has adequate water rights and a sustainable supply to accommodate the needs of the proposed development. Supply can be measured in terms of time (e.g., the right to withdraw from the resource for a minimum of 100 years without depleting the source) and quantity (e.g., the right to appropriate a minimum of “x” gallons per day). Courts in other

states have upheld the requirement that a subdivider demonstrate a 300-year supply.<sup>11</sup> In addition, the annual or daily appropriation rights may be translated into a carrying capacity for the source depending upon the equivalent residential unit standard adopted by the community.<sup>12</sup>

If the system serving the development, such as the City's central water system, has sufficient permitted rights for a long period of time, the water resources analysis could be removed for purposes of administrative convenience and regulatory streamlining.

Finally, the applicant for development approval should be required to demonstrate that reservoirs, surface water treatment plants, lift stations, transmission lines, and distribution lines are capable of delivering adequate water to meet the demands created by the proposed development. In addition, the distribution lines must have adequate water pressure to accommodate the scale of development proposed for both domestic use and fire flows. With the exception of physical supply, a similar analysis would apply to wastewater treatment facilities. Specific criteria for measuring demand are provided in the Development Process Manual, as is discussed further in Section 5.6 of this chapter.

For both water and sewer, level of service standards should also be developed for individual wells and septic systems in order to protect public health and safety in areas where devel-

opment is at densities sufficiently low to permit non-central systems. In most jurisdictions, a minimum lot size applies to projects utilizing on-site wells and/or septic systems in order to assure that there is adequate land area for septic disposal, to avoid the excessive concentration of individual disposal systems, and to maintain an adequate distance between the septic system and the well. State and local regulations require connection to a central system where distribution lines are already located within a specified distance of the proposed development. Furthermore, standards are needed for high production industrial wells to protect water sustainability.

### Roads

Traffic engineers generally utilize a performance rating system based upon the operational characteristics of a roadway, e.g., speed and travel time, for local, collector, and arterial streets as set forth in the Institute of Transportation Engineers, *Highway Capacity Manual*.<sup>13</sup> While some jurisdictions have developed specific, local methodologies for converting travel speed to the carrying capacity of roadways, most jurisdictions utilize a ratio of volume (e.g., the number of trips on a designated roadway segment during the peak hour) to capacity (the maximum number of trips that the segment may accommodate at the designated level of service standard) as a proxy for performance (the volume to capacity ratio). Table 43 presents a volume to capacity ratio equivalency chart that is utilized in many jurisdictions.

Capacity of existing and planned roadways, particularly collectors and arterials, is only one side of the Adequate Public Facilities Ordinance determination equation for adequacy of road facilities. The other element is the traffic generated by a proposed development which utilizes the available capacity. While each roadway segment and intersection has a specific peak hour carrying capacity, the community may choose the level of service standard that is acceptable, e.g., level of service C which would allow for a maximum of 79% of the roadway capacity to be utilized, or level of service E which would allow 99% of the capacity to be committed to development. (The higher the percentage of roadway capacity used, the greater the delays on roadway segments and intersections.) If the level of service standard is set, for example, at C, once 79% of the peak hour roadway capacity is being utilized, further development would be denied or deferred until additional capacity is made available (e.g., via new roadway construction, additional through lanes, improving and coordinating signalization, providing acceleration and/or deceleration lanes, adding left and right turn lanes, constructing medians, etc.). Another option is to allow an applicant for development approval to undertake mitigation measures to reduce the otherwise applicable traffic impacts.

Utilization of a roadway level of service standard necessitates a sophisticated system for identifying current major roadway volumes and capacities and monitoring changes as

**Table 43 Volume to Capacity Equivalency Chart**

Level of Service	Volume to Capacity Ratio
A	< 0.59
B	< 0.69
C	< 0.79
D	< 0.89
E	< 0.99
F	> 1.00

capacity is added via roadway improvements and as capacity is consumed by new development. This can be compared with an accounting system of credits (for capacity expansions) and debits (for capacity utilization).

On the demand side of the equation, there are established methodologies to measure the traffic generation impacts of different land uses. The Institute of Transportation Engineers Trip Generation Manual (1991) compiles data about the trip generation characteristics of virtually all common land use developments. For example, a single-family dwelling unit generates approximately 9.6 trips per day, while a multi-family unit generates fewer trips, i.e., 7.8 trips per day. Non-residential development trip generation is typically measured per 1,000 square feet based on the type of non-residential land use, e.g., retail, office, warehouse, industrial, hotel, drive-in facility, etc.

The extent that proposed developments will utilize collector and arterial streets is also a function of four other factors besides the trip generation rate: the average trip length associated with the type of development (the longer the trip, the greater the roadway capacity that is utilized); the predominant direction of travel; the number of “pass-by” trips “captured” by the proposed development as opposed to the generation of new trips; and the time at which most trips are generated, e.g., a.m. peak hour, p.m. peak hour or spread evenly over a 12- or 24-hour period.

In many cases, a transportation analysis is required for a development, demonstrating that capacity is available to accommodate the traffic projected to be generated by the development without causing a diminution in the current or adopted level of service standard. One of the vexing issues that sometimes arises in requiring a transportation analysis is the geographic area and the collector and arterial streets that must be investigated. If the geographic scope is too narrow, more distant impacts may be overlooked; however, if the geographic scope is overly broad, the transportation analysis may be unduly expensive and time consuming. A reasonable approach

might be to establish geographic limits for transportation analysis based upon the size and/or location of the project.

Applying these concepts, the Planned Growth Strategy team has inventoried the available vacant land in approved subdivisions, land likely to develop outside of approved subdivisions, and redevelopable land in the Planned Growth Strategy, Part 2 – Preferred Alternative. This information is compiled for land within the urban service area and can be used to iterate the magnitude of improvements needed to reach various level of service standards by subarea. The level of service selected should take into consideration the projected population and employment growth in these areas that are identified in the Preferred Alternative as well as the ability to expand right-of-way and facility capacity.

### *Drainage*

New development has both on-site and off-site storm water impacts. Many subdivision regulations require on-site detention and require that postdevelopment runoff not exceed predevelopment runoff. Minimum detention volume and maximum release rates are typically established. The design storm (2-, 10-, 25- and 50-year recurrence intervals) is critical in determining which storm water management techniques to utilize and how they should be sized. These types of regulations are not typical of other Adequate Public Facilities Ordinance standards because they tend to address internal site improvements rather than off-site capacity.

Urban areas, such as Albuquerque, that have regional storm water management facilities can build off-site capacity into the Adequate Public Facilities Ordinance concurrency review analysis. Developments that discharge to an existing regional facility can be relieved of on-site infrastructure obligations. Further, the capacity of regional facilities can be reserved for developments in particular areas or that meet design criteria that more efficiently utilize the facility.



The City currently has very detailed standards for hydrologic analysis in the Development Process Manual. In order to encourage compact development, it is important that on-site detention or retention does not become standard practice for designated infill development or development in urban tiers.<sup>14</sup>

### **Programmed Public Facilities: Minimum Requirements for Concurrency**

Once the applicable level of service standard has been identified for purposes of issuing development approvals and initiating capital investment and budgeting strategies, the decision maker must resolve the issue of when the level of service must be attained in order for development to proceed. There are two types of facilities that may be considered when measuring compliance with concurrency. The first is existing facilities that are in place at the time a development application is under consideration; the second is programmed facilities that are scheduled for construction but are not already in place.

The critical policy issue is the amount of “lag time” the community will tolerate between the construction and occupancy of the development and the availability of the public facilities needed to serve the development. The question of when public facilities must be available and how they will be guaranteed is referred to as the “minimum requirements” for concurrency. The minimum requirements issue is distinguishable from the level of service that must be attained when those facilities are available. While the adopted level of service standard could affect the community’s policy decision regarding the minimum requirements imposed for concurrency—and vice versa—the standards are distinguishable. The former refers to the capacity and/or quality of the public facilities while the latter refers to when the facilities must be available, and, if not presently available, how provision of the public facilities will be guaranteed at the time of actual development.

Minimum requirements may vary depending on the type of public facility. The rationale for variation is that some facilities are more directly related to public health, safety, and welfare than others; and some facilities may require a longer or more unpredictable acquisition and planning process than others. In states with concurrency legislation, only existing facilities may be considered, with several exceptions, when measuring the public facility capacity available to serve a proposed development. Programmed public facilities may, however, be considered for certain facilities, such as parks/recreation and transportation facilities. States, such as Florida, provide that programmed facilities may not be considered for the evaluation of water, sanitary sewer, drainage, or solid waste facilities. No public facilities need necessarily be available at the time of development application so long as they are available at the time of actual development. If they are not available at the time of development application, before approving the development, the community must be satisfied that they will be available and adequate (i.e., with capacity at the time of development) or that the development approval is conditioned upon their availability and adequacy at the time of development or that their availability and adequacy has been guaranteed by the developer (e.g., by the posting of a performance bond or other adequate surety).

Facilities, such as water and sewer, must be available at the time of development as a matter of public health and safety. However, if adequate parks are not available, the development could be allowed to proceed so long as there are assurances that the parks will be provided within a reasonable period of time.

