

Mitigation Plans - Outline

- Proportionate Share and Proportionate Fair-Share Basics
- The Formula
- Real World Mitigation Examples
- Specific Proportionate Share and Proportionate Fair-Share Issues
- Transit Mitigation

Prop. Share and Prop. Fair-Share

Proportionate Share
• DRIs

Proportionate Fair-Share
• Sub-DRIs

PROACTIVE

REACTIVE

When Does Proportionate Share Apply?

DRI Developments



Category	Value
Development	1000
Transportation	2000
Other	500

Significance and Adversity



- DRI impacts must be mitigated
- Financial feasibility requirement not clear (no requirement to add to CIE)
- May satisfy concurrency requirements

Proportionate Share (DRIs)

- Defined in FS 163.3180 (Concurrency) and FAC 9J-2.045 (Transportation Uniform Standard Rule)
- Common option used on many projects to mitigate impacts
 - Generally comfortable with application
- FDOT involved in DRI review process
 - Involvement begins at methodology
- Formula defined as:

$$\text{Proportionate Share} = \frac{\text{Project Trips}}{\text{Increase in SV}} * \text{Cost}$$

Proportionate Fair-Share (sub-DRIs)

*The 2005 amendments to Florida's growth management legislation (SB 360) directed local governments to enact concurrency management ordinances that allow for "fair share" contributions from developers toward concurrency requirements. The intent of the **proportionate fair-share option** is to provide applicants for development an opportunity to proceed **under certain conditions**, notwithstanding the **failure of transportation concurrency**, by contributing their share of the cost of improving the impacted transportation facility.*

FDOT Model Ordinance

When Does Prop. Fair-Share Apply?



Small-scale developments (sub-DRI)



A roadway fails concurrency



Improvements must be financially feasible

- in the 5-year schedule of CIE
- in the next update of the CIE
- in a long-term CMS

Proportionate Fair-Share (sub-DRI)

- Defined in 163.3180(16), FS (Concurrency)
 - FDOT Model Ordinance for Proportionate Fair-Share Mitigation of Development Impacts on Transportation Corridors (2006)
- “New” option used to mitigate impacts
 - Not as familiar with application
- FDOT *may* be involved in study review
 - Often brought in towards end of process
- Formula defined as:

$$\text{Proportionate Fair-Share} = \frac{\text{Project Trips}}{\text{Increase in SV}} * \text{Cost}$$

Prop. Fair-Share Applications

163.3180(16)(c)

- Proportionate fair-share mitigation includes, without limitation, 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. Proportionate fair-share mitigation may be directed toward one or more specific transportation improvements reasonably related to the mobility demands created by the development and such improvements may address one or more modes of travel. The fair market value of the proportionate fair-share mitigation shall not differ based on the form of mitigation. A local government may not require a development to pay more than its proportionate fair-share contribution regardless of the method of mitigation. Proportionate fair-share mitigation shall be limited to ensure that a development meeting the requirements of this section mitigates its impact on the transportation system but is not responsible for the additional cost of reducing or eliminating backlogs.

Proportionate Fair-Share Can Be Applied to Many Transportation Solutions!

Prop. Fair-Share: Right vs. Option



- Chapter 163 provides options for developer to proceed (Sec. E, FDOT Model Ordinance)
- Developer has **the Right** to use Prop Fair-Share on any project in **5-year CIE** and **long term Concurrency Management System (CMS)**
- Developer **MAY** negotiate project with local government
 - Project financially feasible
 - Project placed in next **CIE** update
 - Local Governments can say **"not at this time"**

Proportionate Fair-Share and SIS



Mitigation for development impacts to facilities on the **Strategic Intermodal System** (or TRIP facilities) requires the **concurrence** of the FDOT.



