

ORDINANCE NO. 2006-_____

AN ORDINANCE PERTAINING TO THE ORANGE COUNTY CONCURRENCY MANAGEMENT SYSTEM; INCORPORATING STATUTORY AMENDMENTS; DELETING PAY-AS-YOU-GO PROVISIONS; CREATING A PROCESS FOR PROPORTIONATE FAIR-SHARE CONTRIBUTION AND MITIGATION FOR TRANSPORTATION CONCURRENCY; CREATING THE CONCURRENCY REVIEW COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY:

Section 1. General. The Orange County Code, Article XII, Concurrency Management, is hereby amended in part by amending sections 30-501 through 30-504, 30-520, 30-550 through 30-555, 30-562, 30-571 through 30-573, 30-581 and 30-582, 30-585 and 30-586, 30-591, 30-593 through 30-597, 30-611 through 30-613, and 30-620 through 30-624, creating section 30-505, and deleting sections 30-625 through 30-627, and 30-635 and with amendments being indicated below in Section 2 ~~through Section _____~~ with the new language being underlined and the deleted language being struck through.

Section 2. Amendments. Orange County Code, Article XII, Concurrency Management, is hereby amended to read as follows:

ARTICLE XII. CONCURRENCY MANAGEMENT

DIVISION 1. GENERALLY

Sec. 30-500. Purpose; short title.

The purpose of this article is to implement the concurrency provisions of the county comprehensive policy plan (hereinafter referred to as the "comprehensive policy plan" or the "CPP"), as mandated by F.S. ch. 163, rule 9J.-5.0055, F.A.C. No development order or permit shall be issued except in accordance with this article. This article may be cited as the concurrency management ordinance.

Sec. 30-501. Definitions.

Adverse trip: A vehicle trip on a segment of a failing transportation facility.

Annual capacity availability report: A report prepared on or by October first of each year specifying, among other things, (i) capacity used for the preceding year, (ii) projected capacity demand for the next succeeding year, (iii) available capacity for each public facility and service, (iv) projected capacity for each public facility and service, including new capacity created through the capital improvements program, and (v) recommendations.

Appeal: A request for a review of an administrative interpretation of any provision of this article, or a review of a decision made by any administrative official or board or commission.

Applicant: A person who files an application under this article.

Application: Any document submitted by an applicant under this article including, as the case may be, any of the following:

(1) An application by the applicant to the concurrency management official seeking issuance for his project of a capacity encumbrance letter;

(2) The application or procedure by which the applicant under the provisions of division 8 seeks to appeal the denial by the

concurrency management official of his application for a capacity encumbrance letter;

(3) An application to be placed on a waiting list for capacity as it becomes available;

(4) An application for a proportionate fair share agreement; or

(5) An application or proposal by the applicant for approval of a mitigation plan for his project so that, if approved, a capacity encumbrance letter can be issued.

Area of influence: The geographical transportation network of roadway segments on which the proposed project is tested.

Building: Any structure that encloses or covers a space used for sheltering any occupancy.

Building permit: For purposes of this article, a permit which authorizes (i) the construction of a new building, or (ii) the expansion of a floor area or the increase in the number of dwelling units contained in an existing building, or (iii) change in use, shall qualify as a building permit.

Capacity: Refers to the availability of a public service or facility to accommodate users, expressed in an appropriate unit of measure, such as gallons per day or average daily trip ends.

Capacity, available: Capacity which can be encumbered or reserved to future users for a specific public facility or service.

Capacity, permitted: Capacity, which has been removed from the reserved or encumbered capacity bank and has been committed to a particular property through issuance of a building permit.

Capacity, encumbered: Capacity which has been removed from the available capacity bank through the issuance of a capacity encumbrance letter.

Capacity encumbrance letter: A letter issued by the county based upon a determination by the CMO that adequate capacity for each public service and facility is available and has been

encumbered for one hundred twenty (120) days to serve the densities and intensities of development designated on such capacity encumbrance letter.

Capacity information letter: An informational and nonbinding letter for a specific development or property which indicates available capacity for each public facility based upon adopted LOS standards at the time the letter is issued but which does not (i) guarantee capacity in the future, nor (ii) encumber, commit or reserve capacity for any period of time.

Capacity reservation certificate: A certificate issued by the county pursuant to the terms and conditions of this article, which constitutes proof that adequate capacity for each required public facility or service exists and has been reserved to serve the densities and intensities of development within the time period designated on such certificate.

Capacity reservation fee: The fee as established by resolution of the board of county commissioners that is required to be paid to the county as a condition of capacity reservation in the amount equivalent to the then applicable transportation impact fees calculated on the basis of the capacity reserved for the term of the capacity reservation certificate:

(1) Less any outstanding impact fee credits applicable to the property; and

(2) For a project which has received a certificate of affordability from the county's community development and housing assistance department, less any transportation impact fees due for the affordable housing units within the project, provided that, for purposes of this subsection only, the calculation of the amount of such transportation impact fees shall not be reduced by the discounts authorized by Ordinance No. 92-10.

Capacity, reserved: Capacity which has been removed from the available or encumbered capacity bank and allocated to a particular property through issuance of a capacity reservation certificate reserving capacity for a period of time specified in such capacity reservation certificate.

Capacity, used: Capacity which is being used by existing residents and development.

Capacity, vested: Capacity which has been withdrawn from the available capacity bank through issuance of a trip-based vesting determination or phasing agreement.

Capacity waiting list: A chronological listing of applicants that have been denied a capacity encumbrance letter and have applied to be put on the capacity waiting list. Applicants on the capacity waiting list shall be offered capacity as it becomes available on a "first come-first served" basis.

CIE: Capital Improvements Element of the CPP required pursuant to sec. 163.3177 (3)(a), F.S.

CIP: Capital Improvements Program, a 5-year schedule of capital improvements adopted annually in conjunction with the county budget. The CIP is part of the adopted CIE.

Change of use: For purposes of this article, any proposed change of use, redevelopment or modification of the character, type or intensity of use of an existing building or site.

CMO: Concurrency management official, the County Administrator or his or her designee.

Concurrency: Growth management concept intended to ensure that the necessary public facilities and services are available concurrent with the impacts of development.

Collateral assignee: That person or entity to which a capacity encumbrance letter or capacity reservation certificate is collaterally assigned in accordance with the terms and conditions of this article as security for a loan encumbering the real property described in, and which is the subject of, either a capacity encumbrance letter or a capacity reservation certificate.

Concurrency database: Inventory of roadways subject to concurrency including traffic counts and tracking encumbered, reserved, and (where data is available) vested trips.

Concurrency evaluation: Evaluation by the CMO based on adopted LOS standards to ensure that public facilities and services needed to support development are available concurrent with the impacts of such development as defined in this article.

Concurrency Management System (CMS): The adopted procedures and/or process used to assure that public facilities that support development are available 'concurrent' with the impact of such development consistent with Chapter 163 F.S.

Concurrency Review Committee (CRC): A committee whose voting members consist of the director or manager, or their designees, of the following departments or divisions, as appropriate:

- (1) Public Works Engineering Division
- (2) Growth Management Fiscal and Administrative Services Division
- (3) Office of Management and Budget
- (4) Planning Division
- (5) Traffic Engineering Division
- (6) Transportation Planning Division

The County Administrator shall designate one additional voting member to serve as chairman of the CRC.

County Code: The new (recodified) Code for Orange County, Florida, adopted by the board of county commissioners in and by virtue of Ordinance No. 91-9 approved April 16, 1991, and effective April 26, 1991, as may be amended, modified and/or recodified from time to time.

County vested rights ordinance: Divisions 2, 3, and 4 of article XI, chapter 30 of the county code as may be amended from time to time.

CPP: The Orange County Comprehensive Policy Plan required pursuant to section 163.3177, F. S. (adopted by the board of county commissioners on July 1, 1991, as may be amended or replaced from time to time).

Developer's agreement: An agreement entered into between the county and another person or entity associated with the development of land including, but not limited to, agreements associated with development orders issued pursuant to F.S. § 380.06.

Development completion: The time at which all components of a development are completed and a certificate of occupancy has been issued.

DRC: Development Review Committee.

Encumbrance period: The period of one hundred twenty (120) days following the date of issuance of a capacity encumbrance letter for which period capacity is encumbered pursuant to such capacity encumbrance letter.

FDOT: The Florida Department of Transportation.

FSUTMS: The Florida Standard Urban Transportation Model Structure is a formal set of modeling steps, procedures, software, file formats, and guidelines established by the Florida Department of Transportation (FDOT) for use in travel demand forecasting throughout the State.

Land Development Code: Those portions of the County Code that the county is obligated to enforce pursuant to ch. 163, F.S, which regulate the development and/or use of real property and that are consistent with and implement the comprehensive policy plan pursuant to the requirements of § 163.3202, F.S.

LOS: Level of service standard, which is the measurement indicating the degree of service provided by, or proposed for, a designated public facility based on the operational characteristics of such facility.

Mitigation plan: A plan or proposal by the applicant for a project by which the applicant proposes to improve or undertake improvements to the public facilities and services to mitigate the impacts of the applicant's project.

PM Peak Hour Peak Directional Trips: The vehicle trips in the direction of higher travel demand on a road during the evening peak commuting period.

Project: The particular lot, tract of land, project or other development unit for which the applicant files an application under this article.

Project trip: A new vehicle trip that begins or ends within the project and that uses one or more off-site roads.

Public facilities and services: Those public facilities and services for which level of service (LOS) standards have been

established in the comprehensive policy plan, and are recognized in this article, and which include the following:

- (1) Roads;
- (2) Wastewater;
- (3) Stormwater;
- (4) Solid waste;
- (5) Potable water;
- (6) Parks and recreation; and
- (7) Mass transit.

RAC: Road Agreement Committee.

Reservation period: The length of time for which capacity is reserved pursuant to a capacity reservation certificate.

Roads: Major thoroughfare network.

Roadway segment: A portion of a road defined by two end points, usually the length of road from one signalized intersection to the next signalized intersection.

Subdivision: Any subdivision of land as defined in chapter 30, article III of the County Code.

Transportation Concurrency: Transportation facilities are deemed to be concurrent when facilities needed to serve new development are in place or under actual construction within 3 years after the local government approves a building permit or its functional equivalent that results in traffic generation.

Trip end: One end of a vehicle trip.

VMT: Vehicle-mile(s) of travel generated by the project.

Vehicle trip: A vehicle movement in one direction from an origin to a destination.

Vested rights: The right to develop, or continue to develop,
a project notwithstanding the project's inconsistency with the
county concurrency management system and/or county
comprehensive policy plan, provided a vested rights certificate has
been obtained pursuant to the county vested rights ordinance.

Sec. 30-~~501~~502. Procedure.

The ~~concurrency management official~~ (hereinafter also referred to as the "CMO") or his or her designee shall be responsible for carrying out the requirements of this article and shall make determinations regarding concurrency and shall issue all documentation regarding concurrency according to the procedures set forth in this article.

These procedures are set forth in divisions 5 and 6 of this article.

Sec. 30-~~502~~503. Development not subject to this article.

(1a) *Building permit issued prior to effective date of article.* Development pursuant to a building permit issued prior to December 13, 1991, is vested pursuant to the provisions of the county vested rights ordinance. No such building permit shall be extended except in conformance with the applicable provisions of the County Code. If the CMO determines such a building permit has lapsed or expired pursuant to the appropriate provision of the County Code, then no subsequent building permit shall be issued except in accordance with this article.

(2b) *Vested projects.* Development which is vested as defined and determined in accordance with the county vested rights ordinance shall be exempt from the requirements of this article under the conditions, for the period and for the purposes specified therein.

(3e) *De minimus-minimis development.* After December 13, 1991, total new development or redevelopment on a parcel of record as of December 13, 1991, ~~which does not exceed a p.m. peak direction trip generation greater than 5:00 p.m. peak hour trips~~ which does not exceed one percent of the maximum volume at the adopted level of service (LOS) on affected transportation facilities shall be exempt from the requirements of this article, provided, however that the project's impacts when added to the

existing and projected roadway volumes will not exceed 100 percent of the maximum volume at the adopted LOS of the affected transportation facility. Notwithstanding the foregoing, a single-family home on a single-family platted lot or lot of record as of December 13, 1991, shall be exempt from the requirements of this article.

