

**BOARD OF COUNTY COMMISSIONERS  
INDIAN RIVER COUNTY, FLORIDA**



**COMMISSION AGENDA  
PUBLIC WORKSHOP**

**FRIDAY, MARCH 3, 2006 - 9:00 A.M.**

**County Commission Chamber  
County Administration Building  
1840 25<sup>th</sup> Street, Vero Beach, Florida, 32960-3365  
WWW.IRCGOV.COM**

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**COUNTY COMMISSIONERS**

<b>Arthur R. Neuberger, Chairman</b>	<b>District 2</b>	<b>Joseph A. Baird, County Administrator</b>
<b>Gary C. Wheeler, Vice Chairman</b>	<b>District 3</b>	<b>William G. Collins II, County Attorney</b>
<b>Sandra L. Bowden</b>	<b>District 5</b>	<b>Kimberly Massung, Executive Aide to BCC</b>
<b>Wesley S. Davis</b>	<b>District 1</b>	<b>Jeffrey K. Barton, Clerk to the Board</b>
<b>Thomas S. Lowther</b>	<b>District 4</b>	

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- 1. CALL TO ORDER** **9:00 A.M.**
  - 2. INVOCATION** Stan Boling - Planning Director
  - 3. PLEDGE OF ALLEGIANCE** Commissioner Gary C. Wheeler
  - 4. COMMUNITY DEVELOPMENT**  
Proposed Proportionate Share Ordinance. Ordinance allowing developers to enter into agreements to improve roads and/or contribute toward road improvements and obtain concurrency (memorandum dated February 23, 2006)
  - 5. QUESTIONS AND COMMENTS FROM BOARD MEMBERS**
  - 6. PUBLIC COMMENTS**
  - 7. ADJOURNMENT**

NOTICE: All Proceedings before this Board are electronically recorded. Any person who decides to appeal any action taken by the Board at these meetings will need a record of the proceedings and for such purpose may need to ensure that a verbatim record of the proceedings is made. Upon the request of any party to the proceedings, individuals testifying during a hearing will be sworn in. Any party to the proceedings will be granted the opportunity to cross-examine any individual testifying during a hearing upon request. Anyone with a disability requiring accommodation to attend this meeting should contact the Indian River County General Services Director at (772) 226-1223 at least forty-eight (48) hours prior to the meeting.

~~CONFIDENTIAL~~

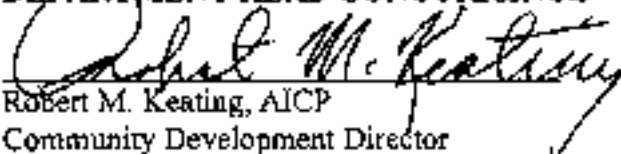
INDIAN RIVER COUNTY, FLORIDA

MEMORANDUM

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TO: Honorable Board of County Commissioners

DEPARTMENT HEAD CONCURRENCE

  
Robert M. Keating, AICP  
Community Development Director

FROM: Sasan Rohani, AICP *S.R.*  
Chief, Long-Range Planning

DATE: February 23, 2006

SUBJECT: Consideration of Proposed Proportionate Fair Share Ordinance Amendments to  
LDR Chapter 910, Concurrency Management System

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It is requested that the data herein presented be reviewed by the Board of County Commissioners at its workshop meeting of March 3, 2006.

BACKGROUND

• **Indian River County's Concurrency Management System**

Florida Statutes Chapter 163 requires local governments to have a concurrency management system to generally ensure "... that public facilities and services needed to support development shall be available concurrent with the impacts of such development". In accordance with FS 163, Indian River County has had a concurrency management system (CMS) in place since 1990. While the system is generally addressed in the Capital Improvements Element and the Water and Sewer Sub-elements of the Comprehensive Plan, the CMS is specifically established through LDR Chapter 910, Concurrency Management System. As structured, the CMS tracks the supply (capacity), demand, and levels of service for roads, potable water, sanitary sewer, solid waste, drainage, and parks. Overall, the regulations of Chapter 910 address issues of vesting, types of concurrency review, timing of impact fee payment, and other aspects of administering concurrency.

Since 1990, the Chapter 910 regulations have been changed a few times. These changes relate primarily to when a developer is required to pay impact fees and when a developer is required to vest (reserve) capacity for his development project. These vesting issues continue to be discussed, and will be reviewed by the PSAC at future meetings.

In the 2005 legislative session, Senate Bill 360 (SB 360) was adopted. That bill addressed many growth management issues (see attachment #1), including the principle of proportionate fair share mitigation for transportation concurrency impacts. Along with various other mandates, the law requires that all local governments amend their concurrency management ordinances to allow for proportionate fair share mitigation on deficient roadway segments.

According to SB 360, local governments must adopt proportionate fair share ordinances by December 1, 2006. The law also directed the Florida Department of Transportation (FDOT) to develop a model proportionate fair share ordinance by December 1, 2005. That model ordinance is available for local governments to use. Copies of the model ordinance are available in the planning division for interested parties.

Using the model ordinance and existing concurrency regulations, staff has developed a proportionate fair share ordinance for Indian River County. Adopting the ordinance will satisfy the county's obligation under SB 360 and provide a mechanism that can be used to resolve some concurrency and infrastructure problems. On March 9, 2006, the Planning and Zoning Commission is to consider the proposed ordinance and is to make a recommendation the BCC to adopt, adopt with changes, or reject the ordinance.

On January 19, 2006, the Professional Services Advisory Committee voted 4 to 3 to recommend that the Board of County Commissioners approve the proposed revisions to Chapter 910, Concurrency Management System.

## ANALYSIS

As required by SB 360, FDOT developed a model proportionate fair share mitigation ordinance. Consistent with SB 360, the state's proportionate fair share ordinance allows developers to satisfy project transportation concurrency requirements through proportionate fair share mitigation under certain conditions. As structured, the proposed changes to LDR Chapter 910 generally follow the FDOT model ordinance.

Some of the major components of the proportionate share changes to Chapter 910 include:

- In order to use the proportionate fair share allowance, a developer whose project will impact a deficient roadway segment must enter into an agreement to pay his proportionate fair share of the cost of an improvement project to correct the deficient segment.
- The proportionate fair share program may be used only if the needed improvement project is included in the county's 5-year schedule of capital improvements, or is to be added to the 5 year CIP in the next CIE update.
- The proportionate fair share mitigation amount will be calculated based on the project's impact on deficient roadway segments and the cost of the roadway expansion improvements needed to

bring the roadway segments to the adopted level of service standard. The amount paid through the proportionate fair share mitigation program shall be applied as a credit toward the project's transportation impact fee liabilities for the roadways subject to proportionate fair share agreement.

To incorporate the proportionate fair share mitigation program into the county's concurrency management system, section 910.09(4)(a) of the LDRs must be amended, and a new section 910.12 must be added. Also, section 910.09(4)(a) of the county LDRs must be changed to make this section consistent with the recently adopted comprehensive plan Capital Improvements Element.

On the attached draft of the proposed amendments to Chapter 910, additions are shown as **bold underline**, and deletions are shown as ~~strike-thru~~.

### **RECOMMENDATION**

Staff recommends that the Board of County Commissioners review the proposed LDR amendments to Chapter 910, Concurrency Management System, obtain public input during the March 3, 2006 workshop, and provide direction and comments to staff.

### **ATTACHMENTS:**

1. Summary of SB 360
2. Proposed Chapter 910 Amendments
3. Model Proportionate Fair Share Ordinance



## A Pay As You Grow Plan For Florida's Future

### SCHOOLS

- Requires school concurrency by December 2006. Currently, school concurrency is optional and is only implemented by Palm Beach County.
- Local governments that fail to implement school concurrency are prohibited from adopting plan amendments that increase residential density.
- Allows waivers for smaller, lesser-impacted counties and municipalities.
- The local government and school board jointly establish a level of service standard. Concurrency is required initially at districtwide levels. Within 5 years application must be less than districtwide level.
- School facilities must be in place or under construction within 3 years following approval of an application for site plan or final subdivision.
- Allows for proportionate share mitigation by developers.
- Provides \$113.4 million for fiscal year 2005-06 to fund school construction and \$75 million thereafter.

### TRANSPORTATION

- Changes the 3-year and 5-year transportation concurrency definition to three years from approval of building permit.
- Transportation concurrency exception areas must be examined and refined to adequately address mobility within the defined area - typically urban infill and downtown revitalization areas.
- Strengthens protection of the Strategic Intermodal System (SIS) within a transportation concurrency exception area and other exception areas.
- DOT will establish level of service standards for SIS and regional roads funded by a new Transportation Regional Incentive Grant Program.
- Allows for proportionate fair share mitigation by developers.
- Provides \$1.1 billion for fiscal year 2005-06 to fund priority transportation projects and \$641.7 million thereafter.

### WATER

- Better coordinates local government water supply plans with water management districts' regional water supply plans.
- Establishes a closer link between water supply and development decisions by requiring adequate water supplies no later than certificate of occupancy.
- Additionally, SB 444, an act relating to water resource protection and sustainability, provides for alternative water supply development funding, more comprehensive regional water supply plans and enhanced consumptive use permitting.
- Provides \$200 million for fiscal year 2005-06 to fund priority water projects and \$100 million thereafter.

**A Pay As You Grow Plan  
For Florida's Future**

**CAPITAL IMPROVEMENTS ELEMENT**

- Must be updated annually to reflect planned capital projects and projected revenues to meet level of service standards.
- Must be financially feasible.
- Must be reviewed by DCA for compliance
- Plan map amendments are prohibited if Capital Improvements Element is not in annually updated and submitted to DCA for review.

**REGULATORY RELIEF**

- Comprehensive plan amendment process is streamlined and greater flexibility is provided in approved urban service boundaries, urban infill and redevelopment areas, rural land stewardship areas and in areas declared rural areas of critical economic concern.
- Comprehensive plan amendments related to the construction of certain affordable housing units are streamlined.
- Amendments that change residential development but do not increase density can be accomplished under small-scale amendment changes.
- Relief from Development of Regional Impact Review is provided in approved urban service boundaries, urban infill and redevelopment areas, and rural land stewardship areas if mitigation of impacts on state and regional transportation facilities is addressed through a binding agreement with adjacent jurisdictions.

