

Escambia County Land Development Code

DISCLAIMER:

This is for general information on the land use regulations within the unincorporated areas of Escambia County. Please note that Escambia County regularly amends its land use regulations and that recent amendments may not yet be shown on this website. Accordingly, when buying, selling, or developing land in Escambia County, please come in to our office & speak with a Front Counter Planner for assistance on the most current regulations affecting your property.

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Article 5 CONCURRENCY MANAGEMENT

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5.01.00. Purpose.

The Local Government Comprehensive Planning and Land Development Regulation Act, F.S. ch. 163, pt. II, as amended (the act), requires that local land development regulations developed pursuant to the act contain provisions that public facilities meet or exceed the level of service standards established by the local comprehensive plan, and that the local government shall ensure that public facilities and services needed to support development are available concurrent with the impacts of such development. This process is commonly known as "concurrency."

5.02.00. Applicability.

Except as otherwise provided in section 5.08.00 herein, this article shall apply to any development of land at specific densities or intensities of use within the jurisdiction of Escambia County, Florida.

(Ord. No. 2001-11, § 4, 3-1-2001)

5.03.00. Reserved.

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Editor's note: Section 4 of Ord. No. 2001-11, adopted March 1, 2001, amended § 5.03.00 by reserving said section for future use. Former § 5.03.00 pertained to definitions and derived from Ord. No. 96-03, adopted Jan. 5, 1996.

5.04.00. Facilities and services.

For the purposes of this article, facilities and services include only those items with established level of service standards. The items are:

- A. Drainage facilities, whether natural or manmade, serving a particular project or development area.
- B. Sanitary sewer systems.
- C. Potable water systems.
- D. The Escambia County Area Transit (ECAT).
- E. Solid waste disposal systems (landfills).
- F. Open spaces, parks and recreation facilities.
- G. Roadways and roadway segments.

(Ord. No. 2001-11, § 4, 3-1-2001)

5.05.00. Reserved.

Editor's note: Section 4 of Ord. No. 2001-11, adopted March 1, 2001, amended § 5.05.00 by reserving said section for future use. Former § 5.05.00 pertained to reservation fees and derived from Ord. No. 96-03, adopted Jan. 5, 1996.

5.06.00. Service area.

The geographic area within which the demand for public facilities and services will be compared to the capacity of such facilities and services for the purposes of evaluating the impact of development on said facilities and services. Evaluation of impact on solid waste disposal capacity shall be on a county-wide basis. Evaluation of impact on parks, recreation and open space lands shall be on a district-wide basis as set forth in the approved county parks and recreation master plan. The service area for mass transit facilities shall be those lands located along the fixed route system of the Escambia County Area Transit (ECAT) as such system may be, from time to time, established or revised. The service area for provision of potable water shall be the same as the areas franchised by Escambia County. The service areas for sanitary sewer providers shall be the service area of the ECUA and any other sanitary sewer providers which may be franchised by Escambia County. The service area for determining the adequacy of the provision of drainage facilities shall be the parcel or site wherein the proposed project or development is located if such is not connected to a larger, area-wide drainage system. In the event the project site or parcel is adjacent to an area-wide drainage system or facility then the service area shall be the service area of the area-wide facility. The service area for impacted roadway segments shall be as defined and described in section 5.12.02 of this article.

(Ord. No. 2001-11, § 4, 3-1-2001; Ord. No. 2002-36, § 3, 8-1-2002)

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5.07.00. Concurrency management system procedures manual.

The county shall prepare and maintain on file with the growth management department a "Concurrency Management System Procedures Manual." The purpose of the Concurrency Management System Procedures Manual shall be to provide the appropriate technical guidance and delineation of the procedural process that must be followed by staff and the applicant in order to determine that a project is compliant with the concurrency requirements of the comprehensive plan and this Code and to identify administrative requirements and procedures necessary such that the county can be in compliance with the various concurrency requirements mandated by the comprehensive plan. The manual shall provide guidance and direction only. The content of the manual shall not be in conflict with this article and its contents shall not operate to change or alter any provision of this article.