~~Level of Service (LOS) impacts must be determined using generally accepted standards. A proposed development claiming exempt status shall be required to submit to the CMO such data as the CMO shall require for verification of the exempt status of the proposed development. A part of the data referred to in the preceding sentence may include development plans. As an example of the application of the above specified criteria, the creation of seven (7) single-family residential units shall be deemed de minimus development. A listing of common de minimus units is provided in Table 3 of Appendix A of this ordinance (section) which is incorporated herein by this reference. A copy of Appendix A is on file with the clerk to the board of county commissioners and the county planning and traffic engineering departments.~~

(4d) *Exempt permits.*

(a+) The following types of permits are hereby determined to be exempt from the requirements of this article because they do not create additional impacts on public facilities or services:

- Boat dock permit
- Electrical permit
- Fence permit
- Fire service permit
- Floodplain permit
- Mechanical permits (a/c, heating, ventilation)
- Moving of structures (only applies to the permit issued for designating the route of the move)
- Plumbing permit
- Right-of-way utilization permit
- Roofing or sheet metal permit
- Shoreline alteration permit
- Sign permit
- Tree removal permit
- Underground utilities permit

(b2) Additionally, the following shall be exempt from the requirements of this article if, on a case-by-case basis, the ~~CMO-CRC~~ determines that the proposed development or activity will not create additional impacts on public facilities or services:

~~a(i)~~. Variances.

~~(ii)b~~. Special exceptions.

~~(iii)e~~. Interior alterations.

~~(iv)d~~. Residential accessory structures which are restricted to a use or uses which are incidental or accessory to a dwelling unit on residential property, which structures do not constitute dwelling units.

~~(v)e~~. Additions or expansions to a dwelling unit on residential property provided such additions or expansions do not increase the number of dwelling units in the particular building or buildings on such property.

~~(vi)f~~. Such other permit, development or activity, which the ~~CMO-CRC~~ determines, on a case-by-case basis, will not create additional impacts on public facilities or services.

Sec. 30-~~503~~504. Change of use.

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 article.

(1) Increased impact on public facilities or services.

~~(a)~~ If a proposed change of use shall have a greater impact on public facilities and/or services than the previous use, a capacity encumbrance letter (and a capacity reservation certificate, if appropriate) shall be required for the net increase only.

~~(b)~~ If the proposed change in use has an impact of less than 110 percent of the previously existing capacity, the change of use shall not be denied based on the failure to meet the adopted LOS.

(2) Decreased impact on public facilities and services. If the proposed change of use shall have an impact on public facilities and/or services which is equal to or less than the previous use, then the proposed change, redevelopment or modification of use may proceed without the encumbrance of additional capacity in accordance with the provisions of this article; provided, however, that in connection with such proposed change, redevelopment or modification, all other applicable provisions of the County Code must be complied with.

(3) Definition of "previous use." For purposes of this section, the term "previous use" shall mean either:

(a). The use existing on the site when a concurrency evaluation is sought; or

(b). 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 six-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.

Sec. 30-~~504~~505. 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 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 for prior use shall not be transferable to another parcel. Credit for prior use must be utilized in connection with a redevelopment of the site within two (2) years following the demolition of the existing structure or termination of the existing use, whichever first occurs. Credit for prior use shall be deemed extinguished in the event such credit is not utilized in connection with the issuance of a building permit or a capacity reservation certificate within two (2) years following the date of issuance of the demolition permit for the subject property, or the termination of the existing use, whichever first occurs.

Secs. 30-~~505~~506--30-519. Reserved.

DIVISION 2. LEVEL OF SERVICE (LOS) STANDARDS

Sec. 30-520. Performance standards.

Service standards for potable water, solid waste, wastewater, parks and recreation, stormwater, roads and mass transit facilities shall be as established in ~~the CPP policy 1.3.2 through 1.3.8 of t~~The comprehensive policy plan's capital improvements element ~~from time to time. As of December 10, 1991,~~ standards are as follows:

(1) *Potable water.* ~~Pursuant to policy 1.3.4 of the comprehensive policy plan's capital improvements element, the~~ Pursuant to the CPP, level of service standard for potable water shall be three hundred fifty (350) gallons per day per equivalent residential unit when central water service from the county public utilities is required for development. If the service provider is other than the county public utilities, then the service standard of the appropriate service provider shall be utilized.

(2) *Solid waste.* ~~Pursuant to policy 1.3.6 of the comprehensive policy plan's capital improvements element, the~~ Pursuant to the CPP, level of service standard for solid waste is to maintain a landfill capacity to accommodate solid waste generated at a rate of six (6.0) pounds per person per day.

(3) *Wastewater.* ~~Pursuant to policy 1.3.5 of the comprehensive policy plan's capital improvements element, the~~ Pursuant to the CPP, level of service standards for wastewater shall be three hundred (300) gallons per day per equivalent residential unit when central sewer from the county public utilities is required for development. If the service provider is other than the county public utilities, then the service standard of the appropriate service provider shall be utilized.

(4) *Parks and recreation.* ~~Pursuant to policy 1.3.7 of the comprehensive policy plan's capital improvements element, the~~ Pursuant to the CPP, level of service standards for parks and recreation are one and one-half (1.5) acres per one thousand (1,000) population (unincorporated area) for publicly owned activity-based parks and six (6.0) acres per one thousand (1,000) population (unincorporated area) for publicly owned resource-based parks. The projected population of a particular development in connection with which a capacity encumbrance letter or a

capacity reservation certificate is requested shall be based upon the following population factors:

- (a). 2.86 persons per dwelling unit for single-family;
- (b). 1.80 persons per dwelling unit for multifamily; and
- (c). 2.77 persons per dwelling unit for mobile homes.

(5) *Stormwater.* ~~Pursuant to policy 1.3.8 of the comprehensive policy plan's capital improvements element, the level~~Pursuant to the CPP, level of service standard for stormwater shall be based on the following stormwater quantity and quality criteria:

- (a). Design storm based on twenty-four-hour minimum:

<i>Facility</i>	<i>Design Storm</i>
Bridges	50-100 year
Canals, ditches, or culverts for drainage external to the development	25 year
Crossdrains, storm sewers	10 year
Roadside swales for drainage internal to the development	10 year
Detention basins	25 year
Retention basins (no positive outfall)	100 year

(b). Stormwater management systems shall be required to retain or detain with filtration the first one-half ~~(+1/2)~~ inch of rainfall on the site, or the runoff generated from the first inch of rainfall on developed sites, whichever is greater.

(c). A retention/detention system shall be required which limits peak discharge of a developed site to the discharge from the site in an undeveloped condition during a twenty-four-hour/twenty-five-year frequency storm event.

(d). Prior to development approval, projects shall be required to receive appropriate permits from state agencies to comply with the rules and regulations for stormwater facility design, performance and discharge.

(e). Discharged stormwater runoff shall not

degrade receiving surface water bodies below the minimum conditions established by state water quality standards (F.A.C. §§ 17-302 and 17-40.420).

(6) *Roads.*

~~_____ (a).~~ Roads level of service. ~~Pursuant to policy 1.3.2 of the comprehensive policy plan's capital improvements element, the~~ Pursuant to the CPP, peak hour level of service for roads are:

Level of Service Standards

Type	State and County	
	Rural	Urban
SIS* Freeways (FIHS)* TRIP*	B*	D*
Principal arterials	D	E
Minor arterials	D	E
Collectors	D	E

~~*SIS – Strategic Intermodal System~~
~~*FIHS--"Florida Intrastate Highway System"~~
~~TRIP – Transportation Regional Incentive Program~~

~~A system of limited access and controlled access facilities, which have the capacity to provide high-speed and high-volume traffic movements in an efficient and safe manner. Highways may only be included as part of this system when so designated by law. Local governments do not have the authority to set the minimum level of service standards on FIHS facilities. These standards are set by the state. The above table shows the state standards for these facilities.~~

~~Pursuant to sec. 163.3180 (10) F.S., these roadway facilities funded by the state have level-of-service standards established by the FDOT by rule, and local governments must adopt those standards.~~

~~_____ b. _____~~ *Constrained facilities.*

- ~~_____ 1. _____~~ *Maintain the operating conditions: The peak hour volume on state roads*

~~shall not increase more than an additional fifteen (15) percent over the existing traffic volume specified in policy 1.1.1.2 of the traffic circulation element.~~

- ~~2. Maintain the operating conditions: The peak hour volume on county roads shall not increase more than an additional fifteen (15) percent over the existing traffic volume in policy 1.1.1.2 of the traffic circulation element.~~

~~c. Backlogged facilities:~~

- ~~1. Maintain and improve the operating conditions: The peak hour volume on state roads shall not increase more than an additional fifteen (15) percent over the existing traffic volume specified in policy 1.1.1.3 of the traffic circulation element.~~

- ~~2. Maintain and improve the operating conditions: The peak hour volume on county roads shall not increase more than an additional fifteen (15) percent over the existing traffic volume specified in policy 1.1.1.3 of the traffic circulation element.~~

~~d. Long term transportation concurrency management system. This subsection implements traffic circulation element policies 1.1.1.5, 1.1.1.6, and 1.1.1.7 of the county comprehensive policy plan as follows:~~

- ~~1. The county hereby adds a long term transportation concurrency component to the concurrency management system. The purpose of this component is to address significant transportation backlogs. Significant transportation backlogs are defined as transportation~~

~~facilities which require up to a ten-year planning period to correct.~~

~~2. Transportation facilities that are initially identified as significantly backlogged in policy 1.1.1.5 of the traffic circulation element will be included in the long term transportation concurrency management system. The traffic engineering department shall monitor these facilities and add or delete additional facilities in conjunction with the yearly development of the county five-year road program.~~

~~3. A long term transportation concurrency management map to implement this system is on file in the county planning, traffic engineering and highway construction departments. The map uses the existing transportation impact fee districts identified in the road impact fee ordinance, chapter 23, article IV, of this Code, to designate areas in which significant transportation backlogs must be addressed. This map shall be updated annually based upon then current information obtained by the planning, traffic engineering and highway construction departments.~~

~~4. Development which contributes to the significantly backlogged transportation facility(ies) shall be reviewed on a case-by-case basis for the establishment of interim LOS standards subject to the standards outlined below.~~

~~5. Interim level of service (LOS) standards may be established on~~

~~certain facilities within the long-term concurrency management districts to permit the issuance of development orders and permits. Scheduled improvements to facilities within interim LOS standards will be included in the long-term concurrency management system and identified on the long-term transportation concurrency management map. The interim LOS will be subject to a monitoring system. Should the interim LOS not be achieved, the long-term concurrency management system will be amended and a default LOS will be assigned to the facility. The default LOS will be binding for the issuance of development orders and permits.~~

~~6. A long-term schedule of capital improvements shall also be implemented in conjunction with the adoption of a policy in the capital improvements elements. This schedule of capital improvements will include the estimated date of commencement of actual construction and the estimated date of project completion derived from the county five-year road program. A plan amendment will be required to eliminate, defer, or delay construction of any transportation facility that is listed in the long-term schedule of capital improvements.~~

~~7. Either (i) significantly backlogged transportation facilities, or (ii) transportation facilities with interim LOS standards, within the long-term transportation concurrency management system, may be addressed with private contributions~~

~~as identified in the pay as you go system per section 60-622. These contributions shall be included in the long-term schedule of capital improvements.~~

(7) *Mass transit.* ~~Pursuant to policy 1.3.3 of the comprehensive policy plan's capital improvements element, the~~ Pursuant to the CPP, level of service standard for mass transit is to maintain a person trip capacity of not less than thirty-seven thousand eight hundred eighty-six (37,886) per weekday.

Secs. 30-521--30-549. Reserved.

DIVISION 3. CONCURRENCY EVALUATIONS

Sec. 30-550. Concurrency requirements applicable.

The CMO shall utilize the standards and requirements set forth in this article to conduct a concurrency evaluation prior to issuance of a capacity information letter (see division 4), capacity encumbrance letter (see division 5), or capacity reservation certificate (see division 6) for those projects not otherwise exempt from concurrency review as set forth in section 30-~~502~~503. In addition to the standards set forth in this article, the CMO shall also utilize the standards set forth in the comprehensive policy 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 CMO shall have the authority to consider, utilize and rely upon, in whole or in part, other appropriate methodologies, evaluations, studies, documents and/or information submitted by the applicant.

Sec. 30-551. 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 article which indicates that capacity for the proposed development is available with respect to all applicable public facilities and services.

