

## **Sec. 4.02.07. Proportionate Fair –Share Program**

### **A. Purpose and Intent**

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

### **B. Applicability**

*The Proportionate Fair-Share Program shall apply to all developments in County that have been notified of a lack of capacity to satisfy the transportation adequate public facilities requirements of this Part (transportation concurrency) on a transportation facility addressed by these adequate public facilities regulations, including transportation facilities maintained by FDOT or another jurisdiction that are relied upon for transportation concurrency determinations, pursuant to the requirements of section C. The Proportionate Fair-Share Program does not apply to developments of regional impact (DRIs) using proportionate fair share under §163.3180(12), F.S., or to developments exempted from concurrency as provided in this Part.*

### **C. General Requirements**

- (1) *An applicant may choose to satisfy transportation concurrency requirements by making a proportionate fair-share contribution toward a transportation improvement, pursuant to the following requirements:*
  - (a) *The proposed development is consistent with the Future of Hillsborough Comprehensive Plan for Unincorporated Hillsborough County and applicable requirements of this Code.*
  - (b) *The five-year schedule of capital improvements in the Capital Improvement Element of the Future of Hillsborough Comprehensive Plan for Unincorporated Hillsborough County (CIE) includes a transportation improvement that, upon completion will satisfy the transportation concurrency requirements of the County.*

*The provisions of Subsection C. (2) or C.(3) may apply if a project or projects needed to satisfy transportation concurrency are not presently contained within the CIE.*

(2) *The County, at its option, may choose to allow an applicant to satisfy transportation concurrency through the Proportionate Fair-Share Program by contributing to an improvement that, upon completion, will satisfy transportation concurrency requirements, but is not contained in the 5-year schedule of capital improvements in the CIE, where the following apply:*

(a) *The County adopts, by resolution or ordinance, a commitment to add the improvement to the 5-year schedule of capital improvements in the CIE no later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be determined by the Board of County Commissioners to be financially feasible as defined in Section 163.3164 (32) Florida Statutes, consistent with the comprehensive plan, and in compliance with the provisions of this Code.*

*As provided in Section 163.3180 (16)(b)1., Florida Statutes, updates to the CIE which reflect proportionate fair share contributions shall not be found to not be financially feasible 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.*

(3) *If the funds allocated for the 5-year schedule of capital improvements in the CIE are insufficient to fully fund construction of a transportation improvement required by the transportation concurrency regulations, or the 5-year schedule of capital improvements in the CIE does not include a transportation improvement required for a proposed project to satisfy the requirements of transportation concurrency the County, at its option, may still enter into a binding proportionate fair-share agreement with the applicant authorizing construction of that amount of development on which the proportionate fair share is calculated if the proportionate fair-share amount in such agreement is sufficient to pay for one or more improvements that will, in the opinion of the governmental entity or entities maintaining the transportation facilities, significantly benefit the impacted transportation system. The entire proportionate fair-share amount shall be allocated to transportation improvements that significantly benefit the impacted transportation system and/or are contained in the 5-year schedule of capital improvements in the CIE. To qualify for consideration under this section, the proposed improvement must be determined by the Board of County Commissioners to be financially feasible as defined in Section 163.3164 (32) Florida Statutes, consistent with the comprehensive plan, and in compliance with the provisions of this Code. Additionally, if the improvement funded by the proportionate-share component is not contained in the 5-year schedule of capital improvements in the CIE, the County shall adopt, by resolution or ordinance, a commitment to add the improvement to the 5-year schedule of capital improvements in the CIE no later than the next regularly scheduled update.*

*An improvement that may be considered as one that will significantly benefit the impacted transportation system shall meet the following criteria:*

