

# CHAPTER 10

## Concurrency

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**10.00.00 GENERALLY**

**10.00.01 Purpose**

Public facilities and services needed to support development shall be available concurrent with the impacts of such development, or in place within timeframes as outlined in the Town's Comprehensive Plan. The provisions of this chapter are designed to provide a systematic process for the evaluation of all proposed development for its impact on those public facilities and services specified in the Town's Comprehensive Plan.

**10.01.00 APPLICABILITY**

**10.01.01 Exemptions from Concurrency**

The following development orders and permits are exempt from this chapter, and may commence development without a certificate of concurrency:

- A. Any addition to a residence.
- B. Interior construction of a non-residential shell structure for uses with the same or less intensity as identified on an approved site plan.
- C. Renovations with no change in use.
- D. Accessory structure that creates no additional impact on public facilities.
- E. Replacement structure which creates no additional impact.
- F. Temporary construction trailers.
- G. Single-family and duplex residences on lots which were platted prior to adoption of this code.
- H. Development that is determined to be vested.

**10.01.02 Vested Rights**

- A. Applicants for development orders who have been determined to possess vested rights from a previously issued development order will be allowed to proceed with development even though they may not meet concurrency. A concurrency evaluation shall still be performed in order to calculate the impact of the vested development on remaining capacity. This concurrency analysis will not affect the vested development, but the capacity used by the vested development will not be available for development that is not vested.
- B. Vesting of Final Development Orders. Some properties may not be subject to restrictions imposed by concurrency if the property is vested prior to the implementation of the concurrency management system. Florida case law establishes a three (3) part test for determining vested development rights. All three (3) of the following must be met in order to be vested for development:
  - 1. Good faith reliance on an act or omission of the Town.
  - 2. Substantial expenditures or obligations subsequent to reliance on an act or omission of the Town; and,
  - 3. Made a substantial change in position or has incurred such extensive obligations and expenses that it would be highly inequitable and unjust to

destroy the rights acquired by application of the Comprehensive Plan and/or this Code.

**10.02.00 REVIEW AND DETERMINATION****10.02.01 Concurrency Review**

The Town of Howey in the Hills requires concurrency review and determination with the following applications for development permits:

- A. Building Permit
- B. Final Site and Subdivision Plans

**10.02.02 Certificate of Concurrency**

- A. General. For each public facility, a determination of available capacity shall be made. If the capacity for that specific facility exceeds the projected demand of the proposed development, a Certificate of Concurrency (COC) shall be issued. If capacity is not available, the Town shall issue a letter outlining the capacity deficiency.
- B. Expiration of a Certificate of Concurrency. Each Certificate of Concurrency will specify the length of time it is valid for each facility or service. The Town has specific time limits for development orders. A concurrency certificate will no longer be valid if the development order is no longer valid.
- C. Resubmission of Concurrency Application. Applications for development orders that are denied because of insufficient capacity of public facilities may be resubmitted if the applicant of the denied development order intends to provide all public facilities to comply with capacity requirements or enters into a development agreement with the Town or other public facility provider for the purpose of contributing to the provision of the public facility required.
- D. Transfer of Certificate of Concurrency. The concurrency analysis is site specific and cannot be transferred to another piece of property. It can be transferred to subsequent development orders for the same parcel, and to subsequent owners of the same parcel.

**10.02.03 Standards to Meet Concurrency**

The Town shall review applications for development and a development permit will be issued only if the proposed development does not lower the existing level of service (LOS) of a facility or service below the adopted LOS in the Town's Comprehensive Plan. A project shall be deemed concurrent if one of the following standards is met:

- A. The necessary public facilities and services are in place at the time the development order or permit is issued; or
- B. A final development order is issued subject to the condition that the necessary facilities and services will be in place when the impacts of the development occur; or
- C. The necessary facilities are under construction at the time a final development order is issued; or

