

CHAPTER V CONCURRENCY MANAGEMENT*

* **Editors Note:** Ord. No. 2009-39, § 2, adopted July 21, 2009, effective July 28, 2009, repealed Ch. V, in its entirety, and enacted provisions designated as a new Ch. V to read as herein set out. Prior to inclusion of said Ordinance, Ch. V pertained to similar subject matter. See also the Code Comparative Table.

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5.00.00 General.

5.00.01 Purpose, Intent and Short Title.

A. The purpose of the Lake County Concurrency Management System is to ensure that public facilities and services needed to support Development are available concurrent with the impacts of such Development. Concurrency management shall be relevant to all Development located within the area for which Lake County has authority to issue Development Orders and Permits.

B. This Chapter may be cited as the Lake County Concurrency Management Ordinance.
(Ord. No. 2009-39, § 2, 7-21-09)

5.01.00 Applicability.

5.01.01 General. All Development Orders issued by the County shall be subject to concurrency management, unless exempted in this Section.

5.01.02 Exemptions for Development with Negligible Impacts.

- A. Development causing negligible impacts on public facilities and services shall be exempt from Concurrency Management Review, as the Development is considered to cause no additional impacts on public facilities and services. Such Development includes:
1. Interior renovations or alterations and exterior maintenance to existing Structures which do not involve a change in use; including but not limited to, replacement of siding, paint, gutters, awnings, hurricane shutters, aluminum and wooden carports over existing

- concrete, roof repairs, and reroofings within the same footprint;
2. Demolitions, except in conjunction with the replacement of an existing Structure;
 3. Replacement of a Single-Family residence with a Single-Family residence;
 4. Electrical, plumbing and mechanical activity;
 5. Signage and fences;
 6. Improvements to an existing Single-Family residence such as room additions, decks, pools and screened enclosures;
 7. Accessory Structures to a Single-Family residence;
 8. Temporary construction trailer placements;
 9. Utilities such as telephone switching stations, and electrical power substations;
 10. Radio and other Communication Towers; and
 11. Accessory facilities that do not create any demand on public facilities.

5.01.03 Exemptions for Development with De Minimis Impacts.

- A. General. Development Orders associated with Developments causing de minimis impacts on all public facilities and services Shall be exempt from concurrency management review, as the impacts of such Development Shall be accounted for by the County on an annual basis, prior to approval of the Development Orders, using an aggregate impact procedure. Development Orders associated with Development causing de minimis impacts on public facilities and services for which the County has adopted Impact Fees Shall be exempt from the portion of the concurrency management review which requires payment for capacity reservation.
- B. De Minimis Impacts.
 1. Transportation: A de minimis impact is an impact that would not affect more than one (1) percent of the maximum volume at the adopted Level of Service of the affected Transportation facility as determined by Lake County. No impact will be de minimis if the sum of existing Roadway volumes and the projected volumes from approved projects on a Transportation facility would exceed one hundred ten (110) percent of the maximum volume at the adopted Level of Service of the affected Transportation facility; provided, however, that an impact of a Single-Family home on an Existing Lot will constitute a de minimis impact on all Roadways regardless of the level of the deficiency of the Roadway. Further, no impact will be de minimis if it would exceed the adopted level-of-service standard of any affected designated hurricane evacuation routes.

2. Sanitary Sewer: There Shall be no de minimis impact associated with public sanitary sewer facilities and services.
3. Solid Waste: A de minimis impact is one that would not generate more than fifty (50) pounds of Solid Waste per day before recycling, composting, reuse, and volume reduction. Cumulatively, annual de minimis Solid Waste impacts Shall not exceed a significant degradation threshold of one thousand five hundred (1,500) pounds of Solid Waste per day before recycling, composting, reuse, and volume reduction.
4. Stormwater Management: The following stormwater management Systems Shall be deemed to have a de minimis impact:
 - a. Stormwater management Systems for silvicultural lands, provided that the System is constructed and operated in accordance with the provisions of Chapter 40C-43 Florida Administrative Code, and the Silviculture Best Management Practices Manual, as amended and published by the State of Florida, Department of Agriculture and Consumers Services;
 - b. Stormwater management Systems designed to accommodate only one (1) Single-Family dwelling unit, duplex, triplex, or quadruplex, provided the single unit, duplex, triplex, or quadruplex is not part of a larger common plan of Development; or
 - c. Stormwater management Systems designed to serve Single-Family residential projects, including duplexes, triplexes and quadraplexes, of less than ten (10) acres total land area and which have less than two (2) acres impervious surface, that:
 - (i) Are not part of a larger common plan of Development, and
 - (ii) Will discharge into a stormwater management System exempted or Permitted by the St. Johns River Water Management District which has sufficient capacity and treatment capability and is owned, maintained or operated by Lake County, a municipality within Lake County, an adjacent County, a special District with drainage responsibility, or a Water Management District; however, this exemption does not authorize discharge into a System without prior written consent from the System owner, the party responsible for the maintenance or the operator.
5. Potable Water: There Shall be no de minimis impact associated with public potable water facilities and services.
6. Parks and Recreation: A de minimis impact is one that would not increase the resident population of the unincorporated portion of Lake County by more than 0.05 percent.

Cumulative, annual de minimis recreation impacts Shall not exceed a threshold of one-and-one-half (1.5) percent of the resident population of the unincorporated portion of Lake County.

7. Educational Facilities: The following residential uses Shall be exempt from the requirements of this Chapter by virtue of their having a de minimis impact upon educational facilities. However, if the Development approval for such use required it to meet school concurrency, the proposed residential use Shall not be exempt and Shall not be considered to have a de minimis impact upon educational facilities:
 - a. Single-Family Lots having received Final Plat approval before September 1, 2007, or other Lots vested pursuant to Chapter 1 of the Land Development Regulations;
 - b. Multi-family residential Development having received Final Site Plan approval on or before September 1, 2007, or other multi-family residential Development vested pursuant to Chapter 1 of the Land Development Regulations;
 - c. Amendments to residential Development approvals issued on or before September 1, 2007, that do not increase the number of residential units or change the type of residential units proposed;
 - d. Age-restricted communities, defined herein as those that are subject to deed restrictions prohibiting the permanent occupancy of residents under the age of eighteen (18). Such deed restrictions must be recorded and must be irrevocable for a period of at least fifty (50) years;
 - e. Plats or residential Site Plans which include four (4) or fewer dwelling units.
 - (i) For purposes of this Section, a property owner may not divide his or her property into several Developments in order to claim exemption as allowed by this Section.
 - (ii) In making a determination as to whether a property is exempt under this Section, the County Manager or Designee Shall consider, in addition to the ownership at the time of the application, the ownership as of March 18, 2008, which is the date the Lake County Board of County Commissioners approved the First Amended Interlocal Agreement for School Facilities Planning and Siting.
- C. De Minimis Development Orders. The following Development Orders Shall be considered by the County to have de minimis impacts on all public facilities and services:
1. Individual Residential Building Permits for which the applicant proposes the use of a private well and a septic tank, and is not required to connect to a potable water or sanitary sewer System that may be associated with public facilities and services.

2. Nonresidential Building Permits for which a Development Order is not required and for which the applicant is not required to connect to a potable water or sanitary sewer System that may be associated with public facilities and services.
3. Administrative Lot splits (including minor Lot splits, large agricultural Lot splits), located along a local Roadway, that create no more than two (2) Lots per original parcel, for which each Lot contains at least one (1) acre of uplands, and for which the applicant does not propose improving access to a semi-impervious or an impervious surface, or making major alterations to the land for an easement when an easement is utilized, and provided the applicant is not required to connect to a potable water or sanitary sewer System that may be associated with public facilities and services.
4. Conditional use Permits that do not require Site Plan approval, for which the applicant meets the stormwater management design and improvement standards identified in these Land Development Regulations, and provided the applicant is not required to connect to a potable water or sanitary sewer System that may be associated with public facilities and services.
5. Variances that are not associated with another Development Order issued by the County.
6. Variances that are associated with another Development Order where the Development Order is determined by the County to have de minimis impacts on public facilities and services, provided the applicant meets the stormwater management design and improvement standards, and provided the applicant is not required to connect to a potable water or sanitary sewer System that may be associated with public facilities and services.

