

**SEMINOLE COUNTY GOVERNMENT
AGENDA MEMORANDUM**

CONTINUED FROM THE 11/07/06 MEETING

SUBJECT: Capital Improvements, Implementation and Transportation Element –
Comprehensive Plan Text Amendments for Proportionate Fair-Share Funding
of Transportation Improvements

DEPARTMENT: Planning & Development **DIVISION:** Planning

AUTHORIZED BY: Dori L. DeBord **CONTACT:** Sheryl Stolzenberg **EXT.** 7383

Agenda Date <u>12/12/06</u>	Regular <input type="checkbox"/>	Consent <input type="checkbox"/>	Work Session <input type="checkbox"/>	Briefing <input type="checkbox"/>
	Public Hearing – 1:30 <input checked="" type="checkbox"/>		Public Hearing – 7:00 <input type="checkbox"/>	

MOTION/RECOMMENDATION:

1. **AUTHORIZE** adoption of an ordinance to amend the text of the Seminole County Comprehensive Plan to enable the use of Proportionate Fair-Share funding of a transportation improvement and authorize transmittal of the proposed amendments to the State Department of Community Affairs (DCA) for a Finding of Compliance with State Law; or
2. **DENY** authorization of an ordinance to amend the text of the Comprehensive Plan to enable the use of Proportionate Fair-Share funding of a transportation improvement; or
3. **CONTINUE** the public hearing until a time and date certain.

District – Countywide

Sheryl Stolzenberg, Principal Coordinator

BACKGROUND:

The original Florida Growth Management Act of 1985 contained a requirement that all local governments adopt 'Concurrency Management Systems' to ensure that necessary public facilities are available concurrent with the impacts of development on those services. The Concurrency Management System required local governments to adopt 'Levels of Service' for services such as transportation, and, as a part of development approval, evaluate whether the service needs of a proposed development exceed the existing capacity of a service and

Reviewed by:	<u>KL</u>
Co Atty:	<u> </u>
DFS:	<u> </u>
Other:	<u> </u>
DCM:	<u> </u>
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File No.	<u>ph130pdp10</u>

any scheduled improvements. If adequate capacity is not available, local governments could not permit a development unless certain specified conditions applied.

The 2005 amendments to Florida's Growth Management legislation directed local governments to revise their concurrency management ordinances by December 1, 2006 to allow for 'proportionate share' contributions from developers toward transportation concurrency requirements. The intent of the proportionate share amendment is to provide applicants with an opportunity to proceed with a development when a proposal is otherwise consistent with the Comprehensive Plan, but transportation capacity is not available.

In order to amend the Land Development Code (LDC), it is necessary to first adopt amendments to those portions of the Comprehensive Plan that address concurrency or funding sources for transportation improvements. The proposed Comprehensive Plan text amendments were heard by the Board at the August 8, 2006 public hearing and were transmitted to the State Department of Community Affairs (DCA) shortly thereafter. Amendments to the text of the following elements are needed: Capital Improvements, Implementation and Transportation.

DCA issued an Objections, Recommendations and Comments (ORC) report on October 20, 2006. The ORC report recommended that the proposed amendment include statutory references to Section 163.3180(16), Florida Statutes (F.S.) and information about the methodology that will be used to calculate proportionate fair-share mitigation. The amendments were revised accordingly, with the additional text shown as double underlined. The proposed amendments are shown as underlined and double underlined material on Comprehensive Plan pages attached to this memorandum.

STAFF RECOMMENDATION:

Staff recommends that the Board of County Commissioners authorize adoption of an ordinance adopting the proposed Comprehensive Plan text amendments as revised to respond to the ORC and transmit the ordinance and amendments to the Florida Department of Community Affairs (DCA) for a Finding of Compliance with State Law.

Attachments:

- Proposed Comprehensive Plan Text Amendments
- Economic Impact Statement
- Objections, Recommendations and Comments Report, including responses

Vision 2020 Comprehensive Plan Seminole County, Florida



OBJECTIVE CIE 4 USER PAYS PRINCIPLE

Development shall bear a proportionate cost of needed facility improvements through equitable and legally available means.

Policy CIE 4.1 Developments' Proportionate Share

Development will bear an equitable and proportionate share of the cost of providing new or expanded public facilities required to maintain adopted levels of service through mechanisms such as impact fees, capacity fees, developer dedications, developer contributions pursuant to land development regulations and special benefit assessment/taxing districts.

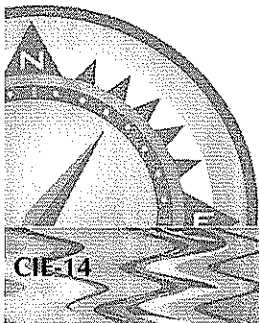
Policy CIE 4.2 Fee Assessments

The County shall regularly evaluate whether present fee levies are adequate to address impacts of inflation, whether the County needs to appropriate new impact fees, and whether capacity fees, user charges, special benefit assessment/ taxing districts and other mechanisms are adequately and fairly meeting the fiscal demands placed on the County by new development.

