

ARTICLE X. CONCURRENCY MANAGEMENT

DIVISION 1. GENERALLY

Sec. 30-711. Purpose and intent.

The purpose of this article is to establish a management and monitoring system to evaluate and coordinate the timing and provision of necessary public facilities to service development pursuant to adopted LOS (level of service) standards, to establish a regulatory program that ensures that adequate public facilities are available to serve development concurrent with when the impacts of development occur on the public facilities.

(Ord. No. 02-09, § 1, 2-19-2002)

Sec. 30-712. Conditions for concurrency.

Required facilities include any improvement or public facility which is required to maintain the prescribed LOS parameters to serve current city residents and projected new residents as a result of a given project. Required facilities for a proposed development shall be identified by the owner or developer and reviewed for concurrency by the city in compliance with the adopted comprehensive plan. Concurrency requirements for a proposed project will be met if any of the following three conditions are met for each of the level of service requirements for required facilities:

- (1) *Condition 1:* Required facilities are in place at the time a development order is issued, or a development order is issued subject to the condition that the necessary facilities will be in place when the certificate of occupancy is issued.
- (2) *Condition 2:* The required facilities are under construction at the time a development order is issued.
- (3) *Condition 3:* The required facilities are the subject of a binding contract executed for the construction of those facilities at the time a development order is issued.

Notwithstanding anything in this section to the contrary, with respect to potable water, the sole condition will be the city's determination as to whether potable water supplied to serve the new development will be available no later than the anticipated date of issuance by the city of a certificate of occupancy or its functional equivalent.

(Ord. No. 02-09, § 2, 2-19-2002; Ord. No. 10-06, § 2.1., 6-7-2010)

Sec. 30-713. Conditions for suspension of development order.

A development order issued with any of the conditions listed in section 30-712 shall not be granted a certificate of occupancy unless the required facilities are in place, or without a recommendation from the planning board and city council approval.

(Ord. No. 02-09, § 3, 2-19-2002)

Sec. 30-714. Responsibility for implementation.

- (a) The community development department shall coordinate the implementation strategy for purposes of this article and will annually provide the city manager with the following:
 - (1) Current population projections for a five-year period;
 - (2) Building permit activity for the past five years;
 - (3) Annual level of service report; and
 - (4) Additional information as requested.
- (b) The building official shall utilize 2.16 as the standard for calculating "persons per dwelling unit" for residential structures. This standard shall be applied to building permit applications to assess the additional growth and its impact on adopted levels of service for all facilities and public infrastructures.

(Ord. No. 02-09, § 4, 2-19-2002)

Sec. 30-715. Implementation strategy.

The following implementation strategy is in place to ensure that the goals, objectives, policies and program established in the capital improvements element of the comprehensive plan will be achieved:

- (1) *Development order review.* When a development order is requested, the applicant will outline the required facilities, as related to level of service, for the proposed development, and how these facilities shall be provided concurrently.
- (2) *Building permit review.* When a building permit is applied for, the applicant will outline the required facilities, as related to level of service, for the proposed development, and how these facilities shall be provided concurrently.
- (3) *Annual budget.* The city's annual budget will identify projects which are targeted to maintain the level of service. Projects which are targeted for level of service maintenance but are unfunded or removed from the annual budget may cause the revocation of any development order or building permit which was issued upon the construction of that project.
- (4) *Comprehensive plan amendments.* Reports to the state department of community affairs concerning amendments to the comprehensive plan due to emergencies, annexation, developments of regional impact, and selected small developments will report on changes, if any, to adopted goals, objectives, policies and programs in the capital improvements element.
- (5) *Annual level of service report.* Each individual facility or service with an adopted level of service will be annually monitored to ensure that the level of service is maintained. The specific details for each monitoring scheduling and report can be found in the specific guidelines for concurrency.

(Ord. No. 02-09, § 5, 2-19-2002)

Sec. 30-716. Monitoring.

- (a) *City-owned facilities and services.* Monitoring for each adopted level of service shall take place annually.
- (b) *County and privately-owned facilities and services.* A monitoring report detailing available capacity, available capacity for the next five years, and proposed capital facilities expansions, shall be prepared by each non-city entity providing facilities and services by January of each year.