5.01.04 Exemptions for Property Subject to Vested Rights Determination. Development Orders associated with Developments subject to a Vested Rights determination issued by Lake County Shall be exempt from concurrency management review, to the extent provided in the Vested Rights determination, so long as the Vested Rights determination remains in effect and so long as such Development Order is consistent with the Vested Rights determination.

5.01.05 Redevelopment After Demolition or Termination of Existing Use. In the case of demolition of an existing Structure or termination of an existing use in conjunction with plans for Redevelopment, the concurrency management evaluation for future Development Shall be based upon the new or proposed land use as compared to the land use existing at the time of such demolition or termination. Credit Shall only be given for the density/intensity of the site proposed for demolition/termination. Proposed Redevelopment that increases the density/intensity of the site Shall be reviewed based upon the net increase in density/intensity. Credit for the prior use Shall not be transferable to another parcel. Credit for the prior use must be used in connection with a Redevelopment of the site within four (4) years following the demolition of the existing Structure or termination of the existing use, whichever occurs first. Credit for the prior use Shall be deemed extinguished in the event such credit is not used in connection with the issuance of a Building Permit or the reservation of capacity within four (4) years following the date of issuance of the demolition Permit for the subject property, or the termination of the existing use, whichever occurs first.

5.01.06 Change of Use. In the case of a proposed change in use, the concurrency management evaluation for future Development Shall be based upon the new or proposed land use as compared to the land use existing at the time of such demolition or termination. Credit Shall only be given for the density/intensity of the existing use on the site. A proposed change in use that increases the density/intensity of the site Shall be reviewed based upon the net increase in density/intensity. Credit for the prior use Shall not be transferable to another parcel. Any proposed change of use, which term or phrase Shall include a change, Redevelopment or modification of the character, type or intensity of use, Shall require a concurrency evaluation in accordance with this Chapter. For purposes of this Section, the term "previous use" Shall mean either: the use existing on the site when a concurrency evaluation is sought; or if no active use exists on the site at the time when a concurrency evaluation is sought, then the most recent use on the site within the two-year period immediately prior to the date of application. The applicant Shall provide evidence which establishes the existence of such use. Such evidence must include, but Shall not be limited to, utility records, phone bills, income tax returns, tax bills, occupational licenses, and unrelated party affidavits.
(Ord. No. 2009-39, § 2, 7-21-09)

5.02.00 Level of Service Standards.

The Level of Service (LOS) standards adopted in the Lake County Comprehensive Plan for public facilities and services are hereby incorporated by reference.
(Ord. No. 2009-39, § 2, 7-21-09)

5.03.00 Concurrency Evaluations.

- A. General. The County Manager or Designee Shall utilize the standards and requirements set forth in this Section to conduct a concurrency evaluation:
 - 1. prior to issuance of a capacity information letter, Capacity Encumbrance Letter, or Capacity Reservation Certificate for those projects not otherwise exempt from concurrency review, or
 - 2. when concurrency review is required but the applicant is not applying for a Capacity Encumbrance Letter or Capacity Reservation Certificate.
- B. In addition to the standards set forth in this article, the County Manager or Designee Shall also utilize the standards set forth in the Comprehensive Plan and such other standards regarding concurrency as may be authorized by the Board of County Commissioners from time to time. In connection with concurrency evaluations, the County Manager or Designee Shall have the authority to consider additional appropriate evaluations, studies, documents and/or information.
- C. The burden of showing compliance with the adopted levels of service and meeting the standards utilized in the concurrency evaluation Shall be upon the applicant.
- D. A concurrency evaluation performed pursuant to this Section does not encumber capacity, is not a guarantee of capacity, and confers no entitlement with regard to capacity upon the applicant.

Where applicable, a Capacity Encumbrance Letter and a Capacity Reservation Certificate are still required at the time of a Development Order, regardless of whether the applicant has undergone a concurrency evaluation pursuant to this Section.

5.03.01 Capacity Encumbrance and Subsequent Reservation. No Capacity Encumbrance Letter (or Capacity Reservation Certificate) Shall be issued except after a concurrency evaluation is conducted pursuant to this Section which indicates that capacity for the proposed Development is available with respect to all applicable public facilities and services.

5.03.02 Comprehensive Plan Amendments and Rezoning Applications.

- A. Comprehensive Plan amendments. A concurrency evaluation pursuant to Section 5.03.00 is not required in connection with a Comprehensive Plan amendment or future land use map amendment. However, the County Shall consider the availability of public services and facilities when evaluating the appropriateness of a future land use map amendment or Comprehensive Plan amendment. A request for future land use map amendment or Comprehensive Plan amendment request may be denied if public facilities and services are not expected to be available within the planning period pursuant to the Comprehensive Plan.
- B. Zoning and Rezoning applications.
 - 1. Planned unit Development. A concurrency evaluation pursuant to Section 5.03.00 Shall be required as part of any application for Planned Unit Development (PUD) zoning. As part of the concurrency evaluation, the County Manager or Designee Shall determine whether capacity is available to serve both the density and intensity of Development that would result from the proposed plan. The concurrency evaluation Shall be submitted as part of the staff analysis for any public hearing on the application, and such concurrency evaluation Shall be considered in determining the appropriateness of the requested rezoning and/or the conditions applicable thereto. The approval Shall State that a Capacity Reservation Certificate Shall be required before any Final Development Order authorizing construction is issued. If the concurrency evaluation indicates that the PUD would be concurrent, and if the PUD is approved, a Capacity Reservation Certificate Shall be required before any construction plans are approved, or before any Final Development Order authorizing construction is issued.
 - 2. All other Zoning and Rezoning Applications. Other than for PUDs, a concurrency evaluation pursuant to Section 5.03.00 is not required in connection with a rezoning application or other zoning application subject to this Chapter. However, the County Shall consider the planned availability of public services and facilities when evaluating the appropriateness of a rezoning application or other zoning application subject to this Chapter. A rezoning application or other zoning application subject to this Chapter may be denied if public facilities and services are not expected to be available within the planning period pursuant to the Comprehensive Plan.
- C. Development of Regional Impact (DRI). DRIs approved after the effective date of this Chapter

Shall be subject to concurrency. For the purposes of this Section, the term DRI Shall include Florida Quality Developments. Every DRI Development Order issued after the effective date of this Chapter Shall contain a Section entitled "Concurrency Management" which Shall specify the manner in which concurrency Shall be applied to the Development and Shall include, at a minimum:

- (1) Approved phasing, by year, land use and trip ends generated; and
 - (2) Public facilities and services to be provided or constructed by the developer during phase one (1) of the Development; and
 - (3) Capacity in public facilities and services, if any, to be provided by the County for phase one (1) of the Development; and
 - (4) A procedure for determining who will provide public facilities and services for phases beyond phase one (1) of the Development.
- D. Consistency with Comprehensive Plan and Zoning District. No Capacity Encumbrance Letter or Capacity Reservation Certificate Shall be issued for a use on any property unless such use is consistent with the Comprehensive Plan category and Zoning category applied to such property.

5.03.03 Residential Subdivisions. A concurrency evaluation pursuant to Section 5.03.00 Shall be required as part of any application for a residential Preliminary Plat. The approval Shall also State that in all cases a Capacity Reservation Certificate Shall be required before approval of construction plans or Final Plat, whichever occurs first. If the concurrency evaluation indicates that the subdivision would be concurrent, a Capacity Reservation Certificate Shall be required before construction plans are approved or the Final Plat is approved for recording.

5.03.04 Nonresidential Plats.

1. Unless a currently valid Capacity Encumbrance Letter or Capacity Reservation Certificate applicable to the property has been obtained, a concurrency evaluation pursuant to Section 5.03.00 Shall be required as part of any application to approve construction plans for a nonresidential subdivision.
2. A nonresidential subdivision plat may be approved without a Capacity Reservation Certificate.
3. Approval of a nonresidential plat does not entitle or ensure any capacity to the subdivision. Further, any Development Order issued on any Lot in the subdivision Shall be required to obtain a Capacity Encumbrance Letter or Capacity Reservation Certificate prior to Site Plan approval.

5.03.05 Commercial Projects and Projects Subject to Site Plan Review Process. Unless a currently valid Capacity Encumbrance Letter or Capacity Reservation Certificate applicable to the property has been obtained, a concurrency evaluation pursuant to Section 5.03.00 will be required as part of any application for any project required to obtain Site Plan approval. If the concurrency evaluation indicates that the proposed Development

would be concurrent, a Capacity Encumbrance Letter Shall be required before the final commercial Site Plan is approved.