- D. The necessary facilities and services are guaranteed in an enforceable development agreement. The agreement must guarantee that the necessary facilities and services will be in place when the impact of development occurs; or
- E. The necessary facilities and services are in place no later than the issuance of a certificate of occupancy.
- F. For parks, at a minimum, the following standards shall satisfy the concurrency requirement:
  - 1. At the time the final development order is issued, the necessary facilities and services are the subject of a binding executed contract which provides for the commencement of the construction of the required facilities within one year of the issuance of the final development order; or
  - 2. The necessary facilities and services are guaranteed in an enforceable development agreement which requires the commencement of the construction of the facilities or the provision of services within one year of the issuance of the applicable development order; or
  - 3. The necessary facilities and services are in place no later than one year after the issuance of a certificate of occupancy.
- G. For roads, at a minimum, the following standards will satisfy the concurrency requirement:
  - 1. The necessary facilities and services are in place at the time a final development order is issued; or
  - 2. A final development order is issued subject to the condition that the necessary facilities and services will be in place when the impacts of the development occur; or
  - 3. The necessary facilities are under construction at the time a final development order is issued; or
  - 4. At the time the final development order is issued, the necessary facilities and services are the subject of a binding executed contract which provides for the commencement of the construction of the required facilities or the provision of services within three (3) years of the approval of the development order; or
  - 5. The necessary facilities and services are guaranteed in an enforceable development agreement which requires the commencement of the construction of the facilities or the provision of services within three (3) years of the approval of the applicable development order; or
  - 6. The necessary facilities and services are guaranteed in an enforceable development agreement that includes the provisions of paragraphs 1-3 above. The agreement must guarantee that the necessary facilities and services will be in place when the impacts of the development occur; or
  - 7. The necessary facilities and services are in place or under construction no later than three (3) years after issuance of a certificate of occupancy.
- H. For school facilities, the following standards shall satisfy the concurrency requirement:
  - 1. If public school concurrency is applied on less than a district-wide basis in the form of concurrency service areas, a residential development order or permit shall be issued only if the needed capacity for the particular service area is

available in one or more contiguous service areas and school capacity is available district-wide.

**10.02.04 Facilities and Services Subject to Concurrency Determination.**

A concurrency determination shall be made for the following public facilities and services:

- A. Potable water.
- B. Sanitary sewer
- C. Transportation
- D. Solid Waste Disposal
- E. Stormwater Management
- F. Parks

**10.02.05 Facility and Service Demand Calculations**

Facilities and services shall be analyzed based on the levels of service (LOS) outlined in the Town's Comprehensive Plan.

**10.02.06 Alternative Demand Calculations**

If the applicant claims the standards provided in the demand calculations are not applicable to the proposed project, the applicant shall submit appropriate documentation supporting the proposed alternative demand calculation to the Town. Any alternative calculation standard shall be subject to the approval of the Town Council.

**10.02.07 Appellate Process**

The applicant may appeal the denial of a Certificate of Concurrency to Town Council. The appeal shall be made in accordance with Section 9.02.03 of Chapter 9.

**10.03.00 DETERMINING PROPORTIONATE FAIR SHARE****10.03.01 General Requirements**

- A. An applicant may choose to satisfy the transportation concurrency requirements of the Town by making a proportionate fair-share contribution, pursuant to the following requirements:
  - 1. The proposed development is consistent with the comprehensive plan and applicable land development regulations and
  - 2. The five-year schedule of capital improvements in the Capital Improvements Element (CIE) or the schedule of capital improvements for the long-term CMS includes a transportation improvement(s) that, upon completion, will satisfy the then existing requirements of the applicable CMS. The provisions of Section 5(2) may apply if a project or projects needed to satisfy concurrency are not presently contained within the applicable CIE(s) or the adopted long-term schedule of capital improvements.

3. A proportionate share contribution may involve the addition of transportation capacity through several means including but not limited to: the physical widening and/or reconstruction of a roadway to add capacity; the addition of transportation capacity through creating new reliever roadways; 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 Town to add transportation capacity sufficient to mitigate impacts.
- B. The Town may choose to allow an applicant to satisfy transportation concurrency through the Proportionate Fair-Share Program by approving the applicant's contribution to an improvement or improvements that, upon completion, will satisfy the requirements of the applicable CMS(s), but is not contained in the five-year schedule of capital improvements in the CIE(s) or a long-term schedule of capital improvements for an adopted long-term CMS, where the following apply:
  1. The jurisdiction approving the development order adopts, by resolution or ordinance, 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. To qualify for consideration under this section, the proposed improvement must be reviewed by the appropriate jurisdictions and agencies and must be determined to be financially feasible pursuant to §163.3180(16)(b)1, F.S., 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 ordinance. Financial feasibility for this section means that additional contributions, payments, or funding sources are reasonably anticipated during a period not to exceed 10 years to fully mitigate impacts on the transportation facilities. If a transportation facility proposed for the Proportionate Share Program is under the jurisdiction of another entity, such as the County or 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.
  2. If the funds allocated for the schedule of capital improvements in the CIE are insufficient to fund construction of a transportation improvement required by the CMS, the Town 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.

