

**ADMINISTRATIVE CODE
BOARD OF COUNTY COMMISSIONERS**

CATEGORY: Transportation and Traffic Management	CODE NUMBER: AC-11-5
TITLE: Roads Impact Fee Ordinance Administrative Code	ADOPTED: 07/31/85
	AMENDED: 07/01/92; 01/04/95; 03/05/97; 03/24/98; 11/18/03; 08/28/07
	ORIGINATING DEPARTMENT: County Attorney

PURPOSE/SCOPE:

The purpose of this administrative code is to guide staff in the administration of Chapter 2, Article VI, Division 2 of the Lee County Land Development Code (Road Impact Fee regulations). This Code is intended to supplement the provisions of Chapter 2.

If any of the provisions of this code conflict with the provisions of the Land Development Code (LDC), the Land Development Code will control.

POLICY/PROCEDURE:

I. ADMINISTRATIVE ORGANIZATION AND RESPONSIBILITY

A. Impact Fee Administrator/Building Officials

The County Manager, or his designee, will conduct the general administration of the Roads Impact Fee regulations. The County Manager is hereafter referred to in this Code as the "Impact Fee Administrator".

The Building Official of each participating municipality or in the case of the City of Fort Myers, the Mayor or his designee is hereby designated by the County Manager to supervise the administration of Chapter 2 of the Land Development Code within the boundaries of that municipality.

B. Director of the Lee County Department of Transportation (DOT)

The Director of DOT or his designee (as used herein the term " Department of Transportation" includes any successor agency serving the same function and the Director of the Department or any successor agency will be referred to in this code as the "Director") will assist the Impact Fee Administrator in the following areas:

1. Land Use Determination - When a land use is not listed in the fee schedules, or in the list of previously determined miscellaneous land uses, the Director will assist the Impact Fee Administrator in establishing a roads impact fee by determining the most nearly comparable type of land use listed in the fee schedules, using the sources set out in Chapter 2, Article VI, Division 2 of the Land Development Code.

2. Independent Fee Calculations - Upon submission of an independent fee calculation, the Director will attend pre-application meetings; review the independent fee calculation study for sufficiency, methodology, technical accuracy, and findings; and make recommendations to the Impact Fee Administrator concerning the appropriate amount of the roads impact fee based on the procedures described in this Code and the Land Development Code (LDC).
3. Exemptions, Refunds and Recalculations - the Director will assist the Impact Fee Administrator in determining whether exemptions from roads impact fees are appropriate, refunds are justified or recalculation of the fee is necessary in the event of a change of use, redevelopment, or modification of an existing land use.
4. Fee Adjustments - The Director will recommend to the Impact Fee Administrator an appropriate roads impact fee in response to any claim to a fee adjustment under Section 2-266(e) of the LDC.
5. Roads Impact Fee Credits - The Director will recommend whether roads impact fee credits should be issued for the dedication of road rights-of-way or construction of approved roads and the amount of roads impact fee credits.

C. The Department of Community Development (DCD)

The Lee County Department of Community Development (as used herein the "Department of Community Development" will include any successor agency serving the same function) will provide advice, information, or other such service upon the request of the Impact Fee Administrator or the Director.

II. DETERMINATION OF ROADS IMPACT FEE

- A. Unincorporated Lee County. The Impact Fee Administrator will determine the amount of the roads impact fee with the assistance of the Director when necessary and appropriate. The Impact Fee Administrator will determine amount of the fee, whether the method of determination is based on the Land Development Code fee schedule, a fee adjustment or an independent fee calculation study. Determining entitlement to exemptions, refunds and credits will also be the responsibility of the Impact Fee Administrator.
- B. Participating Municipalities. Participating municipalities will have authority to assess and collect road impact fees based on the Impact fee Schedule and list of Miscellaneous Land Uses described in this Code, and determine exemptions from the road impact fees as provided in Chapter 2 of the Land Development Code. Participating municipalities will have the authority to undertake any other action regarding fee determination consistent with the ordinance that is granted to the municipality pursuant to interlocal agreement and not in conflict with Chapter 2 of the Land Development Code.
- C. Determination of Fee Based on Fee Schedules.