(Ord. No. 2001-11, § 4, 3-1-2001)

5.08.00. Exemptions.

The concurrency review requirements of this article shall not apply to the following:

- A. Development permits or orders for projects which have a valid, unexpired certificate of concurrency.
- B. Applications for permits or approvals that do not constitute "development" as defined in article 3.
- C. Applications for approval of de minimis developments as defined in article 3. See section 5.12.03 for de minimis determination criteria.
- D. The application for approval of construction of a single-family home, addition thereto or accessory structure or placement of a single mobile home on a lot in an existing or approved subdivision or on a lot of record (as herein defined) for single-family residential purposes. Except as prohibited in paragraph F., below, in accordance with F.S. § 163.3180(6), the impact of a single-family home on an existing lot will constitute a de minimis impact on all roadways regardless of the level of deficiency of the roadway.
- E. Internal renovations to a building or structure when such internal renovations are to accommodate the same general use.
- F. To encourage redevelopment within county-designated redevelopment areas, the county shall consider requests for exemptions to traffic concurrency requirements in these areas, as provided in Florida Statutes. It is important that the concurrency management system files contain appropriate data and analyses that address estimated impacts on the effected road segments by redevelopment activities so that such activities may be monitored for system-wide effects and considered in the capital improvements programming process for roadway improvements. The traffic concurrency exemptions set forth above in paragraphs C. and D., and in this paragraph F., will not be allowed for any development or redevelopment which affects any designated hurricane evacuation route, if the impact of such development would exceed the hurricane evacuation time established by Objective 11.A.7 of the Comprehensive Plan.

(Ord. No. 98-53, § 1, 12-3-1998; Ord. No. 2001-11, § 4, 3-1-2001; Ord. No. 2002-36, § 4, 8-1-2002)

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5.09.00. Test for concurrency.

A primary purpose of this article is to determine if proposed new development or redevelopment activities can or will be supported and served by infrastructure facilities or services at prescribed levels. The evaluation, analyses and quantitative methods described in this article are designed to measure the impact of a proposed project against the capacity of impacted infrastructure. If sufficient capacity exists within all impacted facilities or services to meet the projected demand of the project, then the director of the department of growth management shall issue a development order and a "certificate of concurrency" which shall be initially valid as specified in section 5.15.00 of this article, titled, "Capacity Allocation."

(Ord. No. 99-33, § 1, 7-1-1999; Ord. No. 2001-11, § 4, 3-1-2001)

5.10.00. General requirements.

5.10.01. Administrative requirements. Primary administrative responsibility for implementation of this article, which includes updating as required to ensure this article and the concurrency management system procedures manual are always in agreement and in compliance with the comprehensive plan, rests with the planning official or designee. The planning official shall:

- A. Establish and maintain a current database inventory of existing services and facilities as defined by this article and the database shall include the available capacities of each service or facility and such capacity shall be updated on a semi-annual basis consistent with the reports required by section 14.06 of the comprehensive plan;
 - 1. Exceptions to using the current database for traffic concurrency will be allowed following a declared disaster. In this case, the most recent traffic counts prior to the disaster will be used for a maximum of three years.
 - 2. The Board of County Commissioners shall authorize the use of traffic counts other than those in the most current database by resolution, which shall state the underlying justification and duration for the use of alternate traffic counts, as recommended by the County Administrator or his designee.
- B. Report the status of public facilities and services covered under this system to the land planning agency (LPA) and the board of county commissioners (BCC) and recommend a schedule of improvements for those services and facilities found to have existing deficiencies. This shall be part of the integrated capital improvements plan (CIP) submitted for budget consideration and approval;
- C. Periodically (at least semi-annually) advise the LPA of any projected or predicted deficiencies which should be addressed in order to avoid the degradation of established level of service standards on any particular system or facility. This advisory will include all roadway segments whose current capacity has reached 75 percent of available capacity;
- D. Provide information to applicants and/or affected parties regarding the capacity of services and facilities covered by this article and such information will include:
 - 1. Available capacity for roadways by segment.