Sec. 30-552. Comprehensive policy plan amendments and rezoning applications.

(1) Comprehensive policy plan amendments. A concurrency evaluation as outlined in this division is not required in connection with a comprehensive policy plan amendment or future land use map amendment. However, the county may consider the availability of public services and facilities when evaluating the appropriateness of a future land use map amendment or comprehensive policy plan amendment. A request for future land use map amendment or comprehensive policy 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 policy plan.

(2) Zoning applications. A concurrency evaluation as outlined in this division is not required in connection with a rezoning application or other zoning application subject to this article. However, the county may consider the planned availability of public services and facilities when evaluating the appropriateness of a rezoning application or other zoning application subject to this article. A rezoning application or other zoning application subject to this article may be denied if public facilities and services are not expected to be available within the planning period pursuant to the comprehensive policy plan future land use element.

(3) Planned development. A concurrency evaluation shall be required as part of any application for planned development (PD) zoning. As part of the concurrency evaluation, the CMO 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 to the planning and zoning commission/local planning agency as well as to the board of county commissioners in connection with the review by such bodies of the requested rezoning, and such concurrency evaluation shall be considered in determining the appropriateness of the requested rezoning and/or the conditions applicable thereto.

(4) Recommendation for denial. In the case where there is a recommendation of denial of the requested future land use map, comprehensive policy plan, rezoning, or PD application, the applicant is not precluded from applying for a capacity encumbrance letter and a capacity reservation certificate in accordance with this article.

Sec. 30-~~552~~553. Preliminary subdivision plan (PSP) and

plat approvals for residential subdivisions.

Other than projects subject to the requirements of the county site development ordinance, County Code chapter 30, article VIII, section 30-326 et seq., unless a currently valid capacity encumbrance letter or capacity reservation certificate applicable to the property has been obtained, a concurrency evaluation shall be required as part of any application for a residential preliminary subdivision plan (PSP). The PSP may be approved, notwithstanding a lack of the requisite capacity, provided that such approval shall reiterate that the requisite capacity is not then and may not in the future be available. The approval shall also state that in all cases a capacity reservation certificate shall be required before platting. If the concurrency evaluation indicates that the subdivision would be concurrent, and if the preliminary subdivision plan (PSP) is approved, a capacity reservation certificate shall be required before the plat is approved for recording.

Sec. 30-~~553~~.554 Nonresidential subdivisions.

Unless a currently valid capacity encumbrance letter or capacity reservation certificate applicable to the property has been obtained, a concurrency evaluation shall be required as part of any application to approve a nonresidential subdivision plat for recording. A nonresidential subdivision may be approved for recording without a capacity reservation certificate. However, approval of a nonresidential plat for recording does not entitle or ensure any capacity to the subdivision. Further, any vertical construction or development on a project on such platted lands shall comply with section 30-554.

Sec. 30-~~554~~555. Commercial projects and projects subject to site development review process.

Unless a currently valid capacity encumbrance letter or capacity reservation certificate applicable to the property has been obtained, a concurrency evaluation will be required as part of any application for any project required to comply with the requirements of the county site development ordinance, County Code chapter 30, article VIII, section 30-236 et seq., commonly known as commercial site plan review. If the concurrency evaluation indicates that the proposed development would be concurrent, a capacity reservation certificate shall be required before the final commercial site plan is approved.

~~Sec. 30-555. Comprehensive policy plan amendments and rezoning applications.~~

~~(a) Comprehensive policy plan amendments. A concurrency evaluation as outlined in this division is not required in connection with a comprehensive policy plan amendment or future land use map amendment. However, the county may consider the availability of public services and facilities when evaluating the appropriateness of a future land use map amendment or comprehensive policy plan amendment. A request for future land use map amendment or comprehensive policy plan amendment request may be denied if public facilities and services are not expected to be available within the planning period pursuant to comprehensive policy plan.~~

~~(b) Zoning applications. A concurrency evaluation as outlined in this division is not required in connection with a rezoning application or other zoning application subject to this article. However, the county may consider the planned availability of public services and facilities when evaluating the appropriateness of a rezoning application or other zoning application subject to this article. A rezoning application or other zoning application subject to this article may be denied if public facilities and services are not expected to be available within the planning period pursuant to comprehensive policy plan future.~~

~~(c) Planned development. A concurrency evaluation shall be required as part of any application for planning development (PD) zoning. As part of the concurrency evaluation, the CMO shall determine whether capacity is available to serve both the density and intensity of development which would result from the proposed plan. The concurrency evaluation shall be submitted as part of the staff analysis to the planning and zoning commission/local planning agency as well as to the board of county commissioners in connection with the review by such bodies of the requested rezoning, and such concurrency evaluation shall be considered in determining the appropriateness of the requested rezoning and/or the conditions applicable thereto.~~

~~(d) [Recommendation for denial.] In the case where there is a recommendation of denial of the requested application, the applicant is not precluded from applying for a capacity encumbrance letter and a capacity reservation certificate in accordance with this article.~~

Sec. 30-556. Concurrency evaluation--Potable water.

A concurrency evaluation for potable water shall be required prior to issuance of a capacity encumbrance letter. The potable water LOS standards specified in section 30-520(1) shall be implemented, and the concurrency evaluation for potable water shall be conducted on the basis thereof.

If the county public utilities is not the service provider, a letter from the potable water service provider verifying its ability to serve the project must be submitted to the CMO. All applicants are cautioned and put on notice that, where a capacity encumbrance letter and/or a capacity reservation certificate is issued on the basis of or in reliance upon, in whole or in part, the commitment of a service provider other than the county to furnish or provide all or a part of the necessary public facilities and/or services, the capacity encumbrance letter or the capacity reservation certificate may be revoked or terminated in the event of the failure or refusal of such service provider other than the county to provide the services and/or facilities at the requisite level of service.

(1) Method of evaluation prior to encumbrance. In performing the concurrency evaluation for potable water in order to encumber capacity, the CMO shall determine the maximum amount of potable water, in gallons per day, which would be necessary to serve the proposed uses. If such amount of potable water, plus potable water which is or will be generated by all existing, permitted, vested, encumbered and reserved development, can be provided while meeting the performance standards set forth herein, then the development shall be deemed to be concurrent for potable water, and accordingly, the requested capacity encumbrance letter may be issued. If the amount of potable water, plus potable water which is or will be necessary to serve all existing, permitted, vested, encumbered and reserved development, cannot be provided while meeting the performance standards set forth herein, then the proposed development shall be deemed not to be concurrent for potable water, and accordingly, the requested capacity encumbrance letter shall not be issued.

(2) Performance standards. The portion of existing and projected treatment plant capacity which will be allocated to serve the proposed development shall be determined by applying the LOS standard to the number of equivalent residential units (ERUs)

in the proposed development. The LOS standard for potable water when the county is the service provider is three hundred fifty (350) gallons per day per ERU. For potable water, one (1) of the following standards will satisfy the concurrency requirement: (a) The necessary facilities and services are in place at the time a development permit is issued; or (b) a development permit is issued subject to the condition that the necessary facilities and services will be in place when the impacts of development occur; or (c) the necessary facilities are under construction at the time a development permit is issued; or (d) the necessary facilities and services are guaranteed in the enforceable development agreement that includes the provisions of F.A.C. rule 9J.-5.005(3)(a)1.-2. The development agreement must guarantee that the necessary facilities and services will be in place when the impacts of development occur.

The concurrency determination for potable water focuses on present and planned plant capacity. It does not include an evaluation of actual connections from county facilities to the project and on- site infrastructure. Therefore, any capacity encumbrance letter or capacity reservation certificate is subject to the developer complying with (1) applicable sections of the Land Development Code, (2) applicable rate resolutions, and (3) ordinances, rules and regulations governing water capacity. The concurrency evaluation for potable water with respect to a particular development shall be performed by the county utilities engineering department and shall be based upon the last ~~semiannual~~annual capacity availability report provided to the CMO by the county public utilities engineering department as provided for in division 7 of this article.

Sec. 30-557. Same--Solid waste.

A concurrency evaluation for solid waste shall be required prior to issuance of a capacity encumbrance letter. The solid waste LOS standards specified in section 30-520(2) shall be implemented, and concurrency evaluations for solid waste shall be conducted on the basis thereof.

(1) *Method of evaluation prior to encumbrance.* In performing the concurrency evaluation for solid waste in order to encumber capacity, the CMO shall determine the maximum amount of solid waste, in pounds per day, which could be generated by the proposed uses. If such amount of solid waste, plus solid waste which is or will be generated by all existing, permitted,

vested, encumbered and reserved development, is equal to or less than the performance standards set forth in this section and in section 30-520(2), then the proposed development shall be deemed to be concurrent for solid waste, and accordingly, the requested capacity encumbrance letter may be issued. If the amount of solid waste which would be generated by the proposed development, plus solid waste which is or will be generated by all existing, permitted, vested, encumbered and reserved development, is greater than one hundred (100) percent of the county landfill capacity, then the proposed development shall be deemed not to be concurrent for solid waste, and accordingly, the requested capacity encumbrance letter shall not be issued.

(2) Performance standards. Solid waste LOS will be measured for all proposed development. Measurement shall be achieved by comparing the forecasted annual tonnage measured by the adopted LOS with the actual tonnage reported by the resource recovery department. The county will maintain the projected landfill capacity by applying the appropriate LOS standards to total county-wide population and will update the inventory on a ~~semiannual~~annual basis in the ~~semiannual~~annual capacity availability report. The review will occur more frequently if and when the projected remaining useful life of the county disposal system is five (5) years or less. For solid waste, one (1) of the following standards will satisfy the concurrency requirement: (a) The necessary facilities and services are in place at the time a development permit is issued; or (b) a development permit is issued subject to the condition that the necessary facilities and services will be in place when the impacts of development occur; or (c) the necessary facilities are under construction at the time a development permit is issued; or (d) the necessary facilities and services are guaranteed in an enforceable development agreement that includes the provisions of F.A.C. rule 9J.-5.005(3)(a)1.-2. The development agreement must guarantee that the necessary facilities and services will be in place when the impacts of development occur.

Sec. 30-558. Same--Wastewater.

A concurrency evaluation for wastewater shall be required prior to issuance of a capacity encumbrance letter. The wastewater LOS standards specified in section 30-520(3) shall be implemented, and concurrency evaluations for the wastewater shall be conducted on the basis thereof.

(1) Method of evaluation prior to encumbrance. In performing the concurrency evaluation for wastewater in order to encumber capacity, the CMO shall determine the maximum amount of wastewater, in gallons per day, which would be necessary to serve the proposed uses. If such amount of wastewater, plus wastewater which is or will be generated by all existing, permitted, vested, encumbered and reserved development, can be provided while meeting the performance standards set forth in this subpart, then the development shall be deemed to be concurrent for wastewater, and accordingly, the requested capacity encumbrance letter may be issued. If the amount of wastewater, plus wastewater which is or will be necessary to serve all existing, permitted, vested, encumbered and reserved development, cannot be provided while meeting the performance standards set forth in this section and in section 30-520(3), then the proposed development shall be deemed not to be concurrent for wastewater, and accordingly, the requested capacity encumbrance letter shall not be issued.

(2) *Performance standards.* The portion of existing and projected treatment plant capacity which will be allocated to serve the projected development shall be determined by applying the LOS standard to the number of equivalent residential units (ERUs) in the proposed development. For wastewater, one (1) of the following standards will satisfy the concurrency requirement: (a) The necessary facilities and services are in place at the time a development permit is issued; or (b) a development permit is issued subject to the condition that the necessary facilities and services will be in place when the impacts of development occur; or (c) the necessary facilities are under construction at the time a development permit is issued; or (d) the necessary facilities and services are guaranteed in an enforceable development agreement that includes the provisions of F.A.C. rule 9J.-5.005(2)(a)1.-3. The development agreement must guarantee that the necessary facilities and services will be in place when the impacts of development occur.

The concurrency determination for wastewater focuses on present and planned plant capacity. It does not include an evaluation of actual connections from county facilities to the project and on-site infrastructure. Therefore, any capacity encumbrance letter or capacity reservation certificate is subject to the developer complying with (1) applicable sections of the Land Development Code, (2) applicable rate resolutions, and (3) ordinances, rules and regulations governing the connection and

allocation rules of the county wastewater treatment plants. The concurrency evaluation for wastewater with respect to a particular development shall be performed by the county public utilities engineering department and shall be based upon the last ~~semiannual~~annual capacity availability report provided to the CMO by the county utilities engineering department as provided for in division 7 of this article.