5.03.06 Potable Water, Sanitary Sewer, Solid Waste and Stormwater Management. For potable water, sanitary sewer, Solid Waste and stormwater management facilities and services, the concurrency management review procedure Shall be satisfied through one (1) of the following actions approved by Lake County during the Development review process:

- A. A Development Order or Permit is issued subject to the condition that, at the time of the issuance of a Certificate of Occupancy or its functional equivalent, the necessary facilities and services are in place and available to serve the new Development; or
- B. At the time the Development Order or Permit is issued, the necessary facilities and services are guaranteed in an enforceable Development agreement, pursuant to F.S. § 163.3220, or an agreement or Development Order issued pursuant to F.S. Ch. 380, to be in place and available to serve new Development at the time of the issuance of a Certificate of Occupancy or its functional equivalent.

5.03.07 Parks and Recreation. The concurrency management review procedure Shall, if satisfied as follows, be approved by Lake County during the review process as part of the review:

- A. At the time the Development Order or Permit is issued, the necessary facilities and services are in place or under actual construction; or
- B. A Development Order or Permit is issued subject to the condition that, at the time of the issuance of a Certificate of Occupancy or its functional equivalent, the acreage for the necessary facilities and services to serve the new Development is dedicated or acquired by Lake County, or funds in the amount of the developer's Proportionate Fair-Share are committed; and
 - 1. A Development Order or Permit is issued subject to the conditions that the necessary facilities and services needed to serve the new Development are scheduled to be in place or under actual construction not more than three (3) years after issuance of a Certificate of Occupancy or its functional equivalent as provided in the Five-Year Capital Improvements Program; or
 - 2. At the time the Development Order or Permit is issued, the necessary facilities and services are the subject of a binding executed agreement which requires the necessary facilities and services to serve the new Development to be in place or under actual construction not more than three (3) years after issuance of a Certificate of Occupancy or its functional equivalent; or
 - 3. At the time the Development Order or Permit is issued, the necessary facilities and services are guaranteed in an enforceable Development agreement, pursuant to F.S. § 163.3220, or an agreement or Development Order issued pursuant to F.S. Ch. 380, to be in place or under actual construction not more than three (3) years after issuance of a

Certificate of Occupancy or its functional equivalent.

5.03.08 Transportation (Roads). The concurrency management review procedure Shall be satisfied through one (1) of the following actions approved by Lake County during the Development review process:

- A. A Development Order or Permit is issued subject to the condition that, at the time of the issuance of a Certificate of Occupancy or its functional equivalent, the necessary facilities and services are in place and available to serve the new Development; or
- B. At the time the Development Order or Permit is issued, the necessary facilities and services are guaranteed in an enforceable Development agreement, pursuant to F.S. § 163.3220, or an agreement or Development Order issued pursuant to F.S. Ch. 380, to be in place and available to serve new Development at the time of the issuance of a Certificate of Occupancy or its functional equivalent; or
- C. Necessary improvements that are programmed within the first three (3) years of the Five-Year Schedule of Capital Improvements, provided that all of the following conditions are met:
 - 1. The Five-Year Capital Improvements Program and the Capital Improvements Element of the Lake County Comprehensive Plan are financially feasible. As Permitted by Rule 9J-5.0055(3)(c), F.A.C., concurrency determinations Shall only include Transportation projects scheduled in or before the first three (3) years of the Five-Year Schedule of Capital Improvements.
 - 2. The Five-Year Capital Improvements Program includes improvements necessary to correct any identified Road deficiencies and maintain adopted levels of service for existing and Permitted Development within the first three (3) years of the Five-Year Schedule of Capital Improvements, and the provision of service will commence in or before that third year.
 - 3. The public facilities necessary to serve the Development are available or included in or before the first three (3) years of the Five-Year Schedule of Capital Improvements, and Development Orders are only issued on this condition.
 - 4. The Five-Year Capital Improvements Program is based on currently available revenue sources, identifies whether funding is for design, engineering, consultant fees, or construction, and indicates, by fiscal year, how the dollars will be allocated.
- D. Execution of a Proportionate Fair-Share agreement in accordance with Section 5.10.00, Land Development Regulations.

5.03.09 Educational Facilities. The concurrency management review procedure Shall be satisfied through one of the following items; the County Manager or Designee Shall not accept, nor Shall that Person process, a Development application for a non-exempt residential use without either:

1. The School Board's written determination that adequate school capacity will be in place or under actual construction within three (3) years after the issuance of final subdivision or Site Plan approval for each level of school without mitigation; or
2. The School Board's written acknowledgement that the applicant has paid proportionate share; or
3. The execution of a legally binding mitigation agreement between the applicant, Lake County and the School Board.

(Ord. No. 2009-39, § 2, 7-21-09)

5.04.00 Concurrency Management Review.

5.04.01 General. The Lake County Concurrency Management Review Procedure is designed to provide an expeditious review of Development Orders while ensuring that public facilities and services needed to support the Development associated with the Development Orders are available concurrent with the impacts of such Development. In order to ensure an expeditious review of Development Orders, it is essential that the applicant and the County comply with Concurrency Management Administrative Review Procedures adopted by the County. The Lake County Concurrency Management Review Procedure includes the issuance of Capacity Information Letters, Capacity Encumbrance Letters, and Capacity Reservation Certificates. No Development Order Shall be issued by Lake County without the issuance of Capacity Encumbrance Letter, or Capacity Reservation Certificate unless the project is otherwise exempt from concurrency review as provided herein.

(Ord. No. 2009-39, § 2, 7-21-09)

5.05.00 Capacity Information Letters.

5.05.01 Purpose. A capacity information letter is a nonbinding analysis of existing levels of service for public facilities and services in the vicinity of the parcel identified in the application at the time the capacity information letter is issued and does not guarantee capacity in the future or encumber/reserve capacity for any period of time. The capacity information letter does not purport to analyze the impacts of the applicant's proposed project on public facilities or services nor to determine if the existing levels of service are sufficient (i) to Permit Development of a particular parcel, (ii) to authorize the issuance of a Capacity Encumbrance Letter, or (iii) to authorize the issuance of a Capacity Reservation Certificate. The issuance of a capacity information letter does not relieve the applicant from complying with the remaining provisions of this Ordinance with respect to capacity encumbrance or capacity reservation.

5.05.02 Application. An application for a capacity information letter Shall be submitted to the County Manager or Designee together with the required fee, which Shall be set by resolution adopted by the Board of County Commissioners from time to time. Any Person seeking a capacity information letter Shall submit the following information to the County Manager or Designee on the prescribed form. No such application Shall be accepted (or deemed accepted) until it is complete.

- (a) Date of submittal;
- (b) Applicant's name, address and telephone number;

- (c) Alternate Key number and legal description.

5.05.03 Processing of application by County Manager or Designee. Upon receipt of a complete application for a Capacity Information Letter, the County manager or Designee Shall access the existing levels of service for public facilities and services in the vicinity of the parcel. The County Manager or Designee Shall issue the capacity information letter within twenty (20) calendar days after receipt of the application.

5.05.04 Contents of capacity information letter. At a minimum, the capacity information letter Shall contain:

- (1) Date of issuance;
- (2) Applicant's name, address and telephone number;
- (3) Alternate Key number and legal description;
- (4) Name and location of nearest potable water facility if known by the County;
- (5) Name and location of nearest wastewater facility if known by the County;
- (6) Available capacity of Parks;
- (7) Available capacity of Solid Waste facilities; and
- (8) Available capacity of Road facilities.

(Ord. No. 2009-39, § 2, 7-21-09)

5.06.00 Capacity Encumbrance Letters.

5.06.01 Introduction. A Capacity Encumbrance Letter is a determination by the County Manager or Designee that, for a particular parcel, given a specific proposed Development density or intensity and based on the timing of Development by phase and year, the proposed Development will be concurrent at the time the Capacity Encumbrance Letter is issued and that the County Manager or Designee has encumbered a specified amount of Public Facility or service capacity as specified in the letter. A Capacity Encumbrance Letter is a prerequisite to a Capacity Reservation Certificate. In no event Shall an applicant encumber a greater amount of capacity than that necessary to serve the maximum amount of Development Permitted on the site under its current land use designation on the future land use map and its current Zoning District.

