

## Chapter 106

### CONCURRENCY MANAGEMENT

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#### **Section 106-1. Purpose and Intent.**

- (a) The purpose of the City of Eustis Concurrency Management System is to ensure that public facilities and services needed to support development are available concurrent with the impacts of such development. For the purpose of the issuance of Development Orders, Concurrency Management shall be relevant to all development located within the area for which the City of Eustis has authority to issue Development Orders and Permits.
  
- (b) It is the intent of this Chapter to ensure that level of service (LOS) standards adopted in the City of Eustis Comprehensive Plan for public facilities and services, hereby incorporated by reference, are maintained via the City of Eustis Development review process. For the purpose of concurrency management, public facilities and services, pursuant to Rule 9J-5, Part 9J-5.0055, Florida Administrative Code, include the following for which LOS standards must be adopted:
  - (1) Transportation facilities and services,
  - (2) Sanitary sewer facilities and services,
  - (3) Solid waste facilities and services,
  - (4) Stormwater Management facilities and services,
  - (5) Potable water facilities and services,
  - (6) Parks and recreation facilities and services, and
  - (7) Mass transit facilities and services.
  - (8) Public school facilities

#### **Section 106-2. Applicability.**

All Final Development Orders issued by the City shall be subject to Concurrency Management. Exemptions for Concurrency Management shall be granted for development determined by the City to have negligible impacts on public facilities and services in accordance with the exemption criteria established in Section 106-2.1 Additionally, exemptions from the Concurrency Management Review, or portions thereof, may be granted for developments determined by the City to have "De Minimus" impacts on public facilities

and services in accordance with the exemption criteria established in Section 106-2.2 and the special exemptions in Section 106-2.3.

**Section 106-2.1. Exemptions for Development with Negligible Impacts.**

- (a) Development causing negligible impacts on public facilities and services shall be exempt from Concurrency Management Review, as the development shall be considered to cause no additional impacts on public facilities and services. Such development includes:
- (1) Interior renovations or alterations and exterior maintenance to existing structures which do not involve a change in use; including but not limited to, replacement of siding, paint, gutters, awnings, hurricane shutters, aluminum and wooden carports over existing concrete roof repairs and reroofings within the same footprint;
  - (2) Demolitions, except in conjunction with the replacement of an existing structure;
  - (3) Replacement of a single family residence with a single family residence;
  - (4) Electrical, plumbing and mechanical activity;
  - (5) Signage, fences and pools;
  - (6) Screen patio and screen pool enclosures, and wooden (non-roofed) decks;
  - (7) Improvements to an existing single family residence such as room additions and screened enclosures;
  - (8) Accessory structures to a single family residence;
  - (9) Temporary construction trailer placements;
  - (10) Wells and septic tank placements;
  - (11) Utilities such as telephone switching stations, and electrical power substations;
  - (12) Radio and other communication towers; and
  - (13) Accessory facilities for agricultural uses.

**Section 106-2.2. Exemptions for Development with "De Minimus" Impacts.**

- (a) General.  
Development Orders associated with developments causing "De Minimus" impacts on all public facilities and services shall be exempt from Concurrency Management review, as the impacts of such development shall be accounted for by the City on an annual basis, prior to approval of the Final Development Orders, using an aggregate impact procedure. Development Orders associated with development causing "De Minimus" impacts on public facilities and services for which the City has adopted impact fees shall be exempt from the portion of the Concurrency Management review which requires payment for capacity reservation.
- (b) "De Minimus" Impacts.
- (1) Transportation: A "De Minimus" impact is one that can clearly be determined without a Traffic Impact Study and all the parties involved (local government, agency, applicant, etc.) are in agreement and able to negotiate appropriate

mitigation. An applicant must submit a Request for Exemption Letter as specified in the Lake Sumter MPO Transportation Concurrency Management System (TCMS) Traffic Impact Study Methodology Guidelines.

- (2) Sanitary Sewer: There shall be no "De Minimus" impact associated with public sanitary sewer facilities and services.
- (3) Solid Waste: A "De Minimus" impact is one that would not generate more than fifty (50) pounds of solid waste per day before recycling, composting, reuse, and volume reduction. Cumulatively, annual de minimus solid waste impacts shall not exceed a significant degradation threshold of one thousand five hundred (1,500) pounds of solid waste per day before recycling, composting, reuse, and volume reduction.
- (4) Stormwater Management: A "De Minimus" impact is one that would require a stormwater Management system that would be:
  - a. For silvicultural Lands, provided that the system is constructed and operated in accordance with the provisions of Chapter 40C-43 Florida Administrative Code, and the Silviculture Best Management Practices Manual, as amended and published by the State of Florida, Department of Agriculture and Consumers Services;
  - b. Designed to accommodate only one (1) single family Dwelling Unit, duplex, triplex, or quadplex, provided the single unit, duplex, triplex, or quadplex is not part of a larger common plan of development; or
  - c. Designed to serve single family residential projects, including duplexes, triplexes and quadplexes, of less than ten (10) acres total land area and which have less than two (2) acres impervious surface and would be a system that:
    1. Is not part of a larger common plan of development, and
    2. Would discharge into a stormwater management system exempted or permitted by the St. Johns River Water Management District which has sufficient capacity and treatment capability and is owned, maintained or operated by Lake County, the City of Eustis, a special district with drainage responsibility, or a water management district; however, this exemption does not authorize discharge into a system without prior written consent from system Owner, Maintenance or Operator.
- (5) Potable Water: There shall be no "De Minimus" impact associated with public potable water facilities and services.

- (6) Parks and Recreation: A "De Minimus" impact is one that would not increase the resident population of the City by more than 0.05 percent. Cumulative, annual de minimus recreation impacts shall not exceed a significant degradation threshold of one-and-one-half (1.5) percent of the resident population of the City.
- (c) "De Minimus" Development Orders: The following Final Development Orders shall be considered by the City to have "De Minimus" impacts on all public facilities and services:
- (1) Residential Building Permits for which the Applicant proposes the use of a private well and a septic tank, and is not required to connect to a potable water or sanitary sewer system that may be associated with public facilities and services.
  - (2) Mobile Home placement permits for which the Applicant proposes the use of a private well and a septic tank, and is not required to connect to a potable water or sanitary sewer system that may be associated with public facilities and services.
  - (3) Nonresidential Building Permits for which a Development Order is not required and is not required to connect to a potable water or sanitary sewer system that may be associated with public facilities and services.
  - (4) Administrative Lot splits located along a local roadway, that create no more than six (6) Lots per original parcel, for which each lot contains at least one (1) acre of uplands, and for which the Applicant does not propose improving the easement to a semi-impervious or an impervious surface, or making major alteration to the land for an easement when an easement is utilized, and provided the Applicant is not required to connect to a potable water or sanitary sewer system that may be associated with public facilities and services.
  - (5) Conditional Use Permits that do not require Site Plan approval, and provided the Applicant is not required to connect to a potable water or sanitary sewer system that may be associated with public facilities and services.
  - (6) Variances that are not associated with another Development Order issued by the City and variances that are associated with another Development Order that is determined by the City to have "De Minimus" impacts on public facilities and services, provided the Applicant meets the stormwater Management design standards identified in these Land Development Regulations, and provided the Applicant is not required to connect to a potable water or sanitary sewer system that may be associated with public facilities and services.