Policy CIE 4.3 Proportionate Fair-Share Program

The Proportionate Fair-Share Program as provided in Section 163.3180(16), F.S., shall apply to all developments in the County that impact a road segment or transportation facility in the County Concurrency Management System where the developer has been notified of a failure to achieve transportation concurrency on the roadway segment or segments, or transportation facility or facilities. An applicant may choose to satisfy the transportation concurrency requirements by making a proportionate fair-share contribution if the proposed development is consistent with the County's Comprehensive Plan and Land Development Code, and the County's five-year Capital Improvement Program (CIP) and the Capital Improvements Element (CIE) include a transportation improvement or improvements that, upon completion, will accommodate the additional trips generated by the proposed development, or the County agrees to add the transportation improvement to the CIP and CIE no later than the next regular update of those documents. When the Proportionate Fair-Share Program is used by a developer, this source of funding shall be included in the CIP and CIE as a revenue stream for the affected transportation improvement or improvements. The methodology to calculate proportionate fair-share mitigation, which is specified in the Land Development Code, shall be as provided in Section 163.3180(12), F.S. Proportionate fair-share mitigation includes separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by Seminole County. Mitigation for development impacts to facilities on the Strategic Intermodal System, as required by Section 163.3180(16)(e), F.S., and the County's Land Development Code, requires concurrence of the Department of Transportation.

(Added: Amendment 06F.TXT01.1, Ordinance 2006-XX, 11/07/2006)



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- 3 "Development permit" means an arbor permit, a building permit, a construction permit-site, a construction permit-subdivision, a deck and porch permit, a plumbing permit, a razing permit, a septic repair permit, a septic tank permit, a sign permit and any other development approval other than a final development order or preliminary development order.
- 4 "Public facility" means the capital improvements and systems of each of the following: arterial and collector roads, mass transit, stormwater management, potable water, sanitary sewer, solid waste, parks and recreation, library, fire-rescue service, and other County buildings.

Land Development Regulations

The County shall maintain its land development regulations providing for a system of review of various applications for development orders and permits which applications, if granted, would impact the levels of service of Category I and Category III public facilities. Such system of review shall assure that no final development order or development permit shall be issued which results in a reduction in the levels of service below the standards adopted in the Comprehensive Plan for Category I and Category III public facilities. The County land development regulations shall also contain the methodology for determining the proportionate fair-share obligation for a transportation facility, if said transportation facility fails to achieve transportation concurrency and the developer of a proposed development wishes to exercise the option to satisfy transportation concurrency in this manner as provided by Section 163.3180(16), F.S. The methodology to calculate proportionate fair-share mitigation, which is specified in the Land Development Code, shall be as provided in Section 163.3180(12), F.S. Proportionate fair-share mitigation includes separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by Seminole County. In addition, pursuant to Section 163.3180(16)(e), F.S., and as required in the Land Development Code, mitigation for development impacts to facilities on the Strategic Intermodal System requires concurrence of the Department of Transportation.

(Revised: Amendment 06F.TXT01.2.1, Ordinance 2006-XX, 11/07/2006)

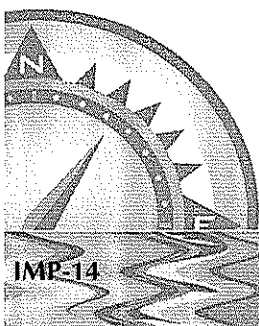
The land development regulations address the circumstances under which public facilities may be provided by applicants for development orders or permits. Development orders and permits may be issued subject to the provision of public facilities by the applicant subject to each of the following requirements:

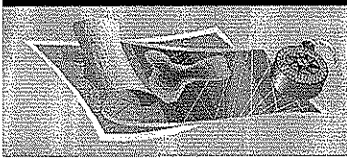
- A The County and the applicant enter into an enforceable development agreement which shall provide, at a minimum, a schedule for construction of the public facilities and mechanisms for monitoring to ensure that the public facilities are completed concurrent with the impacts of the development, or the development will not be allowed to proceed; and
- B The public facilities to be provided by the applicant are contained in the Schedule of Capital Improvements of the Comprehensive Plan, or, in the case of a development where transportation concurrency is to be met through the Proportionate Fair-Share methodology calculated as provided in Section 163.3180(12)F.S. and in accordance with Section 163.3180(16) F.S., a transportation improvement or improvements are added to the Schedule of Capital Improvements of the Comprehensive Plan and the County five-year Capital Improvement Program no later than the next regular update of those documents.

(Revised: Amendment 06F.TXT01.2.2, Ordinance 2006-XX, 11/07/2006)

Concurrency Implementation and Monitoring System

The County shall continue Concurrency Implementation and Monitoring Systems consisting of the following components:





Vision 2020 Comprehensive Plan Seminole County, Florida

Public Facility Capacity Review

Each application for a development order or permit shall be analyzed for concurrency. Records shall be maintained during each fiscal year to indicate the cumulative impacts of all development orders approved during the fiscal year-to-date on the capacity of public facilities. The land development regulations of the County shall provide that applications for development orders that are denied because of insufficient capacity of public facilities may be resubmitted after a time period to be specified in the land development regulations. Such time period is in lieu of, and not in addition to, other minimum waiting periods imposed on applications for development orders that are denied for reasons other than lack of capacity of public facilities. Land development regulations shall require that development commence within a specified time after a development order is issued, or the determination of capacity shall expire, subject to reasonable extensions of time based on criteria included in the regulations.