5.06.02 Procedure for Capacity Encumbrance Letter evaluation. After receipt of an application for a Capacity Encumbrance Letter, the County Manager or Designee Shall process the application, conduct a concurrency evaluation, and issue a Capacity Encumbrance Letter or a Capacity Encumbrance Denial Letter. When the County Manager or Designee reviews the application, the basis for the review Shall be to determine whether or not the project, and its resulting demands upon public facilities and services and the resulting impacts upon applicable LOS, will result in degradation in the LOS of any applicable Public Facility or service below the LOS adopted in this Ordinance or the Comprehensive Plan.

For Road concurrency, staff will prepare a general assessment of the project's impacts, using current guidelines and methodologies outlined in a procedure to be adopted by the County Manager, in order to determine whether Roadways are operating below or are projected to operate below the adopted LOS standards. If failing facilities are identified within the area of influence, staff will notify the applicant of options to satisfy concurrency and the applicant will be required to attend a preapplication conference to discuss the options available to mitigate the concurrency deficiencies.

5.06.03 Application for Capacity Encumbrance Letter. An application for a Capacity Encumbrance Letter Shall be accompanied by a fee which Shall be set by resolution of the Board of County Commissioners from time to time. Any application seeking a Capacity Encumbrance Letter Shall submit the following information on a form provided by the County Manager or Designee; no such application Shall be accepted (or deemed accepted) until it is complete:

- (1) Property owner's name, address and telephone number;
- (2) Applicant's name, address and telephone number;
- (3) Parcel Alternate Key number and legal description;
- (4) Land use(s) and Zoning District(s) Permitted for the parcel or parcels under the future land use map;
- (5) Proposed use(s) by land use category, square feet and number and type of units;
- (6) Phasing information by proposed uses, square feet and number of units, if applicable;
- (7) Existing use of property;
- (8) Acreage of property;
- (9) Name of project;
- (10) Site design information, if applicable;
- (11) Potable water needs for the proposed Development (together with a verification of service letter from the service provider);
- (12) Wastewater needs for the proposed Development (together with verification of service letter from the service provider);
- (13) Traffic information as specified within;
- (14) Proposed geographic allocation of capacity by legal description, if applicable; and

(15) Such other information as deemed necessary by the County.

5.06.04 Action by County Manager or Designee if all Public Facilities and Services Found to be Concurrent. If, during the concurrency evaluation, the County Manager or Designee determines that all public facilities and services are concurrent, or are concurrent with conditions, the County Manager or Designee Shall issue the Capacity Encumbrance Letter, which Shall advise the applicant that capacity is available for reservation or for issuance of a Building Permit. The effective date of encumbrance of capacity Shall be deemed to be the date of the Capacity Encumbrance Letter and the Capacity Encumbrance Letter Shall be valid for a period of one hundred twenty (120) days. If the applicant seeks a reservation during the one-hundred-twenty-day encumbrance period, capacity Shall be reserved by issuance of a Capacity Reservation Certificate in accordance with this Ordinance. If the applicant is not the property owner, a copy of the Capacity Encumbrance Letter Shall also be sent to the property owner. At a minimum, the Capacity Encumbrance Letter Shall include:

- (1) Property owner's name, address and telephone number;
- (2) Applicant's name, address and telephone number;
- (3) Parcel Alternate Key number and legal description;
- (4) Land use(s) and Zoning District(s) Permitted for the parcel or parcels under the future land use map;
- (5) Amount of capacity encumbered for each facility or service;
- (6) The date the Capacity Encumbrance Letter was issued; and
- (7) The date upon which the Capacity Encumbrance Letter expires, unless, prior to such expiration date, either (i) a Building Permit is issued, or (ii) the encumbered capacity is reserved by the issuance of a Capacity Reservation Certificate.

5.06.05 Use of encumbered capacity. If a Capacity Reservation Certificate is issued within the encumbrance period and the capacity encumbered is greater than the capacity reserved, the excess encumbered capacity Shall revert to the available capacity bank on the date the Capacity Reservation Certificate is issued. If a Building Permit is issued within the encumbrance period and the capacity encumbered is greater than the capacity committed to the Building Permit, the excess encumbered capacity Shall revert to the available capacity bank on the date the Building Permit is issued. When a valid Building Permit is issued for a project utilizing encumbered capacity, that capacity Shall become Permitted capacity and Shall not be recaptured unless the Building Permit lapses, is revoked, or expires without the issuance of a Certificate of Occupancy. When a valid Capacity Reservation Certificate is issued for a project utilizing encumbered capacity, that capacity Shall become reserved capacity and Shall not be recaptured unless (i) the Capacity Reservation Certificate lapses or expires without the issuance of a valid Building Permit, or (ii) a Building Permit is issued but lapses, is revoked, or expires without issuance of a Certificate of Occupancy.

5.06.06 Action by County Manager or Designee if one (1) or more Public Facilities Does Not Meet Concurrency. If the County Manager or Designee determines that one (1) or more public facilities or services

lacks sufficient available capacity to accommodate the applicant's request, he/she Shall issue a Capacity Encumbrance Denial Letter that Shall advise the applicant that capacity is not available for one (1) or more public facilities or services. The applicant Shall have sixty (60) days from the issuance of the letter to submit an application to:

- (i) Be placed on the capacity waiting list,
- (ii) Pursue the concurrency appeal/mitigation process outlined herein (Section 5.09.00), and/or
- (iii) Pursue the Proportionate Fair-Share Contribution (to remedy a Transportation facilities deficiency only) as outlined herein. At a minimum, the Capacity Encumbrance Denial Letter Shall include:
 - (1) Property owner's name, address and telephone number;
 - (2) Applicant's name, address and telephone number;
 - (3) Parcel Alternate Key number and legal description;
 - (4) Proposed use(s) by land use category and Zoning District, square feet and number of units;
 - (5) The public services or facilities determined not to be concurrent, including the level of the deficiency, if known;
 - (6) Status of any applicable waiting lists; and
 - (7) The options available to the applicant including, but not necessarily limited to submitting an application:
 - (i) To be placed on the capacity waiting list;
 - (ii) To enter the concurrency appeal/mitigation process pursuant to Section 5.09.00 of this Ordinance; and
 - (iii) To propose a Proportionate Fair-Share contribution (to remedy a Transportation facilities deficiency only).

5.06.07 Capacity waiting list.

1. Applicants who receive a Capacity Encumbrance Denial Letter due to insufficient capacity within an applicable service area may elect to be placed on the capacity waiting list. Placement on the capacity waiting list will serve to confirm a valid application for a Capacity Encumbrance Letter and will serve to ensure an equitable "first come-first served" processing of applications. Projects on the capacity waiting list Shall be offered capacity as it becomes available on a first come-first

served basis. Applicants will be notified by certified mail that capacity is available for allocation to their specific project and advised as to any additional information or documentation required to facilitate updating and final review of their application. If the available capacity is insufficient to accommodate the project as a whole, the County Manager or Designee Shall offer the available capacity to the applicant. The applicant may:

- A. Reserve the available capacity by payment of the required fee to obtain issuance of a Capacity Encumbrance Letter as respects the then available capacity, and either:
 - (i) Remain in place on the waiting list and continue waiting for additional capacity;
or
 - (ii) For Transportation facilities deficiencies only, utilize the Proportionate Fair-Share contribution for the additional capacity required for the specific parcel.
 - B. Reject the offer of capacity within thirty (30) days, in which event the available capacity Shall be offered to the next applicant on the waiting list. The applicant's failure to respond within the thirty-day timeframe Shall be considered a rejection of the offer of capacity.
2. Within thirty (30) days following receipt of an application of a written offer of capacity, the applicant Shall (i) supply such additional information or otherwise finalize the pending application as required by the County Manager or Designee, (ii) pay the required fee for issuance of the Capacity Encumbrance Letter, and (iii), if applicable, submit a request to pursue the Proportionate Fair-Share contribution for the provision of Transportation facilities only.
 3. Failure to accept the offered capacity by timely providing the updating information requested by the County Manager or Designee and paying the applicable capacity encumbrance fee Shall be deemed a withdrawal of the application and the applicant Shall be removed from the capacity waiting list.