**COMMISSIONS AND STUDIES**

- **Century Commission for a Sustainable Florida – standing body of 15 members**
  - Envision and plan Florida's future with an eye towards both 25-year and 50-year horizons and an emphasis on identifying exemplary community-building ideas
  - Develop and recommend policies, plans, action steps and strategies to assist in achieving the vision of thoughtful growth
  - Address increasing population while maintaining the natural, historical, cultural and manmade qualities that comprise Florida
  - Focus on essential state interests
  - Requires the Commission to prepare an annual report with findings and recommendations for the Governor and Legislature. The Legislature is directed to create a select committee to review the report.
  - Requires DCA to provide Commission staffing
- **Florida Impact Fee Review Task Force – 15 member body; report due February 2006**
  - Survey and review current use of impact fees
  - Recommend if statutory direction is needed on methodology, payments, accounting, and other issues relating to impact fees
- **Regional Boundary Study – OPPACA report due January 15, 2006**
  - Recommend adjustments to boundaries of the regional planning councils, water management districts, and the Department of Transportation districts to be more coterminous

AN ORDINANCE OF INDIAN RIVER COUNTY, FLORIDA CONCERNING AMENDMENTS TO LAND DEVELOPMENT REGULATIONS (LDRs); PROVIDING FINDINGS; PROVIDING FOR AMENDMENTS TO CHAPTER 910, CONCURRENCY MANAGEMENT SYSTEM, BY AMENDING TABLE OF CONTENTS, BY AMENDING DETERMINATION OF CONCURRENCY, BY AMENDING DETERMINATION OF CONCURRENCY COMPONENTS SECTION 910.09(4)(A). BY INCREASING POST BUILDING PERMIT ROAD CONSTRUCTION COMMENCEMENT DATE FROM 2 YEARS FROM CERTIFICATE OF OCCUPANCY TO 3 YEARS OF FIRST BUILDING PERMIT; BY ADDING NEW PROPORTIONATE FAIR SHARE MITIGATION SECTION; BY PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS; CODIFICATION; SEVERABILITY; AND EFFECTIVE DATE.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA THAT THE INDIAN RIVER COUNTY LAND DEVELOPMENT REGULATIONS (LDRS) AND TITLE X REGULATIONS BE AMENDED AS FOLLOWS:

**PART I: FINDINGS.**

It is hereby ascertained, determined, and declared that:

- A. Pursuant to Article VIII, Section 1 of the Florida Constitution, and Sections 163.3202, 125.01, and 125.66, Florida Statutes, the Board has all powers of local self-government and such power may be exercised by the enactment of County ordinances.
- B. The proportionate fair-share program provides a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors.

**PART II: AMENDMENTS TO CHAPTER 910, CONCURRENCY MANAGEMENT SYSTEM, OF INDIAN RIVER COUNTY LAND DEVELOPMENT REGULATIONS ORDINANCE.**

**1. Update of Chapter 910, Concurrency Management System, Table of Contents**

Sec 910.01.	Title, background and intent.
Sec. 910.02.	Certificate of concurrency determination.
Sec. 910.03.	No taking or abrogation of vested rights
Sec. 910.04.	Definitions.
Sec. 910.05.	Interpretation and administration of the Indian River County Concurrency Management System
Sec. 910.06.	Establishment of fee for concurrency review.
Sec. 910.07	Development review system.

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Sec. 910.08.	Determination of concurrency, generally.
Sec. 910.09.	Determination of concurrency, components.
Sec. 910.10	Level of service standards established in the comprehensive plan.
Sec. 910.11	Determination of concurrency specifically.
910.12	Proportionate Fair-Share Mitigation
Sec. 910.40, 13	Appeal process and vested rights determination.
Sec. 910.44, 14	Assignability and transferability

2. Increase Post-CO. Building Permit Road Construction Commencement Date from 2 years to 3 years and to make Chapter 910 consistent with the adopted CIE.

IDR Section 910.09(4)(a) is hereby amended, to read as follows:

(4) *Transportation.*

(a) *Transportation supply (capacity).* Transportation supply ~~must~~ shall be determined on a segment by segment basis. For concurrency purposes, all segments on the county's thoroughfare plan ~~must~~ shall be considered. Capacity for segments will be based either on FDOT's generalized capacity tables or individual segment capacity studies approved by the public works director pursuant to the criteria specified in Chapter 952, Traffic. Transportation supply for each segment is:

1. The segment's existing peak hour, peak season, peak direction capacity; or
2. The segment's new roadway capacity if facility expansion for the segment is proposed and if:
  - a. At the time the development order or permit is issued, the facility expansion is in place or under construction; or
  - b. A development order or permit is issued subject to a condition that the facility expansion needed to serve the new development is included in the county's adopted five-year schedule of capital improvements and is scheduled to be in place or under actual construction not more than three (3) years after issuance of the project's first building permit or its functional equivalent. For purposes of this section, the county may recognize and include transportation projects included in the first three years of the adopted Florida Department of Transportation five year work program. In order to apply

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this provision to a facility expansion project, the Capital Improvements Element must include the following policies:

- i. The estimated date of commencement of actual project construction and the estimated date of project completion (for Indian River County, this is included in policy 5.11 of the county's CIE and within Appendix B of the county's CIE).
- ii. A provision that a plan amendment is required to eliminate, defer, or delay construction of any road or mass transit facility or service which is needed to maintain the adopted level of service standard and which is listed in the five-year schedule of capital improvements (for Indian River County, this is included in Policy 1.2 of the county's CIE); or
- b. At the time a development order or permit is issued, the facility is the subject of a binding executed agreement which requires the facility to be in place or under actual construction no more than three (3) years after the issuance of the project's first building permit or its functional equivalent; or
- c. At the time a development order or permit is issued, the facility is guaranteed in an enforceable development agreement, pursuant to Section 163.3220, F.S., or an agreement or development order issued pursuant to Chapter 380, F.S., to be in place or under actual construction not more than three years after issuance of a building permit or its functional equivalent. [Section 163.3180(2)(c), F.S.]; or
- ~~e. The county grants conditional project approval such that a development order or permit is issued subject to the conditions that the transportation facilities needed to serve the new development are included in Capital Improvements Element Table 13.24, the county's adopted five year schedule of priority transportation capital improvements, and are scheduled to be in place or under actual construction not more than two (2) years after issuance of a certificate of occupancy for the development. By reference, the schedule of capital improvements recognizes and includes transportation projects included in the first three (3) years of the applicable, adopted Florida Department of Transportation five year work program. Table 13.24 also includes the estimated date for the commencement of actual construction and the estimated date of completion for each of the transportation capital improvements. Where a development order or permit is issued~~

~~pursuant to the provisions of this section, the development order or permit shall include a condition that a comprehensive plan amendment will be required to eliminate, defer, or delay construction of any transportation facility improvement which is listed in the comprehensive plan's five-year schedule of capital improvements, and which is needed to maintain the adopted level of service standard for roadway segments impacted by the project. In approving a development permit, the county may impose conditions requiring that transportation facilities necessary to serve the project be in place or under construction by a date certain which shall not exceed two (2) years from the issuance of a certificate of occupancy; or~~

~~c. At the time a development order or permit is issued, the necessary transportation facilities are the subject of a binding executed agreement which requires the necessary transportation facilities to serve the new development to be in place or under construction not more than two (2) years after the issuance of a certificate of occupancy for the development. In approving a binding executed agreement, the county may impose conditions requiring that transportation facilities necessary to serve the project be in place or under construction by a date certain which shall not exceed two (2) years from the issuance of a certificate of occupancy; or~~

~~d. At the time a development order or permit is issued, the necessary transportation facilities are guaranteed in an enforceable development agreement, pursuant to Section 163.3220, F.S., or an agreement or development order issued pursuant to Chapter 380, F.S., to be in place or under actual construction not more than two (2) years after issuance of a certificate of occupancy for the development. In approving a development agreement, the county may impose conditions requiring that transportation facilities necessary to serve the project be in place or under construction by a date certain which shall not exceed two (2) years from the issuance of a certificate of occupancy.~~

**3. The segment's new roadway capacity if facility expansion for the segment is the subject of a proportionate fair-share agreement. In such case, the segment capacity increase reflected in the proportionate fair share agreement shall be available only to the party or parties to the proportionate fair share agreement.**

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3. New Proportionate Fair-Share Mitigation Section LDR Section 910.12.(1) Purpose and Intent

The purpose of this section is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, to be known as the Proportionate Fair-Share Program, as required by and in a manner consistent with §163.3180(16), F.S.

(2) Findings

(a) The Indian River County Commission finds and determines that transportation capacity is a commodity that has a value to both the public and private sectors and that the County Proportionate Fair-Share Program:

1. Provides a method by which the impacts of development on transportation facilities can be mitigated by the cooperative and creative efforts of the public and private sectors;
2. Allows developers to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their proportionate fair share of the cost of expanding or improving a transportation facility;
3. Contributes to the provision of adequate public facilities for future growth and promotes a strong commitment to comprehensive facilities planning, thereby reducing the potential for moratoria or unacceptable levels of traffic congestion; and
4. Maximizes the use of public funds for adequate transportation facilities to serve future growth, and may, in certain circumstances, allow the County to expedite transportation improvements by supplementing funds currently allocated for transportation improvements in the Capital Improvements Element.

(3) Applicability

The Proportionate Fair-Share Program shall apply to any development project in Indian River County where the project's traffic impact study or the county traffic

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engineer determines that there is insufficient capacity on one or more segments to satisfy the development project's transportation concurrency requirements. The Proportionate Fair-Share Program does not apply to developments of regional impact (DRIs) using proportionate fair share under §163.3180(12), F.S., or to developments exempted from concurrency as provided in this concurrency chapter.

**(4) General Requirements**

**(a) An applicant whose project meets the criteria of Section 910.12(3) may choose to satisfy transportation concurrency requirements 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 County Capital Improvements Element (CIE) includes one or more transportation improvements that, upon completion, will provide sufficient capacity for the deficient segments to accommodate the traffic generated by the proposed development.**

**(b) The County may choose to allow an applicant to satisfy transportation concurrency for a deficient segment through the Proportionate Fair-Share Program by contributing to an improvement that, upon completion, will create additional capacity on the deficient segment sufficient to accommodate the additional traffic generated by the applicant's proposed development even if the improvement project for the deficient segment is not contained in the 5-year schedule of capital improvements in the CIE where:**

- The Board of County Commissioners holds an advertised public hearing to consider the proportionate share agreement and corresponding future changes to the 5-year CIE, and**
- The County adopts, by resolution, a commitment to add the improvement to the 5-year schedule of capital improvements in the CIE no later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be reviewed by the Board of County Commissioners, and determined to be financially feasible pursuant to §163.3180(16)(b)1, F.S., consistent with the comprehensive plan, and in compliance with the provisions of this ordinance. Financial feasibility for this section means that additional contributions, payments or revenue sources to fund the improvement**

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project are reasonably anticipated during a period not to exceed 10 years.

