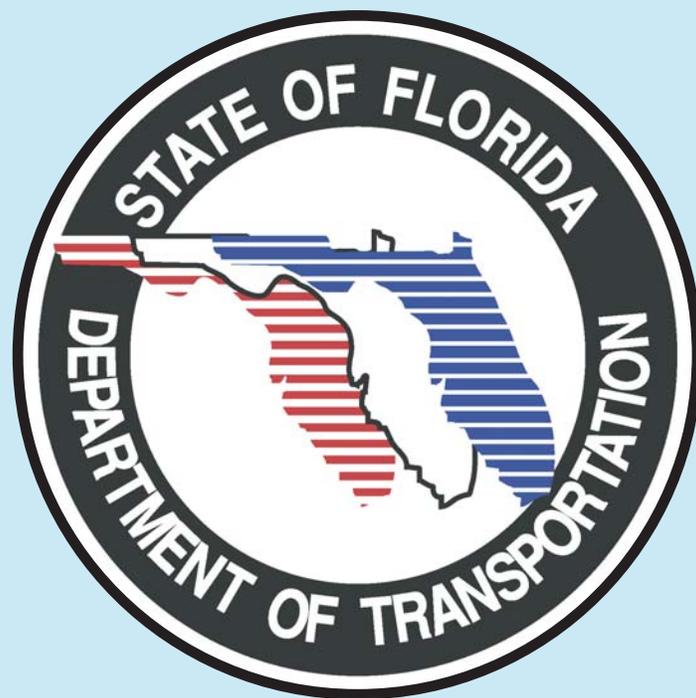


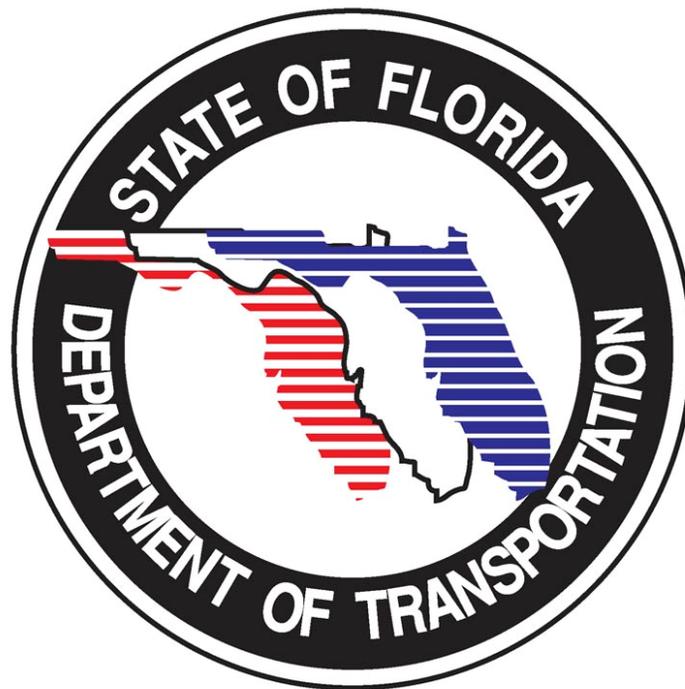
# Working with Proportionate Fair-Share



December 2006

Presented by the Florida Department of Transportation

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Volume 1, December 2006

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# *Proportionate Fair-Share Basics*

## What is the purpose of this guide?

The purpose of this Florida Department of Transportation (FDOT) guidebook is to provide information and guidance to District staff on how to work with **proportionate fair-share** and maximize its benefits.

## What is **proportionate fair-share**?

The concept of concurrency was created in 1985 through Chapter 163, Florida Statutes, which stated that local governments could not issue a development order or permit which results in a reduction in the level of services for the affected public facilities below the adopted levels of service in the comprehensive plan. In other words, the public facilities needed to be in place at the time the development occurred.

In 2005, the Florida Legislature passed SB 360 with the intent of providing a method for mitigating the impacts of development on transportation facilities by the cooperative efforts of the public and private sectors. This method, called **proportionate fair-share**, can potentially be used by a local government to determine a developer's fair-share of costs to meet concurrency. The developer's fair-share may be combined with public funds to construct improvements to satisfy concurrency. This method does not apply to all situations; however, it does provide an opportunity to use private funds to advance projects which are planned for construction by the public sector. In this manner, transportation funds are leveraged.

## Why should the FDOT Districts want proportionate fair-share?

- ✓ Additional funding can be leveraged to complete much needed projects
- ✓ More partners are brought to the table to solve transportation deficiencies
- ✓ State and Federal funding can go farther to address transportation needs
- ✓ Projects can be advanced and completed in a shorter timeframe

## Are local governments required to have a proportionate fair-share ordinance?

**Yes**, local governments must adopt a proportionate fair-share ordinance by December 1, 2006 that may allow developers in certain circumstances to satisfy transportation concurrency requirements by proportionate fair-share contributions. To assist local governments in the development of their ordinances, FDOT developed a model proportionate fair-share ordinance which is available at:

**<http://www.dot.state.fl.us/planning/gm/pfso/model-ordinance.pdf>**

*The Model Ordinance for Proportionate Fair-Share Mitigation of Development Impacts on Transportation Corridors* document was developed by FDOT and the Department of Community Affairs (DCA) with input from a variety of planning and land use professionals from both public and private entities across the State.



## Can proportionate fair-share be collected in a transportation concurrency exception area (TCEA)?

Technically, there is no “concurrency” in a TCEA. However, TCEAs are now required to have funding mechanisms for needed transit or multimodal improvements similar to proportionate fair-share. The new legislation requires all existing TCEAs be updated to address the new mobility standards.

## What is the difference between “proportionate share” and “proportionate fair-share”?

**Proportionate share** refers to a method that is commonly used for calculating the mitigation costs for impacts from a development of regional impact (DRI).

**Proportionate fair-share** is a requirement as a result of the new growth management legislation (SB 360) that was passed in 2005 which does not apply to DRIs. In fact, it was designed to only address impacts from sub-DRI developments in instances where the local government’s concurrency management system (CMS) shows that a facility is operating, or will operate, below the adopted level of service (LOS) standard. While the formulas for these two payments are similar, the number of project trips used in the calculations can differ.

