

Lee County Board Of County Commissioners  
 Agenda Item Summary

Blue Sheet No. 20061282

**1. ACTION REQUESTED/PURPOSE:** Conduct first public hearing on proposed amendments to Chapter 2 of the Land Development Code to amend the County's Concurrency Management System by adopting the statutorily mandated Proportionate Fair Share Program. Direct to second public hearing in October 24, 2006.

**2. WHAT ACTION ACCOMPLISHES:** Allows for public comment on the proposed ordinance that will allow developers of property unable to achieve transportation concurrency to proceed with development under specified conditions by paying a proportionate fair share of the cost of the needed road improvement.

**3. MANAGEMENT RECOMMENDATION:** Direct to second public hearing on October 24, 2006, at 5:05 p.m.

**4. Departmental Category:** 5:05 PM #1

**5. Meeting Date:** 10-10-06

**6. Agenda:**

**7. Requirement/Purpose: (specify)**

**8. Request Initiated:**

<input type="checkbox"/> Consent	<input checked="" type="checkbox"/> Statute	163.3180(16)
<input type="checkbox"/> Administrative	<input type="checkbox"/> Ordinance	
<input type="checkbox"/> Appeals	<input type="checkbox"/> Admin. Code	
<input checked="" type="checkbox"/> Public 5:05	<input type="checkbox"/> Other	
<input type="checkbox"/> Walk-On		

Commissioner \_\_\_\_\_  
 Department County Attorney  
 Division Land Use  
 By: *Donna Marie Collins*  
 Donna Marie Collins

**9. Background:**

The Lee Plan mandates that the County utilize a Transportation Concurrency Management System consistent with the requires of Florida Statutes and the Florida Administrative Code. The County measures concurrency on all roads on a roadway segment-by-segment basis with the exception for constrained roads where alternatives have been established pursuant to Florida Statutes. The County annually updates roadway conditions and available capacity as part of its Concurrency Management Report.

Under the County's Concurrency Management System, all proposed development activity is reviewed against the available capacity identified in the Annual Concurrency Management Report based on existing conditions. The Concurrency Management System is intended to ensure that no development permits will be issued unless the established regulatory level of service requirements are met or will be met as needed to serve the proposed development.

(Continued on Page 2)

**10. Review for Scheduling:**

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
	N/A	N/A	N/A	<i>Janet...</i>	Analyst <i>10/27/06</i>	Risk <i>9/29/06</i>	Grants <i>RK 9/27</i>	Mgr. <i>9/27</i>	<i>[Signature]</i>

**11. Commission Action:**

- Approved
- Deferred
- Denied
- Other

RECEIVED BY COUNTY ADMIN: *[Signature]*  
 9-26-06 2pm-mp  
 COUNTY ADMIN FORWARDED TO: *[Signature]*  
 9/28/06  
 noon

CO. ATTY. FORWARDED TO CO. ADMIN.  
 9/26/06 1:00

Bluesheet #20061282

Page 2

Subject: Proportionate Fair Share Program

In 2005, the Florida Legislature amended the Growth Management Act directing local governments to enact ordinances by December 1, 2006, that would allow for "proportionate share" contributions from developers toward concurrency requirements. The intent of the Proportionate Fair Share Option is to provide developers an opportunity to proceed notwithstanding the failure of transportation concurrency, under certain conditions. This is accomplished by the developer contributing its fair share of the costs of improving the impacted transportation facility at issue. Under the proposed ordinance, the Proportionate Fair Share Program will not apply until a deficiency has been identified through the Concurrency Management System.

The proposed amendments to the LDC amend the County's Concurrency Management Ordinance has been amended to recognize the statutorily mandated Proportionate Fair Share Program. In addition, the definition of "*de minimus impact*" is expanded and clarified consistent with the directives of the Florida Legislature.

The purpose of the Proportionate Fair Share Program is to establish a method whereby impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors. The intent is to maximize the use of public funds for adequate transportation facilities to serve future growth in the County. In some circumstances, the program will allow the County to expedite transportation improvements by supplementing funds currently allocated for transportation improvements in the Capital Improvement Element. Participating in the Proportionate Fair Share Program is optional on the part of the developer.

The proposed Ordinance has been reviewed by the following committees: Land Development Code Advisory Committee, Executive Regulatory Oversight Committee. The Local Planning Agency has found the Ordinance consistent with the Lee Plan. Staff recommends that the Board direct the proposed amendments to the LDC to a second public hearing on October 24, 2006.

Attachments: 1) Proposed Ordinance draft dated \_\_\_\_\_.  
2) Summary of the LPA and Advisory Committee Review of Proposed Amendments  
3) FAIS

COMMITTEE REVIEW CHART FOR PROPOSED AMENDMENTS  
CONCURRENCY MANAGEMENT ORDINANCE AND THE  
PROPORTIONATE FAIR SHARE PROGRAM

Land Development Code Advisory Committee 9/8/06	Recommended adoption of proposed amendments to Land Development Code. Discussion suggested the need for an administrative code to implement proposed Land Development Code Section 2-72(4)(c).
Executive Regulatory Oversight Committee 9/13/06	Recommended adoption of proposed amendments. 7-0 (Kinsey-Roeder).
Local Planning Agency 10/23/06	

LEE COUNTY ORDINANCE 06-\_\_\_\_\_

AN ORDINANCE AMENDING CHAPTER 2 OF THE LEE COUNTY LAND DEVELOPMENT CODE, ARTICLE II, CONCURRENCY MANAGEMENT SYSTEM, AMENDING DEFINITIONS, CONCURRENCY CERTIFICATION, CONCURRENT DEVELOPMENT ORDERS, GREATER PINE ISLAND CONCURRENCY, VESTED RIGHTS, CONCURRENCY MANAGEMENT INFORMATION SYSTEM, VARIANCES, AND APPEALS; CREATING A DIVISION 2, ENTITLED PROPORTIONATE FAIR SHARE PROGRAM, PROVIDING FOR PURPOSE AND INTENT, FINDINGS, APPLICABILITY, GENERAL REQUIREMENTS, INTERGOVERNMENTAL COORDINATION, APPLICATION PROCESS, DETERMINING PROPORTIONATE FAIR SHARE OBLIGATION, IMPACT FEE CREDIT FOR PROPORTIONATE SHARE MITIGATION, PROPORTIONATE FAIR SHARE AGREEMENTS, APPROPRIATION OF FAIR SHARE REVENUES, AND CROSS JURISDICTIONAL IMPACTS; AND PROVIDING FOR CONFLICTS OF LAW, SEVERABILITY, CODIFICATION, SCRIVENER'S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, Lee Plan Objective 37.3. mandates the County to utilize a Transportation Concurrency Management System consistent with the requirements of Chapter 163.3180 and Rule 9J-5.0055, Florida Administrative Code; and,