- (c) Any improvement project proposed to meet a developer's fair-share obligation must meet design standards of the County for locally maintained roadways and those of the Florida Department of Transportation (FDOT) for the state highway system.

(5) Application Process

- (a) Upon identification of a lack of capacity to satisfy transportation concurrency, an applicant may choose to satisfy transportation concurrency through the proportionate fair-share program pursuant to the requirements of section 910.12(4).
- (b) Prior to submitting an application for a proportionate fair-share agreement, the applicant shall attend a pre-application meeting with planning and traffic engineering staff to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. If the impacted facility is on the Strategic Intermodal System (SIS), then the Florida Department of Transportation (FDOT) will be notified and invited to participate in the pre-application meeting.
- (c) Eligible applicants shall submit an application to the County that includes an application fee as established by resolution and the following:
1. Name, address, and phone number of owner(s), developer and agent;
  2. Property location, including parcel identification numbers;
  3. Legal description and survey of property;
  4. Project description, including type, intensity, and amount of development;
  5. Phasing schedule, if applicable;
  6. Description of requested proportionate fair-share mitigation method(s); and
  7. Copy of concurrency application.
  8. Copy of the project's Traffic Impact Statement (TIS) or Traffic Impact Analysis (TIA)
  9. Location map depicting the site and affected road network.

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- (d) Within 10 business days, planning staff shall review the application and certify that the application is sufficient and complete. If an application is determined to be insufficient, incomplete, or inconsistent with the general requirements of the proportionate fair-share program as indicated in section 4 910.12(4), then the applicant shall be notified in writing of the reasons for such deficiencies within 10 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 shall be deemed abandoned. The Board of County Commissioners 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 the extension and has taken reasonable steps to effect a cure.
- (e) Pursuant to §163.3180(16)(c), F.S., proposed proportionate fair-share mitigation for development impacts to facilities on the Strategic Intermodal System requires the concurrence of the Florida Department of Transportation (FDOT). If an SIS facility is proposed for proportionate share mitigation, the applicant shall submit evidence of an agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.
- (f) When an application is deemed sufficient, complete, and eligible, a proposed proportionate fair-share obligation and binding agreement will be prepared by the County or the applicant with direction from the County and delivered to the appropriate parties for review, including a copy to the FDOT for any proposed proportionate fair-share mitigation on a Strategic Intermodal System (SIS) facility, no later than 60 days from the date at which the application was determined to be sufficient and no fewer than 14 days prior to the Board of County Commissioners meeting when the agreement will be considered.
- (g) The County shall notify the applicant regarding the date of the Board of County Commissioners meeting at which the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the Board of County Commissioners.

(6) Determining Proportionate Fair-Share Obligation

- (a) Proportionate fair-share mitigation for concurrency impacts may include, separately or collectively, private funds, contributions of land, and construction and contribution of facilities as provided in §163.3180 (16)(c), F.S.
- (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 as provided in §163.3180 (16)(c), F.S.

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(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:

The cumulative number of peak hour, peak direction trips from the complete buildout of the proposed development, or buildout of the stage or phase being approved, that are assigned to the proportionate share program segment divided by the change in the peak hour directional maximum service volume (MSV) of the proportionate share program segment resulting from construction of the proportionate share program improvement, multiplied by the anticipated construction cost of the proportionate share project in the year that construction will occur.

OR

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

(Note: In the context of the formula, the term "cumulative" does not include a previously approved stage or phase of a development.)

Where:

$\sum_i =$  Sum of all deficient links proposed for proportionate fair-share mitigation for a project.

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 concurrency management system;

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

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

(d) For purposes of determining proportionate fair-share obligations, the County shall determine improvement costs based upon the actual and/or anticipated costs of the improvement in the year that construction will occur. These costs will be determined by the county's public works department.

(e) If the County has accepted an improvement project proposed by the applicant, then the value of the improvement shall be based on an engineer's certified cost estimate provided by the applicant or other method approved by the county's public works director.

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- (f) If the County 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 County property appraiser or, at the option of the applicant, by fair market value established by an independent appraisal approved by the County and at no expense to the County. Said appraisal shall assume no approved development plan for the site. The applicant shall supply a drawing and legal description of the land and a certificate of title or title search of the land to the County at no expense to the County. If the estimated value of the right-of-way dedication proposed by the applicant (based on a County-approved appraisal) is less than the County estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference. If the estimated value of the right-of-way dedication proposed by the applicant (based on a County-approved appraisal) is more than the county estimated total proportionate fair-share obligation for the development, then the county will give the applicant traffic impact fee credit for the difference.

(7) Impact Fee Credit for Proportionate Fair-Share Mitigation

- (a) Proportionate fair-share mitigation payments for a development project shall be applied as a credit toward the traffic impact fees assessed to that development project.
- (b) Impact fee credits for a proportionate fair-share contribution will be determined when the traffic impact fee obligation is calculated for the proposed development. 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 must pay the remaining impact fee amount.
- (c) A proportionate fair-share contribution is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any traffic impact fee credit based upon proportionate fair-share contributions for a proposed development may not be transferred to any other location.
- (d) The amount of traffic impact fee (TIF) credit for a proportionate fair-share contribution will be determined based on the following formula:

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For Community Development/Pres/ComDev/CRUI/ORDINANCE/2006/0000-\_\_\_\_\_ CHAPTER 910 OMS Proportionate Share R77



ORDINANCE 2006-\_\_\_\_\_

TIF Credit = (Proportionate fair share impacted roadways' VMT/Total Project VMT) \* Total Project Traffic Impact Fee Liability

Where:

VMT (Vehicle miles of travel on a link) = (length of link \* number of trips assigned to that link)

Total Project VMT = Total vehicle miles of travel on all links impacted by proportionate fair share project

(e) A proportionate fair share impact fee credit shall be applied consistent with the following formula:

Applicant payment - (Total project traffic impact fees assessed) - (Proportionate Share Payment) = TIF CREDIT

(8) Proportionate Fair-Share Agreements

(a) Upon executing a proportionate fair-share agreement (Agreement) and satisfying other concurrency requirements, an applicant shall receive a CCIS (or its successor upon amendment of initial concurrency regulations) County certificate of concurrency approval. Should the applicant fail to apply for building permits within the timeframe provided for in the county concurrency certificate, then the project's concurrency vesting shall expire, and the applicant shall be required to reapply. Once a proportionate share payment for a project is made and other impact fees for the project are paid, no refunds shall be given. All payments, however, shall run with the land.

(b) Payment of the proportionate fair-share contribution for a project and payment of other impact fees assessed to that project shall be due and must be paid prior to the effective date of the proportionate fair share agreement. The effective date shall be specified in the agreement and shall not be more than one (1) year beyond the date the agreement is approved by the Board.

(c) All developer improvements accepted as proportionate fair share contributions must be completed within 3 (three) years of the issuance of the first building permit for the project which is the subject of the proportionate fair share

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CHAPTER 910 CMS Proportionatshare RTF

agreement. Prior to the effective date of the proportionate fair share agreement, the applicant shall enter into a binding agreement that is accompanied by a security instrument that is sufficient to ensure the completion of all required improvements. The security instrument shall conform to the subdivision construction security requirements of 913.10(1)(D). It is the intent of this section that any required improvements be completed within 3 (three) years of the issuance of the first building permit for the project which is the subject of the proportionate fair share agreement.

(d) Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement must occur prior to the effective date of the proportionate fair share agreement.

(e) Any requested change to a development project subsequent to issuance of a development order ~~may~~ shall be subject to additional proportionate fair-share contributions to the extent the change would increase project costs or generate additional traffic that would require mitigation.

(f) Applicants may withdraw from a proportionate fair-share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs to the County are nonrefundable.

(g) The County may enter into proportionate fair-share agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.

(9) Appropriation of Fair-Share Revenues

(a) Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the County capital improvements element, 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).

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- (b) In the event a scheduled facility improvement is removed from the CIF, then the proportionate fair share revenues collected for its construction may be applied toward the construction of another alternative improvements within that same corridor or sector where the alternative improvement will mitigate the impacts of the development projects on the congested roadway(s) for which the original of-the proportionate fair share contributing development-projects contribution was made.**

**4. Renumbering LDR Sections 910.12 and 910.13 to Section 910.13 and 910.14**

**Section 910.13 910.13. Appeal process and vested rights determination.**

(1) *Purpose and intent.* This section is established to provide a mechanism for the hearing and decision of appeals of decisions or actions by the community development director or his designee on concurrency determinations and vested rights determinations.

(2) *Authorization.*

(a) The board of county commissioners of Indian River County is hereby authorized to:

1. Hear and decide appeals when it is alleged that there is an error in any order, requirement, decision, or determination made by the community development director or his designee in the concurrency determination.
2. Hear and decide appeals when it is alleged that there are vested rights.

(b) Upon appeal and in conformance with land development regulations, the board of county commissioners in exercising its powers may reverse or affirm wholly or partly, or may modify the order, requirement, decision, interpretation, application, or determination of the community development director or his designee.

(c) A majority vote of a quorum of all members of the board of county commissioners shall be necessary to reverse any order, requirement, decision, interpretation, application or determination of the community development director or his designee.

(3) *Appeal procedures.*

(a) The applicant, or any other person(s) whose substantial interests may be affected or determined in the proceeding may initiate an appeal.

(b) Appeals must be filed within fifteen (15) days following action or determination by the respective official.

(c) An appeal must be filed with the community development department on an

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application form prescribed by the county within the specified time limit. All such appeals shall recite the reasons why such an appeal is being taken.

The appeal shall be accompanied by a fee to be determined by resolution of the board of county commissioners. The community development director shall schedule the hearing of the appeal in front of the board of county commissioners within thirty (30) days following receipt of the application.

- (d) The community development director must review the appeal and prepare a report which contains the department's findings and recommendation.
- (e) All appeals shall be heard at a meeting of the board of county commissioners. All interested parties shall have a right to appear before the board of county commissioners and address specific concerns directly related to the appeal. Any person may appear by agent or attorney. All such hearings shall be conducted in compliance with the rules of procedure for the board of county commissioners. The time and place scheduled for hearing shall be given to the applicant in writing.
- (f) The final decision of the board of county commissioners must be reached within sixty (60) days following the receipt of the appeal by the community development department director.
- (g) The same procedure identified in section 910.12(3) will be applicable to the vested rights determination. The criteria identified in section 910.03 will be utilized for the vested rights determination.

