This ordinance establishes the Proportionate Fair Share Program by amending Chapter 5 of the Land Development Regulations and creating Section 5.04.00, Land Development Regulations, entitled “Proportionate Fair Share Program,” to establish a method for mitigating the impacts of development on transportation facilities with concurrency deficiencies through proportionate share agreements with developers.

**ORDINANCE PROPORTIONATE FAIR SHARE PROGRAM**

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF LAKE COUNTY, FLORIDA; AMENDING SECTION 5.01.01; LAND DEVELOPMENT REGULATIONS, ENTITLED GENERAL PROVISIONS; AMENDING SECTION 5.02.00, LAND DEVELOPMENT REGULATIONS, ENTITLED CONCURRENCY MANAGEMENT SYSTEM; PROVIDING FOR AN OPTION FOR A PROPORTIONATE FAIR SHARE AGREEMENT; AMENDING SECTION 5.03.02, LAND DEVELOPMENT REGULATIONS, ENTITLED PUBLIC FACILITY/SERVICE CAPACITY REVIEW CRITERIA; AMENDING SECTION 5.03.04, LAND DEVELOPMENT REGULATIONS, ENTITLED ALTERNATE DATA FOR CAPACITY ANALYSIS; PROVIDING AN EXEMPTION FOR TRANSPORTATION CAPACITY FROM ALTERNATE DATA FOR CAPACITY ANALYSIS; PROVIDING FOR AN OPTION FOR A PROPORTIONATE FAIR SHARE AGREEMENT; AMENDING SECTION 5.03.07, LAND DEVELOPMENT REGULATIONS, ENTITLED PAYING FOR CAPACITY RESERVATIONS; CREATING SECTION 5.04.00, LAKE COUNTY CODE, LAND DEVELOPMENT REGULATIONS, ENTITLED PROPORTIONATE FAIR SHARE PROGRAM; PROVIDING FOR A METHOD OF MITIGATING IMPACTS ON TRANSPORTATION FACILITIES; PROVIDING FOR PURPOSE AND INTENT; PROVIDING FOR APPLICABILITY; PROVIDING GENERAL REQUIREMENTS; PROVIDING THE 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 INCLUSION IN THE CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, transportation concurrency is a growth management principle that ensures the necessary transportation facilities and services are available concurrent with the impacts of development; and

WHEREAS, the Lake County Comprehensive Plan, Objective 1-5 provides that Lake County shall assure that needed public services and facilities are developed concurrent with the impact of new development; and
WHEREAS, the Lake County Comprehensive Plan, Objective 1-13 provides that the County shall monitor impacts generated by future development and that no development orders or permits shall be issued unless it has been determined that Concurrency Management System (CMS) criteria have been met; and

WHEREAS, Policy 2-2.3 of the Lake County Comprehensive Plan provides that the County will coordinate with municipalities to assure that impacts of future development will not cause levels of service standards to diminish below the adopted level; and

WHEREAS, the County has worked closely with the municipalities and the Lake-Sumter MPO to develop a proportionate fair share ordinance that will allow for effective intergovernmental coordination for implementation of the proportionate share program; and

WHEREAS, Policy 2-2.6 of the Lake County Comprehensive Plan states that prior to the issuance of a development order or permit, an applicant must assure that adequate roadway capacity is available concurrent with the impacts of the proposed development and that the proposed development shall not degrade the roadway below the adopted level of service standard; and

WHEREAS, Section 5.00.01, Land Development Regulations, states that it is the intent of Chapter 5 to ensure that level of service standards adopted in the Lake County Comprehensive Plan for transportation facilities and services are maintained during the development review process; and

WHEREAS, Section 163.3180(16), Florida Statutes, directes local governments to enact concurrency management ordinances that allow for proportionate fair share contributions from developers toward concurrency requirements; and

WHEREAS, the Proportionate Fair Share Program allows the public and private sections to cooperate in mitigating the impacts of development on transportation facilities; and

WHEREAS, the Board now desires to establish the Proportionate Fair Share Program to encourage private sector involvement in the improvement of transportation facilities with a concurrency deficiency.

NOW THEREFORE, BE IT ORDAINED by the Board of County Commissioners of Lake County, Florida, as follows:

Section 1. Recitals. The foregoing recitals are true and correct and incorporated herein by reference.