**Section 106-2.3. Special Exemptions.**

- (a) Previously Disclosed Development. Development that was disclosed as part of an earlier concurrency management review, for which capacity has been encumbered or reserved,

shall not be subject to concurrency management, provided the development design has not changed to increase demand on public facilities and services, or the Development Order associated with the earlier development has not expired.

- (b) **Redevelopment After Demolition or Termination of Existing Use.** In the case of demolition of an existing structure or termination of an existing use in conjunction with plans for redevelopment, the concurrency management evaluation for future development shall be based upon the new or proposed land use as compared to the land use existing at the time of such demolition or termination. Credit shall only be given for the density/intensity of the site proposed for demolition/termination. Proposed redevelopment that increases the density/intensity of the site shall be reviewed based upon the net increase in density/intensity. Credit for the prior use shall not be transferable to another parcel. Credit for the prior use must be used in connection with a redevelopment of the site within two (2) years following the demolition of the existing structure or termination of the existing use, whichever occurs first. Credit for the prior use shall be deemed extinguished in the event such credit is not used in connection with the issuance of a Building Permit or the reservation of capacity within two (2) years following the date of issuance of the demolition Permit for the subject property, or the termination of the existing use, whichever occurs first.
  
- (c) **Residential Uses Exempt from School Concurrency.** The following residential uses shall be considered exempt from the requirements of school concurrency (unless the development approval for such use required it to meet School Concurrency).
  - (1) Single family lots having received final plat approval prior to the effective date of the Land Development Regulations addressing school concurrency or other lots which the City has determined are vested based on statutory or common law vesting.
  - (2) Multi-family residential development having received final site plan approval prior to the effective date of the Land Development Regulations addressing school concurrency or other multi-family residential development which the City has determined is vested based on statutory or common law vesting.
  - (3) Amendments to residential development approvals issued prior to the effective date of the effective date of the Land Development Regulations addressing school concurrency, which do not increase the number of residential units or change the type of residential units proposed.
  - (4) Age restricted communities that are subject to deed restrictions prohibiting the permanent occupancy of residents under the age of eighteen (18). Such deed restrictions must be recorded and must be irrevocable for a period of at least fifty (50) years.
  - (5) Plats or residential site plans which include four (4) or less units. For purposes of

this section, a property owner may not divide his property in to several developments in order to claim exemption as allowed by this section. In making a determination as to whether a property is exempt under this section, the City shall consider in addition to the ownership at the time of the application the ownership as of the date of the adoption of these regulations.

#### **Section 106-2.4. Applicability to Development Orders.**

- (a) Preliminary Development Orders. Applicants for Preliminary Development Orders, including Comprehensive Plan Amendments, , Planned Unit Developments, Site Plans, Preliminary Plats, Conditional Use Permits and Variances shall have the option:
- (1) To voluntarily request a concurrency management review for the purpose of reserving capacity of public facilities and services; or
  - (2) To voluntarily request a concurrency management review for inquiry purposes only and defer concurrency management review for the purpose of reserving capacity of public facilities and services via the Applicant for the Preliminary Development Order SIGNING AN AFFIDAVIT OF DEFERRAL acknowledging that future rights to develop the property are subject to a future concurrency management review and, without such a review, no vested Development Rights shall have been granted by the City or acquired by the applicant; or
  - (3) To defer concurrency management review for the purpose of reserving capacity of public facilities and services via the applicant for the Preliminary Development Order SIGNING AN AFFIDAVIT OF DEFERRAL acknowledging that future rights to develop the property are subject to a future concurrency management review and, without such a review, no vested Development Rights shall have been granted by the City or acquired by the applicant.
  - (4) To request a pre-application meeting for transportation facilities with a lack of capacity to satisfy concurrency for discussion of a Proportionate Fair Share agreement in accordance with Section 106-5, Land Development Regulations.
- (b) Final Development Orders. Final Development Orders, including Florida Quality Development (FQD) Development Orders, Development of Regional Impact (DRI) Development Orders, final Subdivision Plats, Final Engineering Plans, construction plans, administrative Lot splits and Building Permits shall be required to undergo concurrency management review in accordance with Section 106-4 as a condition of granting the Final Development Order.

#### **Section 106-3. Concurrency Management System.**

No Final Development Order shall be issued by the City unless there is sufficient capacity of public facilities and services, at the adopted level of service standards, needed to support

the Development, concurrent with the impacts of such Development, in accordance with the following criteria.

(a) Potable Water, Sanitary Sewer, Solid Waste and Stormwater Management. For potable water, sanitary sewer, solid waste and stormwater Management facilities and services, the concurrency Management review procedure shall be satisfied through one (1) of the following actions approved by the City of Eustis during the Development review process:

- (1) Facilities and services are in place prior to the issuance of a Building Permit;
- (2) A Development Permit is issued subject to the condition that the necessary facilities and services will be in place at the time the impacts of the development occur. Such conditions shall be stipulated within an enforceable development agreement or a binding contract that guarantees the completion of construction prior to the issuance of a certificate of occupancy. A development shall place no impact on facility capacity until such a certification is issued;
- (3) The necessary facilities are under construction at the time a permit is issued. Such facilities shall be completed prior to the impacts of development. A certificate of occupancy shall not be issued until such facilities or services are able to perform in a manner consistent with adopted level of service standards; or
- (4) Facilities and services are guaranteed in an enforceable development agreement that assures facilities and services are in place concurrent with the impacts of development.

(b) Parks and Recreation. For parks and recreation facilities and services, the concurrency Management review procedure shall be satisfied through one (1) of the following actions approved by the City of Eustis during the development review process:

- (1) Satisfy one (1) of the four (4) requirements stipulated above for potable water, sanitary sewer, solid waste and stormwater management facilities and services; or
- (2) Prior to the issuance of a Building Permit, recreation facilities and services are the subject of a binding executed contract or guaranteed in an enforceable development agreement which provides for the commencement of the actual construction of the required recreation facilities or provision of services within one (1) year of the issuance of a Building Permit. Such a contract or agreement shall stipulate that facilities or services shall be available for active use within one (1) year after construction commences.

(c) Transportation (Roads). For transportation facilities and services, the concurrency management review procedure shall be satisfied through one (1) of the following actions approved by the City of Eustis in consultation with the Lake Sumter MPO during the development review process:

- (1) Satisfy one (1) of the four (4) criteria stipulated above for potable water, sanitary sewer, solid waste and stormwater management facilities and services; or
  - (2) Necessary improvements are programmed within the first three (3) years of the Five-Year Schedule of Capital Improvements provided that each of the following conditions is met:
    - a. The Five-Year Capital Improvements Program and the Capital Improvements Element of the City of Eustis Comprehensive Plan are financially feasible. As permitted by Section 9J-5.0055(2)(c)1., F.A.C., concurrency determinations shall only include transportation projects scheduled in or before the first three (3) years of the Five-Year Schedule of Capital Improvements
    - b. The Five-Year Capital Improvements Program includes improvements necessary to correct any identified road deficiencies and maintained adopted levels of service for existing and permitted development within the first three (3) years of the Five-Year Schedule of Capital Improvements and the provision of service will commence in or before that third year.
    - c. The Five-Year Capital Improvements Program is a realistic, financially feasible program based on currently available revenue sources and Development Orders will only be issued if the public facilities necessary to serve the development are available or included in or before the first three (3) years of the Five-Year Schedule of Capital Improvements.
    - d. The Five-Year Capital Improvements Program identifies whether funding is for design, engineering, consultant fees, or construction and indicates, by fiscal year, how the dollars will be allocated.
  - (3) Execution of a Proportionate Fair Share agreement in accordance with Section 106-5, Land Development Regulations.
- (d) Public School Facilities. For public school facilities, the concurrency management review procedure shall be satisfied in accordance with the provisions of the First Amended Interlocal Agreement for School Facilities Planning and Siting dated December 26, 2007, and any future amendments and revisions.