Review of Changes in Planned Capacity of Public Facilities

The County shall review each amendment to the Capital Improvements Element, in particular any changes in standards for levels of service and changes in the Schedule of Capital Improvements, in order to review the amount of capacity that is available.

Concurrency Implementation Strategies

Standards for levels of service are applied according to the timing of the impacts of development on public facilities. Final development orders and development permits impact public facilities in a matter of months and are issued subject to the availability of water, sewer, solid waste, and stormwater management facilities prior to the impacts of the development. Parks must be under construction within one (1) year of the issuance of the development order or permit. Roads and mass transit must be included in the first three (3) years of the five-year capital improvements schedule, or, in the case of a transportation improvement financed through the Proportionate Fair-Share Program, as provided in Section 163.3180(16), F.S., using methodology as provided in Section 163.3180(12), F.S., must be added to the five-year capital improvement schedule at the next regular amendment update, and the schedule must:

- A Be financially feasible based on currently available sources of revenue, including Proportionate Fair-Share contributions determined by the methodology included within the Land Development Code and as provided in Section 163.3180(12), F.S.;
- B Include estimated dates of commencement and completion of actual construction;
- C Not be changed without an amendment to the Comprehensive Plan; and
- D Designate the areas to be served by facilities.

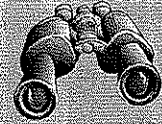
Preliminary development orders can be issued subject to public facility capacity, but the capacity determination expires unless the applicant provides financial assurances to the County and obtains subsequent development orders before the expiration of the initial development order. As an alternative, the determination of public facility capacity for preliminary development orders can be waived with a written agreement that a capacity determination must be made prior to issuance of any final development order or development permit for the subject property. Such a waiver specifically precludes the acquisition of rights to a final development order or permit as a result of the issuance of the preliminary development order (See Policy IMP 2.4).

Standards for levels of service are applied within appropriate geographical areas of the County. Standards for countywide public facilities are applied to development orders based on levels of service throughout the County. Standards for public facilities that serve less than the entire County are applied to development orders on the basis of levels of service within assigned service areas (See Objective IMP 3.0).

Public facility capital improvements are prioritized according to the criteria in the Capital Improvements Element. Applications for available capacity will be considered on a first-come, first-served basis.



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OBJECTIVE IMP 2 DETERMINATION OF CAPACITY

The County shall continue to determine the availability of facility capacity to meet adopted level of service standards of the several County public facilities prior to development approvals.

Policy IMP 2.1 Establishment of Concurrency Doctrine

The Board of County Commissioners of Seminole County finds that the impacts of development on public facilities within the County occur at the same time (i.e., concurrently) as development authorized by certain final development orders or development permits.

Policy IMP 2.2 Concurrency Management System Implementation

The County shall determine, prior to the issuance of such development orders, whether or not there is sufficient capacity of Category I and Category III public facilities to meet the standards for levels of service for existing and committed development and the impacts of proposed development concurrent with the proposed development, including in such determination for transportation improvement capacity any additional capacity to be financed through the Proportionate Fair-Share Program. The methodology to calculate proportionate fair-share mitigation, which is specified in the Land Development Code, shall be as provided in Section 163.3180(12), F.S. and in accordance with Section 163.3180(16), F.S. Proportionate fair-share mitigation includes separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by Seminole County. Mitigation for development impacts to facilities on the Strategic Intermodal System, as required by Section 163.3180(16)(e) and the Land Development Code, requires concurrence of the Department of Transportation.

(Revised: Amendment 06F.TXT01.2.4, Ordinance 2006-XX, 11/07/2006)

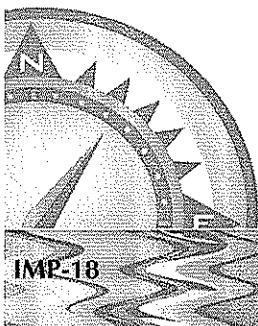
Policy IMP 2.3 Maintain Adopted Level Of Service Standards

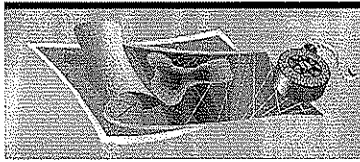
No final development order under which development activity impacting public facilities may ensue, or development permit, shall be issued by the County unless there shall be sufficient capacity of Category I and Category III public facilities to meet the standards for levels of service for existing development and for the proposed development, and the development order or permit shall be subject to the requirements of Policy IMP 2.5. In the absence of a final development order under which development activity impacting public facilities may ensue or a development permit, no development of land is authorized.

Policy IMP 2.4 Preliminary Development Orders (Capacity Determination)

For preliminary and final development orders for which no development activity impacting public facilities may ensue, the capacity of Category I and Category III public facilities shall be determined as follows:

- A The applicant may request a determination of such capacity as part of the review and approval of the development order subject to the requirements of Policy IMP 2.5; or
- B The applicant may elect to request approval of the development order without a determination of capacity of Category I and Category III public facilities provided that any such order is issued subject to requirements in the applicable land development regulation or to specific conditions contained in the development order that:





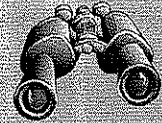
Vision 2020 Comprehensive Plan Seminole County, Florida

C Roads and Mass Transit:

- 1 Any of the provisions of section A.1.-A.4. listed above for potable water, sewer, solid waste and drainage; or
- 2 Any of the provisions of section B.1.-B.3 listed above for parks and recreation; or
- 3 The County has committed to provide the necessary public facilities in accordance with the five-year Schedule of Capital Improvements and has adopted and implemented a concurrency management system based upon an adequate capital improvements program and schedule, provided that:
 - a The Capital Improvements Element and five-year Schedule of Capital Improvements must be financially feasible, including Proportionate Fair-Share contribution as provided by Section 163.3180(16) and determined by the methodology included in the Land Development Code in accordance with Section 163.3180(12), F.S., where this option is used to satisfy transportation concurrency, and may include transportation projects included in the first three (3) years of the applicable adopted Florida Department of Transportation five-year work program, or, in the case of a developer choosing to satisfy transportation concurrency requirements through the Proportionate Fair-Share Program as provided by Section 163.3180(16)F.S., the County adds the transportation improvement or improvements to the five-year Capital Improvements Program (CIP) and five year Schedule of Capital Improvements within the County's Comprehensive Plan Capital Improvements Element (CIE) at the next regular update of those documents.
 - b The five-year Schedule of Capital Improvements must include both necessary facilities to maintain the adopted level of service standards to service the new development proposed to be permitted, and the necessary facilities required to eliminate those portions of existing deficiencies which are a priority to be eliminated during the five-year period under the County's schedule of capital improvements in this Comprehensive Plan.
 - c The County uses a realistic, financially feasible funding system based on currently available revenue sources as defined in Chapter 9J-5.003(29), Florida Administrative Code, including any funds generated through the Proportionate Fair-Share option as provided by Section 163.3180(16) and determined according to the methodology included in the Land Development Code in accordance with Section 163.3180(12). The revenues must be adequate to fund the public facilities required to serve the development authorized by the development order or development permit, and which public facilities are included in the five-year schedule of capital improvements in this Comprehensive Plan, or, in the case of a transportation project to be funded through the Proportionate Fair-Share Program as provided by Section 163.3180(16) F.S., the improvement is added to the five-year schedule of capital improvements at the next regular update.
 - d The five-year Schedule of Capital Improvements in this Comprehensive Plan must include the estimated date of commencement of actual construction and the estimated date of project completion.



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OBJECTIVE TRA 13 FINANCING AND PROGRAMMING TRANSPORTATION IMPROVEMENT

The County shall provide a financially feasible program, including a Proportionate Fair-Share Program as provided in Section 163.3180(16), F.S., for funding transportation improvements necessary to support the growth forecasts, goals, objectives and policies of the Future Land Use Element and as one means of providing for a safe, convenient and efficient transportation system, through implementation of the following policies.

(Revised: Amendment 06F.TXT01.3.1, Ordinance 2006-XX, 11/07/2006)

Policy TRA 13.1 Adopt Capital Improvements Program

The County shall establish and adopt a Capital Improvement Program that shall be updated annually. The CIP shall list planned improvements for all vehicular, transit, pedestrian, and bicycle modes and their interconnections.

Policy TRA 13.2 Programming of Transportation Improvements

The County shall plan, program and implement transportation improvements based on the costs and benefits of individual projects as they relate to improving the overall performance of the transportation system and in coordination with the land development program reflected in the Future Land Use Element. The County shall consider existing and projected capacity deficiencies, safety deficiencies, physical and policy constraints, required right-of-way needs, design deficiencies and system continuity considerations in the prioritization of transportation improvements.

Policy TRA 13.3 Funding of Transportation Improvements

The County shall continue to fund transportation improvement costs and operation and maintenance costs of the County Road System, transit system, and bicycle and pedestrian facilities through available sources of revenue, such as:

- State and Federal funds,
- Constitutional gas tax,
- Countywide road and bridge ad valorem tax,
- Local option gas tax,
- Local option sales tax,
- Special assessment districts, and
- Impact fees
- Proportionate Fair-Share Program as provided in Section 163.3180(16), F.S.

(Revised: Amendment 06F.TXT01.3.2, Ordinance 2006-XX, 11/07/2006)

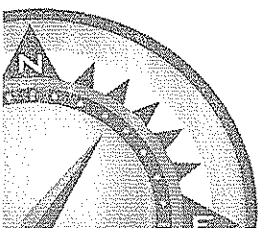
Policy TRA 13.4 Use of Transportation Plans as Basis for Funding Improvements

The County shall use its transportation plans at the regional and State levels as the basis for securing Federal and State funds for improvements to the major road systems.

Policy TRA 13.5 Pursue Alternate Forms of Funding

The County shall pursue funding outside the normal funding process for transportation projects that are needed by Seminole County residents but are not listed in either the financially feasible transportation plans or in the 5-year work programs at the regional and State levels.