Section 2. Amendment. Section 5.01.01, Lake County Code, Appendix E, Land Development Regulations, entitled General, is amended to read as follows:
5.01 | Purpose and Intent.

A. All Development Orders, as defined in Chapter II, issued by the County shall be subject to Concurrency Management. Exemptions for Concurrency Management shall be granted for Development determined by the County to have negligible impacts on public facilities and services in accordance with the exemption criteria established in Section 5.01.02. Additionally, exemptions from the Concurrency Management Review, or portions thereof, may be granted for developments determined by the County to have "De Minimus" impacts on public facilities and services in accordance with the exemption criteria established in Section 5.01.03.

B. Development associated with Development Orders that have been granted vested rights in accordance with the criteria established in Section 5.04.00 shall not be subject to the Concurrency Management Review.

Section 3. Amendment. Amendment. Section 5.02.00, Lake County Code, Appendix E, Land Development Regulations, entitled Concurrency Management System, is amended to read as follows:

5.02 | Concurrency Management System.

No Development Order shall be issued by the County unless there is sufficient capacity of public facilities and services, at the adopted level of services standards, needed to support the Development, concurrent with the impacts of such Development, in accordance with the following criteria:

(Subsections A and B shall remain unchanged)

C. Transportation (Roads). For transportation facilities and services, the concurrency management review procedure shall be satisfied through one (1) of the following actions approved by Lake County during the development review process:

1. Satisfy one (1) of the four (4) criteria stipulated above for potable water, sanitary sewer, solid waste and stormwater management facilities and services; or

2. Necessary Improvements are programmed within the first three (3) years of the Five-Year Schedule of Capital Improvements provided that each of the following conditions is met:

   a. The Five-Year Capital Improvements Program and the Capital Improvements Element of the Lake County Comprehensive Plan are financially feasible. As permitted by Section 9J-5.0055(2)(e)1, 9J-5.0055(3)(c)2, F.A.C., concurrency determinations shall only include
transportation projects scheduled in or before the first three (3) years of
the Five-Year Schedule of Capital Improvements

b. The Five-Year Capital Improvements Program includes Improvements
necessary to correct any identified Road deficiencies and maintained
adopted levels of service for existing and Permitted Development within
the first three (3) years of the Five-Year Schedule of Capital
Improvements and the provision of service will commence in or before
that third year.

c. The Five-Year Capital Improvements Program is a realistic, financially
feasible program based on currently available revenue sources and
Development Orders will only be issued if the public facilities necessary
to serve the Development are available or included in or before the first
three (3) years of the Five-Year Schedule of Capital Improvements.

d. The Five-Year Capital Improvements Program identifies whether funding
is for design, engineering, consultant fees, or construction and indicates,
by fiscal year, how the dollars will be allocated.

3 Execution of a Proportionate Fair Share Agreement in accordance with
Section 5.04.07, Land Development Regulations.

Section 4. Amendment. Section 5.03.02, Lake County Code, Appendix E, Land
Development Regulations, entitled Public Facility/Service Capacity Review Criteria, is amended
to read as follows:

5.03.02 Public Facility/Service Capacity Review Criteria. Capacity analysis for public
facilities and services shall be completed in accordance with the following criteria:

A. Roads.

1. The demand on transportation facilities and services shall be based on the
number of trips generated by the proposed Development using the most
recent edition of the ITE Trip Generation Manual, a trip distribution which
is mutually agreed upon by the Applicant and the County using the best
trip attraction/generation data available to the County and a Development
impact area established using the following impact area guidelines:

a. There shall not be an impact area established, not shall there be a
transportation impact associated with, Developments that have no
impact a de minimus impact on transportation facilities and
services. No impact is one that would not affect more than 1
percent of the maximum volume, at the adopted level of service
standard, of the transportation facility providing direct access to
the proposed Development, and that is caused by an increase in
Density or Intensity that is less than or equal to twice the Density of the existing Land Use, or, in the case of vacant Land, is a Density of less than one (1) Dwelling Unit per quarter acre of a floor area ratio of .1 for nonresidential uses.

b. The impact area for Developments that generate less than one hundred (100) peak hour/peak direction trips (approximately one thousand five hundred (1,500) trips per day) on a weekday shall include, at a minimum, the roadways which provide access to the proposed Development and roadways within one-half (1/2) mile of the proposed access to the Development. This minimum impact area shall be increased, at the discretion of the County Manager or his designee, if it can be demonstrated that the proposed Development has substantial impact on additional roadways because of the location of the Development in relation to arterial and Collector Roadways (e.g., a Development along a local roadway for which access to a collector or an arterial roadway would require traversing a distance in excess of one-half (1/2) mile and for which the nearest collector or arterial roadway is the only roadway providing trip distribution).