Sec. 30-717. General procedural guidelines; reporting requirements.

(a) *Report to planning board; planning board public hearing.*

- (1) *Annual level of service report.* Each year, the community development department shall compile a report which addresses the following in terms of the level of service for all services and facilities subject to the concurrency management section of the comprehensive plan:
 - a. Adopted level of service versus current level of service;
 - b. Current capital improvements program and potential capital improvements program options for maintaining level of service with a five-year timeframe;
 - c. Available or potential funding sources;
 - d. Current inventory of its facilities;
 - e. Current population and five-year projection, by year;
 - f. Comparison of the previous year's building permit activity to the past five years' inventory;
 - g. Potential developments, redevelopments or annexations which could have an impact on the current level of service; and
 - h. Relationship to the goals, objectives and policies of the comprehensive plan.
- (2) *Conduct of hearing.* Following the annual level of service report, the planning board will hold a public hearing at which the board will discuss the current and adopted level of service for required public facilities. The annual level of service report shall be available to the board and the public at least two weeks before the public hearing. If the current level of service is below the adopted level of service policy standards, measures must be discussed by the board which either:
 - a. Fund the necessary improvements to reestablish the adopted level of service within a two-year transition period;
 - b. Adopt a lower level of service which would be consistent with current levels of service; or
 - c. Cease issuing development orders which negatively impact the level of service until the adopted level of service is reestablished.
- (3) *Notice of hearing.* Preparation for the public hearing will follow the advertising and public notice procedures which are currently followed for the planning boards' regular meetings.
- (4) *Recommendation report.* The planning board shall make recommendations to the city council regarding the maintenance of the level of service of the facilities and services. This report shall be based on the recommendations of the planning board.

(b) *Action by city council.*

- (1) *First reading.* The community development department shall present its annual level of service report and the planning board's recommendations to the city council at a public meeting as soon as possible after the board makes its findings and recommendations. A resolution will be presented which adopts the recommendations of the board, adopts the recommendations of the boards with additional conditions, or modifies the recommendation of the board.
 - a. If the current level of service is below the adopted level of service, measures must be addressed by the city council which either:

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1. Fund the necessary improvements to reestablish the adopted level of service within a two-year transition period;
 2. Adopt a lower level of service which would be consistent with the then existing level of service; or
 3. Cease issuing development orders which negatively impact the level of service until the adopted level of service is reestablished.
- (2) *Second reading and public hearing.* The annual level of service report and the board's recommendation report shall be presented by the city manager. At this time, level of service deficiencies and mitigation options shall be discussed. Where necessary, potential changes to the capital improvements program shall also be addressed.

At the conclusion of the public hearing, the city council shall adopt a resolution that adopts the recommendations of the board, adopts the recommendations of the boards with additional conditions, or modifies the recommendation of the board. The city council shall direct the community development director to notify the state of its actions.

(c) *Reporting to state department of community affairs.*

- (1) The community development director shall notify the state department of community affairs of the status of the level of service for the facilities and services as directed by the state department of community affairs or as otherwise required by state law.
- (2) Copies of the level of service report shall be available to the public and city officials.

(Ord. No. 02-09, § 7, 2-19-2002; Ord. No. 10-06, § 2.2., 6-7-2010)

Sec. 30-718. Adopted level of service standards for city owned and operated facilities and services.

The city is currently responsible for facilities and service levels related to transportation, stormwater drainage, community parks, potable water and sanitary sewer. The following adopted level of service (LOS) standards are contained in the comprehensive plan:

- (1) *Transportation.*
 - a. Arterials LOS D (except SR 951 from the Jolley Bridge to CR 92 LOS C).
 - b. Collector roadways LOS D.
 - c. Local roads LOS D.
- (2) *Stormwater drainage.* The LOS design standard for new stormwater management facilities will be the ten-year, one-hour storm event, with a 3.3 inches/hour intensity duration. For existing and future drainage system components the following design LOS standard hierarchy is provided:
 - a. LOS Standard A: Upstream (US) Ground Elevation Upstream Hydraulic Grade Line (US HGL) > 0.5 Ft.
 - b. LOS Standard B: US Ground Elevation US HGL > 0.2 ft.
 - c. LOS Standard C: US Ground Elevation US HGL > or = 0.0 ft.
 - d. LOS Standard D: US HGL < or = 5.2 ft. N.G.V.D.*
 - e. LOS Standard E: US HGL > 5.2 ft. N.G.V.D.*

For existing drainage system components a level not to exceed the parameters of LOS shall be adopted.