The Formula



$$\text{Proportionate Share} = \frac{\text{Project Trips} * \text{Cost}}{\text{Increase in SV}}$$

$$\text{Proportionate Fair-Share} = \frac{\text{Project Trips} * \text{Cost}}{\text{Increase in SV}}$$

"It is the intent of the Legislature to provide a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors. The methodology used to calculate proportionate fair-share mitigation under this section shall be as provided for in subsection (12)."

FS 163.3180(16)

The Formula - Project Trips

Proportionate Share (DRIs)	Prop Fair Share (sub-DRIs)
<i>DRI trips</i> = Cumulative number of trips from the proposed development expected to reach the roadway during the peak hour from the complete buildout of a stage or phase being approved 9J-2.045(1)(h)1	<i>Development trips</i> = Those trips from the stage or phase of development under review that are assigned to roadway segment "i" and have triggered a deficiency per the CMS FDOT Model Ordinance, pg. 9
Significance and adversity considerations	Trips that trigger a concurrency deficiency

- Determined through traffic study
 - Correct application of trip generation and trip distribution

Shameless plug - FDOT Site Impact and LOS Training September 18-20!

The Formula - Service Volume Increase

- **SV increase** - the change in peak hour maximum service volume of the roadway resulting from construction of the improvement necessary to maintain the adopted LOS (9J-2.045(2)(h))
- Same application for Prop Share (DRIs) and Prop Fair-Share (sub-DRI)
- Determined through traffic study
 - Correct application of highway capacity and LOS analysis
 - Generalized Tables, ART_PLAN, HCS

Shameless plug - FDOT Site Impact and LOS Training September 18-20!

The Formula - Cost

- **Cost** - cost of construction, at the time of developer payment, of an improvement necessary to maintain the adopted level of service. Construction cost includes all improvement associated costs, including engineering design, right-of-way acquisition, planning, engineering, inspection, and other associated physical development costs directly required and associated with the construction of the improvement, as determined by the governmental agency having maintenance authority over the roadway. (9J-2.045(2)(h))

The Formula - Cost

- Determined through coordination with maintaining agency
 - Costs from planned project, LRE, "planning level", generalized costs
- Agency commitment to project requires accurate costs
 - Low cost estimate puts agency "on the hook" for balance
- Costs at time of construction
 - Use escalators (available from FDOT) to take present day to future

The Formula - Cost

- Timing of payment
 - Proportionate fair-share: Payment at execution of development order
 - Proportionate share: Today's costs for estimates, prompt payment
 - Proportionate share: Future payment, agree to prop share percentage, estimate costs at time of payment
 - Discuss escalated cost for informational purposes
- Developer commitment to deliver project
 - May still need reasonable cost estimate to evaluate proposal
 - Example legal agreements available

Proportionate Share Example Calc.



• 4 Lane divided Arterial LOS Standard = D

• From Directional Peak Hour Tables, Urbanized Class II

A development adds 300 peak hour directional trips to currently failing segment = **PROJECT TRIPS**

		Level of Service				
Class II (2.00 to 4.50 signalized intersections per mile)		A	B	C	D	E
Lanes Divided						
1	Undivided	**	100	590	810	850
2	Divided	**	220	1,360	1,710	1,800
3	Divided	**	340	2,110	2,570	2,710
4	Divided	**	440	2,790	3,330	3,500

Significance Test

Let's use 5% as significant

Development adds **300** Peak Hour directional trips to segment

1,710 Maximum Service Volume at LOS D

$$\frac{300}{1,710} = 18\%$$

Yes, this is significant

- 4 Lane divided Arterial
- from Directional Peak Hour Tables, Urbanized Class II, LOS D = 1,710.

Proportionate Share Example Calc.

To maintain a LOS D, This road must go from 4 to 6 lanes

$$2,570 - 1,710 = \text{Service Volume Increase}$$

		Level of Service				
Lanes Divided		A	B	C	D	E
1	Undivided	**	100	590	810	850
2	Divided	**	220	1,360	1,710	1,800
3	Divided	**	340	2,110	2,570	2,710
4	Divided	**	440	2,790	3,330	3,500

Proportionate Share Example Calc.