There is a difference between measuring and enforcing compliance with the Adequate Public Facilities Ordinance requirements. While programmed facilities may always be included in the measurement of compliance with concurrency, any facilities used to enforce compliance for water, sewer, drainage, and solid waste must be in existence before the impacts of the development occur. Park and recreation facilities, however, may still be in the planning,

budgeting, or contracting stage at the time the impacts of the development occur. At early stages in the development approval process, such as rezoning and preliminary plat approval, the community should consider programmed facilities in the concurrency evaluation. However, a condition should be attached to the development approval requiring specific public facilities to be completed before building permits are issued.

A minimum requirements system depends primarily on two factors: the stage in the development approval process at which the proposed project is reviewed and the type of public facility. The first variable relates directly to the “lag time” issue. If the concurrency determination will be made early in the development approval process, it is not essential that public facilities be in existence. The need for public facilities to be in place is greatest when the impacts of the development are imminent, such as at the building permit stage. Consequently, some jurisdictions allow “planned” facilities to be used in concurrency determination if such public facilities will be in place at the specified level of service when the impacts of the development are felt.

It is logical to consider the capacity of programmed public facilities if concurrency review occurs early in the development approval process because the impacts of the development will not be felt for several years. While the community could require that all public facilities and services needed to serve new development at the adopted level of service exist at the time of development approval, this approach could impede development if certain public facilities are nearing capacity or are currently over capacity.

If development approval is denied or deferred because of the unavailability of public facility capacity, the community must show that the public facilities forming the basis for the concurrency determination will be provided within a “reasonable” period of time. Unfortunately, case law provides little guidance as to what constitutes a reasonable period of time. In *Golden v. Planning Board of the Town of*

*Ramapo*, 30 N.Y.2d 359, 334 N.Y.S.2d 138, 285 N.E.2d 291, *app. diss’d*, 409 U.S. 1003 (1972), the court approved a concurrency ordinance based upon a staged, eighteen-year Capital Improvements Program that would have deferred some development approvals for the duration of the plan. In *Woodbury Place Partners v. City of Woodbury*, 492 N.W.2d 258 (Minn. App. 1992), *cert. denied*, 113 S. Ct. 2929 (1993), the court affirmed the principle that all use of a property may be denied for a temporary period of time without resulting in a taking. It is unclear whether New Mexico courts would take such a view. However, it appears that most courts will permit the timing and sequencing of development in order to avoid public facilities problems.

### **Options When Public Facilities Do Not Meet Level of Service Standards**

When public facilities are determined to be insufficient to accommodate the impacts of a proposed development: (1) building permits may be deferred pending the availability of public facilities and services at the adopted level of service, (2) the applicant may agree to reduce the density or intensity of the proposed development within the parameters of available facility capacity, (3) the applicant may agree to a phasing schedule, or (4) the developer may agree to provide those public facilities needed (or a full payment to construct these facilities) to attain the adopted level of service, provided that they will be available when the impacts of the development occur. The deferral of development approval or the provision of public facilities by the developer can be addressed through appropriate conditions.

When public facilities are determined to be adequate before a final development order is issued, a key question is whether this finding “reserves” the capacity for the development or whether a new finding must be made at a later stage in the development approval process. If planned facilities are included in the earlier finding, it must be specified whether the reservation remains valid in the event that the facil-

ities are not constructed. Reservations of capacity must be included in a development monitoring system in order to prevent the over-allocation of capacity. Procedures should be developed to prevent the “hoarding” of capacity by approved but unbuilt projects.

Some concurrency ordinances allow developers to construct the necessary facilities and services needed to reach the adopted level of service where the development would otherwise be delayed or denied. If this results in the construction of facilities with excess capacity, the developer may receive reimbursement for the excess capacity when it is allocated to other projects. Thus, where public facilities are currently operating below the adopted level of service, the community has several options:

- Allow the proposed development to proceed if it will not cause the existing level of service to be degraded.
- Deny development approval or defer development approval until the public facilities are operating at the adopted level of service. Thus, development may be delayed until the necessary public facilities are scheduled in the Capital Improvements Program.
- Deny or defer development as provided above, but allow the developer to construct or pay for those public facilities necessary to achieve the adopted level of service standard.
- Allow the applicant to resubmit the application with modifications that would reduce the project's demand on the affected facilities, such as a reduction in the density or intensity of the development or demand management strategies, such as transportation demand management (e.g., ride sharing or vanpooling programs for traffic) or water conservation measures. The developer would be required to quantify the impact of demand-reducing measures on the total demand generated by the proposed project.

In the context of the Planned Growth Strategy, these concepts can be combined with impact

fees (and utility extension charges) to create incentives for infill development and redevelopment. Areas defined as Fully Served can proceed with development after paying impact fees without a level of service review assuming the development is consistent with the Planned Growth Strategy Preferred Alternative. In the Partially Served Areas, a level of service review for certain infrastructure would be conducted and developments would be staged and sequenced. Developers wishing to proceed ahead of the Capital Improvements Program may advance facilities, as is currently permitted in the Line Extension Policy. Where impact fees cannot be charged, either because of state law or local policy, development staging can provide an equilibrium between capacity and demand until community resources have provided the necessary facilities.

### **Allocating and Monitoring Facility Capacity**

Compliance with the applicable level of service standard is determined by comparing the projected impacts of a development project with the capacity of those public facilities affected by the project. The following administrative issues are raised by the methodology for applying adopted level of service standards to applications for development approval:

- How will available capacity be allocated when there is insufficient capacity to accommodate all developments for which applications have been submitted?
- How will capacity be monitored to account for (1) additions to capacity from the construction of new public facilities, from changes in consumer behavior, from projects funded by private developers, and, from changes in demand and (2) subtractions from capacity due to development approvals and/or reservations?

A prerequisite to allocating available capacity is determining how much capacity is available and how much capacity is used by specific types of development. In general, capacity is allocated on a first-come, first-served basis as development applications are processed.

However, where available capacity is constricted, the community might consider allocating capacity only to those projects that achieve important goals and objectives of the Comprehensive Plan, that implement the Planned Growth Strategy Preferred Alternative, or that should be granted preferential treatment for hardship or other reasons.

The first alternative for allocating capacity would be the use of a set-aside. Under this system, a percentage of available capacity is reserved for certain types or categories of development. For example, in Montgomery County, Maryland, projects defined as affordable housing may be approved where the available capacity threshold in the applicable impact area has been exceeded, provided that such projects must be reviewed for their impacts on localized facilities (nearby intersections and roadway links). A similar policy is authorized by New Jersey's Council on Affordable Housing, which administers that state's housing policies for local governments. In addition, Montgomery County's program allocates capacity to residential and non-residential projects within each impact area to maintain a favorable ratio between jobs and housing. This is accomplished by computing a separate development threshold within each area for employment and housing.

A second alternative would be a "point system" that enables the reviewing agency to balance concurrency review with other public policies and could include a "weighting system" on the capacity and availability of public facilities for purposes of concurrency review. For example, the community could assign point scores for the availability of a specified amount of capacity for each public facility and/or for the achievement of other public policies such as the provision of affordable housing. Thus, a project that would create a deficiency in one public facility, such as transportation, could receive approval if a compensating point score is achieved for other public facilities and/or for the provision of other public benefits. Care must be taken, however, to assure that minimum standards are met. A related practice is followed in Austin, Texas using the Smart

Growth Criteria Matrix. This system assigns points to proposed developments based on achieving desirable objectives such as mixed use, streetscape treatment, transit focus, and so on. Such a matrix could be used in combination with a facility capacity evaluation.<sup>15</sup>

A point system or set-aside can be tailored in a nearly infinite number of ways. Development orders can be "batched" during an annual allocation process and ranked under the point system, with development orders issued only to those projects earning the highest scores. The two alternatives could also be combined. A certain proportion of available capacity could be set aside for those development proposals earning the highest ranking under a point system.

### **Advancing Facility Capacity**

Where public facilities are currently operating below the adopted level of service, developers may be allowed to proceed with their development if the facilities needed to attain the level of service standards and to accommodate the marginal impacts of the proposed development are provided. The alternative would be to await the provision of facilities as scheduled in the Capital Improvements Program, which may result in a delay. Provisions for the advancement of public facilities and services are a mechanism to alleviate the hardship of undue delay and have been approved by courts in other states.<sup>16</sup> It is probably good public policy to allow developers to advance facility capacity in a manner consistent with Planned Growth Strategy policies. The advancement policy can provide funding for infrastructure and allow developers to proceed with project approval. However, developers will have to advance money for all facilities that are deficient for expedited approval to occur. In other words, if both water and sewer facilities are deficient, and the developer provides the necessary facilities to meet the level of service for water but not sewer, building permits will still be deferred until sewer facilities are available at the adopted levels of service. This may discourage developers from utilizing this option except where advancement of only one or two public facilities is needed.



If the public facilities are scheduled in the community's Capital Improvements Program, the policy decision regarding the construction of those facilities has already been made. Therefore, there would be no reason to prohibit the expedited construction of those facilities through developer advancements.