c. For Developments that generate one hundred (100) peak hour/peak direction trips or more on a weekday, the impact area shall include, at a minimum, the roadways which provide access to the proposed Development and roadways within one-half (1/2) mile of the proposed access to the Development, as well as the area of significant impact which shall include an area to: 1) a point where traffic generated by the Development is less than ten (10) percent of the maximum volumes, at the adopted level of service standard, of the transportation facilities; and 2) a point where traffic generated by the Development is less than ten (10) percent of the intersection design capacity as defined in the 1985 2000 Highway Capacity Manual, as amended.

2. Once the demand on transportation facilities has been calculated, it shall be compared to the available capacity of the transportation facilities. Available capacity shall be determined by subtracting the existing traffic volume on the transportation facilities, the traffic generated by Developments that have previously reserved capacity on the transportation facilities and the traffic generated by Developments that have previously encumbered capacity on the transportation facilities from the maximum volume of the transportation facilities, at the adopted level of service standards. If the demand on transportation facilities and services exceeds the available capacity of the transportation facilities and services, the Development Order associated with the concurrency Management review shall not be approved unless a Proportionate Fair Share
Agreement has been executed in accordance with Section 5.04.00, Land Development Regulations.

3. In the event that the impact area for the proposed Development includes transportation facilities and services within a municipality or within an adjacent county, the affected municipality or adjacent county shall be notified of the proposed Development and its associated transportation facilities and services demand, and shall be requested to provide a letter of response indicating whether the transportation facilities and services within the municipality or adjacent county have capacity available to serve the proposed Development. The affected municipality or county shall be given 30 days from the request to provide a response. If the affected municipality or county indicates that the demand on transportation facilities and services exceeds the available capacity, the Development Order associated with the concurrency management review shall not be approved unless a Proportionate Fair Share Agreement has been executed in accordance with Section 5.04.00, Land Development Regulations.

(Subsections B through F shall remain unchanged)

Section 5. Amendment. Section 5.03.07, Lake County Code, Appendix E, Land Development Regulations, entitled Paying for Capacity Reservation, is hereby amended to read as follows:

5.03.07 Paying for Capacity Reservation.

A. In order to reserve capacity, the Applicant must provide one (1) of the following forms of payment:

1. Direct payment of fees;
2. Letter of credit;
3. Development agreement to establish a first priority lien against the property; or
4. County approved cash escrow agreement.

B. Actual impact fees are due and payable in accordance with the criteria established in Chapter XV of these Land Development Regulations or Chapter 22 of the Lake County Code in association with the building permit issued by the County since the capacity reservation fee only represents an estimate of County impact fees. All funds collected for the purpose of reserving capacity shall be used as partial payment of the transportation impact fees associated with the Development.

Section 6. Creation. Section 5.04.00, Lake County Code, Appendix E, Land Development Regulations, entitled Proportionate Fair Share Program, is hereby created to read as follows:
5.04.00 Proportionate Fair Share Program

5.04.01 Purpose and Intent. The purpose of this section is to establish a mitigation methodology for transportation facilities development impacts through cooperative efforts of the public and private sectors. This methodology shall be known as the Proportionate Fair Share Program as specified in §163.3180(16), F.S. This section will provide methods and procedures for the County to coordinate the Proportionate Fair Share Program.

5.04.02 Applicability. The Proportionate Fair Share Program shall apply to all proposed development in Lake County that have been notified by the County Manager or designee that demand on transportation facilities and services exceeds the available capacity. The Proportionate Fair Share Program does not apply to developments of regional impact (DRIs) subject to proportionate share under §163.3180(12), F.S., vested developments, or to developments exempted from concurrency as provided by local and state law.