(Ord. No. 90-16, § 1, 9-11-90)

**Section 910.13 ~~910.14~~. Assignability and transferability.**

(a) A certificate of concurrency determination shall run with the land and shall transfer to a successor in interest to the original applicant upon written disclosure of such transfer to the community development department as to the identity of the successor. The disclosure shall provide the full legal name of the person or business entity acquiring the interest in the property; the nature of the interest; the address of the principal place of business of the successor; telephone number, name and address of registered agent if corporation; name, address and title of officers or agents authorized to transact business with the county, together with proof of authorization if other than president or vice-president or general partner; and the name and address of any new design professional for the project if applicable. A transferee applicant must also assume in writing on form acceptable to the county attorney all commitments, responsibilities, and obligations of the prior applicant, including all special conditions of the concurrency determination certificate.

(b) Failure to make the required disclosure and assumption shall suspend a concurrency determination certificate until such time as proper disclosure and assumption are made.

(c) Transfer of the certificate of concurrency determination shall not toll or modify the

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calculation of time limits set forth in the concurrency determination certificate. Following any transfer, such time limits shall be calculated as if the transfer had not occurred.

(d) A concurrency determination certificate shall not be assignable or transferable to other developments.

(Ord. No. 90-16, § 1, 9-11-90)

**PART 10: GENERAL PROVISIONS.**

**SECTION ONE: SEVERABILITY.**

If any clause, section or provision of this Ordinance shall be declared by a court of competent jurisdiction to be unconstitutional or invalid for any cause or reason, the same shall be eliminated from this Ordinance and the remaining portion of this Ordinance shall be in full force and effect and be as valid as if such invalid portion thereof had not been incorporated therein.

**SECTION TWO: REPEAL OF CONFLICTING ORDINANCES.**

The provisions of any other Indian River County ordinance that are inconsistent or in conflict with the provisions of this Ordinance are repealed to the extent of such inconsistency or conflict.

**SECTION THREE: INCLUSION IN THE CODE OF LAWS AND ORDINANCES.**

The provisions of this Ordinance shall become and be made a part of the Code of Laws and Ordinances of Indian River County, Florida. The sections of the Ordinance may be renumbered or relettered to accomplish such, and the word "ordinance" may be changed to "section", "article", or any other appropriate word.

**SECTION FOUR: EFFECTIVE DATE.**

This Ordinance shall take effect immediately upon filing with the Department of State.

Approved and adopted by the Board of County Commissioners of Indian River County, Florida, on this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

This ordinance was advertised in the Press-Journal on the \_\_\_\_\_ day of \_\_\_\_\_ 2006, for a public hearing to be held on the \_\_\_\_\_ day of \_\_\_\_\_, 2006, at which time it was moved for adoption by Commissioner \_\_\_\_\_, seconded by Commissioner \_\_\_\_\_, and adopted by the following vote:

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ORDINANCE 2006-\_\_\_\_\_

Chairman Arthur R. Neuberger	_____
Vice Chairman Gary C. Wheeler	_____
Commissioner Sandra L. Bowden	_____
Commissioner Thomas S. Lowther	_____
Commissioner Wesley S. Davis	_____

BOARD OF COUNTY COMMISSIONERS  
OF INDIAN RIVER COUNTY

BY: \_\_\_\_\_  
Arthur R. Neuberger, Chairman

ATTEST BY: \_\_\_\_\_  
Jeffrey K. Barton, Clerk

This ordinance was filed with the Department of State on the following date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

William G. Collins II, County Attorney

APPROVED AS TO PLANNING MATTERS

\_\_\_\_\_  
Robert M. Keating, AICP, Community Development Director

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December 1, 2005

The Honorable Jeb Bush  
Governor  
State of Florida  
The Capitol  
Tallahassee, Florida 32399

The Honorable Tom Lee  
Senate President  
409 The Capitol  
Tallahassee, Florida 32399

The Honorable Allan Bense  
House Speaker  
420 The Capitol  
Tallahassee, Florida 32399

Dear Governor Bush, President Lee, Speaker Bense:

In accordance with Chapter 2005-290 Laws of Florida which amended Florida's growth management statutes, I am pleased to transmit a workshop draft of a Model Proportionate Fair-Share Ordinance with methodologies for assessing proportionate fair-share mitigation options. This model ordinance is designed to be a technical assistance product that local governments can use to incorporate proportionate fair-share methodologies into their transportation concurrency management systems by December 1, 2006.

The model ordinance is the result of a collaborative effort between the Department of Transportation, the Center for Urban Transportation Research (CUTR), a Technical Advisory Committee comprised of transportation and development professionals with experience in transportation concurrency management, and a cross-section of representatives of the development community in Florida. In addition, an interactive web site was maintained to inform interested parties on the progress of the development of the ordinance and to seek their input and feedback.

A statewide informative workshop will be sponsored in partnership with the Florida League of Cities and the Florida Association of Counties in mid-December. Additional feedback will be taken at this time prior to finalizing the model ordinance on January 1, 2006. The Departments of Transportation and Community Affairs are also planning to hold technical workshops regarding issues and strategies relating to the implementation of the ordinance during the first quarter of 2006. These workshops will also address closely related issues regarding proportionate fair-share options and the relationship to the development of local government's capital improvement program.

**ATTACHMENT 3**

Governor Bush, President Lee, Speaker Bense  
December 1, 2005  
Page Two

We believe that this model ordinance will provide a useful tool for local governments as they implement the transportation concurrency provisions of this landmark legislation. If you have any questions, please contact me or Bob Romig, Director of the Office of Policy Planning at 414-4800 or by e-mail at robert.romig@dot.state.fl.us.

Sincerely,  
  
Denver Stotler, Jr., P.E.  
Secretary

DS/am

Attachment:

cc: Senator Michael Bennett, Chairman, Senate Committee on Community Affairs  
Senator Jim Sebesta, Chairman, Senate Committee on Transportation  
Representative Randy Johnson, Chairman, House Committee on Growth Management  
Representative Ray Sansom, Chairman, House Committee on Transportation



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**Model Ordinance for Proportionate Fair-Share  
Mitigation of Development Impacts  
on Transportation Corridors**

**Workshop Edition**

December 2005



State of Florida  
Department of Transportation  
605 Suwannee Street  
Tallahassee, FL 32399  
FDOT Contract No. B10544; RPW0-21



Center for Urban Transportation Research  
University of South Florida, College of Engineering  
4202 E. Fowler Ave., CUT100  
Tampa, FL 33620-5375  
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*The opinions, findings, and conclusions expressed in this publication are those of the authors and not necessarily those of the State of Florida Department of Transportation.*

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## ACKNOWLEDGEMENTS

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## PREFACE

Concurrency is a growth management concept intended to ensure that the necessary public facilities and services are available concurrent with the impacts of development. To carry out transportation concurrency, local governments must define what constitutes an adequate level of service and measure whether the service needs of a new development outrun existing capacity and any scheduled improvements in the capital improvements element. If adequate capacity is not available, the local government cannot permit development unless certain conditions apply as provided for in statute, such as "de minimis" exemptions for developments having only minor impacts or concurrency exception areas to encourage infill and redevelopment.

The 2005 amendments to Florida's growth management legislation directed local governments to enact concurrency management ordinances by December 1, 2006 that allow for "proportionate share" contributions from developers toward concurrency requirements (see §163.3180(16), F.S., in Appendix A). The intent of the proportionate fair-share option is to provide applicants for development an opportunity to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their share of the cost of improving the impacted transportation facility.

The Florida Department of Transportation (FDOT) was directed to develop a model ordinance for proportionate fair-share contributions for use by local governments no later than December 1, 2005. This model proportionate fair-share ordinance is the result of a collaborative effort between the FDOT, the Center for Urban Transportation Research (CUTR), a Technical Advisory Committee comprised of transportation and development professionals with experience in concurrency management, and a cross section of Florida developers and their consultants.

It is necessary for a local government to have a concurrency management system in place prior to the adoption of a proportionate fair-share ordinance. The newly adopted proportionate fair-share requirements would not apply until a deficiency is identified through the local concurrency management system. Local governments that have yet to establish a concurrency management system will need to do so prior to implementing a proportionate fair-share mitigation program.

Proportionate fair-share programs must be consistent with local concurrency management requirements. The law permits local concurrency management systems to determine concurrency based on new capacity to be provided by planned road improvement projects up to the first three years of the capital improvement schedule. Local governments, at their option, may adopt more stringent standards that apply concurrency at an earlier stage. To the extent local governments have adopted more stringent standards, the proportionate fair-share ordinance must reflect a similar time period, thus providing for proportionate fair-share options in years 1, 2 or 3 (consistent with local provisions) of the 5-year capital improvement schedule.

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Proportionate fair-share contributions should not be confused with transportation impact fees. The primary difference is that the proportionate fair-share payment outlined in Section 163.3180(16), F.S., is intended as a means to address a specific transportation concurrency issue—a road segment or segments operating below the adopted level-of-service standard; whereas transportation impact fees are imposed on each new development to pay for that development's impact on the entire transportation system (as addressed by the local impact fee ordinance). The model ordinance addresses the need for local governments to provide transportation impact fee credit for proportionate fair-share contributions under certain conditions as required by Section 163.3180(16), F.S.

The model ordinance implements the provisions of Section 163.3180(16), F.S., which establishes conditions whereby developers may satisfy transportation concurrency requirements through proportionate fair-share contributions. It should be noted that the developer may elect to use these provisions if the transportation facilities or facility segments identified as mitigation for the development's traffic impacts are specifically identified for funding in the 5-year schedule of capital improvements in a local government's capital improvements element or in an adopted long-term concurrency management system.

Likewise, the local government may elect to allow a development to proceed through the proportionate fair-share program if the local government is willing to add the necessary transportation improvement project in the 5-year schedule of capital improvements in the next annual update of the capital improvements element (CIE). If the local government does not have sufficient funds to fully fund construction of a transportation improvement required by the concurrency management system, the local government and developer may still enter into a binding proportionate fair-share agreement authorizing the developer to construct that amount of development on which the proportionate fair share is calculated. In this latter case, the proportionate fair-share amount must be sufficient to pay for one or more improvements which will, in the opinion of the governmental entity or entities maintaining the transportation facilities, significantly benefit the impacted transportation system.

Local capital improvement plans needed to achieve and maintain adopted level of service standards over the 5 year period and long term concurrency management systems must be "financially feasible" as defined in Section 163.3164(32), F.S. Local governments choosing to add a project to their 5-year capital improvements schedule must demonstrate that additional contributions, payments or funding sources are reasonably anticipated to fully fund the project. Updates to the CIE that reflect proportionate share contributions will still meet financial feasibility requirements if additional developer contributions and other funding sources are reasonably anticipated "to fully mitigate impacts on the transportation facilities" at least within a 10-year period.

