CHARLIE CRIST
Governor

THOMAS G. PELHAM
Secretary
Florida Department of Community Affairs

STEPHANIE C. KOPELOUSOS
Secretary
Florida Department of Transportation

COPY

October 3, 2007

Mr. Bill Roberts, Chairman
Okaloosa-Walton Transportation Planning Organization
P.O. Box 11399
Pensacola, FL 32524-1399

Re: Response to Questions Presented in Your Letter of August 23, 2007

Dear Chairman Roberts:

Your letter of August 23, 2007, raised a variety of questions related to recent growth management legislation, and its applicability to capital facilities planning generally and transportation planning specifically. As requested, written answers to your questions are attached.

We sincerely appreciate the time that you and your staff have taken to explore these important issues in greater detail, and we hope that the attached responses are of assistance. As you continue your work to build the future of your region, we encourage you to take advantage of a variety of web based resources from the Department of Community Affairs (DCA) and the Department of Transportation (DOT) which address many of your questions. Some of these resources are highlighted below.

- The DCA website at www.dca.state.fl.us/fdcp/DCP/publications/index.cfm includes the publication "A Guide to the Annual Update of the Capital Improvements Element," as well as other related resources.

- The DOT website at www.dot.state.fl.us/planning/gm/default.htm includes guidebooks related to proportionate fair-share, transportation concurrency management systems, and transportation concurrency exception areas, as well as the "Model Ordinance for Proportionate Fair-Share Mitigation of Development Impacts on Transportation Corridors." The website also includes frequently asked questions related to proportionate share mitigation.

Thank you for your interest in these important issues and their role in the future of the Okaloosa-Walton region. Our staffs will contact your office to arrange the requested round table meeting in October. If you have further questions, please call Bill Pable of the Division of Community Planning at DCA at (850) 922-1781, or David Hutchinson of the Office of Policy Planning at DOT at (850) 414-4820.

Sincerely yours,

Thomas G. Pelham
Secretary

Stephanie C. Kopelousos
Secretary

TGP/bp

Attachment

cc: Senator Ken Pruitt, President of the Florida Senate
Senator Durell Peaden, Jr.
Senator Don Gaetz
Representative Marco Rubio, Speaker of the Florida House of Representatives
Representative Ray Sansom
Representative Greg Evers
Representative Marti Coley
Representative Donald D. Brown
David Gibbs, Division Administrator, Federal Highway Administration
Larry Kelley, Secretary, FDOT District 3
Jim DeVries, FDOT District 3 Urban Office Pensacola

Response to Questions in August 23, 2007 Letter from the Okaloosa-Walton Transportation Planning Organization – October 4, 2007 –

The Okaloosa-Walton Transportation Planning Organization's letter of August 23, 2007, references questions 1-56 by line number to HB 7203 and questions 57-62 by line number to HB 985. The statutory citation has been added in brackets to the end of each question. The answers reference the statutory citations, not the line numbers.

All references to the Department of Community Affairs (DCA) and to the Department of Transportation (DOT) use the acronym for each agency.

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1. On line 124 the definition of "Financial Feasibility" is defined in relation to a 5-year capital improvement program, how does the long range (15-year) capital improvement program relate to lines 124-144? [See Section 163.3164(32), F.S.]

   As noted in Section 163.3177(3)(d), F.S., "If a local government adopts a long-term concurrency management system pursuant to s. 163.3180(9), it must also adopt a long-term capital improvements schedule covering up to a 10-year or 15-year period, and must update the long-term schedule annually. The long-term schedule of capital improvements must be financially feasible." At a minimum, financial feasibility must be demonstrated no later than the conclusion of the long-term schedule. However, it should be demonstrated that progress is being made over the course of the long-term planning period toward achieving the level-of-service standard, and at a minimum it must be achieved no later than the end of the long-term schedule.

2. In line 127 thru 130 it states that planning funding sources can be used such as state and federal dollars. Does this include the Okaloosa-Walton County TPO 2030 Cost Feasible Plan? [See Section 163.3164(32), F.S.]

   Yes. The following background information is also provided for further clarification. Section 163.3164(32), F.S., notes that planned revenues may only be used in years 4 and 5, versus committed revenues, which may be used at any time in years 1 through 5. Committed funding means funding based on expected revenues from an existing revenue source, versus planned revenue, which relies on a source that is not currently available to the local government. The definition of "financial feasibility" in Section 163.3164(32), F.S., distinguishes between "currently available," "committed," and "planned" funding sources. First, Rule 9J-5.003(29), Florida Administrative Code, notes that a currently available revenue source is "...an existing source and amount of revenue presently available to the local government. It does not include a local government's intent to increase the future level or amount of a revenue source which is contingent on ratification by public referendum." Second, the text of the financial feasibility definition notes that a committed funding source is one which is available as part of a five-year capital improvement schedule for financing capital improvements and could include "...ad valorem taxes, bonds, state and federal funds, tax revenues, impact fees, and developer contributions." Finally, Section 163.3177(3)(a)5,

F.S., states that a planned revenue source is one which requires "...referenda or other actions to secure the revenue source."

3. Line 131 indicates that the contributions must be adequate to fund the project cost. Who will determine if the contribution is adequate? [See Section 163.3164(32), F.S.]

   Section 163.3164(32), F.S., could be summarized as follows: "Financial feasibility means that sufficient revenues are currently available or will be available...which are adequate to fund the projected costs of the capital improvements..." There are two answers to this question. First, the question of adequacy focuses on whether sufficient revenues are available to pay for the identified capital improvements. Second, DCA will evaluate the revenue and cost data to ensure that they are based on professionally accepted existing sources and the best available existing data, consistent with Rule 9J-5.005(2)(c), Florida Administrative Code.

