

BCC Mtg. Date: March 7, 2023

Effective Date: March 14, 2023

ORDINANCE NO. 2023-11

AN ORDINANCE RELATED TO CONCURRENCY IN ORANGE COUNTY, FLORIDA, AMENDING CHAPTER 30, PLANNING AND DEVELOPMENT, OF THE ORANGE COUNTY CODE; AMENDING DIVISION 3, "CONCURRENCY, EXEMPTIONS, AND VESTED RIGHTS" OF ARTICLE XI "COMPREHENSIVE PLAN AND VESTED RIGHTS,"; AMENDING DIVISION 1, "GENERALLY," DIVISION 2, "LEVEL OF SERVICE (LOS) STANDARDS," DIVISION 3, "CONCURRENCY EVALUATIONS," DIVISION 4, "CAPACITY INFORMATION LETTERS," DIVISION 5, "CAPACITY ENCUMBRANCE LETTERS," DIVISION 6, "CAPACITY RESERVATION CERTIFICATES," DIVISION 7, "CONCURRENCY ADMINISTRATION," AND DIVISION 8, "CONCURRENCY APPEAL/MITIGATION PROCESS" OF ARTICLE XII, "CONCURRENCY MANAGEMENT"; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Amendments; In General. Article XI, Chapter 30 of the Orange County Code is hereby amended as set forth in Section 2 of this ordinance and Article XII, Chapter 30 of the Orange County Code is hereby amended as set forth in Section 3 of this ordinance, with all new wording being indicated by underlines and all deleted wording being shown by ~~strike-throughs~~.

Section 2. Amendments to Article XI, Comprehensive Plan and Vested Rights.
Division 3 of Article XI is amended, in part, to read as follows:

**DIVISION 3. - CONCURRENCY, EXEMPTIONS, AND
VESTED RIGHTS**

* * *

Sec. 30-372. Developments entitled to a vested rights certificate for concurrency other than schools.

(a) *Vested rights generally.* Pursuant to F.S. § 163.3167(~~85~~), as may be amended, nothing in the comprehensive policy plan shall limit or modify the rights of any person to complete any development that has been authorized as a development of regional impact pursuant to F.S. ch. 380 or who has been issued a final local development order and development has commenced and is continuing in good faith.

(b) *Vested rights certificates.* Any person may request from the county a determination of whether the person's right to complete a development is vested pursuant to subsection (a) above and F.S. § 163.3167(~~85~~), as may be amended, notwithstanding the imposition of concurrency requirements. Such request shall be made on application forms as the county may from time to time prescribe, and the request shall be made and shall be reviewed and approved or disapproved in accordance with the procedures described in division 4 of this article.

(c) *DRI's.* Notwithstanding the imposition of concurrency requirements, a DRI shall be entitled to a vested rights certificate if, on or before December 2, 1991, either (1) the DRI was approved by the board pursuant to F.S. § 380.06 and the pertinent development order has not expired or (2) there has been issued for the DRI a binding letter of vested rights, and such rights are still valid and have not expired.

(d) *Other developments.* Notwithstanding the imposition of concurrency requirements, a development, which may be other than a DRI, shall be deemed to have been issued a final local development order and to have commenced and to be continuing in good faith for purposes of subsection (a) above and F.S. § 163.3167(~~58~~), as may be amended, and therefore to be entitled to a vested rights certificate, if (1) the development otherwise complies with and is allowed to proceed under all county ordinances and regulations and (2) the development meets at least one (1) of the following criteria:

* * *

Sec. 30-374. Developments entitled to exemption from school concurrency.

Certain development may be exempt from school concurrency as provided below:

(a) *Exemptions.* The following types of developments are exempt from the requirements of school concurrency if any of the following exemptions have been met; provided, however, if any application for exemption requires a more detailed review or Concurrency Management staff is unable to determine whether or not the application qualifies for an exemption, Concurrency Management staff, in its discretion, may forward the application to the County Attorney's Office for review and may, at that time, require the applicant to complete a vested rights application including the requisite fee. ~~the~~An exemption shall not be granted until an application for school concurrency exemption, accompanied by sufficient documentation and any applicable fee, is submitted and approved by the concurrency management official.

* * *

(10) *Plat.* A residential subdivision, which, for purposes of this section, shall include single-family, multi-family, and townhome units, that has been platted into one (1) or more dwelling units per lot prior to September 16, 2008. Such subdivision shall be exempt from school concurrency for the number of unbuilt dwelling units approved on the plat.

(b) *Vested rights.* The following types of developments may be exempted from the requirements of school concurrency by a school concurrency vested rights certificate; provided, however, a certificate shall not be issued until an application for school concurrency vested rights, accompanied by sufficient documentation and any applicable fee, is submitted and approved by the concurrency management official based on a review by the Orange County Attorney's Office:

(1) *Approved site plan*~~/plat~~. Any new residential development that has site plan approval for a site pursuant to a specific development order approved on or before September 16, 2008, and such Site Plan Approval has not expired~~including the portion of any project that has received final subdivision plat approval as a residential subdivision into one (1) dwelling unit per lot.~~

* * *

Sec. 30-375. Expiration of exemption or vested rights certificates for school concurrency.

(a) *Expiration of school concurrency exemptions under subsection 30-374(a).* School concurrency exemptions listed in subsection 30-374(a) shall expire when the basis for the exemption terminates or expires.

(b) *Expiration of school concurrency vested rights certificates under subsection 30-374(b).* School concurrency vested rights listed in subsection 30-374(b) shall expire as follows:

(1) *Site plan.* School concurrency vested rights based on a preliminary subdivision plan approval shall expire when the preliminary subdivision plan expires, in accordance with section 34-73, as may be amended. School concurrency vested rights based on a commercial site plan approval shall expire when the building permit expires, in accordance with section 9-33, as may be amended.

* * *

Secs. 30-376—30-384. Reserved.

Section 3. Amendments to Article XII, Concurrency Management. Article XII is 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 Plan (hereinafter referred to as the "comprehensive plan"), as mandated by ~~F.S. ch. Ch.~~ 163, ~~F.A.C. rule 9J-5.0055~~ F.S., and the First Amended and Restated Interlocal Agreement for Public School Facility Planning and Implementation of Concurrency (hereinafter referred to as the "interlocal agreement") entered into by the county, the school board and the applicable municipalities within the county as required in ~~F.S. § 163.3180(136)~~, F.S., both as may be amended from time to time. 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.

~~*Adjacency review:* The review of school concurrency service areas adjacent to the school concurrency service area in which the proposed residential development is located as required by section 18.6(e) of the interlocal agreement.~~

Adjusted FISH capacity: The number of students who can be served in a permanent public school facility as provided in the Florida Inventory of School Houses ("FISH"), adjusted to account for the design capacity of modular or in-slot classrooms on the campuses designed as modular or in-slot schools, but not to exceed core capacity (the maximum number of students that can be effectively served in a school dining facility).

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

~~*Alternative mobility area (AMA):* A designated transportation concurrency exception area established for the purpose of promoting urban infill development or redevelopment and maximizing the use of existing public infrastructure pursuant to Objective T2.3 and Map 16 in the Transportation Element of the County's adopted Comprehensive Plan.~~

Annual capacity availability report: A report prepared ~~on or by October 1 of each year~~ annually specifying, among other things, capacity used for the preceding year, and available, encumbered, and reserved capacity for each public facility and service. Pursuant to section 46.2 of the interlocal agreement, the school board shall provide information by March 1 of each year to the county with regard to public school enrollment, capacity, and levels of service for each school concurrency service area.

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 or entity who files an application under this article.

Application: Any document submitted by an applicant under this article to obtain concurrency or capacity approval ~~including, but not limited to, any of the following:~~

~~(1) An application submitted to the concurrency management official seeking a capacity encumbrance letter;~~

~~(2) — The appeal of the denial of a capacity encumbrance letter;~~

~~(3) — An application to be placed on a capacity waiting list;~~

~~(4) — An application for a proportionate share agreement (for transportation) or for proportionate share mitigation (for schools); or~~

~~(5) — An application for, or proposal of, a transportation concurrency mitigation plan for a project that, if approved, will allow a capacity encumbrance letter to be issued.~~

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

Available Capacity: Capacity that can be encumbered or reserved for future users for a specific public facility or service.

Available school capacity: The ability of a school concurrency service area to accommodate the students generated by a proposed development at the adopted level of service standards. Available school capacity shall be derived using the following formula for each school type:

Available School Capacity = (School Capacity x Adopted Level of Service ¹) - (Enrollment ² + Reserved Capacity ³)

Where:

- 1 Adopted Level of Service = the ratio, expressed as a percentage, of enrollment to school capacity as jointly adopted by the school board and local governments.
- 2 Enrollment = student enrollment as counted in the most recent official October count.
- 3 Reserved Capacity = the total amount of school capacity reserved for all residential developments within a school concurrency service area.

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

Building permit: For purposes of this article, a building permit shall mean any 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, ~~bank~~available: a concurrency management database which tracks, in the appropriate unit of measure, the available, Capacity which can be encumbered, or and reserved capacity to future users for a ~~specific~~ public facility or service.

Capacity commitment agreement: A developer's agreement or capacity enhancement agreement, whether individually or as part of a consortium of capacity enhancement agreements, executed prior to September 9, 2008, containing commitments to fund wholly or partially the construction of public school facilities to provide school capacity at identified public schools required to serve the affected residential developments.

~~*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 pursuant to ~~section 30-588~~Division 5, hereof, to serve the densities and intensities of development designated on such capacity encumbrance letter.

Capacity enhancement agreement: A legally enforceable and binding agreement, as may be amended and / or reinstated, between an applicant and the school board (and, when necessary, the county), committing to mitigation determined to be necessary by the school board to avoid or mitigate overcrowding individual schools impacted by the proposed residential development ~~pursuant to the comprehensive plan public schools facilities element policy PS6.3.1.~~

Capacity information letter: An informational and nonbinding letter for a specific development or property ~~which that~~ 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

information letters for schools are issued by the school board.

~~*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 reservation certificate: A certificate issued by the county pursuant to this article, ~~which~~ that 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~~ which is required to be paid to the county as a condition of capacity reservation in the amount equivalent to the then applicable impact fees calculated on the basis of the capacity reserved for the term of the capacity reservation certificate, as more particularly described in Section 30-596, hereof.:

~~(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 housing and community development division, 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. For schools, capacity is reserved through the issuance of a certificate of school concurrency or the execution of a proportionate share mitigation agreement.

~~*Capacity, vested:* Transportation 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. The county does not maintain a capacity waiting list for schools.~~

Certificate of school concurrency: A written determination by the county based on a finding of the school board that available school capacity is sufficient to accommodate the residential development and has been reserved for such development. A certificate of school concurrency may be included in a consolidated capacity reservation certificate.

Change of use: For purposes of this article, any proposed change of use, redevelopment₂ or modification of the character, type₂ or intensity of use of an existing building or site.