Development adds 300 Peak Hour directional trips to segment

1,710 Maximum Service Volume at LOS D

Improvement would bring facility to 2,570 Maximum Service Volume

$$2,570 - 1,710 = 860$$

$$\frac{300 \text{ Development Trips}}{860 \text{ Service Volume Increase}} = 35\%$$

If the improvement were \$1,000,000 Total
The developer's share would be \$350,000

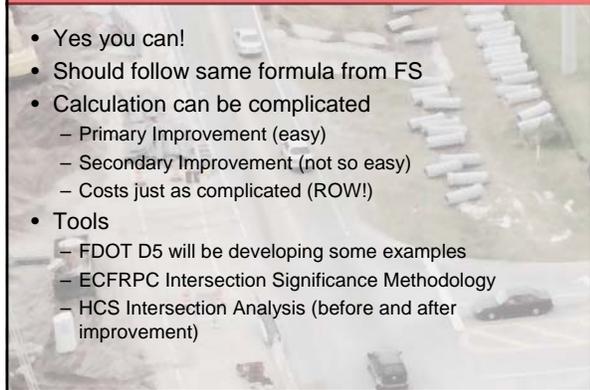
$$35\% \times \$1 \text{ Million} = \$350,000$$

- 4 Lane divided Arterial
- from Directional Peak Hour Tables, Urbanized Class II, LOS D = 1,710.

Intersection Proportionate Share



- Yes you can!
- Should follow same formula from FS
- Calculation can be complicated
 - Primary Improvement (easy)
 - Secondary Improvement (not so easy)
 - Costs just as complicated (ROW!)
- Tools
 - FDOT D5 will be developing some examples
 - ECFRPC Intersection Significance Methodology
 - HCS Intersection Analysis (before and after improvement)



Intersection Proportionate Share



Approach	Volume	Delay	Queue	Stop	Stop Time	Stop Length	Stop Rate
North	100	100	100	100	100	100	100
South	100	100	100	100	100	100	100
East	100	100	100	100	100	100	100
West	100	100	100	100	100	100	100

Real World Mitigation Examples



FDOT District 5 Experience



- District 5 has negotiated over \$150 million of Prop. Share agreements over the past 2 years
- Some developers walk away (and stay away)
- Some developments don't happen even after an agreement is negotiated
 - No development, no contribution
- The sooner expectations are set, the easier negotiations will be
- More data is better

Each agreement is unique and challenging!

Proportionate Share Calculation



Fowler's Grove DRI – City of Winter Garden

- Single Phase DRI
 - 1.15 msf.
 - 60 ksf. Office
 - 100 multi-family
- Significant and adverse impacts on SR 50
 - Orange County, Winter Garden and Ocoee
 - 5.3 miles

Proportionate Share Calculation



Segment From To	DRI PM PA HP Pk/Dr	Service Volume Trucks	Cost per Mile			Improvement Cost	DRI Type/Dr Vol	DRI Proportionate Share Cost 2000	
			ROW	Shoulder	Cost				
SR 545 - Vineland Rd	129	1,080	3,004,545	0	8,558,370	11,541,515	\$ 14,311,479	11.9%	\$ 1,708,427
Vineland Rd - Dillard St	139	1,080	3,004,545	0	8,558,370	11,541,515	\$ 2,769,964	12.9%	\$ 358,505
Dillard St - 9th St	208	1,080	3,004,545	0	8,558,370	11,541,515	\$ 5,770,758	19.3%	\$ 1,111,405
9th St - Western Beltway	148	1,080	3,004,545	0	8,558,370	11,541,515	\$ 12,560,263	13.7%	\$ 1,723,500
Western Beltway - Turnpike	305	950	2,900,313	0	8,005,418	10,905,728	\$ 2,643,289	21.6%	\$ 613,553
Turnpike - Maguire Rd	180	950	2,900,313	0	8,005,418	10,905,728	\$ 7,326,838	18.9%	\$ 1,388,293
Maguire Rd - Old Winter Garden Rd	171	950	2,900,313	0	8,005,418	10,905,728	\$ 2,733,932	18.9%	\$ 492,108
Old Winter Garden Rd - Clarke Rd	87	950	2,900,313	8,888,390	8,005,418	18,894,118	\$ 17,434,324	9.2%	\$ 1,396,617
TOTAL SEGMENT IMPROVEMENT COSTS							\$ 85,770,634		\$ 8,981,833

