

**Legislative Proposal**  
**Supported by Department of Community Affairs**  
**March 27, 2007**

**163.3164 Local Government Comprehensive Planning and Land Development Regulation Act; definitions.--As used in this act:**

(26) "Urban redevelopment" means demolition and reconstruction or substantial renovation of existing buildings or infrastructure within urban infill areas, ~~or existing urban service areas,~~ or community redevelopment areas consistent with s. 163.340(10).

(27) "Urban infill" means the development of vacant parcels in otherwise built-up areas where public facilities such as sewer systems, roads, schools, and recreation areas are already in place and the planned average residential density is at least five dwelling units per acre, and the planned average nonresidential intensity is at least a floor area ratio of 1.0 ~~and vacant,~~ ~~developable land does not constitute more than 10 percent of the area.~~

(32) "Financial feasibility" means that sufficient revenues are currently available or will be available from committed funding sources for the first 3 years, or will be available from committed or planned funding sources for years 4 and 5, of a 5-year capital improvement schedule for financing capital improvements, such as ad valorem taxes, bonds, state and federal funds, tax revenues, impact fees, and developer contributions, which are adequate to fund the projected costs of the capital improvements identified in the comprehensive plan necessary to ensure that adopted level-of-service standards are achieved and maintained within the period covered by the 5-year schedule of capital improvements. ~~The requirement that level-of-service standards be achieved and maintained shall not apply if the proportionate share process set forth in s. 163.3180(12) and (16) is used.~~

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**163.3177 Required and optional elements of comprehensive plan; studies and surveys.--**

(2) Coordination of the several elements of the local comprehensive plan shall be a major objective of the planning process. The several elements of the comprehensive plan shall be consistent, and the comprehensive plan shall be financially feasible. Financial feasibility shall be determined using professionally accepted methodologies and shall apply to the 5-year planning period except in the case of a long-term transportation or school concurrency management system when a 10 or 15-year period shall apply.

(3)(a) The comprehensive plan shall contain a capital improvements element designed to consider the need for and the location of public facilities in order to encourage the efficient utilization of such facilities and set forth:

1. A component which outlines principles for construction, extension, or increase in capacity of public facilities, as well as a component which outlines principles for correcting existing public facility deficiencies, which are necessary to implement the comprehensive plan. The components shall cover at least a 5-year period.

2. Estimated public facility costs, including a delineation of when facilities will be needed, the general location of the facilities, and projected revenue sources to fund the facilities.

3. Standards to ensure the availability of public facilities and the adequacy of those facilities including acceptable levels of service.

4. Standards for the management of debt.

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5. A schedule of capital improvements which includes publicly funded projects, and which may include privately funded projects for which the local government has no fiscal responsibility, necessary to ensure that adopted level-of-service standards are achieved and maintained. For capital improvements that will be funded by the developer, financial feasibility shall be demonstrated by being guaranteed in an enforceable development agreement or interlocal agreement pursuant to paragraph (10)(h), or other enforceable agreement. These development agreements and interlocal agreements shall be reflected in the schedule of capital improvements if the capital improvement is necessary to serve development within the 5-year schedule. If the local government uses planned revenue sources that require referenda or other actions to secure the revenue source, the plan must, in the event the referenda are not passed or actions do not secure the planned revenue source, identify other existing revenue sources that will be used to fund the capital projects or otherwise amend the plan to ensure financial feasibility.

6. The schedule must include transportation improvements included in the applicable metropolitan planning organization's transportation improvement program adopted pursuant to s. 339.175(7) to the extent that such improvements are relied upon to ensure concurrency and financial feasibility. The schedule must also be coordinated with the applicable metropolitan planning organization's long-range transportation plan adopted pursuant to s. 339.175(6).

(b)1. The capital improvements element shall be reviewed on an annual basis and modified as necessary in accordance with s. 163.3187 or s. 163.3189 in order to maintain a financially feasible 5-year schedule of capital improvements. Corrections and modifications concerning costs; revenue sources; or acceptance of facilities pursuant to dedications which are consistent with the plan may

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be accomplished by ordinance and shall not be deemed to be amendments to the local comprehensive plan. A copy of the ordinance shall be transmitted to the state land planning agency. An amendment to the comprehensive plan is required to update the schedule on an annual basis or to eliminate, defer, or delay the construction for any facility listed in the 5-year schedule. All public facilities shall be consistent with the capital improvements element. Amendments to implement this section must be adopted and transmitted no later than December 1, ~~2007~~ 2008. Thereafter, a local government may not amend its future land use map, except for plan amendments to meet new requirements under this part and emergency amendments pursuant to s. 163.3187(1)(a), after December 1, ~~2007~~ 2008, and every year thereafter, unless and until the local government has adopted the annual update and it has been transmitted to the state land planning agency.