Sec. 30-559. Same--Parks.

A concurrency evaluation for parks shall be required prior to issuance of a capacity encumbrance letter for any residential development. The parks LOS standards specified in section 30-520(4) shall be implemented, and concurrency evaluations for parks shall be conducted on the basis thereof.

(1) *Method of evaluation prior to encumbrance.* In performing the concurrency evaluation for parks in order to encumber capacity, the CMO shall determine the number of acres of parkland which would be necessary to serve the number of dwelling units on the site. If such amount of parkland, plus parkland which is or will be necessary to serve all existing, permitted, vested, encumbered and reserved development, can be provided while meeting the performance standards set forth in this section and section 30-520(4), then the project shall be deemed to be concurrent for parks, and accordingly, the requested capacity encumbrance letter may be issued. If such amount of parkland, plus parkland which is or will be necessary to serve all existing, permitted, vested, encumbered and reserved development, cannot be provided while meeting the performance standards set forth in this section and in section 30-520(4), then the project shall not be deemed to be concurrent for parks, and accordingly, the requested capacity encumbrance letter shall not be issued.

(2) *Performance standards.* When appropriate, the projected acreage need for parks in connection with each application shall be determined by the population estimate submitted by the applicant and verified by the CMO. The county will maintain a current inventory of available public park acreage which can be counted toward the LOS requirement. The inventory will be updated at least ~~semiannual~~annually at the time of submission of the ~~semiannual~~annual capacity availability report referred to in division 7 below. For parks, one (1) of the following standards will satisfy the concurrency requirement: (a) The necessary facilities and services are in place at the time a

development permit is issued; or (b) a development permit is issued subject to the condition that the necessary facilities and services will be in place when the impacts of development occur; or (c) the necessary facilities are under construction at the time a development permit is issued; or (d) the necessary facilities and services are guaranteed in an enforceable development agreement that includes the provisions of F.A.C. rule 9J.-5.005(2)(a)1.-2. The development agreement must guarantee that the necessary facilities and services will be in place when the impacts of development occur.

Sec. 30-560. Same--Stormwater.

A concurrency evaluation for stormwater shall be required prior to the issuance of a capacity encumbrance letter. The project shall be deemed concurrent with respect to stormwater provided the applicant shall submit, as part of the application for the capacity encumbrance letter, a signed statement, which may be part of the application, that upon submittal of actual development plans for the project, the stormwater LOS standards specified in section 30-520(5) shall be implemented, and evaluations for stormwater shall be conducted on the basis thereof. Development plans for the project shall not be approved, and a building permit authorizing commencement of development shall not be issued except upon a determination that development of the project in accordance with the submitted development plans shall result in the project meeting the stormwater LOS standards specified in section 30-520(5) as implemented and evaluated by and in accordance with the stormwater management requirements of the county subdivision regulations and as specified in section 30-520(5). Issuance of the capacity encumbrance letter does not relieve the applicant from compliance with all other applicable local, state and federal permitting requirements.

Sec. 30-561. Same--Mass transit.

A concurrency evaluation for mass transit shall be required prior to issuance of a capacity encumbrance letter. The mass transit LOS standards specified in section 30-520(7) shall be implemented, and concurrency evaluations for mass transit shall be conducted on the basis thereof.

(1) *Method of evaluation prior to encumbrance.* In performing the concurrency evaluation for mass transit in order to encumber capacity, the CMO shall determine the person trip

handling capacity reported by the primary mass transit provider. If adequate capacity is available measured by the performance standards set forth in this section and section 30-520(7), then the project shall be deemed to be concurrent for mass transit, and accordingly, the requested capacity encumbrance letter may be issued. If the person trip capacity reported by the mass transit provider does not meet the performance standards set forth in this section and section 30-520(7), then the project shall not be deemed to be concurrent for mass transit, and accordingly, the requested capacity encumbrance letter shall not be issued.

(2) *Performance standards.* Mass transit LOS will be maintained by the county based on population and the current primary service provider's inventory of buses. The county is not solely responsible for the operations of the current mass transit provider. Rather, the county along with other jurisdictions in Central Florida contributes toward this service to offset operating and capital deficits. The county is financially committed to continue contributions through 1995, by an adopted interlocal agreement. The mass transit provider is responsible for adjusting and reallocating available resources as necessary to maintain the adopted LOS standard. The present mass transit provider is pursuing a dedicated source of funding to finance mass transit. The county will update the capacity availability ~~semiannual~~annually and report the same in the ~~semiannual~~annual capacity availability report. For mass transit, one (1) of the following standards will satisfy the concurrency requirement: (a) The necessary facilities and services are in place at the time a development permit is issued; (b) a development permit is issued subject to the condition that the necessary facilities and services will be in place when the impacts of development occur; (c) the necessary facilities are under construction at the time a development permit is issued; and (d) the necessary facilities and services are guaranteed in an enforceable development agreement that includes the provisions of F.A.C. rule 9J.-5.005(a)1.-2. The development agreement must guarantee that the necessary facilities and services will be in place when the impacts of development occur.

Sec. 30-562. Same--Roads.

A concurrency evaluation for roads shall be required prior to the issuance of a capacity encumbrance letter. The road LOS standards outlined in division 2 of this article shall apply to this concurrency evaluation for roads.

If the amount of traffic which would be generated by the proposed development, plus traffic which is or will be generated by existing, permitted, encumbered, and reserved development (and where data is available, vested development), is greater than the capacity on the affected roadways at the adopted LOS, then the proposed development shall not be deemed concurrent for transportation, and accordingly, the requested capacity encumbrance letter shall not be issued.

~~The detailed operation and procedures for the county transportation concurrency system are contained in Appendix A of this ordinance. A copy of Appendix A is on file with the clerk to the board of county commissioners and with the county planning and traffic engineering departments.~~

(1) *LOS Standards.* The road LOS standards outlined in division 2 of this article shall apply to this concurrency evaluation for roads. LOS impacts must be determined using generally accepted standards including the tables in the latest edition of the FDOT Quality Level of Service Handbook depicting the generalized peak hour directional volumes and approved LOS computation tools. A proposed development claiming exempt status shall be required to submit to the CMO such data as the CMO shall require for verification of the exempt status of the proposed development. A part of the data referred to in the preceding sentence may include development plans.

(2) *Traffic Study.* A concurrency evaluation shall include a traffic study. A traffic study shall include:

(a) *Summary.* Project name, project location (including location map and parcel identification number), applicant contact information, parcel owner information (if different than applicant), proof of ownership of parcel(s).

(b) *Proposed Development.* Proposed use for the property by land use category and amount of development.

(c) *Area of Influence.* The impact area for purposes of evaluating concurrency shall be all road segments within a one (1) mile radius of the project if project site is located within the urban area as determined by the board of county commissioners. The impact area for purposes of evaluating concurrency shall be all road segments within a two and one half

(2 1/2) mile radius of the project if project site is located within the rural area as determined by the board of county commissioners.

(d) *Proposed Project Traffic.* Traffic to be generated by the proposed development by land use category and amount of development.

(i) *Trip Generation.* Trip generation rates shall be based on the latest edition of *Institute of Traffic Engineers Trip Generation Manual* (ITE Trip Generation Manual) or a county-approved trip generation study. All generated trips shall be assumed to be external, unless documented.

(ii) *Trip Distribution.* Trip distribution shall be performed to allocate trips to origin and destination land use areas external to the site and may be performed manually or using an appropriate transportation model such as FSUTMS. The assumptions use to allocate trips on the network shall be documented in the traffic study.

(iii) *Trip Assignment.* Trip assignment may be performed manually or using FSUTMS or a comparable county-approved model. If the manual method is used, the assignment may be done concurrently with distribution. The assignment process shall be based on a review of the land uses within the area of influence. All assumptions shall be documented in the traffic study.

(e) *Available Capacity.* Roadway capacity as reported in the Concurrency Database, which is based on Generalized Level of Service Tables as found in the latest edition of *FDOT Quality Level of Service Manual*, or approved LOS computation tools such as an ART-Plan or High-Plan Analysis.

(f) *Special Analysis.* Any deviation from the traffic study requirements must be supported by documented justification and must be approved by the Concurrency Review Committee.

Secs. 30-563--30-569. Reserved.

DIVISION 4. CAPACITY INFORMATION LETTERS

Sec. 30-570. Purpose.

A capacity information letter is a non-binding 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 article with respect to capacity encumbrance or capacity reservation.

Sec. 30-571. Application.

~~(a)~~—*Generally.* An application for a capacity information letter shall be submitted to the CMO 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 CMO on a form prescribed by the CMO. No such application shall be accepted (or deemed accepted) until it is complete.

~~(a1)~~ Date of submittal;

~~(b2)~~ Applicant's name, address and telephone number;

~~(c3)~~ Parcel I.D. number and legal description.

~~(b)~~—*Short form application.* ~~Short form application may be used in areas where existing density allows one (1) home per ten (10) acres and the nearest backlogged or constrained road is two and one half miles away as measured in road miles from the point of connection to the county road system. The CMO shall make available short form application forms. A listing of short form application areas is set forth in Appendix A, Table 2, which is incorporated herein by this reference. A copy of Appendix A is on file with the clerk to the board of county commissioners and~~

~~with the county planning and traffic engineering departments.~~

Sec. 30-572. Processing of application by CMO.

Upon receipt of an complete application for a capacity information letter, the CMO shall ~~determine~~ assess the existing levels of service for public facilities and services in the vicinity of the parcel consistent with division 2 of this article. The CMO shall issue the capacity information letter within ten (10) calendar days after receipt of the application.

Sec. 30-573. 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) Parcel I.D. number and legal description;
- (4) Name and location of nearest potable water facility and available capacity if supplied by the county;
- (5) Name and location of nearest wastewater facility and available capacity if supplied by the county;
- (6) Available capacity of activity-based and resource-based parks;
- (7) Available capacity of mass transit facilities;
- (8) Available capacity of solid waste facilities; and
- (9) ~~Consistent with the transportation requirements of Appendix A of Ordinance No. 91-27 as set forth in section 30-562, the existing and projected levels of service for roadway facilities within the vicinity of the site and the identification of any backlogged or constrained facilities.~~ Available capacity of road facilities.

Secs. 30-574--30-579. Reserved.

DIVISION 5. CAPACITY ENCUMBRANCE LETTERS

Sec. 30-580. Introduction.