#### **Section 106-4. Concurrency Management Review.**

The City of Eustis Concurrency Management Review Procedure is designed to provide an expeditious review of Development Orders while ensuring that public facilities and services needed to support the development associated with the Development Orders are available concurrent with the impacts of such development. In order to ensure an expeditious review of Development Orders, it is essential that the Applicant and the City comply with Concurrency Management Administrative Review Procedures adopted by the City. Where applicable it is essential that the Applicant SIGN AN AFFIDAVIT OF DEFERRAL, acknowledging that future rights to develop the property are subject to a future concurrency

Management review and, without such a review, no vested Development Rights have been granted by the City or acquired by the Applicant.

**Section 106-4.1. Public Facility/Service Capacity Review Criteria.**

Capacity analysis for public facilities and services shall be completed in accordance with the following criteria:

- (a) Roads. In accordance with the applicable inter-local agreement, the Lake Sumter MPO shall administer the transportation concurrency management system for the City of Eustis.
  - (1) The demand on transportation facilities and services shall be based on the number of trips generated by the proposed Development using the most recent edition of the ITE Trip Generation Manual, a trip distribution which is mutually agreed upon by the Applicant, the Lake Sumter MPO, and the City. The Traffic Impact Study must comply with the requirements of the Lake Sumter MPO Methodology Guidelines.
  - (2) Once the demand on transportation facilities has been calculated, it shall be compared to the available capacity of the transportation facilities. Available capacity shall be determined by subtracting the existing traffic volume on the transportation facilities, the traffic generated by Developments that have previously reserved capacity on the transportation facilities and the traffic generated by Developments that have previously encumbered capacity on the transportation facilities from the maximum volume of the transportation facilities, at the adopted level of service standards. If the demand on transportation facilities and services exceeds the available capacity of the transportation facilities and services, the Final Development Order associated with the concurrency management review shall not be approved unless a proportionate fair share agreement has been executed in accordance with Section Section 106-5. The Lake Sumter MPO shall maintain the Master Transportation Concurrency Management System for the City of Eustis.
- (b) Sanitary Sewer. The demand on sanitary sewer public facilities and services shall be based on an Equivalent Residential Unit (ERU) Design Flow Schedule adopted by the City, whereby one (1) ERU equates to a flow of three hundred (300) gallons per day (GPD) of effluent. Developments that propose to connect to, or are required to connect to sanitary sewer public facilities and services shall be required to obtain a letter from the provider of such sanitary sewer facilities and services indicating that the provider has the capacity available, or will have the capacity available to serve the proposed Development concurrent with the impacts of such Development, in accordance with Rule 9J-5, Part 9J-5.0055(2)(a), Florida Administration Code. If the demand on sanitary sewer facilities and services exceeds the available capacity of the sanitary sewer facilities

and services, the Final Development Order associated with the concurrency Management review shall not be approved.

- (c) Solid Waste. The demand on solid waste public facilities and services for a proposed Development shall be based on an Equivalent Residential Unit (ERU) Design Flow Schedule adopted by the County, whereby one (1) ERU equates to the number of pounds per capita per day generated at the adopted level of service standard for solid waste. Once the demand has been calculated, it shall be compared to the available capacity of the solid waste facilities and services. If the demand on solid waste facilities and services exceeds the available capacity of the solid waste facilities and services, the Development Order associated with the concurrency Management review shall not be approved.
- (d) Stormwater Management. The demand for stormwater Management shall be based on the volume of stormwater runoff for the design storm. The geographic scope to be examined shall be the project development site. If the Applicant is unable to demonstrate that the proposed development will be able to meet the stormwater Management design standards adopted in these Land Development Regulations, the Final Development Order associated with the concurrency management review shall not be approved.
- (e) Potable Water. The demand on potable water public facilities and services shall be based on an Equivalent Residential Unit (ERU) Design Flow Schedule adopted by the County, whereby one (1) ERU equates to a flow of three hundred (300) gallons per day (GPD) of potable water at a minimum pressure of twenty (20) pounds per square inch. Developments that propose to connect to, or are required to connect to potable water public facilities and services shall be required to obtain a letter from the provider of such potable water facilities and services indicating that the provider has the capacity available, or will have the capacity available to serve the proposed Development concurrent with the impacts of such Development, in accordance with Rule 9J-5, Part 9J-5.0055(2)(a), Florida Administrative Code. If the demand on potable water facilities and services exceeds the available capacity of the potable water facilities and services, the Final Development Order associated with the concurrency management review shall not be approved.
- (f) Recreation and Open Space. The demand for parks and recreation shall be determined for a proposed Development based on the number [of] acres of parks and recreation facilities required per one thousand (1,000) residents. Demand shall only be calculated for residential development and shall incorporate a persons per household figure established in the most recent decennial census. Once the demand on parks and recreation facilities has been calculated, it shall be compared to the available capacity of the parks and recreation facilities. Available capacity shall be determined by subtracting the existing demand on parks and recreation facilities, the demand on parks and recreation facilities created by developments that have previously reserved the capacity and the demand on parks and recreation facilities created by developments that have

previously encumbered capacity from the total acreage of parks and recreation facilities, at the adopted level of service standards. If the demand on parks and recreation facilities and services exceeds the available capacity, the Final Development Order associated with the concurrency management review shall not be approved.

(g) Public School Facilities. The following procedures shall be utilized to obtain a School Concurrency Determination from the Lake County School Board and to allow for mitigation if a development proposal is determined not to be in compliance:

- (1) A completed application provided by and delivered to the Lake County School Board must be submitted concurrent with a final development order by an applicant proposing residential development. The application at a minimum shall include the following information:
  - a. Proposed Development Name
  - b. Application Type
  - c. Intake Date
  - d. Signature of Agent
  - e. Number of Residential Units broken down by unit type
  - f. Property Deed
  - g. Consent Form
  - h. Phasing Plan (If Applicable)
  - i. Site Plan
  - j. Survey
  - k. Justification Statement
  - l. Location Map
- (2) Within three days of submitting to the School Board, the applicant must present a copy of the application to the City. The City shall provide a Determination of Authenticity to the School Board within three days of receiving the application.
- (3) The School Board shall review the application in accordance with the provisions of Section 5.5.2 of the First Amended Interlocal Agreement for School Facilities Planning and Siting dated December 26, 2007, and any future amendments and revisions (the *Agreement*) and base the concurrency determination on standards outlined in Section 5.5.3 of the *Agreement*.
- (4) No development order shall be approved unless a Letter of Determination of Concurrency has been issued by the School Board finding the development in compliance.
- (5) Once the School Board has reviewed the application it shall issue a Letter of Determination of Concurrency within 30 days if the impact of the proposed developments student growth does not cause the adopted Level of Service to be exceeded.
- (6) If the development is not in compliance, the Letter of Determination of Concurrency shall detail why the development is not in compliance and shall