- (a) The improvement is included in the current the current Metropolitan Planning Organization Transportation Improvement Program, or the current Metropolitan Planning Organization Long Range Transportation Plan Highway Needs Assessment, or the current Metropolitan Planning Organization Transit Bus Route Needs for Hillsborough County, or the current Hillsborough County Capital Project Request List for Transportation (a.k.a. Unfunded Transportation CIP), or the current HARTLine Transit Development Plan; and*
  - (b) The improvement lies within or eliminates transportation deficiencies within the development's Area of Influence as described in Section 4.02.03.D.2 of this Code; and*
  - (c) The improvement lies on a regulated road or eliminates deficiencies on a regulated road listed in the Transportation Element of the Hillsborough County Comprehensive Plan; and*
  - (d) The improvement provides new capacity equal to or greater than the new traffic generated by the proposed new development.*
- (4) Any improvement project proposed to meet the developer's fair-share obligation must meet design standards of the entity maintaining the facility, however, improvements on the state highway system shall meet the design standards of the Florida Department of Transportation (FDOT) regardless of the entity maintaining the facility.*

***D. Intergovernmental Coordination***

*The County shall coordinate with affected jurisdictions, including FDOT, regarding mitigation to impacted facilities regulated by this Part for transportation concurrency but not under the jurisdiction of Hillsborough County*

***E. Application Process***

- (1) Upon notification of a lack of capacity to satisfy transportation concurrency, the applicant shall also be notified in writing of the opportunity to satisfy transportation concurrency through the proportionate fair-share program pursuant to the requirements of section C.*

- (2) *Prior to submitting an application for a proportionate fair-share agreement, a pre-application meeting shall be held to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. If the impacted facility is on the Strategic Intermodal System (SIS) or any other transportation facility under the jurisdiction of the FDOT or any other governmental body, agency or authority, then FDOT or such other governmental body, agency, or authority will be notified and invited to participate in the pre-application meeting.*
- (3) *Proposed proportionate fair-share contributions to facilities on the SIS or any other transportation facility under the jurisdiction of the FDOT or any other governmental body, agency or authority requires the concurrence of FDOT or such other governmental body, agency, or authority. The applicant shall submit evidence of an agreement between the applicant and the FDOT or other applicable governmental body, agency, or authority for inclusion in the proportionate fair-share agreement.*

**F. Determining Proportionate Fair-Share Obligation**

- (1) *Proportionate fair-share mitigation for concurrency impacts may include, without limitation, separately or collectively, private funds, contributions of land, and construction and contribution of facilities.*
- (2) *A development shall not be required to pay more than its proportionate fair share. The fair market value of the proportionate fair-share mitigation for the impacted facilities shall not differ regardless of the method of mitigation.*
- (3) *The methodology used to calculate an applicant's proportionate fair-share obligation shall be as provided for in Section 163.3180 (12), Florida Statutes.*

OR

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

Where:

*Development Trips<sub>i</sub> = Those trips from the stage or phase of development under review that are assigned to roadway segment "i", which is the roadway segment necessary for the development to satisfy the transportation concurrency requirements, or for projects utilizing the option under Section 4.02.07.C.(3) the roadway improvement that would provide the capacity needed for the development to satisfy the transportation concurrency requirements, , and have triggered a deficiency per the provisions of this Part;*

*SV Increase<sub>i</sub> = Service volume increase provided by the eligible improvement to roadway segment “i”, which is the roadway segment necessary for the development to satisfy the transportation concurrency requirements, or for projects utilizing the option under Section 4.02.07.C.(3) the roadway improvement that would provide the capacity needed for the development to satisfy the transportation concurrency requirements , per section C;*

*Cost<sub>i</sub> = Adjusted cost of the improvement to segment “i”, which is the roadway segment necessary for the development to satisfy the transportation concurrency requirements, or for projects utilizing the option under Section 4.02.07.C.(3) the roadway improvement that would provide the capacity needed for the development to satisfy the transportation concurrency requirements. Cost shall include all improvements and associated costs, such as design, right-of-way acquisition, planning, engineering, inspection, and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred. In the event that an improvement extends beyond the limits of segment “i”, the entire cost of the improvement shall be averaged to determine a cost per unit of measurement that shall be used to determine the cost of the improvement to segment “i.”*

*(4) For the purposes of determining proportionate fair-share obligations, the County shall determine improvement costs based upon the best estimate of the actual cost of the improvement using the most current cost estimates as obtained from the Capital Improvements Element, the MPO Transportation Improvement Program, the FDOT Work Program or the Hillsborough County Project Information Management System (PIMS). Improvement costs shall be escalated to the proposed year of construction using the Method for Cost Escalation as provided in Section I unless the costs are already escalated to the actual year of construction within the aforementioned sources. Where such information is not available or at the County’s discretion when necessary to ascertain the best estimate of the actual cost, improvement cost shall be determined using the following method:*