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2. Existing and adopted levels of service for all impacted systems, including roadway segments.
3. Improvements to be made to impacted systems as reflected in the capital improvement plans or programs of the entity responsible for such system provided however that construction of the improvement is scheduled to commence within three years of each annual report promulgated by the director. These improvements include those scheduled for construction in the first three years of the annual Five Year Work Program of the Florida Department of Transportation (FDOT).

E. Provide other information and/or guidance to applicants, county staff or other affected parties in the day-to-day administration and implementation of this article;

F. Obtain from the director of the department of solid waste management an annual report which indicates the available capacity for the solid waste facilities for the current year and make this data available to all applicants via the Internet;

G. Obtain from the director of the department of parks and recreation an annual report that indicates the available capacity for parks and open space facilities for the current year and make this data available to all applicants via the Internet;

H. Obtain from the director of the Escambia County Area Transit (ECAT) an annual report that indicates the available capacity for the mass transit facilities for the current year and make this data available to all applicants via the Internet.

5.10.02. Applicant requirements. Any applicant for development approval for a project which is required to undergo concurrency review and determination pursuant to this article, is responsible for demonstrating compliance with this article. For each system, service or facility impacted by a proposed development, the applicant shall demonstrate concurrency as follows:

A. *Drainage.* The drainage level of service standards shall be met if the application includes certification that a stormwater management plan will be submitted and detailed within construction plans prepared by a registered and licensed professional engineer in the State of Florida documenting the plan meets or exceeds the adopted level of service standard. The standards to be certified are:

1. The retention or detention of the first one-half-inch of runoff on-site;
2. That the post development runoff rate will not exceed the predevelopment runoff rate for a 25-year storm event, up to and including an event with a 24-hour duration;
3. Use of the criteria established in F.A.C. ch. 17-25, in its entirety (including exemptions), and F.A.C. 17-3.02;
4. That the contribution of the new development to any existing, functioning area-wide drainage system will not degrade the ability of the area-wide system to adequately retain/detain/store and control stormwater runoff.

NOTE: For the purposes of this provision, "on-site" includes any area within an approved subdivision (or subdivision to be approved) or any area within two or more parcels subject to a joint use agreement or shared facilities agreements. Possession of a valid DEP stormwater permit is deemed to satisfy the requirements of subparts 1. and 3., above.

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(Ord. No. 97-51, § 1, 10-2-1997; Ord. No. 98-53, § 1, 12-3-1998; Ord. No. 99-33, § 1, 7-1-1999; Ord. No. 2001-11, § 4, 3-1-2001; Ord. No. 2002-36, §§ 7, 8, 8-1-2002; Ord. No. 2009-28, 8-6-2009)

5.13.00. Deficient capacity.

Where capacity of any impacted service or facility is found to be deficient as a result of the analyses performed pursuant to section 5.11.00 or 5.12.00 above, the methods outlined in sections 5.13.01 through 5.13.04 may be used to maintain adopted levels of service. For projects with substantial impact, such as developments of regional impact (DRIs), the project will be reviewed through coordination with the Florida Department of Transportation (FDOT), West Florida Regional Planning Council (WFRPC), Department of Community Affairs (DCA), and/or other appropriate agencies.

5.13.01. Reduce project scale. The proposed project may be reduced in scope or scale so that demand does not exceed available capacity.

5.13.02. Withdrawal of application. The applicant may withdraw the application.

5.13.03. Denial of application. If the adopted level of service for each impacted roadway segment cannot be maintained and mitigation is not provided, then the development will not be approved.

5.13.04. Utilization of the proportionate fair share program. The applicant may utilize the proportionate fair share program under the conditions outlined in this section.

A. Applicability.

1. The proportionate fair share program shall apply to all proposed developments in Escambia County that have been notified of a lack of capacity to satisfy transportation concurrency based on the Escambia County Concurrency Management System (CMS) including transportation facilities maintained by FDOT or another jurisdiction that are relied upon for concurrency requirements.
2. The proportionate fair share program shall not apply to DRIs using proportionate fair share under F.S. § 163.3180(12), or to developments exempted from concurrency as provided in the Escambia County Comprehensive Plan, F.S. § 163.3180, or the Escambia County Concurrency Management System Manual Section 1.4.