- offer the applicant the opportunity to enter into a 90 day negotiation period in accordance with the provisions of Section 5.6 of the *Agreement*.
- (7) During the 90 day negotiation period the applicant shall meet with the School Board in an effort to mitigate the impact from the development.
    - a. Mitigation shall be limited to those options which the School Board recognizes and assumes the responsibility to operate and which will maintain the adopted Level of Service standards for the first five years from receipt of the School Boards Letter of Determination of Concurrency.
    - b. The City of Eustis shall have the opportunity to review the mitigation options.
    - c. The City Commission shall approve all Proportionate Share Agreements.
  - (8) If mitigation is not agreed to, the Letter of Determination of Concurrency shall detail why mitigation proposals were rejected and detail why the development is not in compliance. In this case, no development order shall be issued.
  - (9) If the School Board and the applicant agree to mitigation, the Letter of Determination of Concurrency shall be issued based on the agreed mitigation measures and an agreement between the School Board, the City and the applicant.
  - (10) A Letter of Determination for School Concurrency, finding the development in compliance, issued by the School Board shall be valid for one year from the date of issuance unless extended by the School Board. Once the development order is issued, the concurrency determination shall run with the development order.
  - (11) If the Letter of Determination of Concurrency requires conditions or mitigation to be placed on the development, the development order issued by the City of Eustis shall incorporate conditions as set forth by the School Board.
  - (12) If the Letter of Determination of Concurrency requires the development to be phased to school construction or other mitigation, the conditions of approval of the development order shall reflect the phasing requirements by withholding subsequent development orders for building permits.
  - (13) In no case shall a development order be issued unless provisions are made through conditions of approval or by agreement between the School Board, the City and the applicant to provide Performance Security when required.

#### **Section 106-4.2. Encumbrance of Capacity.**

(a) General.

- (1) All Applicants of Development Orders shall have the ability to temporarily encumber capacity in accordance with the capacity encumbrance criteria established for each type of Development Order. All Final Development Orders shall expire in accordance with the time frames established for capacity encumbrance in the event that capacity is not reserved prior to the expiration of the capacity encumbrance. Notwithstanding the criteria established below, once

capacity is encumbered by the City, in accordance with the criteria established below, the Applicant shall have ninety (90) days to reserve such capacity in the event another proposed Final Development order is to be denied strictly because of a lack of capacity. The City shall be responsible for notifying the Applicant via certified mail in the event another Development is in need of such encumbered capacity. However, the City shall not be responsible for notifying the Applicant if the encumbered capacity expires in accordance with the criteria established below.

- (2) Capacity shall be encumbered by the City at the time the Final Development Order is reviewed by the appropriate Department within the City. All Final Development Orders, shall be required to encumber capacity prior to receiving final approval.

(b) Capacity Encumbrance for Development Orders.

- (1) Administrative Lot Split. Capacity shall be encumbered by the City for an administrative Lot split, prior to scheduling the administrative Lot split for review, for a time period not to exceed six (6) months from the date the Applicant submits the administrative Lot split and the administrative Lot split is reviewed for concurrency Management. In the event that capacity is not available to be encumbered by the City for public facilities and services, the administrative Lot split shall not be scheduled for review.
- (2) Building Permits. Capacity shall be encumbered by the City for Building Permits for a time period not to exceed six (6) months from the date the Building Permit is issued. In the event that capacity is not available to be encumbered by the City for public facilities and services, the Building Permit shall not be approved. In the event that capacity is not reserved by the Applicant within the encumbrance time frame, the Building Permit shall no longer be valid.
- (3) Comprehensive Plan Amendments. Capacity shall be encumbered by the City for a Comprehensive Plan Amendment (CPA) for a time period not to exceed one (1) year from the date the CPA is found in compliance with Chapter 163, Florida Statutes, by the State of Florida, Department of Community Affairs. In the event that capacity is not available to be encumbered by the City for public facilities and services, the CPA shall not be approved by the City. In the event that capacity is not reserved by the Applicant within the encumbrance time frame, the CPA shall remain valid, however, all future rights to develop the property are subject to a future concurrency management review and, without such a review, no vested development rights, for concurrency purposes only, shall have been granted by the City or acquired by the Applicant.
- (4) Conditional Use Permits. Capacity shall be encumbered by the City for a Conditional Use Permit (CUP) for a time period not to exceed six (6) months from

the date the CUP is reviewed and approved. In the event that capacity is not available to be encumbered by the City for public facilities and services, the CUP shall not be approved. In the event that capacity is not reserved by the Applicant within the encumbrance time frame, the CUP Shall remain valid; however, all future rights to develop the property are subject to a future concurrency Management review and, without such a review, no vested Development Rights, for concurrency purposes only, shall have been granted by the City or acquired by the Applicant.

- (5) Final engineering and Construction Plans (Non-Residential). Capacity shall be encumbered by the City for non-residential construction for a time period not to exceed three (3) months from the date the construction plans receive final approval by the City. In the event that capacity is not available to be encumbered by the City for public facilities and services, the plans shall not be approved; however, implementation shall be subject to the Development meeting concurrency management standards. In the event that capacity is not reserved by the Applicant within the encumbrances time frame, the plans shall no longer be valid for concurrency purposes only.
- (6) Final engineering and Construction Plans (Residential Subdivision). Capacity shall be encumbered by the City for residential construction plans for a time period not to exceed eighteen (18) months from the date the plans receive final approval by the City. In the event that capacity is not available to be encumbered by the City for public facilities and services, the plans shall not be approved; however, implementation shall be subject to the development meeting concurrency management standards. In the event that capacity is not reserved by the Applicant within the encumbrance time frame, the plans shall no longer be valid for concurrency purposes only.
- (7) Developments of Regional Impact and Florida Quality Developments. Capacity shall be encumbered by the City for a Development of Regional Impact (DRI) or a Florida Quality Development for a time period not to exceed three (3) years from the date the DRI or FQD is approved. In the event that capacity is not available to be encumbered by the City for public facilities and services, the DRI or FQD Shall not be approved. In the event that capacity is not reserved by the Applicant within the encumbrance time frame, the PUD associated with the DRI or FQD shall remain valid; however, all future rights to develop the property are subject to a future concurrency management review and, without such a review, no vested Development Rights, for concurrency purposes only, shall have been granted by the City or acquired by the Applicant.
- (8) Final Plat. Capacity shall be encumbered by the City for a Final Plat, prior to scheduling the Final Plat for approval by the City Commission, for a time period not to exceed one hundred twenty (120) days from the date the Applicant receives Final Plat approval. In the event that capacity is not available to be

encumbered by the City for public facilities and services, the Final Plat shall not be scheduled for approval by the City Commission. In the event that capacity is not reserved by the Applicant within the encumbrance time frame, the Final Plat shall no longer be valid for concurrency purposes only.

