

DATE EFFECTIVE: _____

ORDINANCE NO. 06-07-_____

AN ORDINANCE TO BE KNOWN AS THE HIGHLANDS COUNTY PROPORTIONATE FAIR-SHARE ORDINANCE; PROVIDING FOR PURPOSE, INTENT, AND FINDINGS; PROVIDING FOR APPLICABILITY; PROVIDING FOR GENERAL REQUIREMENTS; PROVIDING FOR INTERGOVERNMENTAL COORDINATION; PROVIDING FOR APPLICATION PROCESS; PROVIDING FOR DETERMINATION OF PROPORTIONATE FAIR-SHARE OBLIGATION; PROVIDING FOR IMPACT FEE CREDIT FOR PROPORTIONATE FAIR-SHARE MITIGATION; PROVIDING FOR PROPORTIONATE FAIR-SHARE AGREEMENTS; PROVIDING FOR APPROPRIATION OF FAIR-SHARE REVENUES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT; AND, PROVIDING FOR AN EFFECTIVE DATE.

SECTION 1. AMENDMENT AND ADOPTION. Division 1 of Article 13 of Chapter 12 of the Code of Ordinances, Highlands County, Florida, is amended by adding thereto new Sections 12.13.140 through 12.13.149, inclusive, which are adopted to read as follows:

Section 12.13.140 Short Title: Sections 12.13.140 through 12.13.149 shall be known and may be cited as the Highlands County Proportionate Fair-Share Ordinance.

Section 12.13.141 Purpose, Intent, and Findings:

- A. Purpose and Intent:** The purpose and intent of the Highlands County Proportionate Fair-Share Ordinance 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 Section 163.3180(16), Florida Statutes.
- B. Findings:** The Board of County Commissioners (BCC) finds and determines that transportation capacity is a commodity that has a value to both the public and private sectors and that the 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. Allows developers to proceed under certain conditions, notwithstanding the failure of transportation concurrency, by contributing their proportionate fair- share of the cost of a transportation facility;

3. Contributes to the provision of adequate public facilities for future growth and promotes a commitment to comprehensive facilities planning, thereby reducing the potential for moratoria or unacceptable levels of traffic congestion;
4. 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 in the five-year Capital Improvements Schedule in the Capital Improvements Element (CIE) of the County comprehensive plan for transportation improvements; and
5. Is consistent with Section 163.3180(16), Florida Statutes, and supports the following policies in the County comprehensive plan:
 - a. Objective 3 with associated policy 3.7 of the Transportation Element
 - b. Objective 9 with associated policies 9.1, 9.2, 9.3 9.4 and 9.8 of the Transportation Element
 - c. Objective 12 with associated policy 12.1 of the Transportation Element
 - d. Objective 4 with associated policy 4.1, 4.2 and 4.3 of the Future Land Use Element
 - e. Objective 4 with associated policy of the Intergovernmental Coordination Element
 - f. Objective 2 with associated policies 2.1, 2.2 and 2.3 of the Capital Improvements Element
 - g. Objective 4 with associated policies 4.1, 4.2, 4.4, 4.5 and 4.9 of the Capital Improvements Element

12.13.142 Applicability:

- A. The Proportionate Fair-Share Program shall apply to all developments in the County that have identified or have been notified of a lack of capacity to satisfy transportation concurrency on a transportation facility in the Concurrency Management System (CMS) adopted by the BCC, including transportation facilities maintained by the Florida Department of Transportation (FDOT) or another government agency that are relied upon for concurrency determinations, pursuant to the requirements of Section 12.13.143 of this division. The Proportionate Fair-Share Program does not apply to developments of regional impact (DRIs) using proportionate fair-share under Section 163.3180(12), Florida Statutes, or to developments exempted from concurrency as provided in this division, policies in County comprehensive plan, or Chapter 163.3180, Florida Statutes, regarding exceptions and de minimis impacts.
- B. The Proportionate Fair-Share Program applies to transportation improvements or

mitigation required to address roadway link deficiencies identified at the time of concurrency review. If an intersection deficiency is identified in the concurrency denial determination and the improvements required to remedy that insufficiency can be incorporated into a link improvement pursuant to Section 12.13.143 of this division, then the costs and proportionate fair-share contribution may be included in the link improvement and calculation of the proportionate fair-share obligation made pursuant to Section 12.13.146 of this division. The Proportionate Fair-Share Program does not apply to minor intersection improvements, such as signal retiming, installing traffic signals, and constructing turn lanes required to remedy a deficiency, that are not part of a roadway link transportation concurrency requirement. The County Engineer may consider and approve major intersection improvements, such as grade separations, interchanges, and through movement capacity improvements, as eligible for the Proportionate Fair-Share Program.