Because some facilities, such as water and sewer mains, must be oversized to accommodate future demands, the question arises whether developers who advance such facilities should be reimbursed for providing capacity in excess of what is warranted by the size of the proposed development alone. Many jurisdictions provide a mechanism for reimbursing developers in this situation. In addition, the correction of existing deficiencies will by definition exceed the marginal impacts created by the development proposal. While most jurisdictions provide for reimbursement for oversized facilities, few address the issue of reimbursement for correcting existing deficiencies. The community could provide a mechanism by which developers would be reimbursed for the use of excess capacity by subsequent development projects within the impact area. Impact fees, user fees, or utility fees for the development of the specific facilities being improved could be transferred to the developer as they are collected. Recommended Planned Growth Strategy policy supports this approach in the Partially Served Areas.

### **5.3.2 Varying Level of Service Standards**

The community may vary the level of service standards applicable to each public facility by geographic area, over time, or by type of development project. Level of service standards may vary by geographic area in order to allow flexibility in the achievement of other public objectives, such as promoting infill development. Level of service standards may also be varied by geographic area where substantial deficiencies exist or where environmental or other constraints prevent facility expansion (these are sometimes referred to as “backlogged” or “constrained” facilities). For exam-

ple, levels of service may be “tiered” over time in order to avoid the effect of an immediate, high level of service on growth and development in the jurisdiction. To achieve this result, one level of service standard can be set for purposes of review for a specified period of time subsequent to adoption of the Adequate Public Facilities Ordinance, with a higher standard taking effect at a specified future date.

A differential level of service standard is one in which the level of service varies based upon the location of development, the type of development, or other policy considerations. The most typical response is the establishment of higher level of service standards in rural areas in order to discourage sprawl development. Level of service standards can be adjusted to encourage infill, redevelopment, the production of affordable housing, or other public policies. However, the level of service standards must be justified, be supported by data and analysis, and bear a rational relationship to a legitimate public purpose.

In Florida, state legislation expressly authorizes local governments to establish special areas in which transportation level of service standards will be relaxed in order to encourage infill development, transportation demand management, public transit, and other permanent solutions to the seemingly intractable problem of traffic congestion in major metropolitan areas.

Transportation Concurrency Management Areas are a framework for utilizing concurrency management in a manner conducive to mass transit, economic development, and a desirable urban form. While the system could be structured in a number of ways, the designation of major nodes and centers could provide a starting point for the designation of Transportation Concurrency Management Areas and allocation of transportation capacity. Identification of regional service levels and regional improvements establishes a regional transportation carrying capacity, which is then allocated to centers as Transportation Concurrency Management Areas. This could operate in two different ways. First, the carry-

ing capacity would establish a ceiling on regional development. This would provide a basis for the allocation of capacity to centers/Transportation Concurrency Management Areas and would also require the affected agencies to debit capacity utilized in centers from the outlying areas. This would assure that (1) capacity for regional centers is accorded a priority for utilization by the business community and (2) that capacity is taken away from areas where development is assigned a low priority by the public sector, thereby assuring that the goals and objectives of development in the regional centers are not thwarted by competition from outlying areas. Capacity allocated to Transportation Concurrency Management Areas could be allocated on a first-come, first-served basis or subject to certain allocation criteria.

Florida, which is the first state in the nation to mandate concurrency, is the only state with specific requirements for Transportation Concurrency Management Areas.<sup>17</sup> As such, its legislation provides a good example of how levels of service can be varied for transportation requirements. The purpose of the Transportation Concurrency Management Area is to promote infill development and redevelopment. Transportation Concurrency Management Areas must be designated in the local government comprehensive plan. The characteristics of a Transportation Concurrency Management Area relate primarily to urban form rather than location, making the concept particularly suitable to the desire expressed during the Town Hall meetings to encourage more compact development in fringe areas outside of the City's 1960 limits. The Transportation Concurrency Management Area must have the following characteristics:

- a compact geographic area,
- an existing network of roads, and
- multiple, viable alternative travel paths or modes for common trips.

An areawide level of service standard may be established for a Transportation Concurrency Management Area based upon an analysis that

provides a justification for the areawide level of service, how urban infill development or redevelopment will be promoted, and how mobility will be accomplished within the Transportation Concurrency Management Area.

To encourage infill, several other provisions of Florida's concurrency legislation supplement the Transportation Concurrency Management Area provisions. First, a proposed redevelopment project located within a defined and mapped Existing Urban Service Area (Fully Served Area) is not subject to concurrency requirements if the transportation impact of the project does not exceed 110% of the transportation impact of the previously existing uses.<sup>18</sup> This provision increases capacity in older areas that new development can use.

Second, the legislation provides for concurrency exceptions in designated redevelopment areas. The legislation begins with the following finding:

The Legislature finds that under limited circumstances dealing with transportation facilities, countervailing planning and public policy goals may come into conflict with the requirement that adequate public facilities and services be available concurrent with the impacts of such development. The Legislature further finds that often the unintended result of the Adequate Public Facilities Ordinance for transportation facilities is the discouragement of urban infill development and redevelopment. Such unintended results directly conflict with the goals and policies of the state comprehensive plan.... Therefore, exceptions from the Adequate Public Facilities Ordinance for transportation facilities may be granted as provided by this subsection.<sup>19</sup>

The legislation authorizes a local government to grant an exception from transportation Adequate Public Facilities Ordinances for developments that promote public transportation or that are located within an area designated in the comprehensive plan for the fol-

lowing: (1) urban infill development, (2) urban redevelopment, or (3) Downtown revitalization.<sup>20</sup> These exceptions must consider the impacts on the Intrastate Highway System and are available only within the specific geographic area of the jurisdiction designated in the comprehensive plan.

Montgomery County, Maryland has also implemented a varied level of service concept. To implement its growth management policies, an Adequate Public Facilities Ordinance was adopted in 1973, patterned loosely after the Ramapo model. The Adequate Public Facilities Ordinance requires an adequacy review for transportation, water/sewer, schools, and police/health clinics at the preliminary plat stage. The adequacy review takes into account approved but unbuilt projects, and also uses a two-tiered policy area review and local area review to limit the geographic service areas where level of service standards must be satisfied. Staging ceilings for population and employment growth are established throughout transportation policy areas, based on areawide level of service standards. Where the staging ceiling is exceeded, applications for preliminary plat approval are denied. Local area review is triggered when large subdivisions are either (1) proposed when total development in the policy area is within 5% of the staging ceiling or (2) located near a congested area. If local area review is triggered, projects may only be approved where peak hour levels of service would be maintained, taking into account mass transit and developer improvements. The Adequate Public Facilities Ordinance is monitored annually through the adoption of an annual growth policy in which various political subdivisions of the county interested in its enforcement review the staging ceilings and suggest methods for administrative reform.

Critical to the Montgomery County program is the assignment of different levels of service to policy areas based upon the availability of transit. Areas that are generally undeveloped are typically assigned a level of service C, while lower levels of service are assigned in areas with available transit capacity.

The Maryland Court of Appeals rejected a takings and equal protection challenge to the differential assignment of level of service by policy area in *Schneider v. Montgomery County*, No. 683 (Court of Special Appeals, September 1991) (unpublished). The plaintiff argued that it was arbitrary to deny plat approval in areas with 45% of capacity unused, while approving development in areas with only 12-23% of capacity unused. The court rejected this argument, relying on the County's finding that it is appropriate to permit greater congestion in areas with alternative modes of travel.

### 5.3.3 Applying the Concepts

In Albuquerque/Bernalillo County, an Adequate Public Facilities Ordinance would be established within the land development regulations of participating jurisdictions. These regulations include both zoning and subdivision regulations. Details about how level of service standards are interpreted may be added to the Development Process Manual. If the ordinances are combined into a Unified Development Code or a Unified Regulating Code, the technical details can be specified in an Appendix to the ordinance.<sup>21</sup>

Jurisdictional issues include the issue of annexation, which extends the Adequate Public Facilities Ordinance policies into previously unincorporated territory, and interjurisdictional cooperation.

While the major policy issues associated with structuring an Adequate Public Facilities Ordinance have been discussed earlier, interjurisdictional cooperation between the City, the County, and other cities and towns within the urban area would improve the effectiveness of the system.

The New Mexico statutes authorize several methods of annexation: (1) the arbitration method;<sup>22</sup> (2) the boundary commission method;<sup>23</sup> (3) the petition method;<sup>24</sup> and (4) by petition in Class A Counties in limited situations.<sup>25</sup> In 1998, the state legislature established a procedure for referral of annexations in Bernalillo County to the County Commission for

comments prior to approval by the City Council. Within Class A counties, the petition to the City Council or petition to the district court are the methods authorized for most annexations.<sup>26</sup> In those counties, the boundary commission method is only allowed when the territory to be annexed is outside a conservancy district.<sup>27</sup>

Criteria relating to the provision of public services within a reasonable period of time are integral to all of the annexation methods available under New Mexico law. However, there is little guidance for the City Council or the courts to refer to in determining whether public facilities will, in fact, be available within a reasonable period of time. Establishing strong policies in the Adequate Public Facilities Ordinance that define the issue of when public facilities are considered available will help to resolve this issue absent, as is the situation at present, a judicial definition of reasonableness.