WHEREAS, Lee County measures concurrency on all roads on a roadway segment-by-segment basis, except for constrained roads and where alternatives are established pursuant to Florida Statutes, Section 163.3180, and Rule 9J-5.0055, Florida Administrative Code; and,

WHEREAS, the County will continue to annually modify roadway conditions and available capacity as part of its Concurrency Management Report; and,

WHEREAS, pursuant to Policy 37.3.3., all proposed development activity, except that which affects constrained roads and roads subject to concurrency alternatives, will be reviewed against the available capacity identified in the annual Concurrency Management Report based on existing conditions; and,

WHEREAS, Lee Plan Policy 38.1.1. requires the County to maintain an effective and fair system of impact fees to ensure development that creates additional impacts on

arterial and collector roads and pays an appropriate fair share of the costs to mitigate its off-site impacts; and,

WHEREAS, Lee Plan Objective 95.2. requires the County to maintain a Concurrency Management System within the development regulations in accordance with Florida Statutes, Section 163.3202. The Concurrency Management System will ensure that no development permits will be issued unless the established regulatory level of service requirements are met or will be met, as needed, to serve development; and,

WHEREAS, Lee Plan Goal 39 requires the County to maintain clear, concise, and enforceable development regulations that fully address on-site and off-site development impacts and protect and preserve public transportation facilities; and,

WHEREAS, pursuant to Lee Plan Objective 39.1., the County will maintain and enforce development regulations to ensure that the impacts of development approvals occur concurrently with adequate roads, and to achieve maximum safety, efficiency, and cost effectiveness; and,

WHEREAS, the 2005 amendments to the Florida's Growth Management Act directed local governments to enact ordinances by December 1, 2006, that allow for "proportionate share" contributions from developers toward concurrency requirements (see *Section 163.3180(16), F.S.*); and,

WHEREAS, the intent of the proportionate fair share option is to provide developers an opportunity to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their fair share of the costs of improving the impacted transportation facility; and,

WHEREAS, the proportionate fair share requirements will not apply until a deficiency is identified through the Concurrency Management System; and,

WHEREAS, proportionate fair share contributions are not impact fees; rather, the contributions are intended as a means to address a specific transportation concurrency issue, to wit, a road segment or segments operating below the adopted level of service standard; and,

WHEREAS, the Land Development Code Advisory Committee reviewed the proposed amendments to the Proportionate Fair Share Program Regulations on September 8, 2006; and,

WHEREAS, the Executive Regulatory Oversight Committee reviewed the proposed amendments to the Proportionate Fair Share Program Regulations on September 13, 2006; and,

WHEREAS, the Local Planning Agency reviewed the proposed amendments to the Land Development Code on September 13, 2006, and found the amendments consistent with the Lee Plan.

NOW, THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Lee County, Florida:

**SECTION TWO: AMENDMENT TO LAND DEVELOPMENT CODE CHAPTER 2, ARTICLE II, CONCURRENCY MANAGEMENT SYSTEM**

The Lee County LDC, Chapter 2, Article II, is amended to read as follows, with strike through text identifying language to be deleted and underlined text identifying new language:

**CHAPTER 2 - ADMINISTRATION**

**ARTICLE II. CONCURRENCY MANAGEMENT SYSTEM**

**DIVISION 1. CONCURRENCY MANAGEMENT PROVISIONS**

**Sec. 2-45. Definitions.**

- (a) The following words, terms and phrases, when used in this article, will have the meanings ascribed to them in this subsection, except where the context clearly indicates a different meaning:

*Board of County Commissioners* means the Board of County Commissioners of Lee County, Florida, acting in a public meeting.

*Building permit* means an official document or certification that authorizes the construction, alteration, enlargement, conversion, reconstruction, remodeling, rehabilitation, erection, demolition, moving or repair of a building or structure.

*Certificate of concurrency compliance* means the certification issued by the director pursuant to section 2-46(d). This certification means that the director has determined that there is or will be sufficient public facilities to serve the development for which a development permit has been requested without violating the minimum concurrency standards set forth in the Lee Plan.

*Certificate of concurrency exemption* means the certification issued by the director pursuant to section 2-46(b). This certification means that the director has determined that a type of development order, or a specific development order issued for a proposed development permit, is exempt from the concurrency levels of service requirements of the Lee Plan. The issuance of a certificate of concurrency exemption does not exempt a

developer from submission of project data required by the director unless specifically set forth in the certificate. Submission of project data assists the county in monitoring anticipated impacts on public facilities for the purposes of maintaining an inventory to evaluate new requests for development.

*Concurrency certificate* means a certificate of concurrency compliance, a certificate of concurrency exemption, a concurrency variance certificate or a conditional certificate of concurrency compliance.

*Concurrency variance certificate* means the certification issued by the director pursuant to section 2-51. This certification means that the director has determined that a variance from the strict concurrency requirements of the Lee Plan must be granted with respect to a specific development permit to avoid the unconstitutional taking of property without due process of law.

*Conditional certificate of concurrency compliance* means a certificate issued by the director pursuant to section 2-46(j). This certification means that the director has determined that:

- (1) A development permit, which otherwise would violate the minimum concurrency requirements of the Lee Plan, can be issued consistent with the Lee Plan if certain conditions are attached to the permit; or
- (2) The application for concurrency review is complete but for a particular document that can be submitted prior to the issuance of a building permit or certificate of occupancy.

*Constrained roads* means those roadway segments that cannot or will not be widened due to community scenic, historic, aesthetic, right-of-way or environmental constraints.

*De Minimus Transportation Impact* means an impact created by a use that would not affect more than one percent of the maximum volume at the adopted level of service of the affected transportation facility as determined by the County. No impact will be considered *De Minimus* if the impact would exceed the adopted level of service standard of an affected designated hurricane evacuation route.