At the option of the feepayer, the amount of the roads impact fee may be determined by the fee schedules contained in Section 2-266(a) of the Ordinance.

D. Administrative Determination of Fee Without an Independent Fee Calculation Study.

The feepayer may, at his option, submit a request for a fee adjustment as provided in Section 2-266(f) of the Land Development Code by submitting evidence to the Impact Fee Administrator indicating that the fee set out in the fee schedules is not applicable to the particular development. The Impact Fee Administrator may administratively approve a fee adjustment based on the information submitted or require an independent fee calculation study at his sole discretion. After appropriate review, the Impact Fee Administrator may adjust the impact fee to an amount appropriate to the particular development.

The Impact Fee Administrator will be guided in his decision by the recommendation from the Director who will recommend roads impact fees by considering demographic or other information that is available from the Department's studies and plans, the Lee County Department of Community Development, the Bureau of Economic and Business Research of the University of Florida, or other applicable agencies or sources.

It is the applicant's responsibility to furnish, as required by the Impact Fee Administrator, all materials and information necessary to validate a claim to a fee adjustment up to and including deed covenants. Any claim to a fee adjustment must be submitted prior to the payment of the roads impact fee at issue, otherwise the claimed fee adjustment is waived.

If the feepayer disagrees with the amount of the administratively determined roads impact fee, the feepayer may prepare and submit an independent fee calculation study in accordance with this Administrative Code and Section 2-266(f) of the Land Development Code.

E. Independent Fee Calculation Studies

1. General

The feepayer must prepare and submit an independent fee calculation study in accordance with Section 2-266(f) of the Land Development Code and this Administrative Code if:

- a. The feepayer opts not to follow the fee schedules in the Land Development Code; or
- b. The Impact Fee Administrator determines that a feepayer's claim for a fee adjustment cannot be assessed administratively; or
- c. The feepayer disagrees with the administrative determination of the roads impact fee under Section II.D. above.

Submission of an independent fee calculation study will not exempt the feepayer from paying the roads impact fees prior to the issuance of any building permit, mobile home move-on permit, or recreational vehicle development order as those terms are defined in the Land Development Code.

2. Notice of Intent by Feepayer

The feepayer must inform the Impact Fee Administrator of his intent to submit an independent fee calculation study before the issuance of any building permit, mobile home move-on permit, or recreational vehicle development order. The Director will then schedule a pre-application meeting with the feepayer.

3. Pre-Application Meeting

Before beginning the independent fee calculation study, the feepayer or his representative will attend a pre-application meeting with the Director. The purpose of this meeting is to discuss the procedures, methodology and the standards to be met in the preparation of the study.

The Director will prepare a written summary of the results of the pre-application meeting regarding methodology, required forms, documentation or procedures (which will not constitute a waiver of the provisions of the Land Development Code). The Director will send a copy of this summary to the feepayer and the Impact Fee Administrator. The feepayer must provide written confirmation of the receipt and acceptance of the summary to the Impact Fee Administrator.

If the applicant wishes to waive the pre-application meeting, he must do so in writing. Applicants who waive the pre-application meeting waive the right to raise methodological or procedural issues regarding the study at a subsequent time.

4. Methodology

- a. The purpose of the independent fee calculation study is to measure the impact of the development on the road system illustrated on Map 3A of the Lee Plan transportation element.
- b. The independent fee calculation study must follow the methodologies and formats agreed upon during the pre-application meeting. In addition, the study must be in accord with the documentation or methodology required by this Code and the Land Development Code.
- c. The methodology used to prepare the independent fee calculation must be appropriate to the independent fee calculation.
- d. The independent fee calculation study must be prepared and presented by a registered professional engineer licensed in Florida. The methodology must be consistent with best professional practice and support the central claim of the study. The study must provide all necessary supporting documentation and information. Failure to adhere to best professional standards is a basis for rejection of the study. The applicant's submission must certify that the study complies with best professional practices and this attestation must be sealed (where and when applicable).
- e. The applicant must submit the study to the Impact Fee Administrator who will forward the study to the Director.