   As a practical matter, it is important to keep in mind that DCA will be receiving annual Capital Improvement Element updates from over 470 local governments. It is not DCA's intention to delve into the details of local budgets or to seek unnecessary backup documentation. DCA is looking for a demonstration that the local government is meeting the statutory requirement to plan for and fund necessary infrastructure. There are a few basic things DCA will expect to see in its review of the five-year schedule of capital improvements in the Capital Improvements Element. First, revenues must be greater than or equal to expenditures. Second, projects must be moving through the five-years of the schedule of capital improvements and not linger at the out years. Third, the projection of revenues and the evaluation of which projects attain and maintain level-of-service must be based on a reasonable approach with realistic assumptions.

4. Line 138 thru 142 states that a comprehensive plan shall be deemed financially feasible if it can be demonstrated that the level-of-service standards will be achieved by the end of the planning period. What standard or method will be used to determine if the plan demonstrates this? [See Section 163.3164(32), F.S.]

   Beyond the definition of financial feasibility noted above, Section 163.3177(2), F.S., provides that local governments and the Department shall use professionally acceptable methodologies to demonstrate the following for the time period of the capital improvement schedule:

   a. Identify the infrastructure needed to attain and maintain its adopted level of service standards (LOS);
   b. Estimate the cost of providing that infrastructure;
   c. Estimate the revenues that are available to pay for that infrastructure; and
   d. Make appropriate adjustments to "a" through "c" to ensure that the LOS is met and that sufficient revenues are available to pay for the needed improvements.

   One possible method to provide that demonstration is described below.

- For the expenditures, the local government could provide sufficient data and analysis to demonstrate that the choice of capital improvements is based on professionally acceptable methodologies. For example, the local government might utilize a traffic model to quantify its need for new roadways. It could provide an executive summary of the model, its parameters, its assumptions, and its outputs.
- For the revenues, the local government could show the historical trends for the various revenues and base projections on those trends.
- To demonstrate that sufficient revenues are available for expenditures, the local government could prepare a table that compares expenditures by year, with corresponding revenues by year, along with the resulting balance of funds.

5. Line 152 thru 157 states that the comprehensive plan shall be financially feasible and that financial feasibility shall be determined using professionally accepted methodologies and applies to the 5-year planning period, except in the case of a long-term CIP. What will be the requirement for financial feasibility for the 15-year CIP? [See Section 163.3177(2), F.S.]

   Please refer to the answer to question #1 above.

6. What method will be required to demonstrate financial feasibility for the 15-year CIP?

   Please refer to the answer to questions #1 and #4 above.

7. Line 162 thru 165 states that the comprehensive plan shall have a component that outlines principles for construction, extension, or increase in capacity of public facilities, as well as a component that outlines principles for correcting existing public facility deficiencies, in regards to transportation does this include all roadways within the county or just roadways in the local concurrency management system? [See Section 163.3177(3)(a)1, F.S.]

   Regarding transportation, it includes all roads upon which the local government relies to ensure the achievement of concurrency and financial feasibility.

8. Does this include state facilities that have a backlog but the county has no development impact upon.

   Please refer to the answer to question #7 above.

9. Line 168 thru 171 requires the estimated cost, timing of facilities, and projected revenue sources to fund the facilities. If the county estimates the public facility cost, who has to sign off on the cost estimates? [See Section 163.3177(3)(a)2, F.S.]

   Please refer to the answer to question #3 above. Also, local governments should base their cost estimates on adequate data and analysis from professionally accepted sources. One possible source might be the local government's actual recent experience in acquiring right-of-way. An objection from DCA may be based on a cost figure that is extraordinarily low, without sufficient data and analysis which explains the reason for the cost difference.

10. What method should be utilized in projecting proposed proportionate fair-share contributions from developers?

    Section 163.3180(16)(a), F.S., required DOT to develop a model transportation concurrency management ordinance with methodologies for assessing proportionate fair-share mitigation options. A copy of that model ordinance can be found at http://www.dot.state.fl.us/planning/gm/pfso/model-ordinance.pdf. Please refer to page 9 of the model ordinance for a discussion of the methodology for determining the proportionate fair-share obligation of an applicant. The model ordinance is currently being revised by DOT to reflect 2007 legislation.

11. Since federal and state funding is not adequate to fund all the required transportation improvements, what mechanisms can be employed to reduce the cost of construction? On state roadways where there are existing lanes and constraints on placement of new pavement can the federal and state requirements be waived to reduce the engineering cost or provide for an abbreviated PD&E process?

    DOT shares the Transportation Planning Organization's concern about transportation project cost increases and has created a web page to provide information on transportation costs and efforts underway to address cost increases. This web page is at http://www.dot.state.fl.us/planning/policy/costs/default.asp. It identifies a number of continuing actions taken by DOT, and includes links to reports and additional information on this subject. Generally speaking, federal and state engineering and PD&E (environmental review) requirements cannot be waived or eliminated for capacity projects for existing facilities.

12. This section addresses the 5-year CIP, how does this relate to a long term capital improvements program?

    This question could be read in two ways. First, the difference between a 5-year CIP and a long range (15-year) CIP is addressed in the answer to question #1. Second, the difference between a 5-year CIP and long term infrastructure planning is addressed below.

    The local government should maintain in the capital improvements element a list of the improvements that are projected to be needed in the planning timeframe but beyond the five years covered by the adopted capital improvements schedule. This list need not include any cost estimates for the improvements. The local government must use this list when it adopts the mandatory annual update of the capital improvements schedule. Improvements needed to achieve and maintain adopted level of service standards within the next five years should be moved from the list into the financially feasible five-year schedule, along with a cost estimate and funding source.