(*) May be acceptable LOS standard at a limited number of roadway locations due to extreme topographical conditions.

(3) *Community parks.*

- a. *LOS Standard.* 1.2882 acres of active parkland/1,000 permanent residents.
- b. *Responsibility for monitoring.* The public works director shall be responsible for monitoring and reporting activities relating to transportation and stormwater drainage facilities. The community development director shall be responsible for monitoring and reporting activities relating to community parks.

(4) *Potable water.* The adopted LOS standard for potable water will be 200 gallons per capita per day.

(5) *Sanitary sewer.*

- a. The adopted LOS standard for sanitary sewers is 100 gallons of wastewater treatment capacity per capita per day.
- b. *Responsibility for monitoring.* The building official shall be responsible for monitoring and reporting activities relating to solid waste, potable water and sanitary sewers. The building official shall annually compile completed county issued notifications of mandatory garbage assessment forms received prior to the issuance of a certificate of occupancy. The private utility shall provide the building official with a report detailing available capacity for both potable water and sanitary sewer (wastewater) treatment.

(Ord. No. 02-09, § 8, 2-19-2002; Ord. No. 10-06, § 2.3., 6-7-2010)

Sec. 30-719. Adopted level of service standards for county and privately owned and operated facilities and services.

The county is currently responsible for facilities and service levels related to solid waste and schools. The following adopted level of service (LOS) standards are contained in the comprehensive plan.

- (1) *Solid waste.* The adopted LOS standard is the same as contained in the county growth management plan (GMP) which is described as follows:
 - a. 1.10 tons of solid waste per capita per year. (* Tons per capita is used to determine landfill disposal capacity, which is based on the average of the last five complete fiscal years actual lined cell tonnage activity).
 - b. A minimum of two years of constructed lined landfill capacity at the calculated waste generation rate.
 - c. A minimum of ten years of permittable landfill capacity at the calculated waste generation rate.
- (2) *Schools.* See sections 30-733 to 30-735.

(Ord. No. 02-09, § 9, 2-19-2002; Ord. No. 10-06, § 2.4., 6-7-2010)

Sec. 30-720. Corrections for LOS standard deficiencies.

- (a) The purpose of the annual level of service report is to ensure that adequate public facilities are in place to serve existing development, and that adequate capacity will be available to serve future development. The

following safeguards are intended to ensure that LOS standards are maintained and future development can be accommodated.

