



Sturgeon County Offsite Levy Policy Framework

Version 3
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Presented to:
Brian Hartman, Manager Engineering
Services
Sturgeon County
9613-100 Street
Morinville, Alberta T8R 1L9
(780) 939-4321
bhartman@sturgeoncounty.ca
www.sturgeoncounty.ab.ca

Prepared by:
Greg Weiss, Partner
CORVUS Business Advisors
9670 – 95 Avenue
Edmonton, AB T6C 2A4
(780) 428-4110
gweiss@corvusbusinessadvisors.com
www.corvusbusinessadvisors.com

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1 DOCUMENT INFORMATION

1.1 Revision History

Version Number	Revision Date	Summary of Changes and Author
1	November 1 st , 2015	DRAFT: created by CORVUS Business Advisors
2	November 23 rd , 2015	DRAFT: reviewed by Administration
3	February 18 th , 2016	FINAL: Reviewed by SLT

1.2 Glossary

At the outset, it is critical to have a common understanding of the terminology. The following terms and acronyms have been used throughout the document.

Term	Description
Offsite Levy Exemption	Conditions that must be satisfied in order to have to an offsite levy assessment waived on a subdivision or development permit application.
Offsite Levy Offset	Front-end infrastructure costs incurred by the developer used to reduce the amount of offsite levy assessment payable by the developer.
Offsite Levy Deferral Agreement	An agreement between the developer and municipality that permits the developer to pay offsite levies on an installment basis.
Offsite Levy Down Payment	The amount of offsite levy that is immediately due upon the issuance of a subdivision or development permit.
Offsite Levy Installment	The amount of offsite levy assessment that is due annually.

Term	Description
“Qualified” Offsite Infrastructure	Developer front-ended infrastructure that is outlined in the Offsite Levy Bylaw and contained within the “qualified” portion of the Capital Plan (usually the first 5 years).
“Non-Qualified” Offsite Infrastructure	Developer front-ended infrastructure that is outlined in the Offsite Levy Bylaw and is contained within the “non-qualified” portion of the Capital Plan (usually beyond 5 years).
Capital Plan	Outlines offsite infrastructure approved for construction and outlined in the offsite levy bylaw. Note, items approved for construction do not necessarily mean that they are funded.
Annual Financial Plan	Outlines future anticipated disbursement / retention of offsite levy reserve funds. The plan considers front-ending claims, development infrastructure staging, offsite levy reserve balances, future offsite levy receipts, municipal debt capacity etc.
Construction Completion Certificate	Issued by the municipality to signify that front-end offsite infrastructure has been constructed to standard.
Final Acceptance Certificate	Issued at the completion of a warrantee period and when front-end infrastructure is free of defects and deficiencies. The Final Acceptance Certificate signals the release of hold back on front-ended construction repayment.
Holdback	The amount of funds held-back after issuance of the Construction Completion Certificate during the warranty period. Holdback may be released upon issue of the Final Acceptance Certificate.