13. If DOT or the County has partial or no funding for the roadway improvement and the developers will be charged for the rest of the improvement cost when they develop, will this be considered to be financially feasible?

Assuming the developer has entered into an enforceable development agreement which ensures that the road is fully funded and will be constructed so that adopted levels-of-service are attained and maintained, then it would be considered to be financially feasible. See Section 163.3177(3)(a)5, F.S., for further details.

14. If development stalls and proportional fair share payments are not realized as anticipated, who will determine if the project needs to move out several years or another project defined?

    It is the local government's responsibility to identify the appropriate projects to attain and maintain the adopted level-of-service standards, and to identify adequate revenues for their construction.

15. In line 172 thru 176 define the acceptable levels of service? [See Section 163.3177(3)(a)3, F.S.]

    Generally speaking, each local government defines its own levels-of-service based on what is considered locally appropriate. There are some exceptions to this. For example, Section 163.3180(10), F.S., notes that "With regard to roadway facilities on the Strategic Intermodal System designated in accordance with ss. 339.61, 339.62, 339.63, and 339.64, the Florida Intrastate Highway System as defined in s. 338.001, and roadway facilities funded in accordance with s. 339.2819, local governments shall adopt the level-of-service standard established by the Department of Transportation by rule. For all other roads on the State Highway System, local governments shall establish an adequate level-of-service standard that need not be consistent with any level-of-service standard established by the Department of Transportation." The law provides that for these roads the standard is to be "adequate" and based on "data and analysis".

16. Who will define the standards for management of debt?

    The local government should establish standards for the management of debt based on "professionally accepted existing sources" and "best available existing data", as required by Rule 9J-5.005(2)(c), Florida Administrative Code.

17. In line 184 it indicates other enforceable agreements, does this include development orders? [See Section 163.3177(3)(a)5, F.S.]

    It could include a development order if it is clearly enforceable, notes that the improvement will be funded by the developer, and achieves and maintains the level-of-service.

18. If not, will there be a requirement for development agreements in all proportional fair share payments? If so who will be required to sign the agreement?

    Section 163.3177(3)(a)5, F.S., requires a development agreement for developer proportionate fair-share payments. It notes that "For capital improvements that will be funded by the developer, financial feasibility shall be demonstrated by being guaranteed in an enforceable development agreement or interlocal agreement pursuant to paragraph (10)(h), or other

enforceable agreement." A proportionate fair-share payment meets this criteria and therefore must occur with a development agreement. The local government and developer will have to sign the development agreement at a minimum.

19. In line 191 thru 194 it states that if actions do not secure the planned revenue source, identify other existing revenue sources that will be used to fund the capital projects or otherwise amend the plan to ensure financial feasibility. What is the process for amending the long range transportation plan if proportionate fair-share payments do not materialize as scheduled? [See Section 163.3177(3)(a)5, F.S.]

    First, it should be emphasized that Section 163.3177(3)(a)5, F.S., is addressed to the 5-year schedule of projects in the Capital Improvements Element. Therefore, when the text in question notes that the local government must identify other existing revenue sources that will be used to fund the capital projects in the event the referenda are not passed or actions do not secure the planned revenue source, it is referring to an action that would occur as part of the required annual update to the Capital Improvements Element. Therefore, if the anticipated proportionate fair-share payments do not occur as anticipated, the local government should amend its Capital Improvements Element accordingly to ensure that sufficient revenues are available to attain and maintain the adopted levels-of-service.

20. Line 195 thru 199 indicates that the plan must include transportation improvements included in the applicable metropolitan planning organization's transportation improvement program adopted pursuant to s. 198 339.175(7) to the extent that such improvements are relied upon to ensure concurrency and financial feasibility. Can the county utilize the TPO's cost for projects? [See Section 163.3177(3)(a)6, F.S.]

    Yes.

21. If a project is in the TPO plan and is fully funded; and the County collects proportional fair share from developers for that project, how will the money earmarked by the TPO for that project be reallocated in the TPO process?

    Responsibility for developing a financially feasible long range transportation plan through a continuing, cooperative and comprehensive process remains with the Transportation Planning Organization. Also, please refer to the Model Ordinance for Proportionate Fair-Share, which is at http://www.dot.state.fl.us/planning/gm/pfso/model-ordinance.pdf. Specifically, page 6 discusses the importance of intergovernmental coordination.

    DOT encourages partnerships which will increase resources needed to facilitate the provision of a transportation system within a County or TPO area. Projects which are leveraged by local funds will assist DOT in delivering those projects prioritized in the TPO's TIP.

    DOT will work with the local government or TPO to ensure state and federal dollars replaced by local leveraged funds will be placed on eligible transportation improvements within the TPO or County, or on a facility within a regional system that will provide increased access to or reduce congestion within the TPO or County.

22. If a County brings 50% of the cost of a project to the table, for a project totally funded in the TPO plan, does the 50% that the TPO had in its plan go to the next project on the list or does it stay within the county that provided the matching funds?

    It would not be appropriate to speculate on the answer to this question since updates to priorities are determined by the TPO. Section 339.135(4)(c)2, F.S., requires that each DOT district work program shall be developed cooperatively from the outset with the various metropolitan planning organizations of the state and include, to the maximum extent feasible, the project priorities of metropolitan planning organizations.

    Please also refer to the response to question #21 above.

23. Line 199 to 202 indicates that the schedule must be coordinated with the applicable MPO's long range plan. In what form must this coordination take? Does the County just present their program? [See Section 163.3177(3)(a)6, F.S.]