- C. Any improvement project proposed to meet the developer's fair share obligation must meet the Howey-in-the-Hills design standards, or those of Lake County for County facilities or those of FDOT for State facilities.
- D. Pursuant to Section 163.3177, F.S., the CIE must include transportation improvements included in the Lake Sumter MPO Transportation Improvement Plan (TIP) to the extent that such improvements are relied upon to ensure concurrency and financial feasibility. If the Town is relying upon scheduled improvements to a facility maintained by the other to ensure concurrency and financial feasibility, the scheduled improvements from the other jurisdiction's Work Program must be included in the CIE of the local government issuing the development order. All CIEs must also be coordinated with the adopted Lake Sumter MPO's Long Range Transportation Plan (LRTP) for planning purposes.

#### **10.03.02 Intergovernmental Coordination**

- A. In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the Town may enter into an agreement with an adjacent local government(s) to address cross jurisdictional impacts of development on transportation facilities. The agreement shall provide for application of the methodology in this section to address the cross jurisdictional transportation impacts of development.
- B. A development application shall be subject to this section when a transportation concurrency determination is made that indicates the development will have an adverse impact on the adopted level of service standard on one or more facilities in a neighboring jurisdiction.
- C. Upon identification of an impacted transportation facility, the approving Town shall notify the applicant and the other affected jurisdictions in writing of a potential proportionate fair-share agreement, based on the projected impacts of the proposed development on the facility.
- D. Pursuant to policies in the Intergovernmental Coordination Element of the Town's comprehensive plans and applicable policies in the Lake Sumter MPO 2025 LRTP, the Town shall coordinate with affected jurisdictions, including FDOT, regarding mitigation to impacted facilities. Proportionate fair-share contributions should be applied toward the impacted facility. However, impacted facilities may be maintained by an agency other than the local government executing the proportionate fair-share agreement (e.g., a county or state road within the city limits). Therefore, each local government shall work with other affected agencies to establish a procedure for coordinating mitigation to impacted facilities that are maintained by another agency. An interlocal agreement may be established with other affected jurisdictions for this purpose.

**10.03.03 Application Process**

- A. Upon notification of a lack of capacity to satisfy transportation concurrency, 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 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 approving jurisdiction. If the impacted facility is a state facility, then FDOT will be invited to participate in the pre-application meeting.
- C. The Town shall review the application and certify that the application is sufficient and complete within 15 business days. If an application is determined to be insufficient, incomplete or inconsistent with the general requirements of the Proportionate Fair-Share Program, then the applicant will be notified in writing of the reasons for such deficiencies within 15 business days of submittal of the application. If such deficiencies are not remedied by the applicant within 30 days of receipt of the written notification, then the application will be deemed abandoned. The governing body of the Town may, in its discretion, grant an extension of time not to exceed 60 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 Section 163.3180(16)(e), F.S., 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.
- 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 local government with jurisdiction over the proposed development, and delivered to the appropriate parties for review no later than 60 days from the date which the applicant received the notification of a sufficient application and no fewer than 14 days prior to the governing body meeting when the agreement will be considered. The jurisdiction may need to enter into an agreement with FDOT as appropriate.
- F. The Town shall notify the applicant regarding the date of the governing body meeting when the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the governing body.



**10.03.04 Determining Proportionate Fair-Share Obligation**

- A. Proportionate fair-share mitigation for concurrency impacts may include, without limitation, separately or collectively: private funds, contributions of land, and construction of and contribution of facilities.
- 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 Section 163.3180(12), F. S., as follows:

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

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 purposes of determining proportionate fair-share obligations, the Town 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.

- D. If the Town has accepted an improvement project proposed by the applicant, then the value of the improvement shall be determined using one of the methods provided in this section.
- E. If the Town 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 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 Town and at no expense to the Town. 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 Town at no expense to the Town. If the estimated value of the right-of-way dedication proposed by the applicant is less than the Town estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference. Prior to purchase or acquisition of any real estate or acceptance of donations of real estate intended to be used for the proportionate fair-share, public or private partners should contact FDOT for essential information about compliance with federal law and regulations.