*Developer* means any person, including a governmental agency, undertaking any development.

*Development* means the carrying out of building activity or mining operation, the making of any material change in the use or appearance of any structure or land, or the dividing of land into three or more parcels. It is intended to have the same meaning given in F.S. § 380.04.

*Development order* means any order granting or granting with conditions an application for a development permit.

*Development permit* means a building permit, subdivision approval, certification or variance or other official action of local government having the effect of permitting the development of land. This definition conforms to that set forth in F.S. § 163.3164(7), except that it does not include zoning permits, zoning variances, rezoning, special exceptions, preliminary plan approvals, and special permits which, by themselves, do not permit the development of land.

*Director* means the county manager, or any other person designated by the county manager to exercise the authority or assume the responsibilities given the director in this article.

*Equivalent residential connections* means the total number of meter equivalents using the methodology of the state public service commission. This term is synonymous with the term "equivalent residential units" used by the state public service commission.

~~*Final development order* means a development order issued pursuant to chapter 10 or a final development order issued pursuant to Lee County Ordinance No. 82-42, as amended.~~

*Hearing examiner* means an officer appointed by the Board of County Commissioners to hear all matters and exercise all duties set out in chapter 34, article II.

*Lee Plan* means the county comprehensive plan which ~~that~~ was adopted pursuant to F.S. ch. 163 on January 31, 1989, and effective March 1, 1989, and all subsequent amendments thereto.

*Long term transportation concurrency management system* means a financially feasible system to ensure that existing deficiencies are corrected within a specified time frame and to establish priorities for addressing backlogged facilities in special concurrency district or areas.

*Mobile home move-on permit* means an official document or certification authorizing a purchaser, owner, mover, installer or dealer to move a mobile home onto a particular site. It also includes a permit authorizing the tiedown of a park trailer in a mobile home zoning district. Mobile homes and park trailers are defined in chapter 34.

*Permanent traffic* means the traffic that a development can reasonably be expected to generate on a continuing basis upon completion of the development. It does not mean the temporary construction traffic.



*Planned development rezoning* means any rezoning to a planned development zoning district pursuant to chapter 34.

*Preliminary development order* means a preliminary development order issued pursuant to Ordinance No. 82-42, as amended.

*Preliminary plan approval* means a type of site plan approval pursuant to chapter 10 that does not authorize development and to which no concurrency vesting attaches. *Regulatory standards* means the minimum acceptable level of service as set forth in the Lee Plan, policy 70.1.3, subsections 1 through 6.

~~*Rule 9J-5.0055* means the rule and any subpart thereof published in the Florida Administrative Code.~~

*Transportation Concurrency* means transportation facilities needed to serve new development must be in place or under actual construction within three years after the local government approves a development permit, or its functional equivalent, that results in traffic generation.

*Transportation concurrency exception areas* means areas designated under the Lee Plan that allow exceptions to the transportation concurrency management requirement to promote urban infill development, urban redevelopment, or downtown revitalization.

*Transportation concurrency management areas* means compact geographic areas designated under the Lee Plan with existing or proposed multiple, viable alternative travel paths or modes for common trips, which employ the use of an area-wide level of service standard and an accommodation and management of traffic congestion for the purpose of promoting infill development or redevelopment in a manner that supports more efficient mobility alternatives.

#### **Sec. 2-46. Concurrency certification.**

- (a) *Review for compliance with level of service requirements.* All applications for final development orders and building permits must be reviewed by the director for compliance with the level of service requirements set forth in the Lee Plan. Exceptions to this provision are development permits that are:
- (1) specifically exempted from concurrency review by county administrative code AC 13-9;
  - (2) granted pursuant to a concurrency variance certificate under section 2-51;
  - (3) a concurrency exemption certificate applies under section 2-49;

- (4) related to development pursuant to a development order issued under F.S. §§ 380.06 and 380.061, and the DRI development order separately provides for concurrency compliance and analysis;
- (5) granted pursuant to a developer agreement in effect pursuant to Ordinance No. 90-29, as amended, and the development agreement makes separate provision for concurrency compliance and analysis; or
- (6) granted pursuant to a developer's participation in the Proportionate Fair Share Program set forth in Division 2 of this Article.

Upon application and payment of the application fee set by the Board of County Commissioners by administrative code, the director will determine whether the public facilities and services listed in F.S. § 163.3180 needed to support the development will be available concurrent with the impacts of that development, or whether the development should be exempted from such a determination, either because the development will not have an impact on the public facilities and services or because the applicant for the development permit has a vested right to receive it a favorable determination of concurrency.

*Sections (b) through (i) are unchanged.*

- (j) *Issuance of finding upon failure to qualify for certificate of concurrency compliance.*
  - (1) If a proposed development permit fails to qualify for a certificate of concurrency compliance under the criteria set forth in subsections (a) through (i) of this section, the director will issue a finding that the proposed development will meet concurrency requirements if it is subject to the condition that the facilities and services ~~which that~~ will be necessary to serve the development will be in place when the impacts of the development occur without degrading the level of service of these facilities below the minimum level prescribed in the Lee Plan. When no solution can be identified to provide for the additional facility capacity required, the certificate will either be limited to reflect the then-available facility capacity, or the application will be denied. If the director issues such a finding that limited development may proceed, to be known as a conditional certificate of concurrency compliance, no further development permits may be issued unless it contains on its face ~~the statement that the permit is issued subject to the condition that the~~ additional facilities to serve the further development ~~must be in~~ are in place when the impacts of the development occur.
  - (2) The conditional certificate of concurrency compliance must identify the minimum additions to the then-existing facilities that must be built and operating, in addition to planned facilities meeting the criteria set forth in

subsections (f), (g), (h) and (i) of this section, before further development permits will be issued. If a developer proposes to develop in stages or phases so that facilities and services needed for each phase will be available in accordance with the standards set forth in this article, the director may issue a conditional certificate of concurrency compliance that establishes related periods of time when additional development permits will be granted if the additional facilities, identified by the director as ~~being~~ the minimum additions to existing or planned facilities needed to serve each phase, are built and operating.