CIE: Capital improvements element of the comprehensive plan required pursuant to ~~F.S.~~ § 163.3177(3)(a)₂ F.S.

CIP: Capital improvements program, a five-year schedule of capital improvements adopted annually in conjunction with the county budget. The CIP is part of the adopted CIE. For schools, the CIP includes the five-year district facilities work program of the school district's educational facilities plan adopted in accordance with ~~F.S.~~ § 1013.35₂ F.S.

CMO: Concurrency management official, the county administrator or his or her designee.

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 therein, in accordance with the terms and conditions of this article~~in, and which is the subject of, either a capacity encumbrance letter or a capacity reservation certificate.~~

Comprehensive plan: The Orange County 2010-2030 Comprehensive Plan required pursuant to ~~F.S.~~ § 163.3177, F.S. (adopted by the board of county commissioners on May 19, 2009, as may be amended or replaced from time to time).

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

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

Concurrency evaluation: Evaluation based on adopted LOS standards to ensure that public facilities and services required as a result of new development are available concurrently with the impacts of such development, as defined in this article.

Concurrency management system (CMS): The adopted procedures and/or processes used to ensure that public facilities that are required as a result of new development are available concurrently with the impacts of such development consistent with ~~F.S.~~ § 163.3180, F.S.

~~*Core capacity:* The maximum number of students that can be effectively served in a school dining facility.~~

Concurrency management system methodology (CMS Methodology): A document prepared by orange county staff which identifies the current transportation standards and typical approach to conduct a transportation concurrency analysis.

County: Orange County, a charter county and a political subdivision of the State of Florida.

County Code: The new (recodified) Code for Orange County, Florida, adopted by the board of county commissioners in and ~~pursuant to 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.

De Minimis: For the purposes of transportation analysis, a project is considered de minimis if its impacts are less than a total p.m. peak of five (5) peak hour trips on the roadways within the area of influence. When evaluating for school concurrency, any residential development that creates an impact of less than one (1) student shall be considered de minimis.

Developer's agreement: An agreement entered into between the county and/or the School Board and one (1) or more persons or entities associated with the development of land including, but not limited to, agreements associated with development orders issued pursuant to ~~F.S.~~ §380.06, F.S.

Development analysis: The document required to be prepared and submitted under section 30-563 of this article and section 18.4 of the interlocal agreement as a requirement for ~~the~~

review of a school concurrency determination application for evaluating the impacts of a proposed residential development on school concurrency.

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

Development impact (schools): The projected students from a residential development as a result of the approval of a development application or a school concurrency determination application calculated by multiplying the proposed number of dwelling units by the student generation rates by school type as set forth in the most recent school impact fee study as may be amended from time to time.

DRC: Development review committee.

~~*Encumbered Capacity:* Capacity that has been removed from the available capacity bank through the issuance of a capacity encumbrance letter.~~

Encumbrance period: The period during which ~~following the date of issuance of a capacity encumbrance letter for which period~~ capacity is encumbered pursuant to issuance of a such capacity encumbrance letter.

Exempt development: Any development that qualifies for an exemption pursuant to section 30-374 or 30-503 of this chapter or section 18.2 of the interlocal agreement, all as may be amended from time to time.

FDOT: The Florida Department of Transportation.

FISH: Florida Inventory of School Houses; an inventory of educational facilities within each school district that is required by the Florida Department of Education to be updated annually.

~~*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.~~

In-slot (modular) classrooms: Relocatable classrooms that conceptually "slide" into the spaces along a common walkway, as part of a modular campus which is characterized by a campus with

brick and mortar core facilities and covered concrete walkways leading to the relocatable classrooms, list of which may be obtained from the school board. With the exception of in-slot (modular) classrooms, relocatable classrooms are not considered permanent capacity.

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

Long-Term Transportation Concurrency Management System (LTTCMS): A schedule of transportation capital improvements adopted into the CIE intended to achieve the adopted LOS within a 10-year timeframe.

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, as defined in the FDOT Quality Level of Service Manual.

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

~~*Pedestrian connectivity index:* A link to node ratio defined as the number of links (street segments between intersections and cul-de-sacs) divided by the number of nodes (total number of intersections and cul-de-sacs).~~

Permitted Capacity: Capacity that has been removed from the reserved or encumbered capacity bank and has been committed to a particular property through issuance of a certificate of occupancy.

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, structure, or other development unit for which ~~the~~an applicant files an application under this article.

Project that promotes public transportation: A development within the urban service area that directly affects the

provision of public transit, including transit terminals, transit lines and routes, separate lanes for the exclusive use of public transit services, transit stops (shelters and stations), office buildings or projects that include fixed-rail or transit terminals as part of the building, and projects which are transit-oriented and designed to complement reasonably proximate planned or existing public facilities consistent with Policy T2.8.1 and Section 163.3164(37), Florida Statutes F.S.

Project trip: A new vehicle trip that begins or ends within the project and that uses one (1) or more off-site roads, pedestrian facilities, or bicycle facilities.

Proportionate share—~~mitigation~~ contribution (transportation): An improvement or contribution made by an applicant pursuant to a binding and enforceable agreement between the applicant ~~school board~~ and the county to provide monetary compensation, construction of specific improvements, or other mitigation for the additional demand on deficient roadway segments, intersections, or other transportation facilities or services created by a proposed development as mandated in 163.3180(2), F.S., and as set forth in sections 30-621 and 30-622~~public school facilities created by a proposed residential development, as mandated in F.S. § 163.3180(6)(h)2., and as set forth in section 30-622(4) of this article and section 19 of the interlocal agreement.~~

Proportionate share mitigation (schools): An improvement or contribution made by an applicant pursuant to a binding and enforceable agreement between the applicant, school board, and county to provide monetary compensation or other mitigation for the additional demand on deficient public school facilities created by a proposed residential development, as mandated in § 163.3180 (6)(h)2., F.S., and as set forth in section 30-621 and 30-622 of this article and section 19 of the interlocal agreement.

Public facilities and services: Those public facilities and services for which level of service (LOS) standards have been established in the Comprehensive Plan, ~~and~~ which include the following:

- (1) Roads;
- (2) Wastewater*;
- (3) Stormwater*;
- (4) Solid waste*;

- (5) Potable water*;
- (6) Parks and recreation;
- (7) Mass transit; and
- (8) Schools.

*Required by law

RAC: Road agreement committee.

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

Reserved Capacity: Capacity that 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. For schools, capacity is reserved through issuance of a certificate of school concurrency.

Residential development: Any development that is comprised of residential units, in whole or in part, for nontransient human habitation, ~~and includes~~ including single-family and/or multi-family dwelling units, regardless of whether the approval procedure for such development is considered commercial or residential.

Road agreement committee: (RAC) A staff committee that reviews agreements related to roads and transportation impact fee credits pursuant to Administrative Regulation 4.03, as may be amended from time to time.

Roads: Major thoroughfare network.

Roadway segment: A portion of a road defined by two (2) end points, usually the length of road from one (1) signalized intersection to the next signalized intersection.

School board: The school board of Orange County, Florida, which is the governing body of the school district of Orange County, Florida.

School concurrency: Pursuant to ~~F.S.~~ § 163.3180(6)(h)2., F.S., the requirement that public school facilities adequate to maintain level of service standards be in place or be scheduled to be under construction within three (3) years after the issuance of final subdivision or site plan approval or the functional equivalent.

School concurrency determination application: The written submittals for the determination of available school capacity for a residential development or a phase of a residential development, which is included as part of an application for site plan approval.

School concurrency service area: A geographic area in which the level of service standards are measured by the school board for each school type (elementary, middle, high) as designated in the public school facilities element of the county's comprehensive plan and the interlocal agreement.

School type: The category of public school based on the level or type of instruction, whether elementary ~~school-grades~~, middle-~~school-grades~~, or high school-~~grades~~.

Site plan: Site plan shall be the point at which school concurrency is imposed. For multifamily projects this shall mean commercial site plan. For single-family projects, this shall mean preliminary subdivision plan; provided, however, that a capacity reservation certificate shall ~~not~~ be required ~~until prior to before a~~ plat ~~is~~ approved.

Specific Transportation Analysis Methodology Plan (STAMP): A written summary of the specific methodology assumptions to be applied to the transportation analysis of a specific project. The STAMP must identify any variations from the Orange County CMS Methodology as well as any intersection analysis requirements or local considerations identified by the CMO.

STAMP process: A negotiation process by which an applicant submits a draft STAMP for approval by the CMO prior to submitting a traffic analysis study in support of a concurrency application. The process includes a pre-application meeting or conference call with the CMO to discuss the details of a draft STAMP, written submission of the draft STAMP and final approval by the CMO. Upon receipt of a draft STAMP, the CMO will return it to the applicant marked as approved or approved with revisions, identifying in writing any changes in the draft STAMP that are required by the CMO.

Student generation rates: The number of students generated by development type and school type as set forth in the most recent school impact fee study and incorporated into Section 34-155, both as may be amended from time to time.

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

Transportation concurrency: For transportation facilities being reviewed after October 1, 2014, such Transportation facilities are deemed to be concurrent when the facilities needed have available capacity to serve new development are in place or under actual are programmed for construction within one (1) year (for facilities being reviewed prior to October 1, 2014, it shall be three (3) years) after the local government approved a building permit or its functional equivalent that results in traffic generation pursuant to policies T2.2.1 and T2.2.2.

~~*Trip-end:* One (1) end of a vehicle trip.~~

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

~~*Vehicle trip:* A vehicle movement in one (1) direction from an origin to a destination.~~

Vested Capacity: Transportation capacity that has been withdrawn from the available capacity bank through issuance of a trip-based vesting determination or phasing agreement.

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 plan, provided a vested rights certificate has been obtained pursuant to the county vested rights ordinance.

Sec. 30-502. Procedure.

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~~ 4 through 8 of this article.

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

(1) ~~*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.~~

(2) — *Vested projects.* Development ~~which that~~ is vested as defined and determined in accordance with the county vested rights ordinance (Chapter 30, Article XI, Division 3) shall be exempt from the requirements of this article under the conditions, for the period, and for the purposes specified therein.

(32) *De minimis development.* When evaluating for transportation concurrency, ~~after December 13, 1991, total a~~ new development, or redevelopment, on a parcel of record as of December 13, 1991, which does not exceed a total p.m. peak of five (5) peak hour trips on the roadways within the area of influence ~~one (1) 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~~ Level of Service (LOS) impacts shall 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. when added to the existing and projected roadway volumes will not exceed one hundred (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. When evaluating for school concurrency, any residential development that creates an impact of less than one (1) student shall be considered de minimis and exempt from school concurrency.

(34) *Exempt permits.*

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

Permits issued to Orange County for County Facilities Constructed for Nonproprietary Governmental Purposes (as that term is defined in Section 23-88 of the County Code)

De minimis development as indicated in 30-503(2)

Boat dock permit

Electrical permit

Fence permit

Fire service permit

Floodplain permit

Mechanical permits (a/c, heating, ventilation)

Moving of structures (~~only~~ applies only 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

Unenclosed structures (e.g. canopies)

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

- (i) Variances.
- (ii) Special exceptions.
- (iii) Interior alterations.