Under the petition method, the City already examines public facilities issues during the annexation process pursuant to the City's annexation policy (Resolution 54-1990) and the Development Process Manual, Chapter 10 (applications for annexation approval). The Development Process Manual applies the following criteria for the Central Urban, Established Urban, and Developing Urban Areas related to requirements on the applicant and the ability of the City to reject the annexation petition:

- Anticipated delay in provision of City services is so far into the future as to be speculative and therefore an unreasonable basis to provide for annexation.
- Compliance with City policy regarding land dedication for public facilities is assured.
- The applicant shall agree in writing to timing of capital expenditures for necessary major streets, water, sanitary sewer, and storm-water-handling facilities.
- The City may decline an annexation if ... the City concludes that it would be unreasonable to make land owners wait

for basic utilities and facilities as long as would probably be the case.<sup>28</sup>

While these criteria are good statements of policy, they provide no direction as to how the timing and availability of facilities is to be judged or how the capacity of facilities is to be measured. Further, there is no formal linkage to the City's Capital Improvements Program. An Adequate Public Facilities Ordinance offers the precision needed to resolve these issues. In addition, the level of service concept provides a basis for working proactively with the County and landowners to encourage annexation where facilities can be efficiently provided.

The ordinance should also address the types of permits subject to Adequate Public Facilities Ordinances. These may include the following requirements of the Zoning Code and Subdivision Regulations:

- Zoning Map Amendments.<sup>29</sup>
- Sector Development Plans or Sector Development Plan Amendments.<sup>30</sup>
- Special Exceptions, which include Conditional Uses, Variances, and Nonconforming Use Expansions.<sup>31</sup>
- Sketch Plats.<sup>32</sup>
- Preliminary Subdivision Plats.<sup>33</sup>
- Final Subdivision Plats.<sup>34</sup>

Adequate Public Facilities Ordinance requirements appear to fall within the state subdivision enabling legislation. This legislation provides broad authority for subdivision regulations. Under this legislation, subdivision regulations may provide for: the harmonious development of the municipality and its environs; adequate open space for traffic, recreation, drainage, light, and air; the distribution of population and traffic that tend to create conditions favorable to the health, safety, convenience, prosperity, or general welfare of the residents of the municipality; land use, including natural drainage; and other matters necessary to carry out the purposes of the Municipal Code.<sup>35</sup>



An Adequate Public Facilities Ordinance would also seem to fall within the purview of a local government's zoning authority. Municipal zoning may be used, *inter alia*, to lessen congestion in the streets and public ways; facilitate adequate provision for transportation, water, sewerage, schools, parks, and other public requirements; and to promote health and the general welfare. Similar language was used to sustain the Adequate Public Facilities Ordinance upheld by the New York Court of Appeals in *Golden v. Town of Ramapo*, *supra*.

Review for compliance with public facility standards is generally recommended for discretionary permits that occur early in the development approval process, rather than ministerial permits that occur late in the approval process. This allows the developer input as to the availability and capacity of public facilities prior to the commitment of significant resources towards final development approval. Requiring compliance late in the process creates uncertainty in the approval process. Accordingly, it is recommended that review for compliance with level of service standards apply to any rezoning/Sector Plan amendment, special exception, and preliminary plat. The Adequate Public Facilities Ordinance review should not apply to final plats, although final plats may be staged and sequenced in accordance with an approved preliminary plat.

The Adequate Public Facilities Ordinance review should also occur during the plan review process for Planned Communities in Comprehensive Plan Rural and Reserve Areas. An Adequate Public Facilities Ordinance analysis should apply to any plan designated as Rank 2 (Level A Community Master Plan) or Rank 3 (Level B Village Master Plan). A more detailed analysis should apply to any Neighborhood Plan (Level C Subdivision/Site Plan).

In addition to the permit approval process, the City and County should revise their Capital Improvements Program requirements to conform to the Adequate Public Facilities Ordinance. The cost, source of funds, completion dates, and priority of Capital Improvements should continue to be included pur-

suant to § 2-12-1(B) of the City Code. However, the capacity and the impact on the adopted level of service should also be part of the data for each capital project.

## 5.4 Locational Criteria

In order to fold concurrency into an overall Planned Growth Strategy framework for the region, a unifying framework is needed for the application of level of service standards to different parts of the Albuquerque/Bernalillo County region. Such systems provide methods for establishing variable level of service standards as well as ancillary community design and zoning regulations. This type of system provides a common thread for the variety of implementation measures that will be required throughout a diverse metropolitan area such as Albuquerque/Bernalillo County. The types of systems that may be used include urban growth boundaries, urban service areas, and tier systems. These systems are described below.

### 5.4.1 Urban Growth Boundary

Adoption of a fixed long-term geographic restraint, called an Urban Growth Boundary, requires that the community, through a comprehensive planning process involving detailed, well-documented growth projections, establish a perimeter or a boundary beyond which urban scale development is prohibited. This perimeter should be incorporated into the comprehensive plan as a fixed line during the life of the plan. It should be supported by planning studies that demonstrate the desirability of areas within the perimeter for the extension of municipal services, such as streets, sewers, and water, and the inability or undesirability of servicing areas beyond the limit line. Implementing regulations are then adopted that limit development outside the perimeter to rural uses and densities that do not require urban facilities and services. These are often termed "urban limit lines."

### 5.4.2 Urban Service Areas

A temporary boundary may be used to identify areas not to be serviced within the next 10–25

years based on the capital program and the comprehensive plan. Growth may then be managed through phased service extensions to designated short-term priority areas allowing the community to harmonize short-range needs with long-term goals. This system is more common than urban growth boundaries and differs from urban growth boundaries in that development is controlled through the orderly extension of public facilities and services rather than through regulatory measures.

### 5.4.3 Tiers

The tier system is an approach for structuring growth management systems by geographic areas as a refinement of Urban Service Areas. Although not an implementation technique in the same sense as others described in this chapter (e.g., Adequate Public Facilities Ordinances), it is an extremely useful mechanism that establishes a framework for determining which of the varied techniques should be used to achieve growth management in different areas of the community.

A principal tenet of this system involves the geographic and functional division of the planning area into subareas ("tiers"). The functional planning area concept recognizes that different areas of the community present different problems relating to growth and development. Nevertheless, while individual geographical or functional areas may need to be separated for specialized treatment, they must still be viewed in terms of their interrelationships with other areas and with the community as a whole.

A framework for a growth management system that allows for major problems to be addressed on a communitywide basis aids local governments in planning for future growth and in understanding the interrelationships between, and implications of, varying growth policies, goals, and implementation techniques. A breakdown into functional and geographic areas allows planning entities to describe goals and objectives in terms of such areas, to evaluate market forces and growth trends selectively for each area, and to consider implementation techniques that are specific for each

area. Thus, goals that would be competing or conflicting when applied uniformly can be harmonized when viewed selectively by subarea. For example, preservation of agricultural land in selected areas of the community can be compatible with increasing housing opportunities in other areas. Further, the implementation techniques that may be associated with these goals can also be harmonized and validated within the tier framework. The tiers should be descriptive of the existing data and structure of the area and be capable of functioning as planning and plan implementation units. The tier delineation allows the goals and appropriate techniques employed in a urban growth management system to vary with the geographic or functional subunits of the planning jurisdiction. Such flexibility is essential to the future success of such systems because it provides for articulation of different, and even contrasting, strategies for different areas of the community, with corresponding legal techniques and implementing mechanisms, without jeopardizing the overall comprehensiveness of the system or any of its individual components. Equally important, a tier system permits the courts to adopt the same analytical framework for their review of the legal validity of the system and its component parts.

As stated, the fundamental premise of the tier delineations is that the community can be divided into geographical subunits based upon functional distinctions within the growth management system. This is quite different from a division of a city into neighborhoods since their boundaries correspond to data collection units, streets, topography, and other criteria. The functional delineations of the tier system, however, do relate strongly to the goals and objectives to be achieved through the growth management system.

A growth management system should recognize the concepts of "growth" areas and "limited growth." The typical tier system divides the community into "growth" and "limited growth" categories and adds the tiers as subdivisions of those general categories. Tiers within the growth category are commonly designated "Urbanized" and "Planned Urbanizing." The

tiers within the limited growth category would be “Rural/Future Urbanizing” and “Conservation/Open Space.” Each of the tiers has specific geographical boundaries and would be capable of being mapped. In the Planned Growth Strategy, these are associated with the tiers called Fully Served (“Urbanized”), Partially Served (“Planned Urbanizing”) and Unserved (“Rural/Future Urbanizing”).

The Urbanized tier would consist of those areas that are largely built-out and almost completely served by public infrastructure (i.e., Fully Served Areas). Recognizing that this definition includes areas for which different growth management strategies may be desired, the tier may be further subdivided into two subareas: those that have suffered population losses and those that have increased in population.

