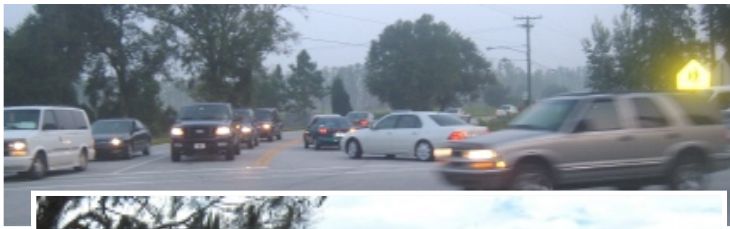


# Transportation Proportionate Share

A Forum on the Implementation of Florida's Landmark New Growth Laws



Lake~Sumter  
Community College  
July 26, 2006

# Forum Agenda

- Introduction & Overview of Proportionate Share
- Impacts of Proportionate Share
- Panel Discussion #1: Legal Implications
  - Laura Jacobs Donaldson, Carey, O'Malley, Whitaker & Manson, P.A.
  - Jon Weiss, FDOT
  - Sanford Minkoff, Lake County
  - Thomas Burke, Lake-Sumter MPO
- Panel Discussion #2: Implementing in the Real World
  - Steven Richey, Steven J. Richey, P.A.
  - Bruce Duncan, Potter, Clement, Lowry & Duncan
  - Dottie Keedy, Lake County
  - Louis Rotundo, Rotundo & Associates
- Questions & Answers
- Wrap-Up

## Senate Bill 360

- The Infrastructure Planning & Funding Act
- Signed by Governor Jeb Bush on June 24, 2005.
- <http://www.dca.state.fl.us/GrowthManagement2005>
- Most significant changes in Florida's Growth Management Laws since 1985.
- Includes the first major funding for infrastructure in several years, a total of \$1.5 billion, with half recurring and half nonrecurring.

## Senate Bill 360

- “Closes the Gap” between new development and construction of needed facilities.
- Links policies, plans and budgets to ensure that infrastructure is available to support local growth plans
- Sets up a “Pay-as-you-Grow” system to address backlogs and future growth needs

# Senate Bill 360: The C.I.E.

- Capital Improvements Element

- ❑ Must be updated annually to reflect planned capital projects and projected revenues to meet level of service standards.
- ❑ Must be financially feasible.
- ❑ **Years 1-3: Funds Must be Currently Available or Committed (e.g. Ad Valorem, Bonds, State/Federal Funds, Tax, Impact Fees, Developer Contributions, etc.)**
- ❑ **Years 4-5: Funds Must be Currently Available, Committed or Planned (e.g. Grants, New Sources, etc.)**

## Senate Bill 360: The C.I.E.

- Capital Improvements Element (Cont'd)
  - ❑ Must ensure adopted level-of service standards
  - ❑ Must be reviewed by DCA for compliance.
  - ❑ **Plan map amendments are prohibited if Capital Improvements Element is not annually updated and submitted to DCA for review.**
  - ❑ CIE annual amendments conducted under expedited process (1 public hearing)
  - ❑ **Compliance required by December 1, 2007**

# Senate Bill 360: Transportation Impacts

- Changes the 3-year and 5-year transportation concurrency definition to **three years from approval of building permit**.
- Transportation concurrency exception areas must be examined and refined to adequately address mobility within the defined area - typically urban infill and downtown revitalization areas.
- Strengthens protection of the Strategic Intermodal System (SIS) within a transportation concurrency exception area and other exception areas.
- DOT will establish level of service standards for SIS and regional roads funded by a new Transportation Regional Incentive Grant Program.
- Allows for proportionate fair share mitigation by developers.
- Provides \$1.1 billion for fiscal year 2005-06 to fund priority transportation projects and \$541.7 million thereafter.

# Senate Bill 360: Transportation Impacts

- Concurrency Exception Areas
  - ❑ Local governments must consult with DOT and cooperatively develop a plan to mitigate impacts on the Strategic Intermodal System
- De Minimis Exceptions
  - ❑ New reporting requirements
  - ❑ **110% of capacity maximum threshold**
  - ❑ No further exceptions allowed if threshold is exceeded



# Senate Bill 360: Transportation Impacts

- Proportionate Fair-Share Mitigation
  - ❑ **Local governments must adopt proportionate fair-share mitigation methodologies by Dec. 1, 2006**
  - ❑ Satisfaction of concurrency requirements can be done by developers through “fair-share” contributions to facilities in five-year capital improvement plan
  - ❑ Development construction could commence without sufficient local government funds if fair-share contribution significantly benefits impacted transportation system

# Senate Bill 360: Transportation Impacts

- Recurring and Non-Recurring Funding
  - ❑ \$575 million non-recurring from General Revenue
  - ❑ \$542 million recurring from Documentary Stamps
- Additional Funding for Existing Programs
  - ❑ Strategic Intermodal System (\$175M non-recur, \$345.4M recur)
  - ❑ County Incentive Grant Program (\$25M non-recur)
  - ❑ Small County Outreach Program (\$27.1M recur)
  - ❑ State Infrastructure Bank (\$100M non-recur)