5. Sufficiency Determination

The Director will review the independent fee calculation study for sufficiency, methodology, technical accuracy, and findings. Afterwards, the Director will make recommendations to the Impact Fee Administrator concerning the appropriate amount of the roads impact fee. The Impact Fee Administrator will have 30 days from the date the study is received to provide written notification to the applicant of deficiencies or defects in the study, to approve the study and authorize an appropriate fee adjustment or to reject the conclusions of the study and deny the fee adjustment. This notice will be sent certified mail, return receipt requested. In the event this notice is not given within 30 days, the study will be considered sufficient and the fee adjusted as if the study had been approved. If the study is found defective or deficient, the 30

day review period will begin again with the submission of a new or modified study. If the applicant does not respond to the Impact Fee Administrator regarding a finding of defect or deficiency within 30 days of the date notice of defect or deficiency is sent, the Impact Fee Administrator will consider the independent fee calculation study withdrawn and all claims to a fee adjustment waived. Any building permit, mobile home move-on permit or recreational vehicle development order subsequently applied for must be accompanied by the roads impact fees established by the fee schedules.

The 30 day sufficiency review will begin when the Impact Fee Administrator receives and date-stamps the independent fee calculation study.

6. Effective Date

Once an independent fee calculation study is approved by the Administrator, the adjusted roads impact fee established by the study will be related back to the date of the pre-application meeting. Fees paid according to the roads impact fee schedule after the pre-application meeting will be adjusted to reflect the fee established by the study. The applicant will receive a refund for the difference between the Land Development Code schedule and the fee established pursuant to the approved study. The refund will be in the form of cash or roads impact fee credits depending on the original method of payment. There will be no refund of fees paid prior to the pre-application meeting.

In the instance where the applicant waives the pre-application meeting, the adjusted road impact fee established by the study will be related back to the date the study is found sufficient for review by the Director.

7. Application for Permit or Development Order

It is the feepayer's responsibility to claim a reduction in roads impact fee on the basis of the approved independent fee calculation study, at the time of application for a building permit, mobile home move-on permit or recreational vehicle development order. The feepayer must present documentation enabling the Department of Community Development or the Building Official of a participating municipality to verify this claim. No claim to a reduced fee will be accepted in advance of the approval of an independent fee study where one is required. In order to assert a claim for a fee reduction, a feepayer must have attended a pre-application meeting with the Impact Fee Administrator to discuss an independent fee calculation study prior to paying the roads impact fees or receiving the building permit, mobile home move-on permit or recreational vehicle development order. Where the applicant waived the pre-application meeting, fees paid according to the roads impact fee schedule after the study was found sufficient for review will be adjusted to reflect the fee established by the study.

8. Development of Regional Impact (DRI)

Applicants may use data, studies, or information prepared as part of a DRI submission for the purposes of an independent fee calculation study.

9. General Methodology

The impact fee calculation is based on the magnitude of travel generated by or attracted to a unit of development. This fee represents an equitable proportion of system-wide roadway construction and right-of-way (ROW) costs, less credits for other sources of roadway finance

(per unit of development). The formula for calculating road impact fees is provided in LDC Section 2-266(f).

10. INDEPENDENT FEE CALCULATION - TRAFFIC ENGINEERING STUDIES

The impact fee structure identified in Chapter 2 of the Land Development Code was established based on national average travel characteristics for land uses calibrated to Lee County conditions by an adjustment factor. While those characteristics and resultant impact fees were based on the best available data and sound engineering practices, it is recognized that individuals may desire to conduct independent surveys of their project's trip generation, trip length and new trips and recalculate their particular impact fee per unit of development. An applicant proposing to base the fee on local travel characteristics must document all three characteristics (trip generation rate, new trips factor and average trip length) and may not use the adjustment factor.

a. Trip Generation Rate Studies.