5.06.08 Transfer of Encumbered Capacity. Encumbered capacity Shall not be transferred to property not included in the legal description provided by the applicant in the application for the Capacity Encumbrance Letter. However, if during the encumbrance period the applicant submits an application for a Building Permit or an application for a Capacity Reservation Certificate, the applicant may, as a part of such application, designate the amount of capacity allocated to portions of the property, such as Lots, blocks, parcels or tracts, included in the application. Moreover, a Capacity Encumbrance Letter Shall be deemed in all respects appurtenant to the real property described therein and to which it applies. A Capacity Encumbrance Letter may not be sold, assigned, transferred or conveyed separate or apart from the real property to which it relates and which is described in the Capacity Encumbrance Letter.

Notwithstanding the preceding sentence, a Capacity Encumbrance Letter, and all rights and obligations appertaining thereto, may be collaterally assigned as security for a loan encumbering the real property described in, and which is the subject of, the Capacity Encumbrance Letter. The collateral assignment Shall vest in the collateral assignee as security interest in the Capacity Encumbrance Letter, but the collateral assignee Shall not

be deemed to have acquired title to the Capacity Encumbrance Letter until and unless the collateral assignee acquires fee title in and to the property described in the Capacity Encumbrance Letter and the County receives written notice from the collateral assignee that it has acquired such fee simple interest, together with copies of such legal documents evidencing the acquisition of such fee title by the collateral assignee, at which time, the County Manager or Designee Shall reissue the Capacity Encumbrance Letter to the collateral assignee as fee simple title holder of the property. However, in no event Shall such reissuance to a collateral assignee extend the original encumbrance period, and the reissued Capacity Encumbrance Letter Shall expire on the same date as the original letter would have expired. The County Manager or Designee Shall not be required to furnish any written notices to the collateral assignee; specifically, but not by way of limitation, the County Manager or Designee Shall not be required to notify the collateral assignee of the expiration of a Capacity Encumbrance Letter, notwithstanding that the effect of the expiration of the one-hundred-twenty-day encumbrance period would be termination of the Capacity Encumbrance Letter and return of the capacity to the available capacity bank.

5.06.09 Expiration of Capacity Encumbrance Letter. If the Capacity Encumbrance Letter expires prior to issuance of either a Capacity Reservation Certificate in accordance with this Ordinance or a Building Permit using the encumbered capacity, the capacity Shall revert to the available capacity bank as described in this Ordinance. A Capacity Encumbrance Letter Shall be valid for a period of one hundred twenty (120) days following the date of the letter (the "encumbrance period").
(Ord. No. 2009-39, § 2, 7-21-09)

5.07.00 Capacity Reservation Certificate.

5.07.01 Introduction. The purpose of the capacity reservation process is to allow property owners and developers to ensure that capacity is available when it is needed for a particular project and to provide a higher degree of certainty during the construction financing process.

5.07.02 Application for Capacity Reservation Certificate. An application for a Capacity Reservation Certificate Shall be submitted to the County Manager or Designee and Shall be accompanied by a valid Capacity Encumbrance Letter and the capacity reservation fee. The capacity reservation fee Shall be established by resolution adopted by the Board of County Commissioners from time to time. The application Shall include:

- (1) Property owner's name, address and telephone number;
- (2) Applicant's name, address and telephone number;
- (3) Parcel Alternate Key number and legal description;
- (4) Proposed use(s) by land use category and Zoning District, square feet and number of units;
- (5) Phasing information by proposed uses, square feet and number of units, if applicable;
- (6) Existing use of property;
- (7) Acreage of property;

- (8) Name of DRI, Florida Quality Development, PUD, subdivision, office Park, if applicable;
- (9) Site design information, if applicable;
- (10) Written consent of the property owner, if different from applicant;
- (11) A copy of a valid Capacity Encumbrance Letter; and
- (12) Allocation of capacity, by legal description, if applicable.

5.07.03 Issuance of Capacity Reservation Certificate. Within twenty (20) calendar days of the receipt of a complete application for a Capacity Reservation Certificate, accompanied by a valid Capacity Encumbrance Letter and the required applicable fee, the County Manager or Designee Shall issue a Capacity Reservation Certificate. The Capacity Reservation Certificate Shall describe the amount and length of time the capacity Shall be reserved. Upon issuance of the Capacity Reservation Certificate, the County Manager or Designee Shall reserve the requested capacity.

5.07.04 Reservation Time Period.

- (1) Capacity Shall be reserved for a specified time frame. A Capacity Reservation Certificate Shall allow the applicant to reserve capacity for up to four (4) years based on the standards and criteria for concurrency evaluations identified in this Ordinance, unless otherwise designated by statutes controlling Developments of Regional Impact. In these cases, the reservation period will be regulated through the approved Development Order. The total capacity requested must be reserved for the full duration of the reservation. The Capacity Reservation Certificate, for the purposes of Developments of Regional Impact, Shall be consistent with the time periods outlined in the Development Order adopted by the Lake County Board of County Commissioners.
- (2) Expiration. Upon expiration of the time frame set forth in the Capacity Reservation Certificate, if a Final Development Order was not obtained within the reservation period, the County Manager or Designee Shall transfer the reserved capacity to the available capacity bank. If the time frame set forth in the Capacity Reservation Certificate expires, the applicant may obtain an extension in one (1) of three (3) ways:
 - (a) If a Final Development Order was issued, but the project has not completed build-out, the applicant can request from the County Manager or Designee, an extension, not to exceed three (3) additional years, or
 - (b) If the applicant can demonstrate that the Development is proceeding in good faith, the County Manager or Designee may grant an extension of up to three (3) years. Failure of the Development to proceed in good faith during any extension of the reservation period Shall be grounds for the County Manager or Designee to terminate the extension after thirty (30) days' written notice of intent to terminate has been given to the applicant, and providing the applicant is given an opportunity to be heard on the issue of whether the

Development has proceeded in good faith, or

- (c) If the County delays progress on the applicant's project through no fault of the applicant, notwithstanding the existence of a capacity waiting list, the applicant may request an extension of the Capacity Reservation Certificate, which will be granted by the County Manager or Designee.

5.07.05 Capacity Reservation Fees for Capacity Reservation Certificates.

- (1) A capacity reservation fee Shall be required to be paid as a condition of capacity reservation. The capacity reservation fee for residential subdivisions Shall be established by the Lake County Board of County Commissioners. In all other cases, the capacity reservation fee Shall be an amount equivalent to the then applicable Impact Fees calculated on the basis of the total capacity reserved:
 - (a) Less any outstanding Impact Fee credits applicable to the property; and
 - (b) Less any Proportionate Fair-Share contributions for the provision of Transportation facilities only.
- (2) However, in the event the Capacity Reservation Certificate is not used and the applicant would otherwise be entitled to a refund, the appropriate Impact Fee credit Shall be recredited to the applicant. The capacity reservation fee may not be prorated over the four-year term of the Capacity Reservation Certificate. No Capacity Reservation Certificate Shall be issued until and unless the required capacity reservation fee is paid in full.
- (3) Failure to pay the capacity reservation fee within one hundred twenty (120) days from the date of issuance of the Capacity Encumbrance Letter so that the Capacity Reservation Certificate may be timely issued Shall be deemed a withdrawal of the application for a Capacity Reservation Certificate, and the County Manager or Designee Shall return the capacity to the available capacity bank.
- (4) The applicant Shall be required to pay all Impact Fees due at the time of, and as a condition of, receiving any Building Permit or Final Development Order where a Building Permit will not be issued, pursuant to the Impact Fee rate schedule in effect at the time a Building Permit is issued. However, the capacity reservation fee paid by the applicant Shall be credited toward the Impact Fees due at time of issuance of the Building Permit on a dollar-for-dollar basis.
- (5) The capacity reservation fees collected pursuant to this Section Shall be accounted for separately from other revenue of the County. They Shall be kept in the appropriate Impact Fee fund, but they Shall be separately earmarked from Impact Fees.
- (6) Refund of unused reservation fee. Reservation fees Shall be refundable as set forth in this paragraph. Upon application by the owner of property subject to a Capacity Reservation Certificate, the County Manager or Designee Shall refund ninety (90) percent of the capacity

reservation fee not applied as credit against Impact Fees. Refund Shall be granted only if and to the extent that capacity reservation fees are subsequently received by the County from third parties in such amounts as are required to effect any requested refund. Those applicants awaiting refunds Shall be placed on a list, and refunds Shall be made to applicants in the order in which their names appear on such list, provided that funds are available within the specified Impact Fee District to effect such refunds as specified in the preceding sentence.