B. General requirements.

1. A proportionate fair share contribution may be used to satisfy transportation concurrency requirements for a deficient roadway segment(s) only if the following requirements are met:
 - a. The proposed development is consistent with the Escambia County Comprehensive Plan and the applicable land development regulations.
 - b. The 5-year schedule of capital improvements found in the capital improvements element (CIE) contains transportation construction improvements that, when completed, will satisfy the Escambia County CMS requirements. The provisions of subsection B.2. or B.3. may apply if such a project is not scheduled in Escambia County's 5-year schedule of capital improvements.

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- c. The county has calculated and presented to the applicant the applicant's fair share cost of providing adequate transportation facilities.
 - d. The board of county commissioners (BCC) approves a fair share agreement in which the applicant agrees to pay the county the assessed fair share cost or to provide in-kind transportation improvements.
 2. Under the circumstance that a transportation improvement needed to satisfy transportation concurrency is not in the five-year schedule of capital improvements found in the CIE, the county may choose to allow an applicant to satisfy transportation concurrency through the proportionate fair share program only if the following requirements are met:
 - a. The county adopts an ordinance to add the transportation improvement to the 5-year schedule of capital improvements in the CIE no later than the next regularly scheduled CIE update; and
 - b. The county determines that the transportation improvement is financially feasible and in compliance with subsection B.1. of this section, with the exception of subsection B.1.b. In accordance with F.S. § 163.3180(16)(b)(1), "financially feasible for this section" will mean that all additional contributions, payments, or funding sources to fully fund the transportation improvement are reasonably anticipated not to exceed a ten-year timeframe.
 3. When the revenues projected to fund years four and five of the adopted five-year schedule of capital improvements become insufficient to fully fund the construction of the transportation improvement needed to satisfy transportation concurrency, the proportionate fair share program can be used to satisfy concurrency under the following conditions:
 - a. Pursuant to F.S. § 163.3180(16)(f), the county and the applicant may enter into a binding proportionate share agreement authorizing the developer to construct the amount of development on which the proportionate share is calculated, given that the proportionate share is sufficient to pay for the completion of one or more improvement that the county deems will significantly benefit the impacted transportation system.
 4. All fair share contribution projects must meet the county's design standards for local roads and FDOT standards for state highway system roads.

C. *Intergovernmental coordination.*

1. Under the circumstance that the county is allowing a development to proceed because of participation in the proportionate fair share program, the county will coordinate with any additional jurisdictions or governmental entities impacted by the development for which the applicant is entering into the fair share agreement. An interlocal agreement may be established with other affected jurisdictions or governmental entities for this purpose.

D. *Applicant eligibility.*

1. An applicant is eligible to apply to participate in the proportionate fair share program once the applicant has received a development order approval that is subject to the condition that the applicant will satisfy all transportation concurrency requirements through a proportionate fair share agreement to be

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executed by the applicant and the BCC within 12 months of the date of the development order. This type of development order shall be known as a development order approval subject to conditions or a conditional development order. If the proportionate fair share agreement has not been entered into by the BCC by the end of the first BCC meeting after the expiration of the 12-month period, or if the applicant misses the deadlines of subsection F.1., F.2., or F.3., the conditional development order shall be considered null and void.

2. Any roadway capacity allocated in the conditional development order will be available to the applicant for a period of 12 months. If the proportionate fair share agreement has not been entered into by the BCC by the end of the first BCC meeting after the expiration of the 12-month period, the roadway capacity allocation will be forfeited.

E. *Application content.*

1. Eligible applicants shall submit a proportionate fair share application to the county and the following:
 - a. A copy of the complete development review committee (DRC) application;
 - b. A copy of the conditional development order; and
 - c. Once an application is deemed sufficient, the applicant will provide \$15,000.00 to the county, a portion of which shall be refunded if unused, for consulting services in order to assist county staff with the fair share mitigation conference, to prepare the fair share agreement, to pay for legal advertisements, and to fund any other costs associated with the applicant's participation in the proportionate fair share mitigation program.