The Planned Urbanizing area would represent the “new” growth area (i.e., Partially Served Areas). It, too, can be subdivided. One subarea would consist of those lands that are partially developed but that are distinguished from the Urbanized area by having a less dense overall population. The second subarea consists of those lands that the community wants to target for growth but are mostly vacant at present. The targeted areas are defined once the community has selected a development scenario for this purpose, but might possibly consist of transportation corridors, development “nodes,” activity centers, planned communities as broadly defined in the Planned Growth Strategy, and Traditional Neighborhood Developments.

The Rural/Future Urbanizing area may be a permanent rural density development area or may be a temporary holding zone until the growth areas are built out. The Rural/Future Urbanizing tier generally contains lands that are presently unserved and that have a lower population density or no population.

The Conservation/Open Space tier consists of lands containing environmentally sensitive areas or public open space.

Transportation corridors, as areas that would be targeted for future growth, can be integrated into the framework by inclusion in the area mapped and designed as Urbanized and Planned Urbanizing. Transportation corridors can be separately mapped and may overlay the tier delineations. In a typical community, transportation corridors pass through more than one tier and therefore may require the use of differing techniques. For instance, techniques utilized in transportation corridors in the Urbanized tier will likely have a redevelopment/infill focus while techniques utilized in transportation corridors in the Planned Urbanizing area would likely consist of advance acquisition and the like.

The transportation corridor reflects a far broader concept than a mere highway system, both in terms of geographic configuration and function. The corridor is a mapped area whose central focus is a proposed or existing transportation facility, including, but not limited to, a section of the regional or arterial roadway system, a high-speed rail line, or other similar facility. The boundaries of the transportation corridor should be established, based upon sound planning and study, to include not only all rights-of-way necessary to meet projected facility demands but also the entire area that is deemed to be impacted by the facility at its ultimate capacity. Functionally, the transportation corridor is more than an area between two points used for the movement of people and goods. Each corridor is a nexus for major commercial, office, industrial and/or high-density residential development. As such, the physical extension of such corridors into Future Urbanizing Areas should be avoided until consistent with the desired timing and phasing of suburban growth. A transportation corridor may be an appropriate recipient of transfers of development rights from noncorridor areas that can then be preserved or land assembled. As a result of higher densities, multi-modal transportation systems, including high-speed and mass transit, may become viable.

#### 5.4.4 Applying the Concept

Urban Growth Boundary systems have some appeal because they are simple and more resistant to political persuasion. A tier system is a more sophisticated implementation of the Urban Service Area concept and is more adaptable because it takes into account the complexities of the Planned Growth Strategy concepts.

The tier system is consistent with the Planned Growth Strategy for several reasons. First, the broad structure of the systems conforms to the Planned Growth Strategy areas: “Urbanized” to “Fully Served Areas”; “Planned Urbanizing” to “Partially Served Areas”; and “Rural/Future Urbanizing” to the “Unserved” areas.

Second, the Planned Growth Strategy has divided the City into 14 subareas within the Planned Growth Strategy study area. The Preferred Alternative allocations of population and employment to these areas and the quality of life and future development goals for them could provide a useful basis for establishing differing policies for zoning, subdivision improvement requirements, level of service standards, redevelopment incentives, and so on.

Third, the Planned Growth Strategy has prioritized corridors and centers within the Preferred Alternative as targets for future development. As mentioned above, these might be subject to different policies for zoning, level of service standards, vested rights in the development approval process, and so on.

Forth, the City has defined 10 Community Planning Areas in the urban area that ultimately may have different priorities for growth and development.

### 5.5 Community Design

From regional, macro-level urban policies, implementing regulations needed for the design of new development and redevelopment projects must flow. While much effort has been invested in the identification of regional and communitywide growth issues, these benefits will be lost if not translated into tangible

improvements in the built form of the urban area. For example, renowned New Urbanist architect Andres Duany observed the following about Portland’s noted urban growth boundary system during a visit:

That as soon as one left the prewar urbanism (to which all my prior visits had been confined) the sectors all the way to the urban boundary were chock full of the usual sprawl that one finds in any American city, no better than in Miami. So the outcome wasn’t that different after all, in Portland most of the prewar urbanism is excellent and most of the postwar version is junk. What was missing in the new areas was the traditional neighborhood structure of mixed-use, inclusive housing and walkable streets.<sup>36</sup>

The use of variable levels of standards makes more sense for some types of facilities than others. For water and wastewater facilities, for example, the demands created per unit of development may or may not vary by location. For storm water management, lower discharges may be presumed for cluster or conservation subdivisions that utilize low-impact development practices.<sup>37</sup> Variable levels of service are used most effectively with transportation facilities. The impact of development on transportation facilities varies significantly with the location and design of new development, and this relationship is documented. Moreover, this relationship blends well with the policies emerging from the Planned Growth Strategy process. Development practices that warrant variable level of service are described in greater detail below.

#### 5.5.1 Transportation

The design and form of new development has a significant influence on travel modes and the impacts of new development on roadway capacity. Some of these studies are summarized below.

A comparative analysis of 12 metropolitan areas by Robert Cervero showed that walking



and cycling consistently declined throughout each area but that more than 15% of all journeys to work were by nonvehicular modes.<sup>38</sup> Cervero recommends that sidewalks, trails, and pathways be coordinated with a larger system and not end abruptly.<sup>39</sup> While less than 1% of all trips in the nation are by walking and cycling, office parks with integrated pedestrian systems and on-site amenities such as showers can increase bike travel to 3–5%.<sup>40</sup> He suggests that the impact is more meaningful where employees are concentrated within 1–3 miles of the employment center. He reports that 20% of the workers at the Xerox research facility in Silicon Valley commute by bicycle.<sup>41</sup>



*Buildings oriented to the street with frequent openings encourage walking and transit use (right). Blank walls discourage walking (left).*

Cervero has further documented how lack of design amenities often discourages pedestrian and bike travel in suburban employment cen-

ters.<sup>42</sup> Most walk trips in suburban employment centers are for nonwork purposes, comprising 21.5% of these trips. Foot travel is discouraged by long blocks, disconnected sidewalks, and limited mid-block crosswalk opportunities. Consumers are more likely to walk on avenues with shops, parks and other interesting destinations where a number of trip purposes can be accomplished.<sup>43</sup>

In an extensive summary of research on the issue, Reid Ewing has compiled a listing of pedestrian and transit-friendly features that are summarized in Table 44.<sup>44</sup>

The literature also provides support for the trip reduction potential of walkable communities such as Traditional Neighborhood Developments. There are few empirical studies due to the lack of well-established new communities with a New Urbanist design emphasis. A study of traditional and modern conventional subdivisions in Austin, Texas found that persons walked to the store six times more in traditional subdivisions than in modern conventional subdivisions, and the walk trips were a substitute for driving trips.<sup>45</sup> A study by 1000 Friends of Oregon demonstrated substantial reductions in vehicle miles traveled and trips based on four “Pedestrian Environmental Factors”: (1) Ease of street crossings, (2) sidewalk continuity, (3) local street characteristics (grid vs. cul de sac), and (4) topography. The

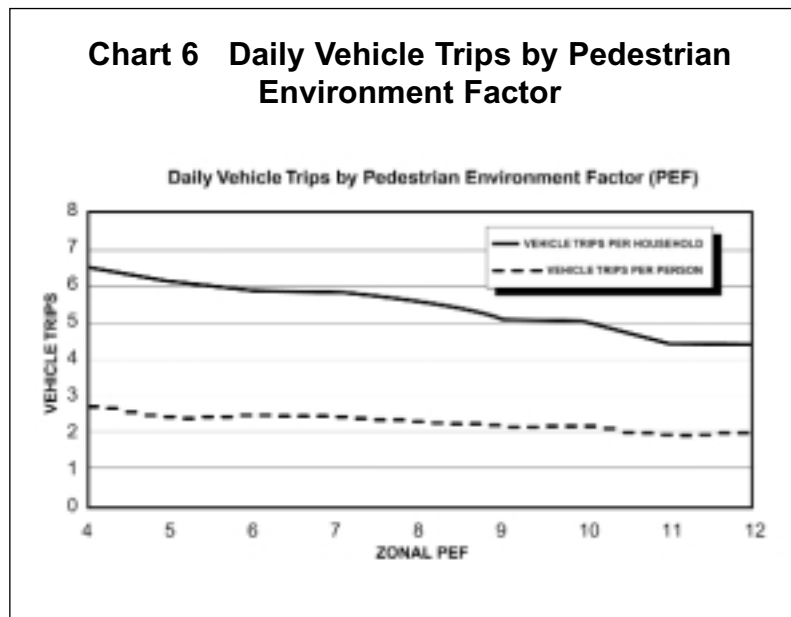
**Table 44 Pedestrian and Transit-Friendly Features**