- (3) Development permits issued based on conditional certificates of concurrency compliance ~~must specify the next level or levels of permitting that may be granted before the condition or conditions of the permit must be satisfied.~~
  - (4) The director may also issue a conditional certificate of concurrency compliance where the proposed development will meet concurrency requirements provided certain documents, not submitted with the initial application, are subsequently delivered to the director, or the proposed ~~final~~ development order is subject to the review of other county agencies and therefore likely to change, thereby requiring further concurrency review.
- (k) *Validity of certificates of concurrency compliance and conditional certificates of concurrency compliance.* Certificates of concurrency compliance and conditional certificates of concurrency compliance are valid for three years from the date they are issued or for the remaining tenure of the underlying ~~final~~ development order or development permit, whichever is less.
- (l) *Validity of development permits.*
- (1) Except for building permits, development permits ~~which~~ that have been issued based upon a valid certificate of concurrency compliance or a conditional certificate of concurrency compliance will be valid for a period of three years from the date the certificate was granted or for the ~~normal~~ remaining duration of the development permit, whichever is less. This will enable the developer to begin the work permitted or to apply for additional development permits not inconsistent with the permit issued, using the concurrency certificate from the issued permit to satisfy the concurrency review requirements for the additional permits. ~~Approval by the Board of County Commissioners of an extension to the term of a development permit, other than a building permit, will automatically constitute the issuance or extension, as the case may be, of a concurrency certificate for three years or the period of the extension, whichever is less.~~

- (2) Building permits issued based upon a valid concurrency certificate will be valid for the ~~normal~~ remaining duration of the building permit, so long as the permit is applied for while the certificate of concurrency compliance or conditional certificate of concurrency compliance is valid, the permit application is substantially complete, and the building permit is ultimately issued in the ~~normal~~ ordinary course. The original permit may not be extended ~~more than twice~~ beyond the term of the concurrency certificate without triggering new concurrency review.
- (3) If a building permit ~~for which such an application has been filed~~ is not issued within six months of the expiration date of the applicable concurrency certificate, ~~a rebuttable presumption will arise that the building permit has not been issued within the normal~~ ordinary course as that term is used in this subsection.
- (m) *Director's action not appealable pursuant to state law.* The director's action in issuing a concurrency certificate is not a development order ~~which~~ that can be appealed pursuant to F.S. §163.3215.

*Section (n) is unchanged.*

- (o) *De Minimus Impact.* The Florida Legislature has found that a *de minimus* impact is consistent with Part II of Chapter 163. Therefore, the impact of a single-family home on an existing lot will constitute a *de minimus* impact on all roadways regardless of the level of deficiency of the roadway.

Other than single-family homes on existing lots, no impact will be *de minimus* if the sum of existing roadway volumes and the projected volumes from approved projects on a transportation facility would exceed 110 percent of the maximum volume at the adopted level of service of the affected transportation facility. Further, except for single family homes on existing lots, no impact will be *de minimus* if it would exceed the adopted level of service standard of any affected designated hurricane evacuation route.

Lee County will maintain records to ensure that the 110 percent criteria is not exceeded. Annually, Lee County will submit to the State Land Planning Agency a summary of the *de minimus* records along with its updated Capital Improvements Element. In the event the State Land Planning Agency determines that the 110 percent criteria has been exceeded, the County will be notified of the exceedence and no further *de minimus* exceptions for the applicable roadway will be granted until the volume is reduced below the 110 percent. The County will provide proof of the reduction to the State Land Planning Agency prior to issuing further *de minimus* exceptions.

**Sec. 2-47. Concurrent development orders.**

- (a) ~~Final d~~Development orders and amendments or extensions thereto. A request or application for a final development order, an amendment to a final development order or an extension of a final development order may be accepted by the director, the hearing examiner or the Board of County Commissioners prior to issuance of a valid concurrency certificate for the exact plan of development for which approval is sought. However, no final development order, final development order amendment or final development order extension may be granted for a development that will cause more intensive impacts than those assumed by the director when issuing his concurrency certificate unless the development in question is resubmitted for reviewed for compliance with the level of service requirements of the Lee Plan. If an amendment to a final development order, already approved for concurrency purposes, results in a reduction of anticipated impacts on public facilities and services, the director must approve the amendment unless to do so would be inconsistent with the Lee Plan.

*Sections (b) through (d) are unchanged.*

- (e) *Review of planned development rezoning applications.* In addition to the mandatory provisions of this article, the director is authorized at the request of staff or the applicant, to review planned development rezoning applications. In those cases where the director has determined that an approval could lead to excessive impacts on public facilities and services needed to support the development, he may issue an advisory opinion setting forth the basis of his determination. Approval of a development application subject to such an advisory opinion must contain conditions to mitigate the identified impacts. Those conditions may include reduction of density or intensity, phasing of the project to match its impacts with planned expansion of public facilities, required improvements to public facilities, payment of a proportionate fair share contribution in accordance with Article II, Division 2, or other similar mitigating measures.
- (f) *Developments of regional impact.* Application for final local development orders on property located within a development of regional impact are subject to the concurrency levels of service requirements of the Lee Plan unless the DRI is vested pursuant to section 2-49(c) or 2-49(d).

**Sec. 2-48. Greater Pine Island concurrency.**

Concurrency compliance for property located in Greater Pine Island, as identified on the future land use map, will be determined in accordance with the level of service and restrictions set forth in Lee Plan policies 14.2.1 and 14.2.2 to the extent the policies provide additional restrictions that supplement other provisions of this article. These policies require the following:

- (1) The minimum acceptable level of service standard for Pine Island Road between Burnt Store Road and Stringfellow Boulevard is level of service D on an annual average peak-hour basis and level of service E on a peak-season peak-hour basis using methodologies from the 1985 Highway Capacity Manual Special Report 209. This standard will be measured at the county's permanent count station on Little Pine Island.
- (2) When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches 810 peak-hour annual average two-way trips, rezonings that increase traffic on Pine Island Road may not be granted. When traffic on Pine Island Road between Burnt Store Road and Stringfellow Boulevard reaches ~~910~~ peak-hour annual average two-way trips, residential development orders (pursuant to chapter 10) will not be granted unless measures to maintain the adopted level of service can be included as a condition of the development order. The effect of this restriction on residential density must not be more severe than restricting density to one-third the maximum density otherwise allowed on that property.