(iv) Residential accessory structures ~~which-that~~ 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) 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) Such other permit, development or activity, which the CRCCMO determines, on a case-by-case basis, will not create additional impacts on public facilities or services.

(5) *School concurrency.* When evaluating for school concurrency, any developments exempt from school concurrency pursuant to section 30-374 shall be exempt.

Sec. 30-504. 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 (excluding demolition), 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 (which shall include an increase in density or intensity or a change in unit type) shall have a greater impact on public facilities and/or services than the previous use, and such impact exceeds the de minimis amount, a concurrency evaluation shall be required for the net increase only to determine if a capacity encumbrance letter (and or a capacity reservation certificate, if appropriate) shall be is required for the net increase only. For school concurrency this includes any amendment to any previously approved residential development that adds residential units or increases the number of dwelling units or changes the type of dwelling units (e.g., converts nonresidential to residential or converts single family to multifamily).~~

~~(b) — For transportation concurrency, if the proposed change in use has an impact of less than one hundred ten (110) percent of the previously existing capacity, the change of use shall not be denied based on the failure to meet the adopted LOS. For school concurrency, any residential development that creates an impact of less than one (1) student is exempt from school concurrency pursuant to subsections 30-503(3) and 30-374(a)(1).~~

(2) *Decreased impact on public facilities and services.* If the proposed change of use (which shall include an increase in density or intensity or a change in unit type) shall have

an impact on public facilities and/or services ~~which-that~~ 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, must comply with 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-that~~ establishes the existence of such use. Such evidence ~~must-may~~ include, but shall not be limited to, utility records, phone bills, income tax returns, tax bills, occupational licenses, and unrelated party affidavits.

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

Sec. 30-506. Reserved. ~~Transportation concurrency exception areas.~~

~~The alternative mobility area is designated as a transportation concurrency exception area pursuant to Objective T2.3 and Map 16 in the transportation element of the county's adopted comprehensive plan. The AMA requirements found in Objective T2.3 and its associated policies shall apply to future land use map amendments, rezonings, special exceptions, PD land use plans, development plans, preliminary subdivision plans, and commercial site plans within the AMA, and may apply to substantial changes to PD land use plans, preliminary subdivision plans, and development plans within the AMA.~~

Sec. 30-507. Projects that promote public transportation.

(a) Projects that promote public transportation ~~are~~ shall be exempt from transportation concurrency ~~based on their consistency if consistent~~ with Policy T2.8.1 of the comprehensive plan and Section 163.3164(378), ~~Florida Statutes~~, as may be amended, implementation of site design and performance standards specified under Transportation Objective T2.8, and the submittal of a mobility analysis that satisfies all of the requirements of this section.

(1) A project may establish eligibility through comprehensive plan amendment, rezoning, special exception, or planned development land use plan, preliminary subdivision plan, or development plan. A project with appropriate future land use or zoning that is not a planned development may establish eligibility through application to the county roadway agreement committee (RAC).

(2) A portion of a planned development or proposed development may be eligible for concurrency ~~exception~~ exemption if designed as a project promoting public transportation. This partial ~~exemption~~ exemption shall not affect other portions of a planned development or proposed development not designed as a project promoting public transportation, which shall still be subject to transportation concurrency.

(3) A pre-application conference shall be required with the transportation planning, development engineering, zoning, and planning divisions and can be scheduled by contacting the transportation planning division.

(4) The ~~county shall require the~~ applicant shall ~~to~~ complete a mobility analysis for the proposed development as part of the project's transportation analysis that must be submitted to the transportation planning division. The transportation planning division will coordinate ~~review~~ comments from County reviewers, which will be provided to the applicant within fifteen (15) working days of submittal of the mobility analysis. The mobility analysis must be based on the ~~methodology published by Orange County which may include the following latest Orange County~~ Concurrency Management System Methodology and shall include the following:

~~a. A map depicting the proposed development site in the immediate context of adjacent parcels;~~

~~ba.~~ Existing circulation network within a ¼ mile walking distance (streets, sidewalks, pedestrian paths, and bicycle paths, with stub-outs clearly indicated) noting incomplete facilities or those in need of repair;

~~eb.~~ Proposed circulation network within a ¼ mile walking distance ~~for of~~ the development site in relationship to ~~its the land use immediate context and in connection to~~ existing and/or planned transit stops/stations;

~~dc.~~ Transit map showing the geographic extent of the transit lines that can be accessed from transit stops within ¼ mile walking distance of the site's primary entrance; and

d. Footprint of proposed development if available.

(5) An applicant may apply to remove the "project promoting public transportation" designation from all or part of a project by notifying the transportation planning division. For planned developments, the applicant must submit the revised plan to development review committee (DRC) and, if mitigation is necessary, to the RAC. For projects that are not planned developments, the applicant must apply to the concurrency management office for a concurrency determination and make any required payments to the county. Pursuant to section 38-1207, substantial changes to PD land use plans must be approved by the board of county commissioners.

(6) Projects that promote public transportation on constrained, backlogged, or long-term transportation concurrency management system roadways shall be exempt from the

requirement for proportionate share, but shall be required to meet any site design requirements of Transportation Element Policy T2.2.4.

(b) Any denial involving a "project promoting public transportation" designation may be appealed to the RAC.

Secs. 30-508—30-519. Reserved.

DIVISION 2. - LEVEL OF SERVICE (LOS) STANDARDS

Sec. 30-520. Performance standards.

Level of service standards for potable water, solid waste, wastewater, parks and recreation, stormwater, roads, mass transit and public school facilities shall be as established in the Comprehensive Plan. ~~The Comprehensive Plan's capital improvements element standards are as follows:~~

(1) *Potable water.* ~~Pursuant to the CPP, The~~ level of service standard for potable water is contained in Comprehensive Plan Policy CIE1.3.4 for development that requires shall be two hundred seventy-five (275) 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~~be used.

(2) *Solid waste.* ~~Pursuant to the CPP, The~~ level of service standard for solid waste is contained in Comprehensive Plan Policy CIE1.3.6 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 the CPP, The~~ level of service standards for wastewater is contained in Comprehensive Plan Policy CIE1.3.5 for development that requires central wastewater service from shall be two hundred twenty-five (225) 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 provider shall ~~be utilized~~be used.

(4) *Parks and recreation.* The level of service standard for parks is contained in Comprehensive Plan Policy CIE1.3.7. 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 the CPP,~~The level of service standard for stormwater is contained in Comprehensive Plan Policy CIE1.3.8. ~~shall be based on the following stormwater quantity and quality criteria:~~

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

Facility	D esign Storm
Bridges	1 00-year
Canals, ditches, or culverts for drainage external to the development	2 5-year
Crossdrains, storm sewers	1 0-year
Roadside swales for drainage internal to the development	1 0-year
Detention basins	2 5-year
Retention basins (no positive outfall)	1 00-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) Transportation. The level of service standard for roads is contained in Comprehensive Plan Policies T2.1.1 and T2.1.2. The desired overall level of service standard for signalized and major non-signalized intersections shall not be lower than the lowest intersecting roadway level of service standard and the intersection approaches shall be determined to be operationally acceptable with improved delay and capacity on each approach compared to degraded conditions. Such operational evaluation shall be based on standard traffic engineering practice in accordance with the Highway Capacity Manual and as determined by the County Engineer or his/her designee.

Roads level of service. Pursuant to the CPP, peak hour level of service for roads are:

Level of Service Standards

Type	— State and County	
	Rural	Urban
SIS [±]	D	E

Principal arterials	D	E
Minor arterials	D	E
Collectors	D	E

~~^h - SIS - Strategic Intermodal System~~

(7) *Mass transit.* ~~Pursuant to the CPP, The~~ level of service standard for mass transit is contained in Comprehensive Plan Policy T2.1.3~~to maintain a person trip capacity of not less than thirty-seven thousand eight hundred eighty-six (37,886) per weekday.~~

(8) *Public schools.* The level of service standard for public schools ~~facilities shall be as jointly determined by the school board and the county and adopted by the county is~~ contained in the Comprehensive Plan Policies CIE1.3.16 and CIE1.3.18.

Secs. 30-521—30-549. - Reserved.

DIVISION 3. - CONCURRENCY EVALUATIONS

Sec. 30-550. Concurrency requirements applicable.

The CMO shall ~~utilize~~use the standards and requirements set forth in this article to conduct a concurrency evaluations ~~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 Division 1 hereof~~section 30-503~~. In addition to the standards set forth in this article, the CMO shall also ~~utilize~~use 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~~use 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 unless~~ a concurrency evaluation ~~is that has been~~ 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 Plan amendments and rezoning applications.

(1) *Comprehensive Plan amendments.* A concurrency evaluation as outlined in this division is not required in connection with a Comprehensive 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 Plan amendment. A request for future land use map amendment or Comprehensive Plan amendment may be denied if public facilities and services are not expected to be available within the planning period pursuant to the Comprehensive Plan. In evaluating the availability of public school facilities, the county shall request school capacity information from the school board for all Comprehensive Plan amendments that will result in a net increase of ~~ten (10) single-family or fifteen (15) multifamily residential units one (1) student pursuant to section 704B.2. of the County Charter and the Comprehensive Plan public schools facilities element policy PS6.3.1.~~

(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, other than transportation facilities, are not expected to be available within the planning period pursuant to the ~~C~~comprehensive ~~P~~plan ~~future land use element~~. In evaluating the availability of public school facilities, the county shall request school capacity information from the school board for all rezoning applications that will result in a net increase of ~~ten (10) single-family or fifteen (15) multifamily residential units four (4) students pursuant to section 704B.2. of the County Charter and the Comprehensive Plan public schools facilities element policy PS6.3.1.~~

(3) *Planned development.* A study to assess traffic and capacity impacts shall be required as part of any application for

planned development (PD) zoning. If the PD already has a CEL, no study shall be required. The study ~~shall~~ may 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 study ~~shall~~ may be considered in determining the appropriateness of the requested rezoning and/or the conditions applicable thereto. A substantial change to a PD that affects traffic may require a traffic study and analysis.

(4) *Recommendation for denial.* ~~In the case where there is a recommendation of denial of~~ If the requested ~~comprehensive plan~~ future land use map ~~amendment~~ comprehensive ~~policy~~ plan ~~amendment~~ rezoning, or PD application is recommended for denial, the applicant is not precluded from applying for a capacity encumbrance letter ~~and a capacity reservation certificate~~ in accordance with this article; provided, however, approval is contingent upon final approval of the requisite development approval.

Sec. 30-553. 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., u~~ 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 (other than public school capacity), provided that such approval shall ~~reiterate state~~ that the ~~requisite necessary~~ capacity is not, ~~then~~ and may not ~~in the future~~ be, available. If there is insufficient school capacity, the approval shall require that a certificate of school concurrency be obtained prior to approval ~~and recording~~ of the plat. ~~Unless otherwise vested or exempt, 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~~ no later than approval of a the plat is approved for recording.