- (1) Pursuant to adopted policies throughout the comprehensive plan, non-city entities responsible for the provision of facilities and services subject to LOS standards must notify the city in writing if they reach 80 percent of capacity in their adopted LOS standard within five year's of plan adoption, and any five-year period thereon. Such entity must inform the city as to how and when the entity will take action to increase capacity to ensure continued compliance with adopted LOS standards.
 - (2) For stormwater drainage and community parklands, the city shall monitor indices of possible or pending deficiencies, and will initiate corrective actions through the five-year capital improvement program to ensure continued compliance with adopted LOS standards.
 - (3) For transportation related LOS standards, the public works department shall monitor traffic counts and traffic impact assessments (TIA) and traffic impact statements (TIS) to ensure continued compliance with adopted LOS standards.
- (b) Utilizing the abovementioned information, the public works director shall advise the city manager of any roadway segment that is forecast to be deficient in the adopted LOS standard within the ensuing five years. The public works director shall base his report to the city manager on the following information, as deemed necessary to ensure accurate LOS monitoring of transportation facilities:
- (1) A listing of roadway segments, by category, with their individual current and adopted level of services;
 - (2) Current and potential level of service deficiencies;
 - (3) Current capital improvements program and potential capital improvements program options for maintaining level of service with a five-year timeframe;
 - (4) Available or potential funding sources;
 - (5) Current population and five-year projection, by year;
 - (6) Comparison of previous year's building permit activity to past five years' inventory.
 - (7) Potential developments, redevelopments or annexations which could have an impact on the current level of service; and
 - (8) Relationship to the goals, objective and policies on the comprehensive plan.
- (c) Based on the advise of the public works director, the following actions may be initiated to ensure continued compliance:
- (1) If the current level of service for transportation facilities is measured at the adopted level of service or better, no mitigating action is required.
 - (2) If the current level of service measured is nearing the next lower level of service, quarterly counts will be taken and analyzed for a peak hour/peak season count. If necessary, a detailed study of the capacity of the roadway segment, consistent with the 2000 (or the most current edition) DOT Highway Capacity Manual Data, will be undertaken concurrently with the collection of quarterly data.
 - (3) If the current level of service measured is at the next lower level of service, and had been at the adopted level of service the previous year, quarterly counts will be taken and analyzed for a peak hour/peak season count.
 - (4) If three consecutive quarterly counts, which may include the annual count, indicate that the roadway to be below the adopted level of service, then the roadway segment enters a transitional period at the beginning of the next fiscal year. During this period, the roadway may operate on one level below the adopted level of service for two years. Development orders may still be issued, provided that the

improvements necessary to elevate the level of service have been planned, funded and adopted as part of the first two-year period of the capital improvements program. Construction for these improvements, including parallel facilities or improvements, must begin in or before the second year of the transition period.

- (5) No development orders negatively impacting the affected segment shall be issued until improvements are made to the existing roadway, or a parallel facility is constructed or improved to capture traffic from the affected segment.
- (6) If the measured level of service is at "F," the city shall cease issuing development orders that would serve to increase the volume of traffic on the affected segment.
- (7) A comprehensive plan amendment is required to change the level of service for any road segment, or defer or delay construction, beyond the two-year transitional period, which is necessary to maintain or reestablish an adopted level of service.

(Ord. No. 02-09, § 10, 2-19-2002)

Sec. 30-721. Requirements for issuance of a development order or building permit certificate of adequate public facilities.

Before a development order or building permit is issued, a certificate of adequate public facilities shall be prepared. The certificate shall indicate the following information:

- (1) There is adequate capacity for the provision of potable water, sanitary sewer (if applicable), and solid waste collection for the project or new development. Compliance is deemed acceptable per letters from the private utility and the county.
- (2) There is adequate community parkland to accommodate the impacts of the new project or proposed development. Compliance is deemed acceptable per approval of plans by the community development department staff.
- (3) The roadway network can accommodate the new project or proposed development without a decrease in LOS standards. Compliance is deemed acceptable by the issuance of a right-of-way permit.
- (4) The stormwater management system complies with applicable LOS standards. Compliance is deemed acceptable by the approval of the building.

(Ord. No. 02-09, § 11, 2-19-2002)

DIVISION 2. TRANSPORTATION PROPORTIONATE FAIR-SHARE

Sec. 30-722. Purpose and intent.

The purpose of this article is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, to be known as the proportionate fair-share program, as required by and in a manner consistent with F.S. § 163.3180(16).

(Ord. No. 07-02, § 1, 1-22-2007)

Sec. 30-723. Applicability.

The proportionate fair-share program shall apply to all developments in the City of Marco Island that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility in the city concurrency management system, including transportation facilities maintained by FDOT or another jurisdiction that are relied upon for concurrency determinations. The proportionate fair-share program does not apply to developments of regional impact (DRIs) using proportionate fair-share under F.S. § 163.3180(12), or to developments exempted from concurrency as provided in F.S. § 163.3180, regarding exceptions and de minimis impacts.

(Ord. No. 07-02, § 1, 1-22-2007)

Sec. 30-724. General requirements.