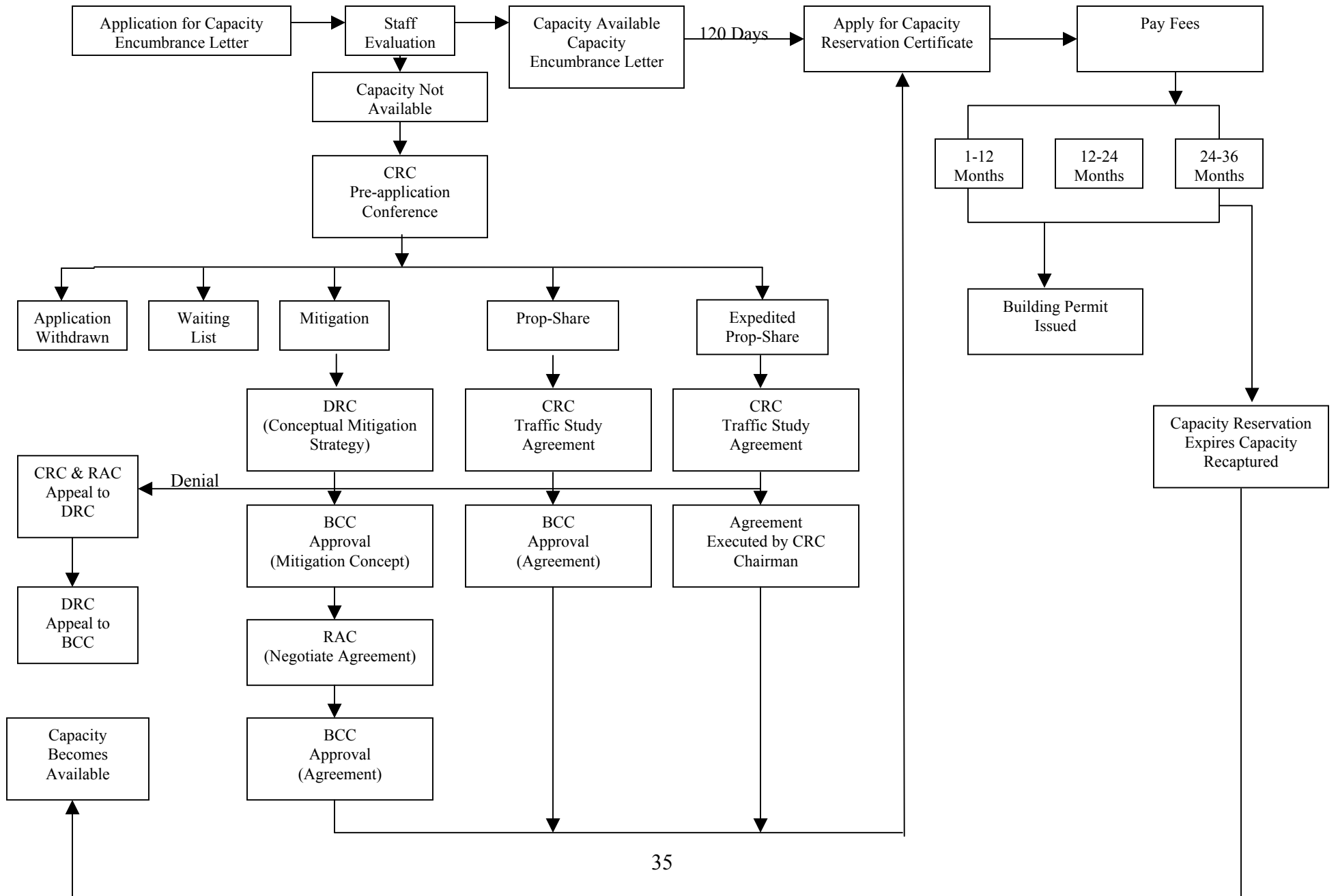
A capacity encumbrance letter is a determination by the CMO that, for a particular parcel, given a specific proposed development density or intensity and based on the timing of development by phase and year, the proposed development will be concurrent at the time the capacity encumbrance letter is issued and that the CMO 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.

Sec. 30-581. Procedure for capacity encumbrance letter evaluation.

Within twenty-one (21) days after receipt of an application for a capacity encumbrance letter, the CMO shall process the application, conduct a concurrency evaluation in accordance with division 3 of this article, and issue a capacity encumbrance letter or a capacity encumbrance denial letter. When the CMO 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 article and/or the CPP, according to the following procedure:

For road concurrency, staff will prepare a general assessment of the project's impacts and determine if roadways operating below or projected to operate below the adopted LOS standards according to the concurrency database are located within the project's area of influence. 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 pre-application conference during a regularly scheduled CRC meeting.

Section 30-581 Transportation Concurrency Procedure Flow Chart



Sec. 30-582. Application for capacity encumbrance letter.

~~(a)~~—*Generally.* 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 to the CMO, on a form provided by the CMO. 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 I.D. number and legal description;
- (4) Land use(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 if the county public utilities is not the service provider);
- (12) Wastewater needs for the proposed development (together with verification of service letter from the service provider if the county public utilities is not the service provider);

(13) Traffic information specified in ~~Appendix A of Ordinance No. 91-27; Ssec. 30-562.~~

~~(14) Affidavit of applicant committing to compliance with the county subdivision regulations;~~

(145) Proposed geographic allocation of capacity by legal description, if applicable;

(156) Such other information as deemed necessary by the county.

~~(b) *Short form application.* Short form application may be used in areas where existing density allows one (1) home per ten (10) acres and the nearest backlogged or constrained road is two and one half miles away as measured in road miles from the point of connection to the county road system. The CMO shall make available short form application forms. A listing of short form application areas is set forth in Appendix A, Table 2, which is incorporated herein by this reference. A copy of Appendix A is on file with the clerk to the board of county commissioners and with the county planning and traffic engineering departments.~~

Sec. 30-583. Action by CMO if all public facilities and services found to be concurrent.

If, during the concurrency evaluation, the CMO determines that all public facilities and services are concurrent, concurrent with conditions, or are presumed to be concurrent pursuant to divisions 3 and 5 of this article, the CMO 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. 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 division 6 of this article. 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 I.D. number and legal description;
- (4) Land use(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;
- (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.

Sec. 30-584. 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 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 or expires without issuance of a certificate of occupancy.

Sec. 30-585. Action by CMO if one or more public facilities determined not to be concurrent.

If, during the concurrency evaluation, the CMO determines that one (1) or more public facilities or services lacks sufficient available capacity to accommodate the applicant's request, the CMO shall issue a capacity encumbrance denial letter which shall advise the applicant that capacity is not available for one (1) or more public facilities or services. The applicant shall have ~~fifteen~~ sixty (4560) calendar days from the issuance of a capacity encumbrance denial letter to ~~elect~~ submit an application ~~-(i) to be placed on the capacity waiting list, (ii) to pursue the concurrency denial/mitigation process outlined in division 8 of this article and/or (iii) to pursue the pay-as-you-go system proportionate fair-share contribution-(to remedy a transportation facilities deficiency only) as outlined in division 8 of this article. At a minimum, the concurrency encumbrance denial letter shall include:~~

(1) Property owner's name, address and telephone number;

(2) Applicant's name, address and telephone number;

(3) Parcel I.D. number and legal description;

(4) Land use(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 of units;

(6) The public services or facilities determined not to be concurrent, including the level of the deficiency, if known;

(7) Status of any applicable waiting lists; and

(8) Whether a pre-application conference with the CRC is required; and

~~(89)~~ The options available to the applicant including, but not necessarily limited to~~;~~

(i) ~~(i) electing~~ submitting an application to be placed on the capacity waiting list~~;~~

(ii) ~~(ii) entering~~ submitting an application for

the concurrency appeal/mitigation process outlined in division 8 of this article; and

(iii) participation in the pay-as-you-go system submitting an application for proportionate fair-share contribution (to remedy a transportation facilities deficiency only) as outlined in division 8 of this article.

Sec. 30-586. Capacity waiting list.

(1a) 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 CMO shall nevertheless offer the available capacity to the applicant, and 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:

a(i). Remain in place on the waiting list and continue waiting for additional capacity, or

b(ii). For transportation facilities deficiencies only, utilize the pay-as-you-go system proportionate fair-share contribution for the additional capacity required for the specific parcel.

(2) Reject the offer of capacity, in which event the available capacity shall be offered to the next applicant on the waiting list.

(ba) Within thirty (30) days following receipt of an applicant of a written offer of capacity, the applicant shall (i)

supply such additional information or otherwise finalize the pending application as required by the CMO, (ii) pay the required fee for issuance of the capacity encumbrance letter, and (iii), if applicable, submit a request to pursue the ~~pay-as-you-go system~~proportionate fair-share contribution for the provision of transportation facilities only.

~~(+)(b)~~ Failure to ~~timely~~ accept the offered capacity by timely providing the updating information requested by the CMO and paying the applicable capacity encumbrance fee will result in nonissuance of the capacity encumbrance letter and removal of the applicant from the capacity waiting list.

Sec. 30-587. 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, he 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, provided that, as a precondition to the effectiveness of such collateral assignment, application must be made to the CMO, utilizing a form prescribed by the CMO for such purpose, requesting authorization to make such collateral assignment of all rights, duties and obligations under the capacity encumbrance letter. The CMO may approve or disapprove such application and, in connection with any approval, may impose conditions with respect to the effectiveness of such collateral assignment; the approval, disapproval or approval with conditions shall be in writing and signed by the CMO. 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 CMO 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 CMO shall not be required to furnish any written notices to the collateral assignee; specifically, but not by way of limitation, the CMO 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.

Sec. 30-588. Expiration of capacity encumbrance letter.

If the capacity encumbrance letter expires prior to issuance of either a capacity reservation certificate in accordance with division 6 of this article or a building permit using the encumbered capacity, the capacity shall revert to the available capacity bank as described in division 7 of this article.

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") unless the applicant has applied for and been granted by the CMO a sixty-day extension prior to the expiration date of the capacity encumbrance letter and providing that capacity is available at the time of extension request.

Sec. 30-589. Reserved.

DIVISION 6. CAPACITY RESERVATION CERTIFICATE

Sec. 30-590. 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.

Sec. 30-591. Application for capacity reservation certificate.

~~(a)~~ *Generally.* An application for a capacity reservation certificate shall be submitted to the CMO 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 I.D. number and legal description;
- (4) Land use(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 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 DRI, PD, subdivision, office park, if applicable;
- (10) Site design information, if applicable;
- (11) Whether sewer capacity has been reserved for the proposed development;
- (12) Written consent of the property owner, if

different from applicant;

(13) A copy of a valid capacity encumbrance letter;

(14) The reservation period requested; and

(15) Allocation of capacity, by legal description, if applicable.

~~(b) *Short form application.* Short form application may be used in areas where existing density allows one (1) home per ten (10) acres and the nearest backlogged or constrained road is two and one-half miles away as measured in road miles from the point of connection to the county road system. The CMO shall make available short form application forms. A listing of short form application areas is set forth in Appendix A, Table 2, which is incorporated herein by this reference. A copy of Appendix A is on file with the clerk to the board of county commissioners and with the county planning and traffic engineering departments.~~

Sec. 30-592. Issuance of capacity reservation certificate.

Within fourteen (14) 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 CMO 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 CMO shall reserve the requested capacity.

Sec. 30-593. Reservation time period.

~~(1a) *Types of capacity reservations.*~~ Capacity shall be reserved for a specified time frame under certain conditions. Pursuant to this section, an applicant may request one (1) of two (2) different types of capacity reservations:

~~(a1) *Fixed time frame capacity reservation certificate.*~~ A fixed time frame capacity reservation certificate shall allow the applicant to reserve capacity for up to three (3) years. Reservations may be made for one (1), two (2) or three (3) years. A specific quantity of capacity must be requested for use during

each year of the reservation time frame. Capacity for fixed time frame capacity reservation certificates shall be reserved based on the standards and criteria for concurrency evaluations identified in division 3 of this article. For accounting purposes, the CMO shall reserve the requested capacity for each year from the appropriate capacity bank. Except as provided in sections 30-594 and 30-595 below, a fixed time frame capacity reservation certificate will allow the applicant to utilize the capacity reserved for a particular year only during the one-year period specified in the certificate.

(b2) *Flexible time frame capacity reservation certificate.* A flexible time frame capacity reservation certificate shall allow the applicant to reserve capacity for three (3) years based on the standards and criteria for concurrency evaluations identified in division 3 of this article. The total capacity requested must be reserved for the full duration of the reservation. However, for accounting purposes, the CMO shall allocate the requested capacity equally for each year from the appropriate capacity bank. A flexible time frame capacity reservation certificate will allow the applicant to utilize the capacity at any time during the term of the certificate.

(2b) *Expiration.* Upon expiration of the time frame set forth in the capacity reservation certificate, if a building permit was not obtained within the reservation period, the CMO shall transfer the reserved capacity to the available capacity bank.

(a) If a building permit was issued, but the project has not completed build-out, the applicant can request from the CMO, an extension, not to exceed three (3) additional years, providing that all capacity reservation fees have been paid for the project at the time of the extension request and there is not a capacity waiting list within the location of the project.

(b) Notwithstanding the existence of a capacity waiting list, if the applicant can demonstrate that the development is proceeding in good faith, the CRC may grant an extension. Failure of the development to proceed in good faith during any extension of the reservation period shall be grounds for the CRC 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.

(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 may be granted by the CRC.

(d) Notwithstanding the existence of a capacity waiting list, if the applicant has been required to execute a capacity enhancement agreement with the School Board of Orange County, and the terms of that agreement result in the delay of the applicant's development (through no fault of the applicant), then the applicant may request an extension of the capacity reservation certificate, which may be granted by the CRC.

Sec. 30-594. Shifting of capacity under fixed time frame capacity reservation certificate.

(1a) Shifting of capacity is the movement of reserved capacity from one (1) or more specific yearly time frames to other specific yearly time frames. In order to shift capacity, an application to shift capacity, either forwards or backwards, shall be submitted to the CMO at least thirty (30) days prior to the expiration of the specific yearly time frame into which or out of which the capacity was originally allocated pursuant to the capacity reservation certificate. In evaluating an application to shift capacity the CMO shall consider:

(a1) Whether the applicant has previously shifted capacity;

(b2) The project's current status and degree to which the applicant is deviating from his phasing schedule;

(c3) The stated reasons for the deviation from the phasing schedule;

(d4) The length of any applicable waiting list; and

(e5) The funds expended by the applicant prior to the initiation of vertical construction.