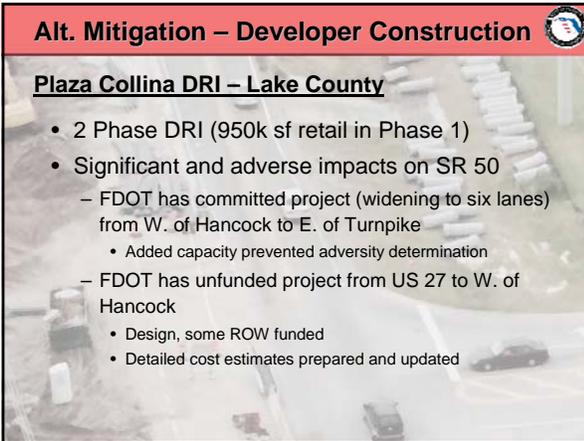
Fowler's Grove Proportionate Share Calculations

Alt. Mitigation – Developer Construction



Plaza Collina DRI – Lake County

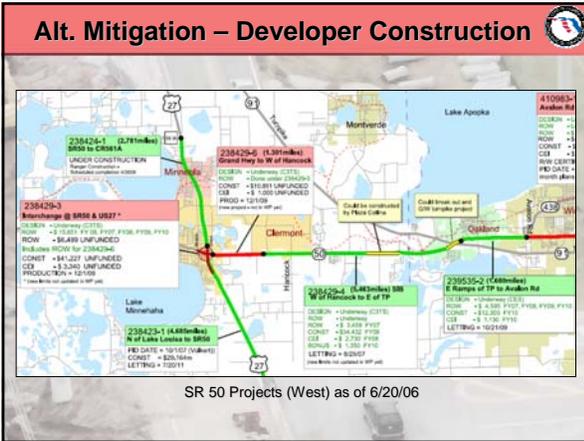
- 2 Phase DRI (950k sf retail in Phase 1)
- Significant and adverse impacts on SR 50
 - FDOT has committed project (widening to six lanes) from W. of Hancock to E. of Turnpike
 - Added capacity prevented adversity determination
 - FDOT has unfunded project from US 27 to W. of Hancock
 - Design, some ROW funded
 - Detailed cost estimates prepared and updated



Alt. Mitigation – Developer Construction



SR 50 Projects (West) as of 6/20/06



Plaza Collina Negotiations



- Benefit of having project specific cost (LRE)
 - Little discussion of “Is this really the cost?”
- Developer commitment to deliver project
 - Advance construction project
 - Coordinate roadway widening impact with site development impacts
 - Satisfy Development Order Condition
 - Assumes risk/reward of project delivery
 - Requires specific commitments
 - Bonding, FDOT specifications and approvals