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3 INTRODUCTION

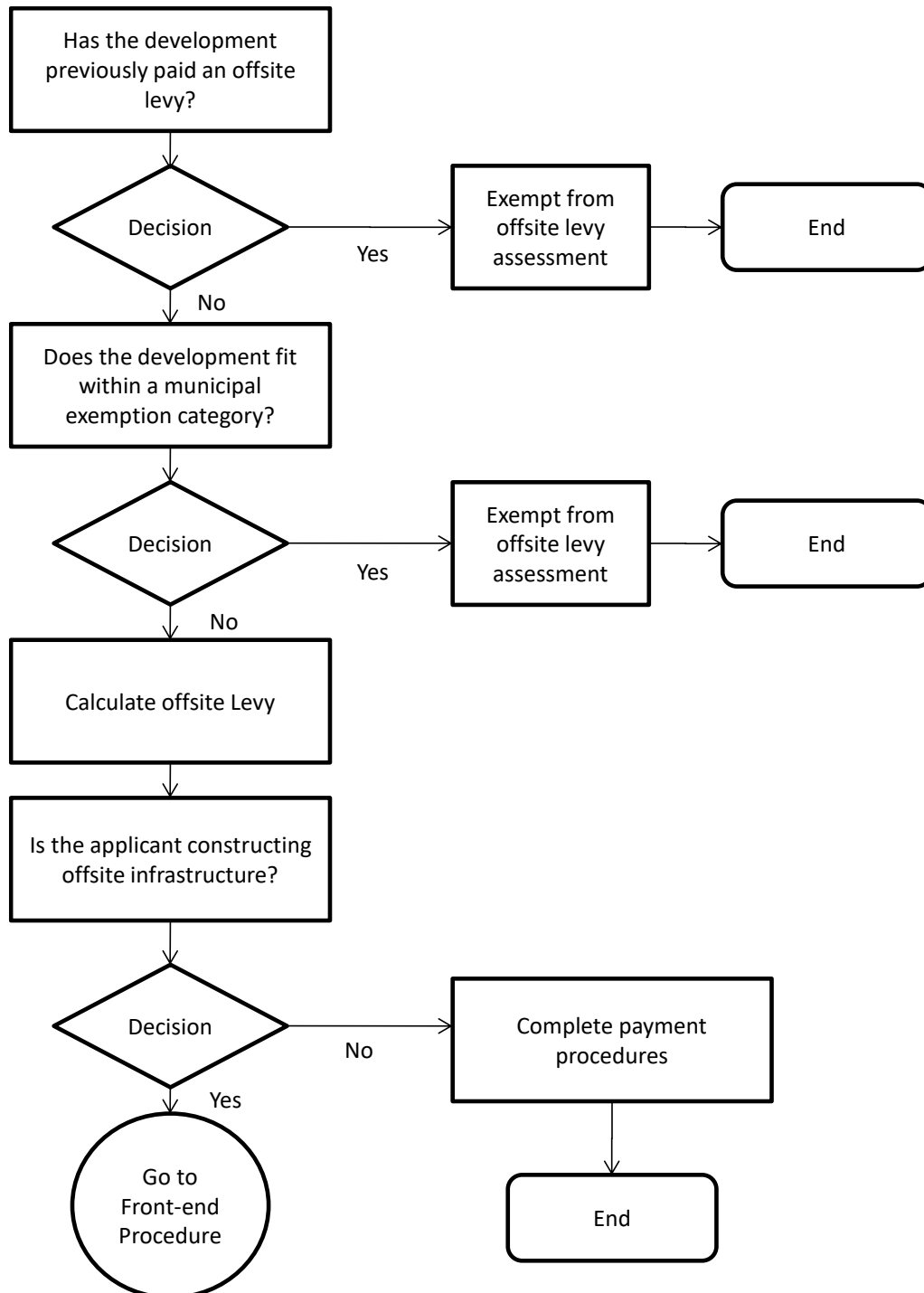
During the 2015 Sturgeon Industrial Park offsite levy rate update, administration recognized the need to clarify aspects pertaining to offsite levy bylaw implementation. Specifically, those policy and process options that Sturgeon County may choose to help guide when to assess offsite levies, when levies are payable (deferrals), when and how front-ended infrastructure construction will be assigned to developers, when and how front-ended construction costs will be reimbursed.

This document is laid out in chronological fashion starting with policies pertaining to initial assessment and ending with disbursement of levy funds. Each section within the report contains an introduction to the scope of the policy, an overview of the typical steps and flow of decisions that County staff would follow, the fundamental principles that are used to support policy choices, and then procedural workings and other information that will assist the County to administer, and the applicant understand, the policy statements.

4 ASSESSMENT / COLLECTION PROCESS OVERVIEW

The flow chart below outlines the various process steps and decisions that will be used to guide offsite levy assessment and collection.

Offsite Levy Assessment and Collection



4.1 Levy Assessment, Assessment Exemptions and Thresholds

The obligation to pay offsite levies occurs in two steps: (1) the levy is incurred upon application for subdivision or development, and (2) the levy is paid upon execution of the subdivision or development agreement or may be deferred to a future time of payment. This section focuses on the principles that will guide the County in determining when the application for subdivision or development would result in a levy obligation being incurred.

4.2.1 Legislated Exemption

The first criteria to be considered in determining if an application for subdivision or development is eligible or exempt from incurring an offsite levy obligation is outlined in legislation. County guiding policies are consistent with these legislative requirements.

Municipal Government Act, Section 648(4) states:

“An offsite levy imposed under this Part of the former Act may be collected once only for each purpose described in subsection (2) in respect of land that is the subject of a development or subdivision.”

Municipal Government Act, Section 648(7) states:

“Where after March 1, 1978 and before January 1, 2004 a fee or other charge was imposed on a developer by a municipality pursuant to a development agreement entered into by the developer and the municipality for the purpose described in subsection (2)(c.1), that fee or charge is deemed (a) to have been imposed pursuant to a bylaw under this section, and (b) to have been validly imposed and collected effective from the date the fee or charge was imposed.”

Guiding Principle

If a parcel of land was previously subdivided or developed, and an offsite levy of a certain infrastructure type (e.g., water) was paid in accordance with Section 648 of the Municipal Government Act on that entire parcel, then any new subdivision or development is exempt from any future assessment and payment of an offsite levy of the same type.

4.2.2 County Exemptions

Except for exemption conditions outlined in legislation, offsite levies would apply to all “development” or “subdivision” situations within Sturgeon County offsite levy development area unless such development or subdivision is explicitly exempted.

According to Section 616 (b) of the Municipal Government Act “Development” means (i) an excavation or stockpile and the creation of either of them, (ii) a building or an addition to or replacement of a building and construction or placing of any of them on, in over or under land, (iii) a change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building or (iv) a change in the intensity of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the intensity of use of the land or building.

According to Section 616 (ee) of the Municipal Government Act “Subdivision” means the division of a parcel of land by an instrument.