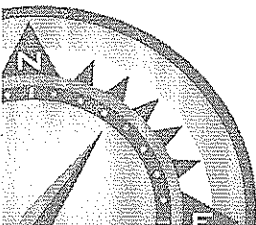
The County will pursue additional and alternative funding, as appropriate, for improvements indicated in *Exhibit TRA: Roadway Number of Lanes 2020* and *Exhibit*



Vision 2020 Comprehensive Plan Seminole County, Florida



- Policy TRA 13.12 Coordinated Capital Plans with Airport Authority and Rail Companies**
The County shall coordinate with the Airport Authority and rail companies during annual CIE updates to ensure participation in the County roads and utilities programs.
- Policy TRA 13.13 Evaluate Provision of Transit Services**
By 2005, the County shall evaluate the provision of transit services, and shall ensure that it is provided at a fair and reasonable price as compared to other alternatives and that it is financially feasible.
- Policy TRA 13.14 Consideration of Economic Vitality and Environmental Quality**
In its planning activities, the County shall consider the role that the transportation system plays in maintaining the economic vitality and environmental quality of the County.
- Policy TRA 13.15 Public Participation**
The County shall continue to require public notice of and public meetings on the planning and design of transportation improvements as required by law or as established by policy of the Board of County Commissioners.
- Policy TRA 13.16 Consideration of Transportation Systems Management Activities**
In order to make more efficient use of the existing transportation infrastructure and available financial resources, the County shall continue to consider and implement transportation systems management activities which discourage urban sprawl, reduce travel time, increase capacity at a relatively low cost, and increase the use of alternative modes of transportation.
- Policy TRA 13.17 Adopted Future Transportation System Map Series**
The County adopts the Future Transportation System Map Series as depicted in the Exhibits.
- Policy TRA 13.18 Proportionate Fair-Share Program**
In accordance with Subsection 163.3180(16), Florida Statutes (F.S.), the County shall establish within its Land Development Code (LDC) a Proportionate Fair-Share Program that shall apply to all developments in the County that impact a road segment in the County Concurrency Management System for which the developer has been notified of a failure to achieve transportation concurrency on a roadway segment or segments. This program shall not apply to Developments of Regional Impact (DRIs) using proportionate share under Subsection 163.3180(12), F.S., developments meeting the de minimis standards under Subsection 163.3180(6), F.S., or to developments exempted from concurrency as provided in the LDC. An eligible applicant may choose to satisfy the transportation concurrency requirements of the County by making a proportionate fair-share contribution if the proposed development is otherwise consistent with the Comprehensive Plan and applicable land development codes, and if the County's five-year Capital Improvement Program (CIP) and the Capital Improvements Element (CIE) of the County's Comprehensive Plan includes a transportation improvement or improvements that, upon completion, will accommodate the additional trips generated by the proposed development. The County may choose to allow an applicant to satisfy transportation concurrency through the Proportionate Fair-Share Program by contributing to an improvement or improvements that, upon completion, will accommodate the additional trips generated by the proposed development but is not contained in the CIP and CIE where one of the following conditions apply: (1) The County adds the transportation improvement or





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improvements to the CIP and CIE no later than the next regular update and the improvement or improvements have been determined by the County Engineer or County Engineer's designee to be financially feasible, or (2) If the funds in the adopted CIP and CIE are insufficient to fully fund construction of a transportation improvement or improvements required by the Concurrency Management System, the County may require a proportionate fair-share contribution for another improvement or improvements that will, according to the findings of the County's development review process, significantly benefit the impacted transportation system or systems, and said transportation improvement or improvements are adopted into the CIP and CIE at the next annual update of those documents. The methodology to calculate proportionate fair-share mitigation, which is specified in the Land Development Code, shall be as provided in Section 163.3180(12), F.S. Proportionate fair-share mitigation includes separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by Seminole County. Mitigation for development impacts to facilities on the Strategic Intermodal System, as required by Section 163.3180(16)(e) and the Land Development Code, requires concurrence of the Department of Transportation.
(Revised: Amendment 06F.TXT01.3.3, Ordinance 2006-XX, 11/07/2006)



Seminole County ECONOMIC IMPACT STATEMENT

Date:	10/18/06	Dept/Div:	P&D/Planning Division
Contact:	Sheryl Stolzenberg	Phone Ext:	407-665-7383
Action:	Ordinance amending the Comprehensive Plan on 11/07/06		
Topic:	Proportionate Share Enabling Language in three Elements of the Plan		

Describe Project/Proposal

The County is proposing to amend the Vision 2020 Seminole County Comprehensive Plan by adopting text amendments to the Capital Improvements, Implementation and Transportation Elements of the Seminole County Comprehensive Plan

The purpose of this amendment is to comply with State Law by allowing 'proportionate share' contributions from developers toward transportation improvements to enable a project that is otherwise consistent with the Comprehensive Plan to meet transportation concurrency requirements.

Describe the Direct Economic Impact of the Project/Proposal upon the Operation of the County

There is no economic impact as a result of this amendment. The Proportionate Share provision allows an applicant to achieve transportation concurrency through a fair share payment only for a project that is otherwise consistent with the Comprehensive Plan, thus not requiring additional expenditure by the County.

Describe the Direct Economic Impact of the Project/Proposal upon the Property Owners/Tax Payers/Citizens who are Expected to be Affected

There is no direct economic impact as a result of this amendment to the property owners/tax payers/citizens of this county. The Proportionate Share provision allows an applicant to achieve transportation concurrency through a fair share payment only for a project that is otherwise consistent with the Comprehensive Plan, thus not requiring additional expenditure by the County and County Tax Payers.

Identify and Potential Indirect Economic Impacts, Positive or Negative, Which Might Occur as a Result of the Adoption of the Ordinance

There are no indirect economic impacts as a result of the adoption of this ordinance. The Proportionate Share provision allows an applicant to achieve transportation concurrency through a fair share payment only for a project that is otherwise consistent with the Comprehensive Plan, thus not requiring additional expenditure by the County.