Sec. 30-554. Nonresidential subdivisions.

Unless a currently valid capacity encumbrance letter or capacity reservation certificate applicable to the property has been obtained, a ~~concurrency evaluation~~ capacity encumbrance letter shall be required as part of any application to approve a nonresidential subdivision plat ~~for recording~~. A nonresidential subdivision plat may be approved ~~for recording~~ without a capacity reservation certificate. ~~However, such 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 ~~section~~ 30-555.

Sec. 30-555. 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~~ capacity encumbrance letter will be required as part of any application for a vertical building permit 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. 30-556. Concurrency evaluation—Potable water.

(1) Level of Service. ~~A~~ The concurrency evaluation for potable water shall be conducted based on required prior to issuance of a capacity encumbrance letter. ~~The 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 Orange County Utilities ~~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 hereby~~ put on notice that, ~~where a~~ any 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 outside service provider ~~other than the county~~ to provide the services and/or facilities at the requisite level of service.

(2) Capacity determination. For proposed development where Orange County Utilities is the service provider, the Utilities Department will determine, on an annual basis, or more frequently as may be determined by the CMO, whether capacity exists to accommodate all development that may be proposed during that period. If the Utilities Department determines that adequate capacity exists, this information will be forwarded to the Concurrency Management Office and will satisfy the concurrency evaluation requirement for the period specified. If, at any time, the Utilities Department determines that insufficient capacity exists, a concurrency evaluation will be required.

(3) Method of evaluation~~prior to encumbrance~~. In performing ~~the a~~ concurrency evaluation for potable water ~~in order to encumber capacity, the CMO shall determine the maximum the~~ amount of potable water, ~~in gallons per day, which that~~ would be ~~necessary needed~~ to serve the proposed development shall be determined by applying the LOS standard to the number of equivalent residential units (ERUs) in the proposed developmentuses. If such amount of potable water, plus potable water ~~which that~~ 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 section 30-520(1), 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 if such performance standards set forth herein cannot be met, then the proposed development shall not 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 two hundred seventy-five (275) 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~~ evaluation 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~~ applicant complying with (1) applicable sections of the Land Development Code, (2) applicable rate resolutions, and (3) Chapter 37 and any other 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 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. Concurrency Evaluation ~~Same~~—Solid waste.

~~(1) Level of service. The~~ A concurrency evaluation for solid waste shall be conducted based on the ~~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.~~

~~(2) Capacity determination. For proposed developments where the Orange County Solid Waste Division is the service provider, the Division will determine, on an annual basis, or more frequently as determined by the CMO, whether capacity exists to accommodate all development that may be proposed during that period. If the Division determines that adequate capacity exists, this information will be forwarded to the Concurrency Management Office and will satisfy the concurrency evaluation requirement for the period specified. If, at any time, the Division determines that insufficient capacity exists, a concurrency evaluation will be required.~~

~~(31) Method of evaluation prior to encumbrance.~~ In performing ~~the a~~ concurrency evaluation for solid waste, ~~in order to encumber capacity, the CMO shall determine if~~ the maximum amount of solid waste, ~~in pounds per day, which could be generated by the proposed use(s). If such amount of solid waste, plus solid waste which that~~ 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,; if such amount of solid waste~~ is greater than one hundred (100) percent of the county landfill capacity, then the proposed development shall ~~not~~ 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 an annual basis in the 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. Concurrency Evaluation Same—Wastewater.

~~(1) Level of Service. The A~~ concurrency evaluation for wastewater shall be ~~required prior to issuance of a capacity~~

~~encumbrance letter. The conducted based on 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) — (2) Capacity determination. For proposed developments where Orange County Utilities is the service provider, the Utilities Department will determine, on an annual basis, or more frequently as determined by the CMO, whether capacity exists to accommodate all development that may be proposed during that period. If the Utilities Department determines that adequate capacity exists, this information will be forwarded to the Concurrency Management Office and will satisfy the concurrency evaluation requirement for the period specified. If, at any time, the Utilities Department determines that insufficient capacity exists, a concurrency evaluation will be required.~~

~~(3) Method of evaluation prior to encumbrance. In performing the concurrency evaluation for wastewater in order to encumber capacity, the CMO shall determine, if the maximum amount of wastewater, in gallons per day, which would be generated by necessary to serve the proposed use(s). If such amount of wastewater, plus wastewater which that is or will be generated by all existing, permitted, vested, encumbered and reserved development, can be accommodated provided while meeting the performance standards set forth in this subpart Section 30-520(3), 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; if such performance standards cannot be met, set forth in this section and in section 30-520(3), then the proposed development shall not 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-applicant complying with (1) applicable sections of the Land Development Code, (2) applicable rate resolutions, and (3) Chapter 37 and any other 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 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. Concurrency Evaluation Same—Parks.

~~(1) Level of service. The A concurrency evaluation for parks shall be required prior to issuance of a capacity encumbrance letter for any residential development. The conducted based on 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)—(2) Capacity determination. The Orange County Parks and Recreation Division will determine, on an annual basis, or more frequently as determined by the CMO, whether capacity exists to accommodate all development that may be proposed during that period. If the Division determines that adequate capacity exists, this information will be forwarded to the Concurrency Management Office and will satisfy the concurrency evaluation requirement for the period specified. If, at any time, the Division determines that insufficient capacity exists, a concurrency evaluation will be required.~~

~~(3) 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-that~~ would be necessary to serve the number of dwelling units on the site, based on the number of units submitted by the applicant.

If such amount of parkland, plus parkland ~~which-that~~ 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;~~ if such performance standards set forth in ~~this section and in section 30-520(4), cannot be met,~~ 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 annually at the time of submission of the 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. Concurrency Evaluation ~~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-a~~ capacity encumbrance letter, a signed statement, ~~which may be~~

~~part of the application,~~ that upon submittal of the actual ~~development-site~~ plan(s) for the project, the stormwater LOS standards specified in section 30-520(5) shall be ~~implemented met,~~ and evaluations for stormwater shall be conducted on the basis thereof. ~~Development-Site~~ 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-site~~ 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 30-52.0(5).~~ Issuance of ~~the~~ a capacity encumbrance letter does not relieve the applicant from compliance with all other applicable local, state, and federal permitting requirements.

Sec. 30-561. Concurrency Evaluation ~~Same~~—Mass transit.

(1) Level of service. ~~The~~A concurrency evaluation for mass transit shall be conducted based on the 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.~~

(~~2~~4) Method of evaluation ~~prior to encumbrance.~~ In performing the concurrency evaluation for mass transit ~~in order to encumber capacity,~~ the CMO shall ~~determine use~~ the person's trip handling capacity reported by the primary mass transit provider(s). 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; if such~~ performance standards are not met, 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 annually and report the same in the 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. The county will update and report the capacity availability annually, or more frequently as deemed necessary by the CMO.~~

**Sec. 30-562. Concurrency Evaluation Same—
Roads Transportation.**

~~(1) *Level of service.* The concurrency evaluation shall be conducted based on the transportation LOS standards specified in section 30-520(6). If the 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—that would be generated by the proposed development, plus traffic which—that is or will be generated by existing, permitted, encumbered, and reserved development (and where data is available, vested development), is equal to or less~~greater~~ than the capacity on the affected roadways, intersections, bikeways, and sidewalks (if applicable) at the adopted LOS, then the proposed development shall ~~not~~ be deemed concurrent for transportation; if the adopted LOS is exceeded, then the proposed development shall not be deemed concurrent for transportation,—and—accordingly, the requested capacity encumbrance letter shall not be issued.~~

~~(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) *Method of evaluation.* Transportation impacts must be determined in accordance with Section 163.3180, F.S., as may be amended, and using generally accepted engineering standards as documented in the current Orange County Concurrency Management System (CMS) Methodology. A concurrency evaluation shall include a traffic study consistent with the requirements and administrative procedures detailed within the current Orange County CMS Methodology. This methodology shall remain consistent with current standards of transportation engineering practice and the requirements of the comprehensive plan and shall designate the specific administrative procedures for arriving at an approved Specific Transportation Analysis Methodology Plan (STAMP) to support the proposed development. A preapplication meeting shall be required for all projects with transportation impacts greater than de minimis, as defined in section 30-503(2). At this meeting, a list of intersections to be analyzed will be generated and any requested deviations from the Orange County CMS Methodology will be discussed. Subsequent to the meeting, the applicant must submit, in writing, a draft STAMP for approval. Upon receipt of a draft STAMP, transportation planning division staff will review it, approve or deny it, and return it to the applicant marked as approved, approved with revisions, or denied, identifying in writing any changes in the draft STAMP that are required. The traffic study shall be performed according to the approved STAMP. Material deviations from the approved STAMP may be grounds for rejection of the traffic study. The required traffic study shall comply with the Orange County Concurrency Management System Methodology

~~(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 (2½) 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.~~

(3) *Performance standards.* For transportation, the concurrency requirement will be deemed satisfied if: (a) The necessary facilities and services are in place at the time a building permit is issued; (b) the CIE identifies facilities and services necessary to meet the adopted LOS scheduled to be funded for construction or in place within one (1) year from the date the permit is issued; or (c) the applicant offers to enter into a Proportionate Share Agreement in accordance with Section 163.3180(5), F.S., as amended from time to time.

Sec. 30-563. Concurrency Evaluation ~~Same~~—Public schools.

(1) *Level of service.* ~~The~~A concurrency evaluation for public school facilities shall be conducted based on the ~~is required prior to the issuance of a capacity encumbrance letter. The public school LOS standards specified in section 30-520(8) shall apply to this concurrency evaluation for public school facilities.~~

~~If the impacts to the school concurrency service area which would be generated by the proposed residential development, plus impacts generated by existing, permitted, encumbered, and reserved development (and where data is available, vested development) would cause the adopted LOS within the affected school concurrency service area to be exceeded, then the requested capacity encumbrance letter shall be denied.~~

(2) *Method of evaluation.* An application for concurrency evaluation for public schools shall be submitted to the Concurrency Management Office, which shall forward it to the school board to perform the concurrency evaluation.

(a) *Application requirements.* Any applicant seeking approval for a preliminary subdivision plan ("PSP") or a multifamily commercial site plan that is not exempt under section 30-374, shall submit to the county a school concurrency evaluation~~determination~~ application which shall contain a development analysis.

(b) *Development analysis content.* The development analysis shall include:

- (1) Location of the residential development, including applicable tax parcel identification numbers.
- (2) Number of residential units and unit types.
- (3) Phasing schedule (if applicable).

(4) Map showing, as applicable, existing and proposed zoning classifications and existing and proposed future land use categories for areas subject to and adjacent to the parcel for which the concurrency ~~evaluation~~approval is sought.

(5) Any existing request by the county or the school board for a school site within the parcel.