## How is a proportionate fair-share contribution established?

A local government establishes by ordinance the statutory formula (s.163.380(12)) for establishing developer contributions. The formula considers the applicant's share of impacts for each roadway segment as established in the local government's concurrency management system (CMS).

## Who is responsible for calculating proportionate fair-share amount?

Typically, calculating the actual payment amount would be the responsibility of the applicant with review of the calculations by the local government. For facilities on the State Highway System (SHS) or the Strategic Intermodal System (SIS), FDOT should be consulted as part of this review. This process is similar to the existing DRI review process.

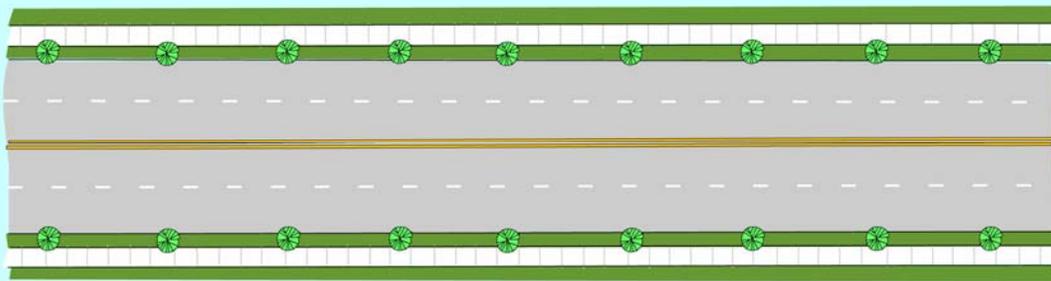
Actual payments may be made to the local government entity that is responsible for maintaining the facility or to FDOT. Local governments should establish accounts for each transportation project and keep records of payments for tracking in order to plan for capital improvements and to coordinate with FDOT. For more detail about how the funds are to be processed, see page 14 of this guide.



## *The Formula Explained*

$$\text{Proportionate Fair-Share} = \left( \frac{\text{Development Trips} - \text{Available Capacity}}{\text{Service Volume Increase}} \right) \times \text{Cost of Roadway Segment Improvement (RSI)}$$

PROJECT SEGMENT - WIDENING FROM 2 LANES TO 4 LANES



### **For example:**

Project – State Road 555 – Segment 1

Development Impacts (Trips) = 151

Available Capacity (Trips) = 100

Service Volume Increase from RSI = 1,100

RSI Cost = \$2,500,000

$[(151-100)/1100] \times \$2,500,000 = \mathbf{\$115,909}$

**The applicant's proportionate fair-share contribution is \$115,909.**

# How should local governments implement proportionate fair-share?

## ***Planning***

- Local governments should monitor available capacity on their transportation system via their CMS. Ideally, local governments will be proactive by planning for transportation improvements or solutions prior to a portion of their system failing. In this manner proportionate fair-share agreements, if needed, can be facilitated in a shorter timeframe due to the availability of a project to address the congestion. A corridor management plan or equivalent is a planning tool which allows the local government to coordinate the permitting of development with the available capacity of the transportation facility within the corridor. It also provides the basis or framework for subsequent proportionate fair-share agreements between the local government and developers.

## ***Intergovernmental Coordination***

- The local government is required to have within their Land Development Regulations (LDR) or CMS methodologies for assessing proportionate fair-share mitigation options (s.163.3180(16)(a)(b)). In most instances these options and methodologies have been adopted by ordinance and include administrative procedures to implement them. It is important that the local government coordinate potential proportionate fair-share agreements with adjacent local governments which may be impacted by the proposed development. Proportionate fair-share agreements to mitigate development impacts on SIS facilities require the concurrence of FDOT (s.163.3180(16)(e)). In other instances, the government entity maintaining the transportation facility may also have to agree before a proportionate fair-share agreement can be entered into for that facility (s.163.3180(16)(f)).



## What are the basic steps when considering if proportionate fair-share can be collected?

- Step 1.** If the construction phase of a project that is needed to meet local concurrency requirements is in the first three years of the five-year schedule of the local government's Capital Improvements Element (CIE) or FDOT Work Program, then the developer is considered to have met the concurrency requirement<sup>1</sup>. If not, proceed to Step 2.
- Step 2.** If there is a project that is needed to meet local concurrency requirements in the fourth or fifth year of the five-year schedule of the local government's CIE, or that will be added to the five-year Capital Improvements Plan (CIP) in the next year, then the developer can pay a proportionate fair-share contribution and proceed with development upon approval from the local government. Additionally, if the project is included in a 10-year long-term concurrency management system (LTCMS) as adopted in the local government's comprehensive plan (LGCP) and reflected in a 10-year CIE, the developer may also pay a proportionate fair-share contribution and proceed with development. If there is not a mitigating project in the fourth or fifth year of the five-year schedule of the local government's CIE, or if the local government does not concur with adding the project in the next year, proceed to Step 3.

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<sup>1</sup> It is acceptable for local governments to adopt more stringent standards than are statutorily required. For example, some local governments require the construction phase of a project to be in the first or second years of the CIE in order to meet the concurrency requirement.

## What are the basic steps when considering if proportionate fair-share can be collected? (continued)

**Step 3.** If there is not a project in the five-year schedule of the local government's CIE that will be added to the five-year CIP in the next year, then it is at the *discretion* of the local government to accept, or not, a proportionate fair-share contribution on a project. In order for this to be allowed, the local government must be satisfied that the project provides capacity or mobility options to satisfy the local CMS and is consistent with the LGCP. If agreed upon, the project must be reflected in the next regularly scheduled update of the CIE. DCA cannot find the addition of the project in non-compliance based on s.163.3177(3) and s.163.164(32) if the project itself is fully funded or 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 (s.163.3180(16)(b)1). It is recommended that the project be placed within an LTCMS to ensure its development within the local government capital improvement process and to solidify its financial feasibility in regards to DCA review (s.163.3180(9)(a)). FDOT must concur with projects that involve the SHS and SIS in order to ensure impacts on these facilities are addressed.