- (9) Site Plans. Capacity shall be encumbered by the City for a Site Plan for a time period not to exceed six (6) months from the Site Plan receives approval. In the event that capacity is not available to be encumbered by the City for public facilities and services, the Site Plan shall not be approved; however, implementation shall be subject to the development meeting concurrency management standards. In the event that capacity is not reserved by the Applicant within the encumbrance time frame, the Site Plan shall no longer be valid for concurrency purposes only. In the event that capacity is reserved for the primary use established via the Site Plan, capacity will be encumbered by the City for the ancillary uses until such time that Building Permits are issued for the ancillary uses. For the purpose of encumbering capacity for Site Plans, ancillary uses shall mean those uses established via the Site Plan that constitute less than fifteen (15) percent of the demand for public facilities and services for all uses established via the Site Plan.
- (10) Planned Unit Developments. Capacity shall be encumbered by the City for a Planned Unit Development (PUD) for a time period not to exceed two (2) years from the date the Applicant requests PUD approval and the PUD is reviewed for concurrency management. A Planned Unit Development (PUD) associated with a Development of Regional Impact (DRI) or a Florida Quality Development (FQD) shall be subject to the encumbrance criteria established for a DRI or FQD, respectively. In the event that capacity is not available to be encumbered by the City for public facilities and services, the PUD shall not be approved. In the event that capacity is not reserved by the Applicant within the encumbrance time frame, the PUD shall remain valid; however, all future rights to develop the property are subject to a future concurrency Management review and, without such a review, no vested Development Rights, for concurrency purposes only, shall have been granted by the City or acquired by the Applicant. In the event a portion of the capacity is reserved for the PUD, the remaining portion of the PUD shall remain valid; however, all future rights to develop the property are subject to a future concurrency management review, and, without such a review, no vested Development Rights, for concurrency purposes only, shall have been granted by the City or acquired by the Applicant.
- (11) Preliminary Plat. Capacity shall be encumbered by the City for a Preliminary Plat for a time period not to exceed two (2) years from the date the Preliminary Plat receives final approval. In the event that capacity is not available to be encumbered by the City for public facilities and service, the Preliminary Plat shall not be approved. In the event that capacity is not reserved by the Applicant within the encumbrance time frame, the Preliminary Plat shall no longer be valid

for concurrency purposes only. In the event that capacity is reserved for a portion of a Preliminary Plat containing more than fifty (50) units and the Development is determined by the City to be "continuing in good faith," a two-year capacity encumbrance extension may be granted by the City. Additional two-year capacity encumbrance extensions may be granted by the County for a Preliminary Plat containing more than one hundred (100) units, provided that the Development is determined by the City to be "continuing in good faith." For the purpose of evaluating a Preliminary Plat for capacity encumbrance extension, "continuing in good faith" shall mean that Final engineering and construction plans have been approved by the City, addressing at least fifty (50) units, every two (2) years from the date the Preliminary Plat receives final approval.

- (12) Variances. Capacity shall be encumbered by the City for Variances for a time period not to exceed six (6) months from the date the Variance is reviewed and approved. In the event that capacity is not available to be encumbered by the City for public facilities and services, the Variance shall not be approved. In the event that capacity is not reserved by the Applicant within the encumbrance time frame, the Variance Shall remain valid; however, all future rights to develop the property are subject to a future concurrency management review and, without such a review, no vested Development Rights, for concurrency purposes only, shall have been granted by the City or acquired by the Applicant.

(c) Development Agreements. Applicants for Development Orders may offer to provide public facilities and services at the expense of the Applicant in order to ensure the availability of capacity concurrent with the impact of the associated Development. Applicants that elect to provide public facilities and services may do so through the use of an enforceable Development Agreement, thereby, eliminating the need to encumber and subsequently, reserve capacity of public facilities and services. Development Agreements may be entered into subject to the following requirements:

- (1) An enforceable Development agreement shall provide, at a minimum, a schedule for construction of the public facilities and services and mechanisms for monitoring to insure that the public facilities and services are completed concurrent with impacts of the Development, or the Development will not be allowed to proceed.
- (2) The Development Agreement is construed to be enforceable according to Sections 163.3220--163.3243, Florida Statutes.

### **Section 106-4.3. Alternate Data for Capacity Analysis.**

In the event the City is unable to encumber capacity for a proposed Development because the data used by the City exhibits that there is no available capacity, the Applicant may submit alternate data subject to the requirement that the alternate data be substantiated by a competent professional and approved by the City. In the event that the alternate data is based on special circumstances regarding the presumed use or Development of the

property, the applicant will be required to execute a deed restriction to enforce such special circumstances. This section does not apply to transportation capacity determinations.

**Section 106-4.4. Notice of Capacity Determination.**

- (a) The Department of Development Services shall issue a Notice of Capacity Determination once the results of the capacity analysis have been provided by all Departments responsible for completing such analysis. The Notice of Capacity determination shall state that:
- (1) Public facilities and services have capacity available to support the proposed Development and that the City has encumbered such capability, in accordance with the criteria established for the associated Development Order, for the purpose of reserving such capacity; or
  - (2) Public facilities and services do not have capacity available to support the proposed Development and provide the information concerning which public facilities and services do not have available capacity.
- (b) In the event that certain public facilities and services do not have capacity available to meet the needs of the proposed Development, all available capacity shall be encumbered by the City for those public facilities and services that have available capacity for a time period not to exceed six (6) months, thereby, providing the Applicant time to address the capacity problem.

**Section 106-4.5. Reservation of Capacity.**

- (a) All Development that has undergone the concurrency management review procedure and has had capacity encumbered for the associated Development Order will have the ability to reserve capacity in accordance with the capacity reservation criteria established below. Development orders for which the capacity encumbrance has expired may not reserve capacity.
- (b) Residential Developments proposed at a Density in excess of one (1) Dwelling Unit per five (5) acres shall be required to pay a fee established by the City Commission for each proposed Dwelling Unit for the reservation of capacity.. Residential Developments proposed at a Density of one (1) Dwelling Unit per five (5) acres, or less, shall not be required to pay a fee for the reservation of capacity since they have inconsequential demand on public facilities and services.
- (c) Capacity reservation may be achieved for each Development Order according to the following criteria:
- (1) Administrative Lot Split. Capacity shall be reserved for an administrative Lot split through the payment of a capacity reservation fee associated with the

administrative Lot split, in accordance with the payment schedule identified below, prior to final approval of the administrative Lot split. The capacity reservation fee for the administrative Lot split shall be determined by associating a fee established by the City Commission with each residential lot split established via the administrative lot split which contains less than five (5) acres of uplands. Payment of one hundred (100) percent of the capacity reservation fee shall provide for the reservation of capacity for the administrative lot split. No alternate payment schedule shall be allowed for an administrative lot split.