(6) If the application proposes a school site, the development analysis must include the estimated date of availability to the school board; ~~and~~ the provider(s) for on-site and off-site infrastructure and whether the proposed school site satisfies the school site selection criteria set forth in article XVIII, chapter 38 of this Code; and

(7) If the applicant has previously executed a capacity enhancement agreement, a copy of the agreement must be included ~~in~~ with the development analysis and the development analysis must indicate whether the residential development will exceed the capacity provided for in the capacity enhancement agreement.

(c) *Review and evaluation.* The county will review the school concurrency determination application for completeness, and forward the complete application and development analysis to the school board for review.

(1) The county may charge applicant a nonrefundable application fee.

(2) The school board may require additional information from the applicant.

(3) Within fifteen (15) business days of ~~the~~ receipt of the development analysis, the school board shall determine whether ~~if~~ there is available school capacity for each school type in the affected school concurrency service area to accommodate the impacts of the residential development, and shall issue a written preliminary school concurrency recommendation to the county consistent with section 18.6 of the interlocal agreement.

(4) ~~In the event that~~ If the school board finds there is insufficient available school capacity for the school concurrency service area in which the proposed residential development is located, and, where applicable, in an adjacent school concurrency service area, to accommodate the residential development pursuant to section 18.6 of the interlocal agreement, the school board shall so state in its preliminary school

concurrency recommendation (preliminary recommendation). The school board shall offer the applicant the opportunity to enter a sixty-day period to negotiate a proportionate share mitigation agreement. Based on the school board preliminary recommendation of insufficient capacity, the county shall issue a capacity encumbrance denial letter. If mitigation is agreed upon, the school board shall enter into an enforceable and binding proportionate share mitigation agreement with the county and the applicant and the county may issue a capacity encumbrance letter pursuant to the terms thereof.

(5) If the school board finds that there is sufficient available school capacity within the applicable school concurrency service area, the school board shall issue ~~the~~a preliminary recommendation so stating. The county may treat the preliminary recommendation as a final school concurrency recommendation and ~~in reliance thereon,~~ issue a capacity encumbrance letter in reliance thereon.

Secs. 30-564—30-569. Reserved.

DIVISION 4. - CAPACITY INFORMATION LETTERS

Sec. 30-570. Purpose.

A capacity information letter (CIL) is a nonbinding analysis of existing levels of service for public facilities and services (excluding public schools) in the vicinity of the parcel identified in the application. The CIL identifies capacity at the time of issuance; it 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. Any request for a capacity information letter for schools shall be directed to the school board.~~

~~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.

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.~~

- (a) Date of submittal;
- (b) Applicant's name, address and telephone number;
- (c) Parcel I.D. number and legal description.

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

Upon receipt of a complete application for a capacity information letter, the CMO shall ~~access~~ provide the existing ~~levels of service capacity~~ 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 a complete~~ 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 service provider facility and ~~available capacity~~, if supplied by the county, Orange County service area;
- (5) Name and location of ~~nearest~~ wastewater service provider facility and ~~available capacity~~, if supplied by the county, Orange County service area;
- (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) Available capacity of road facilities; ~~and~~

(10) Available capacity of school 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 future land use designation on the Comprehensive Plan future land use map and consistent zoning district.

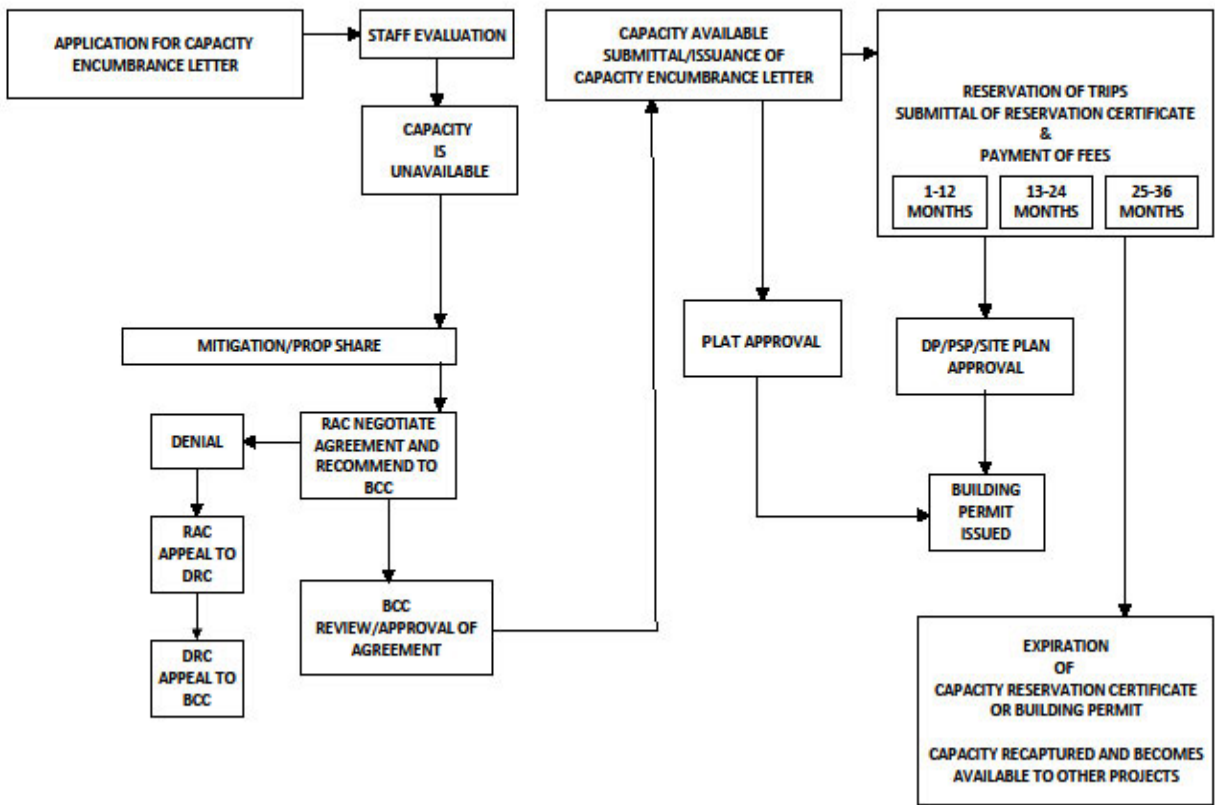
Sec. 30-581. Procedure for capacity encumbrance letter evaluation.

Within twenty-one (21) days after receipt of ~~an~~ complete application for a capacity encumbrance letter for public facilities other than schools, 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. For residential development requiring a school concurrency evaluation, within twenty-one (21) days after ~~the~~ receipt of a final school concurrency recommendation from the school board the CMO shall 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 Comprehensive Plan.~~

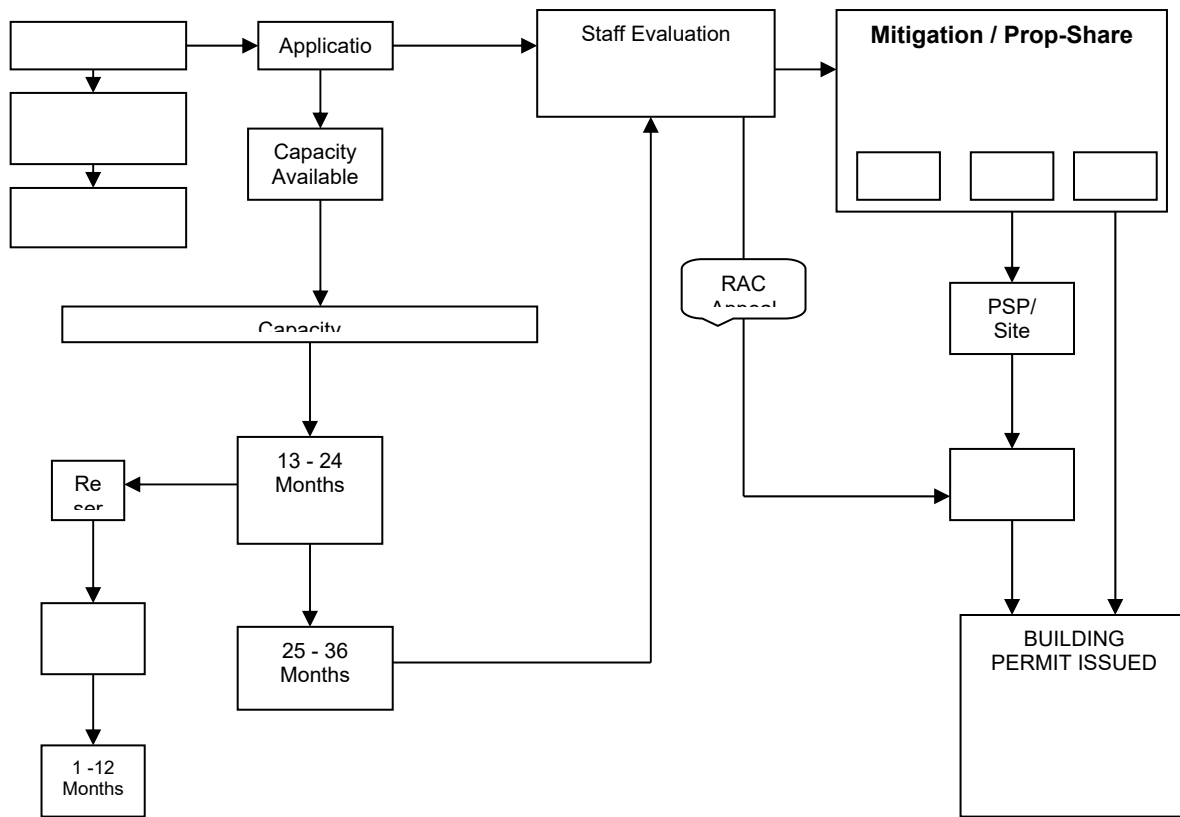
For transportation facilities, Transportation Planning road ~~concurrency, staff~~ will prepare a general assessment of the project's impacts and determine if roadways operating below or projected to operate below the adopted LOS standards according to the concurrency management database are located 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 should~~ the applicant choose to proceed, the applicant will be required to attend a regularly scheduled RAC meeting to negotiate a proportionate share contribution agreement.