1. The individual must select a minimum of three sites for the land use in question. The selected sites should be single use sites with exclusive driveways and, if possible, should be located in the same Impact Fee district as the proposed land use.
2. The Director will review the site inventory and sites proposed for the survey. The Director must approve the sites to be surveyed prior to initiation of any survey.
3. Two-way, 24-hour counts must be made for all crossings (driveways) for three consecutive weekdays. The resultant counts must be recorded using a summary report form. Equipment at each site should be checked periodically to insure a proper count. Counts should not be conducted during a special event traffic day. Equipment failure or inclement weather may be grounds for aborting the count. If hourly machine records are made, the original tapes must be submitted.
4. The trip generation data and generation rate must be summarized and calculated. Trip generation rates must be calculated using the same unit basis (i.e., dwelling units, gross floor area) by use identified in the Fee Schedule of Chapter 2 of the Land Development Code. All calculations and assumptions, such as seasonal adjustments, must be clearly reported and documented.
5. All traffic counts and analysis must be conducted by a professional traffic engineering firm that is qualified by the Florida Department of Transportation in 3.05 - Traffic Operation Studies and 3.06 - Traffic Operation Design or an equivalent.

- ### b. Trip Length and Percent New Trips Studies.
- Alternative trip length and percent new trips data will be based on origin/destination and trip purpose studies conducted at land uses comparable to the proposed land development activity.

As with the trip generation studies, the following conditions must be met:

1. A minimum of three sites for the land use in question must be surveyed for three consecutive weekdays. The selected sites should, if possible, be located in the same Impact Fee District in which the proposed land use is located.

2. The site inventory, sites proposed for the surveys, and the detailed survey methodology must be reviewed and approved by the Director prior to the initiation of the survey.
 3. At a minimum, the following data must be obtained:
 - (a) Trip origin by location (major street intersection, landmark).
 - (b) Trip destination by location (major street intersection, landmark).
 - (c) Primary trip purpose.
 4. The following questions must be asked in the interview to determine the percent new trips:
 - (a) Did you come directly to this use from home and will you return home directly?
 - (b) Did you come directly to this use from work and will you return to work directly?
 - (c) Did you come here to work?
 - (d) Supplemental Question (for research purposes only). Would you have passed by this use regardless of whether or not you stopped? (Or would you have been on a different route?)

All "yes" responses (questions a, b or c above) are new trips. All others are existing and, hence, deductible trips.
 5. The origin/destination and trip purpose data must be coded and summarized using a summary report form. All calculations and assumptions, including documentation of the sample size confidence level, must be clearly reported and documented.
 6. All surveys must be conducted by a professional traffic engineering firm qualified by the Florida Department of Transportation in 3.05 - Traffic Operation Studies and 3.06 - Traffic Operation Design.
- c. Internal Orientation Studies. It is recognized that certain mixed use developments may capture a portion of their total trip generation on site. Those trips would be internal to the site and would not impact the major roadway network. The degree of internal orientation that can be expected is dependent on the type, character, quantity and location of uses in the particular mixed use development.
1. Mixed use projects must meet the following criteria:
 - (a) The development has been planned as a unified, complementary whole, and functionally integrated to the use of shared vehicular, pedestrian and bicycle access and parking.
 - (b) A minimum of 25 percent of the total gross floor area of the development must be devoted to residential land use; and a minimum of 25 percent of the total gross floor area of the development must be devoted to nonresidential land use.

- (a) Access between residential and nonresidential uses must be “pedestrian and bicycle friendly.” The term “pedestrian and bicycle friendly” will mean that:
- I. access between the residential use and the nonresidential uses must be provided without the necessity or likelihood that motorists, bicyclists or pedestrians will cross a major or minor arterial street; and
 - ii. the development includes a pedestrian/bicycle circulation system that provides convenient access between the residential uses and nonresidential uses.

2. Trip ends in a mixed use development are comprised of “attractions” and “productions.” The land uses contained in the Fee Schedule can be classified as follows:

Attractions

- Medical Office
- General Office
- Warehouse
- Mini-Warehouse
- Industrial Park or General Industrial
- Retail or Shopping Center
- Restaurant, Fast Food or Standard
- Convenience Store w/ Gas Sales
- Bank
- Golf Course (open to public)
- Movie Theater
- Hospital
- Nursing Home
- Church
- Day Care
- Elementary/Secondary School (Private)

Productions

- Single-Family Residential
- Duplex Two-Family or Townhouse
- Multi-Family residential
- Elderly/Disabled Housing
- Adult Congregate Living Facility (ACLF)
- Mobile Home/RV Park
- Hotel/Motel
- Time Share