    Coordination of the Comprehensive Plan with the MPO Plan is a long standing statutory requirement. There is no prescribed form of coordination. However, it should be noted that the first sentence in Section 163.3177(3)(a)6, F.S., requires the 5-year schedule in the Capital Improvements Element to include transportation improvements from the applicable metropolitan planning organization's transportation improvement program to the extent that such improvements are relied upon to ensure concurrency and financial feasibility. One of the focuses of the coordination should be to gauge the degree to which a local government is relying on projects from the metropolitan planning organization's transportation improvement program to achieve concurrency and financial feasibility.

24. Does the MPO have to sign an inter-local agreement with the County? [See Section 163.3177(3)(a)6, F.S.]

    No.

25. Does the MPO have to place projects on their plan if it is on the County's plan? [See Section 339.175(7) and 339.175(8), F.S.]

    Florida Statutes require that an MPO's long-range transportation plan must be consistent, to the maximum extent feasible, with future land use elements and the goals, objectives, and policies of the approved local government comprehensive plans of the units of local government located within the jurisdiction of the M.P.O. The approved long-range transportation plan must be considered by local governments in the development of the transportation elements in local government comprehensive plans and any amendments thereto. The long-range transportation plan must, at a minimum: identify transportation facilities, including but not limited to, major roadways, airports, seaports, spaceports, commuter rail systems, transit systems, and intermodal or multimodal terminals that will function as an integrated metropolitan transportation system.

Also, an MPO's five-year transportation improvement program shall be consistent, to the maximum extent feasible, with the approved local government comprehensive plans of the units of local government whose boundaries are within the metropolitan area of the M.P.O. and include those projects programmed pursuant to s. 339.2819(4) which established Transportation Regional Incentive Program.

26. Line 203 thru 206 indicates that an annual review must be done to modify the CIP, who has to sign off on the review and what procedure is required? [See Section 163.3177(3)(b)1, F.S.]

    The first sentence of Section 163.3177(3)(b)1, F.S., notes that "The capital improvements element must be reviewed on an annual basis and modified as necessary...". The annual review of the capital improvements element must be adopted by the local government as an amendment to the comprehensive plan and approved by DCA. Therefore, the review process is the same as any amendment to the comprehensive plan.

    Section 163.3177(3), F.S., and Rule 9J-5.016, Florida Administrative Code provide specific guidance regarding what must be addressed in the annual update of the Capital Improvements Element. The response to question #4 above provides one approach to the update of the annual Capital Improvements Element.

27. Line 208 thru 212 indicates that an ordinance must be passed by the County on acceptance of facilities. Does this include dedication of right-of-way from a developer for proportional fair share cost? [See Section 163.3177(3)(b)1, F.S.]

    Yes. The sentence in question notes that "Corrections and modifications concerning costs; revenue sources; or acceptance of facilities pursuant to dedications which are consistent with the plan may be accomplished by ordinance and shall not be deemed to be amendments to the local comprehensive plan."

28. Line 217 thru 219 indicates that amendments to implement this section must be adopted and transmitted no later than December 1, 2008. Does this mean the County can not accept proportional fair share payments until this is adopted? [See Section 163.3177(3)(b)1, F.S.]

    No. A local government can accept proportionate fair-share payments today. Please note, however, that the December 1, 2008 deadline is not the date by which the Capital Improvements Element must be updated or be subject to sanctions. The requirement for an annual update is a long standing statutory requirement. Instead, the relevance of the December 1, 2008 deadline is that it is the date on which the penalty referenced in Section 163.3177(3)(b)1, F.S., will be applied if the annual update has not yet occurred.

29. Line 244 thru 263 states that at the discretion of the local government a comprehensive plan as revised by an amendment shall be deemed to be financially feasible and to have achieved and maintained level-of-service standards if the amendment to the future land use map is supported by a condition in a development order for a development of regional impact or binding agreement that addresses proportionate-share mitigation consistent with s.

163.3180(12). Does this mean that concurrency has to be addressed at the change of land use stage? [See Section 163.3177(3)(e), F.S.]

First, please note that this provision is available at the discretion of the local government and is not required. The question suggests that the referenced statute accelerates the concurrency test from the end of the development process (i.e. permitting) to the beginning of the process (i.e. a comprehensive plan amendment) and it is agreed that such an approach has become available as an option. The referenced statute actually creates greater flexibility for the identified future land use map amendment and associated project. It recognizes that if a future land use map amendment is such that project level detail is available and the project utilizes proportionate share either in a condition of approval in a DRI development order or in a binding agreement to demonstrate financial feasibility, the comprehensive plan as revised by the Future Land Use Map amendment "...shall be deemed to be financially feasible and to have achieved and maintained level-of-service standards for the applicable road network..." Therefore, the statute does not impose new requirements. Instead, it creates greater flexibility and an ability to combine justification for the future land use map amendment and mitigation for the development.

I would also like to comment briefly on the phrasing of the question. The development process typically evolves from a rather general land use approval on the Future Land Use Map (e.g., residential, commercial, or institutional at a specified maximum density and/or intensity), to a more focused density or intensity in a zoning action (e.g., RD-4 versus Residential), to a very specific application for a development permit (e.g., 100 single family units). The State's growth management laws create both a financial feasibility test and a concurrency test.

The financial feasibility test applies to a proposed Future Land Use Map amendment, to the extent that it impacts the five-year schedule of capital improvements in the Capital Improvements Element. It must be demonstrated that, if the amendment is adopted, that the five-year schedule remains financially feasible. This would include a demonstration that the needed infrastructure will be provided consistent with the concurrency requirements of Chapter 163 at the time development is anticipated to occur.