The definition of financial feasibility in statute further indicates that "the requirement that level-of-service standards be achieved and maintained shall not apply if the proportionate-share process set forth in 163.3180(12) and (16) is used." This provision

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clarifies that proportionate share is a pay-and-go method that does not require immediate resolution of the level of service (LOS) deficiency, but transportation projects mitigating the LOS deficiencies on these facilities must still be programmed for improvement in the 5-year CIE or long term concurrency management system.

The 5-year schedule of capital improvements in the capital improvements element must be reviewed annually and modified as necessary to maintain financial feasibility. In addition to any locally programmed facilities, the schedule must include projects in the metropolitan planning organization (MPO) transportation improvement program (TIP) (and any privately funded facilities that have been guaranteed in an enforceable agreement) that are relied upon to ensure concurrency and financial feasibility in the 5-year schedule period (§163.3177(3)(a)6, F.S.).

If a long term concurrency management system is adopted, the local government must evaluate the system periodically and at a minimum the next Evaluation and Appraisal Report (EAR) must assess the progress toward achieving an improved level of service and identify any changes needed to accelerate that progress. Long term concurrency management systems are typically 10 years, but may extend up to 15 years with certain justification. The legislation also called for a long term schedule of capital improvements to be submitted with the long term concurrency management system plan (§163.3177(3)(d), F.S.).

Finally, a local government has the responsibility to deny a development that is inconsistent with the comprehensive plan or land development regulations. This should occur regardless of a development's ability to meet concurrency through proportionate fair share, unless the plan is amended to reflect the necessary changes to accommodate the development.

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## EXECUTIVE SUMMARY OF ORDINANCE

Sections A and B of the ordinance provide statements regarding the intent of the proportionate fair-share program. The basic intent is to establish a process for mitigating the impacts of development on transportation facilities through the cooperative efforts of the public and private sectors. Under this process, development may proceed despite a lack of adequate capacity on the impacted transportation system, provided applicants contribute their fair share toward mitigating the transportation impacts of their development projects. A corresponding intent is to strengthen local capital improvements planning by tying these developer contributions more closely to the transportation planning and improvement process.

Section C states that the proportionate fair share program would apply, pursuant to certain conditions, to any development that has been denied transportation concurrency by the local government, other than those specifically excluded by statute or exempted from concurrency in local ordinance. It would also apply to transportation facilities not maintained by the permitting local government, provided those facilities are relied upon for transportation concurrency determinations.

Section D is provided to accommodate regulatory definitions needed to implement the proportionate fair-share program. The section advises local governments to reconcile terms in their proportionate fair-share ordinance with other concurrency-related definitions in Chapter 163, F.S., and local land development regulations. It also provides the new definition of concurrency from Section 163.3180(2)(c), F.S.

Conditions for participating in the program are indicated in section E. Specifically, plans must be in place to improve the impacted transportation facilities such that capacity will be available to accommodate the impacts of the proposed development as required by Section 163.3180, F.S. Local governments may also choose to add new projects to the local capital improvements element or a long term concurrency management system and schedule of projects that incorporate developer contributions. If the capacity of a planned transportation improvement is consumed by vested developments, then the local government would not allow further participation in the proportionate fair share program unless an alternative improvement can be identified pursuant to the provisions in section E(2).

Although the emphasis is on major facility improvements to address transportation needs, section E would not preclude short-term operational improvements in advance of a larger capacity project. It would also allow for mitigation in the form of parallel reliever routes, improved network development and connectivity, transit facility improvements or other major mobility improvements. The intent, however, is that any improvement to a facility be aimed at advancing a planned improvement project or at least be reflected in an adopted corridor management plan.

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Section F addresses the need for intergovernmental coordination with other affected jurisdictions and agencies, regarding contributions to impacted facilities that are under their jurisdiction. Proportionate fair-share contributions should be applied toward the impacted facility. Therefore, local governments are advised to work with other affected agencies to establish a process for applying developer contributions to the impacted facilities. This could be accomplished through cooperative agreements or some other method, such as participation in preapplication meetings, as suggested in Section G.

Section G provides a basic application process for proportionate fair-share agreements. It provides for a short notification to applicants, concurrent with the notice of a lack of capacity to satisfy transportation concurrency, informing them of the proportionate fair-share option and referring them to the ordinance requirements. Under this section, potential applicants would need to attend a preapplication meeting. If the proposed mitigation would be on the Strategic Intermodal System (SIS), FDOT would be notified and invited to attend. Including FDOT in the preapplication process is suggested as a good way to provide for early and ongoing coordination and to meet the requirements of Section 163.3180(16)(a), P.S., which requires FDOT concurrence on SIS mitigation. Although not specified in ordinance, preapplication meetings would also be helpful for coordinating on proportionate share contributions with other affected agencies that maintain a roadway within their jurisdiction (e.g., county roadways in city boundaries, non-SIS state highways).

Section H sets forth the methodology for determining an applicant's proportionate fair-share obligation. This section applies the formula specified in statute, which is that used for multi-use Developments of Regional Impact. Unlike the DRI requirements, however, the impact area would be determined by the local concurrency management system and not by the "significance test" provided in Rule 9J-5 for multi-use DRIs. The process involves determining each development's share of a future improvement cost based on the number of trips that would exceed available capacity under the local concurrency management system. The planned improvement used as the basis for the contribution would be that improvement specified pursuant to section E of the ordinance. The cost used for the proportionate fair-share calculation should reflect actual costs at the time the improvement is scheduled for construction as closely as possible. Therefore, a sample method for determining an inflation factor is provided in Appendix B.

Section I establishes that applicants are eligible to receive impact fee credit for proportionate fair-share contributions, as required by Section 163.3180(16)(b)(2), F.S. A complicating factor is that impact fees are assessed on a systemwide basis, whereas concurrency determinations for proportionate fair-share address improvements related to a specific site. Therefore, the model suggests that local governments first determine the distribution of impact fee revenues across the transportation system. Under this approach, applicants would be eligible for impact fee credit only for that portion of their proportionate fair-share contribution that applies to the same segment that is also being funded for improvement with their impact fees.



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Under Section 163.3180(16)(b)(2), F.S., applicants are not eligible for impact fee credits on facilities not contemplated in the impact fee ordinance. For example, if the road is a state road and the impact fee rate is calculated based on trip lengths that include state roads, then there would be a credit. If the calculation included only trip lengths on non-state roads there would be no credit.

Section J provides a process for executing proportionate fair-share agreements and a timeline for payment of contributions. It allows applicants to move forward with their development plans pursuant to an agreement, without requiring payment until prior to final approval either of the development order or recording of a final plat. However, it establishes that applicants must apply for a development permit within one year, or as required by a local government's concurrency management system. It also provides an incentive for early payment by establishing that the local government will recalculate the fair-share obligation to capture any changes in improvement costs where an applicant submits their payment more than one year after execution of the agreement.

Section K outlines the method for appropriating revenue from proportionate fair-share contributions. It suggests that revenues be applied to the facilities for which they were collected, unless the terms of the agreement dictate otherwise. It also establishes parameters for re-appropriating revenue if an improvement is removed from the CIE. Specifically, it requires another improvement to be identified and added to the CIE to mitigate transportation deficiencies within that same corridor or sector. 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).

Section K also includes an optional provision whereby local governments could establish a method to reimburse an applicant who constructs a transportation facility that provides capacity in excess of the applicant's proportionate fair-share obligation. This could be addressed in the terms of proportionate fair-share agreements and/or provided for in the proportionate fair-share ordinance using the model language provided.

The ordinance concludes with two optional additions to a local government's proportionate fair share regulations. Option A provides an opportunity for a local government to address the transportation impacts of a proposed development in an adjacent local government that is at or near its border. Each participating local government would first enter an agreement to incorporate the provision into their land development regulations. Where a permitting local government finds a significant transportation impact may occur across its border, using the methodology provided, it would inform its neighbor who would determine if the development traffic would cause a concurrency deficiency in their jurisdiction. If so, the adjacent local government would determine the applicant's proportionate fair-share obligation to them and provide that

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information to the permitting agency who would condition their approval on the fulfillment of all proportionate fair-share obligations.

Option B provides a concept for applying the proportionate fair-share program toward mobility improvements within a transportation concurrency exception area (TCEA), transportation concurrency management area (TCMA), or a multimodal transportation district (MMTD). Because these areas are intended to incorporate significant multimodal improvements and often have constrained roadways, an areawide approach is suggested. It advances Section 163.3180, F.S., which requires local governments to adopt and implement strategies to support and fund mobility within these areas, including alternative modes of transportation.

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## I. MODEL PROPORTIONATE FAIR-SHARE ORDINANCE

### Introduction

*This model ordinance provides a series of options that are intended as a framework for proportionate fair-share programs. The ordinance language sets forth the proportionate fair-share mitigation options in a manner consistent with and as required by Section 163.3180(16), F.S., and has been crafted to tie to existing local government concurrency management systems. Because conditions vary throughout the state, it is not the intent that a local government would adopt the ordinance verbatim as it does not address all issues that may arise within a particular context. Rather, the model ordinance is a technical assistance product that local governments will need to adapt to their situation. The model ordinance contains some options that a local government may consider depending upon their needs. Local governments should obtain professional planning and legal assistance when adapting this model regulatory language to fit local needs.*

### A. Purpose and Intent

The purpose of this ordinance is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, to be known as the Proportionate Fair-Share Program, as required by and in a manner consistent with §163.3180(16), F.S.

### B. Findings

- (1) The [Council/Commissioner] finds and determines that transportation capacity is a commodity that has a value to both the public and private sectors and that the [City/County] Proportionate Fair-Share Program:
  - (a) Provides a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors;
  - (b) Allows developers to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their proportionate fair share of the cost of a transportation facility;
  - (c) Contributes to the provision of adequate public facilities for future growth and promotes a strong commitment to comprehensive facilities planning, thereby reducing the potential for moratoria or unacceptable levels of traffic congestion;
  - (d) Maximizes the use of public funds for adequate transportation facilities to serve future growth, and may, in certain circumstances, allow the

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[City/County] to expedite transportation improvements by supplementing funds currently allocated for transportation improvements in the Capital Improvements Element;

- (e) Is consistent with §163.3180(16), F.S., and supports the following policies in the [City/County] Comprehensive Plan [cross reference policies and objectives in the comprehensive plan/CIE].