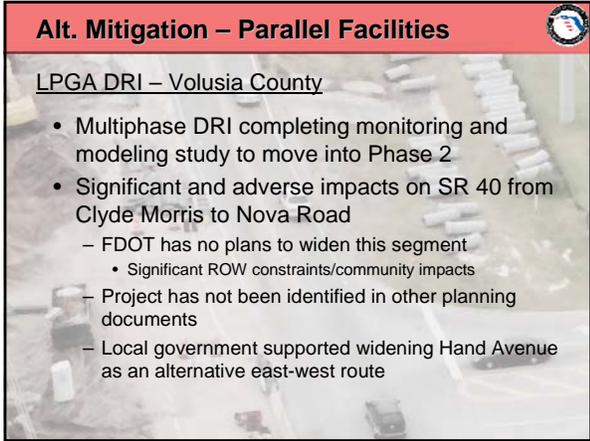


Alt. Mitigation – Parallel Facilities

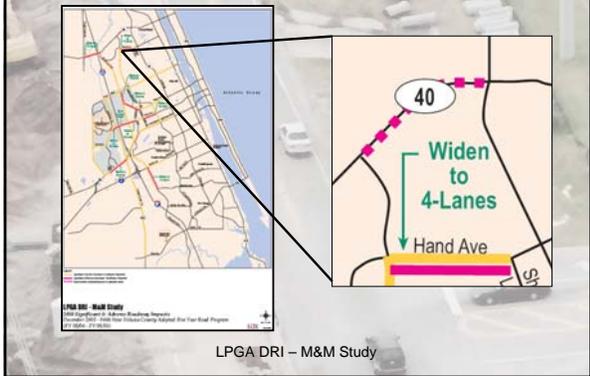


LPGA DRI – Volusia County

- Multiphase DRI completing monitoring and modeling study to move into Phase 2
- Significant and adverse impacts on SR 40 from Clyde Morris to Nova Road
 - FDOT has no plans to widen this segment
 - Significant ROW constraints/community impacts
 - Project has not been identified in other planning documents
 - Local government supported widening Hand Avenue as an alternative east-west route



Alt. Mitigation – Parallel Facilities



LPGA Negotiations



- Applicant prepared traffic analysis showing benefit of parallel facility
- Recommended mitigation based on impacts to both roadways
 - Prop share based on SR 40 and Hand Ave traffic
 - Costs from Hand Avenue (real project)
- DRI mitigation plan still being finalized



Alt. Mitigation – Pipelining

- Addressed in HB 7203 for sub-DRI (commonly applied to DRIs)
 - 163.3180(16)(c): Proportionate fair-share mitigation may be directed toward one or more specific transportation improvements reasonably related to the mobility demands created by the development, and such improvements may address one or more modes of travel.
- Add 'pipelined' project to CIE, start planning for projects that made up 'pipeline' funding
- Difficult to 'pipeline' when impacts are small
 - Small prop fair-share percentages may leave short fall in revenue funding for actual project
- Consider having developer construct 'pipelined' project

Alt. Mitigation – Pipelining

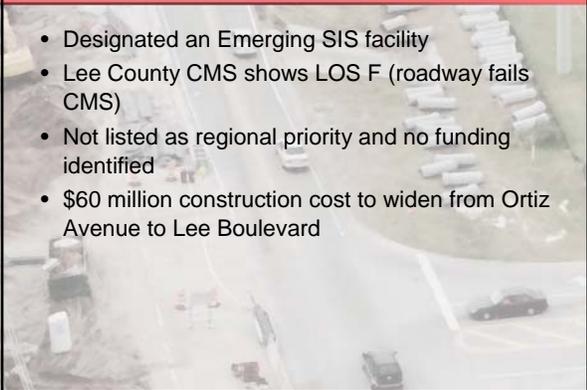
Harmony DRI – Osceola County

- Multiphase, mixed use DRI (buildout in 2025)
- Significant and adverse impacts on several intersections in Phase 1
- Significant and adverse impacts to several roadway segments in Phase 2
 - Most intersection improvements from Phase 1 would be 'torn up' when roadway improvements for Phase 2 constructed
- No plans in place for Phase 2 widening

Harmony Negotiations

- Pipeline proportionate share money from intersection improvements to conduct PD&E study for Phase 2 roadway improvements
 - Supported by FDOT, County, and Developer
- PD&E will facilitate estimation of Phase 2 costs
- Developer funded and is conducting PD&E study to FDOT specifications