Citation

Seminole County Home Rule Charter.

DEPARTMENT OF COMMUNITY AFFAIRS
OBJECTIONS, RECOMMENDATIONS AND COMMENTS
FOR
SEMINOLE COUNTY
AMENDMENT 06-2

October 20, 2006
Division of Community Planning
Bureau of Local Planning

This report is prepared pursuant to Rule 9J-11.010, F.A.C.

**OBJECTIONS, RECOMMENDATIONS AND COMMENTS
FOR
SEMINOLE COUNTY
AMENDMENT 06-2**

I. CONSISTENCY WITH CHAPTER 163, PART II, F.S.; and RULE 9J-5, F.A.C.

The County's proposed Amendment 06-2 consists of text amendments (Capital Improvements Element; Implementation Element; and Transportation Element) to address proportionate fair-share mitigation for transportation and one amendment to the Future Land Use Map (FLUM) for a 54 acre parcel. The Department raises the following objections and comments to proposed Amendment 06-2:

A. Text Amendments

The proposed text amendments revise the Capital Improvements Element, Implementation Element, and Transportation Element to address the transportation proportionate fair-share mitigation requirements of Section 163.3180(16), Florida Statutes (F.S.). The amendments add several new policies and revise existing adopted policies and text portions of the three elements.

1. Objection: Section 163.3180(16), F.S., establishes various requirements for proportionate fair-share mitigation, including in part the following three items: (1) the methodology to calculate proportionate fair-share mitigation shall be as provided in Section 163.3180(12), F.S.; (2) proportionate fair-share mitigation includes separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by the local government; and (3) mitigation for development impacts to facilities on the Strategic Intermodal System made pursuant to this subsection requires the concurrence of the Department of Transportation. The proposed amendment does not include plan policies that appropriately establish meaningful and predictable standards/guidelines addressing the three statutory items identified above either by: (a) plan policies that incorporate by reference the provisions of Section 163.3180(16), F.S., or (b) plan policies that state: (i) the methodology that will be used to calculate proportionate fair-share mitigation, (ii) that proportionate fair-share mitigation includes separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by the local government, and (iii) that mitigation for development impacts to facilities on the Strategic Intermodal System made pursuant to this subsection requires the concurrence of the Department of Transportation. Therefore, the proposed amendment is not consistent with the requirements of Section 163.3180(16), F.S.

Regarding the County's Land Development Code, the proposed Transportation Element Policy 13.18 states "The County hereby establishes within its Land Development Code (LDC) a Proportionate Fair-Share Program in accordance with Subsection 163.3180(16), Florida Statutes (F.S.) ..." This first sentence is vague and misleading as to whether the County needs to amend its Land Development Code to address the Proportionate Fair-Share Program or whether the plan

amendment somehow accomplishes the revision to the Land Development Code. Therefore, Policy 13.18 is not meaningful and predictable.

Rules 9J-5.005(2, 5, and 6); 9J-5.0055(1, 2, and 3); 9J-5.016(1, 2, 3, and 4); 9J-5.019(1, 2, 3, and 4), Florida Administrative Code (F.A.C.); and Sections 163.3177(6)(b, i, and j); 163.3177(2, 3, 8, and 10); 163.3180; 163.3180(16), Florida Statutes (F.S.).

Recommendation: Revise the proposed amendment to include plan policies that appropriately incorporate by statutory reference the provisions of Section 163.3180(16), F.S. Alternatively, revise the proposed amendment to include plan policies that appropriately: (i) state the methodology that will be used to calculate proportionate fair-share mitigation, (ii) state that proportionate fair-share mitigation includes separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by the local government, and (iii) state that mitigation for development impacts to facilities on the Strategic Intermodal System made pursuant to this subsection requires the concurrence of the Department of Transportation. In addition, the first sentence of Policy 13.18 should be revised to clarify that "By December 1, 2006, the County shall establish within its Land Development Code (LDC) a Proportionate Fair-Share Program in accordance with Subsection 163.3180(16), Florida Statutes (F.S.) ..."

Proposed response to Objections:

Changes proposed to Capital Improvements Element Policy CIE 4.3 are shown as double underlined:

Policy CIE 4.3 Proportionate Fair-Share Program

The Proportionate Fair-Share Program as provided in Section 163.3180(16) F.S., shall apply to all developments in the County that impact a road segment or transportation facility in the County Concurrency Management System where a developer has been notified of a failure to achieve transportation concurrency on the roadway segment or segments, or transportation facility or facilities. An applicant may choose to satisfy the transportation concurrency requirements by making a proportionate fair-share contribution if the proposed development is consistent with the County's Comprehensive Plan and Land Development Code, and the County's five-year Capital Improvement Program (CIP) and the Capital Improvements Element (CIE) include a transportation improvement or improvements that, upon completion, will accommodate the additional trips generated by the proposed development, or the County agrees to add the transportation improvement to the CIP and CIE no later than the next regular update of those documents. When the Proportionate Fair-Share Program is used by a developer, this source of funding shall be included in the CIP and CIE as a revenue stream for the affected transportation improvement or improvements. The methodology to calculate proportionate fair-share mitigation, which is specified in the Land Development Code, shall be as provided in Section 163.3180(12), F.S. Proportionate fair-share mitigation includes

separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by Seminole County. Mitigation for development impacts to facilities on the Strategic Intermodal System, as required by Section 163.3180(16)(e), F.S., and the County's Land Development Code, requires concurrence of the Department of Transportation.