2. Capital improvements element amendments adopted after the effective date of this act shall require only a single public hearing before the governing board which shall be an adoption hearing as described in s. 163.3184(7). Such amendments are not subject to the requirements of s. 163.3184(3)-(6).

(c) If the local government does not adopt the required annual update to the schedule of capital improvements or the annual update is found not in compliance, the state land planning agency must notify the Administration Commission. A local government that has a demonstrated lack of commitment to meeting its obligations identified in the capital improvements element may be subject to sanctions by the Administration Commission pursuant to s. 163.3184(11).

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(d) If a local government adopts a long-term concurrency management system pursuant to s. 163.3180(9), it must also adopt a long-term capital improvements schedule covering up to a 10-year or 15-year period, and must update the long-term schedule annually. The long-term schedule of capital improvements must be financially feasible.

(e) The Legislature finds that significant backlogs exist for transportation facilities with respect to adopted level-of-service standards and that to overcome the backlogs local governments need to rely on a combination of short-term capital improvements and long-term land use and transportation strategies. In furtherance of this finding, the following principles shall apply:

1. During the short-term planning period addressed by the schedule of capital improvements the requirement to achieve and maintain the adopted level-of-service standards shall mean that the level of service will not degrade below existing operating levels; and,

2. During the long-term planning period the comprehensive plan shall ensure that new growth will be accommodated and transportation backlogs are eliminated or reduced through a combination of land use and transportation mobility strategies.

**163.3180 Concurrency.—**

(5)(a) The Legislature finds that under limited circumstances dealing with transportation facilities, countervailing planning and public policy goals may come into conflict with the requirement that adequate public facilities and services be available concurrent with the impacts of such development. The Legislature further finds that often the unintended result of the concurrency requirement for transportation facilities is the discouragement of urban infill

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development and redevelopment. Such unintended results directly conflict with the goals and policies of the state comprehensive plan and the intent of this part. Therefore, exceptions from the concurrency requirement for transportation facilities may be granted as provided by this subsection.

(b) A local government may grant an exception from the concurrency requirement for transportation facilities if the proposed development is otherwise consistent with the adopted local government comprehensive plan and is a project that promotes public transportation or is located within an area designated in the comprehensive plan for:

1. Urban infill development,
2. Urban redevelopment,
3. Downtown revitalization, or
4. Urban infill and redevelopment under s. 163.2517.

(c) The Legislature also finds that developments located within urban infill, urban redevelopment, existing urban service, or downtown revitalization areas or areas designated as urban infill and redevelopment areas under s. 163.2517 which pose only special part-time demands on the transportation system should be excepted from the concurrency requirement for transportation facilities. A special part-time demand is one that does not have more than 200 scheduled events during any calendar year and does not affect the 100 highest traffic volume hours.

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(d) A local government shall establish guidelines in the comprehensive plan for granting the exceptions authorized in paragraphs (b) and (c) and subsections (7) and (15) which must be consistent with and support a comprehensive strategy adopted in the plan to promote the purpose of the exceptions.

(e) The local government shall adopt into the plan and implement long-term strategies to support and fund mobility within the designated exception area, including alternative modes of transportation. The plan amendment shall also demonstrate how strategies will support the purpose of the exception and how mobility within the designated exception area will be provided. In addition, the strategies must address urban design; appropriate land use mixes, including intensity and density; and network connectivity plans needed to promote urban infill, redevelopment, or downtown revitalization. The comprehensive plan amendment designating the concurrency exception area shall be accompanied by data and analysis justifying the size of the area.

(f) Prior to the designation of a concurrency exception area, the state land planning agency and the Department of Transportation shall be consulted by the local government to assess the impact that the proposed exception area is expected to have on the adopted level-of-service standards established for Strategic Intermodal System facilities, as defined in s. 339.64, and roadway facilities funded in accordance with s. 339.2819. Further, the local government shall, in ~~cooperation~~ consultation with the state land planning agency and the Department of Transportation, develop a plan to mitigate any impacts to the Strategic Intermodal System, including, if appropriate, the development of a long-term concurrency management system

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pursuant to subsection (9) and s. 163.3177(3)(d). The exceptions may be available only within the specific geographic area of the jurisdiction designated in the plan. Pursuant to s. 163.3184, any affected person may challenge a plan amendment establishing these guidelines and the areas within which an exception could be granted.