The concurrency test, on the other hand, applies when the specific application for a development permit is requested. If the concurrency test fails, proportionate fair-share may be available to address the failure in concurrency. Proper planning should minimize concurrency problems for future development to the greatest extent possible.

30. If so, what mechanism will be used to accomplish this?

Please see answer to question #29 above.

31. If a binding agreement at the land use change is required how will the County address any changes to the proportional fair share program, if the actual project does not take place for several years?

This question highlights the importance of conducting annual updates to the Capital Improvements Element and its 5-year schedule of improvements. Obviously, forecasts of the future will never be perfect. The changing conditions alluded to in the question should be addressed in the annual update of the Capital Improvements Element.

32. Line 261 thru 265 states that the binding agreement must be based on the maximum amount of development identified by the future land use map amendment. Can the FLUM amendment take into account the properties requirement in the local land development code to provide for set backs, wetland buffers, preservation, and other circumstances that will decrease the actual developable land on the property? [See Section 163.3177(3)(e)2, F.S.]

    No. It must be based on the maximum amount of development allowed under the future land use map and associated goals, objectives, and policies.

33. Will the County have to place the FLUM amendment in their concurrency data base once the agreement is signed?

    The answer is "yes" based upon the extent of concurrency approval authorization by the binding agreement that supports the future land use map amendment.

34. Line 340 thru 342 indicates that the comprehensive plan amendment designating the concurrency exception area shall be accompanied by data and analysis. What data and analysis will be accepted? [See Section 163.3180(5)(e), F.S.]

    There is no prescribed list of data and analysis except that in Statute and Rule. Section 163.3180(5)(e), F.S. states that "The Comprehensive plan amendment designating the concurrency exception area must be accompanied by data and analysis justifying the size of the area." Therefore, the data and analysis must be adequate to justify the size of the area, and it must be from professionally acceptable existing sources and be the best available existing data, consistent with Rule 9J-5.005(2)(c), Florida Administrative Code.

35. Line 344 thru 350 states the local government will consult DCA and FDOT to assess the impact that the proposed exception area is expected to have. In what form will FDOT and DCA's consulting take? Will a letter of acceptance from them be required? [See Section 163.3180(5)(f), F.S.]

    A transportation concurrency exception area would ultimately require DCA's approval as a comprehensive plan amendment. [See Section 163.3180(5)(d-e), F.S.] Prior to the amendment, DOT and DCA will offer technical assistance to the local government, including in regard to development of a plan to mitigate impacts to the Strategic Intermodal System.

36. Line 350 thru 356 indicates that DCA and FDOT be consulted on a long-term concurrency management system. What role will DCA and FDOT play in the development of the long-term plan? [See Section 163.3180(5)(f), F.S.]

A long term concurrency management system would also ultimately require DCA's approval as a comprehensive plan amendment. [See Section 163.3180(9)(a-b), F.S.] Prior to the amendment, DOT and DCA will offer technical assistance.

37. Does DCA have to approve the plan to include cost?

The following answer assumes the question is asking whether DCA must approve the costs in the long term concurrency management system discussed in the preceding question. As noted in the response to question #3 above, it is not DCA's intention to delve into the details of local budgets or to seek unnecessary backup documentation. DCA will expect costs to be based on a reasonable approach with realistic assumptions. One possible approach related to costs, for example, might be for a local government to base its costs on its actual recent expenditures for similar facilities.

38. Line 358 thru 360 indicates that any affected person may challenge a plan amendment establishing guidelines within an exception area. Who will determine who is classified as an affected person? [See Section 163.3180(5)(f), F.S.]

The full text of the referenced Statute reads as follows: "*Pursuant to s. 163.3184*, any affected person may challenge a plan amendment establishing these guidelines and the areas within which an exception could be granted." (Emphasis added.) Section 163.3184(1)(a), F.S., provides a detailed definition of the term "affected person".

39. Line 366 thru 372 states "A development of regional impact may satisfy the transportation concurrency requirements of the local comprehensive plan, the local government's concurrency management system, and s. 380.06 by payment of a proportionate share contribution for local and regionally significant traffic". If a County has a state facility in their concurrency management system and a development of regional impact causes the roadway to go over the designated LOS in the local concurrency management system, is this considered a local impact? [See Section 163.3180(12), F.S.]

The focus of the statute is that a DRI may satisfy transportation concurrency through payment of proportionate share for its impacts on both local and regionally significant roads. In the hypothetical example, the DRI is stated to have impacts to a state road, which should therefore be addressed through the proportionate share payment if that option is pursued.

Please note that whether a facility is or is not a state road does not define whether it would be considered a local or regionally significant roadway. Rule 9J-2.045(4), Florida Administrative Code, notes that the determination of whether a road is regionally significant requires consideration of "...the extent, location and configuration of the roadway, and the number and type of trips which occur or could occur on the roadway." It further notes that "Under no circumstances shall the Department consider a roadway to be state and regionally significant unless it is a paved roadway which crosses local government jurisdictional boundaries, is a component of the state highway system, connects components of the state highway system, provides access to a regional center, or is a hurricane evacuation route."

40. Line 390 thru 398 states that "If the regionally significant transportation facility to be constructed or improved is under the maintenance authority of a governmental entity, as defined by s. 334.03(12), other than the local government with jurisdiction over the development of regional impact, the developer is required to enter into a binding and legally enforceable commitment to transfer funds to the governmental entity having maintenance authority or to otherwise assure construction or improvement of the facility". Does this mean that proportional fair share money collected by the County on state roadways must be collected by FDOT? [See Section 163.3180(12)(d), F.S.]