3. For mixed use developments forgoing a more refined analysis, a ten percent deduction in trip generation will be given for the smaller trip type (i.e., attractions or productions) with that volume also deducted from the predominant trip type (i.e., attractions or productions). For example, if the smaller land use and trip type were attractions, then a ten percent deduction would be applied to the attraction total. That volume (10% of the attraction trips) would also be deducted from the production trips. As an example, suppose a mixed-use development comprising 350 single family residences and a small retail shopping center of 70,000 GFA:

Production: 350 units X 9.70 trips/unit - 3,395 trips

Attraction: 70,000 GFA/1000 X 41.40 trips/1,000 GFA=2,898 trips

10% of 2,898 trips = 289.8 (290) trips

Total Attraction Trips = 2,898 - 290 = 2608 trips

Total Production Trips = 3,395 - 290 = 3105 trips

4. Individuals seeking credit for more than ten percent internal orientation for a specific mixed use development, must conduct detailed trip studies. Those studies must include but not be limited to the following:
 - a. Detailed site plan identifying development land uses, internal vehicular circulation systems and internal pedestrian circulation systems;
 - b. Trip generation by land use, and by attractions and productions;
 - c. Trip matrix identifying by trip purpose and on site origins, and destination, inbound and outbound internal trip ends; and
 - d. Trip table which identifies by land use, total trip generation, external trip ends, and internal trip ends.
5. The degree of internal orientation of trip ends by land use and the amount of credit given for the mixed use development will be determined by the Director and must be based on the reasonableness of matching and internal trips by purpose and origin and destination.

All studies must be conducted by a professional traffic engineering firm, qualified by the Florida Department of Transportation in 3.05 - Traffic Operation Studies and 3.06 - Traffic Operation Design.

11. INDEPENDENT FEE CALCULATION - REVENUE STUDIES

The impact fee structure identified in Chapter 2, Article VI, Division 2 of the Land Development Code was established based on the trip generation characteristics surveyed for land uses within Lee County, estimated roadway construction cost, estimated right-of-way acquisition cost, and other roadway construction revenue sources.

While the cost calculations have been based on a county-wide average cost to add new capacity to the approved road system and should not be the subject of an independent fee calculation, it is recognized that individuals may desire to conduct independent calculations of revenue sources and to use those findings in an independent calculation of impact fees per unit of development. While all applicants for an independent fee calculation study must address the travel demand factors addressed in II.E.10, addressing revenue credits is optional.

Gas tax revenue credits for individual land uses have been calculated for purposes of the Roads Impact Fee Division of the Land Development Code.

Credits attributable to the proposed land development activity that can reasonably be projected to be available to replace the portion of the service volume used by the traffic

generated by the proposed land development activity can be re-calculated by those individuals who desire to calculate their impact fee independently. The methodology used for calculating those revenues must be reviewed and approved by the DOT Director. All assumptions and calculations, such as capitalization rates and allocations, must be clearly reported and documented.

12. IMPACT FEE CALCULATION

The following formulae will be used in the independent fee calculation to determine the impact fee per unit of development:

The fee will be calculated according to the formula in LDC Sec. 2-266(f), provided that the local adjustment factor will not be used.