As such, all improvements on a site including: buildings, other structures, parking and loading areas, landscaping, paving or graveling areas, devoting areas to exterior display, etc. might be considered development. Further, the placement of any land instrument that divides land might be considered subdivision.

The broad application of these definitions to the assessment of offsite levies would result in obligations due where there may be no intent to develop or where the nature and size of the development would not warrant payment of an offsite levy. Whereas the intent of the offsite levy assessment is to pay for the construction of offsite levy road, water, sanitary and storm management infrastructure that supports the development. Clearly then, a subdivision or a development application that does not place any burden on road, water, sanitary and/or storm management offsite infrastructure might be considered exempt from offsite levy assessment and payment obligation.

Guiding Principle

If a development or subdivision is likely not to place a burden on the roads, and/or water, and/or sanitary, and/or storm management offsite infrastructure then the development or subdivision may, subject to the approved exemptions and thresholds, be considered exempt from offsite levy assessment.

County offsite levy assessment exemptions and exemption thresholds:

Exemption / Exemption Threshold	Rationale
a) Temporary Development / Land Uses – Temporary land uses are exempt so long as the use or structure proposed will not be used beyond 1 year.	If a use is truly temporary in nature the impact on offsite levy infrastructure will also be temporary and therefore complies with the guiding principle. The timeframe threshold ensures that a temporary use is not extended to permanent use.
b) Demolition or Removing of a Structure – This would permit any existing property to remove existing structures while remaining exempt from offsite levy assessments.	This would allow existing property owners to demolish older structures in readying the property for future development.
c) Replacement of a Structure – Replacement of a structure with a new structure of the same size and use at the same site or lot are exempt when such replacement is substantially completed within 1 year of the demolition or destruction of the prior structure.	This is intended to exempt residential / commercial rebuilding in the event of a fire or similar catastrophic loss, etc. The replacement structure would not use offsite infrastructure to any greater extent than the previous structure. The threshold timeframe is intended to ensure that replacement of the structure occurs in a timely fashion.

Exemption / Exemption Threshold	Rationale
d) Altering a Residential Structure – Altering residential structures up to creation of semi-detached/2-plex are exempt.	This is intended to exempt the various forms of residential alterations ranging from a room addition to creation of a semi-detached/2-plex. Alterations beyond a semi-detached/2-plex would be considered a development that would result in greater demand on offsite infrastructure and would, therefore, incur offsite levies.
e) Ancillary improvements – includes but may not limited to fences, walls, berms and signs. These miscellaneous improvements are exempt.	This is intended to exempt various residential, commercial and industrial development applications that would not create any additional burden on offsite infrastructure.
f) Division of Lands so that Further Subdivision Can Take Place – includes situations where lands are subdivided into blocks that in turn would require further subdivision of individual lots or blocks. A parcel greater than 16 ha. (40 ac.) is exempt.	This allows large tracks of lands to be assembled and divided amongst developers. The minimum parcel size threshold is established to help guide application of this exemption.
g) Non-residential Farm Buildings – agricultural / farming structures are exempt. This would include bona fide farming operations such as barns, silos and other ancillary development for agricultural use.	Exempting non-residential farm buildings permits existing farms to modernize without incurring offsite levies.

Exemption / Exemption Threshold	Rationale
h) Division of Agricultural Lands – includes situations where a farm is subdivided. Subdivision of land in blocks of 16 ha. (40 ac.) or greater are exempt. An exemption is also permitted for the severance of one residential parcel of land from the agricultural lands for a residential site.	This would allow land owners to sell their farmland and create a residential site on the divided lands.
i) Altering an Existing Non-Residential Buildings That Does Not Change its Use – Non-Residential buildings may be enlarged to a threshold of 25% of the existing building floor size before offsite levies are assessed. Cumulative building enlargement in excess of the 25% threshold will result in the assessment of offsite levies.	The floor plate % threshold is easy to administer. A cumulative threshold ensures that multiple / staged building enlargements do not bypass the payment of offsite levies.
j) Intensified Land Development That Does Not Change the Use – Non-building site development use (processing / production facilities, storage etc.) can be increased by a threshold of 25% site size/coverage before offsite levies are assessed. Cumulative increased site size / coverage in excess of the 25% threshold will result in the assessment of offsite levies.	The site use % threshold is easy to administer. A cumulative threshold ensures that multiple / staged site developments do not bypass the payment of offsite levies.

4.2 Levy Assessment Deferment and Installment Payments

Offsite levy deferment enables payment of an offsite levy obligation over a period of time.

4.2.1 Eligibility for Payment Deferment

Offsite levy deferment criterion is focused on the amount of offsite levy that is to be paid by the developer. Developments below the offsite levy deferment threshold are required to pay offsite levies as a condition of subdivision or development approval. Levies greater than the deferment threshold amount may elect to defer offsite levy payment subject to the guiding principles and thresholds.