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

- (5) *If the County has accepted an improvement project proposed by the applicant, then the value of the improvement shall be determined using one of the methods provided in this section.*
- (6) *If the County has accepted right-of-way dedication for the proportionate fair-share payment, credit for the dedication of the non-site related right-of-way shall be valued on the date of the dedication by fair market value established by an independent appraisal approved by the County and at no expense to the County. The applicant shall supply a drawing and legal description of the land and a certificate of title or title search of the land to the County at no expense to the County. If the estimated value of the right-of-way dedication proposed by the applicant is less than the County estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference. Prior to purchase or acquisition of any real estate or acceptance of donations of real estate intended to be used for the proportionate fair share, public or private partners should contact FDOT for essential information about compliance with federal law and regulations.*

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

- (1) *Upon execution of a proportionate fair-share agreement (Agreement) the applicant shall receive a certificate of capacity for transportation concurrency for the development covered by such agreement. The certificate of capacity shall be effective for the time periods specified in Section 4.02.05 C. of this Code. Should the certificate of capacity expire, then the Agreement shall be considered null and void, and the applicant shall be required to reapply. Upon payment of the proportional fair share contribution, as provided in Section G.(2), the certificate of capacity shall become permanent.*
- (2) *Payment of the proportionate fair-share contribution is due in full prior to issuance of any building permit 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 F. and adjusted accordingly.*
- (3) *All developer improvements authorized under this Code must be completed prior to issuance of a certificate of occupancy, or as otherwise established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure the completion of all required improvements. It is the intent of this section that any required improvements be completed before issuance of certificates of occupancy.*

- (4) *Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement must be completed prior to issuance of the final development order or recording of the final plat.*
- (5) *Any requested change to a development project subsequent to a development order may be subject to additional proportionate fair-share contributions to the extent the change would generate additional traffic that would require mitigation.*
- (6) *Applicants may submit a letter to withdraw from the proportionate fair-share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs to the County will be nonrefundable.*

**H. Appropriation of Fair-Share Revenues**

- (1) *Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the County capital improvements element, or as otherwise established in the terms of the proportionate fair-share agreement. Proportionate fair-share revenues may also be used as the 50% local match for funding under the FDOT Transportation Regional Incentive Program (TRIP).*
- (2) *In the event a scheduled facility improvement is removed from the CIE, then the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor or sector that would mitigate the impacts of development pursuant to the requirements of subsection C.(3).*
- (3) *Where an impacted regional facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan as provided in Section 339.155, F.S., then the County may coordinate with other impacted jurisdictions and agencies to apply proportionate fair-share contributions and public contributions to seek funding for improving the impacted regional facility under the FDOT Transportation Regional Incentive Program (TRIP). Such coordination shall be ratified by the County through an interlocal agreement that establishes a procedure for earmarking of the developer contributions for this purpose.*

**I. Method For Cost Escalation**

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

$$Cost_n = Cost_0 \times (1 + Cost\_growth_{3yr})^n$$

Where:

- $Cost_n =$  The cost of the improvements and associated costs in year  $n$ ;
- $Cost_0 =$  The cost of the improvement and associated costs in the current year;
- $Cost\_growth_{3yr} =$  The growth rate of costs over the last 3 years using the FDOT District 7 rates;
- $n =$  The number of years until the improvement is constructed.

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

$$Cost\_growth_{3yr} = [Cost\_growth_{-1} + Cost\_growth_{-2} + Cost\_growth_{-3}]/3$$

Where:

- $Cost\_growth_{3yr} =$  The growth rate of costs over the last 3 years;
- $Cost\_growth_{-1} =$  The growth rate of costs in the previous year;
- $Cost\_growth_{-2} =$  The growth rate of costs two years prior;
- $Cost\_growth_{-3} =$  The growth rate of costs three years prior.

The growth rate shall be determined using the FDOT District 7 rates.