III. METHOD OF PAYMENT

A. Payment Due

1. General. All Payments must be made in the following manner:

- a. Unincorporated Lee County. Payment must be made in cash or by personal check, cashier's check, or money order made payable to the Lee County Board of County Commissioners. All payments must be made at the Department of Community Development. At the sole discretion of the Impact Fee Administrator, the County may accept payment in escrow of the full amount of impact fees attributable to a particular land development activity, or mix of land development activities on a single parcel, by the impact fee schedules, in order to allow the issuance of building or other development permits while the County makes a determination on a feepayers claim to a fee adjustment. The escrow payment must be made as set out above and must be earmarked as escrowed funds within the appropriate trust fund. No escrowed funds will be accepted that are not accompanied by a signed letter agreement, acceptable to the County Attorney's Office, stating the purpose of the escrow and releasing the County from any claim to the escrowed funds by the feepayer or his successors if the County ultimately denies the feepayer's request for a fee adjustment. The agreement must also set forth the feepayer's understanding that the escrowed payment will support issuance of building or other development permits only if all other requirements of the Lee County regulations have been met. If the County subsequently approves the requested fee adjustment, the difference between the amount paid into escrow and the adjusted fee will be returned to the feepayer. If the fee adjustment is denied, the escrowed funds will be released to the County and the feepayer may pursue an appeal of the determination as set out in the Land Development Code.
- b. Participating Municipality. The feepayer must make payment in a manner acceptable to the governmental agency responsible for issuance, of the permit, unless an interlocal agreement provides for payment to Lee County, in which case payment will be as in (a) above.
- c. Use of Roads Impact Fees. In lieu of cash, up to 100% of the roads impact fee may be paid by the use of credits. Credits cannot be use to pay any applicable administrative fee.

B. Invalid Payment.

1. Deficient Payment.

In the event the payment of required road impact fees subsequently proves to be invalid due to insufficient funds, improper execution, or any other reason, the following action will be taken:

- a. No building permit, mobile home move-on permit or recreational vehicle development order will be issued until the required road impact fee is paid.
 - b. The Impact Fee Administrator or the Building Official in a participating municipality (state if the fee was collected by the participating municipality), will, within 30 days of detection of such a deficiency, notify the feepayer, contractor, and property owner by certified mail, return receipt requested, that:
 - (1) The road impact fee amount is due by valid payment upon receipt of the letter;
 - (2) No permit or Certificates of Occupancy will be issued until the fee is paid in full. If not paid within 15 days of the date the letter is sent, the issuing building department will have authority to stop all construction on the site until payment in full is received;
 - c. The amount due will be the amount of the road impact fee plus the amount charged by the bank for the dishonored payment plus, pursuant to Section 68.065, Florida Statutes, the greater of a service charge of \$10.00, or five percent (5%) of the face amount of the check.
2. Payment of Fee Based on Error or Misrepresentation. If the roads impact fee has been calculated and paid based on error or misrepresentation, it will be recalculated and any difference refunded to the original feepayer or paid to the County or municipality if appropriate by the original feepayer, whichever is applicable. If roads impact fees are owed to the County, no participating municipality or County permits of any type may be issued for the building or structure in question, or for any other part of a development of which the building or structure in question is a part, while the fees remain unpaid, and the Impact Fee Administrator may bring any action permitted by law or equity to collect the unpaid fees.

If higher roads impact fees should be collected, then the following action will be taken:

- a. No building or construction permits or Certificate of Occupancy (C.O.) will be issued until the required roads impact fees are paid.
- b. The Impact Fee Administrator or the designated Administrator in a participating municipality, must, within 30 days of detection of such a deficiency, notify the feepayer, the contractor, and the property owner by certified mail, return receipt requested, that:
 - (1) An additional roads impact fee amount is due immediately upon receipt of the letter;
 - (2) A permit or C.O. will not be issued until the amount is paid and if not paid within 15 days, the issuing building department will have authority to stop all construction on the site of said building permit until the payment is received.
- c. Prior to the expiration of one year from the date a final Certificate of Occupancy is issued for which the required roads impact fees have not been paid, or have not been paid in full, the County, will, where authorized by the applicable County ordinances, have authority to file a lien against the real property encumbered by said building permit until the required roads impact fees, together with additional charges allowed by such applicable County ordinances, have been paid.

If the amount of roads impact fee paid exceeded the amount which should have been paid, then the following action will be taken:

1. The Impact Fee Administrator or the Building Official in a participating municipality, will, within 30 days of detection of such an overpayment, notify the original feepayer by certified mail, return receipt requested, that the feepayer is owed a refund. The appropriate refund forms(s) will be included with this notice.
2. The feepayer must then submit a written request for refund to the Impact Fee Administrator or Building Official. Upon receipt of the written request, the refund will be issued.

IV. CREDITS

A. Administrative Responsibility

In all cases, the Impact Fee Administrator will make the final determination concerning the issuance of roads impact fee credits based upon the recommendations of the Director.