- (a) An applicant may choose to satisfy the transportation concurrency requirements of the City of Marco Island by making a proportionate fair-share contribution, pursuant to the following requirements:
 - (1) The proposed development is consistent with the comprehensive plan and applicable land development regulations.
 - (2) The five-year schedule of capital improvements in the City of Marco Island CIE or the long-term schedule of capital improvements for an adopted long-term CMS includes a transportation improvement(s) that, upon completion, will satisfy the requirements of the City of Marco Island transportation CMS. The provisions of subsection (b) may apply if a project or projects needed to satisfy concurrency are not presently contained within the local government CIE or an adopted long-term schedule of capital improvements.
- (b) The City of Marco Island may choose to allow an applicant to satisfy transportation concurrency through the proportionate fair-share program by contributing to an improvement that, upon completion, will satisfy the requirements of the City of Marco Island transportation CMS, but is not contained in the five-year schedule of capital improvements in the CIE or a long-term schedule of capital improvements for an adopted long-term CMS, where the following apply:
 - (1) The City of Marco Island adopts, by resolution or ordinance, a commitment to add the improvement to the five-year schedule of capital improvements in the CIE or long-term schedule of capital improvements for an adopted long-term CMS no later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be reviewed by the city manager or designee, and determined to be financially feasible pursuant to F.S. § 163.3180(16)(b)1, consistent with the comprehensive plan, and in compliance with the provisions of this article. Financial feasibility for this section means that additional contributions, payments or funding sources are reasonably anticipated during a period not to exceed ten years to fully mitigate impacts on the transportation facilities.
 - (2) If the funds allocated for the five-year schedule of capital improvements in the City of Marco Island CIE are insufficient to fully fund construction of a transportation improvement required by the CMS, the City of Marco Island may still enter into a binding proportionate fair-share agreement with the applicant authorizing construction of that amount of development on which the proportionate fair-share is calculated if the proportionate fair-share amount in such agreement is sufficient to pay for one or more improvements 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 fair-share component must be adopted into the five-year capital improvements schedule of the comprehensive plan or the long-term

schedule of capital improvements for an adopted long-term concurrency management system at the next annual capital improvements element update.

- (c) Any improvement project proposed to meet the developer's fair-share obligation must meet design standards of the City of Marco Island for locally maintained roadways and those of the FDOT for the state highway system.

(Ord. No. 07-02, § 1, 1-22-2007)

Sec 30-725. Intergovernmental coordination.

Pursuant to policies in the Intergovernmental Coordination Element of the City of Marco Island comprehensive plan and applicable policies in the Southwest Florida Regional Planning Council Regional Plan, the City of Marco Island shall coordinate with affected jurisdictions, including Collier County and FDOT, regarding mitigation to impacted facilities not under the jurisdiction of the local government receiving the application for proportionate fair-share mitigation. An interlocal agreement may be established with other affected jurisdictions for this purpose.

(Ord. No. 07-02, § 1, 1-22-2007)

Sec. 30-726. Application process.

- (a) Upon notification of a lack of capacity to satisfy transportation concurrency, the applicant shall also be notified in writing of the opportunity to satisfy transportation concurrency through the proportionate fair-share program pursuant to the requirements of section 30-724.
- (b) Prior to submitting an application for a proportionate fair-share agreement, a pre-application meeting shall be held to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. If the impacted facility is on the SIS, then the FDOT and Collier County will be notified and invited to participate in the preapplication meeting.
- (c) Eligible applicants shall submit an application to the City of Marco Island that includes any application fee as may be included in the city's schedule of fees and the following:
 - (1) Name, address and phone number of owner(s), developer and agent;
 - (2) Property location, including parcel identification numbers;
 - (3) Legal description and survey of property;
 - (4) Project description, including type, intensity, and amount of development;
 - (5) Phasing schedule, if applicable;
 - (6) Description of requested proportionate fair-share mitigation method(s); and
 - (7) Copy of concurrency application.
- (d) The city manager or designee shall review the application and certify that the application is sufficient and complete. If an application is determined to be insufficient, incomplete, or inconsistent with the general requirements of the proportionate fair-share program as indicated in section 30-724, then the applicant will be notified in writing of the reasons for such deficiencies. If such deficiencies are not remedied by the applicant within 30 days of receipt of the written notification, then the application will be deemed abandoned. The Marco Island City Council may, in its discretion, grant an extension of time not to exceed 60 days to cure such deficiencies, provided that the applicant has shown good cause for the extension and has taken reasonable steps to effect a cure.