    Not necessarily. The referenced language existed in statute prior to the revisions made by HB 7203; it relates to developments of regional impact and refers to proportionate share not proportionate fair-share. The cited statute notes that "...the developer is required to enter into a binding and legally enforceable commitment to transfer funds to the governmental entity having maintenance authority ***or*** to otherwise assure construction or improvement of the facility." (Emphasis added.) The second half of the sentence would allow a binding and legally enforceable commitment to "otherwise assure construction or improvement of the facility", which would involve no collection of funds by DOT.

41. If so, what assurance does the County have that the funds collected will be spent within the County?

    Please refer to the answer to question #48. The suggested interlocal agreement could be one possible means to address this concern.

42. Does this mean FDOT has to sign all agreements for proportional fair share payments on state roadways?

    Mitigation for development impacts to facilities on the Strategic Intermodal System requires the concurrence of DOT. For facilities on the State Highway System, DOT should be consulted as part of the review process. Some jurisdictions have developed corridor-based or regional mitigation plans with the concurrence of DOT, thus eliminating the need to obtain DOT approval for each proportionate fair-share agreement approved by the local jurisdiction.

43. Line 400 thru 401 states that "The proportionate-share contribution may be applied to any transportation facility to satisfy the provisions of this..." Does this mean that proportional fair share payments made to FDOT can be utilized in other Counties? [See Section 163.3180(12)(d), F.S.]

    Given that Section 163.3180(12), F.S., is directed specifically to developments of regional impact, proportionate share payments could be utilized in other counties. However, such use would be guided by that portion of Section 163.3180(12)(d), F.S., which immediately precedes the portion quoted in the question. It notes that "If the regionally significant transportation facility to be constructed or improved is under the maintenance authority of a governmental entity, as defined by s. 334.03(12), other than the local government with jurisdiction over the development of regional impact, the developer is required to enter into a binding and legally enforceable commitment to transfer funds to the governmental entity

having maintenance authority or to otherwise assure construction or improvement of the facility."

44. Line 410 thru 412 states "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. For purposes of this..." If the developer pays his proportional fair share at the time of platting or at building permit stage does this mean the County has to recalculate their proportional fair share the day they come in to pay? [See Section 163.3180(12)(d), F.S.]

    First, it is important to note that Section 163.3180(12)(d), F.S., is addressed to proportionate share payments for DRIs, not to proportionate fair-share as addressed elsewhere in Statute. Second, the question specifically addressed proportionate fair-share, and an answer is provided below.

    Please refer to the Model Ordinance for Proportionate Fair-Share, which is available online at http://www.dot.state.fl.us/planning/gm/pfso/model-ordinance.pdf. Specifically, page 12, section J(2) reads as follows: "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."

    The commentary continues as follows: "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."

45. Line 414 thru 418 states that proportionate-share mitigation by the development of regional impact is not responsible for reducing or eliminating back logs. Does this apply to non DRI projects? [See Section 163.3180(12)(d), F.S.]

    Yes. The intent of both proportionate share for DRIs and for proportionate fair-share payments generally is to only mitigate the impacts created by the new development. This question raises several important related questions, which are addressed in "a" through "d" below.

    a. Who is responsible for ensuring that existing infrastructure deficiencies are addressed?

        The responsibility for developing a plan to address existing and projected deficiencies rests with local governments and must be addressed in each jurisdiction's Capital Improvements Element. There are a variety of strategies and tools available to local governments to address existing deficiencies. Local governments must include such

strategies and tools in their Comprehensive Plans that explain how it will address the deficiencies and achieve and maintain adopted level-of-service standards. New development is only responsible for the infrastructure required to serve the demand generated by that new development, as established by local government impact fee ordinances, concurrency management systems, and the like. It is the local government's responsibility to address projected infrastructure needs as a result of any change to the plan.

b. What must be done to adequately address deficiencies?

The Capital Improvements Element must include a five-year schedule with capital improvements that are designed to achieve and maintain each community's adopted level-of-service standards. This schedule should reflect the local government's efforts to address existing deficiencies. If the annual update to the Capital Improvements Element demonstrates that existing infrastructure deficiencies cannot be fully addressed in the five-year schedule, the local government must adopt into the Comprehensive Plan either a long-term concurrency management system, a 10 or 15-year schedule of improvements, policies demonstrating a plan to address the deficiencies, or similar strategies that explain how the local government intends to address the long-term need over the timeframe of the overall comprehensive plan. The key is that the local government must show it is making progress and will ultimately eliminate existing deficiencies. With regard to transportation, Section 163.3182(2), F.S., creates a new tool for local governments to address transportation concurrency backlogs. As noted by Section 163.3182(2)(b), F.S., a Transportation Concurrency Backlog Authority may be created to "...adopt and implement a plan to eliminate all identified transportation concurrency backlogs within the authority's jurisdiction..." using funds from a local trust fund which is funded by the proceeds of an ad valorem tax increment collected within each transportation concurrency backlog area.

c. When must existing infrastructure deficiencies be addressed?

The creation of a plan to address infrastructure deficiencies is the responsibility of local governments and must be addressed by local governments on an ongoing basis through the annual update of their Capital Improvements Element. The strategy to address existing deficiencies should be ongoing and encompass the long-range planning time frame of the Comprehensive Plan.

d. Is the five-year schedule in the Capital Improvements Element required to include all projects necessary to serve the needs of both new development and existing deficiencies?

The Capital Improvements Element must include a five-year schedule containing any capital improvements, which are aimed at achieving and maintaining each community's adopted levels of service. This schedule should reflect the local government's best effort to address all existing deficiencies. The comprehensive plan must make progress towards addressing remaining deficiencies and showing over time that the situation is improving. Possible methods to demonstrate progress over the longer time-frame might include a 10

or 15-year schedule of improvements, or policies in the Comprehensive Plan that explain how the local government intends to address the long-term need.