#### **Sec. 2-49. Vested rights.**

*Sections (a) and (b) are unchanged.*

- (c) Persons owning DRI development orders issued prior to March 1, 1989, are vested to complete developments in accordance with the specific provisions of those development orders, including mitigation of all impacts, without having to comply with the concurrency levels of service requirements of the Lee Plan, regardless of whether they have commenced development or have continued in good faith. The vested status of these DRI development orders will terminate on the expiration/termination date of the DRI development order.
  - (1) A determination of vesting pursuant to this subsection does not exempt a developer from submission of project data required by the director. Submission of project data assists the county in monitoring impacts on infrastructure as development progresses.
  - (2) ~~Any d~~ Development orders vested pursuant to this subsection amended on or after March 1, 1989, will be subject to all concurrency requirements on those portions of the development changed. However, if an amendment to a DRI development order vested pursuant to this subsection results in a reduction of anticipated impacts on public facilities and services, the director, in his discretion, may find that the proposed amendment does not impair the overall vested status of the development.

- (3) Notwithstanding 2-49(c)2., DRI development orders vested pursuant to this subsection, subsequently amended to extend the build out or termination dates by seven or more years from the original dates, will be subject to all concurrency level of service requirements of the Lee Plan. The amendment to the DRI development order to extend the expiration/termination date must be final prior to the expiration or termination date set forth in the development order.
- (d) DRI's approved subsequent to March 1, 1989, may be vested to complete development in accordance with the terms of the development of regional impact development order for 10 years under the following circumstances:
- 
- (1) The transportation mitigation assessment amount has been determined by the Board of County Commissioners based on recommendations by County staff.
  - (2) The developer agrees to pay the full transportation mitigation assessment amount in advance through a time-certain schedule specified in a local government development agreement, which must be executed within ~~90~~ 180 days of DRI development order approval. This assessment amount can represent either road impact fees or the proportionate share assessment, whichever is higher.
  - (3) The DRI development order expressly provides for vesting from the level of service standards set forth in the Lee Plan and provides limitations on changes to the project development parameters to maintain the validity of the traffic impact assumptions.

A DRI development order that complies with the conditions set forth above will be vested from concurrency for ten years without extensions. Subsequent requests to extend the phase end and buildout dates of the DRI will not automatically extend the vested status.

DRI's that start development under the terms of a Preliminary Development Agreement pursuant to Chapter 380, F.S., will be subject to concurrency level of service requirements of the Lee Plan until the mitigation analysis is complete and the developer provides for the payment of the full transportation mitigation assessment as set forth above.

Failure to pay the transportation mitigation assessment in accordance with the DRI development order conditions and the local government development agreement will result in further development order applications pursuant to the DRI to be subject to the level of service standards set forth in the Lee Plan.

- (e) Persons owning county development orders, excluding development orders described in subsection (c) of this section, issued before March 1, 1989, will be vested to complete their developments in accordance with the terms of their development orders as approved in writing or shown on accompanying plans without having to comply with the concurrency level of service requirements of the Lee Plan, provided development has commenced prior to September 1, 1989, and has continued in good faith. A determination of vesting pursuant to this subsection does not exempt a developer from submission of project data required by the director. Submission of project data assists the county in monitoring impacts on infrastructure as development progresses.

~~Any development order vested pursuant to this subsection which is amended on or after March 1, 1989, is subject to full concurrency requirements as to those portions of the development approved or changed. However, if an amendment to a development order vested pursuant to this subsection results in a reduction of anticipated impacts on public facilities and services, the director, in his discretion, may find that the proposed amendment does not impair the overall vested status of the development.~~

*Sections (f) and (g) are unchanged.*

- (h) Excepting development orders described in subsection (c) of this section, a determination of vested rights is valid for a period equal to the original maximum possible duration of a final development order, but without extensions. The Board of County Commissioners may not grant the extension of a final development order absent review by the director and a finding of concurrency eligibility.

*Section (i) is unchanged.*

#### **Sec. 2-50. Concurrency management information system.**

*Sections (a) through (c) are unchanged.*

- (d) The director will maintain records to ensure the 110 percent criteria is not exceeded. Those records will be submitted to the State Land Planning Agency annually in accordance with Sec. 2-46(o) and Florida Statutes, Sec.163.3180(6).

#### **Sec. 2-51. Variances.**

- (a) To provide for a reasonable economic use of land in those rare instances where a strict application of the concurrency requirements of this article would constitute an unconstitutional taking of property without due process of law, the director may issue a concurrency variance certificate. This certificate may be issued only if the director finds all of the following circumstances to be true:



- (1) There are not sufficient facilities available to serve the development without violating the minimum concurrency requirements of this article;
- (2) The project is not a candidate for participation in the Transportation Proportionate Fair Share Program described in this chapter;
- ~~(2)(3)~~ (3) No reasonable economic use can be made of the property unless a development permit is issued;
- ~~(3)(4)~~ (4) No reasonable economic use can be made of the property by conditioning the development permit upon sufficient facilities becoming available, as ~~provided for in this article; and~~
- ~~(4)(5)~~ (5) The request to vary from the concurrency requirements of this article is the minimum variance that would allow any reasonable economic use of the property in question.

The director may require the applicant to substantiate the circumstances set forth in subsections (a)(2) through ~~(4)~~ (5) of this section by submitting a report prepared by a professional appraiser. Upon verifying the existence of each of the circumstances set forth in subsections (a)(2) through ~~(4)~~ (5) of this section, the director may issue a concurrency variance certificate with the conditions he believes are reasonably necessary to protect the public health, safety and welfare and give effect to the purpose of this article while allowing the minimum reasonable use necessary to meet constitutional requirements. If the director has reason to question the truth of the circumstances as set forth in the appraiser's report, the director may hire an independent professional appraiser to verify whether reasonable economic use can be made of the property without the issuance of the permit requested by the applicant. Where the reports of the individual appraisers are inconsistent, the Board of County Commissioners will decide which appraiser's report will establish the minimum reasonable use of the property.

- (b) Development orders ~~that are~~ issued based upon a concurrency variance certificate ~~shall~~ must be consistent with, and incorporate all of the conditions placed on the certificate.
- (c) Concurrency variance certificates are valid for the lesser of three years from the date of issuance or the normal duration of the development permit.
- (d) Except for building permits, development permits ~~which have been~~ issued based upon a valid concurrency variance certificate ~~shall~~ will be valid for the period of three years from the date when the permit is granted or the normal duration of the development permit, whichever is less, thereby enabling the developer to begin the work permitted or to apply for additional development permits not inconsistent with

the permit issued, using the concurrency certificate from the issued permit to satisfy the concurrency review requirements for such additional permits.