12.13.143 General Requirements:

- A. An applicant 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 County comprehensive plan and applicable land development regulations.
 - 2. The transportation improvement needed for mitigation is fully funded through construction in years 2, 3, 4 or 5 of the five-year Capital Improvements Schedule in the CIE and the transportation improvement(s) upon completion, will satisfy transportation concurrency on a transportation facility on the five-year Capital Improvements Schedule in the adopted CIE. The provisions of Section 12.13.143B. of this division may apply if a project or projects needed to satisfy concurrency are not presently contained in the five-year Capital Improvements Schedule in the adopted CIE.
- B. The County 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 transportation concurrency on a transportation facility included in the five-year Capital Improvements Schedule in the CIE pursuant to this subsection, but is not, at the time the application pursuant to Section 12.13.145 of this division is made, contained or fully funded in the five-year Capital Improvements Schedule in the CIE where the following apply:
 - 1. The County adopts, by resolution or ordinance, a commitment to add the improvement to the five-year Capital Improvements Schedule in the CIE no later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be reviewed by the appropriate County body and determined to be financially feasible pursuant to Section 163.3180(16) (b) 1, Florida Statutes, consistent with the County comprehensive plan, and in compliance with the provisions of Sections 12.13.140 through 12.13.149, inclusive, of this division. In order to fulfill the obligations of the proportionate fair-share

agreement, the developer shall financially commit funds prior to the effective date of the agreement by delivering to the County a monetary payment or land for right-of-way acceptable to the County equal to the developer's proportionate fair-share obligation as stated in the proportionate fair-share agreement or by securing the developer's proportionate fair-share obligation with a cash deposit, certificate of deposit, bond or other similar cash equivalent security acceptable to the County.

2. If the funds allocated for the five-year Capital Improvements Schedule in the CIE are insufficient to fully fund construction of a transportation improvement required by the CMS, the County 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 obligation is calculated if the proportionate fair-share obligation in that agreement is sufficient to pay for one or more improvements which will, in the opinion of the County Engineer, significantly benefit the impacted transportation system.
 3. The improvement or improvements funded by the proportionate fair-share contribution must be adopted into the five-year Capital Improvements Schedule in the CIE at the next annual CIE update.
- C. Any improvement project proposed to meet the developer's proportionate fair-share obligation must meet design standards of the County for locally maintained roadways and those of the FDOT for the State Highway System.

12.13.144 Intergovernmental Coordination:

- A. Pursuant to policies in the Intergovernmental Coordination Element of the County comprehensive plan and applicable policies in the Central Florida Regional Planning Council Strategic Regional Plan, the County shall coordinate with affected jurisdictions, including FDOT, neighboring counties, and incorporated municipalities in Highlands County, 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.
- B. In the interest of intergovernmental coordination and to reflect the shared responsibilities for managing development and concurrency, the County may enter into agreements with one or more adjacent local governments to address cross-jurisdictional impacts of development on regional transportation facilities.

12.13.145 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 12.13.143 of this division.

- 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 Strategic Intermodal System designated in accordance with Sections 339.61, 339.62, 339.63, and 339.64, Florida Statutes, FDOT will be notified and invited to participate in the pre-application meeting.
- C. Eligible applicants shall submit an application to the County that includes an application fee as required by the County's current fee structure for permit application 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. Traffic Impact Study performed in accordance with the County's adopted Technical Standards Manual Procedures;
 - 6. Phasing schedule, if applicable;
 - 7. Description of requested proportionate fair-share mitigation method(s); and
 - 8. Copy of concurrency application.
- D. The County Engineer shall review the application and certify that the application is sufficient and complete within 10 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 12.13.143 of this division, then the applicant will be notified in writing of the reasons for such deficiencies within 10 business days of submittal of the application. If such deficiencies are not remedied by the applicant within 20 days of receipt of the written notification, then the application will be deemed abandoned. The County Engineer may, in his or her discretion, grant an extension of time to be determined by the County Engineer to cure such deficiencies, provided that the applicant has shown good cause for the extension and has taken reasonable steps to effect a cure.
- E. Pursuant to Section 163.3180 (16) (e), Florida Statutes, proposed proportionate fair-share mitigation for development impacts to facilities on the Strategic Intermodal System requires the concurrence of 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 determined to be sufficient, complete, and eligible, the

applicant shall be advised in writing and a proposed proportionate fair-share obligation shall be calculated and a binding agreement will be prepared by the County or the applicant with direction from the County and delivered to the appropriate parties for review, including a copy to the FDOT for any proposed proportionate fair-share mitigation on a State Highway System facility, and a copy to any incorporated municipality in Highlands County having jurisdiction, for transportation concurrency, over an impacted road, no later than 60 days from the date upon which the applicant received the notification that the application is determined to be sufficient, complete, and eligible, and no fewer than 14 days prior to the BCC meeting when the agreement will be considered. The payment or security to be provided by the developer pursuant to Section 12.13.143B.1. of this division must also be documented for consideration by the BCC. All agreements and other documents requiring execution by the developer shall be executed by the developer prior to consideration by the BCC.