**Step 4.** Execute the agreement and amend the CIP.

**Step 5.** Monitor and track proportionate fair-share payments and implementation status.

### ***Other considerations:***

- The contribution cannot be used to duplicate impact fees collected for the same facility improvement.
- The contribution can be in the form of funds, right-of-way, or the outright construction of improvements.



# *Implementing Proportionate Fair-Share At the District Level:*

## Guidelines for Coordinating with the Work Program

What are the most important things the Districts should know about proportionate fair-share as they begin to deal with these new requirements in the future?

There are three major concepts that should be considered by each District to ensure that the maximum benefit is realized from proportionate fair-share transactions. In the following section of this guide, these common principles are elaborated upon. They are:

- ☑ FDOT must be consulted on projects that impact the SHS or the SIS. Being involved in the planning discussions early on and negotiating sound proportionate fair-share agreements is probably the single most important concept. The Department can be part of these agreements either with the developers, the local government, or both. To assist with these efforts, a *Model Proportionate Fair-Share Agreement* has been developed by the Department. A copy of the model agreement can be found in the back of this guide and it can also be downloaded at:

**<http://www.dot.state.fl.us/planning/gm>**

- ☑ A comprehensive assessment of the entire transportation system should be considered. For example, if an SHS facility is deficient, then all types of projects that could realistically help with that deficiency may be eligible for proportionate fair-share contributions. Examples of these types of projects would include adding lanes to the deficient facility, alternative parallel corridors, transit projects that add capacity, or Intelligent Transportation Systems (ITS) such as ramp metering, traveler information systems, or electronic toll payment facilities that improve operational efficiencies.
- ☑ Project costs for proportionate fair-share contributions should be determined by reference to FDOT data at the District level, or if those data are unattainable, by reference to FDOT statewide cost data which are available from the FDOT Central Office.

## How can FDOT ensure that applicants are addressing impacts to State and SIS facilities?

FDOT District Staff should be consulted in order to ensure that supporting data and analysis are provided which document that:

- ☑ **Current and projected deficiencies are clearly identified.**
- ☑ **Appropriate mitigation and associated project costs are calculated.**
- ☑ **Projects are shown to be financially feasible within the local government's CIE.**
- ☑ **The developers' proportionate fair-share contribution is properly calculated.**



## How can proportionate fair-share contributions be applied when the corridor they are addressing is over capacity, deficient, or constrained, and it is not in the Work Program or an LTCMS?

If a project in a deficient corridor will not be programmed for construction in the FDOT Adopted Work Program due to environmental, fiscal, or social constraints, proportionate fair-share contributions can be collected for use in other programmed projects that add mobility through other types of projects that will address the deficiency, such as:

- ✓ **Alternative parallel corridors**
- ✓ **Transit projects**
- ✓ **Other alternative system-wide operational enhancements, such as ITS**

## When would the local government not want to accept a proportionate fair-share payment?

The local government may decide not to accept a proportionate fair-share payment if the contribution is for a project not in the CIP or CMS, will not sufficiently address the LOS deficiency, and/or is not financially feasible.

## When should a proportionate fair-share agreement be executed?

If a developer cannot meet the transportation concurrency requirement through projects in the first three years of the local government's CIE or Five-Year Work Program, the developer can enter into a **proportionate fair-share agreement** with the local government. In such an agreement, the developer agrees to fund all or a portion of a future transportation project to mitigate impacts. If a roadway which requires concurrency mitigation is on the SIS, FDOT must concur with and be a party to the agreement. For other projects off the SIS but on the SHS, FDOT may also receive the funds for use towards a future project and, although not required by law, should be involved in the agreement. In other words, the local government negotiates with the developer for dollars to offset the impact of the development on the transportation corridor. Agreements are only to be executed for projects that can provide the required transportation concurrency (be under construction) within the fourth and fifth years of the Adopted Five-Year Work Program or that will be under construction within 10 years of the execution of the proportionate fair-share agreement if the transportation facility is in a long-term transportation concurrency system. *By signing an agreement, FDOT is not guaranteeing that the project will be under construction within 10 years, but is agreeing with the local government that sufficient funding is reasonably anticipated within that timeframe.*

*(See Questions and Answers about Proportionate Fair-Share Mitigation on page 31 for further discussion regarding local government options for roadways not under construction within 10 years of the establishment of a proportionate fair-share agreement.)*



The agreements should specifically identify the subject facility, the project limits, the general area being impacted, and the capacity project that will provide the necessary concurrency. There is no restriction in which phase(s) the funds can be used, but there should be restrictions on the funds being programmed for administrative or operational costs. ***If the identified project could not move forward (due to environmental or other issues), the funds could be used for a project on another corridor if that project will reduce the congestion on the corridor identified in the proportionate fair-share agreement.***

## ...and where does the money go?

If an agreement is executed and funds are received by FDOT, a copy of the executed agreement and the check must be sent with a transmittal memorandum to the FDOT Comptroller's Office, General Accounting Office, MS 42B, to the attention of Joe Kowalski, Deputy Comptroller. The Comptroller's Office will prepare and execute an escrow agreement with the Department of Financial Services whereby the funds will be held in the State Treasury in interest bearing accounts until they are to be used on a project. The Comptroller's Office will provide a quarterly report of all funds held in escrow, including interest earnings, pursuant to proportionate fair-share agreements. The transmittal memorandum needs to include a reference to the Item Number, if available, under which the funds are being programmed in the Work Program.

## Once proportionate fair-share contributions are collected, what's next?

Once proportionate fair-share contributions are collected<sup>1</sup>, the funds are to be placed in an account for each specific project and, in some cases, for segments or portions of projects. For example, for a roadway project, funds should be linked to the specific segment of roadway, since it may be constructed in different phases based on available funding. FDOT should routinely evaluate and monitor the amount of funds that are collected for each of these projects that are on the SHS, or where local government projects can mitigate for impacts to the SHS or the SIS. For example, during the Work Program process, transportation facilities and programs could be evaluated based on the amount of funds that are in proportionate fair-share accounts and the percentage that these accounts represent in terms of the overall project cost.

## How do proportionate fair-share collections affect Work Programming Decisions?

All local governments are required to keep and maintain records of all proportionate fair-share transactions, as well as provide an annual report of all accounts, as part of their capital improvement planning process. FDOT District and Central Office Planning and Work Programming staff should periodically review the status of all facilities within their Districts to understand the extent of funding that is available for each transportation facility. This information should be used when making production decisions or when gaming occurs during the annual Work Program development cycle. For example, the following graphic shows three projects in a FDOT district that have received proportionate fair-share contributions.