Building permits issued based upon a valid concurrency variance certificate are valid for the normal duration of the building permit; however, the original permit may not be extended more than twice without triggering new concurrency review.

- (e) The director's action in issuing a concurrency variance certificate is not a development order that can be appealed pursuant to F.S. § 163.3125.

### **Sec. 2-52. Appeals.**

Except for challenges to development orders controlled by the provisions of F.S. § 163.3215, any decisions made by the director in the course of administering this article may be appealed in accordance with those procedures set forth in chapter 34 for appeals of administrative decisions. In cases of challenges to development orders controlled by F.S. § 163.3215, no suit may be brought and no verified complaint, as explained in F.S. § 163.3215(4), may be filed or accepted for filing until the development order giving rise to the complaint has become final by virtue of its having been issued by the director or by virtue of its having been ordered by the county hearing examiner on an appeal reversing the director's denial of the development permit, or by the Board of County Commissioners in cases where the board has granted planned development zoning or an extension of a development order. Once a development order has been granted, the provisions of F.S. § 163.3215 will be the sole means of challenging the approval or denial of a development order, as that term is defined in F.S. § 163.3164(6), when the approval of the development order is alleged to be inconsistent with the Lee Plan. An action brought pursuant to F.S. § 163.3215 will be limited exclusively to the issue of comprehensive plan consistency.

Secs. 2-56 -- 2.65. Reserved

## DIVISION 2. PROPORTIONATE FAIR-SHARE PROGRAM

### **Sec. 2-66. Purpose and Intent.**

The purpose of this Division 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 §163.3180(16), F.S.

### **Sec. 2-67. Findings.**

- (a) Transportation capacity is a commodity that has a value to both the public and private sectors.

**(b) The Lee County Proportionate Fair-Share Program:**

- (1) Provides a method by which the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors;
- (2) Provides a means by which developers may proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their proportionate fair-share of the cost to improve/construct a transportation facility;
- (3) Maximizes the use of public funds for adequate transportation facilities to serve future growth, and may, in certain circumstances, allow the County to expedite transportation improvements by supplementing funds currently allocated for transportation improvements in the Capital Improvement Element;
- (4) Is consistent with §163.3180(16), F.S., and supports the policies under Goals 37 and 38 in the Lee Plan; and,
- (5) Works within the County's existing concurrency management system.

**Sec. 2-68. Applicability.**

The Proportionate Fair-Share Program applies to all developments in unincorporated Lee County that have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility in the County Concurrency Management System, including transportation facilities maintained by FDOT or another jurisdiction that are relied upon for concurrency determinations, pursuant to the requirements of Section 2-69. The Proportionate Fair-Share Program is not available to developments of regional impact (DRIs) using proportionate fair-share under §163.3180(12), F.S., or to developments exempted from concurrency as provided in 2-46(o).

**Sec. 2-69. General Requirements.**

- (a) A developer may choose to satisfy the transportation concurrency requirements of the County by making a proportionate fair-share contribution, pursuant to the following requirements:

  - (1) The proposed development is consistent with the Lee Plan and applicable land development regulations; and,

- (2) The five-year schedule of capital improvements in the County Capital Improvement Element (CIE) or the long-term schedule of capital improvements for an adopted long-term concurrency management system includes a transportation improvement(s) that, upon completion, will mitigate additional traffic generated by the proposed development. If the County transportation concurrency management system indicates that the capacity of the improvement has been consumed by the vested trips of previously approved development, then the provisions of 2-69(2) apply.

Commentary: Pursuant to §163.3180(16) (b) 1, F.S., the transportation improvement in section (1) (b) above may be a programmed capital improvement that enhances the capacity of the transportation system to accommodate the impacts of development. For example, this may involve widening and/or reconstructing a roadway or where the primary roadway is constrained or widening is no longer desired, this could involve creating new reliever roadways, new network additions, new transit capital facilities (e.g., bus rapid transit corridor), or other major mobility improvements, such as expansion of bus fleets to increase service frequency. Local governments may, at their discretion, wish to make short-term operational improvements in advance of the capacity project. If the capacity of the planned improvement is fully committed, or there is no eligible project in an adopted work program, a developer could potentially still participate at the discretion of the local government pursuant to 2-69(2) below.

- (b) The County may choose to allow a developer to satisfy transportation concurrency for a deficient road segment through the Proportionate Fair-Share Program by contributing to an improvement that is not contained in the five-year schedule of capital improvements in the Capital Improvement Element or a long-term schedule of capital improvements for an adopted long-term concurrency management system but which, upon completion, will satisfy the requirements of the County Transportation Concurrency Management System, where the following apply:
  - (1) The County conducts an advertised public hearing to consider the proportionate fair share agreement and corresponding future changes to the five-year CIP; and,
  - (2) The County adopts, by resolution or ordinance, a commitment to add the improvement to the 5-year schedule of capital improvements in the Capital Improvement Element (CIE) no later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be reviewed by the Board and determined to be financially feasible pursuant to §163.3180(16) (b) 1, F.S., consistent with the Lee Plan, and in compliance with the provisions of this Article. Financial feasibility means that 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.

- (c) If the funds allocated for the 5-year schedule of capital improvements in the County CIE are insufficient to fully fund construction of a transportation improvement required by the concurrency management system, the County may still enter into a binding proportionate fair-share agreement with a developer authorizing construction of that amount of development on which the proportionate fair-share is calculated, if in the opinion of Lee County DOT, the proposed proportionate fair-share amount is sufficient to pay for one or more improvements that will, by itself or in combination with other committed contributions, significantly benefit the transportation system. To qualify for consideration under this section, the proposed improvement must be contained in an adopted short- or long range county plan or program, MPO, FDOT or local or regional transit agency. Proposed improvements not reflected in an adopted plan or improvement program but that would significantly reduce access problems and congestion or trips on a major corridor, such as new roads, service roads, or improved network development and connectivity, may be considered at the discretion of the Board. The improvements funded by the proportionate fair-share component must be adopted into the 5-year capital improvements schedule for the Lee Plan in the next annual capital improvement element update.
- (d) Any improvement project proposed to meet the developer's fair-share obligation must meet the County design standards for locally maintained roadways and those of the FDOT for the state highway system.