(f6) Whether the applicant has applied for or has contributed to the pay-as-you-go system made a proportionate fair-share contribution for the provision of transportation facilities

only.

(2b) Where necessary to ensure equitable allocation of capacity, the CMO may approve an application to shift capacity with conditions. If an application to shift capacity is denied or if the applicant disagrees with the conditions, the denial or the conditions may be appealed in accordance with the provisions of division 8 of this article.

(3e) No unused capacity reserved pursuant to the capacity reservation certificate may be carried forward beyond a total of three (3) years from the date of the original issuance of such certificate unless an extension has been applied for and received from the CMO as outlined in section 30-593(b).

Sec. 30-595. Extension of fixed time frame capacity reservation certificates.

(1a) Not later than thirty (30) days before the expiration date of a fixed time frame capacity reservation certificate originally issued for one (1) year or two (2) years, the applicant may request an extension, not to exceed twelve (12) months. In connection with any requested extension, a limit may be placed on the amount of capacity which may be carried forward and allocated to the twelve-month extension term. The CMO shall determine whether the extension is warranted, based on criteria including, but not limited to, the following:

(a1) Size of the project; and

(b2) Amount of capacity requested; and

(c3) Phasing; and

(d4) Location of the project; and

(e5) Capacity availability within the service area; and

(f6) Reasons for requesting the reservation time period extension; and

(g7) Whether the developer exercised good faith in attempting to secure issuance of a building permit.

(~~h8~~) Whether the applicant has applied for or has ~~contributed to the pay as you go system~~ made a proportionate fair-share contribution for the provision of transportation facilities only.

(~~2b~~) No unused capacity reserved pursuant to the capacity reservation certificate may be carried forward beyond a total of three (3) years from the date of the original issuance of such certificate unless an extension has been applied for and received from the CMO as outlined in section 30-593(b).

Sec. 30-596. Capacity reservation fees for fixed time frame capacity reservation certificates.

(~~1a~~) A capacity reservation fee shall be required to be paid as a condition of capacity reservation. The capacity reservation fee shall be an amount equivalent to the then applicable transportation impact fee calculated on the basis of the total capacity reserved for the term of the capacity reservation certificate:

(~~a1~~) Less any outstanding impact fee credits applicable to the property; and

(~~b2~~) Less any ~~contributions to the pay as you go system~~ proportionate fair-share contribution for the provision of transportation facilities only; and

(~~c3~~) For a project which has received a certificate of affordability from the county's community development and housing assistance department, less any transportation impact fees due for the affordable housing units within the project, provided that, for purposes of this subsection only, the calculation of the amount of such transportation impact fees shall not be reduced by the discounts authorized by Ordinance No. 92-10.

However, in the event the capacity reservation certificate is not used and the applicant would otherwise be entitled to a refund, the appropriate traffic impact fee credit shall be recredited to the applicant. Capacity may be reserved for one (1) year, two (2) years or three (3) years. The allocation of capacity reservation fees shall be based upon the duration of the capacity reservation certificate with the applicable capacity reservation fee prorated equally over the term of the reservation. For example, if the fixed time frame

capacity reservation certificate provides for a reservation of capacity over a three-year term, thirty-three and one-third (33 1/3) percent of the capacity reservation fee shall be due at the time of filing the application for capacity reservation; thirty-three and one-third (33 1/3) percent of the capacity reservation fee shall be due on or before the expiration of one (1) year from the date of issuance of the capacity reservation certificate; and the balance of the capacity reservation fee shall be due on or before the expiration of two (2) years from the date of issuance of the capacity reservation certificate. No capacity reservation certificate shall be issued until and unless the required portion of the capacity reservation fee is paid in full. 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 CMO shall return the capacity to the available capacity bank.

The applicant shall be required to pay all impact fees due at the time of, and as a condition of, receiving a building permit, 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.

The capacity reservation fees collected pursuant to this section shall be kept separate from other revenue of the county. They shall be kept with road impact fees, but they shall be separately earmarked from road impact fees.

EXAMPLE NO. 1
Capacity Reservation Fees in Connection
with Fixed Time Frame One-Year Capacity Reservation Certificate

Fee equal to	<i>Year 1</i> 100% of transportation impact fees.
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EXAMPLE NO. 2
Capacity Reservation Fees in Connection
with Fixed Time Frame Two-Year Capacity Reservation Certificate

	<i>Year 1</i>	<i>Year 2</i>
Fee equal to	50% of transportation impact fees	50% of transportation impact fees

EXAMPLE NO. 3
Capacity Reservation Fees in Connection
with Fixed Time Frame Three-Year Capacity Reservation Certificate

	<i>Year 1</i>	<i>Year 2</i>	<i>Year 3</i>
Fee equal to	33(1/3)% of Transportation impact fees	33(1/3)% of transportation impact fees	33(1/3)% of transportation impact fees

~~(2b)~~ *Refund of unused fixed time frame capacity reservation fee.* Capacity reservation fees shall be refundable as set forth in this paragraph. The CMO shall refund one hundred (100) percent of the capacity reservation fee not applied as a credit against impact fees in accordance with section 30-596(a) if the capacity was reserved for a one-year (twelve (12) months) reservation period or less. The CMO shall refund one hundred (100) percent of the capacity reservation fee not applied as a credit against impact fees in accordance with section 30-596(a) if the capacity was reserved for a two-year (twenty-four (24) months) reservation period. The CMO shall refund ninety (90) percent of the capacity reservation fee not applied as a credit against impact fees in accordance with section 30-596(a) if the capacity was reserved for a three-year (thirty-six (36) months) reservation period. Refunds 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 to effect such refunds as specified in the preceding sentence.

Sec. 30-597. Capacity reservation fees for flexible time frame capacity reservation certificates.

(1a) A capacity reservation fee shall be required to be paid as a condition of capacity reservation. The capacity

reservation fee shall be an amount equivalent to the then applicable transportation impact fee calculated on the basis of the total capacity reserved:

(a~~1~~) Less any outstanding impact fee credits applicable to the property; and

(b~~2~~) Less any proportionate fair-share contributions ~~to the pay-as-you-go system~~ for the provision of transportation facilities only; and

(c~~3~~) For a project which has received a certificate of affordability from the county's community development and housing assistance department, less any transportation impact fees due for the affordable housing units within the project, provided that, for purposes of this subsection only, the calculation of the amount of such transportation impact fees shall not be reduced by the discounts authorized by Ordinance No. 92-10.

However, in the event the capacity reservation certificate is not used and the applicant would otherwise be entitled to a refund, the appropriate traffic impact fee credit shall be recredited to the applicant. The capacity reservation fee may not be prorated over the three-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. 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 CMO shall return the capacity to the available capacity bank.

The applicant shall be required to pay all impact fees due at the time of, and as a condition of, receiving a building permit, 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.

The capacity reservation fees collected pursuant to this section shall be kept separate from other revenue of the county. They shall be kept with road impact fees, but they shall be separately earmarked from road impact fees.

(2b) Refund of unused flexible time frame reservation fee. Reservation fees shall be refundable as set forth in this paragraph. The CMO shall refund ninety (90) percent of the capacity reservation fee not applied as credit against impact fees in accordance with section 30-597(a). 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 to effect such refunds as specified in the preceding sentence.

Sec. 30-598. 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 CMO following written application by the CMO. 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 CMO, utilizing a form prescribed by the CMO for such purpose, requesting return receipt from the CMO 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 CMO shall reissue the capacity reservation certificate to the collateral assignee as fee simple title holder of the property. Once the CMO 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 CMO 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 CMO 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.

Secs. 30-599--30-610. Reserved.

DIVISION 7. CONCURRENCY ADMINISTRATION

Sec. 30-611. Traffic Counts.

On county-maintained roads, the county shall continue its traffic counting and monitoring program to ensure the traffic conditions are accurately reflected in the CMS, as follows:

(1) The county shall, at a minimum, conduct annual three-day traffic counts on all county-maintained functionally classified roads.

(2) The county shall establish a similar traffic counting monitoring program to supplement FDOT's traffic counts to provide PM peak hour/peak directional counts.

(3) All annual traffic counts shall be published by March 1st of each year and shall be made available to the public on the county website.

Sec. 30-~~611~~612. Capacity banks.

With respect to each public service or facility (i.e., roads, mass transit, wastewater, potable water, solid waste, stormwater and parks), there are hereby established capacity banks, to be utilized by the CMO in the implementation of this article including, but not limited to, the available capacity bank, the encumbered capacity bank, and the reserved capacity bank. Only the CMO or his 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.

Sec. 30-~~612~~613. SemiaAnnual capacity availability reporting and monitoring.

By ~~March first and by September-October~~ first of each year, beginning in ~~1992~~ 2006, the CMO shall complete an an ~~semi~~annual capacity availability report. This report shall evaluate development permitting activity for the previous ~~six-month period~~ year and determine existing conditions with regard to available capacity for the following public facilities: roads; mass transit; 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 CPP capital improvements element and CPP capital improvements program 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 ~~semi~~annual capacity availability report shall contain, at a minimum:

- (1) A summary of development activity (to include preliminary and final local development orders, 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) Three year projected capital analysis based on CPP capital improvements element and land use projections.~~

~~(4) Performance of LOS standards.~~

~~(35)~~ Recommendation of amendments to the CPP capital improvements element, the CPP capital improvements plan 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 CMO 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.

~~Sec. 30-613. Semiannual evaluation of available capacity.~~

~~The findings of the semiannual 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 period.~~

~~Based upon the analysis included in the semiannual capacity availability report, the CMO shall recommend to the land 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. The CMO shall also report to the land planning agency and the board of county commissioners the status of the capacity banks twice per year when public hearings for CPP amendments are heard.~~

Sec. 30-614. Review process.

The office of the CMO 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 office of the CMO. The CMO shall issue the requested letter or certificate or shall deny the request, as appropriate.

The office of the CMO shall maintain the official records for the county regarding capacity information letters, capacity encumbrance letters and capacity reservation certificates.

The office of the CMO shall coordinate with the affected service delivery departments concerning the capacity analysis for each concurrency determination. The departments shall forward their comments to the office of the CMO.

Secs. 30-615--30-619. Reserved.

DIVISION 8. CONCURRENCY APPEAL/MITIGATION PROCESS

Sec. 30-620. Scope and purpose.

The purpose of this division is as follows:

- (1) To provide to the applicant whose application for a capacity encumbrance letter has been denied a procedure for the appeal of that denial.
- (2) To provide a procedure 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 ~~may issue~~ (which capacity encumbrance letter of concurrency may contain conditions for its issuance).

(3) To provide a procedure by which an applicant who has been issued a capacity encumbrance denial letter for transportation facilities deficiency reasons only may propose to use the ~~pay-as-you-go system~~ proportionate fair-share contribution and for that application 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 may contain conditions for its issuance).

(4) To provide a procedure by which an applicant, whose project will produce twenty-five (25) or fewer adverse trips, may waive impact fee credits and participate in an expedited proportionate fair share approval process.

Sec. 30-621. When concurrency appeal/mitigation proportionate fair share procedures apply.

The concurrency appeal/mitigation procedures described in this division shall apply when:

(1) A denial of an application has been issued; or

(2) The applicant has proposed a mitigation plan for his project in order to satisfy the requisite level of service standards.

(3) An application has been denied for transportation facilities deficiencies only and the applicant has proposed to use the ~~pay-as-you-go system~~ proportionate fair-share contribution ~~for the project in order to satisfy the requisite level of service standards to mitigate the project's actual impacts.~~

(a) The proposed development must be consistent with the CPP; and

(b) The five-year CIP in the county CIE includes a transportation improvement that, upon completion, will satisfy the requirements of the county transportation concurrency management system; or

(c) The county may choose to allow an applicant to satisfy transportation concurrency through a proportionate fair-share contribution to an improvement that, upon completion, will satisfy the requirements of the county transportation concurrency management system, but is not contained in the 5-year CIP, if the county commits to add the improvement to the 5-year CIP no later than the next regularly scheduled update of the CIE. To qualify for consideration the proposed improvement must be reviewed by the CRC, and determined to be financially feasible pursuant to §163.3180(16)(b)1, F.S., consistent with the CPP, and in compliance with the provisions of this ordinance. Financial feasibility for this section means that additional contributions, payments or funding sources are reasonably anticipated during a period not to exceed ten (10) years to fully mitigate impacts on the transportation facilities.

d) Pursuant to sec. 163.3180 (16) (f), F.S., The county may elect to enter into a proportionate fair share agreement with an applicant for a transportation improvement that is not included in the 5-year CIP, which will authorize the issuance of a capacity encumbrance letter for the fair share contribution, provided the proportionate share contribution is sufficient to pay for one or more improvements which will, in the opinion of the governmental entity or entities maintaining the transportation facilities, significantly benefit the transportation system impacted by the project. The improvement or improvements funded by the proportionate share contribution must be adopted into the 5-year CIP at the next annual CIE update.