Guiding Principle

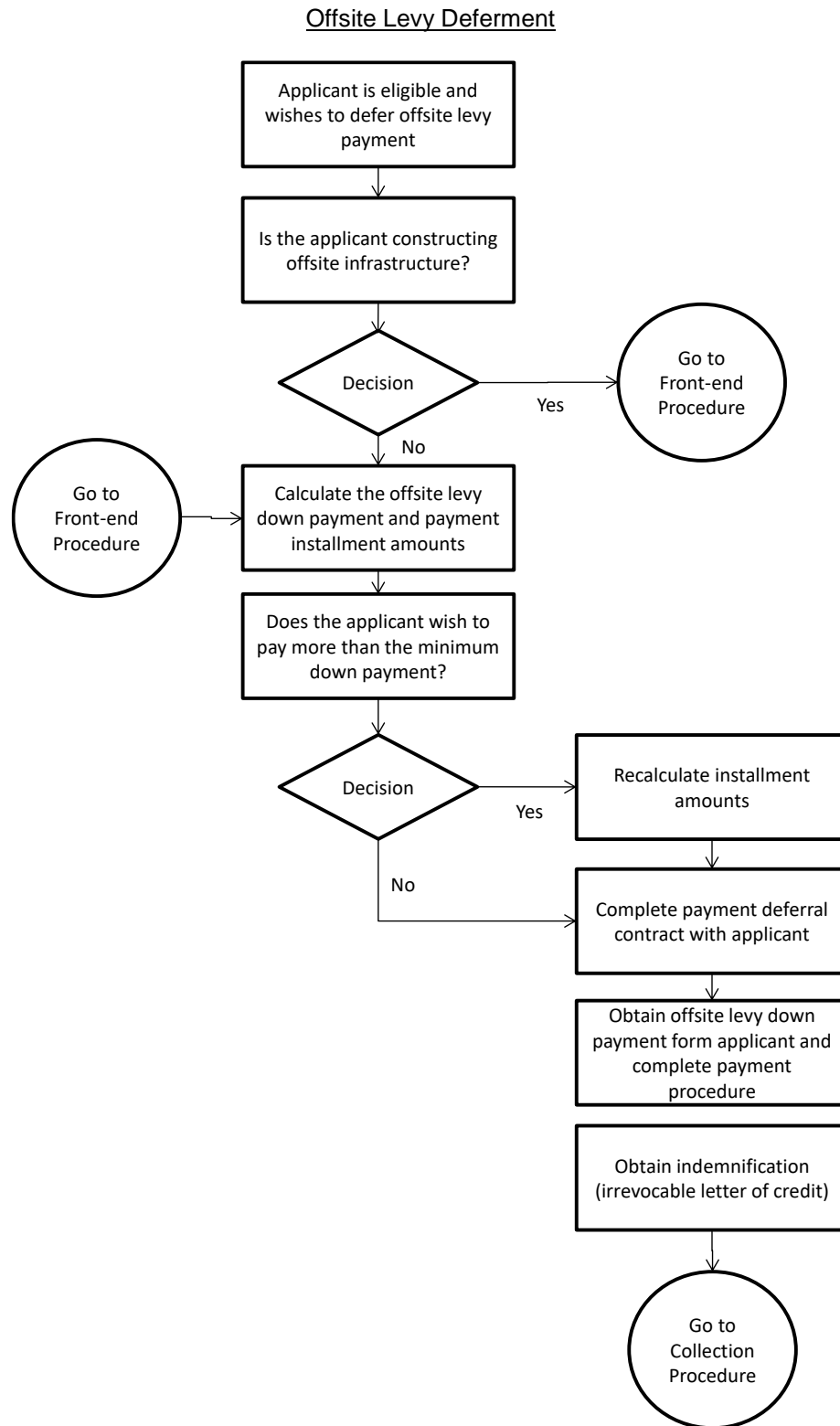
A development or subdivision that is assessed significant cumulative offsite levies may defer offsite levy payments, subject to approval from the County.

Developers that are eligible and elect to defer offsite levy payments must enter into a Deferral Agreement with the County.

Offsite levy deferment includes:

Deferment Threshold	Rationale
a) Offsite Levy Deferment Threshold – The option to defer payment of levies may be extended to any subdivision or development application with offsite levies greater than \$1,000,000. The maximum deferment period is 2 years.	The dollar value threshold provides the developer with a clearly understood threshold for payment deferment. Offsite levies below the threshold are payable as a condition of approving a development or subdivision application.
b) Deferral Agreement - The Deferral Agreement (or appendix of the Development Agreement) outlines the terms and conditions upon which offsite levy payments will be made.	A deferral agreement ensures repayment terms are clearly understood, and the necessary indemnification collected.

The following flow chart outlines the payment deferment process.



4.2.2 Repayment Period and Terms

The repayment period is akin to the terms established in a credit agreement whereby the lender (the County) determines the term of the agreement and the creditor (developer) must meet the terms of the agreement.

Guiding Principle

Deferral agreements will extend a maximum of 2 years, and are subject to specific repayment terms and indemnification provisions.