- (2) Building Permits. Capacity shall be reserved for a Building Permit through the payment of a capacity reservation fee associated with the Building Permit prior to issuance of the Building Permit..
- (3) Comprehensive Plan Amendments. Capacity may be reserved for a Comprehensive Plan (Future Land Use Map) Amendment (CPA) through the payment of a capacity reservation fee associated with the CPA, in accordance with the payment schedule identified below, provided capacity has been encumbered for the CPA.. Payment of one hundred (100) percent of the capacity reservation fee shall provide for the reservation of capacity for three (3) years from the date the payment is made. Payment of fifty (50) percent of the capacity reservation fee shall provide for the reservation of capacity for two (2) years from the date the payment is made. Payment of thirty-three and one-third (33.33) percent of the capacity reservation fee shall provide for the reservation of capacity for one (1) year from the date the payment is made.
- (4) Conditional Use Permits. Capacity may be reserved for a Conditional Use Permit (CUP) through the payment of a capacity reservation fee associated with the CUP, in accordance with the payment schedule identified below, provided capacity has been encumbered for the CUP. Payment of one hundred (100) percent of the capacity reservation fee shall provide for the reservation of capacity for three (3) years from the date the payment is made. Payment of fifty (50) percent (50) of the capacity reservation fee shall provide for the reservation of capacity for two (2) years from the date the payment is made. Payment of thirty-three and one-third (33.33) percent of the capacity reservation fee shall provide for the reservation of capacity for one (1) year from the date the payment is made.
- (5) Final engineering and Construction Plans (Non-Residential). Capacity shall be reserved for construction plans associated with a non-residential development through the payment of a capacity reservation fee associated with the non-residential development, in accordance with the payment schedule identified below, prior to the final approval of the construction plans associated with the non-residential development. Payment of one hundred (100) percent of the capacity reservation fee shall provide for the reservation of capacity for thirty-six (36) months from the date the construction plans receive final approval.

Payment of fifty (50) percent of the capacity reservation fee shall provide for the reservation of capacity for eighteen (18) months from the date the construction plans receive final approval. Payment of thirty-three and one-third (33.33) percent of the capacity reservation fee shall provide for the reservation of capacity for nine (9) months from the date the plans receive final approval.

- (6) Final Engineering and Construction Plans (Residential Subdivision). Capacity shall be reserved for construction plans associated with a residential Subdivision Plat through the payment of a capacity reservation fee associated with the residential Subdivision Plats, in accordance with the payment schedule identified below, prior to the final approval of the final engineering and construction plans associated with the residential Subdivision Plat. The capacity reservation fee for the construction plans associated with the residential Subdivision Plat. The capacity reservation fee for the final engineering and construction plans associated with a residential Subdivision Plat Shall be determined by associating a fee established by City Commission with each residential lot established via the residential Subdivision Plat which contains less than (5) upland acres. In the event that the residential Subdivision Plat associated with the construction plans contains variable lot sizes, the capacity reservation fee shall be determined by associating a fee established by the City Commission with each residential Lot established via the residential Subdivision Plat when the average lot size of the residential Subdivision Plat contains less than five (5) upland acres. Payment of one hundred (100) percent of the capacity reservation fee shall provide for the reservation of capacity for thirty-six (36) months from the date the construction plans receive final approval. Payment of fifty (50) percent of the capacity reservation fee shall provide for the reservation of capacity for eighteen months from the date the plans receive final approval,. Payment of thirty-three and one-third (33.33) percent of the capacity reservation fee shall provide for the reservation of capacity for nine (9) months from the date the construction plans receive final approval.
- (7) Developments of Regional Impact and Florida Quality Developments. Capacity Shall be reserved for a Development of regional Impact (DRI) or a Florida Quality Development (FQD) through the payment of a capacity reservation fee associated with the DRI or FQD, in accordance with a payment schedule approved as part of the conditions placed on the PUD associated with a payment schedule approved as part of the conditions placed on the PUD associated with the DRI or FQD.
- (8) Final Plat. Capacity shall be reserved for a Final Plat through the payment of a capacity reservation fee associated with the Final Plat, in accordance with the payment schedule identified below, prior to scheduling the Final Plat for approval. The capacity reservation fee for the Final Plat shall be determined by associating a fee established by the City Commission with each residential lot established via the Final Plat which contains less than five (5) upland acres. In

the event that the Final Plat contains variable lot sizes, the capacity reservation fee for the Final Plat shall be determined by associating a fee established by the City Commission with each residential lot established via the Final Plat when the average lot size of the Final Plat contains less than five (5) upland acres. Payment of one hundred (100) percent of the capacity reservation fee shall provide for the reservation of capacity for the Final Plat. No alternate payment schedule shall be allowed for a Final Plat.

- (9) Site Plans. Capacity shall be reserved for a final Site Plan through the payment of a capacity reservation fee associated with the Site Plan, in accordance with the payment schedule identified below, prior to approval of the Site Plan. Payment of one hundred (100) percent of the capacity reservation fee shall provide for the reservation of capacity for thirty-six (36) months from the date the final Site Plan receives approval. Payment of fifty (5) percent of the capacity reservation fee Shall provide for the reservation of capacity for eighteen (18) months from the date the final Site Plan receives final approval. Payment of thirty-three and one-third (33.33) percent of the capacity reservation fee shall provide for the reservation of capacity for nine (9) months from the date the final Site Plan receives final approval.
- (10) Planned Unit Developments. Capacity may be reserved for a Planned Unit Development (PUD) through the payment of a capacity reservation fee associated with the PUD, in accordance with a payment schedule approved as part of the conditions placed on the PUD, or the payment schedule identified below, provided capacity has been encumbered for the PUD. Payment of one hundred (100) percent of the capacity reservation fee shall provide for the reservation of capacity for three (3) years from the date the payment is made. Payment of fifty (50) percent of the capacity reservation fee shall provide for the reservation of capacity for two (2) years from the date the payment is made. Payment of thirty-three and one-third (33.33) percent of the capacity reservation fee shall provide for the reservation of capacity for one (1) year from the date the payment is made.
- (11) Preliminary Plat. Capacity may be reserved for a Preliminary Plat through the payment of a capacity reservation fee associated with the Preliminary Plat, in accordance with the payment schedule identified below, provided capacity has been encumbered for the Preliminary Plat. The capacity reservation fee for the Preliminary Plat Shall be determined by associating a fee established by the City Commission with each residential lot established via the Preliminary Plat which contains less than five (5) acres of uplands. In the event that the Preliminary Plat contains variable lot sizes, the capacity reservation fee for the Preliminary Plat Shall be determined by associating a fee established by the City Commission with each residential Lot established via the Preliminary Plat when the average Lot size of the Preliminary Plat contains less than five (5) upland acres. Payment of one hundred (100) percent of the capacity reservation fee shall provide for the

reservation of capacity for three (3) years from the date the payment is made. Payment of fifty (50) percent of the capacity reservation fee shall provide for the reservation of capacity for two (2) years from the date the payment is made. Payment of thirty-three and one-third (33.33) percent of the capacity reservation fee shall provide for the reservation of capacity for one (1) year from the date the payment is made.

- (12) Variances. Capacity may be reserved for a Variance through the payment of a capacity reservation fee associated with the Variance, in accordance with the payment schedule identified below, provided capacity has been encumbered for the Variance. Payment of one hundred (100) percent of the capacity reservation fee shall provide for the reservation of capacity for three (3) years from the date the payment is made. Payment of fifty (50) percent of the capacity reservation fee shall provide for the reservation of capacity for two (2) years from the date the payment is made. Payment of thirty-three and one-third (33.33) percent of the capacity reservation fee shall provide for the reservation of capacity for one (1) year from the date the payment is made.

#### **Section 106-4.6. Paying for Capacity Reservation.**

- (a) In order to reserve capacity, the Applicant must provide one (1) of the following forms of payment:
- (1) Direct payment of fees;
  - (2) Letter of credit;
  - (3) Development agreement to establish a first priority lien against the property; or
  - (4) City approved cash escrow agreement.
- (b) Actual impact fees are due and payable in accordance with the building permit issued by the City since the capacity reservation fee only represents an estimate of City impact fees. All funds collected for the purpose of reserving capacity shall be used as partial payment of the impact fees associated with the Development.