**Sec. 30-622. Submittal of appeal/mitigation plan/
proportionate fair-share agreement.**

(1) *Application.* An application for an appeal of a denial of a request for a capacity encumbrance letter, a mitigation plan, a proportionate fair share agreement, or a proportionate fair share agreement under the expedited approval process shall include the following:

(i) Name, address, and phone number of owner(s), developer and agent;

(ii) Property location, including parcel identification numbers;

(iii) Legal description and survey of property;

(iv) Project description, including type, intensity and amount of development;

(v) Phasing schedule, if applicable;

(vi) Description of request (appeal, mitigation plan, proportionate fair-share, or expedited proportionate fair share);

(vii) Copy of application for capacity encumbrance letter;

(viii) Copy of approved traffic study;

(ix) Application fee; and

(x) Copy of capacity encumbrance denial letter.

~~(24a)~~ If the applicant is appealing a denial, an appeal application and fee which conforms to the submittal requirements of this division, in fifteen (15) copies, shall be submitted to the CMO. 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.

~~(32b)~~ 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 in fifteen (15) copies to the EMODRC. 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 transportation system.

(b) The DRC 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 RAC 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.

(e) Upon approval of the developers agreement, a capacity encumbrance letter will be issued pursuant to the terms of the agreement.

(f) 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.

(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.

~~(e) — If the applicant proposes to use the pay-as-you-go system to remedy a transportation facilities deficiency for development of a specific parcel, an application which incorporates the pay-as-you-go system and includes, at a minimum, that information set forth in section 30-591(1) through~~

~~(10), (12), (14), and (15), shall be submitted with fifteen (15) copies to the CMO. The application shall also state whether the transportation facility is presently included in or will be required as a condition of approval to be added to the long-term transportation concurrency management system as outlined in sections 30-520(6)d.1. through 7. The applicant shall submit a traffic study that:~~

~~_____ (1) Defines the road improvement required to mitigate the adverse impacts of this development; and~~

~~_____ (2) Summarizes the total cost of the improvement including right-of-way design and construction (cost to be approved by the county); and~~

~~_____ (3) Calculates the project's fair share of the improvements using the following formula:~~

$$\frac{\text{Project's P.M. Peak Hr. Peak Directional Traffic}}{\text{LOS "C" Capacity of the Existing Facility}} \times \text{Total Cost of Construction}$$

~~(4) Calculates any impact fee credits that may be due the applicant based upon the approved impact fee ordinance. Impact fee credits will not be applicable for any state projects including U.S. routes or Florida Intrastate Highway System (FIHS) roads.~~

~~_____ (d) If the county has approved a form of application for any of the submittals referred to in subparagraphs (a), (b) or (c) above, the applicant shall use the prescribed form and amend it or modify it as appropriate by virtue of attachments thereto and the data to be included therein.~~

(34) If the applicant proposes using the proportionate fair-share option to satisfy the transportation concurrency requirements for development of a specific parcel:

(a) The applicant shall attend a pre-application conference with the CRC to discuss eligibility, application submittal requirements, potential mitigation options, and related

issues. If the impacted road is a state road, the FDOT will be invited to participate in the pre-application conference.

(ab) The applicant shall submit fifteen (15) copies of the proportionate fair-share application to the county, along with the following:

(i) Name, address, and phone number of owner(s), developer and agent;

(ii) Property location, including parcel identification numbers;

(iii) Legal description and survey of property;

(iv) Project description, including type, intensity and amount of development;

(v) Phasing schedule, if applicable;

(vi) Description of requested proportionate fair share mitigation method;

(v) Copy of application for capacity encumbrance letter;

(vi) Copy of approved traffic study; and

Application fee.

(bc) Within 10 business days, the applicant will be notified if the application is insufficient or, incomplete. If such deficiencies are not remedied by the applicant within 30 days of receipt of the written notification, then the application will be deemed abandoned. The CRC may grant an extension of time not to exceed 60 days to cure such deficiencies, provided that the applicant has shown good cause for the extension and has taken reasonable steps to effect a cure.

(d) Calculation of the project's proportionate fair-share of the improvements using the following formula:

Proportionate Fair-Share Contribution =

$$\sum \left[\frac{(\text{Development Trips}_i)}{(\text{SV Increase}_i)} \times \text{Cost}_i \right]$$

Where:

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

Development Trips_i = PM Peak Hour Peak Directional trips from the stage or phase of development under review that are assigned to roadway segment “i” and that is deficient per the CMS database;

SV Increase_i = Service volume increase provided by the eligible improvement to roadway segment “i” based on the adopted level of service standard for that facility;

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.

(e) For the purposes of determining proportionate fair-share obligations, the County shall determine improvement costs based upon the actual cost of the improvement as obtained from the CIE or the FDOT Work Program. Where such information is not available, improvement cost shall be determined using one of the following methods:

(i) For county roads not in the CIE, the Public Works Engineering Division shall prepare a cost estimate. The cost shall be adjusted to the anticipated year of expenditure using the cost escalation formula in subparagraph (f) below; or

(ii) For state road improvements not included in the adopted FDOT Work Program, cost estimates shall be determined by the FDOT District.

(f) The cost escalation formula is expressed as:

$$\text{Cost}_n = \text{Cost}_0 \times (1 + \text{Cost_growth}_{3\text{yr}})^n$$

Where:

Cost_n = The cost of the improvements in year n;

Cost₀ = The cost of the improvement in the current year;

Cost_{growth}_{3yr} = The growth rate of costs over the last 3 years;

n = The number of years until the improvement is constructed.

(i) The three-year growth rate is determined by the following formula:

$$\text{Cost_growth}_{3\text{yr}} = \frac{[\text{Cost_growth}_1 + \text{Cost_growth}_2 + \text{Cost_growth}_3]}{3}$$

Where:

Cost_{growth}_{3yr} = The growth rate of costs over the last 3 years;

Cost_{growth}₁ = The growth rate of costs in the previous year;

Cost_{growth}₂ = The growth rate of costs two years prior;

Cost_{growth}₃ = The growth rate of costs three years prior.

(ii) The discount formula is determined as follows:

$$\text{Cost}_{d,n} = \text{Cost}_n / (1+k)^n$$

Where:

Cost_{dn} = The cost of the improvements in year n;

k = The interest rate used for the discounting

n = The number of years until the improvement is constructed.

(iii) The discount rate will be the effective rate of return on the County's portfolio average daily balance of the most recent fiscal year as determined and published annually by the Orange County Comptroller.

(g) The cost of the improvement for a proportionate fair-share obligation shall be fixed at the time the proportionate fair-share agreement is approved by the board of county commissioners.

(h) If the County has accepted an improvement project proposed by the applicant, then the value of the improvement shall be determined using one of the methods provided in this section.

(i) 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 through an appraisal, at no expense to the County, from an MAI appraiser approved by the County. The value of the right-of-way to be conveyed by the owner shall be the total number of acres, and/or a fraction thereof, of the conveyed land multiplied by the appraised fair market value of the property. The applicant shall supply a drawing 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 must also 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 the FDOT for essential information about compliance with federal law and regulations.

(j) Credits against impact fees.

(i) Credits will be given for that portion of the impact fees that would have been used to fund the improvements on which the proportionate fair--share contribution is calculated. Additionally, if the proportionate fair share contribution is based on only a portion of the project's traffic, the credit will be limited to that portion of the impact fees on which the proportionate fair--share contribution is based.

(ii) At the time the proportionate fair-share obligation is being determined, the County will also compute the transportation impact fee obligation for the proposed development. The impact fee credit is calculated using the following formula:

$$\text{Credit} = \text{Project VMT} / \text{Total VMT} \times \text{Impact Fees}$$

Where:

Project VMT=Project trips for which a proportionate fair-share is calculated x length of segment for which a proportionate fair-share is calculated

Total VMT=Vehicle miles of travel generated by the project

$$\text{VMT} = \text{ADT} \times \% \text{ NEW} \times \text{ATL} \div 2^*$$

ADT = Trip ends during a weekday

% NEW = Percent of trips that are primary trips

ATL = Average trip length

÷ 2 = Avoids double-counting trips for origin and destination

* This formula is found in the study entitled Orange County, Florida Road Impact Fee Update, dated April, 2004, adopted by reference by the board of county commissioners on April 27, 2004. (See section 23-90).

(k) Proportionate Fair Share Agreement: A developer's agreement addressing the terms of the proportionate fair share contribution (the proportionate fair share agreement) must be recommended by the CRC and approved by the board of county commissioners.

(l) Upon approval of the proportionate fair share agreement by the board of county commissioners, and payment of fees, a capacity encumbrance letter will be issued for the amount of capacity to be created by the proportionate fair share contribution.

(k) Expedited Approval Process: An applicant may elect to use the expedited approval process for projects with twenty-five or fewer adverse trips. An applicant using the expedited approval process waives impact fee credits. The application is reviewed and approved by the CRC and the

proportionate fair share agreement will be executed by the chairman of the CRC.

~~Sec. 30-623. Review process.~~

~~— The following shall constitute the process by which an appeal application or mitigation plan application shall be reviewed:~~

~~— (1) *Determination of sufficiency/request for additional information.* The CMO shall review each application and, within ten (10) days following the date the application is submitted, determine whether or not the application is sufficient and, in any event, within such time period notify the applicant whether:~~

~~— a. The application is sufficient; or~~

~~— b. The application is insufficient and what additional information is required so as to meet sufficiency, which may include, but is not limited to, a further or more detailed traffic study. When additional information is required, the applicant and the CMO may agree on a time frame for its submittal based on the complexity of the information required; absent such agreement, within five (5) days following the expiration of such ten day period, the CMO shall designate by written notice to the applicant a date and time by which the required additional information must be submitted to the CMO. Failure to submit the required information in accordance with the agreed upon schedule or designated date and time may result in a denial of the application.~~

~~— The CMO, in reviewing the sufficiency of the application, shall base his decision on the character, clarity and amount of information which is reasonably necessary for the development review committee to evaluate the impacts of the proposed project on public facilities and services and/or the feasibility of the mitigation plan. A determination of sufficiency of the application shall not in any way be deemed to be an approval or granting of the application.~~

~~— (2) *Review by development review committee.* When the CMO deems the application to be sufficient, the application shall be placed on the next available agenda in the order of filing for evaluation by the development review committee. The applicant shall be promptly notified as to such hearing date and, in any event, shall be notified at least ten (10) days prior to the actual~~

~~hearing before the development review committee of the date and time for such hearing. The staff report reviewing the application shall be made available to the applicant when completed but in no event less than seven (7) days prior to the hearing.~~

~~———— (3) ———— *Decision by development review committee.* In evaluating the application, the following procedure or process shall apply:~~

~~———— a. ———— The development review committee shall consider and evaluate the application in accordance with the procedures set forth in this division and in this article.~~

~~———— b. ———— The development review committee may:~~

~~———— 1. ———— Deny the application; or~~

~~———— 2. ———— Approve the application with or without conditions.~~

~~———— c. ———— The decision of the development review committee shall be in writing and shall set forth in detail the findings of fact upon which the development review committee has denied or approved (whether with or without conditions) the application. Such decision shall be promptly furnished to the applicant.~~

~~———— (4) ———— *Form of approval by development review committee.* If the development review committee approves the application, whether in whole or in part and whether with or without conditions, such written approval shall enable the CMO to issue a capacity encumbrance letter, which requires the applicant to enter into a developer's agreement confirming any conditions for approval. The developer's agreement shall be approved by the board of county commissioners and recorded in the public records. The developer's agreement shall establish the time frame for the reservation of capacity based on the nature and scope of the mitigation plan proposed in the application and the projected completion date of the project or phase thereof to which the mitigation plan applies. 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 an opportunity for the applicant to be heard on the issue of whether the development has proceeded in good faith during the extended reservation period. The developer's agreement shall also state whether any improvements funded by the applicant as part of the mitigation plan would qualify for impact fee credits if all or a portion of the reserved capacity is not used by the applicant's project and is returned to the county. If impact fee credit would be applicable to any portion of the mitigation plan, the developer's agreement shall specify the amount of the credit or the method to be used in determining the amount of the credit.~~

Sec. 30-6234. Appeals ~~of decision by development review committee.~~

The applicant may ~~further appeal the decisions~~ of the ~~development review committee~~RAC, CRC, and DRC, to the board of county commissioners as follows:

(1) The applicant may appeal decisions of the RAC and the CRC by requesting a hearing in letter form to the chairman of the DRC. Such request shall include a summary of the decision being appealed and the basis for the appeal.