- G. The County shall notify the applicant regarding the date of the BCC meeting when the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the BCC.

12.13.146 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. The fair market value of the proportionate fair-share mitigation for the impacted facilities shall not differ regardless of the method of mitigation. In calculating the proportionate fair-share obligation, a development shall not be required to pay more than its proportionate fair-share contribution regardless of the manner of mitigation. The proportionate fair-share contribution specified in the proportionate fair-share agreement shall not exceed the proportionate fair-share obligation calculated pursuant to this Section.
- C. The methodology used to calculate an applicant's proportionate fair-share obligation shall be as provided in Section 163.3180 (12), Florida Statutes, 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 level of service, multiplied by the construction cost, at the time of developer payment, of the improvement necessary to maintain the adopted level of service. For purposes of calculating the applicant's proportionate fair-share obligation pursuant to this methodology, "construction cost" includes all associated costs of the improvement, including, but not limited to, design, right-of-way acquisition, planning, engineering, inspection, utilities, financing costs, and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred. As used in this section, the term "same

development” shall mean any development occurring on land existing as a single parcel or as contiguous parcels having the same owners on October 1, 2006, and all lands required to be developed as a single development by zoning amendment, comprehensive plan amendment, ordinance or agreement.

OR

$$\text{Proportionate Fair-Share} = \sum \left[\left(\frac{\text{Development Trips}_i}{\text{MSV Increase}_i} \right) \times \text{Cost}_i \right]$$

Where:

Development Trips_i =

_____ Those trips from the stage or phase of development under review that are assigned to roadway segment “i” when that stage or phase has triggered a deficiency according to the CMS;

MSV Increase_i = Maximum service volume increase provided by the eligible improvement to roadway segment “i” per Section 12.13.143 of this division;

Cost_i = 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, utilities, financing costs, and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred. The construction cost inflation factor shall be determined by the County Engineer based upon the most recent publication of the “*FDOT Transportation Costs*” or “*The Engineering News of Record*” or other documentation of construction cost inflation acceptable to the County Engineer.

- D. For the purposes of determining proportionate fair-share obligations, improvement costs shall be based upon a certified and sealed engineer’s cost estimate for a project defined in a proportionate fair share agreement. Such cost estimate will be consistent with unit bid costs of recent similar bid projects, preferably within Highlands County, within the last year. This cost estimate will be reviewed for reasonableness and approved or disapproved, in writing, by the County Engineer. If disapproved, the grounds for the disapproval will be indicated to the applicant so that a revised cost estimate may be resubmitted.
- E. If the County 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 County has accepted right-of-way dedication for all or part of the proportionate fair-share contribution, credit for the dedication of the non-site related right-of-way shall be valued on the date of the dedication at an amount up to 120 percent of the most recent assessed value by the County property appraiser

or, at the option of the applicant, by fair market value established by an independent appraisal approved and ordered by the County upon receipt of funds from the applicant to pay for the appraisal. 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 County at no expense to the County. If the estimated value of the right-of-way dedication proposed by the applicant is less than the County 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 to satisfy a proportionate fair-share obligation, public or private partners should contact the FDOT for essential information about compliance with federal law and regulations and should contact the County Engineer for essential information about compliance with the County's Technical Standards Manual and Land Development Regulations.

- G. If through the approval of a previous phase of a development, a proportionate fair-share obligation pursuant to this program was required on a roadway segment and that obligation was satisfied, the previous payment may be applied as a credit toward proportionate fair-share obligations on the same roadway segment for future phases of the same development.

12.13.147 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 contribution is used to address the same capital infrastructure improvements creditable as allowed by the County Impact Fee Ordinance.
- B. Impact fee credits for the proportionate fair-share contributions will be determined when the transportation impact fee obligation is calculated for the proposed development. Impact fees owed by the applicant will be reduced as provided in proportionate fair-share agreement as they become due pursuant to the County Impact Fee Ordinance. If the applicant's proportionate fair-share obligation is less than the development's anticipated transportation 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 County pursuant to the requirements of the County Impact Fee Ordinance.
- C. Major projects not included within the County Impact Fee Ordinance or created under Section 12.13.143 B. 1. and 2. of this division which can demonstrate a significant benefit to the impacted transportation system may be eligible for impact fee credits to the extent allowed by the County Impact Fee Ordinance.
- 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 transportation impact fee credit based upon proportionate fair-share contributions

- for a proposed development cannot be transferred to any other location.
- E. No impact fee credit shall be allowed for any project that is not included in the five-year Capital Improvements Schedule in the CIE.