F. *Application process.*

1. Once an applicant is awarded a conditional development order, the applicant shall have five business days to submit the documents listed in subsection E.1.a. and b., or the development order shall be considered null and void.
2. The application will be reviewed by the engineering department, and sufficiency will be determined within ten business days of receipt of the completed application. The department will notify the applicant in writing whether the application has been deemed sufficient or is determined to be insufficient, incomplete, or inconsistent with the general requirements of the proportionate fair share program.
 - a. If the application is deemed insufficient, incomplete, or inconsistent, then no further review of the application will be made until the deficiencies of the application are remedied. Said deficiencies must be remedied by the applicant within ten business days of notification of insufficiency.
 - b. If the application is deemed sufficient, complete, and eligible, the applicant will deliver the application fee as described in subsection E.1.c. to the county within ten business days of notification of sufficiency or the application will be deemed abandoned. From the time the application is determined to be sufficient and eligible, the fair share obligation may only be changed to correct mathematical errors in the calculation of the obligation. It will not be changed due to new traffic counts, new traffic studies or modeling, or changes to the concurrency management system.

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3. A fair share mitigation conference between the applicant and the county must be scheduled by the applicant to occur within 60 days of notification of sufficiency to discuss participation in the proportionate fair share program and possible mitigation options. The county and the applicant will discuss the potential use of in-kind payments; however, the county will have sole discretion in selecting in-kind payments. Other impacted governmental entities or jurisdictions, including FDOT, will be asked to participate in the fair share mitigation conference.

4. A proposed fair share obligation and fair share agreement will be prepared by the county's consultant and presented to the applicant for review no later than 30 days from the date the fair share mitigation conference is held, including a copy to the FDOT for any proposed proportionate fair share mitigation on a state highway system facility. Each fair share agreement shall include, at a minimum, the following:

- a. The obligation computation sheet prepared by the county;
- b. The names and addresses of all legal and equitable property owners;
- c. The proposed uses, densities and intensities of the land;
- d. The duration of the agreement with definitive, enforceable phases established for any agreement proposed to last longer than five years;
- e. A copy of the conceptual site plan;
- f. A finding that the proposed development is in compliance with the comprehensive plan;
- g. A statement indicating that the agreement is being entered into voluntarily;
- h. A statement indicating that the burdens and benefits of an agreement are binding upon all parties to the agreement or their successors in interest;
- i. A statement indicating that the failure of the agreement to address a particular permit, condition, term or restriction does not relieve the owners of the necessity of complying with the appropriate law governing said permitting requirements, conditions, terms or restrictions;
- j. A description of any conditions, terms, restrictions, or other requirements or third party agreements, not otherwise prohibited by law, and determined to be necessary by the county for the public health, safety and welfare;
- k. A description of all transportation capacity reservations for all transportation facilities within the traffic impact area of the proposed development which are reserved pursuant to the concurrency management system, and the date they will expire under the agreement;
- l. A map of the roadway network impacted by the proposed development clearly identifying the impacted road segments that are deficient;
- m. If applicable, a description of the improvement required to be constructed, including the schedule of construction and completion; and if necessary, the date upon which any third party agreement assuring the provision of said improvements must be provided to the county prior to the commencement of construction of any improvement;