(g) Transportation concurrency exception areas existing prior to July 1, 2005, shall meet, ~~at a minimum,~~ the provisions of this section ~~by July 1, 2006, or~~ at the time of the comprehensive plan update pursuant to the evaluation and appraisal report, ~~whichever occurs last.~~

(12) When authorized by a local comprehensive plan, a ~~multiuse~~ development of regional impact may satisfy the transportation concurrency requirements of the local comprehensive plan, the local government's concurrency management system, and s. 380.06 by payment of a proportionate-share contribution for local and regionally significant traffic impacts, if:

~~(a) — The development of regional impact meets or exceeds the guidelines and standards of s. 380.0651(3)(h) and rule 28-24.032(2), Florida Administrative Code, and includes a residential component that contains at least 100 residential dwelling units or 15 percent of the applicable residential guideline and standard, whichever is greater;~~

~~(a)~~ (a) The development of regional impact contains an integrated mix of land uses and is designed to encourage pedestrian or other nonautomotive modes of transportation;

~~(b)~~ (b) The proportionate-share contribution for local and regionally significant traffic impacts is sufficient to pay for one or more required mobility improvements that will benefit a regionally significant transportation facility;



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(~~c~~d) The owner and developer of the development of regional impact pays or assures payment of the proportionate-share contribution; and,-

(~~d~~e) If the regionally significant transportation facility to be constructed or improved is under the maintenance authority of a governmental entity, as defined by s. 334.03(12), other than the local government with jurisdiction over the development of regional impact, the developer is required to enter into a binding and legally enforceable commitment to transfer funds to the governmental entity having maintenance authority or to otherwise assure construction or improvement of the facility.

The proportionate-share contribution may be applied to any transportation facility to satisfy the provisions of this subsection and the local comprehensive plan, but, for the purposes of this subsection, the amount of the proportionate-share contribution shall be calculated based upon the cumulative number of trips from the proposed development expected to reach roadways ~~during the peak hour~~ from the complete buildout of a stage or phase being approved, divided by the change in the ~~peak hour~~ average daily maximum service volume of roadways resulting from construction of an improvement necessary to maintain the adopted or existing level of service, whichever is lower, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted or existing level of service, whichever is lower. For purposes of this subsection, "construction cost" includes all associated costs of the improvement. Proportionate share mitigation shall be limited to ensure that a development of regional impact meeting the requirements of this subsection mitigates its impact on the transportation system but is not responsible for the additional cost of eliminating backlogs.

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(16) 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).

(a) By December 1, 2006, each local government shall adopt ~~by ordinance~~ a methodology for assessing proportionate fair-share mitigation options. By December 1, 2005, the Department of Transportation shall develop a model transportation concurrency management ordinance with methodologies for assessing proportionate fair-share mitigation options.

(b)1. In its transportation concurrency management system, a local government shall, by December 1, 2006, include methodologies that will be applied to calculate proportionate fair-share mitigation. A developer may choose to satisfy all transportation concurrency requirements by contributing or paying proportionate fair-share mitigation if transportation facilities or facility segments identified as mitigation for traffic impacts are specifically identified for funding in the 5-year schedule of capital improvements in the capital improvements element of the local plan or the long-term concurrency management system or if such contributions or payments to such facilities or segments are reflected in the 5-year schedule of capital improvements in the next regularly scheduled update of the capital improvements element. Updates to the 5-year capital improvements element which reflect proportionate fair-share contributions may not be found not in compliance based on ss. 163.3164(32) and 163.3177(3) if additional contributions, payments or funding sources are reasonably anticipated during a period not to exceed 10 years to fully mitigate impacts on the transportation facilities.

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2. 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.

(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 eliminating backlogs.

(d) Nothing in this subsection shall require a local government to approve a development that is not otherwise qualified for approval pursuant to the applicable local comprehensive plan and land development regulations.

(e) Mitigation for development impacts to facilities on the Strategic Intermodal System made pursuant to this subsection ~~requires the concurrence of~~ shall require consultation with state land planning agency and the Department of Transportation.

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(f) In the event the funds in an adopted 5-year capital improvements element are insufficient to fully fund construction of a transportation improvement required by the local government's concurrency management system, a local government and a developer may still enter into a binding proportionate-share agreement authorizing the developer to construct that amount of development on which the proportionate share is calculated if the proportionate-share amount in such agreement is sufficient to pay for one or more improvements which will, in the opinion of the governmental entity or entities maintaining the transportation facilities, significantly benefit the impacted transportation system. The improvement or improvements funded by the proportionate-share component must be adopted into the 5-year capital improvements schedule of the comprehensive plan at the next annual capital improvements element update.

(g) Except as provided in subparagraph (b)1., nothing in this section shall prohibit the Department of Community Affairs from finding other portions of the capital improvements element amendments not in compliance as provided in this chapter.

(h) The provisions of this subsection do not apply to a ~~multiuse~~ development of regional impact satisfying the requirements of subsection (12).