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- (e) Pursuant to F.S. § 163.3180(16)(e), proposed proportionate fair-share mitigation for development impacts to facilities on the SIS requires the concurrency of the FDOT. The applicant shall submit evidence of an agreement between the applicant and the FDOT for inclusion in the proportionate fair-share agreement.
 - (f) When an application is deemed sufficient, complete, and eligible, the applicant shall be advised in writing and a proposed proportionate fair-share obligation and binding agreement will be prepared by the City of Marco Island or the applicant with direction from the City of Marco Island and delivered to the appropriate parties for review, including a copy to the FDOT for any proposed proportionate fair-share mitigation on a SIS facility, no later than 60 days from the date at which the applicant received the notification of a sufficient application and no fewer than 30 days prior to the city council meeting when the agreement will be considered.
 - (g) The City of Marco Island shall notify the applicant regarding the date of the city council meeting when the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the Marco Island City Council.

(Ord. No. 07-02, § 1, 1-22-2007)

Sec. 30-727. Determining proportionate fair-share obligation.

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

"The cumulative number of trips from the proposed development expected to reach roadways during peak hours from the complete build out of a stage or phase being approved, divided by the change in the peak hour maximum service volume (MSV) of roadways resulting from construction of an improvement necessary to maintain the adopted LOS, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted LOS."

OR

$$\text{Proportionate Fair-Share} = \sigma[(\text{Development Trips}_{\text{sub}}) / (\text{SV Increase}_{\text{sub}})] \times \text{Cost}_{\text{sub}}$$

Where:

Development Trips_{sub} = 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;

SV Increase_{sub} = Service volume increase provided by the eligible improvement to roadway segment "i" per section 30-724;

Cost_{sub} = Adjusted cost of the improvement to segment "i". Cost shall include all improvements and associated costs, such as design, right-of-way acquisition, planning, engineering, inspection, and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred.

- (d) For the purposes of determining proportionate fair-share obligations, the City of Marco Island shall determine improvement costs based upon the actual cost of the improvement as obtained from the CIE, the MPO/TIP or the FDOT work program. Where such information is not available, improvement cost shall be determined using one of the following methods:

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- (1) An analysis by the City of Marco Island of costs by cross section type that incorporates data from recent projects and is updated annually and approved by the city council. In order to accommodate increases in construction material costs, project costs shall be adjusted by an inflation factor; or
 - (2) The most recent issue of FDOT transportation costs, as adjusted based upon the type of cross section (urban or rural); locally available data from recent projects on acquisition, drainage and utility costs; and significant changes in the cost of materials due to unforeseeable events. Cost estimates for state road improvements not included in the adopted FDOT work program shall be determined using this method in coordination with the FDOT district.
- (e) If the City of Marco Island has accepted an improvement project proposed by the applicant, then the value of the improvement shall be determined using one of the methods provided in this section.
 - (f) If the City of Marco Island has accepted right-of-way dedication for the proportionate fair-share payment, credit for the dedication of the non site-related right-of-way shall be valued on the date of the dedication at 120 percent of the most recent assessed value by the Collier County Property Appraiser or, at the option of the applicant, by fair market value established by an independent appraisal approved by the City of Marco Island and at no expense to the City of Marco Island. The applicant shall supply a drawing and legal description of the land and a certificate of title or title search of the land to the City of Marco Island at no expense to the City of Marco Island. If the estimated value of the right-of-way dedication proposed by the applicant is less than the City of Marco Island estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference. Prior to purchase or acquisition of any real estate or acceptance of donations of real estate intended to be used for the proportionate fair-share, public or private partners should contact the FDOT for essential information about compliance with federal law and regulations.

(Ord. No. 07-02, § 1, 1-22-2007)

Sec. 30-728. Impact fee credit for proportionate fair-share mitigation.