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- n. A description of the credit for the fair share obligation after application of an in-kind payment in the form of an improvement;
 - o. If applicable, a description of any reservation or dedication of land for public purposes;
 - p. All agreements with a duration exceeding one year must contain adjustments which cover the number of years over which the fair share payments will be made. The adjustments will be determined by the county as set forth in the calculation portion of this section [subsection G.]. Only phased projects may pay over a period of time;
 - q. Identify the affected road segments, the amount of funds to be allocated to each segment, list the road improvements programmed in the comprehensive plan schedule of capital improvements within each affected segment, and which when constructed will provide transportation facilities adequate to serve the proposed development or reasonably relate to the traffic impacts of the proposed development. The county may substitute alternative comprehensive plan capital improvements in the CIE for those listed in the agreement but only if said alternative road improvements, when constructed, will also provide transportation facilities adequate to serve the proposed development or reasonably relate to the traffic impacts of the proposed development;
 - r. In the event the county applies an impact fee obligation to the development, a statement regarding the responsibility and the timing of the payment of the difference between the development's fair share obligation and the road impact fee;
 - s. Any other provisions deemed necessary or appropriate by the county.
5. Within six weeks of receipt of the fair share agreement signed by the applicant, the engineering department will schedule a public hearing and notify the applicant of the date of the BCC meeting.
- a. At the applicant's expense as detailed in subsection E.1.c., the engineering department will ensure publication of a notice for the public hearing in a daily newspaper of general circulation in the county a minimum of ten days prior to the public hearing. The notice shall describe the deficient roadways for which the proportionate fair share agreement applies, the CIE scheduled improvement or in-kind improvement involved, and the fair share agreement to be proposed at the public hearing.
 - b. No proportionate fair share agreement will be effective until approved by the BCC.
 - c. The hearing shall take place during a regularly scheduled meeting of the BCC.
 - d. Upon BCC approval of the fair share agreement, the agreement shall be appended to the previously approved development order, thereby satisfying conditions therein.
 - e. The BCC shall not enter into any proportionate fair share agreement that does not comply with state or federal law, this section, or the comprehensive plan.
 - f. The BCC may decide not to enter into the proportionate fair share agreement if the transportation improvement project is not in the 5-year schedule of capital improvements.
6. The county and the applicant may agree to an extension of any of the time limits established for the review process when necessary to facilitate application review and prepare the fair share agreement. The

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time limit extension shall be the minimum time necessary to complete the review or prepare the fair share agreement.

G. *Calculation of proportionate fair share contribution.*

1. In accordance with F.S. § 163.3180(16)(c), proportionate fair share mitigation consists of private funds, contributions of land, and construction and contribution of facilities. Public funds may be used as determined by the county.

2. 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 (F.S. § 163.3180(16)(c)).

3. To calculate an applicant's proportionate fair share obligation, the county shall base the calculation on the formula provided in F.S. § 163.3180(12)(e), which divides the cumulative number of development trips anticipated for roadways during the peak-hour by the difference in the peak-hour maximum service volume that results from the roadway improvement(s). This number is then multiplied by the construction cost of the improvement, which includes all noncommitted costs associated with the improvement. In addition to the formula provided in F.S. § 163.3180(12)(e), if any capacity is existing on the impacted roadway, it will be accounted for by subtracting the amount of available capacity from the proposed number of development trips.

Which is equal to:

$$\text{Proportionate Fair Share} = \frac{\sum (\text{Development Trips}_i - \text{Available Capacity})}{(\text{SV Increase}_i)} \times \text{Cost}_i$$

Where:

Development Trips_i = The cumulative number of P.M. peak hour trips from the proposed development expected to reach the impacted road segments from the complete build-out of the stage or phase of development being permitted. The number of development trips will be calculated from the traffic study created for the certificate of concurrency application.

Available Capacity = Any capacity existing on the impacted transportation facility at the time that the DRC approves other concurrency elements.

SV Increase_i = Service volume increase is the additional two-way peak hour capacity provided by the improvement(s) proposed in the fair share agreement. The generalized tables of the Florida Department of Transportation *Quality/Level of Service Handbook* or latest edition available, will be used to calculate this value.

Cost_i = Total cost of constructing the improvement proposed in the fair share agreement. The total cost includes all associated costs, including right-of-way acquisition, planning, design, engineering, permitting, inspection, environmental mitigation, utility costs, and any other costs required for constructing the improvement. Cost of each phase of construction completed or underway will be exempt from the calculation of the total improvement's cost.