~~(2) The appeal procedure to the board of county commissioners shall be as otherwise established by the County Code. Any decision of the DRC pursuant to this article may be appealed to the board of county commissioners by submitting a letter to the chairman of the DRC within 30 days of the decision.~~

(2a) The board of county commissioners may deny or approve (with or without conditions) the application or may return the application to the ~~development review committee~~ appropriate committee for further consideration with or without comments or directions.

(3b) The board of county commissioners shall

review the application on the same basis and in accordance with the procedures of this division, and an approval issued by the board of county commissioners shall have the same effect as an approval by the ~~development review committee~~respective committee and shall accordingly enable the CMO to issue a capacity encumbrance letter which may contain such conditions as the board of county commissioners may require.

~~Sec. 30-625. Basis for review of application.~~

~~When the development review committee or the board of county commissioners, as the case may be, 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 levels of service, will result in degradation in the level of service of any applicable public facility or service below the level of service standard adopted in this article and/or the comprehensive policy plan. The application may be approved with conditions to assure that all applicable levels of service standards will be met and may include, but is not necessarily limited to, any of the following conditions:~~

~~(1) Limiting the manner in which the use is conducted, including restricting the density and/or intensity of the use.~~

~~(2) Phasing of the project, including the time periods or limitations within which individual phases may be commenced and/or must be completed.~~

~~(3) Requiring the construction of certain improvements to meet or enhance the public facilities and/or services for the project.~~

~~Sec. 30-626. Effect of approval.~~

~~The approval of the application by the development review committee or board of county commissioners shall enable the CMO to issue a capacity encumbrance letter with such conditions as are set forth in such approval.~~

~~Sec. 30-6247. Miscellaneous matters.~~

~~(a1) If an applicant wishes to appeal a denial, he must~~

~~submit his application in accordance with the procedures of this division within fifteen (15) days after the issuance of the denial. Pursuant to sec. 163.3164 (32), F.S., the requirement that LOS be achieved and maintained shall not apply (for transportation facilities only) if the proportionate fair share option is used.~~

~~(b2) For any application which is ultimately denied, either initially or upon appeal, the applicant shall be precluded from filing a new application on the property of the kind and type requested in the denied application for that period from the date of the ultimate denial until the next semiannual capacity availability report is published pursuant to section 30-612. Proportionate fair-share under this article does not apply to developments of regional impact (DRIs) using proportionate fair share under §163.3180(12), F.S.~~

~~(e) All developer's agreements must be approved by the board of county commissioners in accordance with the County Code.~~

~~(d3) The filing of an application under this division shall be without prejudice to the right of the applicant to assert a claim of vested rights under the county vested rights ordinance; provided, however, that upon the execution of a developer's agreement, the applicant shall be deemed to have waived any rights for his project under the county vested rights ordinance.~~

~~(e) The term "application" for the purposes of this division shall mean:~~

~~(1) The form or document by which the applicant appeals the denial by the CMO of a request for a capacity encumbrance letter; or~~

~~(2) If the applicant proposes a mitigation plan in order to meet the level of service standards, the form or document by which the applicant has submitted the mitigation plan pursuant to this division.~~

~~(3) Unless addressed in this division, any other procedural items shall be governed by the County Code.~~

Secs. 30-6258--30-634. Reserved.

DIVISION 9. DEFINITIONS

~~Sec. 30-635. Definitions.~~

~~As used in this article, the terms listed below shall have the meanings as set forth below:~~

~~*Appeal:* A request for a review of an administrative interpretation of any provision of this article, or a review of a decision made by any administrative official or board or commission.~~

~~*Applicant:* A person who files an application under this article.~~

~~*Application:* Any document submitted by an applicant under this article including, as the case may be, any of the following:~~

~~(1) An application by the applicant to the concurrency management official seeking issuance for his project of a capacity encumbrance letter;~~

~~(2) The application or procedure by which the applicant under the provisions of division 8 seeks to appeal the denial by the concurrency management official of his application for a capacity encumbrance letter; or~~

~~(3) An application or proposal by the applicant for approval of a mitigation plan for his project so that, if approved, a capacity encumbrance letter can be issued.~~

~~*Building:* Any structure that encloses or covers a space used for sheltering any occupancy.~~

~~*Building permit:* For purposes of this article, a permit which authorizes (i) the construction of a new building, or (ii) the expansion of a floor area or the increase in the number of dwelling units contained in an existing building, or (iii) change in use, shall qualify as a building permit.~~

~~*Capacity:* Refers to the availability of a public service or facility to accommodate users, expressed in an appropriate unit of measure, such as gallons per day or average daily trip ends.~~

~~—————Capacity, available: Capacity which can be encumbered or reserved to future users for a specific public facility or service.~~

~~—————Capacity, permitted: Capacity which has been removed from the reserved or encumbered capacity bank and committed to a particular property through issuance of a building permit.~~

~~—————Capacity, encumbered: Capacity which has been removed from the available capacity bank through the issuance of a capacity encumbrance letter.~~

~~—————Capacity encumbrance letter: A letter issued by the county based upon a determination by the CMO that adequate capacity for each public service and facility is available and has been encumbered for one hundred twenty (120) days to serve the densities and intensities of development designated on such capacity encumbrance letter.~~

~~—————Capacity information letter: An informational and nonbinding letter for a specific development or property which indicates available capacity for each public facility based upon adopted LOS standards at the time the letter is issued but which does not (i) guarantee capacity in the future, nor (ii) encumber, commit or reserve capacity for any period of time.~~

~~—————Capacity reservation certificate: A certificate issued by the county pursuant to the terms and conditions of this article which constitutes proof that adequate capacity for each required public facility or service exists and has been reserved to serve the densities and intensities of development within the time period designated on such certificate.~~

~~—————Capacity reservation fee: The fee as established by resolution of the board of county commissioners that is required to be paid to the county as a condition of capacity reservation in the amount equivalent to the then applicable transportation impact fees calculated on the basis of the capacity reserved for the term of the capacity reservation certificate.~~

~~—————(1) Less any outstanding impact fee credits applicable to the property; and~~

~~—————(2) For a project which has received a certificate of~~

~~affordability from the county's community development and housing assistance department, less any transportation impact fees due for the affordable housing units within the project, provided that, for purposes of this subsection only, the calculation of the amount of such transportation impact fees shall not be reduced by the discounts authorized by Ordinance No. 92-10.~~

~~——— *Capacity, reserved:* Capacity which has been removed from the available or encumbered capacity bank and allocated to a particular property through issuance of a capacity reservation certificate reserving capacity for a period of time specified in such capacity reservation certificate.~~

~~——— *Capacity, used:* Capacity which is being used by existing residents and development.~~

~~——— *Capacity, vested:* Capacity which has been withdrawn from the available capacity bank through issuance of a vesting determination or phasing agreement.~~

~~——— *Capacity waiting list:* A chronological listing of applicants that have been denied a capacity encumbrance letter and have applied to be put on the capacity waiting list. Applicants on the capacity waiting list shall be offered capacity as it becomes available on a "first come first served" basis.~~

~~——— *Change of use:* For purposes of this article, any proposed change of use, redevelopment or modification of the character, type or intensity of use of an existing building or site.~~

~~——— *CMO:* Acronym for concurrency management official.~~

~~——— *Collateral assignee:* That person or entity to which a capacity encumbrance letter or capacity reservation certificate is collaterally assigned in accordance with the terms and conditions of this article as security for a loan encumbering the real property described in, and which is the subject of, either a capacity encumbrance letter or a capacity reservation certificate.~~

~~——— *Comprehensive policy plan:* The county comprehensive policy plan (1990-2010, adopted by the board of county commissioners on July 1, 1991, as may be amended or replaced from time to time).~~

~~———— *Concurrency evaluation:* Evaluation by the CMO based on adopted LOS standards to ensure that public facilities and services needed to support development are available concurrent with the impacts of such development as defined in this article.~~

~~———— *Concurrency management official or CMO:* The planning and development director of the county or his designee.~~

~~———— *CPP:* Acronym for comprehensive policy plan.~~

~~———— *Developer's agreement:* An agreement entered into between the county and another person or entity associated with the development of land including, but not limited to, agreements associated with development orders issued pursuant to F.S. § 380.01.~~

~~———— *Development completion:* All components of a development are completed and a certificate of occupancy has been issued.~~

~~———— *Encumbrance period:* The period of one hundred twenty (120) days following the date of issuance of a capacity encumbrance letter for which period capacity is encumbered pursuant to such capacity encumbrance letter.~~

~~———— *Land Development Code:* Those portions of the County Code which regulate the development and/or use of real property and which are consistent with and which implement the comprehensive policy plan pursuant to the requirement of F.S. § 163.3202, and which the county is obligated by F.S. ch. 163 to enforce.~~

~~———— *Level of service standard:* The measurement indicating the degree of service provided by, or proposed for, a designated public facility based on the operation characteristics of such facility.~~

~~———— *LOS:* Acronym for level of service standard.~~

~~———— *Mitigation plan:* A plan or proposal by the applicant for his project by which the applicant proposes to improve or undertake improvements to the public facilities and services in order for his project to meet the level of service standards.~~

~~———— *County Code:* The new (recodified) Code for Orange County, Florida, adopted by the board of county commissioners in~~

~~and by virtue of Ordinance No. 91-9 approved April 16, 1991, and effective April 26, 1991, as the same may hereafter be amended, modified and/or recodified.~~

~~———— *County vested rights ordinance:* Divisions 2, 3 and 4 of article XI, chapter 30 of the County Code.~~

~~———— *Project:* The particular lot, tract of land, project or other development unit for which the applicant files an application under this article.~~

~~———— *Public facilities and services:* Those public facilities and services for which level of service (LOS) standards have been established in the comprehensive policy plan, and are recognized in this article, and which include the following:~~

- ~~———— (1) ——— Roads;~~
- ~~———— (2) ——— Wastewater;~~
- ~~———— (3) ——— Stormwater;~~
- ~~———— (4) ——— Solid waste;~~
- ~~———— (5) ——— Potable water;~~
- ~~———— (6) ——— Parks and recreation; and~~
- ~~———— (7) ——— Mass transit.~~

~~———— *Reservation period:* The length of time for which capacity is reserved pursuant to a capacity reservation certificate.~~

~~———— *Roads:* Major thoroughfare network.~~

~~———— *Semiannual capacity availability report:* A report prepared on or by March first and September first of each year specifying, among other things, (i) capacity used for the preceding six-month period, (ii) projected capacity demand for the next succeeding six-month period, (iii) available capacity for each public facility and service, (iv) projected capacity for each public facility and service identifying those programmed capital improvements for each public facility and service that will correct deficiencies and/or improve or increase the level of service with respect to such~~

~~facility or service, (v) summarize projected development activity and resulting demand for public facilities and services during the next ensuing six-month period, and (vi) recommendations.~~

~~—————*Subdivision:* Any subdivision of land as defined in chapter 30, article III of the County Code.~~

~~—————*Trip end:* A single or one-directional vehicle movement.~~

~~—————*Vested rights:* The right to develop or continue to develop a project notwithstanding the project's inconsistency with the county concurrency management system and/or county comprehensive policy plan provided a vested rights certificate has been obtained pursuant to the county vested rights ordinance.~~

Section 3. Effective Date. This ordinance shall become effective pursuant to general law.

ADOPTED THIS ____ DAY OF _____, 2006.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Richard T. Crotty, Orange County Mayor

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