SECTION 30-581 TRANSPORTATION CONCURRENCY PROCEDURE FLOW CHART



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

Generally. An application for a capacity encumbrance letter shall be submitted to the concurrency management office together with the required ~~accompanied by a~~ fee which shall be set by resolution of the board of county commissioners from time to time. Any application ~~seeking for~~ a capacity encumbrance letter shall submit-include 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 (and Agent Authorization form if Applicant is not the owner);
- (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 current designation on the Comprehensive Plan future land use map and zoning district;

(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 section 30-562;

(14) Public school information specified in section 30-563;

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

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

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

(a) 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, for non-residential projects, capacity is available for reservation or for issuance of a building permit ~~or, for public schools, that.~~ For residential projects required to plat, capacity is available for reservation must be reserved prior to plat approval. The ~~effective date of encumbrance of capacity shall be deemed to be the date of~~ the capacity encumbrance letter shall be the effective date of encumbrance. If the applicant seeks a reservation during

the 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; and address;
- (2) Applicant's name; and address;
- (3) Parcel I.D. number and legal description;
- (4) Land use(s) permitted for the parcel or parcels under the current designation on the Comprehensive Plan future land use map and zoning district;
- (5) Amount of capacity encumbered for each facility or service;
- (6) The date the capacity encumbrance letter was issued; and
- (7) The expiration date ~~upon which of~~ 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.~~

(b) In order to maintain the effectiveness of the capacity encumbrance letter, the capacity encumbrance letter holder shall be required to notify the CMO anytime the property described in the capacity encumbrance letter undergoes a lot split, sale, or any other modification to the ownership, legal description, or lot configuration.~~The foregoing notwithstanding, for the period from November 13, 2009, through March 31, 2013, any capacity encumbrance letter existing and valid during the period from January 6, 2009, through March 31, 2013, shall be valid for a period of three hundred sixty-five (365) days from the date of issuance. No extensions shall be granted in addition to the three hundred sixty-five (365) days; if an applicant wishes to maintain the capacity, the applicant will be required to obtain 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. ~~Likewise, if a building permits is-are issued for the entire project, or for public schools,~~ a plat or commercial site plan is approved, within the encumbrance period and the capacity encumbered is greater than the capacity committed to the building permits, plat, or commercial site plan, the excess encumbered capacity shall revert to the available capacity bank on the date the last building permit is issued, or ~~for public schools,~~ following ~~the~~ approval of the plat or commercial site plan. When a valid building permit is issued for a project ~~utilizing-using~~ 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-using~~ 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 sixty (60) calendar days from ~~the~~ issuance of a capacity encumbrance denial letter to submit an application ~~(i) to be placed on the capacity waiting list where applicable, (ii) to pursue the concurrency denial/mitigation process outlined in division 8 of this article, and/or (iii) to pursue the proportionate share contribution (to remedy a transportation facilities deficiency only), and/or (iv) to pursue proportionate share mitigation (to remedy a public school facilities deficiency only) as outlined in division 8 of this article.~~ At a minimum, the denial letter shall include:

- (1) Property owner's name, and address;
- (2) Applicant's name, and address;
- (3) Parcel I.D. number and legal description;
- (4) Land use(s) permitted for the parcel or parcels

under the current designation on the Comprehensive Plan future land use map and current zoning district;

(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; and~~

(7) The options ~~available to the applicant including, but not necessarily limited to:~~

~~(i) Submitting an application to be placed on the applicable capacity waiting list;~~

~~(ii) Submitting submit an application for the concurrency appeal/mitigation process outlined in division 8 of this article;~~

~~(iii) Submitting an application for proportionate share contribution (to remedy a transportation facilities deficiency only) as outlined in division 8 of this article; and~~

~~(iv) For purposes of school concurrency, negotiating a proportionate share mitigation agreement with the school board and the county in accordance with division 8 of this article.~~

Sec. 30-586. ReservedCapacity waiting list.

~~(1) Applicants who receive a capacity encumbrance denial letter due to insufficient capacity within an applicable service area may elect to be placed on the capacity waiting list. The county does not maintain a capacity waiting list for school capacity. 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:~~

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

~~(ii) For transportation facilities deficiencies only, utilize the proportionate 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.~~

~~(a) 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 proportionate share contribution for the provision of transportation facilities only.~~

~~(b) Failure to accept the offered capacity by timely providing the updating information requested by the CMO and paying the applicable capacity encumbrance fee will result in non-issuance 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 run with the property described in the capacity encumbrance letter and such capacity encumbrance letter may not be sold, assigned, transferred to property not included in the legal description provided by the applicant, or conveyed separate or apart from the real property described in the application for the capacity encumbrance letter. However, if during the encumbrance period the applicant submits an application for a building permit or an application for a capacity reservation certificate, the applicant may, as a part of such application, designate the amount of capacity allocated to portions of the property, such as lots, blocks, parcels or tracts, included in the application. ~~Moreover, a capacity encumbrance letter shall be deemed in all respects appurtenant to the real property described therein and to which it applies. A capacity encumbrance letter may not be sold, assigned, transferred or conveyed separate or apart from the real property to which it relates and which is described in the capacity encumbrance letter.~~

~~The foregoing~~ 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~~ deny 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~~ any such decision 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~~ documentation from the collateral assignee evidencing 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, under its current terms, to the collateral assignee as fee simple title holder of the property. ~~However, in no event shall such~~ The reissuance to a collateral assignee of the capacity encumbrance letter shall not act to 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.~~

The continued effectiveness of the collateral assignment shall be conditioned upon the requirement that the collateral assignee notify the CMO anytime the property described in the capacity encumbrance letter undergoes a lot split, sale, or any other modification to the ownership, legal description, or lot configuration.

Sec. 30-588. Encumbrance Period; 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 eighty (180) days following the date of the letter (the "encumbrance period") and may be extended by the CMO for successive thirty-day periods not to exceed a total of an additional one hundred eighty (180) days; provided, however, in no event shall an extension be granted if the capacity encumbered affects a failing or deficient roadway segment.

For school concurrency, the capacity encumbrance letter shall be valid for one hundred eighty (180) days from the date of issuance of the letter and may be extended up to an additional one hundred eighty (180) days upon applicant request and written approval by the county and notice to the school board, provided that applicant demonstrates to the county that applicant is proceeding in good faith to obtain necessary development approvals.

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, providing to provide~~ a higher degree of certainty during the construction financing process.

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

Generally. An application for a capacity reservation certificate for public facilities other than schools (for schools, see section 30-599) shall be submitted to the CMO ~~and shall be~~ accompanied by ~~a valid capacity encumbrance letter and the capacity reservation appropriate application fee. The capacity reservation fee shall be as~~ established by resolution adopted by the board of county commissioners from time to time. At a minimum,

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 current designation on the Comprehensive Plan future land use map and current zoning district;
- (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 or prior use of property. If prior use, date of discontinuance or demolition, as applicable, of prior use;
- (8) Acreage of property;
- (9) Name of DRI, PD, subdivision, office park, if applicable;
- (10) Site design information, if applicable;
- (11) Whether wastewater and potable water~~sewer~~ capacity has been reserved for the proposed development;
- (12) ~~Written consent~~Agent authorization from ~~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.

For schools, the development analysis referenced in section 30-563 shall be updated as necessary and shall serve as the application for a certificate of school concurrency.

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, and provided the project otherwise meets all applicable rules and regulations, the CMO shall issue a capacity reservation certificate. The capacity reservation certificate shall describe the amount of capacity reserved and length of time for which the capacity shall be reserved. Upon issuance of ~~the~~ capacity reservation certificate, the CMO shall reserve the requested capacity.

The continued effectiveness of the capacity reservation certificate shall be conditioned upon the requirement that the certificate holder notify the CMO anytime the property described in the capacity reservation certificate undergoes a lot split, sale, or any other modification to the ownership, legal description, or lot configuration.

Sec. 30-593. Reservation time period.

~~(1) *Types—Length 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:~~

~~(a) *Fixed time frame capacity reservation certificate.* A fixed time frame a 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. An applicant can pre-pay its capacity reservation fees and continue building (provided all other applicable rules and regulations are being met) up to the amount pre-paid, not to exceed the amount reserved.~~

~~(b) *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.~~

(2) *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~~ unless extended pursuant to Section 30-595, 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 CMO 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 CMO 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 CMO.~~

~~(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 CMO.~~

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

~~(1) 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:~~

~~(a) Whether the applicant has previously shifted capacity;~~

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

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

~~(d) The length of any applicable waiting list;~~
~~and~~

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

~~(f) Whether the applicant has applied for or has made a proportionate share contribution for the provision of transportation facilities only.~~

~~(2) 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.~~

~~(3) 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 subsection 30-593(b).~~

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

~~(1) Not later than~~ At least thirty (30) days ~~before prior to~~ 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 at a time, up to an additional three (3) years. ~~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 all fees have been paid and whether the extension is warranted, based on criteria including, but not limited to, the following:

- (a) ~~Size of the project; and~~
- (b) ~~Amount of capacity requested; and~~
- (c) ~~Phasing; and~~
- (d) ~~Location of the project; and~~
- (e) ~~Capacity availability within the service area of influence; and~~
- (b)f) Reasons for requesting the reservation time period extension; ~~and~~
- (cg) Whether the developer exercised good faith in attempting to secure issuance of a building permit for a structure other than a model home; and-
- (hd) For the provision of transportation facilities only. ~~Whether the applicant has applied for or has made a proportionate share contribution for the provision of transportation facilities only.~~

(2) ~~No-u~~Unused capacity reserved pursuant to the capacity reservation certificate may not be carried forward beyond a total of ~~three (3)~~six (6) years from the date of ~~the~~ original issuance; provided, however, if additional extensions are granted pursuant to state action, of such extensions shall not count toward the 6 year period~~certificate unless an extension has been applied for and received from the CMO as outlined in subsection 30-593(2).~~

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

(1) 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 original term of the capacity reservation

certificate:

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

~~(b) Less any proportionate share contribution for the provision of transportation facilities only; and~~

~~(be) For a project which that has been determined to be received a certificate of affordability from affordable housing by the county's housing and community development division and housing assistance department, less any transportation and school impact fees due the payment of which has been exempted by an approved Developer's Agreement for Impact Fee Exemption 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. 92-40. In the event the reduction in capacity reservation fees pursuant this paragraph results in zero capacity reservation fees being due, capacity for such project shall be reserved upon the later to occur of: payment of any proportionate share contribution (transportation), payment of any proportionate share mitigation (schools), or final approval of the Developer's Agreement for Impact Fee Exemption.~~

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 amount~~ shall be ~~re~~credited to the applicant in accordance with subsection (2) hereof. ~~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 original term of the capacity reservation certificate with the applicable capacity reservation fee prorated equally over the original term of the reservation. ~~For example, if the fixed time frame capacity reservation certificate provides for a reservation of capacity- Therefore,~~ over a three-year term, thirty-three and one-third ~~(33 1/3)~~ percent (33 1/3 %) of the capacity reservation fee shall be due at the time ~~of filing~~ the application for capacity reservation is filed; thirty-three and one-third ~~(33 1/3)~~ percent (33 1/3 %) of the capacity reservation fee shall be due ~~on or before no later than~~ the expiration of one (1) year from the date ~~of issuance of~~ the capacity reservation certificate is issued; and the balance of the capacity reservation fee shall be due ~~on or before no later than~~ the expiration of two (2) years from the date ~~of issuance of~~ the capacity reservation certificate is issued. 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 appropriate portion of the capacity reservation fee ~~within one hundred twenty (120) days from the date of issuance prior to the expiration~~ of the capacity encumbrance letter ~~so that the capacity reservation certificate may be timely issued~~ shall be deemed a withdrawal of the capacity reservation certificate 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 the time ~~of issuance of~~ the building permit is issued on a dollar-for-dollar basis.