**Sec. 2-70. Intergovernmental Coordination.**

Pursuant to policies in the Intergovernmental Coordination Element of the Lee Plan and applicable policies in the Southwest Florida Regional Planning Council's Strategic Regional Policy Plan, the County will coordinate with affected jurisdictions, including FDOT, regarding mitigation to impacted facilities not under the jurisdiction of the County receiving the application for proportionate fair-share mitigation. An interlocal agreement may be established with other affected jurisdictions for this purpose.

**Sec. 2-71 Application Process.**

- (a) Upon notification of a lack of capacity to satisfy transportation concurrency, the County must also notify the applicant/developer in writing of the opportunity to satisfy transportation concurrency in accordance with the requirements for the proportionate share program set forth in Section 2-69.
- (b) Prior to submitting an application for a proportionate fair-share agreement, the applicant must attend a pre-application meeting with the County Attorney and Directors of Planning and Lee County DOT to discuss eligibility, application submittal requirements, potential mitigation options, and related issues. If the impacted facility is on the Strategic Intermodal System (SIS), then the applicant

must notify and invite the Florida Department of Transportation (FDOT) to participate in the pre-application meeting.

(c) Eligible applicants must submit an application to the County that includes an application fee set forth in the fee manual 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) Proposed phasing schedule, if applicable;

(6) Description of requested proportionate fair-share mitigation method;

(7) Copy of concurrency application;

(8) Copy of the project's Traffic Impact Statement (TIS); and,

(9) Location map depicting the site and affected road network.

(d) The Director or the designee will review the application and certify that the application is sufficient and complete within 20 business days. 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 2-69, then the County will notify the applicant in writing of the reasons for such deficiencies within 20 business days of submittal of the application. If the deficiencies are not remedied by the applicant within 20 business days of receipt of the written notification, then the application will be deemed abandoned. The Director may, in his discretion, grant a one-time extension not to exceed 60 calendar days.

(e) Pursuant to §163.3180(16) (e), F.S., proposed proportionate fair-share mitigation for development impacts to facilities on the SIS requires the agreement of the Florida Department of Transportation (FDOT). If an SIS facility is proposed for proportionate share mitigation, the applicant must submit a copy of the executed 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 County will advise the applicant in writing. The County Attorney will prepare a proportionate

fair-share obligation and binding agreement. A draft agreement will be delivered to the appropriate parties for review, including a copy to the FDOT for proposed proportionate fair-share mitigation on SIS facilities, no later than 60 calendar days from the date the applicant received the notification of a sufficient application and no fewer than 14 calendar days prior to the Board meeting when the agreement will be considered.

- (g) The County will notify the applicant regarding the date the agreement will be considered for final approval by the Board. No proportionate fair-share agreement will be effective until approved by the Commission, or pursuant to staff approval for agreements below a certain dollar amount.

**Sec. 2-72. 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 is not required to pay more than its proportionate fair-share unless the road impact fee obligation under the adopted fee schedule exceeds the proportionate fair share mitigation of the project. The fair market value of the proportionate fair-share mitigation for the impacted facilities will not differ regardless of the form of the mitigation.
- (c) The methodology that will be used to calculate an applicant's proportionate fair-share obligation is stated in Section 163.3180 (12), F. S., 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 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

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

(Note: In the context of the formula, the term "cumulative" does not include a previously approved stage or phase of a development.)

Where:

Development Trips, = 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 concurrency management system;

SV Increase,= Service volume increase provided by the eligible improvement to roadway segment "i" per section 2-69;

Cost, = Adjusted cost of the improvement to segment "i". Cost includes 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.

*Commentary: Under the definition of "development trips," only those trips that trigger a concurrency deficiency would be included in the proportionate fair-share calculation.*

- (d) For the purposes of determining proportionate fair-share obligations, the County will determine improvement costs based upon the actual cost of the improvement as reflected in the Capital Improvement Element, the MPO/Transportation Improvement program, or the FDOT Work Program. Where this information is not available, improvement cost will be determined by the Lee County Department of Transportation using one of the following methods:
- (1) An analysis by the County or appropriate entity of costs by cross section type that incorporates data from recent projects and is updated annually and approved by the Commission. In order to accommodate increases in construction material costs, project costs will 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 will be determined using this method in coordination with the FDOT District.
  - (3) An engineer's certified cost estimate provided by the applicant and accepted by the Director of Lee County DOT.
- (e) If the County accepts a road improvement project proposed by the applicant, then the value of the improvement will be determined consistent with the method provided for in Article VI, Division 2 (Roads Impact Fee), Section 2-275(3)(a). If the value of the road improvement proposed by the applicant is more than the County's estimate total proportionate fair share obligation for the development, then the County will



issue road impact fee credits for the difference when the improvement is complete and accepted by the County.

- (f) If the County accepts right-of-way dedication as the proportionate fair-share payment, credit for the dedication of the non-site related right-of-way will be valued consistent with the method provided for in Article VI, Division 2 (Roads Impact Fee), Section 2-275(3)(b). If the estimated value of the right-of-way dedication proposed by the applicant (based on a County approved appraisal) is more than the County's estimated total proportionate fair share obligation for the development, then the County will issue road impact fee credits for the difference.

**Sec. 2-73. Impact Fee Credit for Proportionate Fair-Share Mitigation.**

- (a) Proportionate fair-share mitigation will be applied as a credit against road impact fees assessed to the project.
- (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. If the developer'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 developer or its successor must pay the remaining impact fee amount to the County in accordance with the governing fee schedule at the time of permitting.
- (c) The proportionate fair-share obligation is intended to mitigate the transportation impacts of a proposed development at a specific location. Road impact fee credit based upon proportionate fair-share contributions for a proposed development cannot be transferred to another district unless the road improvement will provide relief in an adjacent district.

**Sec. 2-74. Proportionate Fair-Share Agreements.**

- (a) Upon execution of a proportionate fair-share agreement (Agreement) the applicant will receive a County certificate of concurrency approval. If the applicant fails to apply for a development permit within three years of the execution of the Agreement, then the Agreement will be considered null and void, and the applicant must reapply for a concurrency certificate. Once paid, proportionate share payments and impact fees are not refundable.
- (b) Payment of the proportionate fair-share contribution is non refundable and due in full within 60 days of execution of the Agreement, or prior to the issuance of the first development order, whichever occurs first. If the payment is not made in the time frame stated above, then the proportionate share cost will be recalculated and a new agreement must be executed.