12.13.148 Proportionate Fair-Share Agreements:

- A. Upon the effective date of an executed proportionate fair-share agreement for which the proportionate fair-share obligation has been paid or adequately secured as provided in Section 12.13.143 B.1. of this division, the applicant shall receive a County certificate of concurrency approval. Should the certificate of concurrency approval expire following execution of the proportionate fair-share agreement, the proportionate fair-share agreement shall be considered null and void, and the applicant shall be required to reapply.
- B. Payment of the proportionate fair-share obligation is due in full prior to issuance of the final development order or recording of the final plat, whichever is last to occur, and shall be non-refundable. If the payment is submitted more than 12 months after the date of execution of the proportionate fair-share agreement by all parties, the proportionate fair-share obligation 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 12.13.146 of this division and adjusted accordingly.
- C. All facilities constructed by a developer pursuant to a proportionate fair-share agreement must be completed or completion adequately secured pursuant to Section 12.13.143 B.1. of this division prior to the issuance of the final development order.
- 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, whichever is last to occur.
- 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 by the BCC. The application fee shall be nonrefundable and the applicant shall reimburse the County for all associated advertising costs incurred by the County.
- G. The County may enter into proportionate fair-share agreements for selected corridors or areawide improvements to facilitate collaboration among multiple applicants on improvements to a shared transportation facility.
- H. Payment of the proportionate fair-share obligation calculated pursuant to Section 12.13.146 of this division whether paid in money or by dedication of right-of-way or by delivery of adequate security pursuant to Section 12.13.143 B. 1. of this division shall be nonrefundable.

- I. If an executed proportionate fair-share agreement is rendered null and void due to expiration of an approved certificate of concurrency after payment of the proportionate fair-share obligation in money or by dedication of right-of-way and, (i) within six months thereafter, the applicant re-applies for a proportionate fair-share agreement for the same property, and (ii) within nine months after the timely filing of that re-application, another proportionate fair-share agreement is entered into for the same property by the applicant and the BCC, a credit shall be given for that payment of the proportionate fair-share obligation. The amount of the credit shall be an amount equal to that payment multiplied by a fraction, the numerator of which is the number of trips for the un-built part of the development for which that payment was made and the denominator of which is the total trips for the development for which that payment was made.

12.13.149 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 CIE, or as otherwise established in the terms of the proportionate fair-share agreement. At the discretion of the BCC, 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 Transportation Regional Incentive Program.
- B. In the event a scheduled facility improvement is removed from the five-year Schedule of Capital Improvements in the CIE, then the revenues collected for its construction may be applied toward the construction of another improvement within that same corridor or impact area as determined by the County Engineer that would mitigate the impacts of development pursuant to the requirements of Section 12.13.143 B. 2. of this division.
- 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, Florida Statutes, 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 Transportation Regional Incentive Program. Such coordination shall be ratified by the County through an interlocal agreement that establishes a procedure for earmarking of the developer contributions for this purpose.
- D. When an applicant constructs a transportation facility that exceeds the applicant's proportionate fair-share obligation calculated under Section 12.13.146 of this division, the County shall reimburse the applicant for the excess contribution according to the terms and conditions of the proportionate fair-share agreement using one or more of the following methods:
 1. By using future transportation impact fees to the extent allowed by the County Impact Fee Ordinance.
 2. By using future proportionate fair-share payments from other applicants

for the same facility, or from proportionate fair-share payments for other transportation facilities for which other funding has been secured to build the project for which the proportionate fair share payment was originally collected.

3. Through other compensation or means acceptable to the County and the applicant.

SECTION 2. SEVERABILITY: The sections, subsections, paragraphs, sentences, clauses and phrases of this Ordinance are severable, and if any phrase, clause, sentence, paragraph, subsection nor section of this Ordinance shall be declared invalid, unconstitutional or unenforceable by the valid judgment or decree of a court of competent jurisdiction, such invalidity, unconstitutionality or unenforceability shall not affect any of the remaining phrases, clauses, sentences, paragraphs, subsections, and section of this Ordinance.

SECTION 3. CONFLICT: Any ordinance or part thereof in conflict with this Ordinance or any part hereof is hereby repealed to the extent of the conflict.

SECTION 4. EFFECTIVE DATE: This Ordinance shall take effect on March 1, 2007.

DONE AND ADOPTED this ____ day of December, 2006.

BOARD OF COUNTY COMMISSIONERS
OF HIGHLANDS COUNTY, FLORIDA

(SEAL)

By: _____
C. Guy Maxcy, Chairman

ATTEST: _____
L.E. "Luke" Brooker, Clerk