Offsite levy payment (installment) terms:

Installment Terms	Rationale
a) Down Payment – 25% of the offsite levy assessment is payable as a condition of the subdivision or development agreement.	The payment of a portion of the offsite levy ensures that some level of funding immediately flows into offsite levy reserves.
<p>b) Installment Payments – The balance owing is paid within a maximum period of 2 years:</p> <ul style="list-style-type: none"> 1st Year Anniversary - 50% of the balance owing is paid. The balance owing is adjusted to reflect the approved offsite levy rates as at the date of payment. 2nd Year Anniversary – full payment of the remaining balance. The balance owing is adjusted to reflect the approved offsite levy rates as at the time of payment. 	The payment installment period is intended to provide a cash flow outlet to the developer. Deferral, however, does not lock in the amount to be paid by the developer. Amounts due to the County are adjusted to reflect offsite levy rate changes that occurred over the deferment period.
c) Early Repayment – Developers have the	This would accommodate situations where a

Installment Terms	Rationale
ability to pay off any offsite levy balances earlier than the repayment date terms.	developer wishes to pay out all levy obligations. Early payment may be desired to avoid offsite levy rate increase adjustments.

4.2.3 Repayment Indemnification

To secure the position of the County in the event of default, the applicant must provide the County with indemnification that can be easily converted to cash.

Guiding Principle

Developers that elect to defer offsite levy payments must provide the County with suitable indemnification.

Failure of the developer to pay an offsite levy down payment or installment will result in the indemnification to be exercised and applied against amounts owed by the developer.

Offsite levy indemnification:

Indemnification Terms	Rationale
a) Irrevocable Letter of Credit – An irrevocable letter of credit in the amount of the balance owing will be provided by the developer to the County. As installments are provided to the County a new letter of credit for the remaining balance owing will be provided. This balance may be adjusted as a result of any offsite levy rate changes that have occurred.	The irrevocable letter of credit provided through a bank or lending institution may be readily converted in the event of default.

4.2.4 Increasing Amounts Due for Any Increase in Offsite Levy Rates

Offsite levy monies owed to the County will be adjusted by offsite levy rate changes that

occur prior to payment of levies.

Guiding Principle

Payments deferred for any reason will be assessed their offsite levy obligation based upon the offsite levy rate in effect at time of payment.

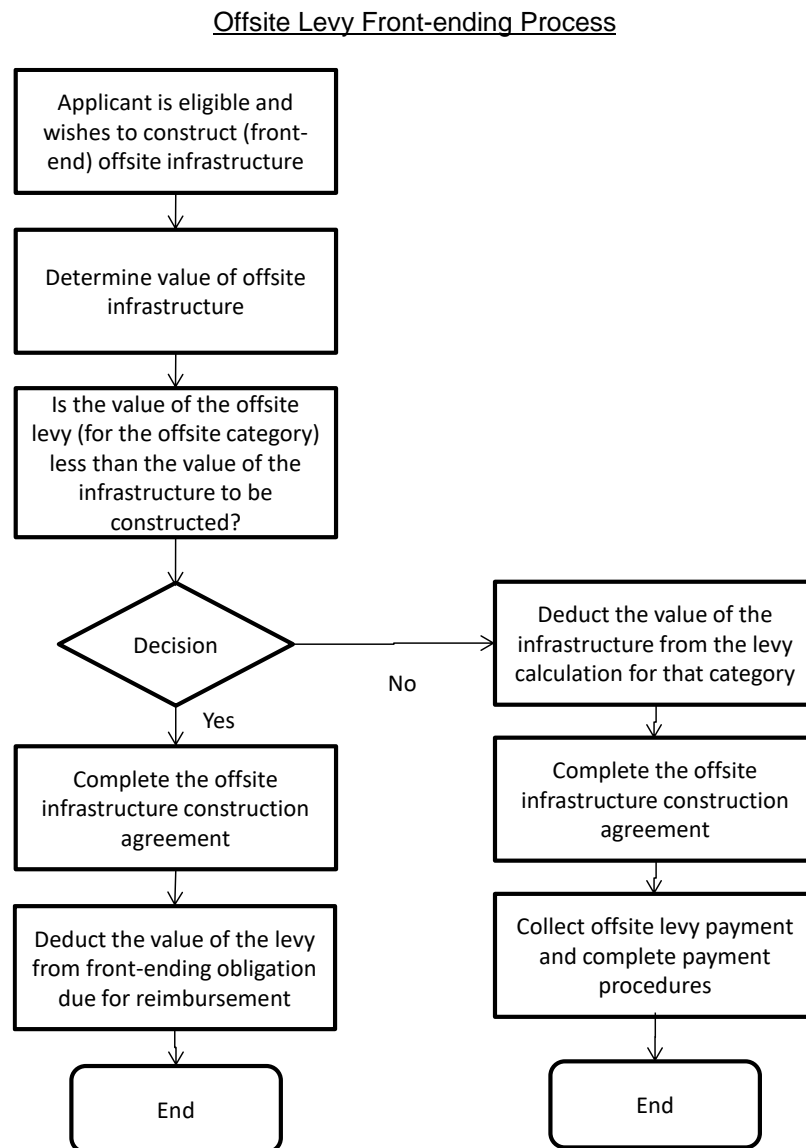
Calculation of offsite levy payments:

Assessment Adjustment Terms	Rationale
a) Assessment at Time of Payment – Offsite levy balances owing are “floating” and subject to adjustment for offsite levy rates in effect at the time of payment.	Offsite infrastructure is subject to changes for cost changes, interest rate changes etc. These changes will be considered in offsite levy rate changes annually.