**10.03.05 Impact Fee Credit for Proportionate Fair-Share Mitigation**

- A. Proportionate fair-share contributions shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the local government's impact fee ordinance. Applicants would be eligible for impact fee credit for that portion of their proportionate fair-share payment that applies to a segment for which the local government transportation impact fee is being applied.
- B. Impact fee credits for the proportionate fair-share contribution will be determined when the transportation impact fee obligation is calculated for the proposed development. Impact fees owed by the applicant will be reduced per the Proportionate Fair-Share Agreement per the Impact Fee Ordinance of the jurisdiction within which the affected roadway facility lies, and if the facility lies within more than one jurisdiction, the impact fee credits shall be prorated accordingly. If the applicant's proportionate fair-share obligation is less than the development's anticipated road impact fee for the specific stage or phase of development under review, then the applicant or its successor must pay the remaining impact fee amount to the County and any other jurisdictions entitled to collect impact fees, pursuant to the requirements of the applicable impact fee ordinances.
- C. The proportionate fair-share obligation is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any road impact fee credit based upon proportionate fair-share contributions for a proposed development cannot be transferred to any other location unless provided for within the local impact fee ordinance.

**10.03.06 Proportionate Fair-Share Agreements**

- A. Upon execution of a proportionate fair-share agreement (Agreement), the applicant shall receive a certificate of concurrency from the jurisdiction issuing development approval. Should the applicant fail to apply for a development order within 12 months of the execution of the Agreement, the certificate of concurrency shall be considered null and 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.

- B. Payment of the proportionate fair-share contribution is due in full prior to issuance of the final development order which for the purposes of this section shall be recording of the final plat if the property to be developed is being subdivided, approval of the final site plan for a development which entails multiple residential or commercial units but is not being subdivided, and issuance of a building permit if the development consists of a single use structure on land not being subdivided. Once paid, contributions shall be non-refundable. If the payment is submitted more than 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 at the time of payment, pursuant to Section 8 and adjusted accordingly.
- C. All transportation improvements undertaken by the developer authorized under this ordinance must be completed prior to issuance of a final development order, or as otherwise established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure the completion of all required improvements. Any security instrument, in a form acceptable to the approving local government, shall be for at least 150% of the estimated cost of improvements to be completed by the developer, and shall be subject to adjustment annually to take into account any increases in costs of materials and construction. The security instrument shall be irrevocable and shall remain in effect until the developer fully completes the required improvements.
- D. 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 subsection 10(2) above.
- E. Any requested change to a development project subsequent 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.
- F. 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 and any associated advertising costs to the Town will be nonrefundable.
- G. The Town may enter into proportionate fair-share agreements with multiple applicants for selected corridor improvements to a shared transportation facility.

#### **10.03.07 Appropriation of Fair-Share Revenues**

- A. Proportionate fair-share revenues shall be placed in the appropriate project account of the local government(s) entitled to share in the revenues for funding of scheduled improvements in the Town's CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At the discretion of the local government, 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. Proportionate fair-share revenues may also be used as the 50% local match for funding under the FDOT Transportation Regional Incentive Program (TRIP).

- B. In the event a scheduled facility improvement is removed from the CIE, the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor or sector that would mitigate the impacts of development pursuant to the requirements of Section 5(2)(b).
- 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 Town 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 TRIP. Such coordination shall be ratified by the Town through an interlocal agreement that establishes a procedure for earmarking of the developer contributions for this purpose.
- D. Where an applicant constructs a transportation facility that exceeds the applicant's proportionate fair-share obligation calculated under Section 8, the Town shall reimburse the applicant for the excess contribution using one 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 and reassigned to subsequent owners of the land to be developed, under the terms and conditions acceptable to the County or ~~Municipality~~ Town, but which must run with the land and may not be assigned in gross to the developer of any other parcel of property.
  - 2. An account may be established for the applicant for the purpose of reimbursing the applicant for the excess contribution with proportionate fair-share payments from future applicants on the facility.
  - 3. The Town may compensate the applicant for the excess contribution through payment or some combination of means acceptable to the Town and the applicant.