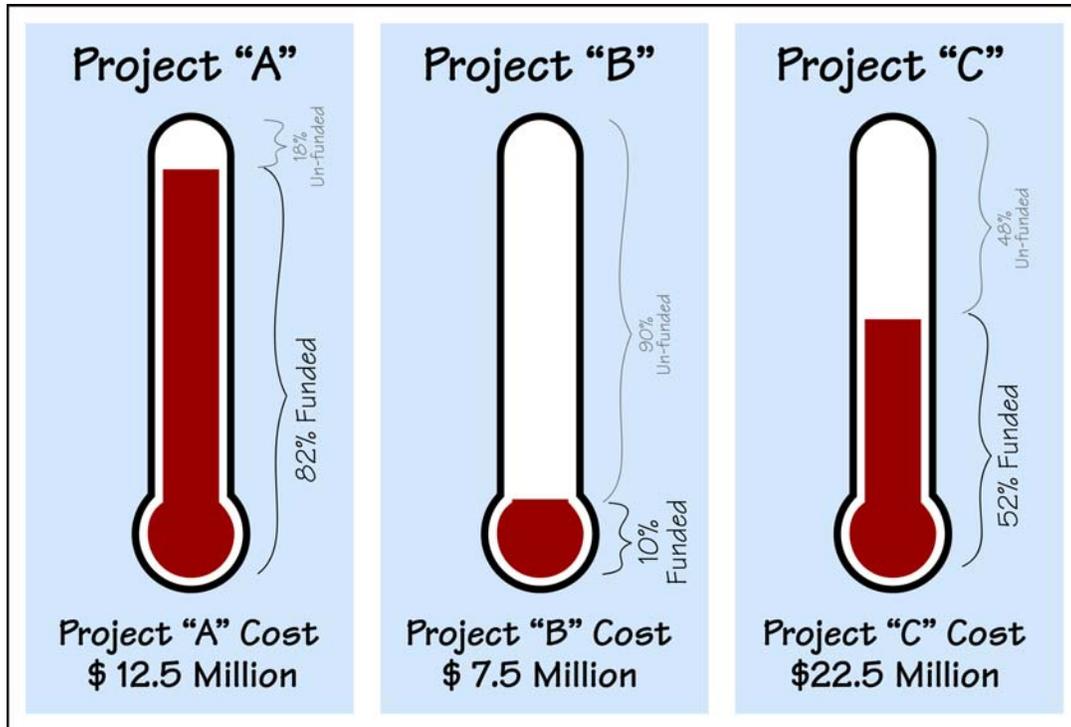
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<sup>1</sup> The CIE should be updated to reflect proportionate fair-share projects and agreements. For more information related to this, please contact the Department of Community Affairs or refer to the DCA document *A Guide to the Annual Update of the CIE*.



Project “A” has about 82 percent of the total project’s construction cost in the proportionate fair-share account whereas Project “B” only has 10 percent and Project “C” has 52 percent.

## Proportionate Fair-Share/Work Programming Considerations



Projects with a considerable amount of the total project cost available could be either added to the Work Program or advanced due to the proportionate fair-share funding available through the Work Program development process. In the case of the three projects listed above, Project “A” would likely be advanced due to the significant portion of the project cost being available as a result of various proportionate fair-share contributions. By evaluating projects in this manner, FDOT is able to leverage additional transportation funds from various sources to implement projects.

**For Work Programming purposes, the following guidance is provided:**

- ☑ If there is a project in year four or five of the Adopted Work Program, the funds received pursuant to the proportionate fair-share agreement may be added to the existing anticipated funding.
- ☑ If the project is in the 10-Year SIS Plan, the funds received pursuant to the proportionate fair-share agreement may be added to the existing anticipated funding.
- ☑ If no project exists in the Adopted Work Program or the 10-Year SIS Plan, the funds shall be programmed in a reserve item (box) in year 10 of the Work Program. A specific reserve item will be established for each corridor identified in a proportionate fair-share agreement. If more than one proportionate fair-share agreement is executed for the same corridor, the funds may be programmed on the same Item Number. During the next gaming cycle, all proportionate fair-share agreements will be reviewed and the projects considered for programming.
- ☑ A proportionate fair-share agreement should not be executed unless it is anticipated that the project referenced in the agreement can be under construction within 10 years from the date of execution of the agreement.
- ☑ If no specific phase has been identified, the funds should be programmed with phase 52, allocation Type 1, fund code LFP, using the appropriate transportation system. The phase may be changed as the project develops and a specific use for the funds is identified, as part of the normal work program development process.



# Breaking it Down: Proportionate Fair-Share Roles and Responsibilities

The table below was developed to outline the proportionate fair-share process for each type of transportation facility and to convey the roles and responsibilities of the parties involved. The table also illustrates that there are different requirements based on the expected funding sources. For example, if a project is not expected to use Federal funding, then it is not required to be in a Metropolitan Planning Organization (MPO) Long-Range Transportation Plan (LRTP) and Transportation Improvement Program (TIP) unless it is regionally significant and requires federal approval<sup>1</sup>.

## Proportionate Fair-Share Process Matrix

		PROCESS					
Roadway Type	Expected Funding Type	Must be in MPO LRTP <sup>1</sup>	Must be in LGCP <sup>2</sup>	Development Agreement with FDOT Needed?	Project is programmed in the fourth or fifth year of the Five-Year Work Program <sup>3</sup>	←OR→	Project Construction is Expected Beyond 5-Year CIP <sup>4</sup>
SIS	Federal Funding	X	X	X	X		X
SIS	Non-Federal Funding	X	X	X	X		X
SHS (non-SIS)	Federal Funding	X	X	X <sup>5</sup>	X		X
SHS (non-SIS)	Non-Federal Funding		X	X <sup>5</sup>	X		X
County/City Local	Federal Funding	X	X		X		X
County/City Local	Non-Federal Funding		X		X		X

<sup>1</sup> 23 CFR 450.324 requires that all regionally significant transportation projects for which Federal Highway Administration (FHWA) or Federal Transit Association (FTA) approval is required be included in the TIP regardless of funding source.