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

	Year 1
Fee equal to	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~~*

	Year 1	Year 2
Fee equal to	50% of transportation impact fees.	50% of transportation impact fees.

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~~EXAMPLE NO. 3~~

*Capacity Reservation Fees in Connection
with Fixed Time Frame Three-Year Capacity Reservation Certificate*

	Year 1	Year 2	Year 3
Fee equal to	33 1/3 % of transportation impact fees.	33 1/3 % of transportation impact fees.	33 1/3 % of transportation impact fees.

(2) *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)~~ninety (90) percent of the capacity reservation fee not applied as a credit against impact fees in accordance with subsection 30-596(1). ~~In the event if (1) the county maintained the capacity reservation account for was reserved for a one year (twelve (12) months) reservation period, or less, (2) if the project for which capacity was reserved has been built out and the capacity reservation fees have decreased since the inception of the capacity reservation account, .~~ ~~The CMO shall refund one hundred (100) percent of the capacity reservation fee not applied as a credit against impact fees in accordance with subsection 30-596(1).~~ ~~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 subsection 30-596(1) if the capacity was reserved for a three year (thirty six (36) months) reservation period.~~ Refunds shall be granted only if ~~and to the county extent that capacity reservation fees are~~ has subsequently received capacity reservation fees by the county from third parties in such amounts as are ~~required-necessary~~ to affect-satisfy any requested refund. Those applicants awaiting refunds shall be placed on a list, and refunds shall be ~~made-given~~ to applicants in the order in which their names appear on such list, provided that funds are available to affect-satisfy such refunds ~~as specified in the preceding sentence.~~

(3) ~~In the event legislation is passed eliminating transportation concurrency and providing for mobility requirements, applicants with existing capacity reservation certificates may be given the option to apply any existing capacity reservation fees towards any future mobility requirements. The specific terms of any such arrangement shall be memorialized in a development agreement approved by the board of county commissioners.~~

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

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

~~(b) — Less any proportionate share contributions for the provision of transportation facilities only; and~~

~~(c) — 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 reccredited 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.~~

~~(2) — 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 subsection 30-597(1). 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 affect 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 affect such refunds as specified in the preceding sentence.~~

~~(3) — In the event legislation is passed eliminating transportation concurrency and providing for mobility requirements, applicants with existing capacity reservation certificates may be given the option to apply any existing capacity reservation fees towards any future mobility requirements. The specific terms of any such arrangement shall be memorialized in a development agreement approved by the board of county commissioners.~~

Sec. 30-598. Transfer of certificates.

Unless otherwise superseded by an agreement approved by the Board of County Commissioners, aA capacity reservation certificate continues to be valid according to its specific terms and conditions only for the property specifically identified and described therein. During the reservation period, capacityCapacity 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 a written ~~application request~~ by the ~~CMO applicant~~.

A capacity reservation certificate ~~shall be deemed in all respects appurtenant to~~runs with the real property described therein ~~and to which it applies. A in the~~ capacity reservation certificate and may not be sold, assigned, transferred or conveyed separate or apart from the real property ~~to which it relates and which is~~ described therein ~~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 application~~ must be made to the CMO, ~~utilizing a form prescribed by the CMO for such purpose,~~ requesting authorization to make return receipt from the CMO of such collateral assignment of regarding all rights, duties and obligations under the capacity reservation certificate. The CMO may approve or deny such application and, in connection with any approval, may impose conditions with respect to the effectiveness of such collateral assignment. 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 ~~documentation notice~~ from the collateral assignee evidencing 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, under its current terms, to the collateral assignee as fee simple title holder of the property. The reissuance to a collateral assignee of the capacity reservation certificate shall not act to extend the original reservation period.

The continued effectiveness of the collateral assignment shall be conditioned on a requirement that the collateral assignee notify the CMO anytime the property described in the capacity reservation certificate undergoes a lot split, sale, or any other modification to the ownership, legal description, or lot configuration.

Once the CMO ~~receives gives~~ written ~~authorization notice offer~~ 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 capacity reservation certificate 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.~~

Sec. 30-599. Capacity reservation fees for school concurrency certificates.

(1) Upon site plan approval and ~~the~~ payment of up to one-third (~~-1/3-~~) (as determined by the school board) of the capacity reservation fees or all proportionate share mitigation payments, the county shall issue a certificate of school concurrency reserving school capacity for a residential development for three (3) years.

(2) Each year on the anniversary date of the certificate of school concurrency, the applicant shall pay an additional portion (up to one-third (~~-1/3-~~), as determined by the school board) of the capacity reservation fees until such fees are paid in full. The applicant may prepay any capacity reservation fees required ~~to be paid~~ under this section.

(3) An applicant who has paid all capacity reservation fees and can demonstrate that the project is proceeding in good faith, may request approval from the county and the school board for an extension of the certificate of school concurrency for up to three (3) additional years. Any extension beyond the initial three-year extension requires de novo review by the county and school board of available school capacity.

(4) Any capacity reservation fees paid shall be credited against payment of school impact fees.

(5) If the county becomes aware of the failure of an applicant to meet any conditions of a certificate of school concurrency ~~of the development~~, the county shall report such failure to the school board within forty-five (45) days of the date the county becomes aware of the failure.

(6) All capacity reservation fee refunds shall be made by the school board, unless the county is holding capacity reservation fees or school impact fees on behalf of the school board, and the superintendent or his or her designee directs the county to refund capacity reservation fees from such funds. The school board, at its discretion, may charge a nonrefundable administrative fee for the processing of any refunds.

Secs. 30-600—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 counts. For concurrency purposes, available capacity is measured by PM peak hour/peak directional counts.

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

Sec. 30-612 Capacity banks.

~~With respect to public school facilities, t~~The school board shall maintain a capacity bank for public school facilities. Any encumbrance or reservation of public school capacity shall be made by the county based upon a recommendation received from the school board ~~which recommendation will be~~ based upon the school board capacity bank ~~maintained by the school board~~.

~~With respect to each of the following public services or facilities: roads, mass transit, wastewater, potable water, solid waste, stormwater and parks, there are hereby established capacity banks, including, but not limited to, the available capacity bank, the encumbered capacity bank, and the reserved capacity bank. Only the CMO or his or her designee shall be authorized to transfer capacity among banks. A capacity bank is maintained for classified roads and capacity is monitored for all other public services or facilities.~~ Capacity refers to the ability or availability of a public facility or service to accommodate users, expressed in an appropriate unit of measure as set forth in Section 30-520, such as gallons per day, average daily trip ends, or, for public schools, available school capacity. 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 or its reasonable equivalent is issued, (ii) a vested rights determination has become final or (iii) a building permit is issued.~~

Sec. 30-613. Annual capacity availability reporting and monitoring.

~~By October 1 of each year, the planning division shall complete an annual~~ A capacity availability report shall be prepared annually. This report shall include development permitting activity for the previous year and existing available capacity for the following public facilities: roads; mass transit; wastewater; potable water; solid waste; stormwater; parks and public schools. The report shall specify the capacity used for the previous year. For public schools, the capacity availability report shall use information reported annually to the CMO by the school board pursuant to the interlocal agreement. The annual capacity availability report shall contain, ~~at a minimum:~~ information reflecting available, encumbered, and reserved capacity for the prior year.

~~(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, parks, and public schools), and the amount of such existing capacity which constitutes:~~

~~(a) Available capacity;~~

~~(b) Encumbered capacity;~~

~~(c) Reserved capacity.~~

Sec. 30-614. Review process.

The office of the CMO shall serve as the clearinghouse for all aspects of the concurrency management system. Applications for capacity information letters (except for public schools), 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 (except for public schools), capacity encumbrance letters, and capacity reservation certificates.

The office of the CMO shall, on an annual basis, for all public facilities, coordinate with the appropriate divisions or departments ~~(or and with~~ the school board for public schools) concerning the capacity analysis for ~~each~~ concurrency determinations. ~~The division or department (or school board) shall forward their comments regarding capacity availability to the office of the CMO.~~

Sec. 30-615. Transportation concurrency ~~exception area~~ monitoring.

~~(1) — Beginning in 2015,~~ Orange County shall monitor and evaluate the impacts of ~~approved development in the AMA and of~~ projects that promote public transportation on adjacent county-maintained roads and the state highway system. ~~That information shall be reported in~~ based on the performance measures set forth in Comprehensive Plan Policy T2.8.5. ~~county's annual capacity availability report for the concurrency management system and shall be available upon request.~~

~~(2) — Orange County shall monitor the success of AMA strategies on a districtwide basis using the following performance measures. Evaluation of the AMA using these performance measures shall begin in 2015.~~

Mobility Strategy	Measure	Target
Support alternative modes of transportation	Transit shelters in the AMA	Increase number of transit shelters
	Sidewalk coverage near transit stops in the AMA	Increase percentage of roadways with sidewalks (on at least one (1) side) within ¼ mile of transit stops
	Pedestrian, bicycle and transit Quality/LOS	Achieve grade C or better
	VMT in the AMA	Maintain or reduce amount per capita
	Accidents involving pedestrians and bicyclists in the AMA	Reduce annual number of accidents involving pedestrians and bicyclists in the AMA
Transportation network connectivity	Pedestrian connectivity index	Increase pedestrian connectivity index score by measuring link to node ratio

Secs. 30-616—30-619. Reserved.

DIVISION 8. - CONCURRENCY APPEAL/MITIGATION PROCESS

Sec. 30-620. Scope and purpose.

The purpose of this division is to provide a process for an applicant to:

- (1) Appeal of a denial of a capacity encumbrance letter.
- (2) ~~An applicant to~~ Obtain a capacity encumbrance letter by meeting the requisite level of service standards by proposing ~~a mitigation plan~~ which must be approved by the county.
- (3) ~~An applicant to~~ Obtain a capacity encumbrance letter for transportation by proposing a proportionate share contribution₂ which must be approved by the county.
- (4) ~~An applicant may~~ Obtain a capacity encumbrance letter for public school facilities by proposing a proportionate share mitigation₂ which must be approved by the school board and county.

Sec. 30-621. When concurrency appeal/mitigation/proportionate share contribution ~~procedures~~ (transportation)/proportionate share mitigation (schools) procedures apply.

The concurrency appeal/mitigation procedures described in this division shall apply in the following circumstances:

- (1) An application has been denied; or
- (2) The applicant has proposed ~~a mitigation plan~~ for ~~his~~ a project in order to satisfy the adopted level of service standards; or
- (3) Transportation. An application has been denied for transportation ~~facility~~~~facilities~~ deficiencies only and the applicant has ~~offered~~~~proposed~~ to enter into a binding agreement to pay for or construct its proportionate share of required improvements ("proportionate share agreement"). Provided the proposed development is consistent with the Comprehensive Plan for all impacts other than transportation~~CP~~, the applicant may satisfy the county's transportation concurrency requirements by offering to enter~~entering~~ into a proportionate share agreement₂; that may include, but shall not be limited to, ~~the~~ construction of intersection

improvements, turn lanes, or signals, under the following circumstances:

(a) The proportionate share contribution may be the proportionate share of the cost of a transportation improvement funded for construction in the county's five-year CIP, or in the ten-year capital improvements schedule (CIS) that, upon completion, will provide transportation facilities necessary to serve the development; or

(b) If a transportation improvement that, upon completion, would provide transportation facilities necessary to serve the proposed development is included in the county's LTTCMS, but is not included in the CIP or CIS the applicant may pay for or construct its proportionate share of an improvement, provided it is sufficient to accomplish one (1) or more mobility improvements.