SR 82 – A True Partnership Example



- Designated an Emerging SIS facility
- Lee County CMS shows LOS F (roadway fails CMS)
- Not listed as regional priority and no funding identified
- \$60 million construction cost to widen from Ortiz Avenue to Lee Boulevard

SR 82 – A True Partnership Example

- Coordinated effort produced realistic funding plan
- Funding

– Property owners	land for ROW
– Property owners	\$15 million
– the City	\$10 million
– Lee MPO (Urban area) funds	\$15 million
– FDOT (TRIP funds)	\$10 million
– FDOT (SIS funds)	\$10 million
	\$60 Million
- Construction of the project to begin in FY 2008-09.
 - FDOT will execute a State Infrastructure Bank loan for \$15 million to be paid back from future MPO funding.

Applicable to both DRIs and sub-DRIs!



Committed Projects and Funding Shortfalls

- How does Prop. (Fair) Share apply to projects in a CIE or FDOT 5-Year Work Program?
Typically applies to Years 4 and 5 only
Local government work program may be more restrictive
- What should a local government do when there is a projected funding shortfall?
For federal or state funding in the first 3 years:
 - Document the circumstances
 - Vested development may proceed
 Local Government Responsibility:
 - Cease issuing development orders, or
 - Identify other revenue sources, or
 - Otherwise amend the comprehensive plan to ensure financial feasibility

Impact Fees (Credits)

- Is Proportionate Share or Proportionate Fair-Share Mitigation Impact Fee Creditable?
 • Impact fee credits may vary by jurisdiction based on the methodology used to determine those fees
 • Applicants eligible for impact fee credit
"Proportionate fair-share mitigation shall be applied as a credit against impact fees to the extent that all or a portion of the proportionate fair-share mitigation is used to address the same capital infrastructure improvements contemplated by the local government's impact fee ordinance."
FS Chapter 163.3180(16)(b)2
- What crediting methodologies are available to help?
City of Orlando and others have good examples



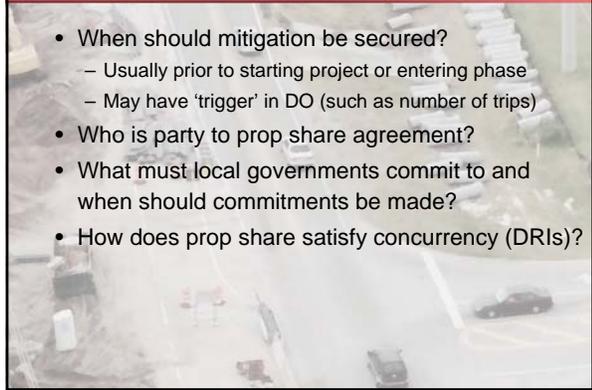
Constrained Facilities and Backlogs

- How do we estimate mitigation requirements for constrained facilities?
Mitigation should be based on cost methodology needed to maintain LOS
- What impact will new legislation regarding applicants not being responsible to mitigate backlog have?
This change from HB 7203 is under interpretation
- Can you do Prop. Fair-Share at CPA?
Follow guidance in FS Chapter 163.3177(3)e2

Legal Requirements of Agreements



- When should mitigation be secured?
 - Usually prior to starting project or entering phase
 - May have 'trigger' in DO (such as number of trips)
- Who is party to prop share agreement?
- What must local governments commit to and when should commitments be made?
- How does prop share satisfy concurrency (DRIs)?



How is FDOT involved?



- FDOT **always** involved in DRI process
- FDOT **must** be consulted in sub-DRI mitigation for SIS and TRIP funded facilities
- FDOT **should** be consulted in sub-DRI mitigation for non-SIS/TRIP

Early involvement and up-front expectations result in a better process for everyone!



Proportionate Fair-Share Resources



<http://www.dot.state.fl.us/planning/gm/pfso/default.htm>



Questions and Discussion