5.04.03 General Requirements. If an applicant receives a Notice of Capacity Determination indicating that there is a lack of capacity to satisfy transportation concurrency pursuant to Section 5.03.05(A)(2), an applicant may choose to satisfy the transportation concurrency requirements by making a proportionate fair share contribution, provided that one of the following exists:

A. The five-year schedule of capital improvements in the Capital Improvements Element (CIE) of the Comprehensive Plan includes transportation improvement(s) in years four or five that, upon completion, will provide the capacity necessary to meet concurrency at that time; or

B. A resolution is adopted which specifies a commitment to add improvements that will provide the capacity necessary to satisfy concurrency. If the improvements are not contained in the five-year schedule of capital improvements in the CIE, the specified improvements shall be included no later than the next regularly scheduled update. To qualify for consideration under this section, the proposed improvement must be

1. Reviewed by the County Manager or designee and must be determined to be financially feasible pursuant to §163.3180(16)(b)1, F.S.;

2. Consistent with the comprehensive plan of each jurisdiction within which any portion of the proposed improvement occurs; and

3. In compliance with the provisions of this section.

If a transportation facility proposed for the Proportionate Fair Share Program is under the jurisdiction of another entity, such as FDOT, the proposed facility shall be included in the five-year Work Program of that entity or, a
commitment shall be adopted through resolution to add the improvement to
the schedule of capital improvements in the CIE or long-term schedule of
capital improvements for an adopted long-term Concurrency Management
System (CMS) no later than the next regularly scheduled update; or

C. If the funds allocated for the schedule of capital improvements in the CIE are
insufficient to fund construction of a transportation improvement needed to satisfy
concurrency, the County may enter into a binding Proportionate Fair Share
Agreement with the applicant. The agreement may authorize construction of the
development if the proportionate fair share amount in such agreement is
determined to be sufficient to pay for improvements which will, in the opinion of
each governing body maintaining the transportation facilities, significantly benefit
the impacted transportation system. The improvement(s) funded by the
proportionate fair share component must, for each affected local jurisdiction, be
adopted into the capital improvements schedule of the CIE or the long-term
schedule of capital improvements for an adopted long-term CMS at the next
annual capital improvements element update.

5.04.04 Application Process

A. Upon receipt of a Notice of Capacity Determination pursuant to Section
5.03.05(A)(2) indicating a lack of capacity to satisfy transportation concurrency,
the applicant shall be notified in writing of the opportunity to satisfy
transportation concurrency through the Proportionate Fair Share Program.

B. Prior to submitting an application for a Proportionate Fair Share Agreement, a
pre-application meeting shall be held with all affected jurisdictions to discuss
eligibility, application submittal requirements, mitigation options, and related
issues. The appropriate parties for review of a proposed Proportionate Fair Share
Agreement shall include the jurisdiction maintaining the transportation facility
subject to the agreement, if other than Lake County. If the impacted facility is a
state facility, then the Florida Department of Transportation (FDOT) will be
invited to participate in the pre-application meeting.

C. The County Manager, or designee, shall review the application and certify that the
application is sufficient and complete within ten (10) days of receipt. If an
application is determined to be insufficient, incomplete or inconsistent with the
general requirements of the Proportionate Fair Share Program, then the applicant
shall be notified in writing of the reasons for such deficiencies within ten (10)
days of receipt of the application. If such deficiencies are not remedied by the
applicant within thirty (30) calendar days from the date of the written notification
then the application will be deemed abandoned. The County Manager, or
designee, may grant one (1) extension of time not to exceed sixty (60) calendar
days to cure such deficiencies, provided that the applicant has shown good cause
for requesting the extension and has taken reasonable steps to remedy the
deficiencies.
D. Pursuant to § 163.3180(16)(e), F.S., proposed proportionate fair share mitigation for development impacts to facilities on the Strategic Intermodal System (SIS) requires the approval of FDOT. The applicant shall submit evidence of an agreement between the applicant and FDOT for inclusion in the proportionate fair share agreement. The County also may need to enter into an agreement with FDOT as appropriate.

E. When an application is deemed sufficient, complete, and eligible, the applicant shall be advised in writing and a proposed proportionate fair share obligation and binding agreement will be prepared by the County. The agreement will be delivered to the appropriate parties for review no later than sixty (60) calendar days from the date of notification of a sufficient application and no fewer than fifteen (15) days prior to the Board of County Commissioners meeting when the agreement will be considered.

F. The County Manager or designee shall notify the applicant regarding the date of the Board of County Commissioners meeting when the agreement will be considered for final approval. No proportionate fair share agreement will be effective until approved by the Board of County Commissioners.