5.07.06 Transfer of Certificates. A Capacity Reservation Certificate continues to be valid according to its specific terms and conditions only for the property specifically identified and described therein. Capacity may be reassigned or allocated within the boundaries of the property described in the Capacity Reservation Certificate, but such reassignment or reallocation Shall be accomplished only by the County Manager or Designee following written application to the County Manager or Designee. A Capacity Reservation Certificate Shall be deemed in all respects appurtenant to the real property described therein and to which it applies. A Capacity Reservation Certificate may not be sold, assigned, transferred or conveyed separate or apart from the real property to which it relates and which is described in the Capacity Reservation Certificate. Notwithstanding the preceding sentence, a Capacity Reservation Certificate, and all rights and obligations appertaining thereto, may be collaterally assigned as security for a loan encumbering the real property described in, and which is the subject of, the Capacity Reservation Certificate, provided that, as a precondition to the effectiveness of such collateral assignment, notice must be made to the County Manager or Designee, utilizing a form prescribed by the County Manager or Designee for such purpose, requesting return receipt from the County Manager or Designee of such collateral assignment regarding all rights, duties and obligations under the Capacity Reservation Certificate. The collateral assignment Shall vest in the collateral assignee as security interest in the Capacity Reservation Certificate, but the collateral assignee Shall not be deemed to have acquired title to the Capacity Reservation Certificate until and unless the collateral assignee acquires fee title in and to the property described in the Capacity Reservation Certificate and the County receives written notice from the collateral assignee that it has acquired such fee simple interest, together with copies of such legal documents evidencing the acquisition of such fee title by the collateral assignee, at which time the County Manager or Designee Shall reissue the Capacity Reservation Certificate to the collateral assignee as fee simple title holder of the property. Once the County Manager or Designee gives written authorization for the collateral assignment of a Capacity Reservation Certificate, no refunds of capacity reservation fees with respect to such Capacity Reservation Certificate Shall be paid to the holder thereof without the prior written consent of the collateral assignee. The County Manager or Designee Shall not be required to furnish any written notices to the collateral assignee except with respect to an application for refund of capacity reservation fees by the holder of the Capacity Reservation Certificate. Specifically, but not by way of limitation, the County Manager or Designee Shall not be required to notify the collateral assignee of the expiration of a Capacity Reservation Certificate or nonpayment of any installment of a capacity reservation fee, notwithstanding that the effect of failure to pay such installment would be termination of the Capacity Reservation Certificate and return of the capacity to the available capacity bank. (Ord. No. 2009-39, § 2, 7-21-09)

5.08.00 Administrative Provisions.

5.08.01 Capacity Banks. With respect to each public service or facility (i.e., Transportation, wastewater, potable water, Solid Waste, stormwater and Parks), there are hereby established capacity banks, to be utilized by the County Manager or Designee in the implementation of this Ordinance including, but not limited to, the available capacity bank, the encumbered capacity bank, and the reserved capacity bank. Only the County

Manager or Designee Shall be authorized to transfer capacity among banks. Capacity refers to the ability or availability of a Public Facility or service to accommodate users, expressed in an appropriate unit of measure, such as gallons per day or average daily trip ends. Available capacity represents a specific amount of capacity that may be encumbered or reserved by future users of a public service or facility. Capacity is withdrawn from the available capacity bank and deposited into an encumbered capacity bank when a Capacity Encumbrance Letter is issued, and then into a reserved capacity bank when (i) a Capacity Reservation Certificate is issued, (ii) a Vested Rights determination has become final or (iii) a Building Permit is issued. Each capacity bank or available, encumbered and reserved capacity will experience deposits and withdrawals on a regular basis.

5.08.02 Annual Capacity Availability Reporting and Monitoring. By October first of each year, the County Manager or Designee Shall complete an annual capacity availability report. This report Shall evaluate Development Permitting activity for the previous year and determine existing conditions with regard to available capacity for the following public facilities: Roads; wastewater; potable water; Solid Waste; stormwater; and Parks. The report Shall specify the capacity used for the previous period and Shall evaluate and project the capacity available for the five-year capital improvements element (CIE) and capital improvements program (CIP) for each Public Facility based on adopted LOS standards. Forecasts Shall be based on the most recently updated schedule of capital improvements, growth projections, Public Facility inventories and revenue projections. The annual capacity availability report Shall contain, at a minimum:

- (1) A summary of Development activity (to include preliminary and final local Development Order, vested Development and exempted Development).
- (2) The total amount of existing capacity of the above specified public services and facilities (i.e., Roads, mass transit, wastewater, potable water, Solid Waste, stormwater and Parks), and, with respect thereto, the amount of such existing capacity which constitutes:
 - (a) Available capacity;
 - (b) Encumbered capacity;
 - (c) Reserved capacity.
- (3) Recommendation of amendments to the CIE, the CIP and the annual budget.

The findings of the annual capacity availability report Shall be considered in preparing the annual update to the capital improvement element and the capital improvements program, any proposed amendments to the capital improvement element and capital improvements program, and Shall be used in reviewing Development Orders during the next year.

Based upon the analysis included in the annual capacity availability report, the County Manager or Designee Shall recommend to the Local Planning Agency and the Board of County Commissioners any necessary amendments to the capital improvement element and any proposed amendments to the comprehensive policy plan.

5.08.03 Review Process. The County Manager or Designee Shall serve as the clearing house for all

aspects of the concurrency management System. Applications for capacity information letters, Capacity Encumbrance Letters and Capacity Reservation Certificates Shall be submitted to the County Manager or Designee. The County Manager or Designee Shall issue the requested letter or Certificate or Shall deny the request, as appropriate. The County Manager or Designee Shall maintain the official records for the County regarding capacity information letters, Capacity Encumbrance Letters and Capacity Reservation Certificates. The County Manager or Designee Shall coordinate with the affected service delivery departments concerning the capacity analysis for each concurrency determination.
(Ord. No. 2009-39, § 2, 7-21-09)

5.09.00. Concurrency Appeal/Mitigation Process (Non-Transportation).

5.09.01 Scope and Purpose. The purpose of this Section is as follows:

- (1) To provide to the applicant whose application for a Capacity Encumbrance Letter for other than Transportation impacts has been denied a procedure for the appeal of that denial, or for the appeal of any decision made by the County Manager in the administration of the concurrency management System, and/or
- (2) To provide a procedure for other than Transportation impacts by which an applicant who proposes to meet the requisite Level of Service standards may propose a mitigation plan, and for that mitigation plan to be reviewed and considered by the County and, if approved (whether as submitted or as subsequently modified), for the issuance of a Capacity Encumbrance Letter (which Capacity Encumbrance Letter of concurrency Shall contain conditions for its issuance).

5.09.02 Submittal of Appeal/Mitigation Plan (Other Than Transportation).

- (1) Application. An application for an appeal or an applicant's mitigation plan proposal Shall be submitted to the County Manager and Shall include the following:
 - (a) Name, address, and phone number of owner(s), developer and agent;
 - (b) Property location, including parcel identification numbers;
 - (c) Legal description and survey of property;
 - (d) Project description, including type, intensity and amount of Development;
 - (e) Phasing schedule, if applicable;
 - (f) Description of request (appeal, mitigation plan);
 - (g) Copy of application for Capacity Encumbrance Letter;
 - (h) Application fee; and

- (i) Copy of Capacity Encumbrance Denial Letter.
- (2) Appeal. No appeal application Shall be deemed accepted unless it is complete. A fee for filing an appeal application Shall be established by resolution of the Board of County Commissioners.
 - (3) Mitigation. If the applicant is proposing a mitigation plan, an application which incorporates the mitigation plan and which conforms to the submittal requirements of this article in regard to a mitigation plan Shall be submitted to the County Manager or Designee. No application Shall be deemed accepted unless it is complete. A fee for filing a mitigation plan Shall be established by resolution of the Board of County Commissioners.
 - (a) The application should include a conceptual mitigation strategy explaining how the proposed mitigation strategy significantly benefits the impacted System.
 - (b) The County Manager or Designee will review the conceptual mitigation strategy and will make a recommendation to the Board of County Commissioners for direction on whether to proceed with the mitigation.
 - (c) Upon approval of the conceptual mitigation strategy by the Board of County Commissioners, the Board will direct the County Manager or Designee to negotiate a developer's agreement addressing the terms of the mitigation plan between the applicant and the County.
 - (d) The developer's agreement must be approved by the Board of County Commissioners. The developer's agreement and the conceptual mitigation strategy may be approved at the same meeting of the Board of County Commissioners.
 - (e) Upon approval of the developer's agreement, a Capacity Encumbrance Letter will be issued pursuant to the terms of the agreement. Any agreement which applies to school capacity must be approved by the Lake County School Board.
 - (f) In extraordinary circumstances where substantial contributions have been made, the time frame for the initial reservation of capacity Shall not exceed ten (10) years; provided, however, that prior to the expiration of the initial reservation period, the applicant may request an amendment to the developer's agreement to extend the reservation period, and may be entitled to one (1) extension to a term determined at the time the agreement is negotiated, upon showing that the Development is proceeding in good faith during the initial reservation period. The length of the reservation period Shall be kept as short as possible and Shall be determined during the negotiation process based on then-current data.
 - (g) Failure of the Development to continue in good faith during any extension of the reservation period Shall be grounds for the Board of County Commissioners to terminate the reservation after giving the applicant not less than thirty (30) days written notice of intent to terminate the reservation and providing the applicant is given an opportunity to

be heard on the issue of whether the Development has proceeded in good faith during the extended reservation period.