5 OFFSITE LEVY INFRASTRUCTURE FRONT-ENDING

The timing of offsite infrastructure is such that all offsite levy funds will not be in place prior to construction. Front-ending will be required, and may be undertaken by either the County or a developer.

The following flow chart outlines the infrastructure front-ending process.



5.1 Construction of “Qualified” and “Non-Qualified” Offsite Infrastructure

“Qualified” means that the County has approved offsite infrastructure construction, entered

into contract (Front-end Construction Agreement) with the developer, and the infrastructure being constructed is reflected in the next 5 years of the County's Capital Plan (i.e., the near term).

There may be instances where a developer wishes to construct offsite infrastructure to support its development, however the County may not require the infrastructure to be built at this time (i.e., beyond 5 years). For example, a developer may wish to construct all four lanes of an arterial road when only two lanes are required. This infrastructure is called "non-qualified".

Guiding Principle

Developers are required to enter agreement with the County on all offsite infrastructure constructed (qualified or non-qualified).

Developers that construct "non-qualified" offsite infrastructure will not be reimbursed costs and will not receive interest on unpaid balances until such time as the infrastructure becomes **"qualified"** (i.e., **contained** in the next 5 years of the County's Capital Plan).

	Qualified Infrastructure	Non-qualified Infrastructure
Relationship to Offsite Levy Bylaw and Capital Plan	Is contained in the County's Offsite Levy Bylaw and the next 5 years of the County's Capital Plan.	Is contained in the County's Offsite Levy Bylaw but is contained beyond the next 5 years of the County's Capital Plan.
Standards & Specifications	Constructed to the standards and specifications of the County.	Constructed to the standards and specifications of the County.
Front-end Agreement	Developers are required to enter agreement with the County.	Developers are required to enter agreement with the County

	Qualified Infrastructure	Non-qualified Infrastructure
Offset Offsite Levies	Developers may offset the value of offsite levies being collected by the cost of construction. Offset may only be applied to levies in the same category as infrastructure being constructed.	Developers may offset the value of offsite levies being collected by the cost of construction. Offset may only be applied to levies in the same category as infrastructure being constructed.
Interest on Unpaid Balance	Developers will receive interest on the balance of offsite infrastructure amounts due to the developer.	No Interest Payment Until Qualified – Developers will not receive interest on non-qualified infrastructure constructed. Interest will only accrue once the infrastructure is “qualified”.

5.2 Offsetting Offsite Levies for Front-end Infrastructure Costs

Developers who front-end the construction of offsite levy infrastructure whether “qualified” or “non-qualified” may apply the cost of this infrastructure against offsite levies due to the County. If the developer is constructing offsite infrastructure or contributing land that will be used to site offsite levy infrastructure the County will award the developer a credit up to the cost of construction. However, the construction credit may only be applied against the same category of levy as the constructed front-end infrastructure. No construction credits may be applied to offsite levies owing that differ from the offsite levy infrastructure being constructed. For example, if a developer were front-ending the construction of road offsite infrastructure, then the offsite levy assessment for roads (but not water, sanitary, or stormwater levies) can be offset by the value of front-ended road infrastructure.

Guiding Principle

Developers that front-end the construction of offsite infrastructure (qualified or non-qualified) may offset the offsite levy assessments on the same category of offsite infrastructure up to the cost of infrastructure construction.