(c) If there is no transportation improvement available under subsection (a) or (b) hereof, the applicant may propose construction of, or a proportionate share contribution to, a transportation improvement that, in the opinion of the governmental entity or entities maintaining the transportation facilities, is sufficient to accomplish one (1) or more mobility improvements. If the county accepts construction of, or a proportionate share contribution to, such transportation improvement, the county will add the transportation improvement to the CIP at the next available opportunity.

(4) *Schools.* An application for a school capacity encumbrance letter has been denied and the applicant proposes proportionate share mitigation to address the project's impacts. The proposed project must be otherwise consistent with the Comprehensive Plan and the proposed proportionate share mitigation shall fall within one (1) of the following categories:

(a) The project will be served by a school improvement that, upon completion, will satisfy the requirements of the county concurrency management system, is included in the district facilities work program (which is included in the five-year CIP in the county CIE); or

(b) The applicant proposes a proportionate share mitigation or contribution to an improvement, approved by the county and school board, that will satisfy the requirements of the county concurrency management system, but is not currently contained in the district facilities work program (that is included in

the five-year CIP). The school board and county shall commit to add the improvement to the district facilities work program and five-year CIP no later than the next regularly scheduled update of the school district facilities plan and CIE.

Sec. 30-622. Submittal of appeal/mitigation ~~plan~~/proportionate share contribution agreement (transportation)/proportionate share mitigation agreement (schools).

(1) *Application.* An application ~~for an appeal of appealing~~ a denial of a ~~request for a~~ capacity encumbrance letter, ~~a~~ mitigation ~~plan~~, ~~a~~ proportionate share contribution agreement, or a proportionate share mitigation agreement (schools) shall include:

(a) Name, address, and phone number of owner(s), developer and agent:

(b) Property location, including parcel identification numbers;

(c) Legal description and survey of property;

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

(e) Phasing schedule, if applicable;

(f) Description of request (appeal, mitigation plan, proportionate share (transportation), or proportionate share mitigation (schools));

(g) Copy of ~~application for capacity encumbrance letter;~~

~~(h) Copy of approved traffic study (transportation) or development impact analysis (schools);~~ and

~~(i) Application fee; and~~

~~(j)~~ h Copy of capacity encumbrance denial letter.

(2) ~~If the applicant is appealing a denial, an appeal application and fee which conforms to the submittal requirements of this division shall be submitted to the CMO. No appeal application shall be deemed sufficient until accepted unless it is complete. A and accompanied by a fee for filing an appeal application which~~ shall be established by resolution of the board of

county commissioners.

(3) If the applicant proposes using the proportionate share contribution option to satisfy the transportation concurrency requirements for development of a specific parcel(s):

(a) The applicant may attend a pre-application conference prior to attending with the RAC 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.~~

(b) The applicant shall submit the proportionate share application to the county.

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

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

Proportionate Share =	<u>Project Trips × Cost</u>
	Increase in Capacity

(e) If the county has accepted right-of-way dedication for the proportionate 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 a 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 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 share, public or private partners should contact the FDOT for essential information about compliance with federal law and regulations.

(f) The applicant shall receive a credit on a dollar-for-dollar basis for impact fees and other transportation concurrency mitigation requirements. The credit ~~shall~~may be reduced by up to twenty ~~(20)~~-percent (20%) by the percentage share that the project's traffic represents of the added capacity of the selected improvement or by the amount specified by local ordinance, whichever yields the greater credit.

(g) *Proportionate share agreement.* A developer's agreement addressing the terms of the proportionate share contribution (the proportionate share agreement) must be reviewed and recommended by the RAC to the board of county commissioners (except for school mitigation agreements which shall be recommended by the CMO to the board of county commissioners) and approved by the board of county commissioners.

(h) *Issuance of capacity encumbrance letter.* Upon approval of the proportionate share agreement by the board of county commissioners, and payment of proportionate share contribution, a capacity encumbrance letter will be issued in accordance with~~for the amount of capacity to be created by~~ the proportionate share agreement~~contribution~~.

(4) *Schools.* In the event there is insufficient available school capacity within a school concurrency service area to meet the demand created by the proposed residential development, and the applicant and the school board have agreed upon mitigation (which may include proportionate share mitigation) pursuant to subsection 30-563~~(2)~~(2)(c)(4) to satisfy the school concurrency requirements for the proposed residential development, the following shall apply:

(a) *Agreement.* The applicant, the school board and the county must memorialize the agreed-upon mitigation by entering into a legally binding agreement to provide mitigation proportionate to the demand for public school facilities created by the actual development of the property.

(b) *Mitigation options.* Mitigation options that provide permanent capacity are subject to school board approval and may include, but are not limited to;

1. Contribution of land in conjunction with the provision of an additional school site meeting the county's school siting criteria, or adjacent land for expansion of an existing facility (the value of such land shall be calculated using the valuation standard of section 19.6(c) of the interlocal agreement);

2. Provision of additional permanent student stations through donations of buildings for use as primary or alternative learning facility, provided that such buildings meet the state requirements for educational facilities;

3. Provision of additional permanent student stations through the renovation of existing buildings for use as learning facilities;

4. Construction of permanent student stations or core facilities;

5. Construction of a school in advance of the time set forth in the district facilities work program;

6. Creation of mitigation banking based on the construction of a public school facility in exchange for the right to sell capacity credits;

7. Construction of a charter school designed in accordance with state requirements for educational facilities and providing permanent student stations. Use of a charter school for mitigation must include provisions for its continued existence, including, but not limited to, the transfer of ownership of the charter school property and/or operation of the school to the school board in the event of the closure of the charter school;

8. Contribution of funds or other financial commitments or initiatives acceptable to the school board to ensure that the financial feasibility of the district facilities work program can be maintained by the implementation of the mitigation options; or

9. Payment of proportionate share mitigation ~~for the residential development. Such payment~~ shall be based on the ability to meet the demand for school facilities created by the proposed residential development. The amount will

be calculated ~~utilizing~~ using the cost per student station allocation for each school type plus the cost of land acquisition, core and ancillary facility requirements and other infrastructure expenditures, including off-site improvements for school sites, as determined and published annually in the district facilities work program. The methodology used to calculate proportionate share mitigation shall be as follows:

Proportionate Share Mitigation = (Development Impact - Available School Capacity) x Total Cost

Where:

Available School Capacity = (School Capacity x Adopted Level of Service) - (Enrollment + Reserved Capacity)

School Capacity = Adjusted FISH capacity for the applicable school concurrency service area as programmed in the first three (3) years of the district facilities work program

Enrollment = Student enrollment as counted in the most recent official October count

Total Cost = the cost per student station plus a share of the land-acquisition costs, additional core and ancillary facility costs and other anticipated infrastructure expenditures or the estimated cost of school infrastructure needed to provide sufficient permanent capacity to the impacted school concurrency service areas, ~~and includes including~~ any cost needed to pay the interest to advance a school scheduled in the district facilities work program to an earlier year.

(c) *Impact fee credit.* ~~Proportionate share mitigation shall be credited against the school impact fee to the extent that the mitigation payment funds a capacity adding public school improvement that is eligible to be funded with school impact fees.~~ The terms of the impact fee credit shall be established in the proportionate share mitigation agreement. Proportionate share mitigation shall be credited against the school impact fee in accordance with Section 163.3180(6), F.S., and Section 163.31801, F.S., both as may be amended from time to time. ~~The impact fee credit shall be calculated as follows:~~

~~Equivalent Residential Units (ERU) for which Proportionate Share Mitigation is provided x Impact Fee per Dwelling Unit~~

Where:

~~Net Development Impact = Development impact -
Available Capacity~~

~~ERU = Net Development Impact divided by the Student
Generation Rate~~

(d) Capacity enhancement contribution credit. To the extent the residential development is subject to a capacity enhancement agreement, the capital contribution paid pursuant to such agreement shall be a credit applied to the proportionate share mitigation applied herein.

(e) CMO. Following negotiation with the school board and the county attorney's office and approval by the school board, the applicant shall submit any proposed proportionate share mitigation agreement to the CMO for ~~review and~~ recommendation ~~by the CMO~~ to the board of county commissioners.

Sec. 30-623. Appeals.

The applicant may appeal decisions of the CMO, RAC, and DRC.

(1) An applicant may appeal decisions of the CMO by notifying the director of the Planning, Environmental and Development Services department (or his/her designee) in writing that such party is appealing the decision. The notification shall be delivered to the director no later than thirty (30) days after the decision on the application is rendered; otherwise, the applicant shall be deemed to have waived all rights to challenge the decision. (For purposes of this section, the term "renders" means the date the applicant initials or otherwise indicates receipt of the decision on the application. However, in the event the decision on the application is not accepted or is returned, the term "renders" means ten (10) calendar days after the date the decision was signed.) Upon receipt by the director of a timely notice of appeal, the director shall submit the appeal to the DRC, which shall consider the appeal no later than ninety (90) days following receipt or at such later date to which the applicant may consent.

(2) The applicant may appeal decisions of the RAC 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. For appeals regarding decisions on the availability of school capacity, the applicant shall submit a copy of the request ~~shall be submitted~~ to the school board who shall send a representative to the DRC meeting at which such

appeal is being heard. The DRC shall consult with the school board in reviewing appeals regarding the availability of school capacity.

(32) 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 thirty (30) days of the decision. For appeals regarding decisions on the availability of school capacity, the applicant shall submit a copy of the ~~appeal request~~ shall be submitted to the school board who shall send a representative to the board of county commissioners meeting at which such appeal is being heard~~for its information~~.

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

(b) The board of county commissioners shall review the application request 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 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.

(c) The board of county commissioners shall consult with and consider the recommendations of the school board regarding appeals on school capacity.

Sec. 30-624. Miscellaneous matters.

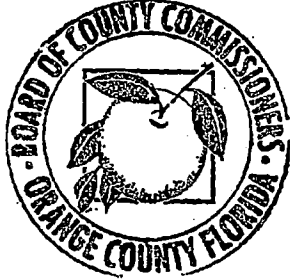
(1) The requirement that LOS be achieved and maintained for a project shall not apply if proportionate share mitigation is used.

(2) 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~~ the project under the county vested rights ordinance.

Secs. 30-625—30-635. Reserved.

Section 4. Effective date. This ordinance shall become effective pursuant to general law.

ADOPTED THIS 7th DAY OF March, 2023.



ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
County Mayor

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Jennifer Horn-Kline*
Deputy Clerk