<sup>2</sup> Per F.S. 339.2819(4)(a)2, projects must be identified in the capital improvements element of the LGCP.

<sup>3</sup> If a project that is needed to address a concurrency deficiency is in the first three (3) years of the Adopted Five-Year Work Program, it is considered to have met the concurrency requirement.

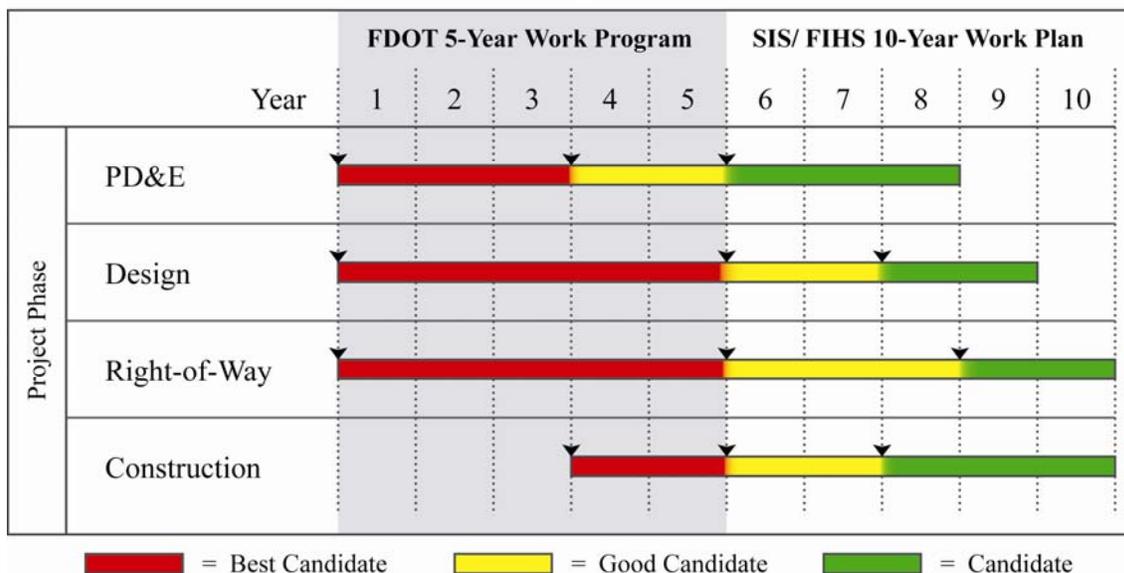
<sup>4</sup> If a project is not in the fourth or fifth year of the Adopted Five-Year Work Program, it must be in a LTCMS which can have a 10 or 15-year timeframe based on the level of backlog. The local government establishes its CMS or LTCMS based on its expected revenues in the CIE. (See page 8 for additional options)

<sup>5</sup> It is preferable for FDOT to sign the development agreement in the beginning of the process, but it is not mandatory. If no agreement is signed at the beginning, FDOT will provide input at the time of the Comprehensive Plan Amendment (CPA) to the CIE.

# What projects would be good candidates for proportionate fair-share?

The graph below illustrates the most opportune times for Districts to enter into proportionate fair-share agreements for State facilities within FDOT’s current Five-Year Work Program and the SIS/FIHS 10-Year Work Plan. Typically, the earlier the agreement is executed in the course of the project, the more beneficial the proportionate fair-share agreement will be. Generally, the further a project moves through the Work Program or Work Plan, the more likely it is to be fully funded and to be constructed within a 10-year time frame. There are exceptions to this but, in most cases, where the PD&E/design stage and right-of-way acquisition have been completed, it is likely that a project will have a committed construction funding source as well. At this point, partners may offset construction dollars or solidify funding for a project by entering into proportionate fair-share agreements.

**Priority of Candidates for Proportionate Fair-Share Agreements**





## So it seems like it will be very important to coordinate with the local governments in my District, but how often should this occur?

The Districts should coordinate with local governments on a regular basis to review their concurrency management systems in order to be aware of overall transportation system conditions. Most Districts will be aware of any current deficiencies, but a periodic review of each CMS will allow the Districts to understand when transportation facilities are nearing deficiency. Transportation facilities operating below adopted LOS standards, but still experiencing development pressures, are good candidates for proportionate fair-share agreements. In addition, it will also be important for the Districts to review the annual update of the local government's CIE and stay informed of the balance of each proportionate fair-share account so that, as the Work Program process is developed each year, available funding can be properly considered allowing projects to be advanced or constructed more quickly.

# *Key Proportionate Fair-Share Agreement Contents*

Each proportionate fair-share agreement will be different depending upon the variables involved. However, at a minimum, each agreement should address or include the following key components:

*Description of Project and Need* - Each proportionate fair-share agreement should have a detailed description of the project toward which subsequent funds will be applied. The transportation improvement itself should be coordinated with future land use through a corridor management or build-out plan. The corridor plan will allow the local government to calculate costs for the transportation improvement and form a basis for distributing those costs to future developers who wish to access the capacity created by the transportation improvement. The corridor plan will also assist the local government in determining financial feasibility for the transportation improvement by estimating funds resulting from future proportionate fair-share development agreements within the corridor. Finally, the corridor plan will act as a framework to balance and allocate trips to the land uses planned along the corridor.

*Identification of Future Funding Partners* - Each proportionate fair-share agreement should specifically obligate the local government to require that subsequent developments within the corridor participate in the funding of the transportation improvement by signing a separate development agreement. In this manner, FDOT will have some assurance that there will be additional funds available to complete the project as the development is permitted by the local government. The corridor management plan should provide an indication of what level of funds a local government can be expected to provide. This should provide FDOT with a greater level of certainty and confidence in relation to entering into development agreements with local governments.



***Identification of Each Partner's Commitments*** - Development agreements that are entered into with FDOT for proportionate fair-share purposes should be seen as a commitment by that local government to plan the corridor in a comprehensive manner. It should be noted that the option to enter into a Development Agreement for a State facility that is not in the FDOT Five-Year Work Program is at the option of FDOT and is not a mandatory action. Each agreement should specifically outline the actions for which each partner is responsible in regards to the planning and construction of the transportation improvement. Time frames associated with specific actions should be included to ensure implementation. Contingent plans or agreements should also be addressed in case unforeseen circumstances occur.