Essential	Highly Desirable	Nice Additions
Medium-High Density (7–50 du/ac)	Supportive Commercial Uses	Street Walls
Mixed Land Uses	Grid Streets	Functional Street Furniture
Short-to-Medium Length Blocks (300–500 feet)	Traffic Calming of Access Routes	Coherent, Small-Scale Signage
Transit Routes Every .5 Mile	Closely Spaced Shade Trees on Access Routes	Special Pavement
2–4 Lane Streets	Lack of Dead Space (or Visible Parking)	Public Art
Continuous Sidewalks 4–8 feet wide	Nearby Parks/Public Spaces	
Safe Street Crossings (5–10 foot radii)	Small-Scale or Articulated Large Buildings	
Buffering from Traffic (e.g., street parking)	Attractive Transit Facilities	
Street-Oriented Buildings		
Comfortable/Safe Places to Wait		

study demonstrates that vehicle trips per household decline as much as 30% with increases in Pedestrian Environment Factors (Chart 6).<sup>46</sup>

A study by Susan Handy indicated that residents in an older community in the San Francisco area walked to the supermarket

**Chart 6 Daily Vehicle Trips by Pedestrian Environment Factor**



more, with the pedestrian mode share at 8%.<sup>47</sup> Other studies demonstrate trip reductions for mixed-use/transit-oriented/New Urbanist development.<sup>48</sup> Some studies have shown that mixed-use development can reduce trip generation rates by as much as 25%.<sup>49</sup> An American Society of Civil Engineers simulation study estimated that Traditional Neighborhood Developments produces 57% of the vehicle miles traveled of a conventional suburban development, with a 9.78% reduction in volume to capacity for arterials (0.83 v. 0.92), a 7.45% reduction for collectors (0.87 v. 0.94), and 4.55% reduction for local streets (0.22 v. 0.21).<sup>50</sup> Further, conventional suburban neighborhoods were found to have trip rates 60% higher than traditional neighborhoods in San Francisco Bay area.<sup>51</sup> A study by Handy in San Francisco was inconclusive about substitution, but later studies by her in Austin confirmed that many walk trips do substitute for car trips. Other studies have documented that residents of older neighborhoods travel less in terms of mileage and number of trips.<sup>52</sup>

## 5.5.2 Applying the Concepts

Several principles apply to the practice of assigning a level of service to developments with preferred design characteristics. First, the applicable level of service should be defined by area. For example, an exemption could be applied to Major Activity Centers, with level of service D, E, or F applicable to Community Activity Centers or Rural Village Centers. This concept is discussed in greater detail in Section 5.3 relating to Adequate Public Facilities.

Second, a design package or “Use Pattern” needs to be identified, with the design characteristics of pedestrian or transit-friendly development identified. The design guidelines should provide clear guidance as to fundamental development criteria, including the following:

- Size and Location of Site
- Uses and Density
- Adequacy of Public Facilities
- Lot Layout
- Design
- Transportation
- Stormwater Management
- Utilities
- Parks and Open Space
- Natural Resource Protection
- Landscaping/Buffering
- Parking

Local examples of some of these concepts include the design guidelines for the West Side<sup>53</sup> and the *Design Standards and Guidelines for Downtown Central Avenue*<sup>54</sup> in the context of more established urban areas. These criteria should be clear and free of regulatory ambiguity. In addition, they should be written in a manner that permits some degree of design flexibility. Discretionary approvals with extensive or unpredictable approval

processes can discourage development in areas where development is needed.

Finally, transit facilities should be given consideration in level of service review. Transit may be considered as a substitute for roadway facilities. Further, the availability of transit can be used to reduce roadway demands during the traffic impact analysis. The combination of these approaches can provide a more acceptable phasing schedule for developers where roadway facilities are constrained and can also reduce the cost of advancing facilities where such arrangements are desired.

## **5.6 Legal and Policy Changes**

### **5.6.1 General Considerations**

Implementation of an effective tiered levels of service criteria will require a fundamental rethinking of how transportation capacity is defined vis-a-vis various modes of transportation (e.g., between transit and roads), and allocated—both on a geographic basis and between types of development. The first step involves the establishment of regional service levels and resulting constraints on land use based on those improvements. Identification of regional service levels and regional improvements allows the affected entities to establish a regional carrying capacity, which is then allocated to subareas.

The subarea allocation could operate in the following way. The carrying capacity would establish a ceiling on regional development. This would provide a basis for the allocation of capacity to subareas and would also require the affected agencies to debit capacity utilized in centers from the outlying areas. This would assure that: (1) capacity for development desired by the public is accorded a priority for utilization by the business community and (2) that capacity is taken away from areas where development is assigned a low priority by the public, thereby assuring that the goals and objectives of development are not thwarted by competition from outlying areas. Capacity could be allocated to priority subareas on a first-come, first-served basis or subject to certain allocation criteria.

While development within Transportation Concurrency Management Areas might exceed the carrying capacity of arterial and collector roadways, it is assumed that the trips could occur on streets or on transit.<sup>55</sup> Because the community wants transit capacity to be utilized, there is little concern that more transit capacity might be consumed than what might become available. This scenario would provide a justification for further investment in transit. Just as suburban decentralization has historically created the market justification for the expansion of freeways, the situation could be reversed to the point where the key stakeholders begin to demand—and support the necessary revenue increases—for increases in transit capacity.

### **Allocation of Carrying Capacity**

The alternatives are using: (1) allocation criteria or (2) a first-come, first-served system. The establishment of allocation-based criteria can provide an effective tool to encourage the type of growth desired by the community. However, it carries an administrative burden not found with first-come, first-served systems. In addition, other parts of the local governments' land use codes would impose transit-oriented development, mixed-use zoning regulations, and other regulatory criteria in these areas.

The first-come, first-served system allows developers in preferred areas (i.e., Transportation Concurrency Management Areas) to take capacity without additional regulatory requirements. To assure that development taking this capacity is the type of development desired by the community, New Urbanist design or Transit-Oriented Development zoning regulations will provide a precise visual outcome for development proposals. In order to assure that all Transportation Concurrency Management Area capacity is not allocated to employment generators or to residential uses, the City and County could set aside part of the capacity to employment and part to residential—as in Montgomery County.

Accordingly, the following steps can be undertaken to implement a variable level of service system:

1. Identify the overall development ceiling.
2. Identify existing employment destinations and residential uses in Transportation Concurrency Management Areas—this assures that the system does not reinforce current imbalances with respect to jobs and housing.
3. Based on #2, identify—on a geographic basis—where current deficiencies exist in terms of jobs and housing. In other words, where are jobs and housing needed in order to achieve a balance? How much is needed?
4. Allocate the capacity identified in #1 to the areas identified in #2.
5. If any capacity is left over after #4, allocated it equally between jobs and housing.

Several issues have been raised about this approach that merit discussion. First, will the reallocation of systemwide capacity from areas with excess capacity to areas that lack capacity produce a change in real peak hour traffic conditions? For example, the Northwest Mesa has limited roadway capacity, while the Southwest Mesa has some excess roadway capacity. Will allocating capacity from one area to another cause these roadway conditions to change?

The answer is that changes cannot be expected immediately. Instead, the system simply recognizes that there are situations where lower roadway service levels are appropriate for policy reasons as well as physical and financial constraints. By assigning lower roadway level of service to these areas, capacity is freed for new development. Over time, a development pattern will shift to reflect system capacity conditions within areas. It is also important to note that the perceived restrictions on existing capacity are a function of present standards and procedures for measuring capacity. The solution lies in the standards adopted for each area and defining the extent of each area over which a level of service is assigned.

In areas where the local government cannot expand capacity due to physical, financial, and policy constraints and where further growth is desired, a lower level of service must be tolerated. The alternative is to assign an unrealistic level of service, producing needlessly expensive improvements and, perhaps, roadway improvements that are detrimental to community character. Conversely, a higher level of service can be assigned in areas that are currently undeveloped, again for policy reasons and to reflect the ability to control the relationship between traffic volumes and capacity.

Second, how is the system implemented? Do new permits cease to be issued in areas where peak hour volume-to-capacity ratios exceed 1.0? This question is addressed in Section 5.3 “Options When Public Facilities Do Not Meet Level of Service Standards.” The City and County can use a variety of options to avoid development moratoria in areas where capacity is constrained. These include:

- Adopting a lower level of service that more realistically reflects traffic conditions and the City’s and County’s abilities to correct them.
- Applying a uniform phasing schedule for new development where capacity is unavailable, in order to allow a reasonable use of property to be made.
- Allocating growth using permit allocation systems or density allocations.

Third, would the system implicitly demand that more funds be spent in areas that have high volume to capacity ratios instead of directing a higher percentage of growth to areas with lower volume to capacity ratios? In other words, would revenues be diverted in order to provide for the build out of land at the periphery? This is a troublesome question with most adequate public facilities ordinances, and it is precisely the situation that variable level of service standards avoid. A higher level of service in developing areas, which typically have lower volume to capacity ratios, creates a lower margin of capacity for growth. While there will be pressure to provide funding for capacity in these areas, such pres-



sure already exists. The variable level of service approach simply allows the City and County to address their expenditures in a comprehensive manner, with a uniform framework for evaluating new expenditures and any growth-inducing impacts.

It is important to note that a fundamental premise of a concurrency-based system is that public improvements are phased and sequenced based on the financial capacity of the local government. Neither the courts nor the New Mexico legislature have provided a time period by which improvements must be available. Accordingly, capacity shortfalls in developing areas can be addressed over a reasonable period of time. In determining the appropriate time period, the City and County can properly determine the impact of building new capacity to serve growth on their financial capacities to address rehabilitation and deficiency needs. A reasonable equilibrium between these objectives can avoid the diversion of funds from rehabilitation and deficiency-related improvements.