### C. Applicability

*Commentary: Each local government is required to adopt and maintain levels of service on transportation facilities per Chapter 163, F.S., through a concurrency management system (CMS) designed to "ensure that issuance of a development order or development permit is conditioned upon the availability of public facilities and services necessary to serve new development" (Rule 9J-5.0635 F.A.C.). This model ordinance assumes that each local government has a concurrency management system in place. Further, this model ordinance is designed to work within a local government's existing concurrency management system.*

The Proportionate Fair-Share Program shall apply to all developments in [City/County] that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility in the [City/County] Concurrency Management System, including transportation facilities maintained by FDOT or another jurisdiction that are relied upon for concurrency determinations. The Proportionate Fair Share Program does not apply to developments of regional impact (DRIs) using proportionate fair share under §163.3180(12), F.S., or to developments exempted from concurrency as provided in [reference appropriate sections in concurrency ordinance, policies in comprehensive plan, and/or Chapter 163.3180, F.S., regarding exceptions and de minimis impacts].

*Commentary: It is important to note that statutory requirements allowing de minimis impacts for concurrency have been changed to require local governments to maintain records to ensure that the 110% criteria is not exceeded. This documentation must be submitted annually with the updates to the local CIE schedule. If DCA determines that a local government has exceeded the 110% criterion on a particular roadway, then it will prohibit further de minimis development approvals on that roadway until the local government provides proof to DCA that the volume has been reduced below 110%.*

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#### **D. Definitions**

*Commentary: This model assumes that basic terms have been defined in local land development regulations. Terms in the local government proportionate fair share ordinance should be reconciled with definitions of relevance to concurrency found in Section 163.3164, F.S., Section 163.3180, F.S., and local land development regulations. In addition, any terms not already defined that have regulatory connotations will need to be defined. Note that the definition of concurrency has been revised as follows: "transportation facilities needed to serve new development shall be in place or under actual construction within 3 years after the local government approves a building permit or its functional equivalent that results in traffic generation" (§163.3180(2)(c), F.S.).*

#### **E. General Requirements**

*Commentary: This section establishes general requirements for participation in the Proportionate Fair-Share Program pursuant to §163.3180(16)(b)1, and (j), F.S. It also clarifies under what circumstances an applicant may choose to participate in the Program, as well as, under what circumstances the local government may choose to offer the opportunity to participate.*

- (1) An applicant may choose to satisfy the transportation concurrency requirements of the [City/County] by making a proportionate fair-share contribution, pursuant to the following requirements:
  - (a) The proposed development is consistent with the comprehensive plan and applicable land development regulations.
  - (b) The five-year schedule of capital improvements in the [City/County] Capital Improvements Element (CIE) or the long term schedule of capital improvements for an adopted long-term concurrency management system includes a transportation improvement(s) that, upon completion, will mitigate additional traffic generated by the proposed development. If the [City/County] concurrency management system indicates that the capacity of the improvement has already been consumed by the vested trips of previously approved development, then the provisions of E(2) shall apply.

*Commentary: Pursuant to §163.3180(16)(b)1, F.S., the transportation improvement in section (1)(b) above may be a programmed capital improvement that enhances the capacity of the transportation system to accommodate the impacts of development. For example, this may involve widening and/or reconstructing a roadway or where the primary roadway is constrained or widening is no longer desired, this could involve creating new reliever roadways, new network additions, new transit capital facilities (e.g. bus rapid transit corridor), or other major mobility improvements, such as expansion of bus fleets to increase service frequency. Local governments may, at their*



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*discretion, wish to make short-term operational improvements in advance of the capacity project as provided for in section K(1) of the ordinance. The last sentence of item 1(b) is intended to avoid the situation where capacity of planned improvements is exceeded before they are actually constructed. If the capacity of the planned improvement is fully committed, a developer could potentially still participate at the discretion of the local government pursuant to E(2) below.*

(2) The [City/County] may choose to allow an applicant to satisfy transportation concurrency through the Proportionate Fair-Share Program by contributing to an improvement that, upon completion, will mitigate additional traffic generated by the proposed development but is not contained in the 5-year schedule of capital improvements in the CIE where one of the following apply:

(a) The [City/County] adopts, by resolution or ordinance, a commitment to add the improvement to the 5-year schedule of capital improvements in the CIE no later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be reviewed by the [appropriate City/County body], and determined to be financially feasible pursuant to §163.3180(16)(b)), F.S., consistent with the comprehensive plan, 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.

*Commentary. The last sentence is somewhat redundant, but was added to clarify that under §163.3180(16)(b)), F.S.: "Updates to the 5-year capital improvements element which reflect proportionate fair-share contributions may not be found not in compliance [with financial feasibility requirements] if 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."*

(b) If the funds allocated for the 5-year schedule of capital improvements in the [City/County] CIE are insufficient to fully fund construction of a transportation improvement required by the concurrency management system, the [City/County] may still enter into a binding proportionate fair-share agreement with the applicant authorizing construction of that amount of development on which the proportionate fair share is calculated if the proportionate fair-share amount in such agreement is sufficient to pay for one or more improvements which will, in the opinion of the governmental entity or entities maintaining the transportation facilities, significantly benefit the impacted transportation system. To qualify for consideration under this section, the proposed improvements must be contained in an adopted short- or long-range plan or program of the [City/County], MPO, FDOT and/or local or regional transit agency. Proposed improvements not reflected in an adopted plan or improvement program but that would significantly reduce access

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problems and congestion or trips on a major road corridor, such as new roads, service roads, or improved network development and connectivity, may be considered at the discretion of the [City/County]. The improvement or improvements funded by the proportionate fair-share component must be adopted into the 5-year capital improvements schedule of the comprehensive plan at the next annual capital improvements element update.

*Commentary: Item (b) addresses §163.3180(16)(f), F.S. Local governments should exercise caution in accepting proposed improvements that are not reflected in an adopted plan or work program. The intent is to allow for major improvements that significantly benefit the transportation system, rather than minor incremental projects included to address localized congestion problems. This would not preclude operational improvements planned on a systemwide basis that are included either in an adopted corridor management plan or provided for within a capital improvements element.*

- (3) Any improvement project proposed to meet the developer's fair-share obligation must meet design standards of the [City/County] for locally maintained roadways and those of the Florida Department of Transportation (FDOT) for the state highway system.

*Commentary: The [City/County] must be mindful of the impact of adding new projects to the 5-year schedule of improvements in the CIE for which proportionate fair-share payments are collected, because the [City/County] is responsible for ensuring the financial feasibility of all capital improvements in the adopted CIE pursuant to Section 163.3164(33) and Section 163.3177. Below are recommended policy statements to include in the capital improvements element of the comprehensive plan.*

*Policy :* The [City/County] capital improvements element shall be reviewed annually and updated as necessary to reflect proportionate fair share contributions.

*Policy \_\_:* The [City/County] is responsible for ensuring the financial feasibility of all capital improvements in the adopted capital improvements element.

*Pursuant to Chapter 163.3177, F.S., the CIE "must include transportation improvements included in the applicable metropolitan planning organization transportation improvement program ... to the extent that such improvements are relied upon to ensure concurrency and financial feasibility." The CIE "must also be coordinated with the applicable metropolitan planning organization's long-range transportation plan..." and should also include "regionally significant transportation facilities" from an adopted regional transportation plan. Although not required by statute, local governments outside of MPOs should include state road improvements from the FDOT Work Program in their CIE, especially those that are relied upon to ensure concurrency within their community. It may be necessary to amend the CIE for consistency with these*

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requirements. See section F for other important considerations related to these provisions.

Finally, if a development triggers a concurrency failure on multiple facilities, it is important to note that the proportionate fair share option in §163.3180(16), F.S., is not available to satisfy concurrency unless each of the deficient transportation facilities is associated with an improvement that is part of or to be added to the Capital Improvements Element or a long term concurrency management system. In addition, a local government that enters a proportionate fair-share agreement with an applicant needs to be aware that it is committing to improving the transportation facility in question within a reasonable timeline that, under Florida growth management law, may not exceed ten years.

#### **F. Intergovernmental Coordination**

Pursuant to policies in the Intergovernmental Coordination Element of the [City/County] comprehensive plan and applicable policies in [reference adopted regional plan], the [City/County] shall coordinate with affected jurisdictions, including FDOT, regarding mitigation to impacted facilities not under the jurisdiction of the local government receiving the application for proportionate fair-share mitigation. An interlocal agreement may be established with other affected jurisdictions for this purpose.

*Commentary: 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, it is advisable for each local government to work with other affected agencies to establish a procedure for coordinating mitigation to impacted facilities that are maintained by another agency. It may be appropriate to enter into a Memorandum of Understanding (MOU) or interlocal agreement outlining inter-jurisdictional review criteria and decision time-frames, or to establish an ordinance provision authorizing deposit of proportionate fair share funds into the appropriate project account of the FDOT or other affected jurisdiction.*

#### **G. Application Process**

- (1) Upon notification of a lack of capacity to satisfy transportation concurrency, the applicant shall also be notified in writing of the opportunity to satisfy transportation concurrency through the proportionate fair share program pursuant to the requirements of section E.
- (2) Prior to submitting an application for a proportionate fair-share agreement, a pre-application meeting shall be held to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. If the impacted

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facility is on the Strategic Intermodal System (SIS), then the Florida Department of Transportation (FDOT) will be notified and invited to participate in the pre-application meeting.

*Commentary: Section 163.3180(16)(e), F.S., requires FDOT concurrence on SIS mitigation proposals. It is the intent of G(2) that FDOT coordinate closely with the local government and developer as proportionate fair-share mitigation options are defined for the SIS in particular. Such coordination is also important on mitigation for other important state highways. Including FDOT in the preapplication process is a good way to provide for early and ongoing coordination on this issue. See also number 5 below.*

- (3) Eligible applicants shall submit an application to the [City/County] that includes an application fee of [\$X] and the following:
- (a) Name, address, and phone number of owner(s), developer and agent;
  - (b) Property location, including parcel identification numbers;
  - (c) Legal description and survey of property;
  - (d) Project description, including type, intensity, and amount of development;
  - (e) Phasing schedule, if applicable;
  - (f) Description of requested proportionate fair-share mitigation method(s); and
  - (g) Copy of concurrency application.

*Commentary: Presumably some of the above items would already have been submitted as part of the initial concurrency application, and would simply need to be copied and re-submitted for this purpose.*

- (4) The [Concurrency Administrator] shall review the application and certify that the application is sufficient and complete within [10 business days]. If an application is determined to be insufficient, incomplete, or inconsistent with the general requirements of the proportionate fair-share program as indicated in section E, then the applicant will be notified in writing of the reasons for such deficiencies within [10 business days] of submittal of the application. If such deficiencies are not remedied by the applicant within [10 days] of receipt of the written notification, then the application will be deemed abandoned. The [Council/Commission] 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 the extension and has taken reasonable steps to effect a cure.