5.09.03 Appeals to Board of Adjustment.

- (1) Any appeal filed pursuant to this Section will be heard by the Board of Adjustment. Such request Shall include a summary of the decision being appealed and the basis for the appeal.
- (2) Any decision of the Board of Adjustment Shall be final County action on the appeal.
 - (a) The Board of Adjustment may deny or approve (with or without conditions) the application, or may return the application to the County Manager or Designee for further consideration with or without comments or directions.
 - (b) The Board of Adjustment Shall review the application on the same basis and in accordance with the procedures of this Ordinance. An approval issued by the Board of Adjustment Shall have the same effect as an approval by the County Manager or Designee, and Shall accordingly enable the County Manager or Designee to issue a Capacity Encumbrance Letter which may contain such conditions as the Board of Adjustment may require.

(Ord. No. 2009-39, § 2, 7-21-09)

5.10.00 Proportionate Fair-Share Program (Transportation).

5.10.01 Purpose and Intent. The purpose of this Section is to establish a method whereby the impacts of Development on Transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, to be known as the Proportionate Fair-Share Program, as required by and in a manner consistent with F.S. § 163.3180(16). This Section will also provide methods and procedures for the County and the fourteen (14) municipalities to coordinate the Proportionate Fair-Share Program.

5.10.02 Applicability. The concurrency appeal/mitigation procedures described in this Section Shall apply when an application has been denied for Transportation concurrency deficiencies, and the applicant has proposed to use the Proportionate Fair-Share contribution to mitigate the project's actual impacts.

5.10.03 General Requirements.

- A. If an applicant receives a Capacity Encumbrance Denial Letter for Transportation facilities deficiency reasons, he or she may propose to use the Proportionate Fair-Share contribution to satisfy Transportation concurrency. In such case, that application Shall be reviewed and considered by the County. The applicant's Proportionate Fair-Share proposal may be approved (whether as submitted or as subsequently modified) for the issuance of a Capacity Encumbrance Letter (which Capacity Encumbrance Letter of concurrency may contain conditions for its issuance), provided that the proposed Development is consistent with the Comprehensive Plan and applicable Land Development Regulations and the existing zoning in place and one (1) of the following exists:

1. The five-year schedule of capital improvements in the Capital Improvements Element (CIE) includes a Transportation improvement(s) in years four (4) or five (5) that, upon completion, will provide the capacity necessary to meet concurrency at that time; or
2. A resolution or Ordinance is adopted which specifies a commitment on the part of the County to add an improvement or improvements to the schedule of capital improvements that, upon completion, will provide the capacity necessary to satisfy concurrency, but is not contained in the five-year schedule of capital improvements in the Capital Improvements Element (CIE). The improvement or improvements Shall be added to the schedule of capital improvements no later than the next regularly scheduled update. To qualify for consideration under this Section, the proposed improvement must be reviewed by the County Manager or Designee and must be determined to be financially feasible pursuant to F.S. § 163.3180(16)(b)1., consistent with the Comprehensive Plan of each jurisdiction within which any portion of the proposed improvement would lie, and in compliance with the provisions of this Section. If a Transportation facility proposed for the Proportionate Fair-Share Program is under the jurisdiction of another entity, such as FDOT, the proposed improvement Shall be included in the five-year Work Program of that jurisdiction or, when the improvement is not in the Work Program, through resolution or Ordinance, there Shall be adoption of a commitment to add the improvement to the schedule of capital improvements in the CIE or long-term schedule of capital improvements for an adopted long-term concurrency management System (CMS) no later than the next regularly scheduled update; or
3. The County enters into a binding Proportionate Fair-Share agreement with the applicant, if the funds allocated for the schedule of capital improvements in the CIE are insufficient to fund construction of a Transportation improvement that will provide capacity to satisfy concurrency. The agreement may authorize construction of the Development if the Proportionate Fair-Share amount in such agreement is determined to be sufficient to pay for improvements which will, in the opinion of the governing body of each governmental entity or entities maintaining the Transportation facilities, significantly benefit the impacted Transportation System. The improvement(s) funded by the Proportionate Fair-Share component must, for each affected local jurisdiction, be adopted into the capital improvements schedule of the Comprehensive Plan or the long-term schedule of capital improvements for an adopted long-term concurrency management System at the next annual capital improvements element update.

5.10.04 Application Process.

- A. Upon receipt of a Capacity Encumbrance Denial Letter for Transportation facilities deficiency reasons, the applicant Shall be notified in writing of the opportunity to satisfy Transportation concurrency through the Proportionate Fair-Share Program pursuant to the requirements of this Section.
- B. Prior to submitting an application for a Proportionate Fair-Share agreement, a pre-application

meeting Shall be held with all affected jurisdictions to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. The appropriate parties for review of a proposed Proportionate Fair-Share agreement include the jurisdiction maintaining the Transportation facility that is subject to the agreement, if other than Lake County. If the impacted facility is a State facility, then FDOT will be invited to participate in the pre-application meeting.

- C. The County Manager or Designee Shall review the application and certify that the application is sufficient and complete within ten (10) business days of receipt. If an application is determined to be insufficient, incomplete or inconsistent with the general requirements of the Proportionate Fair-Share Program, then the applicant Shall be notified in writing of the reasons for such deficiencies within ten (10) business days of receipt of the application. If such deficiencies are not remedied by the applicant within thirty (30) calendar days from the date of the written notification then the application will be deemed abandoned. The County Manager or Designee may, in his or her discretion, grant an extension of time not to exceed sixty (60) calendar days to cure such deficiencies, provided that the applicant has shown good cause for requesting the extension and has taken reasonable steps to remedy the deficiencies.
- D. Pursuant to F.S. § 163.3180(16)(e), proposed Proportionate Fair-Share mitigation for Development impacts to facilities on the Strategic Intermodal System (SIS) requires the approval of FDOT. The applicant Shall submit evidence of an agreement between the applicant and FDOT for inclusion in the Proportionate Fair-Share agreement. The County also may need to enter into an agreement with FDOT as appropriate.
- E. When an application is deemed sufficient, complete, and eligible, the applicant Shall be advised in writing and a proposed Proportionate Fair-Share obligation and binding agreement will be prepared by the County. The agreement will be delivered to the appropriate parties for review no later than sixty (60) calendar days from the date of notification of a sufficient application and no fewer than fourteen (14) calendar days prior to the Board of County Commissioners meeting when the agreement will be considered.
- F. The County Manager or Designee Shall notify the applicant regarding the date of the Board of County Commissioners meeting when the agreement will be considered for final approval. No Proportionate Fair-Share agreement will be effective until approved by the Board of County Commissioners.

5.10.05 Determining Proportionate Fair-Share Obligation.

- A. Proportionate Fair-Share mitigation for concurrency impacts may include, without limitation, separately or collectively: the addition of Transportation capacity through several means such as the physical widening and/or reconstruction of a Roadway to add capacity; the addition of Transportation capacity through creation of new reliever Roadways; monetary contributions; new network additions; contributing to new transit capital facilities (e.g., bus rapid transit corridor); contributing to the expansion of bus fleets to increase service frequency; other contributions to mass transit System expenses; or any other means determined by the County Manager or Designee to add Transportation capacity sufficient to mitigate impacts.