B. General Conditions

Generally, a feepayer may obtain credits by offering to dedicate right-of-way and/or construct improvements for approved roads. The value of the credits will be determined by the procedures set out in the Land Development Code. Any claim for credit must be made no later than the time of application for a building permit, mobile home move-on permit, or RV development order.

The right to determine whether the value of the capital improvement will be approved for credit purposes lies exclusively with Lee County, unless otherwise provided in an appropriate interlocal agreement, or unless the improvement is required under a participating municipal, state, or County development or zoning approval. In the latter case, credits will be given to the extent required by law.

C. General Documentation and Procedures

The offer to make capital improvements or dedicate right-of-way in exchange for roads impact fee credits must be made in an application to the Impact Fee Administrator. The application must identify the capital improvements and/or right-of-way dedications for which credits are requested. The Impact Fee Administrator will forward this application to the Director.

1. Documentation. A feepayer requesting roads impact fee credits for eligible capital improvements or right-of-way dedication must provide all information to the Impact Fee Administrator during development review or prior to application for the issuance of building permits specified below.
2. Credit for Construction. The feepayer must submit a project description in sufficient detail and with complete engineering and construction cost estimates, prepared by qualified professionals, to allow the Director to verify those cost estimates. Except as provided in Subsection 2.b below, credits will not be issued until:
 - a. The construction is complete and accepted by the State, the County, or a municipality within the county that has not opted out from the effect of Chapter 2, Article VI, Division 2 of the Land Development Code, whichever is applicable.

- b. Credit may be issued before completion of specified roadway improvements if the feepayer posts security for the costs of such construction. Security in the form of a performance bond, irrevocable letter of credit or escrow agreement (hereinafter referred to as the Bond) must be posted with the Board of County Commissioners in an amount equal to 110% of the full cost of construction. The Bond must be automatically renewable unless notice of intent to cancel or not to renew is given to the Impact Fee Administrator not later than 60 days prior to the renewal date. In the event of a notice to cancel or of intent not to renew, the Impact Fee Administrator will be entitled to collect the full amount of the Bond.

In the event (i) the County receives notification from the principal (guarantor) that the bond will be canceled before all agreed-to roadway improvements have been completed and accepted by the appropriate governmental body; or (ii) the County determines that terms of the agreement for the roadway construction as set forth in the Bond agreement have not been complied with, the County, in accordance with the Bond agreement, will default the Bond, and collect the full amount of the Bond to be used for completion of the agreed-to improvements and other expenses. If the cost incurred by the County to complete the roadway improvements exceeds the amount received from the Bond, the County may recover its loss under the provisions of this Code.

3. Land Dedication. Credits for right-of-way dedication for approved roads may be created when the following procedures have been completed and the title to the road has been accepted by the appropriate governmental body and recorded in the Official Records of the Clerk of the Circuit Court in Lee County:
 - a. a specimen of the deed proposed to be used to convey title to the appropriate governmental body;
 - b. a survey of the land to be dedicated certified by a Professional Land Surveyor or Registered Land Surveyor, licensed in the State of Florida;
 - c. an ALTA Form B title insurance policy, in an amount equal to the approved value of the credits, from a company satisfactory to the County Attorney that verifies that the proffered deed will convey unencumbered fee simple title to the appropriate governmental body;
 - d. a certified copy of the most recent assessment of the property for tax purposes;
 - e. property appraisals prepared by qualified professionals. In preparing their reports, appraisers must value the land in the following manner: (i) if the land in question is subject to a valid agreement, zoning approval, or development order which prescribes a valuation, the agreement, zoning approval or development order will control; (ii) if the dedication is made pursuant to a condition of zoning approval, is not a site-related improvement, and the zoning condition does not specifically prescribe otherwise, the land will be valued based upon the zoning of the land as it existed prior to the zoning approval which contains the condition of dedication; (iii) otherwise, appraisers must value the land at its current zoning and without any enhanced value which could be attributed to improvements on adjacent lands. The appraisal must be reviewed and approved by the Office of County Lands, or any successor agency serving the same function; and
 - f. proof that property taxes due on the property to be dedicated have been paid.
 - g. An affidavit of interest in real property consistent with Florida Statutes section 286.23. The affidavit must certify to Lee County the name and address of every person having a

beneficial interest in the real property, however small or minimal. The disclosure affidavit must specifically identify the property to be conveyed and be sworn before a notary.