4. The cost of constructing the improvement shall be obtained from the CIE, the Transportation Planning Organization/Transportation Improvement Program or the FDOT Work Program if available. If such information is not available, improvement cost shall be determined using one of the following methods:

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- a. An analysis by the county of costs by typical cross section type, based on FDOT standards for state roads and the county's standards for county roads that incorporates data from recent projects and is updated annually and adopted by the BCC. In order to accommodate increases in construction material costs, an adjustment factor to be determined by Escambia County shall be used; or
 - b. The most recent issue of FDOT Transportation Costs, which may be adjusted based upon the type of cross section (urban or rural); locally available data from recent projects or acquisition, drainage, and utility costs; and significant increases in the cost of materials due to unforeseeable events. Cost estimates for state road improvements not included in the adopted FDOT Work Program shall be determined using this method in coordination with FDOT District 3.
5. If the proposed proportionate fair share payment is via in-kind payments authorized in the proportionate fair share obligation, the value of the in-kind payments shall be determined using one of the methods detailed in this section.
 6. If the county is accepting in-kind payments of right-of-way dedication or land, the value of the these payments will be calculated as a percentage of the most recent assessment by the Escambia County Property Appraiser or will be the fair market value established by an independent appraisal approved by the county, with no cost to the county. The applicant shall provide the county a survey and legal description of the land or right-of-way and a certificate of title or title search of the land to the county, at no expense to the county with the application, and at closing deliver clear title by warranty deed to the county.
 7. If the estimated value of in-kind payments is found to be lower than the total proportionate fair share obligation calculated by the county, the applicant is responsible for paying the difference in order for the fair share agreement to be effective.
 8. The county may accept in-kind payments that have a value greater than the applicant's total proportionate fair share obligation, as calculated by the county. However, the county will not be responsible for compensating the applicant for the difference between the in-kind payments' value and the applicant's proportionate fair share obligation.
 9. In-kind payments will not act as a substitute for the requirements of the LDC.

H. *Proportionate fair share agreement administration.*

1. Upon the approval by the BCC of the proportionate fair share agreement, the applicant will be issued a certificate of concurrency.
2. Once a proportionate fair share agreement has been approved by the BCC, the applicant must apply for a building permit in the timeframe consistent with the provisions of article 4 of the LDC or the application will be considered null and void and the applicant shall be required to reapply.
3. The applicant's proportionate fair share obligation must be paid in full prior to approval of the final plat for residential development and prior to the approval of the site plan for commercial development and is nonrefundable. If the payment is submitted more than 12 months from the approval of the proportionate fair share agreement, then the proportionate fair share obligation shall be recalculated at the time of payment using the methods detailed in subsection G.

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4. All in-kind improvements detailed in the proportionate fair share agreement must be completed prior to approval of the final plat for residential development and prior to the approval of the site plan for commercial development, or as otherwise established a binding agreement that is accompanied by a security instrument that is sufficient to ensure the completion of all requirements.

a. Prior to commencing construction of in-kind transportation improvements under this section, the applicant or applicant's contractor must demonstrate financial responsibility for the completion of the in-kind transportation improvements by submitting a payment bond and performance bond pursuant to the requirements of F.S. § 255.055. The applicant or applicant's contractor must also show that the county's minimum insurance requirements for work performed on public county property have been satisfied.

b. If an applicant constructs an in-kind improvement, the applicant shall be required to post a warranty bond against faulty workmanship at the dedication to the county.

5. Dedication of right-of-way or land in-kind payments pursuant to the proportionate fair share agreement must be completed prior to issuance of the final development order or recording of the final plat.

6. A requested change to a development project subsequent to a development order may cause additional proportionate fair share contributions, if the change generates additional traffic that would require mitigation. In such an event, the applicant must submit an application pursuant to this section.

7. Applicants may submit a letter to withdraw an application for a fair share agreement at any time prior to the execution of the agreement. Any expended application fees and associated costs to the county will be nonrefundable.

8. The county may consider joint applications for proportionate fair share mitigation to facilitate collaboration among multiple applicants on improvements to a shared transportation facility, and may coordinate with other jurisdictions on proportionate share mitigation through interlocal agreements.