***Responsibility for Fiscal Management*** - Each agreement should specifically outline which entity is responsible for managing funds resulting from present and future proportionate fair-share agreements within the corridor. At a minimum, an accounting process which delineates fund balances should be available prior to the beginning of the annual planning of the local government's capital improvements budgeting process and the annual development of the FDOT Work Program.

***Policies for Intergovernmental Coordination*** - Intergovernmental coordination should be addressed, especially in terms of how transportation improvements identified in the agreement will be coordinated with any long-range transportation plan of an applicable MPO. Agreements to support the prioritization of the transportation improvement within the MPO process should be included. A coordination process with other adjacent local governments should be in place as a result of the corridor planning process.

# MODEL PROPORTIONATE FAIR-SHARE AGREEMENT<sup>1</sup>

This TRANSPORTATION PROPORTIONATE FAIR-SHARE AGREEMENT (“Agreement”) is made and entered into by and between [DEVELOPER] (“Developer”) and [LOCAL GOVERNMENT] (“\_\_\_\_\_”) and the STATE OF FLORIDA, DEPARTMENT OF TRANSPORTATION (“FDOT”).

WHEREAS, Developer is the owner and developer of the [NAME OF DEVELOPMENT], (“Project”), more particularly described on Exhibit “A” attached hereto (the “Property”); and

WHEREAS, Project is [PROJECT DESCRIPTION]; and

WHEREAS, Project traffic will impact [ROADWAY] which is currently operating at [THIS] level of service; and

WHEREAS, [ROADWAY] is a component of the [State Highway System or Strategic Intermodal System]; and

WHEREAS, the level of service for [ROADWAY] is set by [LOCAL GOVERNMENT or FDOT] and is [THIS]; and

WHEREAS, Project traffic will [CAUSE A LEVEL OF SERVICE DEFICIENCY or CONTRIBUTE TO A LEVEL OF SERVICE DEFICIENCY] on [ROADWAY]; and

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<sup>1</sup> Note – this is a model agreement and is not intended to be used as a form. Each situation will require specific tailoring of this agreement. This document is also not intended to be used in the DRI context.



WHEREAS, improvements to address the level of service on [ROADWAY] will not be under construction within three years after [LOCAL GOVERNMENT] approves the Project; and

WHEREAS, improvements to address level of service deficiency on [ROADWAY] [ARE/ARE NOT] currently included in [LOCAL GOVERNMENT]'s five year capital improvement plan; and

WHEREAS, Section 163.3180, Florida Statutes, authorizes use of proportionate fair-share contributions by developers to satisfy concurrency requirements; and

WHEREAS, [LOCAL GOVERNMENT] has adopted ordinance [number] for the purpose of assessing proportionate fair-share mitigation options for traffic impacts; and

WHEREAS, Project has therefore failed to satisfy the transportation concurrency requirement of [LOCAL GOVERNMENT]'S comprehensive plan; and

WHEREAS, Parties to this agreement have determined that [DESCRIPTION OF TRANSPORTATION IMPROVEMENT<sup>1</sup>] would sufficiently mitigate the Project's impact on [ROADWAY] and subsequently allow [LOCAL GOVERNMENT] to approve the Project; and

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<sup>1</sup> "Transportation Improvement" means the project(s) or programs agreed upon by the local government and developer, and (when SIS facilities are impacted) FDOT, as the basis for computing a proportionate fair-share contribution. Transportation Improvements include, but are not limited to, new capacity roadway project, alternate corridor improvement, frontage road improvement within the existing corridor, or transit improvements.

WHEREAS, the Parties to this agreement have determined that proportionate fair-share contribution is authorized for the Project pursuant to Section 163.3180, Florida Statutes and [LOCAL GOVERNMENT] ordinance [number];

**NOW, THEREFORE**, in consideration of the premises hereof, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Incorporation of Recitals. The foregoing recitals are true and correct, and are hereby incorporated by the parties as part of this Agreement as if fully set forth herein.

2. Proportionate Fair-Share Calculation. The Developer, [LOCAL GOVERNMENT], and FDOT do hereby acknowledge and agree that [TRANSPORTATION IMPROVEMENT] is necessary to mitigate the traffic impacts of the Project. Based upon the best estimates of FDOT, all parties agree that [THIS AMOUNT] is the Developer's proportionate fair-share contribution ("Proportionate Fair-Share") required under Chapter 163, Florida Statutes, and [LOCAL GOVERNMENT PROPORTIONATE FAIR-SHARE ORDINANCE] necessary for [TRANSPORTATION IMPROVEMENT], notwithstanding any subsequent variance in the actual cost of needed transportation improvements for the Project.



3. Proportionate Fair-Share Contribution by Developer.

The Developer shall contribute the Proportionate Fair-Share to [FDOT/LOCAL GOVERNMENT] [AT/PRIOR TO] upon [TIME SCHEDULE]. The contribution shall be in the form of [MONETARY PAYMENT (letters of credit or other security instruments are not acceptable in lieu of a cash deposit for purposes of FDOT) and/or LAND DEDICATION]. [For LAND DEDICATION] The legal description of the property to be dedicated is attached hereto as Exhibit “A.” The dedication shall be in the form of a warranty deed to FDOT. An appraisal establishing the fair market value of the dedication is attached hereto as Exhibit “B.”

4. Approval by Local Government. The [LOCAL GOVERNMENT] shall issue a concurrency management certificate to Developer upon receipt of the Proportionate Fair-Share contribution from the Developer by [FDOT/LOCAL GOVERNMENT].

5. Responsibilities of [LOCAL GOVERNMENT]. [For monetary payment] [LOCAL GOVERNMENT] shall immediately forward the Proportionate Fair-Share contribution to FDOT. [For either money or land] [LOCAL GOVERNMENT] shall work further with FDOT to identify additional local funding sources necessary to make the [TRANSPORTATION IMPROVEMENT] financially

feasible in a \_\_\_\_\_ -year period. By executing this Agreement [LOCAL GOVERNMENT] agrees that it has a continuing obligation to dedicate future proportionate fair-share contributions by other developers impacting [ROADWAY] to FDOT to fund the [TRANSPORTATION IMPROVEMENT].