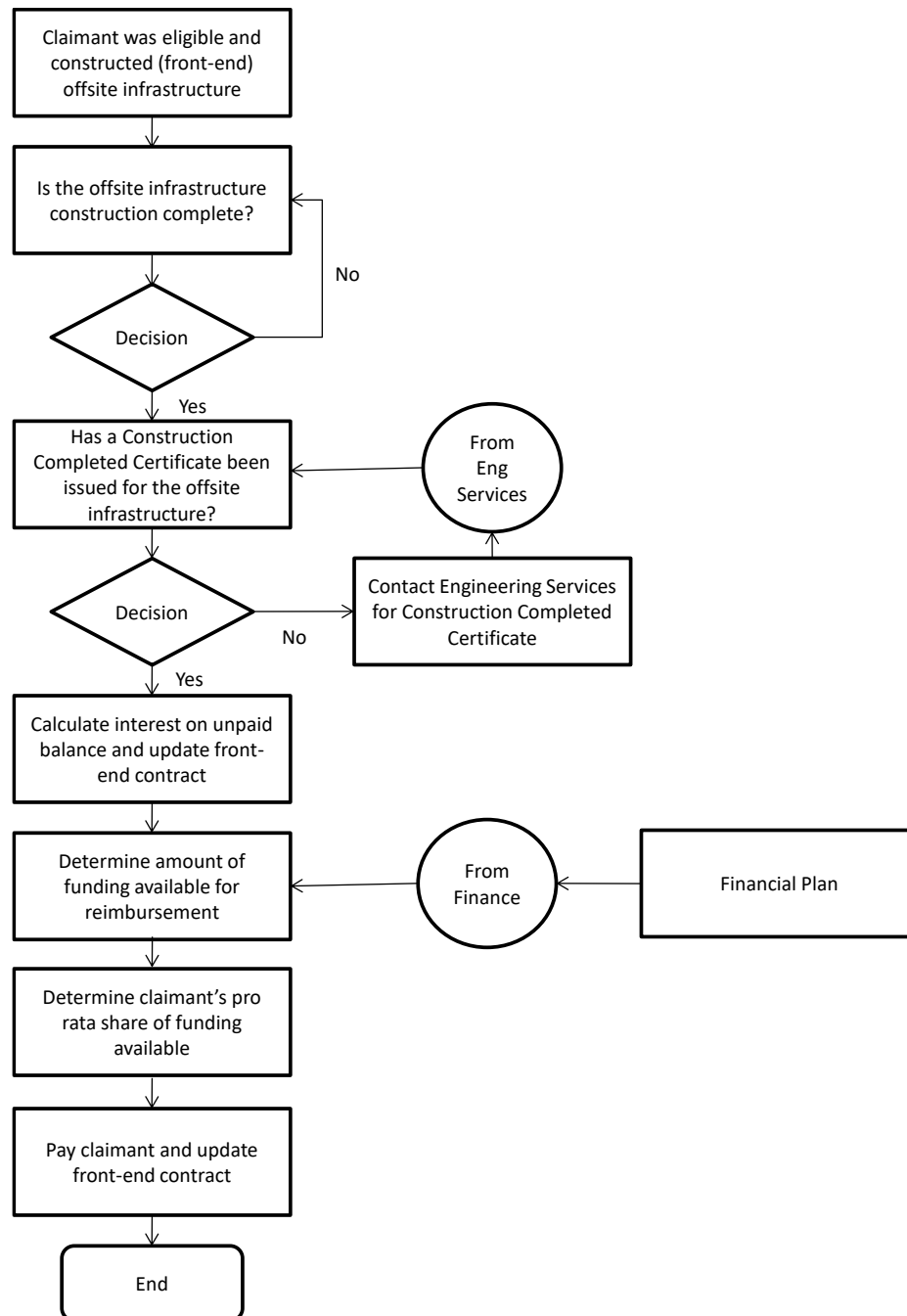
Estimating front-ended construction costs for the purpose of determining offsets:

Front-end Construction Amount / Offset Credits	Rationale
<p>Offset Based Upon Professional Estimate and Adjusted for Actual – The offset credit will be based upon the County approved construction estimates. The developer will provide this estimate. The estimate must be certified by a professional architect or engineer or based on a fixed price bid from a contractor.</p> <p>When the infrastructure is constructed the actual cost of construction, approved by the County, may be applied to adjust any offsite levies still owing.</p> <p>The developer must advise the County of any change orders that impact the cost of the approved infrastructure and the change order must be approved in writing by the County to be eligible for reimbursement or levy assessment offset.</p>	<p>Obtaining external pricing ensures that all parties understand the potential cost of the project.</p> <p>Final actual construction cost is required to finalize amounts that may be due to the developer and / or the County.</p> <p>The notification and approval of change orders will keep the County and developer apprised of the cost changes and potential impact on levy assessments outstanding.</p>

6 INFRASTRUCTURE FRONT-END CLAIM REIMBURSEMENT

The following flowchart outlines the reimbursement of front-ending claims process.

Front-ending Claim Reimbursement Process



6.1 Construction Inspection and Acceptance

Developers who are front-ending the construction of offsite levy infrastructure will construct infrastructure to the standards and specifications required by the County. In this regard, the process used by the County to inspect and accept other on-site development infrastructure will be used for offsite infrastructure construction. The County will inspect constructed infrastructure and issue a Construction Completion Certificate (CCC) when the infrastructure is completed. The developer is responsible for correcting deficiencies in offsite infrastructure construction. Front-end offsite infrastructure will be subject to a two-year warranty period. To ensure that the developer corrects deficiencies in front-end infrastructure, cost reimbursement will be subject to hold back. The County will issue a Final Acceptance Certificate (FAC) when all deficiencies have been remedied and the warranty period has expired. The FAC triggers the release of front-end infrastructure reimbursement hold back.

Guiding Principle

Developers will be responsible to construct offsite infrastructure to the standards and specifications of the County.