- (a) Proportionate fair-share contributions 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 Collier County's Impact Fee Ordinance.
- (b) Impact fee credits for the proportionate fair-share contribution will be determined when the transportation impact fee obligation is calculated for the proposed development. Impact fees owed by the applicant will be reduced per the proportionate fair-share agreement as they become due per the City of Marco Island Impact Fee Ordinance. If the applicant's proportionate fair-share obligation is less than the development's anticipated road impact fee for the specific stage or phase of development under review, then the applicant or its successor must pay the remaining impact fee amount to the Collier County pursuant to the requirements of the Collier County Impact Fee Ordinance.
- (c) Major projects not included within Collier County's Impact Fee Ordinance or created under subsection 30-724(b)(1) and (2) which can demonstrate a significant benefit to the impacted transportation system may be eligible at the Collier County's discretion for impact fee credits.
- (d) The proportionate fair-share obligation is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any road impact fee credit based upon proportionate fair-share contributions for a proposed development cannot be transferred to any other location unless provided for within Collier County's Impact Fee Ordinance.

(Ord. No. 07-02, § 1, 1-22-2007)

Sec. 30-729. Proportionate fair-share agreements.

- (a) Upon execution of a proportionate fair-share agreement (agreement) the applicant shall receive a city certificate of concurrency approval. Should the applicant fail to apply for a development permit within 12 months or timeframe provided in the local CMS of the execution of the agreement, then the agreement shall be considered null and void, and the applicant shall be required to reapply.
- (b) Payment of the proportionate fair-share contribution is due in full prior to issuance of the final development order or recording of the final plat and shall be nonrefundable. If the payment is submitted more than 12 months from the date of execution of the agreement, then the proportionate fair-share cost shall be recalculated at the time of payment based on the best estimate of the construction cost of the required improvement at the time of payment, pursuant to section 30-727 and adjusted accordingly.
- (c) All developer improvements authorized under this article must be completed prior to issuance of a development permit, or as otherwise established in a binding agreement that is accompanied by a security instrument that is sufficient to ensure the completion of all required improvements. It is the intent of this section that any required improvements be completed before issuance of building permits or certificates of occupancy.
- (d) Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement must be completed prior to issuance of the final development order or recording of the final plat.
- (e) Any requested change to a development project subsequent to a development order may be subject to additional proportionate fair-share contributions to the extent the change would generate additional traffic that would require mitigation.
- (f) Applicants may submit a letter to withdraw from the proportionate fair-share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs to the City of Marco Island will be nonrefundable.
- (g) The City of Marco Island may enter into proportionate fair-share agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.

(Ord. No. 07-02, § 1, 1-22-2007)

Sec. 30-730. Appropriation of fair-share revenues.

- (a) Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the City of Marco Island CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At the discretion of the local government, proportionate fair-share revenues may be used for operational improvements prior to construction of the capacity project from which the proportionate fair-share revenues were derived. Proportionate fair-share revenues may also be used as the 50 percent local match for funding under the FDOT TRIP.
- (b) In the event a scheduled facility improvement is removed from the CIE, then the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor or sector that would mitigate the impacts of development pursuant to the requirements of subsection 30-724(b)(2).

Where an impacted regional facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan as provided in F.S. § 339.155, and then the City of Marco Island may coordinate with other impacted jurisdictions and agencies to apply proportionate fair-share contributions and public contributions to seek funding for improving the impacted regional facility under the FDOT TRIP. Such

coordination shall be ratified by the City of Marco Island through an interlocal agreement that establishes a procedure for earmarking of the developer contributions for this purpose.

- (c) Where an applicant constructs a transportation facility that exceeds the applicant's proportionate fair-share obligation calculated under section 30-728, the City of Marco Island shall reimburse the applicant for the excess contribution using one or more of the following methods:
- (1) An impact fee credit account may be established for the applicant in the amount of the excess contribution, a portion or all of which may be assigned and reassigned under the terms and conditions acceptable to the City of Marco Island.
 - (2) An account may be established for the applicant for the purpose of reimbursing the applicant for the excess contribution with proportionate fair-share payments from future applicants on the facility.
 - (3) The City of Marco Island may compensate the applicant for the excess contribution through payment or some combination of means acceptable to the City of Marco Island and the applicant.