46. Line 533 thru 538 states "...[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." If the proportional fair share calculation for a particular road takes credit for the 5-year FDOT work program and requires the developer to make up the difference, can the County by the fact the County will be requiring new development to cover the remaining cost of the improvements, satisfy the "reasonably anticipated" funding test? [See Section 163.3180(16)(b)1, F.S.]

    To answer this question, it is helpful to summarize the full text of Section 163.3180(16)(b)1, F.S. It notes that proportionate fair-share may be used:

    a. 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
    b. 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.

    The question posed above relates to option "b". The question is difficult because it presumes that the methodology for calculating a proportionate fair-share payment could be to "make up the difference" for "the remaining cost of the improvements" that are not funded by DOT. See the answer to question #10 for the appropriate methodology for calculating proportionate fair-share payments.

    Assuming the correct methodology is used to calculate the developer's true proportionate fair-share payment, then planned funding from DOT could meet the "reasonably anticipated" funding test.

47. What justification or analysis will be required to reasonably anticipate funding sources?

    Please refer to the answer to question #2 for a discussion of how the Florida Statutes define various types of revenue.

    While there is no specific definition in Statute or Rule regarding "reasonably anticipated funding", it clearly would not require a demonstration of "currently available" or "committed" revenues. It is not DCA's intention to delve into the details of local budgets or to seek unnecessary backup documentation. DCA is looking for a demonstration that the local government is meeting the statutory requirement to plan for and fund necessary infrastructure. There are a few basic things DCA will expect to see in its review of the five-year schedule of capital improvements in the Capital Improvements Element. First, revenues

must be greater than or equal to expenditures. Second, projects must be moving through the five-years of the schedule of capital improvements and not linger at the out years. Third, the projection of revenues and the evaluation of which projects attain and maintain level-of-service must be based on a reasonable approach with realistic assumptions. Of course, the Capital Improvements Element must be consistent with the requirements established in Chapter 163, Florida Statutes, and in Rule 9J-5.016, Florida Administrative Code.

48. Line 544 thru 548 states that contribution of land can be used as proportional fair share as determined by the local government. If the County accepts land (right-of-way or stormwater facility locations) as part of the proportional fair share for a development and FDOT currently has the money for the right-of-way in its 5-year work program, what guarantee does the county have that the money allocated to purchase right-of-way already in the 5-year FDOT work program will not be utilized in another location? [See Section 163.3180(16)(c), F.S.]

    This question highlights the importance of local governments engaging in a continuing, cooperative, and comprehensive transportation planning process with DOT. Please refer to the Model Ordinance for Proportionate Fair-Share, which is available online at http://www.dot.state.fl.us/planning/gm/pfso/model-ordinance.pdf. Specifically, page 6 discusses the importance of intergovernmental coordination. It notes that "...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."

    Please also see the response to question #21 above.

49. Line 547 thru 548 states a local government can determine what public funds will be utilized in the proportionate fair-share mitigation, does DCA or FDOT have to approve the public planning dollars used in the calculation? [See Section 163.3180(16)(c), F.S.]

    No.

50. Line 565 thru 567 requires the concurrency of FDOT on the Strategic Intermodal System. In what form will the concurrency of FDOT be required. [See Section 163.3180(16)(e), F.S.]

    The concurrence of DOT can be obtained through engagement in a continuing, cooperative and comprehensive transportation planning process. The experience of DOT to date has involved consultative processes to identify issues and potential methods to resolve them, resulting in a memorandum of agreement or similar instrument. All state and regional agencies involved in the administration and implementation of this act are committed to cooperating and working with units of local government in the preparation and adoption of comprehensive plans, or elements or portions thereof, and of local land development regulations.

51. Does the County have to get FDOT's concurrency on state roads not in the Strategic Intermodal System?

    Not necessarily. Section 163.3180(16)(f), F.S., states that "If 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 share is calculated if the proportionate-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." In this situation, the governmental entity or entities maintaining the transportation facility may also have to agree before a proportionate fair-share agreement can be entered into for that facility. It is also important that a local government coordinate potential proportionate fair-share agreements with adjacent local governments which may be impacted by the proposed development.

52. Line 614 thru 616 states the duration of a development agreement shall not exceed 20 years. Does this preclude the county from only approving phases of a development order for a DRI that will be built in the next 5 years? [See Section 163.3229, F.S.]

    That is not correct. The following text provides more detail. The Florida Statutes draw a distinction between non-DRI projects and DRIs, and the manner in which proportionate fair-share versus proportionate share would apply. There are four pertinent statutory citations.

    Non-DRI projects:

    1. Section 163.3177(3)(a)5, F.S., reads as follows: "For capital improvements that will be funded by the developer, financial feasibility shall be demonstrated by being guaranteed in an enforceable development agreement or interlocal agreement pursuant to paragraph (10)(h), or other enforceable agreement." Since proportionate fair-share is one possible method by which a developer could fund improvements for a non-DRI project, Section 163.3177(3)(a)5 applies. In that case, the Statute envisions that either a development agreement, or an interlocal agreement, or some other form of an enforceable agreement will be utilized.

    2. Section 163.3180(16)(f), F.S., notes that "a binding proportionate-share agreement" may be entered into if 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. Section 163.3180(16)(f), F.S., does not limit the form of agreement to that specified under Section 163.3229, F.S.

    3. Section 163.3229, F.S., establishes various limits on development agreements, including a maximum duration, a mechanism for extensions, and criteria to determine the effective date. Note that this citation relates only to development agreements, and not to the "other

enforceable agreements" contemplated in Section 163.3177(3)(a)5. Of course, a development agreement under Section 163.3229, F.S., is available to serve as the mechanism for a proportionate fair-share agreement at the local government's discretion.