Changes proposed to the section "Land Development Regulations" in the Implementation Element are shown as double underlined:

Land Development Regulations

The County shall maintain its land development regulations providing for a system of review of various applications for development orders and permits which applications, if granted, would impact the levels of service of Category I and Category III public facilities. Such system of review shall assure no final development order or development permit shall be issued which results in a reduction of levels of service below the standards adopted in the Comprehensive Plan for Category I and Category III public facilities. The County land development regulations shall also contain the methodology for determining the proportionate fair-share obligation for a transportation facility, if said transportation facility fails to achieve transportation concurrency and the developer of a proposed development wishes to exercise the option to satisfy transportation concurrency in this manner as provided by Section 163.3180(16), F.S. The methodology to calculate proportionate fair-share mitigation, which is specified in the Land Development Code, shall be as provided in Section 163.3180(12), F.S. Proportionate fair-share mitigation includes separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by Seminole County. In addition, pursuant to Section 163.3180(16)(e), F.S. and as required in the Land Development Code, mitigation for development impacts to facilities on the Strategic Intermodal System, as required by Section 163.3180(16)(e), F.S., and the County's Land Development Code, requires concurrence of the Department of Transportation.

The land development regulations address the circumstances under which public facilities may be provided to applicants for development orders or permits. Development orders and permits may be issued subject to the provision of public facilities by the applicant subject to each of the following requirements:

- A. The County and the applicant enter into an enforceable development agreement which shall provide, at a minimum, a schedule for construction of the public facilities and mechanisms for monitoring to ensure that the public facilities are completed concurrent with the impacts of the development, or the development will not be allowed to proceed; and
- B. The public facilities to be provided by the applicant are contained in the Schedule of Capital Improvements of the Comprehensive Plan, or, in the case of a development where transportation concurrency is to be met through the Proportionate Fair-Share methodology calculated as provided in Section 163.3180(12) F.S. and in accordance with Section 163.3180(16), F.S., a transportation improvement or improvements are added to the Schedule of Capital Improvements of the Comprehensive Plan and the County five-year Capital Improvement Program no later than the next regular update of these documents.

Changes proposed to the section "Concurrency Implementation Strategies" in the Implementation Element are shown as double underlined:

Concurrency Implementation Strategies

Standards for levels of service are applied according to the timing of the impacts of development on public facilities. Final development orders and development permits impact public facilities in a matter of months and are issued subject to the availability of water, sewer, solid waste, and stormwater management facilities prior to the impacts of development. Parks must be under construction within one (1) year of the issuance of the development order or permit. Roads and mass transit must be included within the first three (3) years of the five-year capital improvements schedule, or, in the case of a transportation improvement financed through the Proportionate Fair-Share program, as provided in Section 163.3180(16), F.S., using methodology as provided in Section 163.3180(12), F.S., must be added to the five-year capital improvement schedule at the next regular amendment update and the schedule must:

- A. Be financially feasible based on the currently available sources of revenue, including Proportionate Fair-Share contributions determined by the methodology included within the Land Development Code and as provided in Section 163.3180(12), F.S.;

Changes proposed to Implementation Element Policy IMP 2.2 are shown as double underlined:

Policy IMP 2.2

Concurrency Management System Implementation

The County shall determine, prior to the issuance of such development orders, whether or not there is sufficient capacity of Category I and Category III public facilities to meet the standards for level of service for existing and committed development and the impacts of proposed development concurrent with the proposed development, including in such determination for transportation improvement capacity any additional capacity to be financed through the Proportionate Fair-Share Program. The methodology to calculate proportionate fair-share mitigation, which is specified in the Land Development Code, shall be as provided in Section 163.3180(12), F.S. and in accordance with Section 163.3180(16), F.S. Proportionate fair-share mitigation includes separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by Seminole County. Mitigation for development impacts to facilities on the Strategic Intermodal System, as required by Section 163.3180(16)(e) and the Land Development Code, requires concurrence of the Department of Transportation.

Changes proposed to Implementation Element Policy IMP 2.5 are shown as double underlined:

- A Roads and Mass Transit:
 - a. Any of the provisions of section A.1.-A.4. listed above for potable water, sewer, solid waste and drainage; or