4. Sufficiency. The Director will review engineering and cost estimates and make a determination of sufficiency. Road and intersection improvements or right-of-way dedications must meet the following standards in addition to those enumerated in Part B. of this Code in order to be eligible for credits:
 - a. It must be related to the mitigation of impacts from the development for which the building permits have been applied;
 - b. The same guidelines that apply to the use of roads impact fee funds limit those road improvements which are eligible for credits.
5. Determination of Credit.
 - a. The Director will prepare a recommendation of the amount of impact fee credits appropriate for roadway construction and right-of-way dedication to the Impact Fee Administrator. This recommendation will be based upon either the cost estimates provided by the applicant or upon alternative engineering criteria, construction cost estimates, or property appraisals, if the Director determines that such estimates submitted by the applicant are either unreliable or inaccurate. The Director will provide a written recommendation as to which capital improvements and/or right-of-way dedications are eligible for credits and what the amount of the credit will be for each.
 - b. The determination of the amount of credit will be made by the Impact Fee Administrator, after a review of the documentation presented and consideration of the Director's recommendations. Copies of the written determination will be sent to the feepayer and the Director.
 - c. The written determination must include the following: (i) the name of the applicant receiving the credit, (ii) the dollar amount of the credit, (iii) the reason for the credit, (iv) notice that impact fee credits issued for construction may be reduced if the final construction cost is less than the estimated construction cost, and (v) the legal or other adequate description of the project or development to which the credit may be applied. Before credit will be given, the applicant must sign and date a duplicate copy of such letter or certificate indicating his agreement to its terms and return the signed document to the Impact Fee Administrator. If the applicant fails to sign, date, and return such document within 30 days, the credit application will be rendered inactive.
 - d. No increase in the amount of approved credit will be authorized unless it is determined during actual construction of the agreed-to roadway improvements that change orders are to be made incurring additional expense for items that are necessary and are not shown on the approved plans and estimates previously furnished to the Director. It is the feepayer's responsibility to obtain prior approval from the Director before all change orders are made. All requests for an increase of the approved credit must include all documentation required by the Director. The Director will immediately forward all approved requests for change in the amount of credit to the Impact Fee Administrator. The amount of approved credit for the construction of road improvements will be reduced if the final construction cost of the improvements is less than the construction cost estimate upon which the credits were issued.

6. Transferability. Credits created after October 1, 1989 are transferable and may be sold, assigned or otherwise conveyed. Acceptable proof of transfer must be submitted to the Department of Community Development when the credits are used.
- D. Performance Bonds, Letters of Credit, etc. In the event the feepayer has received approval from the Impact Fee Administrator for credits for construction and the credits are provided before completion of the improvements in accordance with this Code, the following requirements must be satisfied.
1. The feepayer must submit to the Impact Fee Administrator, on appropriate forms, a Surety Performance Bond or an automatically renewable, irrevocable Letter of Credit (Cash Performance Bond) (both hereinafter referred to as a Bond), in an amount equal to 110% of the full cost of the agreed-to improvements (excluding right-of-way dedications), and payable to the Lee County Board of County Commissioners.
 2. The bond must be reviewed and approved by the Lee County Attorney's Office prior to acceptance of the bond by the Impact Fee Administrator.
 3. If the road or facility is to be owned by a participating municipality, the County may assign its rights in such security to the municipality if the municipality requests it and the law permits.
 4. A Letter of Credit, pursuant to subparagraph 1. above, must be automatically renewable unless notice of intent to cancel or not to renew is given to the Impact Fee Administrator not later than 60 days prior to the renewal date. In the event of a notice to cancel or of intent not to renew, the Impact Fee Administrator will be entitled to declare a default and collect the full amount of the Bond. In the event the County has assigned its rights in such security to a municipality, then the appropriate Building Official will be responsible for this action.
 5. Upon posting with, and acceptance of such Bond by the Impact Fee Administrator, the appropriate County or municipal entity may issue building permits for that part of the proposed development determined by the County to be satisfied by the credit.