Developments of Regional Impact:

4. In contrast to the above, Section 163.3180(12), F.S., relates only to proportionate share for Developments of Regional Impact. Proportionate share for a DRI is governed through the DRI development order, which is not a "development agreement" for purposes of Section 163.3229, F.S.

53. Does the County have to approve all phases of traffic for a DRI and place that in its concurrency management system or may they require in the development order that future phases be addressed at the technical review phase?

A DRI development order could be structured so that the project is divided into distinct phases, with a requirement that the initial phase be subject to the concurrency management system immediately, and future phases by a date certain.

54. Line 619 thru 624 states no development agreement shall be effective or be implemented until DCA finds the local government's comprehensive plan in compliance. Does this mean that no proportionate fair-share payments can be collected until DCA finds the local comprehensive plan in compliance even if the agreement is incorporated as part of a development order? [See Section 163.3229, F.S.]

First, please refer to the answer to question #52 for a full discussion of the pertinent statutory citations that relate to this issue. Second, with that framework in mind, it is useful to note that Section 163.3229, F.S., reads as follows: "No development agreement shall be effective or be implemented by a local government unless the local government's comprehensive plan and plan amendments ***implementing or related to the agreement*** are found in compliance by the state land planning agency in accordance with s. 163.3184, s. 163.3187, or s. 163.3189." (Emphasis added.) Therefore, if the scope of the question is confined to only a local government development agreement as defined and described in the local government development agreement act that is related to proportionate fair share, such a development agreement could not be executed if the local government's comprehensive plan or plan amendments ***implementing or related to*** proportionate fair-share had been found not in compliance. However, as noted in the response to question #52, a development agreement is not the only mechanism that is available to a local government to implement proportionate fair-share.

55. Line 820 thru 822 states "A county or municipality may create a transportation concurrency backlog authority if it has an identified transportation concurrency backlog." Does this mean that if a current backlog exists on a facility the County must create a concurrency backlog authority? [See Section 163.3182(2)(a), F.S.]

No. The referenced statute notes that a backlog authority "may" be created, which is permissive and not mandatory.

56. How does the proportionate fair-share program, TPO, FDOT, and DCA relate to the Northwest Florida Transportation Corridor Authority and their proposed program?

All of the cited organizations and programs serve their statutorily defined role in planning for an adequate transportation network for Florida's future.

57. Line 2962 thru 2971 states "If the developer or property owner voluntarily contributes right-of-way and physically constructs or expands a local government facility or segment and such construction or expansion meets the requirements in this section and is set forth in a legally binding agreement between the property owner or developer and the applicable local government, the contribution to the local government collector and the arterial system may be applied as credit against any future transportation concurrency requirements within the jurisdiction under chapter 163." If FDOT has allocated money for purchase of right-of-way and the County issues a credit for proportional fair share obligations to a developer for right-of-way dedication, what reasonable expectation does the county have that the money allocated for that right-of-way will be utilized in the County and not transferred somewhere else? [See Section 339.282, F.S.]

Please see answers to questions #21 and #22 above.

58. If the County sets up an advanced right-of-way dedication/purchase system and issues proportional fair share credits to the developer, how will this effect future funding for the roadway?

Please see answer to question #22 above.

59. Line 2973 thru 2984 states that the enhanced bridge program is to provide funds to improve congested roads on the State Highway System or local corridors on which high-cost bridges are located in order to improve a corridor or provide an alternative corridor. Can the County utilize these funds as matching funds for the proportionate fair-share program? [See Section 339.285, F.S.]

The proportionate fair-share program is not a matching program, per se. It may be possible for a County or other local jurisdiction to combine funds from a variety of funding sources with proportionate fair-share funds to accomplish a project, providing the project is eligible for the various funding sources.

60. Line 3196 thru 3208 states the Department may advance projects programmed in the adopted 5-year work program or projects increasing transportation capacity and greater than $500 million in the 10-year Strategic Intermodal Plan using funds provided by public-private partnerships or private entities to be reimbursed from department funds for the project as programmed in the adopted work program. Does the department have to consult with the

local government before approving the public-private partnership? [See Section 334.30(1) and (11), F.S.]

Yes. The statute specifically states that prior to entering such agreement where funds are committed from the State Transportation Trust Fund, the project must be prioritized as follows:

a. DOT, in coordination with the local metropolitan planning organization, shall prioritize projects included in the Strategic Intermodal System 10-year and long-range cost-feasible plans.
b. DOT, in coordination with the local metropolitan planning organization or local government where there is no metropolitan planning organization, shall prioritize projects, for facilities not on the Strategic Intermodal System, included in the metropolitan planning organization cost-feasible transportation improvement plan and long-range transportation plan.

61. If not, how does this effect the County's proportionate fair-share program if the facility is part of that program?

Not applicable.

62. Line 3385 thru 3395 states the department shall ensure that annual payments on multiyear public-private partnership agreements are prioritized ahead of new capacity projects in the development and updating of the tentative work program. How will these agreements affect the TPO's 2030 Cost Feasible Plan? [See Section 334.30(9), F.S.]

Section 334.30(9)(a) states that "In addition to other provisions in this section, the following provisions shall apply: (a) The annual payments under such agreement shall be included in the department's tentative work program developed under s. 339.135 and the long-range transportation plan for the applicable metropolitan planning organization developed under s. 339.175."

In other words, the MPO's cost feasible plan must reflect the commitment of funds for extended term annual payments as provided in the public-private partnership agreement.