# Senate Bill 360: Transportation Impacts

- Funding for New Programs

- Transit New Starts (\$54.2M recur)

- Major new transit fixed guideway and bus rapid transit capital projects in metropolitan areas
    - Match of one-half of the non-federal share to leverage federal and/or federal funds

# Senate Bill 360: Transportation Impacts

- Funding for New Programs (Cont'd)
  - Transportation Regional Incentive Program (TRIP)  
(\$275M non-recur \$115.1M recur)
    - Leverage investments to fund regionally-significant projects identified and prioritized by regional entities
    - 50/50 Match Program (up to 50% of non-federal share of project costs for public transportation projects)
    - Non-cash match available (e.g. right-of-way)
    - Waiver or reduction of match for eligible rural areas
    - Phase in funding to account for readiness of regions
    - All phases eligible, emphasis on right-of-way and construction in early years
    - Projects selected by FDOT districts from regional priorities

# Concurrency

- A.k.a. Adequate Public Facilities Ordinance.
- Local governments required to adopt and maintain levels of service on transportation facilities through a Concurrency Management System (CMS), per Chapter 163.3180, F.S. and 9J-5.0055 FAC.
- Purpose is to establish a mechanism to ensure public facilities and services needed to support development are available concurrent with the impacts of such development.
- Concurrency Management System (CMS) required prerequisite for Proportionate Fair-Share Ordinance

## Concurrency Requirements

- Requires local governments set forth a cost feasible Capital Improvements Element (CIE) to achieve and maintain adopted LOS standards.

# Transportation Concurrency

- Redefined as Part of SB 360, facilities must be in place or under actual construction within 3 years after issuance of a building permit (was certificate of occupancy)
  - Local Government Allowed to be More Restrictive (e.g. Construction 1 or 2 years after issuance of building permit)
- Implements new reporting requirements regarding the prohibition on de minimis exceptions
- Encourages coordination and consideration of common LOS standards and methodologies for multi-jurisdictional facilities

## Transportation CMS

- **Concurrency Management System:** A systematic process utilized by local governments to ensure that new development does not occur unless adequate infrastructure (such as public facilities) is in place to support growth; requirements for the CMS are found in Rule 9J-5.0055, Florida Administrative Code (F.A.C.).
- CMS referenced in Comp Plan & LDRs



# Transportation CMS

- Example CMS Statistics to be Maintained in CMS:
  - List of Included Roadways
  - Annual Traffic Counts: Daily & PM Peak Hour
  - LOS Standards for All Roadways
  - Roadway Capacities (at LOS Standard)
  - Reserved Trips from Previously Approved Development
  - Methodology to Determine Project Trips (e.g. ITE)
  - Pass-By, Internal Capture Rates

# Transportation CMS

- Start thinking about Transit, Bike/Ped, etc.
  - Intent of SB 360 to Encourage Multimodal Solutions
  - FDOT to Assist in Development of Methodologies
- De Minimis Impacts (Minimal or Minor Impacts), defined in the CMS
  - New reporting requirements. DCA will monitor.
  - 1% Max Service Volume on an individual Project
  - 110% capacity maximum threshold for each roadway
  - No further exceptions allowed if threshold is exceeded
  - One single family unit is the exception
- Tools to Deal With Concurrency

## Transportation Concurrency Exception Area (TCEA)

- Areas designated for urban infill development, urban redevelopment or downtown revitalization. Local governments may grant exceptions from concurrency requirements for transportation facilities located within TCEAs.
- The local government shall adopt into the plan and implement strategies to support and fund mobility within the designated exception area, including alternative modes of transportation.
- Consult with FDOT for impacts to SIS
- Good Examples: Gainesville, Jacksonville

## Transportation Concurrency Management Area (TCMA)

- A compact geographic area with an existing network of roads where multiple, viable alternative travel paths or modes are available for common trips. A local government may establish an area-wide level-of-service standard based upon an analysis that provides for a justification for the area-wide level-of-service, how urban infill development or redevelopment will be promoted, and how mobility will be accomplished.

## Multimodal Transportation District

- Established under a local government comprehensive plan in areas delineated on the future land use map for which the local comprehensive plan assigns secondary priority to vehicle mobility and primary priority to assuring a safe, comfortable, and attractive pedestrian environment, with convenient interconnection to transit.

## Long Term Transportation Concurrency Management Area

- A plan for areas where significant backlogs exists that has a planning period of up to 10 to 15 years.
- The plan may include interim level-of-service standards on certain facilities and may rely on the local government's schedule of capital improvements for up to 10 to 15 years as a basis for issuing development permits in these districts. It must be designed to correct existing deficiencies and set priorities for addressing backlogged facilities.