*Commentary. These review timelines are provided for illustration. Local governments should establish a timeline that is appropriate for them in the context of their development review and concurrency management process.*

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- (5) Pursuant to §163.3180(16)(c), F.S., proposed proportionate fair-share mitigation for development impacts to facilities on the Strategic Intermodal System requires the concurrence of the Florida Department of Transportation (FDOT). The applicant shall submit evidence of an agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.

*Commentary: Payments toward mitigation of impacts to the SIS could be transferred to the FDOT through an interlocal agreement or the local government could apply the contributions toward advancing improvements identified in a corridor management plan aimed at reducing local traffic impacts on the SIS.*

- (6) When an application is deemed sufficient, complete, and eligible, the applicant shall be advised in writing and a proposed proportionate fair-share obligation and binding agreement will be prepared by the [City/County] or the applicant with direction from the [City/County] and delivered to the appropriate parties for review, including a copy to the FDOT for any proposed proportionate fair-share mitigation on a Strategic Intermodal System (SIS) facility, no later than [60 days] from the date at which the applicant received the notification of a sufficient application and no fewer than [14 days] prior to the [Council/Commission] meeting when the agreement will be considered.

*Commentary: The appropriate parties for review of proportionate fair-share agreements would include the jurisdiction maintaining the transportation facility that is subject to the agreement, if other than the approving jurisdiction. It is also advisable for local governments to provide their DCA representative a copy for review and comment.*

- (7) The [City/County] shall notify the applicant regarding the date of the [Council/Commission] meeting when the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the [Council/Commission, or pursuant to staff approval for agreements below a certain dollar amount].

*Commentary: Local governments should establish an approval process for agreements that works in their context. A local government may wish to allow administrative approval for smaller contributions below a certain defined dollar amount and provide for Council approval of contributions that exceed that specified amount.*

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## H. Determining Proportionate Fair-Share Obligation

*Commentary: This section establishes the methodology for determining the proportionate fair-share obligation of the applicant. Development trips, roadway segments and corresponding eligible improvements used for proportionate fair-share calculation in this section are identified using the local government concurrency management system, the local Capital Improvements Element, and section E of this ordinance.*

- (1) Proportionate fair-share mitigation for concurrency impacts may include, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities. *[Note: This language is as provided in §163.3180 (16)(c), F.S.]*
- (2) A development shall not be required to pay more than its proportionate fair share. The fair market value of the proportionate fair-share mitigation for the impacted facilities shall not differ regardless of the method of mitigation. *[Note: This language is as provided in §163.3180 (16)(c), F.S.]*
- (3) 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:

"The cumulative number of trips from the proposed development expected to reach roadways during peak hours from the complete buildout of a stage or phase being approved, divided by the change in the peak hour maximum service volume (MSV) of roadways resulting from construction of an improvement necessary to maintain the adopted level of service, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted level of service."

OR

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

*(Note: In the context of the formula, the term "cumulative" does not include a previously approved stage or phase of a development.)*

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 concurrency management system;

SV Increase<sub>i</sub> = Service volume increase provided by the eligible improvement to roadway segment "i" per section E;

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Cost; = 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.

*Commentary: Under the definition of "development trips," only those trips that trigger a concurrency deficiency would be included in the proportionate fair share calculation.*

(4) For the purposes of determining proportionate fair-share obligations, the [City/County] shall determine improvement costs based upon the actual cost of the improvement as obtained from the Capital Improvements Element, the MPO Transportation Improvement Program, or the FDOT Work Program. Where such information is not available, improvement cost shall be determined using one of the following methods:

(a) An analysis by the [City/County] of costs by cross section type that incorporates data from recent projects and is updated annually and approved by the [Council/Commission or appropriate entity]. In order to accommodate increases in construction material costs, project costs shall be adjusted by [inflation factor]; or

*Commentary: The cost used for the proportionate fair-share calculation should be today's cost estimate of tomorrow's cost. A sample method for determining an inflation factor is in Appendix B. Upon acceptance by the local government of a proportionate fair-share contribution, the applicant would not be responsible for any subsequent cost overruns or inflationary factors associated with the project beyond that date.*

(b) The most recent issue of FDOT *Transportation Costs*, as adjusted based upon the type of cross section (urban or rural); locally available data from recent projects on acquisition, drainage, and utility costs; and significant changes in the cost of materials due to unforeseeable events. Cost estimates for state road improvements not included in the adopted FDOT Work Program shall be determined using this method in coordination with the FDOT District.

*Commentary: When determining a cost for state road improvements it is important to contact the FDOT District for cost estimates based on actual construction costs, right-of-way and other area specific costs.*

(5) If the [City/County] 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.

(6) If the [City/County] has accepted right-of-way dedication for the proportionate fair-share payment, credit for the dedication of the non-site related right-of-way

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shall be valued on the date of the dedication at [ ] percent of the most recent assessed value by the [City/County] property appraiser or, at the option of the applicant, by fair market value established by an independent appraisal approved by the [City/County] and at no expense to the [City/County]. The applicant shall supply a drawing and legal description of the land and a certificate of title or title search of the land to the [City/County] at no expense to the [City/County]. If the estimated value of the right-of-way dedication proposed by the applicant is less than the [City/County] estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference.

*Commentary: Local governments may want to use a proxy for market value to allow applicants to proceed without the cost of an appraisal. For example, some communities use 115% or 120% of assessed value, in the assumption that market value typically exceeds assessed value by 15% or 20%. For further information on this technique see the CTR publication Corridor Preservation Best Practices at [www.citr.usf.edu](http://www.citr.usf.edu)*

#### **I. Impact Fee Credit for Proportionate Fair-Share Mitigation**

- (1) Proportionate fair-share mitigation shall be applied as a credit against impact fees. Credits will be given for that portion of the applicant's transportation impact fees that would have been used to fund the improvements on which the proportionate fair-share contribution is calculated. If the proportionate fair-share contribution is based on only a portion of the development's traffic, the credit will be limited to that portion of the impact fees on which the proportionate fair-share contribution is based.
- (2) Impact fee credits for the proportionate fair-share contribution will be determined when the transportation impact fee obligation is calculated for the proposed development. 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 [City/County] pursuant to the requirements of the [City/County] impact fee ordinance.
- (3) 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.

*Commentary: Under the legislation, local governments with transportation impact fees must provide impact fee credit for proportionate fair-share contributions. Impact fee credits may vary by jurisdiction based on the methodology used to determine those fees. Impact fees are generally assessed on a systemwide basis, whereas concurrency determinations for proportionate fair-share address improvements that are related to a specific site. Therefore, it is intended that the local government calculate the impact fee*



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for the development and determine the distribution of the impact fee revenues across the transportation system within the given impact fee zone. Applicants would be eligible for impact fee credit only 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. In addition, applicants would not be eligible for impact fee credits on facilities not contemplated in the impact fee ordinance. For example, if the road is a state road and the impact fee rate is calculated based on trip lengths that include state roads, then there would be a credit. If the calculation included only trip lengths on non-state roads there would be no credit.

#### **J. Proportionate Fair-Share Agreements**

- (1) Upon execution of a proportionate fair-share agreement (Agreement) the applicant shall receive a [City/County certificate of concurrency approval]. Should the applicant fail to apply for a development permit within [12 months or timeframe provided in the local CMS] of the execution of the Agreement, then the Agreement shall be considered null and void, and the applicant shall be required to reapply.
- (2) Payment of the proportionate fair-share contribution is due in full prior to issuance of the final development order or recording of the final plat and shall be nonrefundable. If the payment is submitted more than 12 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 H and adjusted accordingly.

*Commentary: It is intended that proportionate fair-share contributions be paid in a timely fashion and that they reflect actual costs as closely as possible. This section provides that if an applicant chooses to submit their proportionate fair-share payment more than one year after execution of the agreement, the local government will recalculate the fair-share obligation to capture any changes in improvement costs over time. Because this could increase an applicant's fair-share obligation, presumably it would be in the applicant's interest to pay as early as possible.*

- (3) All developer improvements authorized under this ordinance must be completed prior to issuance of a development permit, 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. It is the intent of this section that any required improvements be completed before issuance of building permits or certificates of occupancy.
- (4) 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 or recording of the final plat.

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- (5) 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 traffic that would require mitigation.
  - (6) 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 [City/County] will be nonrefundable.
  - (7) *OPTIONAL PROVISION:* The [City/County] may enter into proportionate fair-share agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.

*Commentary: Situations may arise where local governments desire to facilitate multi-developer fair-share agreements on corridors needing improvement. This sample provision would encourage and allow for public/private agreements among several developers on a corridor that would like to coordinate with each other and the local government on improvements needed for them to achieve concurrency. Such agreements would accommodate unique opportunities for coordinating among several entities, both public and private, to accomplish a needed facility upgrade.*

*For example, Hillsborough County entered a public private partnership with developers along US 301 aimed at coordinating concurrency mitigation projects across several major developments with vested status along the corridor. A stimulus for the program was the fact that each development was widening the corridor along impacted segments, resulting in variations in laneage and corresponding safety problems. Because these segments needed to be tapered, and then later would need to be reconstructed, there were cost savings to all of the developers to pool their resources and coordinate on the overall road widening project needed to serve their developments. Each developer was required to pay their proportionate fair share into an account that was earmarked for this purpose. Participating developers were also allowed to construct their share of the improvement as an alternative to paying into the account.*

#### **K. Appropriation of Fair-Share Revenues**

*Commentary: This section outlines the method for appropriating the revenue from proportionate fair-share contributions. It directs revenues to the facilities for which they were collected unless the terms of the agreement dictate otherwise. Section K(2) establishes parameters for re-appropriating revenue if an improvement is removed from the CIE. Specifically, it requires another improvement to be identified and added to the CIE to mitigate transportation deficiencies within that same corridor or sector.*

- (1) Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the [City/County] capital improvements element, or as otherwise established in the terms of the

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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).

- (2) In the event a scheduled facility improvement is removed from the CIP, then 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 E(2)(b).

*Commentary: It is important to reiterate that a local government that enters a proportionate fair share agreement with an applicant is committing to improving the transportation facility in question within at least ten years. Not doing so would raise questions regarding compliance of the annual capital improvements program with the requirements of Chapter 163 as administered by the Florida Department of Community Affairs.*

- (3) Where an impacted regional facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan as provided in Section 339.155, F.S., then the [City/County] may coordinate with other impacted jurisdictions and agencies to apply proportionate fair-share contributions and public contributions to seek funding for improving the impacted regional facility under the FDOT Transportation Regional Incentive Program (TRIP). Such coordination shall be ratified by the [City/County] through an interlocal agreement that establishes a procedure for earmarking of the developer contributions for this purpose.