6. Capital Improvement Plan [if necessary]. [LOCAL GOVERNMENT] shall add the [TRANSPORTATION IMPROVEMENT] to its five-year capital improvement plan at the next annual update of the [LOCAL GOVERNMENT] comprehensive plan. A copy of this Agreement shall be attached or noted in the capital improvement plan update forwarded to the Department of Community Affairs in order to determine the plan's financial feasibility and to extend the time of commencement of construction of [TRANSPORTATION IMPROVEMENT] to a \_\_\_\_\_ -year time frame pursuant to Section 163.177(16)(b)1, Florida Statutes.

7. Responsibilities of FDOT. [For monetary payment] FDOT shall earmark the Proportionate Fair-Share received from the [LOCAL GOVERNMENT/DEVELOPER] for the [TRANSPORTATION IMPROVEMENT] and place the funds in a separate account for exclusive use for the [TRANSPORTATION IMPROVEMENT]. [For monetary payment] By executing this Agreement, FDOT agrees that it has a continuing obligation to place into this account future proportionate fair-share payments by other



developers impacting [ROADWAY] to fund the [TRANSPORTATION IMPROVEMENT]. [For land dedication] By executing this Agreement, FDOT agrees that it has a continuing obligation to place into a separate account for exclusive use for [IMPROVEMENT OF ROADWAY] future proportionate fair-share payments by other developers impacting [ROADWAY] to fund the [TRANSPORTATION IMPROVEMENT]

8. Feasibility. At this time, based upon existing funding and reasonable projections for future funding, the parties agree that the [TRANSPORTATION IMPROVEMENT] is financially feasible and can be designed, permitted, and constructed in an expeditious manner. However, should the [TRANSPORTATION IMPROVEMENT] subsequently be deemed not feasible for any reason, FDOT reserves the right to transfer the funds received pursuant to this Agreement to an alternative transportation project or projects that will address the level of service deficiency identified herein. In such event, FDOT will consult the [LOCAL GOVERNMENT] regarding alternatives.

9. Construction of Improvements. FDOT and [LOCAL GOVERNMENT] acknowledge and agree that the Developer's Proportionate Fair-Share shall be applied toward [TRANSPORTATION IMPROVEMENT] as described herein in accordance with the standards and design criteria of FDOT with

respect to such facilities. [Responsibility for actual construction of improvements to be determined in individual agreement]

10. Satisfaction of Transportation Improvement Requirements. FDOT and [LOCAL GOVERNMENT] hereby acknowledge and agree that, upon the receipt of Developer's Proportionate Fair-Share as required herein, the Developer shall be deemed to have satisfied all requirements under Chapter 163, Florida Statutes, for the mitigation of traffic impacts of the Project on all state and regional roads without regard to whether the [TRANSPORTATION IMPROVEMENT] is constructed or the Proportionate Fair-Share contribution is used otherwise.

11. Governing Law/Binding Effect. This Agreement shall be interpreted and governed by Florida Law. Each of the parties hereto warrants and represents that this Agreement is valid, binding and enforceable against them in accordance with the terms and conditions of Florida law.

12. Remedies. The parties hereto shall have all rights and remedies provided herein and under Florida Law with respect to the enforcement of this Agreement, and hereby acknowledge and agree that each party hereto shall have the right and remedy to bring an action or actions for specific performance and such other equitable or injunctive relief, as appropriate and necessary, to enforce this Agreement. The parties agree that the venue for any enforcement



action shall be the Circuit Court in \_\_\_\_\_ . The parties further acknowledge and agree that, in the event the Developer fails to pay the Proportionate Fair-Share as provided in this Agreement, no further building permits for the Project shall be issued until the required payment is made.

13. Notice of Default. The parties acknowledge and agree that no party shall be considered in default for failure to perform under this Agreement until such party has received written notice specifying the nature of such default or failure to perform, and said party fails to cure said default or fails to perform within thirty (30) days of receipt of written notice.

14. Notices. All notices which are required or permitted under this Agreement shall be given to the parties by certified mail with return receipt requested, hand deliver, or express courier, and shall be effective upon receipt when delivered to the parties at the addresses set forth herein below (or such other address as provided by the parties by written notice delivered in accordance with this paragraph):

**INSERT NAMES AND ADDRESSES HERE**

15. Amendments. No amendment, modification, or other changes in this Agreement shall be binding upon the parties unless in writing executed by all of the parties.

16. Successors and Assigns Bound. The rights and obligations contained in this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto, including any successor in title to the Developer to all or any part of the Property.

17. Recording. The Developer shall record this Agreement in the Public Records of \_\_\_\_\_ County at the Developer's expense.

18. Effective Date. This Agreement shall become effective upon the date it is executed by the last party to execute the Agreement.

19. Counterparts. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, but all counterparts shall together constitute duplicates of one and the same instrument.



## *Questions and Answers about Proportionate Fair-Share Mitigation*

This section asks several common questions about how Florida growth management law was amended by SB 360. The corresponding answers have been developed to provide a framework for the District Offices to coordinate with local governments and developers and so that the benefits of proportionate fair-share contributions and agreements can be leveraged.

**Question:** If the expected additional development (and therefore the additional proportionate fair-share money) does not materialize, to what extent is the local government committed to provide the additional money to complete the improvements to support the development?

**Answer:** If the shortfall occurs or is identified while a project is in the five-year CIE schedule of capital improvements or included in a long-term concurrency management system, the local government will have to cease issuing development orders, identify other revenue sources that will be used to make up the shortfall, or otherwise amend the plan to ensure financial feasibility. Such plan amendments should include actions necessary to address any transportation deficiency, such as the identification of alternative projects, to address capacity needs.

**Question:** If additional development does not materialize, would the County be able to amend its CIP to build a smaller alternative project with the available proportionate fair-share money?

**Answer:** Yes, this is an option; however, caution should be taken to ensure that the alternative project fully addresses the concurrency deficiency to the same extent as the original project. This may require reexamination to confirm that there will be available capacity for future developments. Prior to inclusion in the plan, alternatives should be coordinated with DCA, FDOT, and any other local government with jurisdiction over the road, if applicable, to ensure that all deficiencies on impacted roadways are properly addressed.