# Proportionate Fair-Share Ordinance

- Purpose of Ordinance is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors.
- Required by Section 163.3180 (16), F.S.
- FDOT directed to develop a model proportionate fair-share ordinance by December 1, 2005.
  - Final Edition dated February 14, 2006.
  - <http://www.dot.state.fl.us/planning/gm/pfso>

## Proportionate Fair-Share Ordinance

- **Local governments are required to adopt a proportionate fair-share ordinance, to be included within their transportation concurrency management system, by December 1, 2006.**
- Proportionate fair-share mitigation will satisfy transportation concurrency (certain conditions only).
- Proportionate fair-share mitigation shall be applied as a credit to transportation impact fees, where used to address same improvements.
- Proportionate fair-share funds may be used for PD&E, design, ROW acquisition/donation, and construction.



# Proportionate Fair-Share Ordinance

- Allowable Conditions:
  - ❑ Five-Year Schedule of Capital Improvements or Long Term Concurrency Management System Includes Transportation Improvement that will Satisfy Transportation CMS. Improvements can be Widening, Relievers, Transit, etc. that Meet LOS Standards
  - ❑ By Resolution or Ordinance, Local Government Commits to Add Improvement to Five-Year CIE or Long Term CMS no Later than Next Regular Update. Must be Deemed Financially Feasible.
  - ❑ Binding Agreement to Fund a Subset of a larger set of Required Improvements (e.g. Fully fund one roadway of four effected, instead of contributing a portion to all four). Local Government Still Bound to Address LOS Deficiencies on Remaining Links within 10 Years

# Proportionate Fair-Share Ordinance

- Additional Conditions:

- ❑ Proportionate Share Mitigation is not considered unless there is a Concurrency Deficiency first identified by the Local Government
- ❑ Consistency with Comprehensive Plan & Applicable LDRs
- ❑ Must Meet Local Government or FDOT Design Standards
- ❑ Fair share mitigation of Strategic Intermodal System (“SIS”) impacts requires concurrence of DOT

# Proportionate Fair-Share Ordinance

- Must use the following methodology prescribed for Developments of Regional Impact in 163.3180(12) F.S.:

The value of the proportionate-share contribution is calculated based on the cumulative number of trips from the proposed development expected to reach roadways during peak hours from the complete build out of a stage or phase being approved, divided by the change in the peak hour maximum service volume of roadways resulting from construction of an improvement necessary to maintain the adopted level of service, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted level of service (see formula below).

$$\text{(Cumulative Number of Trips/ Change in Peak Hour Max Service Volume)} \\ \times \text{Construction Cost} = \text{Proportionate-Share}$$

# Multimodal Considerations

- How Have Multimodal Issues Been Considered in Development Reviews?
  - *Question 21.1 – Multimodal Considerations (Chapter 380, FS): What provisions, including but not limited to sidewalks, bicycle paths, internal shuttles, ridesharing and public transit, will be made for the movement of people by means other than private automobile? Refer to internal design, site planning, parking provisions, location, etc.*
- How can multimodal improvements be used in addition to/instead of traditional roadway improvements to address concurrency deficiencies?
- Should new development be held responsible for funding new or expanded transit service, and if so, how?

# Multimodal Challenges

- Challenge of quantifying cost for multimodal option vs. roadway option
  - Proportionate Fair-Share Formula does not address transit
  - What is the true cost of transit service?
    - Capital (one time investment)
    - Operations & Maintenance (recurring cost)
- How to treat developed areas vs. undeveloped areas
  - Should transit alternatives be considered in areas where roadway improvements are still viable?

# FDOT Model Ordinance

- Collaborative Effort Between:
  - FDOT
  - Center for Urban Transportation Research (CUTR)
  - Technical Advisory Committee
  - Florida Developers & Consultants
- Local Governments must have Concurrency Management System (CMS) in place prior to adopting Proportionate Fair-Share Ordinance
- Newly adopted Proportionate Fair-Share Mitigation Requirements would not apply until a deficiency is identified through the local CMS

# FDOT Model Ordinance

- Preface
  - Provides Background, Sets the Stage
- Executive Summary
  - Describes Content, Good for Writing Reports
- Commentary throughout Model Ordinance
  - Provides Intent of Each Section
- Serves as Framework Only
  - Tailor to Each Local Government's Needs/Desires
  - Some Local Governments already have Prop Share in Place which Would Only Need to be Amended

# Adoption of Proportionate Fair-Share Ordinance

- Key Deadlines

- ❑ **Concurrency Management System In Place – ASAP**
- ❑ **Proportionate Fair-Share Ordinance – December 1, 2006**
- ❑ Financially Feasible Capital Improvement Element Submitted to DCA for Review – December 1, 2007



## Impacts to Work Program

- Local Governments should fully understand that improvements funded in Years 1-3 of the C.I.E. are not open for proportionate fair-share mitigation from the applicant. This capacity is considered committed.
- Projects in Year 4 and 5, and committed for addition in Year 6 (next C.I.E. update), must be financially feasible. Local governments should not accept proportionate fair-share payments from developers unless funds are expected to be made available for the full cost of improvement.

## **New Era of Public-Private Partnerships**

- SB 360 provides more options for the development community to mitigate Concurrency deficiencies.
- More importantly, SB 360 provides more flexibility for Local Government to work with the development community to leverage private contributions towards the funding of key roadway improvements and to better keep pace with growth.

# Questions?



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