Infrastructure inspection and acceptance conditions are outlined below:

Inspection / Acceptance Terms	Rationale
<p>a) Inspection, Correction of Deficiencies, Acceptance – Developer constructed infrastructure will be built to County standards and specification.</p> <p>At completion, infrastructure will be subject to County inspection. The developer will remedy construction deficiencies.</p> <p>A Construction Completion Certificate will be issued by the County to signify that infrastructure conforms to County standards.</p>	<p>The developer is accountable for the infrastructure constructed. The inspection process will ensure that standards have been met and that deficiencies are noted and subject to future correction by the developer.</p>

<p>b) Hold Back on Deficiencies, Issuance of Final Acceptance Certificate – The County will withhold 20% of the cost of front-end offsite infrastructure repayment amounts to expedite correction of deficiencies.</p> <p>At the conclusion of the warranty period and after construction deficiencies are completed a final acceptance inspection will be undertaken, a Final Acceptance Certificate will be issued and holdback on reimbursement may be released (assuming offsite reimbursement funds are available).</p>	<p>To ensure that a developer corrects any offsite infrastructure deficiencies a hold back amount will be established.</p> <p>The issue of a Final Acceptance Certificate by the County will be used to signal release of holdback on payment to the developer.</p>
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6.2 Interest on Unpaid Balance

Developers who construct “qualified” offsite infrastructure, where the cost of construction exceeds offsite levies payable, earn interest on balances due to them. Interest accrues from the point of issuance of the Construction Completion Certificate, and is posted to the developers account annually and upon final repayment of the construction cost by the County. Interest accrued on unpaid balances owed to the developer earns interest at the rate reflected in the County’s offsite levy model for the period in question.

Guiding Principle

Balances due to developers as a result of front-ending the construction of **“qualified”** offsite infrastructure earn interest from this issuance of the CCC, at the rate reflected in the County’s **offsite levy model for the period in question**.

Interest is calculated once per annum and upon final repayment.

Interest earned on outstanding balance due to the developer for construction of “qualified” offsite infrastructure:

Inspection / Acceptance Terms	Rationale
<p>a) Interest on Outstanding Balance at County Cost of Capital – Developer constructed offsite infrastructure will earn interest on any outstanding balance at the interest rate reflected in the County’s offsite levy model for the period in question. Interest will be credited to developer accounts annually and at time of final payment to the developer.</p>	<p>Developers who construct “qualified” infrastructure will receive credit for the working capital invested in constructing front-ending offsite infrastructure.</p> <p>The MGA indicates that parties that front-end infrastructure construction will be entitled to interest on their investment.</p>

6.3 Annual Reserve Fund Priorities

The County will develop a financial plan annually that indicates how offsite levy reserve balances will be distributed. The plan will consider future staging of offsite infrastructure, offsite levy reserve balances, the County’s borrowing capacity, development trends etc. The plan will forecast anticipated levy receipts, expenditures, the allocation of expenditures between front-end debt draw down, monies drawn by the County to construct offsite infrastructure, and amounts retained to finance future construction, etc.

Guiding Principle

The County will develop a financial plan annually that forecasts the nature of offsite levy reserve disbursements.

6.4 Payments on Developer Front-end Debts

Offsite levy reserve funds that are used to the draw-down obligations related to “qualified” front-end construction will be distributed to front-ending parties (County and/or private developers) in an equitable fashion. Small balances will be paid out in priority to optimize efficient administration.

Guiding Principle

Funds drawn from the offsite levy reserve to pay down **“qualified” front-end** obligations will be pro-rated across all outstanding loan balances.

Repayments occur once per annum.

When an amount owed on a “qualified” front-ending obligation is less than \$50,000, the amount due will be paid out in its entirety.

The following outlines the administrative processes that will be used when reserve payments are allocated to the repay “qualified” front-end obligations.

Repayment of “Qualified” Debts	Rationale
<p>Payments on Amounts will be Pro-rated on All Balances Due – The County will determine the amount of funding to be applied to the pay down of front ending obligations for “qualified” balances. Such funding will be pro-rated across all debts and paid once per annum.</p> <p>For example, Front-ending Party A is owed \$100,000 and Front-ending Party B is owed \$200,000. Together they are owed \$300,000. If the County determines that there are \$60,000 available for repayment, Party A would receive \$20,000 ($\\$100,000 / \\$300,000 \times \\$60,000$), and Party B would receive \$40,000 ($\\$200,000 / \\$300,000 \times \\$60,000$).</p>	<p>The County will determine the amount of offsite levy reserve funding to be applied against debt draw-downs.</p> <p>This amount will be distributed equitably to all debts, County and private developer alike. This ensures all debtors share in the cash flow regardless of the timing or size of front-ending obligations, thereby removing disincentives to front-ending.</p>
<p>b) Payments on Small Amounts – When the balance of a “qualified” front-end</p>	<p>Small outstanding balances will be paid out in priority to reduce the administrative efforts</p>

Repayment of “Qualified” Debts	Rationale
obligation falls below \$50,000, the balance is paid out in priority in its entirety.	associated with these amounts.