#### **Section 106-4.7. Extension of Capacity Reservation.**

- (a) An extension to the reservation of capacity may be granted by the City provided the underlying Development Order complies with the most recent Land Development Regulations of the City and provided the Development is deemed to be "continuing in good faith" by the City. If the underlying Development Order complies with the most recent Land Development Regulations of the City and the Development is "continuing in good faith" an extension to the reservation of capacity shall be granted by the City in accordance with the following criteria:

- (1) The extension to the reservation of capacity shall not exceed the time frame for which the initial reservation of capacity was valid; and
- (2) The extension to the reservation of capacity shall not exceed a twelve (12) month period in the event that public facilities and services capacity for the underlying Development Order has been requested for another Development Order or there is a deficiency in public facilities and services reserved for the underlying Development Order because of an action taken by a local government, other than the City of Eustis.

**Section 106-4.8. Expiration of Capacity Reservation and Underlying Development Order.**

- (a) A reservation of capacity shall expire at any point in time for which the underlying Development Order expires or is revoked or denied by the City of Eustis, otherwise, a reservation of capacity shall expire at a point in time for which an extension to the reservation of capacity can no longer be granted by the City for the underlying Development Order. Upon expiration of the capacity reservation, the underlying Development Order Shall no longer be valid, unless specifically provided for below.
- (b) In the event capacity is reserved for a Planned Unit Development, Conditional Use Permit, Comprehensive Plan Amendment, or Variance, and the capacity reservation expires, the Development Order Shall remain valid; however, all future rights to develop the property shall be subject to a future concurrency review and, without such a review, no vested Development Rights, for concurrency purposes only, Shall have been granted by the City or acquired by the Applicant.

**Section 106-4.9. Return of Reserved Capacity Upon Expiration.**

If an Applicant does not request an extension, or the requested extension is denied, and the Development Order expires, the capacity reservation will also expire and the reserved capacity will be accounted for by the City as "available" capacity.

**Section 106-4.10. Forfeiture of Reserved Capacity.**

Capacity that is reserved is forfeited unless it is:

- (a) Ultimately used by completion of construction pursuant to unexpired Development Orders;
- (b) Extended with the extension of the Development Order; or
- (c) Transferred to a subsequent Development Order for the same property.

**Section 106-4.11. Transfer of Reserved Capacity.**

Capacity reservation may not be transferred to another parcel of property, however, it can be transferred to subsequent Development Orders of the same parcel, and to subsequent Owners of the same parcel.

**Section 106-4.12. Refund of Capacity Reservation Fee.**

- (a) The capacity reservation fee is anticipated to provide the City with a portion of the cost of new public facilities and services. Hence, the City shall use the capacity reservation fee in a manner consistent with the use of impact fees.
- (b) The fee, plus accumulated interest, is refundable if Development does not proceed and the associated Development Order is revoked, provided the City has not obligated the money for Capital Improvements, however, the refund is subject to a processing charge, adopted by Resolution of the City Commission.
- (c) In the event the money is obligated for Capital Improvements and the Development does not proceed, the fee, plus accumulated interest, shall be refunded once new Development reserved the capacity that was previously reserved for the Development that is no longer proceeding. However, the refund is subject to a processing charge, adopted by Resolution of the City Commission.

**Section 106-5. Proportionate Fair Share Program.**

The purpose of this section is to establish a method whereby the impacts of Development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, to be known as the Proportionate Fair Share Program, as required by and in a manner consistent with F.S. § 163.3180(16). This section will also provide methods and procedures for the City of Eustis and Lake County, and the Lake Sumter MPO to coordinate the Proportionate Fair Share Program.

**Section 106-5.1. Applicability.**

The Proportionate Fair Share Program shall apply to all proposed Developments in the city that have been notified by the City Manager or designee that demand on transportation facilities and services exceeds the available capacity of the transportation facilities and services. The Proportionate Fair Share Program does not apply to developments of regional impact (DRIs) using proportionate share under F.S. § 163.3180(12), vested developments, or to developments exempted from concurrency as provided by local and state law.

**Section 106-5.2. General Requirements.**

- (a) If an applicant receives a Notice of Capacity Determination stating that there is a lack of capacity to satisfy transportation concurrency pursuant to Section 106-4.4, an applicant

may choose to satisfy transportation concurrency requirements by making a proportionate fair share contribution, provided that the proposed development is consistent with the Comprehensive Plan and applicable Land Development Regulations and one (1) of the following exists:

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

**Section 106-5.3. Application Process.**

- (a) Upon receipt of a Notice of Capacity Determination indicating a lack of capacity to satisfy transportation concurrency pursuant to Section 106-4.4, the applicant shall be notified in writing of the opportunity to satisfy transportation concurrency through the Proportionate Fair Share Program pursuant to the requirements of Section 106-5.
- (b) Prior to submitting an application for a proportionate fair share agreement, a pre-application meeting shall be held with all affected jurisdictions to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. The appropriate parties for review of a proposed proportionate fair share agreement include the jurisdiction maintaining the transportation facility that is subject to the agreement, if other than the City of Eustis, and the Lake Sumter MPO. If the impacted facility is a state facility, then FDOT will be invited to participate in the pre-application meeting.
- (c) The City Manager or designee shall review the application and certify that the application is sufficient and complete within ten (10) business days of receipt. If an application is determined to be insufficient, incomplete or inconsistent with the general requirements of the Proportionate Fair Share Program, then the applicant shall be notified in writing of the reasons for such deficiencies within ten (10) business days of receipt of the application. If such deficiencies are not remedied by the applicant within thirty (30) calendar days from the date of the written notification then the application will be deemed abandoned. The City Manager or designee may, in his or her discretion, grant an extension of time not to exceed sixty (60) calendar days to cure such deficiencies, provided that the applicant has shown good cause for requesting the extension and has taken reasonable steps to remedy the deficiencies.
- (d) Pursuant to F.S. § 163.3180(16)(e), proposed proportionate fair share mitigation for development impacts to facilities on the Strategic Intermodal System (SIS) requires the approval of FDOT. The applicant shall submit evidence of an agreement between the applicant and FDOT for inclusion in the proportionate fair share agreement. The City also may need to enter into an agreement with FDOT as appropriate.
- (e) When an application is deemed sufficient, complete, and eligible, the applicant shall be advised in writing and a proposed proportionate fair share obligation and binding agreement will be prepared by the City. The agreement will be delivered to the appropriate parties for review no later than sixty (60) calendar days from the date of notification of a sufficient application and no fewer than fourteen (14) calendar days prior to the City Commission meeting when the agreement will be considered.
- (f) The City Manager or designee shall notify the applicant regarding the date of the Board of County Commissioners meeting when the agreement will be considered for final approval. No proportionate fair share agreement will be effective until approved by the City Commission.