- B. A Development Shall not be required to pay more than its Proportionate Fair-Share. The fair market value of the Proportionate Fair-Share mitigation for the impacted facilities Shall not differ regardless of the method of mitigation.
- C. The methodology used to calculate an applicant's Proportionate Fair-Share obligation Shall be as provided for in F.S. § 163.3180(12), as follows:

$$\text{Proportionate Fair-Share} = \Sigma [[(\text{Development Trips}_i) / (\text{SV Increase}_i)] \times \text{Cost}_i]$$

Where:

Development Trips_i = Those trips from the stage or phase of Development under review that are assigned to Roadway segment "i" and have triggered a deficiency per the CMS; only those trips that trigger a concurrency deficiency will be included in the Proportionate Fair-Share calculation;

SV Increase_i = Service volume increase contributed by the eligible improvement to Roadway segment "i"

Cost_i = Adjusted cost of the improvement to segment "i". Cost Shall include all improvements and associated costs, such as design, Right-of-Way acquisition, planning, engineering, inspection, and physical Development costs directly associated with construction at the anticipated cost in the year it will be incurred.

For the purpose of determining Proportionate Fair-Share obligations, the County Shall determine improvement costs based upon the actual cost of the improvement as obtained from cost estimates contained in the CIE, the Lake County Transportation Construction Program or the FDOT Work Program. Where such information is not available, improvement cost Shall be determined by the following method: an analysis by the jurisdiction maintaining the facility of costs by cross Section type that incorporates data from recent projects and is updated annually and approved by the jurisdiction. In order to accommodate increases in construction material costs, project costs Shall be adjusted as necessary.

- D. If the County has accepted an improvement project proposed by the applicant, then the value of the improvement Shall be determined using one (1) of the methods provided in this Section. Any improvement project proposed to meet the applicant's Fair Share obligation must meet design standards of the jurisdiction within which the majority of the planned improvements would be located for locally maintained Roadways and those of the FDOT for the State and Federal highway System.
- E. If the County has accepted Right-of-Way dedication for the Proportionate Fair-Share payment, credit for the dedication of the non-site related Right-of-Way Shall be valued on the date of the dedication at one hundred twenty (120) percent of the most recent assessed value by the Lake County Property Appraiser or, at the option of the applicant, by fair market value established by an independent appraisal approved by the County and at no expense to the County. The applicant

Shall supply a survey and legal description of the land and a Certificate of title or title search of the land to the County at no expense to the County. If the estimated value of the Right-of-Way dedication proposed by the applicant is less than the County estimated total Proportionate Fair-Share obligation for that Development, then the applicant Shall pay the difference. Prior to purchase or acquisition of any real estate or acceptance of donations of real estate intended to be used for the Proportionate Fair-Share, public or private partners should contact FDOT for essential information about compliance with Federal law and regulations.

5.10.06 Impact Fee Credit for Proportionate Share Mitigation.

- A. Proportionate Fair-Share Contributions Shall be applied as a credit against Impact Fees to the extent that all or a portion of the Proportionate Fair-Share mitigation is used to address the same capital infrastructure improvements contemplated by the County's Impact Fee Ordinance. Applicants would be eligible for Impact Fee credit for that portion of their Proportionate Fair-Share payment that applies to a segment for which the Transportation Impact Fee is also being applied.
- B. Impact Fee credits for the Proportionate Fair-Share Contribution will be determined when the Proportionate Fair-Share agreement is executed. Impact Fees owed by the applicant will be reduced per the Proportionate Fair-Share agreement. If the applicant's Proportionate Fair-Share obligation is less than the Development's anticipated Transportation Impact Fee for the specific stage or phase of Development under review, then the applicant or its successor must pay the remaining Impact Fee amount to the County and any other jurisdictions entitled to collect Impact Fees, pursuant to the requirements of the applicable Impact Fee Ordinances.
- C. The Proportionate Fair-Share obligation is intended to mitigate the Transportation impacts of a proposed Development at a specific location. As a result, any Transportation Impact Fee credit based upon Proportionate Fair-Share Contributions for a proposed Development cannot be transferred to any other location.

5.10.07 Proportionate Fair-Share Agreements.

- A. If an applicant elects to make a Proportionate Fair-Share Contribution to satisfy Transportation concurrency, a binding agreement between the applicant and the County, and other affected jurisdictions as necessary, Shall be executed in accordance with the requirements of this Chapter.
- B. Upon approval of the developer's agreement, a Capacity Reservation Certificate will be issued pursuant to the terms of the agreement. The time frame for the initial reservation of capacity Shall not exceed ten (10) years; provided, however, that prior to the expiration of the initial reservation period, the applicant may request an amendment to the developer's agreement to extend the reservation period, and Shall be entitled to one (1) extension of up to an additional ten (10) years, upon showing that the Development is proceeding in good faith during the initial reservation period. Failure of the Development to continue in good faith during any extension of the reservation period Shall be grounds for the Board of County Commissioners to terminate the reservation after giving the applicant not less than thirty (30) days written notice of intent to

terminate the reservation and providing the applicant is given an opportunity to be heard on the issue of whether the Development has proceeded in good faith during the extended reservation period.

- C. If the applicant agrees to cash payment of the Proportionate Fair-Share Contribution, payment is due in full prior to issuance of the Capacity Reservation Certificate.
- D. If the applicant agrees to construct Transportation improvements as authorized by the Agreement, all improvement must be completed prior to issuance of the Capacity Reservation Certificate, or as otherwise established in the Agreement. The Agreement Shall be accompanied by a security instrument sufficient to ensure the completion of all required improvements. Any security instrument, in a form acceptable to the County, Shall be for at least one hundred fifty (150) percent of the estimated cost of the improvements to be completed by the developer. The security instrument Shall be irrevocable and Shall remain in effect until the developer fully completes the required improvements.
- E. If an applicant agrees to dedicate Right-of-Way, dedication of necessary Right-of-Way for facility improvements pursuant to a Proportionate Fair-Share agreement must be completed prior to issuance of the Capacity Reservation Certificate.
- F. Any requested change to a Development Order may be subject to additional Proportionate Fair-Share Contributions to the extent the change would generate additional impacts that would require mitigation.
- G. Applicants may submit a request in writing to withdraw from the Proportionate Fair-Share agreement at any time prior to the execution of the agreement. The application fee will be non-refundable.
- H. The County may enter into Proportionate Fair-Share agreements with multiple applicants for selected corridor improvements to a shared Transportation facility.

5.10.08 Appropriation of Fair Share Revenues.

- A. Proportionate Fair-Share revenues Shall be placed in the appropriate project account of the CIE, or as otherwise established in the terms of the Proportionate Fair-Share agreement. At the discretion of the County, Proportionate Fair-Share revenues may be used for operational improvements prior to construction of the capacity project from which the Proportionate Fair-Share revenues were derived.
- B. In the event a scheduled facility improvement is removed from the CIE, the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor or sector that would mitigate the impacts of Development pursuant to the requirements of this Chapter.
- C. Where an impacted facility has been designated as a regionally significant Transportation facility

on the Lake-Sumter MPO Regionally Significant Corridors Map, then the County may coordinate with other impacted jurisdictions and agencies to apply Proportionate Fair-Share Contributions to seek funding for improving the impacted regional facility under the FDOT Transportation Regional Incentive Program (TRIP). Proportionate Fair-Share revenues may be used as the fifty (50) percent local match for funding under the FDOT TRIP. Such coordination Shall be ratified by the County through an interlocal agreement that establishes a procedure for earmarking of the developer contributions for this purpose.

- D. When an applicant constructs a Transportation facility that exceeds the applicant's Proportionate Fair-Share obligation calculated under Section 5.10.05, the County Shall reimburse the applicant for the excess contribution using one (1) or more of the following methods:
1. An Impact Fee credit account may be established for the applicant in the amount of the excess contribution, a portion or all of which may be assigned to subsequent owners of the land to be developed, under terms and conditions acceptable to the County, but must run with the land and may not be assigned to the developer of any other parcel of property.
 2. An account may be established for the applicant for the purpose of reimbursing excess contributions with Proportionate Fair-Share payments from future applicants on the facility.
 3. The County may compensate the applicant for the excess contribution through payment or some combination of means acceptable to the County and the applicant.

(Ord. No. 2009-39, § 2, 7-21-09)