*Commentary: Local governments may consider establishing a method whereby an applicant who constructs a transportation facility that exceeds the applicant's proportionate fair-share obligation could be reimbursed for the excess contribution. This could be addressed in the terms of proportionate fair-share agreements and/or provided for in the proportionate fair-share ordinance. Below is sample language for that purpose:*

- (4) **OPTIONAL PROVISION:** Where an applicant constructs a transportation facility that exceeds the applicant's proportionate fair-share obligation calculated under section H, then the [City/County] shall reimburse the applicant for the excess contribution using one or more of the following methods:

- (a) 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 under the terms and conditions acceptable to the [City/County].

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(b) 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.

(c) The [City/County] may compensate the applicant for the excess contribution through payment or some combination of means acceptable to the [City/County] and the applicant.

*Commentary: The intent of items (c) above is that the local government could provide payment alone or use a combination of methods, such as those provided in (a) or (b) to reimburse the applicant for the excess contribution.*

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## II. MODEL OPTIONAL PROVISIONS

*Commentary:* Below are two optional provisions that a local government may consider adding to its proportionate fair-share ordinance. Option A sets forth a method of coordinating with adjacent jurisdictions on proportionate fair-share contributions for development impacts that extend "across the border." Option B sets forth a method of applying the proportionate fair-share program toward mobility improvements within a transportation concurrency exception area (TCEA), transportation concurrency management area (TCMA), or a multimodal transportation district (MMTD).

### A. Cross Jurisdictional Impacts

*Commentary:* This section provides a concept to advance intergovernmental coordination objectives in local government comprehensive plans and applicable policies in adopted regional plans. It provides an opportunity for a local government to address the impacts of a proposed development in an adjacent local government that is at or near its border. It is intended as a means of managing development on a regional thoroughfare, and not for application to minor roadways. A regional transportation facility in this context would most likely be an arterial roadway, but could be a major collector roadway that is planned for expansion and reclassification as an arterial. To apply this method, each participating local government must first enter an interlocal agreement to incorporate the provision into their respective land development regulations. The permitting local government would use the methodology in this section to determine whether a significant impact may occur across its border and offer its neighbor an opportunity to evaluate the proposed development to determine if it would exceed their adopted level of service standards for concurrency. Where the proposed development would trigger a concurrency failure on the neighboring local government's roadway, that local government would use the proportionate fair-share methodology to determine the applicant's obligation. In this situation, the applicant would need to provide a proportionate fair-share contribution to the adjacent local government that experiences a concurrency deficiency, as well as to the permitting local government.

- (1) In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the [City/County] may enter an agreement with one or more adjacent local governments to address cross jurisdictional impacts of development on regional transportation facilities. The agreement shall provide for application of the methodology in this section to address the cross jurisdictional transportation impacts of development.
- (2) A development application submitted to the [City/County] subject to a transportation concurrency determination meeting all of the following criteria shall be subject to this section:

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- (a) All or part of the proposed development is located within [fill in number] mile(s) of the area which is under the jurisdiction, for transportation concurrency, of an adjacent local government; and

*Commentary: A minimum of one mile is suggested for the provision above.*

- (b) Using its own concurrency analysis procedures, the [City/County] concludes that the additional traffic from the proposed development would use [five percent or more of the adopted peak hour level of service maximum service volume] of a regional transportation facility within the concurrency jurisdiction of the adjacent local government ("impacted regional facility"); and

*Commentary: There are many measures and approaches a community might use to determine whether an impact on a neighboring jurisdiction's roadway segment is significant enough to warrant further analysis for proportionate fair-share contributions. This section suggests a method similar to that used for Developments of Regional Impact.*

- (c) The impacted regional facility is projected to be operating below the level of service standard, adopted by the adjacent local government, when the traffic from the proposed development is included.

*Commentary: An accurate assessment of level of service impacts would account for the cumulative impacts of previously approved developments that have not yet been constructed*

- (3) Upon identification of an impacted regional facility pursuant to subsection 2(b)-(c), the [City/County] shall notify the applicant and the affected adjacent local government in writing of the opportunity to derive an additional proportionate fair-share contribution, based on the projected impacts of the proposed development on the impacted adjacent facility.
- (a) The adjacent local government shall have up to ninety (90) days in which to notify the [City/County] of a proposed specific proportionate fair-share obligation, and the intended use of the funds when received. The adjacent local government must provide reasonable justification that both the amount of the payment and its intended use comply with the requirements of Section 163.3180(16), F.S. Should the adjacent local government decline proportionate fair share mitigation under this section, then the provisions of this section would not apply and the applicant would be subject only to the proportionate fair share requirements of the [City/County].
- (b) If the subject application is subsequently approved by the [City/County], the approval shall include a condition that the applicant provides, prior to the issuance of any building permit covered by that application, evidence that the proportionate fair-share obligation to the adjacent local government has been

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satisfied. The [City/County] may require the adjacent local government to declare, in a resolution, ordinance, or equivalent document, its intent for the use of the concurrency funds to be paid by the applicant.

*Commentary: The new growth management legislation encourages jurisdictions to coordinate with their neighbors on level of service standards and methodologies for concurrency on transportation facilities that traverse multiple jurisdictions. Specifically, the new law requires local governments to "consider compatibility with the roadway facility's adopted level of service standards in adjacent jurisdictions" and to use a "professionally accepted methodology for measuring impacts on transportation facilities" for concurrency determinations. In addition, counties are encouraged to coordinate with adjacent counties, and local governments within a county are encouraged to coordinate, for the purpose of using common methodologies for measuring transportation impacts for concurrency administration.*

#### **B. Proportionate Share Program for TCEAs, TCMA's and MMTDs**

*Commentary: This section provides a concept for the application of a proportionate fair-share program in the context of a TCEA, TCMA, or MMTD, which are concurrency alternatives that require mobility plans and funding mechanisms. Because these areas tend to involve significant multimodal improvements and often have constrained roadways, an areawide approach is suggested.*

Within the [reference all local Transportation Concurrency Management Areas, and/or Multimodal Transportation Districts, and/or Transportation Concurrency Exception Areas], the [City/County] hereby establishes a proportionate fair share assessment, based on the expected costs and transportation benefits of all the programmed improvements within that District, and based on the expected trip generation of the proposed development.

*Commentary: Amendments to §163.3150 F.S. tighten requirements for transportation concurrency exception areas (TCEAs). Similar to the requirements for TCMA's and MMTDs, the statute requires local governments to adopt and implement strategies to support and fund mobility within the designated exception area, including alternative modes of transportation, and to demonstrate how they will provide mobility. This ordinance provision offers local governments a means to use proportionate fair share payments for this purpose.*

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## APPENDIX A: 2005 PROPORTIONATE FAIR-SHARE LEGISLATION

*This Appendix contains the proportionate fair-share language from Senate Bill 360 as found in Chapter 163.3180(16) Florida Statutes.*

(16) It is the intent of the Legislature to provide a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors. The methodology used to calculate proportionate fair-share mitigation under this section shall be as provided for in subsection (12).

(a) By December 1, 2006, each local government shall adopt by ordinance a methodology for assessing proportionate fair-share mitigation options. By December 1, 2005, the Department of Transportation shall develop a model transportation concurrency management ordinance with methodologies for assessing proportionate fair-share mitigation options.

(b)1. In its transportation concurrency management system, a local government shall, by December 1, 2006, include methodologies that will be applied to calculate proportionate fair-share mitigation. A developer may choose to satisfy all transportation concurrency requirements by contributing or paying proportionate fair-share mitigation if transportation facilities or facility segments identified as mitigation for traffic impacts are specifically identified for funding in the 5-year schedule of capital improvements in the capital improvements element of the local plan or the long-term concurrency management system or if such contributions or payments to such facilities or segments are reflected in the 5-year schedule of capital improvements in the next regularly scheduled update of the capital improvements element. Updates to the 5-year capital improvements element which reflect proportionate fair-share contributions may not be found not in compliance based on ss. 163.3164(32) and 163.3177(3) if 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.

2. Proportionate fair-share mitigation 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.

(c) Proportionate fair-share mitigation includes, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by the local government. The fair market value of the proportionate fair-share mitigation shall not differ based on the form of mitigation. A local government may not require a development to pay more than its proportionate fair-share contribution regardless of the method of mitigation.



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(d) Nothing in this subsection shall require a local government to approve a development that is not otherwise qualified for approval pursuant to the applicable local comprehensive plan and land development regulations.

(e) Mitigation for development impacts to facilities on the Strategic Intermodal System made pursuant to this subsection requires the concurrence of the Department of Transportation.

(f) In the event the funds in an adopted 5-year capital improvements element are insufficient to fully fund construction of a transportation improvement required by the local government's concurrency management system, a local government and a developer may still enter into a binding proportionate-share agreement authorizing the developer to construct that amount of development on which the proportionate fair share is calculated if the proportionate fair-share amount in such agreement is sufficient to pay for one or more improvements which will, in the opinion of the governmental entity or entities maintaining the transportation facilities, significantly benefit the impacted transportation system. The improvement or improvements funded by the proportionate fair-share component must be adopted into the 5-year capital improvements schedule of the comprehensive plan at the next annual capital improvements element update.

(g) Except as provided in subparagraph (b)1., nothing in this section shall prohibit the Department of Community Affairs from finding other portions of the capital improvements element amendments not in compliance as provided in this chapter.

(h) The provisions of this subsection do not apply to a multiuse development of regional impact satisfying the requirements of subsection (12).

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## APPENDIX B: METHOD FOR COST ESCALATION

*This Appendix contains a method to estimate growth in costs, through the computation of a three-year average of the actual cost growth rates. This will provide a growth rate that should be smoothed to avoid overcompensating for major fluctuations in costs that have occurred due to short term material shortages*

$$\text{Cost}_n = \text{Cost}_0 \times (1 + \text{Cost\_growth}_{3\text{yr}})^n$$

Where:

$\text{Cost}_n$ =	The cost of the improvements in year n;
$\text{Cost}_0$ =	The cost of the improvement in the current year;
$\text{Cost\_growth}_{3\text{yr}}$ =	The growth rate of costs over the last 3 years;
n =	The number of years until the improvement is constructed.

The three-year growth rate is determined by the following formula:

$$\text{Cost\_growth}_{3\text{yr}} = (\text{Cost\_growth}_1 + \text{Cost\_growth}_2 + \text{Cost\_growth}_3)/3$$

Where:

$\text{Cost\_growth}_{3\text{yr}}$ =	The growth rate of costs over the last 3 years;
$\text{Cost\_growth}_1$ =	The growth rate of costs in the previous year;
$\text{Cost\_growth}_2$ =	The growth rate of costs two years prior;
$\text{Cost\_growth}_3$ =	The growth rate of costs three years prior.