I. Appropriation of fair share revenues.

1. Proportionate fair share mitigation funds shall be placed in a special revenue fund called the "Fair Share Fund" or into the appropriate project account for funding the 5-year schedule of capital improvements projects.

a. At the discretion of the county, proportionate fair share revenues may be used for operational improvements prior to construction of the capacity project from which the proportionate fair share revenues were derived.

b. Proportionate fair share revenues may also be used as the 50 percent local match for funding under the FDOT TRIP.

2. In the event a scheduled facility improvement is removed from the CIE's 5-year schedule of capital improvements, the fair share funds collected towards its construction may be applied towards the construction of another improvement within that same corridor that would mitigate the impacts of development pursuant to the requirements of subsection B.

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3. Where an impacted regional facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan as provided in F.S. § 339.155, the county may coordinate with other impacted jurisdictions and agencies to apply proportionate fair share contributions and public contributions to seek funding for improving the impacted regional facility 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.

(Ord. No. 98-53, § 1, 12-3-1998; Ord. No. 2001-11, § 4, 3-1-2001; Ord. No. 2002-36, § 9, 8-1-2002; Ord. No. 2006-87, § 1, 11-16-2006)

5.14.00. Maintaining levels of service.

In no case shall development, as defined in article 3, commence without a finding of concurrency which establishes that levels of service will not be degraded, unless degradation is allowed pursuant to a policy in the adopted comprehensive plan. No development orders will be issued for any development which affects any designated hurricane evacuation route unless the impact of the development on the hurricane evacuation time for affected evacuation routes is within the standard established by Objective 11.A.7 [of the Comprehensive Plan].

5.14.01. Exceptions. With the exception of hurricane evacuation time for affected evacuation routes, which may not be degraded, the LOS of any specific system may be degraded during the actual construction of new facilities or a project if, upon completion of the construction, the prescribed standards will be met.

5.14.02. Phased construction. The construction of any development project may be phased or staged so as to coincide with the phased or staged construction of infrastructure facilities so that the levels of service for such facilities are maintained upon completion of each phase or stage of the development project.

(Ord. No. 2002-36, §§ 10, 11, 8-1-2002)

5.15.00. Capacity allocation.

A. Capacity shall be allocated upon issuance of a development order for a preliminary plat (subdivision), site plan (non residential), or planned unit development (PUD), phased or longer term project or development of regional impact (DRI). The allocation of capacity, however, shall be subject to the following sunset provisions:

1. Capacity approved and assigned to a preliminary plat will remain allocated for a period of four years from the date of issuance of the development order associated with the preliminary plat. However, capacity will be lost at the end of two years if construction plans have not been submitted to the county.
2. Capacity approved and assigned to a site plan shall remain allocated for a period of 18 months from the date of the issuance of a development order associated with the site plan.
3. Capacity approved and assigned to a planned unit development (PUD), phased development, longer term projects or DRI will remain allocated for a period as established in an enforceable development agreement.
4. Expiration of capacity approved and assigned may be tolled pursuant to section 4.06.11 of this Code.

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B. If construction activity ceases or does not continue in good faith, or if phased development falls behind any pre-established schedules for a period of one year, allocated capacity will be withdrawn and made available to other applicants.

C. In the event of withdrawal of capacity following the issuance of a development order, development permit or construction permit, it shall be incumbent upon the applicant to reapply for necessary capacity allocations if a continuation of the project is desired.

(Ord. No. 2001-11, § 4, 3-1-2001; Ord. No. 2005-36, § 1, 8-18-2005)

5.16.00--5.19.00. Reserved.

Editor's note: Section 3 of Ord. No. 99-44, adopted Sept. 16, 1999, repealed §§ 5.16.00--5.19.00 which respectively pertained to vested rights, intents and purposes for vested rights determinations, criteria for invested rights determination, and limitation on vested rights, and derived from Ord. No. 96-03, the original codification of the Land Development Code.

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