**Section 106-5.4. Determining Proportionate Fair Share Obligation.**

- (a) Proportionate fair share mitigation for concurrency impacts may include, without limitation, separately or collectively: the addition of transportation capacity through several means such as the physical widening and/or reconstruction of a roadway to add capacity; the addition of transportation capacity through creation of new reliever roadways; monetary contributions; new network additions; contributing to new transit capital facilities (e.g., bus rapid transit corridor); contributing to the expansion of bus fleets to increase service frequency; other contributions to mass transit system expenses; or any other means determined by the City Manager or designee to add transportation capacity sufficient to mitigate impacts.
- (b) A Development shall not be required to pay more than its proportionate fair share. The fair market value of the proportionate fair share mitigation for the impacted facilities shall not differ regardless of the method of mitigation.
- (c) The methodology used to calculate an applicant's proportionate fair share obligation shall be as provided for in F.S. § 163.3180(12), as follows:

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

Where:

Development Trips<sub>i</sub> = Those trips from the stage or phase of development under review that are assigned to roadway segment "i" and have triggered a deficiency per the CMS; only those trips that trigger a concurrency deficiency will be included in the proportionate fair-share calculation;

SV Increase<sub>i</sub> = Service volume increase contributed by the eligible improvement to roadway segment "i"

Cost<sub>i</sub> = Adjusted cost of the improvement to segment "i". Cost shall include all improvements and associated costs, such as design, right-of-way acquisition, planning, engineering, inspection, and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred.

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

- (d) If the City has accepted an improvement project proposed by the applicant, then the value of the improvement shall be determined using one (1) of the methods provided in this section. Any improvement project proposed to meet the applicant's fair share obligation must meet design standards of the jurisdiction within which the majority of the planned improvements would be located for locally maintained roadways and those of the FDOT for the state and federal highway system.
- (e) If the City has accepted right-of-way dedication for the proportionate fair share payment, credit for the dedication of the non-site related right-of-way shall be valued on the date of the dedication at one hundred twenty (120) percent of the most recent assessed value by the Lake County Property Appraiser or, at the option of the applicant, by fair market value established by an independent appraisal approved by the City and at no expense to the City. The applicant shall supply a survey and legal description of the land and a certificate of title or title search of the land to the City at no expense to the City. If the estimated value of the right-of-way dedication proposed by the applicant is less than the City estimated total proportionate fair share obligation for that development, then the applicant shall pay the difference. Prior to purchase or acquisition of any real estate or acceptance of donations of real estate intended to be used for the proportionate fair share, public or private partners should contact FDOT for essential information about compliance with federal law and regulations.

**Section 106-5.5. Impact Fee Credit for Proportionate Share Mitigation.**

- (a) Proportionate fair share contributions shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair share mitigation is used to address the same capital infrastructure improvements contemplated by any impact fee ordinance. Applicants would be eligible for impact fee credit for that portion of their proportionate fair share payment that applies to a segment for which the transportation impact fee is also being applied.
- (b) Impact fee credits for the proportionate fair share contribution will be determined when the proportionate fair share agreement is executed. Impact fees owed by the applicant will be reduced per the proportionate fair share agreement. If the applicant's proportionate fair share obligation is less than the development's anticipated transportation impact fee for the specific stage or phase of development under review, then the applicant or its successor must pay the remaining impact fee amount to the City and any other jurisdictions entitled to collect impact fees, pursuant to the requirements of the applicable impact fee ordinances.
- (c) The proportionate fair share obligation is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any transportation impact fee credit based upon proportionate fair share contributions for a proposed development cannot be transferred to any other location.

**Section 106-5.6. Proportionate Fair Share Agreements.**

- (a) If an applicant elects to make a proportionate fair share contribution to satisfy transportation concurrency, a binding agreement between the applicant and the City, and other affected jurisdictions as necessary, shall be executed in accordance with the requirements of this chapter.
- (b) Upon approval of the proportionate fair share agreement by the City Commission, the applicant shall receive a satisfactory Notice of Capacity Determination from the City. The satisfactory Notice of Capacity Determination shall expire at any point in time for which the underlying Development Order expires or is revoked or denied by the City, otherwise a satisfactory Notice of Capacity Determination shall expire at a point in time for which an extension can no longer be granted by the City for the underlying Development Order. The satisfactory Notice of Capacity Determination shall be considered void, and the applicant shall be required to reapply for a concurrency determination. In addition, if the proposed development's impacts were the only impacts causing the potential deficient operation of the facility, the specific project may be removed from the CIE.
- (c) If the applicant agrees to cash payment of the proportionate fair share contribution, payment is due in full prior to issuance of the final development order, as defined above in paragraph (2). Once paid, contributions shall be non-refundable. If the payment is submitted more than six (6) months from the date of execution of the Agreement, then the proportionate fair share cost shall be recalculated at the time of payment based on the best estimate of the construction cost of the required improvement, pursuant to Section 106-5.4(c) and adjusted accordingly.
- (d) If the applicant agrees to construct transportation improvements as authorized by the Agreement, all improvement must be completed prior to issuance of a final development order, or as otherwise established in the Agreement. The Agreement shall be accompanied by a security instrument sufficient to ensure the completion of all required improvements. Any security instrument, in a form acceptable to the City, shall be for at least one hundred fifty (150) percent of the estimated cost of the improvements to be completed by the developer. The security instrument shall be irrevocable and shall remain in effect until the developer fully completes the required improvements.
- (e) If an applicant agrees to dedicate right-of-way, dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair share agreement must be completed prior to issuance of the final Development Order as defined in paragraph (3) above.
- (f) Any requested change to a Development Order may be subject to additional proportionate fair share contributions to the extent the change would generate additional impacts that would require mitigation.

- (g) Applicants may submit a letter to withdraw from the proportionate fair share agreement at any time prior to the execution of the agreement. The application fee will be non-refundable.
- (h) The City may enter into proportionate fair share agreements with multiple applicants for selected corridor improvements to a shared transportation facility.

**Section 106-5.7. Appropriation of Fair Share Revenues.**

- (a) Proportionate fair share revenues shall be placed in the appropriate project account of the CIE, or as otherwise established in the terms of the proportionate fair share agreement. At the discretion of the City, proportionate fair share revenues may be used for operational improvements prior to construction of the capacity project from which the proportionate fair share revenues were derived.
- (b) In the event a scheduled facility improvement is removed from the CIE, the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor or sector that would mitigate the impacts of development.
- (c) Where an impacted facility has been designated as a regionally significant transportation facility on the Lake-Sumter MPO Regionally Significant Corridors Map, then the City may coordinate with other impacted jurisdictions and agencies to apply proportionate fair share contributions to seek funding for improving the impacted regional facility under the FDOT Transportation Regional Incentive Program (TRIP). Proportionate fair share revenues may be used as the fifty (50) percent local match for funding under the FDOT TRIP. Such coordination shall be ratified by the County through an interlocal agreement that establishes a procedure for earmarking of the developer contributions for this purpose.
- (d) When an applicant constructs a transportation facility that exceeds the applicant's proportionate fair share obligation calculated under Section 106-5.4, the City shall reimburse the applicant for the excess contribution using one (1) or more of the following methods:
  - (1) An impact fee credit account may be established for the applicant in the amount of the excess contribution, a portion or all of which may be assigned to subsequent owners of the land to be developed, under terms and conditions acceptable to the County, but must run with the land and may not be assigned to the developer of any other parcel of property.
  - (2) An account may be established for the applicant for the purpose of reimbursing excess contributions with proportionate fair share payments from future applicants on the facility.

- (3) The City may compensate the applicant for the excess contribution through payment or some combination of means acceptable to the City and the applicant.