### **5.6.2 Revisions to Capital Improvements Program Ordinances**

The City's Capital Improvements Program Ordinance already contains several provisions necessary to implement an Adequate Public Facilities Ordinance or tiered level of service policy. However, several changes should be considered in order to strengthen the program. First, the ordinance provides several useful items of information to be included as part of the plan preparation process. These include the following<sup>56</sup>:

- The anticipated capital cost of each project;
- The anticipated source of capital funds for each project, e.g., General Obligation bonds, Enterprise Fund, Gross Receipts Tax, and so on;
- The estimated annual operating cost or savings for each project;
- The estimated completion date of each project;
- The adopted plan or policy, if any, which each project would help to implement;
- The viable alternatives that were considered for each project and the reasons the proposed project is the most cost-effective and practical alternative for meeting the stated objective;
- The project's ranking in whatever sequencing/priority-setting system is used as a basis for proposed programming; and
- The impacts of proposed capital improvements on user rates (for Enterprise Fund projects).

The City's 2001 Capital Improvements Program indicates that the actual implementation of these requirements should be strengthened in the future.

In addition to this information, the Capital Improvements Program should also include the following information:

- The Capital Improvements Program must be an inclusive plan that indicates how the community's goals and the urban growth strategy will be achieved through specific capital projects that are funded through a combination of funding sources. The actual programming of General Obligation and Enterprise Fund capital expenditures should become a secondary focus within this broader approach;
- In order to implement this approach, specific capital projects rather than general programs must be appropriated funds in the Capital Improvements Program;
- The service areas accommodated by the proposed facility;
- The present level of service with the service;
- The level of service that will result after completion of the improvement (based on

current population and employment projections);

- The relationship of level of service capacity in subareas to the forecasts of population and employment in the Preferred Alternative;
- The relationship of level of service capacity to the Planned Growth Strategy Preferred Alternative development goals related to centers, corridors, redevelopment of older neighborhoods, planned communities on the fringe and elsewhere, economic development, and so on;
- All capital funding sources must be included in the Capital Improvements Program including estimated federal and state grants especially used to fund infrastructure, parks, and human services facilities; and
- Whether the facility is needed to accommodate new growth, provide for rehabilitation or renovation, or correct existing infrastructure capacity deficiencies. Past City Capital Improvements Programs indicate that these definitions, although required, are not uniformly applied to projects.

The City has already moved in this direction by providing priorities for maintenance and rehabilitation and the extension of facilities to activity centers in its 2000 resolution providing priorities for the 2001/2002 Capital Improvements Plan.

The Capital Improvements Program Ordinance provides that the City Council establish policy guidelines for the Capital Improvements Program on a biannual basis.<sup>57</sup> As written, these policies can change widely with successive City Councils without reference to adopted plans or core principles. This provision should be revised to incorporate the principles of the Planned Growth Strategy and the Adequate Public Facilities Ordinance, so that requests for infrastructure improvements will have a predictable and sound policy basis.

The degree to which changes in the capital improvement budget will affect capacity within

the service areas should also be reflected in the Mayoral authority to amend budgeted capital improvements.<sup>58</sup> The degree to which any change in a budgeted improvement affects the availability of capacity within a service area should be included within the scope of permissible changes and should also be reported when the change is approved.

The County's Capital Improvements Program Ordinance is more general in nature and process focused. It contains the following useful elements: conformance of capital projects to adopted plans, ordinance, policies and defined community goals; and the cost and source of funding for each project. The County's Capital Improvements Program also is reviewed by the County Planning Commission (as is the City's).<sup>59</sup> While the same general recommendations are appropriate for the County as for the City, the critical issue is aligning and coordinating (and perhaps combining) the City's and County's capital programs to implement the Planned Growth Strategy Preferred Alternative and achieve common community goals and objectives.

### 5.6.3 Line Extension Policy

The City water and sewer utility's Line Extension Policy is addressed primarily to the distribution of financial costs when water and sewer facilities are extended.<sup>60</sup> It is not a concurrency policy, although individual sections of the resolution indicate that service would not be expanded if it would exceed the capacity of the system.<sup>61</sup> In addition, as with many concurrency/Adequate Public Facilities Ordinance systems, developers are permitted to "advance" capital improvements subject to reimbursement.<sup>62</sup>

Within the context of the location-specific Planned Growth Strategy policies, water and sewer systems do not lend themselves to variations in level of service to the same extent as transportation facilities. While the demand for transportation facilities may vary depending on the location and design of a proposed development, the same is not necessarily true of water or sewer systems. While xeriscaping and other

water conservation measures can reduce the demand for water and sewer facilities, these measures do not necessarily depend on the location of development.<sup>63</sup> The decentralized nature of potential arsenic treatment will have a varying cost by location.

The application of an Adequate Public Facilities Ordinance can, however, vary depending on the location of new development. In other words, while the Adequate Public Facilities Ordinance would assume that all new development consumes the same amount of water or produces the same amount of wastewater regardless of its location within or outside of a center or corridor, the areas within the Fully Served Area tiers could be exempt from concurrency review based upon the existing availability of water and sewer service. The Adequate Public Facilities Ordinance would then apply only to the Partially Served tiers, with the Line Extension Policy applicable only to these areas.

This leads to several concrete changes needed in the Line Extension Policies. First, the extension of facilities should be permitted only when consistent with the City/County Comprehensive Plan, Planned Growth Strategy policies related to the Preferred Alternative and area, sector, or corridor plans.<sup>64</sup> This approach is incomplete in that the City/County Comprehensive Plan does not, and the area or corridor plans might not, provide the level of specificity needed to determine whether an expansion is permitted. Accordingly, a Planned Growth Strategy Preferred Alternative map should be adopted as part of the ordinance that bridges the system expansion policies of the water and sewer master plans with the Planned Growth Strategy.

Second, the Line Extension Policy would apply only to the Partially Served Areas. Development in the Unserved Areas would be addressed through separate development agreements consistent with Planned Growth Strategy policies. Development agreements can be used to negotiate reimbursement schedules that are not subject to rational nexus review.

There may be situations where it is to the developer's advantage to negotiate an oversizing arrangement without reimbursement.

Third, while this practice is being followed by the utility, the Line Extension Policy should expressly provide that facilities will not be extended if the proposed development would cause the capacity of Major Facilities within the service area to be exceeded. "Major Facilities" are defined in the Line Extension Policy as "reservoirs, wells, pump stations, master plan lines, lift stations, water and liquid waste treatment facilities." This should be tied to a baseline for measuring demand as set forth in the policy. A cross-reference to the criteria established in Chapter 24, § 2 (sewer facility engineering criteria) and Chapter 25, § 2 (water facility engineering criteria) should suffice.<sup>65</sup> All major facilities, not just distribution and service lines, should be subject to the system design standards. A system for tracking other approved developments should be developed as part of the policy so that capacity is not over allocated.

Fourth, the City should revisit the issue of reimbursement where master plan improvements are advanced pursuant to the Line Extension Policy. Rational nexus principles announced in impact fee cases around the nation do not require the City to reimburse developers for capacity needed to accommodate their own impacts. Neither should the utility forego the collection of Utility Extension Charges revenue for system improvements that the developer has not provided. For example, the developer may construct part of a sewer interceptor with capacity in excess of his project's needs, but no improvement was made to the wastewater treatment plant. At present, however, all sewer Utility Extension Charges revenue collected would be used to repay the developer for the interceptor improvements. Accordingly, a cap on Utility Extension Charges reimbursement could be established at an amount needed to reimburse the developer for impacts exceeding his proportionate share. The part of the Utility Extension Charges reimbursed could be limited by the

proportionate cost of the infrastructure items constructed by the developer to the cost basis of the Utility Extension Charges.

Because of the availability of private wells and septic systems as an alternative to utility service, ancillary policies in other portions of the City Code, as well as the regulations of the County and the Extraterritorial Land Use Authority, should also be considered. The City and County should seek appropriate legislation to clarify their authority to control the proliferation of private wells and septic systems within water and sewer service areas. In addition, however, the City and County should be prepared to permit a reasonable alternative use of property, either through project phasing or rural densities, in order to avoid potential takings liability for developments that cannot obtain central sewer or water service.

#### 5.6.4 Subdivision Regulations

Concurrency/Adequate Public Facilities Ordinance regulations are typically enforced through the subdivision approval process. The City currently requires adequate facilities in its subdivision ordinance, but it has not refined its processes or standards to conform to the Planned Growth Strategy.

City Code § 14-14-2-3 (Land Suitability) contains a basic statement of adequacy of public facilities, as follows:

(B) Land to be subdivided must have or be provided with adequate infrastructure improvements as specified in Part 4 of this article. Demonstrated capability, agreements, and assurances to provide nonprogrammed facilities through private funding will be satisfactory as provided in Part 5 of this article. Programmed facilities are those included in an adopted Capital Improvements Budget with funds authorized.