**Question:** Does Section 163.3180(2)(c), Florida Statutes, require that the SIS improvements be constructed within three years after the local government approves a building permit?

**Answer:** The law requires that all transportation facilities needed to serve new development be in place or under actual construction within three years after the local government approves a building permit. Proportionate share mitigation in subsection 163.3180(16) is one of the tools that local governments can use to address concurrency. A proportionate fair-share project could take as much as 10 years from development approval if the local government commits to it, and, in the case of impacts to the SIS, has received the concurrence of FDOT.



**Question:** Although the local government’s CMS may have a transportation corridor divided into many different segments for trip distribution purposes, and may collect proportionate fair-share contributions on a number of different segments, can the local government have one transportation corridor account where these funds are deposited?

**Answer:** Yes, the local governments are encouraged to be proactive in regard to transportation planning and, consequently, to view the provision of infrastructure within a corridor in a comprehensive manner. As a result, improvements within a corridor should be sequential based on an overall plan of development.

**Question:** If expected State and Federal funding does not materialize, to what extent is the local government committed to providing additional funding to complete the improvements to support the development?

**Answer:** For projects that are expected to be funded with State and/or Federal funds within the first three years of *FDOT’s Five-Year Work Program*, it is the commitment of the State to undertake projects that local governments can rely upon for concurrency purposes. If expected State or Federal funding does not materialize for these projects, the local government should document the circumstances that caused this to occur. If expected State or Federal funding for projects outside of the first three years of the *FDOT Five-Year Work Program* does not materialize, the local government will need to identify other revenue sources that will be used to make up for the shortfall or otherwise amend the comprehensive plan to ensure financial feasibility.

**Question:** In order for the CIE to be “financially feasible,” is the local government required to anticipate private funding for the entire cost of an improvement to a SIS facility, or can the CIP anticipate Federal and State funding, even if the improvement is not yet funded in the FDOT Five-Year Work Program or the SIS 10-Year Work Plan?

**Answer:** If an improvement to a SIS facility has not been identified for funding by FDOT in the Five-Year Work Program or in the SIS 10-Year Work Plan, alternative sources of funding must be identified for the project to be considered for inclusion in a financially feasible CIE. Transportation projects within the first three years of the FDOT Five-Year Work Program stand as the commitment of the state to undertake projects that local governments can rely upon for concurrency purposes in the issuance of development orders. For the purposes of determining “financial feasibility” of the CIE, the first three years of the Work Program should be considered as “committed” funding, and projects within years four and five should be considered “planned” funding. SIS/FIHS projects that will ultimately enter the five-year work program are typically identified in the SIS 10-Year Work Plan and the FDOT 2025 SIS Highways/FIHS Cost-Feasible Plan. Although there is no certainty that projects within years six through ten of the SIS 10-Year Work Plan will be fully funded prior to the time they are included in the Five-Year Work Program, they could be considered candidates for inclusion in a 10-year financially feasible capital improvement program associated with a local government long-term concurrency management system and subsequent proportionate fair-share agreements.

Projects under this scenario would reflect a higher probability of funding than projects not identified in the SIS 10-Year Work Plan or those identified in outer years.



**Question:** If a developer contributes proportionate fair-share funding towards SIS facility improvements, should the county maintain the funds or should it be handled by FDOT? Additionally, can it be aggregated with other funding that is available on the SIS facility and used to fund an improvement on a segment, within the same corridor, that the development did not impact?

**Answer:** A local government or FDOT can maintain the account containing proportionate fair-share contributions. The proportionate fair-share contribution of any single developer is based on the impacts of that development on a transportation facility that is not meeting the adopted level of service. How those funds will be utilized will be based largely upon the development agreement with the developer and the input from DCA and FDOT. The contribution may be combined with other developer contributions to address concurrency deficiencies in any number of ways, such as mitigation in the form of parallel reliever routes, improved network development and connectivity, transit facility improvements (that add capacity), or other major mobility improvements.

**Question:** What is the intent behind having the “concurrence” of the FDOT on impacts to SIS facilities? If FDOT is not willing to participate in the funding of an improvement to a SIS facility, does it negate the local government from funding an improvement to the SIS facility with proportionate fair-share funds collected?

**Answer:** Section 163.3180(16)(e), Florida Statutes, states that mitigation for development impacts to SIS facilities requires concurrence of FDOT. Since SIS facilities are essential to providing statewide and interregional mobility on Florida’s transportation system, FDOT should be consulted with in order to reach agreement on the proposed mitigation when the SIS is impacted by development. Funding provided by FDOT is not a prerequisite to a SIS facility being mitigated with proportionate fair-share funds.

## *Glossary of Acronyms*

<b>CIE</b>	Capital Improvements Element
<b>CIP</b>	Capital Improvements Plan
<b>CMS</b>	Concurrency Management System
<b>CPA</b>	Comprehensive Plan Amendment
<b>DCA</b>	Department of Community Affairs
<b>DRI</b>	Development of Regional Impact
<b>FDOT</b>	Florida Department of Transportation
<b>FHWA</b>	Federal Highway Administration
<b>FIHS</b>	Florida Intrastate Highway System
<b>FTA</b>	Federal Transit Association
<b>ITS</b>	Intelligent Transportation Systems
<b>LDR</b>	Land Development Regulations
<b>LGCP</b>	Local government's Comprehensive Plan
<b>LOS</b>	Level of Service
<b>LRTP</b>	Long-Range Transportation Plan
<b>LTCMS</b>	Long-Term Concurrency Management System



<b>MPO</b>	Metropolitan Planning Organization
<b>RSI</b>	Roadway Segment Improvement
<b>SHS</b>	State Highway System
<b>SIS</b>	Strategic Intermodal System
<b>TCEA</b>	Transportation Concurrency Exception Area
<b>TIP</b>	Transportation Improvement Program



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## Where can I go for more information?

For more information regarding the Florida Department of  
Transportation (FDOT), please visit the FDOT website at  
[www.dot.state.fl.us/planning](http://www.dot.state.fl.us/planning).

If you have questions or comments concerning this document,  
please contact Robert Magee at (850) 414-4800.