- (c) Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement must be completed prior to issuance of the development order.
- (d) Requested changes 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.
- (e) Applicants may submit a letter to withdraw from the proportionate fair-share agreement prior to the execution of the Agreement. The application fee and any associated advertising costs to the County will be non refundable.

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- (f) The County may enter into proportionate fair-share agreements for selected corridor improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.

**Sec. 2-75. Appropriation of Fair-Share Revenues.**

- (a) The County will deposit proportionate fair-share revenues in the appropriate project account for funding of scheduled improvements in the County Capital Improvement Element, or as otherwise established in the terms of the proportionate fair-share agreement. At the discretion of the County, 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% local match for funding under the FDOT TRIP.
- (b) If a scheduled facility improvement is removed from the Capital Improvement Element, 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 Section 2-69.
- (c) Where an impacted regional facility has been designated as a regionally significant transportation facility in an adopted regional transportation plan as provided in Section 339.155, F.S., the County may coordinate with other impacted jurisdictions and agencies to apply proportionate fair-share contributions and public contributions to seek funding for improving the impacted regional facility under the FDOT TRIP. The coordination must be ratified by the County through an interlocal agreement establishing a procedure for earmarking the developer contributions for the purpose of improving the impacted regional facility.

## **Sec. 2-76. Cross Jurisdictional Impacts.**

Commentary: This section provides a concept to advance intergovernmental coordination objectives in local government comprehensive plans and applicable policies in adopted regional plans. It provides an opportunity for a local government to address the impacts of a proposed development in an adjacent local government that is at or near its border. It is intended as a means of managing development on a regional thoroughfare, and not for application to minor roadways. A regional transportation facility in this context would most likely be an arterial roadway, but could be a major collector roadway that is planned for expansion and reclassification as an arterial. To apply this method, each participating local government must first enter an interlocal agreement to incorporate the provision into their respective land development regulations. The permitting local government would use the methodology in this section to determine whether a significant impact may occur across its border and offer its neighbor an opportunity to evaluate the proposed development to determine if it would exceed their adopted LOS standards for concurrency. Where the proposed development would trigger a concurrency failure on the neighboring local government's roadway, that local government would use the proportionate fair-share methodology to determine the applicant's obligation. In this situation, the applicant would need to provide a proportionate fair-share contribution to the adjacent local government that experiences a concurrency deficiency, as well as to the permitting local government.

- (a) In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the County may enter an agreement with one or more adjacent local governments to address cross jurisdictional impacts of development on regional transportation facilities. The agreement must provide for application of the methodology in this section to address the cross jurisdictional transportation impacts of development.
- (b) A development application submitted to the County subject to a transportation concurrency determination meeting all of the following criteria will be subject to this section:
- (1) All or part of the proposed development is located within 5 mile(s) of the area which is under the jurisdiction, for transportation concurrency, of an adjacent local government; and
  - (2) Using its own concurrency analysis procedures, the County concludes that the additional traffic from the proposed development would use [five percent or more of the adopted peak hour LOS maximum service volume] of a regional transportation facility within the concurrency jurisdiction of the adjacent local government ("impacted regional facility"); and

- (3) The impacted regional facility is projected to be operating below the level of service standard, adopted by the adjacent local government, when the traffic from the proposed development is included.
- (c) Upon identification of an impacted regional facility pursuant to subsection 2(a)- (c), the County will notify the applicant and the affected adjacent local government 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.
- (1) The adjacent local government has up to 90 days in which to notify the County of a proposed specific proportionate fair-share obligation, and the intended use of the funds when received. The adjacent local government must provide reasonable justification that both the amount of the payment and its intended use comply with the requirements of Section 163.3180(16), F.S. If the adjacent local government declines 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 County.
- (2) If the subject application is subsequently approved by the County, the approval will include a condition that the applicant provides, prior to the issuance of building permits covered by that application, evidence that the proportionate fair-share obligation to the adjacent local government has been satisfied. The County may require the adjacent local government to declare, in a resolution, ordinance, or equivalent document, its intent for the use of the concurrency funds to be paid by the applicant.

### **SECTION THREE: CONFLICTS OF LAW**

Whenever the requirements or provisions of this Ordinance are in conflict with the requirements or provisions of any other lawfully adopted ordinance or statute, the most restrictive requirements will apply.

### **SECTION FOUR: SEVERABILITY**

It is the Board of County Commissioner's intent that if any section, subsection, clause or provision of this ordinance is deemed invalid or unconstitutional by a court of competent jurisdiction, such portion will be considered a separate provision and will not affect the remaining provisions of this ordinance. The Board of County Commissioners further declares its intent that this ordinance would have been adopted if such invalid or unconstitutional provision was not included.

### **SECTION FIVE: CODIFICATION AND SCRIVENER'S ERRORS**

The Board of County Commissioners intend that this ordinance will be made part of the Lee County Code; and that sections of this ordinance can be renumbered or relettered and that the word "ordinance" can be changed to "section", "article" or some other appropriate word or phrase to accomplish codification, and regardless of whether this ordinance is ever codified, the ordinance can be renumbered or relettered and typographical errors that do not affect the intent can be corrected with the authorization of the County Manager, or his designee, without the need for a public hearing.

**SECTION SIX: EFFECTIVE DATE**

The ordinance will take effect on December 1, 2006.

Commissioner \_\_\_\_\_ made a motion to adopt the foregoing resolution, seconded by Commissioner \_\_\_\_\_. The vote was as follows:

Robert P. Janes  
Douglas St. Cerny  
Ray Judah  
Tammara Hall  
John Albion

DONE AND ADOPTED this \_\_\_\_ of \_\_\_\_\_ 2006.

ATTEST:  
CHARLIE GREEN, CLERK

LEE COUNTY  
BOARD OF COUNTY COMMISSIONERS

BY: \_\_\_\_\_  
Deputy Clerk

BY: \_\_\_\_\_  
Tammara Hall, Chairwoman

DATE: \_\_\_\_\_

Approved as to form by:

\_\_\_\_\_  
Donna Marie Collins  
County Attorney's Office