- b. Any of the provisions of section B.1.-B.3 listed above for parks and recreation; or
- c. The County has committed to provide the necessary public facilities in accordance with the five-year Schedule of Capital Improvements and has adopted and implemented a concurrency management system based upon an adequate capital improvements program and schedule, provided that:
 - i. The Capital Improvements Element and five-year Schedule of Capital Improvements must be financially feasible, including Proportionate Fair-Share contribution as provided by Section 163.3180(16) and determined by the methodology included in the Land Development Code in accordance with Section 163.3180(12), F.S., where this option is used to satisfy transportation concurrency, and may include transportation projects included in the first three (3) years of the applicable adopted Florida Department of Transportation five-year work program, or, in the case of a developer choosing to satisfy transportation concurrency requirements through the Proportionate Fair-Share Program as provided by Section 163.3180(16)F.S., the County adds the transportation improvement or improvements to the five-year Capital Improvements Program (CIP) and five year Schedule of Capital Improvements within the County's Comprehensive Plan Capital Improvements Element (CIE) at the next regular update of those documents.
 - ii. The five-year Schedule of Capital Improvements must include both necessary facilities to maintain the adopted level of service standards to service the new development proposed to be permitted, and the necessary facilities required to eliminate those portions of existing deficiencies which are a priority to be eliminated during the five-year period under the County's schedule of capital improvements in this Comprehensive Plan.
 - iii. The County uses a realistic, financially feasible funding system based on currently available revenue sources as defined in Chapter 9J-5.003(29), Florida Administrative Code, including any funds generated through the Proportionate Fair-Share option as provided by Section 163.3180(16) and determined according to the methodology included in the Land Development Code in accordance with Section 163.3180(12). The revenues must be adequate to fund the public facilities required to serve the development authorized by the development order or development permit, and which public facilities are included in the five-year schedule of capital improvements in this Comprehensive Plan, or, in the case of a transportation project to be funded through the Proportionate Fair-Share Program as provided by Section 163.3180(16) F.S., the improvement is added to the five-year

Changes proposed to Transportation Element Objective TRA 13 and Policy TRA 13.3 are shown as double underlined:

OBJECTIVE TRA 13 FINANCING AND PROGRAMMING TRANSPORTATION IMPROVEMENT

The County shall provide a financially feasible program, including a Proportionate Fair-Share Program as provided in Section 163.3180(16), F.S., for funding transportation improvements necessary to support the growth forecasts, goals, objectives and policies of the Future Land Use Element and as one means of providing for a safe, convenient and efficient transportation system, through implementation of the following policies.

Policy TRA 13.1 Adopt Capital Improvements Program

The County shall establish and adopt a Capital Improvement Program that shall be updated annually. The CIP shall list planned improvements for all vehicular, transit, pedestrian, and bicycle modes and their interconnections.

Policy TRA 13.2 Programming of Transportation Improvements

The County shall plan, program and implement transportation improvements based on the costs and benefits of individual projects as they relate to improving the overall performance of the transportation system and in coordination with the land development program reflected in the Future Land Use Element. The County shall consider existing and projected capacity deficiencies, safety deficiencies, physical and policy constraints, required right-of-way needs, design deficiencies and system continuity considerations in the prioritization of transportation improvements.

Policy TRA 13.3 Funding of Transportation Improvements

The County shall continue to fund transportation improvement costs and operation and maintenance costs of the County Road System, transit system, and bicycle and pedestrian facilities through available sources of revenue, such as:

- State and Federal funds,
- Constitutional gas tax,
- Countywide road and bridge ad valorem tax,
- Local option gas tax,
- Local option sales tax,
- Special assessment districts, and
- Impact fees

Proportionate Fair-Share Program as provided in Section 163.3180(16), F.S.

Changes proposed to Transportation Element Policy TRA 13.18 are shown as double underlined:

Policy TRA 13.18 Proportionate Fair-Share Program

By December 1, 2006, the County shall establish within its Land Development Code (LDC) a Proportionate Fair-Share Program in accordance with Subsection 163.3180(16), Florida Statutes (F.S.) that shall apply to all developments in the County that impact a road segment in the County Concurrency Management System for which the developer has been notified of a failure to achieve transportation concurrency on a roadway segment or segments. This program shall not apply to Developments of Regional Impact (DRIs) using proportionate share under Subsection 163.3180(12), F.S., developments meeting the de minimis standards under Subsection 163.3180(6), F.S., or to developments exempted from concurrency as provided in the LDC. An eligible applicant may choose to satisfy the transportation concurrency requirements of the County by making a proportionate fair-share contribution if the proposed development is otherwise consistent with the Comprehensive Plan and applicable land development codes, and if the County's five-year Capital Improvement Program (CIP) and the Capital Improvements Element (CIE) of the County's Comprehensive Plan includes a transportation improvement or improvements that, upon completion, will accommodate the additional trips generated by the proposed development. The County may choose to allow an applicant to satisfy transportation concurrency through the Proportionate Fair-Share Program by contributing to an improvement or improvements that, upon completion, will accommodate the additional trips generated by the proposed development but is not contained in the CIP and CIE where one of the following conditions apply: (1) The County adds the transportation improvement or improvements to the CIP and CIE no later than the next regular update and the improvement or improvements have been determined by the County Engineer or County Engineer's designee to be financially feasible, or (2) If the funds in the adopted CIP and CIE are insufficient to fully fund construction of a transportation improvement or improvements required by the Concurrency Management System, the County may require a proportionate fair-share contribution for another improvement or improvements that will, according to the findings of the County's development review process, significantly benefit the impacted transportation system or systems, and said transportation improvement or improvements are adopted into the CIP and CIE at the next annual update of those documents. The methodology to calculate proportionate fair-share mitigation, which is specified in the Land Development Code, shall be as provided in Section 163.3180(12), F.S. Proportionate fair-share mitigation includes separately or collectively, private funds, contributions of land, and construction and contribution of facilities and may include public funds as determined by Seminole County. Mitigation for development impacts to facilities on the Strategic Intermodal System, as required by Section 163.3180(16)(e) and the Land Development Code, requires concurrence of the Department of Transportation.