#### 10.04.00 SCHOOL CONCURRENCY

- A. It is the intent of this section to implement the goals, objectives, policies and standards of the Town of Howey in the Hills Comprehensive Plan, as amended, and particularly, the Public School Facilities Element and to implement the Interlocal Agreement between Lake County, the Lake County School Board, and Municipalities for School Facilities Planning and Siting (hereafter referred to the "*Agreement*").
- B. Unless otherwise provided herein, this ordinance shall apply to all development orders with any residential component and any amendment to an existing development order to the extent that the student generation is increased above what was previously approved, or any other official action of the Town having the effect of permitting residential development of land. 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 Town's School Concurrency Ordinance or other lots which the Town 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 Town's School Concurrency Ordinance or other multi-family residential development which the Town 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 Town's School Concurrency Ordinance, which do not increase the number of residential units or change the type of residential units proposed.
  4. Age restricted communities (as defined in the School Concurrency Ordinance) 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 into 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 Town shall consider in addition to the ownership at the time of the application the ownership as of the date of the adoption of this agreement.
- C. To ensure the capacity of schools is sufficient to support student growth at the adopted Level of Service for each year of the five-year planning period and through the long term planning period, after June 1, 2008, the following Level of Service standard shall be established for all schools of each type within each CSA and each individual school:
1. Elementary: 100% of permanent FISH capacity. If core dining capacity is available in excess of FISH capacity, the school capacity shall be increased up to 125% of FISH capacity by adding seats located in temporary student stations so long as the total capacity does not exceed core dining capacity.
  2. Middle: 100% of permanent FISH capacity. If core dining capacity is available in excess of FISH capacity, the school capacity shall be increased up to 125% of FISH capacity by adding seats located in temporary student stations so long as the total capacity does not exceed core dining capacity.
  3. High: 100% of permanent FISH capacity. If core dining capacity is available in excess of FISH capacity, the school capacity shall be increased up to 125% of FISH capacity by adding seats located in temporary student stations so long as the total capacity does not exceed core dining capacity.
    - a. For purposes of (1), (2), and (3) above, non-conversion charter schools shall be counted as FISH capacity if an agreement has been entered between the charter school and the School Board which requires the school facility to be constructed in accordance with Florida Department of

Education standards for public schools; which provides that the school facility will be provided to the School Board for its use if the charter school fails to operate satisfactorily; and, which provides that if there are financing arrangements for the school, the School Board will be able to operate the school without having to be responsible for such financing costs or that the School Board is willing and able to accept responsibility for such costs.

- b. For purposes of (1), (2) and (3) above, a developer financed public school shall be counted as FISH capacity if an agreement has been entered between the developer and the School Board which requires the school facility to be constructed in accordance with Florida Department of Education standards for public schools; which requires that the Developer transfer the school facility to the School Board upon its completion; and, which provides that if there are financing arrangements for the school, the School Board will be able to operate the school without having to be responsible for such financing costs or that the School Board is willing and able to accept responsibility for such costs.
- D. The following procedures will 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.
- E. 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:
  1. Proposed Development Name
  2. Application Type
  3. Intake Date
  4. Signature of Agent
  5. Number of Residential Units broken down by unit type
  6. Property Deed
  7. Consent Form
  8. Phasing Plan (If Applicable)
  9. Site Plan
  10. Survey
  11. Justification Statement
  12. Location Map
- F. Within three days of submitting to the School Board, the applicant must present a copy of the application to the Town. The Town shall provide a Determination of Authenticity to the School Board within three days of receiving the application.
- G. The School Board shall review the application in accordance with the provisions of Section 5.5.2 of the *Agreement* and base the concurrency determination on standards outlined in Section 5.5.3 of the *Agreement*.
- H. 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.

- I. 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.
- J. 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*.
- K. During the 90-day negotiation period the applicant shall meet with the School Board in an effort to mitigate the impact from the development.
  - 1. 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.
  - 2. The Town of Howey in the Hills shall have the opportunity to review the mitigation options.
  - 3. The Town Council shall approve all Proportionate Share Agreements.
- L. 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.
- M. 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 Town, and the applicant.
- N. 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.
- O. If the Letter of Determination of Concurrency requires conditions or mitigation to be placed on the development, the development order issued by the Town shall incorporate conditions as set forth by the School Board.
- P. 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.
- Q. 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 Town, and the applicant to provide Performance Security when required.