(Ord. No. 07-02, § 1, 1-22-2007)

Sec. 30-731. Optional provisions.

(a) *Cross jurisdictional impacts.*

- (1) In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the City of Marco Island may enter an agreement with Collier County or the Florida Department of Transportation to address cross jurisdictional impacts of development on regional transportation facilities. The agreement shall provide for application of the methodology in this section to address the cross jurisdictional transportation impacts of development. This article may be amended as necessary in the future to reflect any such agreements.
- (2) A development application submitted to the City of Marco Island subject to a transportation concurrency determination meeting all of the following criteria shall be subject to this section:
 - a. All or part of the proposed development is located within one mile of the area which is under the jurisdiction, for transportation concurrency, of Collier County or the Florida Department of Transportation; and
 - b. Using its own concurrency analysis procedures, the City of Marco Island concludes that the additional traffic from the proposed development would use five percent or more of the adopted peak hour level of service maximum service volume of a regional transportation facility within the concurrency jurisdiction of Collier County or Florida Department of Transportation ("impacted regional facility"); and
 - c. The impacted regional facility is projected to be operating below the level of service standard, adopted by Collier County or Florida Department of Transportation, when the traffic from the proposed development is included.
- (3) Upon identification of an impacted regional facility pursuant to subsections (a)(2)a.—c., the City of Marco Island shall notify the applicant and Collier County or Florida Department of Transportation in writing of the opportunity to derive an additional proportionate fair-share contribution, based on the projected impacts of the proposed development on the impacted adjacent facility.
 - a. Collier County or Florida Department of Transportation shall have up to 90 days in which to notify the City of Marco Island of a proposed specific proportionate fair-share obligation, and the intended use of the funds when received. Collier County or Florida Department of Transportation must provide reasonable justification that both the amount of the payment and its intended use

comply with the requirements of F.S. § 163.3180(16). Should Collier County or Florida Department of Transportation decline proportionate fair-share mitigation under this section, then the provisions of this section would not apply and the applicant would be subject only to the proportionate fair-share requirements of the City of Marco Island.

- b. If the subject application is subsequently approved by the City of Marco Island, the approval shall include a condition that the applicant provides, prior to the issuance of any building permit covered by that application, evidence that the proportionate fair-share obligation to Collier County or Florida Department of Transportation has been satisfied. The City of Marco Island may require Collier County or Florida Department of Transportation to declare, in a resolution, ordinance, or equivalent document, its intent for the use of the concurrency funds to be paid by the applicant.
- (4) Proportionate share program for TCEAs, TCMAAs, and MMTDs. Within the any local TCMAAs, and/or MMTDs, and/or TCEAs, the City of Marco Island hereby establishes a proportionate fair-share assessment, based on the expected costs and transportation benefits of all the programmed improvements within that district, and based on the expected trip generation of the proposed development.

(Ord. No. 07-02, § 1, 1-22-2007)

Sec. 30-732. Method for cost escalation.

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

$$\text{Cost}_n = \text{Cost}_0 \times (1 + \text{Cost_growth}_{3\text{yr}})^n$$

Where:

Cost_n = The cost of the improvements in year n;

Cost_0 = The cost of the improvement in the current year;

$\text{Cost_growth}_{3\text{yr}}$ = The growth rate of costs over the last three years;

n = The number of years until the improvement is constructed.

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

$$\text{Cost_growth}_{3\text{yr}} = [\text{Cost_growth}_{-1} + \text{Cost_growth}_{-2} + \text{Cost_growth}_{-3}] / 3$$

Where:

$\text{Cost_growth}_{3\text{yr}}$ = The growth rate of costs over the last three years;

Cost_growth_{-1} = The growth rate of costs in the previous year;

Cost_growth_{-2} = The growth rate of costs two years prior;

Cost_growth_{-3} = The growth rate of costs three years prior.

(Ord. No. 07-02, § 1, 1-22-2007)

Secs. 30-733—30-750. Reserved.