However, the following subsection states that the availability of adequate public or private infrastructure “shall all be weighed in consid-

ering proposed subdivisions,” but that these “are not all necessarily required.”<sup>66</sup> Accordingly, the City’s standards relating to adequacy of facilities are internally inconsistent. Under the standard as written, the agencies charged with plat approval are free to ignore the availability of public facilities if they feel that they are outweighed by other policies. How this balancing process is to occur and which policies are to be considered, is not described sufficiently in the ordinance.

Article 4 of the Subdivision Regulations contains the design criteria for subdivision approval. Most of the meaningful standards are embodied in the Development Process Manual, which is adopted by reference.<sup>67</sup> The City has provided very detailed and informative criteria for most of the infrastructure standards in the Development Process Manual. However, these standards need to be refined to coordinate with the locational, urban design, and timing policies of the Planned Growth Strategy. The City also has criteria for specific facilities, such as water. A water and sewer service availability statement must be submitted for preliminary plat approval.<sup>68</sup>

The County Subdivision and Land Development Standards Ordinance<sup>69</sup> also provides infrastructure standards. Subdivision disclosure statements (§ 74-82) must contain detailed information about the availability of water supplies, fire stations, police protection, liquid waste disposal, terrain management (storm water protection), recreational facilities, public schools, and public transportation.<sup>70</sup> Maximum water demands must be quantified (§ 74-92), and water availability assessments must be submitted with a 70-year supply required (§ 74-95). The County also has general standards for liquid waste management (§ 74-98), solid waste disposal (§ 74-99), and terrain management (storm water management) (§ 74-101), fire protection (§ 74-103), and open space (§ 74-111). A transportation impact analysis is required for subdivisions above a specified size (§ 74-102). Most of these standards require reporting, but contain no specific or meaningful criteria for judging the impact



of a development and measuring it against available capacity.

Accordingly, the following revisions are needed for the City and County subdivision regulations:

- A level of service standard should be adopted for each selected facility, by area. This could be provided as a summary matrix in the subdivision regulations, with cross-reference to a development process manual for details about how service levels are computed and measured.
- Areas that are exempt from concurrency review should be listed and mapped.
- Procedures for coordinating infrastructure availability with the three-stage sketch, preliminary, and final plat approval should be established.
- The roles and responsibilities of the public and private sectors related to the private financing of infrastructure should reinforce Planned Growth Strategy goals.

### 5.6.5 Zoning Ordinance

The Concurrency/Adequate Public Facilities Ordinance program creates an opportunity to build the Planned Growth Strategy concepts into the land use approval process in a meaningful way. Numerous changes to the zoning ordinance are needed to make this happen. First, a series of design standards or “Use Patterns” must be defined that reflect the growth objectives of the Planned Growth Strategy. These patterns are described in Section 5.5 of this chapter and elsewhere. The design standards would include minimum densities appropriate to specific areas.

Second, development in major activity centers and community activity centers that lie within major or enhanced transit corridors should be either exempt from concurrency review or should otherwise be allocated sufficient infrastructure capacity. This creates an incentive for compact development patterns to occur

and also reflects the availability of transit as a substitute for automotive travel.

### 5.6.6 Development Agreements

Procedures for the processing and approval of development agreements should be established in City and County Codes. The City and County already use a Subdivision Improvements Agreement to guarantee the construction of on-site infrastructure.<sup>71</sup> A development agreement extends this concept, while at the same time providing procedural protections for the property owner by vesting development rights for the term of the contract.

Whether development agreements constitute invalid contract zoning is an issue untested in the New Mexico courts. However, the New Mexico courts have not invalidated all forms of contract or conditional zoning. In *Dacy v. Village of Ruidoso*, 845 P.2d 793 (N.M. 1992), the New Mexico Supreme Court expressly approved zoning actions that involve “a unilateral contract in which a party makes a promise in return for a municipality’s act of rezoning [where] the municipality makes no promise and there is no enforceable contract until the municipality acts to rezone the property.”<sup>72</sup> Contract zoning is, however, illegal “whenever it arises from a promise by a municipality to zone property in a certain manner, i.e., when a municipality is either a party to a bilateral contract to zone or when a municipality is a party to a unilateral contract in which the municipality promises to rezone in return for some action or forbearance by the other contracting party.”<sup>73</sup> If the development agreement is tied to a site plan approved after a zoning hearing occurs, or is part of a platting or other regulatory process, it does not compromise the local government’s land use standards. Instead, it is an important planning tool to enforce standards by establishing a mechanism for resolving potential legal disputes and providing for the financing of infrastructure needed to accommodate growth. In that context, properly used, it does not have the characteristics of illegal contract zoning.

### 5.6.7 Impact Fees and Utility Extension Charges

Any concurrency/Adequate Public Facilities Ordinance system should be consistent with the land use and capacity assumptions used to calculate impact fees and Utility Expansion Charges. In other words, the level of service used to enforce an Adequate Public Facilities Ordinance should also be the level of service used to calculate the fees.

This approach has several advantages. First, it has the effect of encouraging the types of land use patterns provided for in the Planned Growth Strategy. For example, trip lengths could be used to calculate different fees in Partially Served Areas based upon distance from the urban core and/or whether the project is located in an activity center. This provides lower fees in the areas in which the City and County want development to occur first and at higher densities and intensities. It also has the effect of assuring that development that consumes most of the roadway capacity through longer trip lengths and vehicle miles traveled pays a greater share of growth-related costs. This is consistent with the proportionate share, “rational nexus” concept embodied in the development impact fee statute.<sup>74</sup>

Second, providing the same level of service standards as in the Adequate Public Facilities Ordinance assures that the capital improvements programs for impact fees produced pursuant to NMSA § 5-8-6 are consistent with those produced under the Capital Improvements Program ordinance. In fact, it assures that one document can be prepared for both purposes. This enhances administrative convenience and underscores the rationality of the program.

Finally, level of service standards provide an additional incentive for the City and County to adhere to spending commitments provided for in the Capital Improvements Program. Not only is the Capital Improvements Program augmented with private funding but there is a statutory mandate to earmark the fees and to commit impact fee monies to the improve-

ments.<sup>75</sup> This provides a measure of fiscal discipline missing from most capital improvements programs, including the local ones.

## 5.7 Conclusion

An Adequate Public Facilities Ordinance includes procedures and standards to assure that development approval does not occur unless public facilities will be in place at specified levels of service concurrent with the impacts of the development. From this straightforward-sounding requirement, a host of issues emerge that belie the simple nature of the statement. Because of substantial differences in capital facility provision responsibilities, level of service standards, capital improvements programming, sophistication of existing development approval processes, existing adequacy and available capacity of public facilities that may be subject to concurrency, existing amounts of development in the “pipeline,” and the need to reserve capacity, no Adequate Public Facilities Ordinance developed for one jurisdiction can serve as a precise model for one needed in another jurisdiction. However, knowledge of other systems and approaches has significant benefit because it enables us to:

- appreciate differences in approaches and the rationale for such differences;
- learn from mistakes already made and corrected in other jurisdictions;
- understand the complete range of issues that need to be brought to the attention of staff, the development community, and other interested parties and on which policy decisions will need to be made; and
- understand how a concurrency determination process actually works in practice (not just in theory).

One of the key aspects of concurrency management is that it requires the local jurisdiction to have a monitoring or development tracking system that actually includes two components, the first of which is reasonably common, but the second of which is rare. The first component is the tracking of development in terms of the capacity of public facilities that

will be used or that need to be reserved for the proposed development. That, in turn, will require a measurement of the facility demand generated by development, by type, and by impact area. The second component is the determination and on-going monitoring and update of available public facility capacity by impact area. This would be easier if it only needed to be done annually. However, conditions are changing over time. For example, on the demand side, approved developments may not go forward, thereby freeing up otherwise committed capacity. And, similarly, on the capacity side, capital improvements may be made expanding the available capacity.

The most workable system, given the variety of both infrastructure and design objectives expressed by the community during the Planned Growth Strategy process, is one that combines concurrency review with locational and design criteria. The locational standards supplement concurrency review by applying lower service levels to areas with an existing built form, infill development and redevelopment opportunities, and public transportation. The community design criteria establishes a template for new communities that, because of mixed uses and the relationship of buildings to the public realm, more efficiently use infra-

structure capacity. These guidelines permit the community to establish variable levels of service that accommodate the various objectives of the Planned Growth Strategy.

Under this system, the concurrency concept can be combined with impact fees and other private financing sources to provide very low or no cost to developers for infrastructure where excess capacity is used and is consistent with Planned Growth Strategy objectives. Development that creates demand exceeding the available or CIP programmed capacity would pay for the improvements to increase capacity. Defining a lower level of service in the urban core and in activity centers, where roadway expansion is impractical or unnecessary, creates a valuable incentive for infill development. Defining higher levels of service where roadways are presently uncongested and where there is room for expansion of right-of-way, provides an orderly sequencing of urban development outside of the City and County's designated growth areas. This approach is blended with a Capital Improvements Program that would provide infrastructure programming to areas in which certain types of development are desired. The result is a system of financial incentives and disincentives related to the infrastructure system.