5.04.05 Determining Proportionate Fair Share Obligation

A. Proportionate fair share mitigation for concurrency impacts may include, without limitation, separately or collectively:

1. The addition of transportation capacity through several means such as the physical widening and/or reconstruction of a roadway to add capacity;

2. The addition of transportation capacity through creation of new reliever roadways;

3. Monetary contributions;

4. New network additions;

5. Contributing to new transit capital facilities (e.g., bus rapid transit corridor);

6. Contributing to the expansion of bus fleets to increase service frequency;

7. Other contributions to mass transit system expenses; or

8. Any other means determined by the County Manager or designee to add transportation capacity sufficient to mitigate impacts.
B. A development shall not be required to pay more than its proportionate fair share. The fair market value of the proportionate fair share mitigation for the impacted facilities shall not differ regardless of the method of mitigation.

C. The following formula shall be used to calculate an applicant’s proportionate fair share obligation as provided for in § 163.3180(12), F.S.:

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

Where:

- Development Trips\(_i\) = Those trips from the stage or phase of development under review that are assigned to roadway segment “\(i\)” and have triggered a deficiency per the CMS; only those trips that trigger a concurrency deficiency will be included in the proportionate fair share calculation;

- SV Increase\(_i\) = Service volume increase contributed by the eligible improvement to roadway segment “\(i\)”

- 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, and physical development costs directly associated with construction at the anticipated cost in the year it will be incurred.

For the purpose of determining proportionate fair share obligations, the County shall determine improvement costs based upon the actual cost of the improvement as obtained from cost estimates contained in the CIE, the Lake County Transportation Construction Program or the FDOT Work Program. If improvement cost estimates are not available, they shall be determined by the jurisdiction maintaining the facility annually through an analysis of the costs by cross section type, incorporating data from recent projects. In order to accommodate increases in construction material costs, project costs shall be adjusted as necessary.

D. 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. Any improvement project proposed to meet the applicant’s fair share obligation must meet design standards of the jurisdiction within which the majority of the planned improvements would be located for locally maintained roadways and those of the FDOT for the state and federal highway system.
E. If the County has accepted right-of-way dedication for the proportionate fair share payment, credit for the dedication of the non-site related right-of-way shall be valued on the date of the dedication at 120% of the most recent assessed value by the Lake County Property Appraiser or, at the option of the applicant, by fair market value established by an independent appraisal approved by the County and at no expense to the County. The applicant shall supply a survey 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 shall pay the difference. Prior to purchase or acquisition of any real estate or acceptance of donations of real estate intended to be used for the proportionate fair share, public or private partners should contact FDOT for essential information about compliance with federal law and regulations.

5.04.06 Impact Fee Credit for Proportionate Share Mitigation

A. Proportionate fair share contributions shall be applied as a credit against impact fees to the extent that the proportionate fair share mitigation is used to address the same capital infrastructure improvements contemplated by the County’s impact fee ordinance. Applicants shall be eligible for impact fee credit for the portion of their proportionate fair share payment that applies to a segment for which the transportation impact fee is also being applied.

B. Impact fee credits for the proportionate fair share contribution will be determined when the Proportionate Fair Share Agreement is executed. Impact fees owed by the applicant will be reduced per the Proportionate Fair Share Agreement. 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 and any other jurisdictions entitled to collect impact fees, pursuant to the requirements of the applicable impact fee ordinances.

C. 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.

5.04.07 Proportionate Fair Share Agreements

A. If an applicant elects to make a proportionate fair share contribution to satisfy transportation concurrency, a binding agreement between the applicant and the County, and other affected jurisdictions as necessary, shall be executed in accordance with the requirements of this section.
B. Upon approval of the Proportionate Fair Share Agreement by the Board of County Commissioners, the applicant shall be provided with satisfactory Notice of Capacity Determination. The satisfactory Notice of Capacity Determination shall expire if the underlying Development Order expires, is revoked, or denied by the County. Otherwise a satisfactory Notice of Capacity Determination shall expire if an extension can no longer be granted for the underlying Development Order. An expired satisfactory Notice of Capacity Determination shall be considered void, and the applicant shall be required to reapply for a concurrency determination. If the proposed development’s impacts were the only impacts causing the potential deficient operation of the facility, the specific project may be removed from the CIE.

C. If the applicant agrees to cash payment of the proportionate fair share contribution, payment is due in full prior to issuance of the final development order. Once paid, contributions shall be non-refundable. If payment is submitted more than six (6) months after the date of execution of the Agreement, the proportionate fair share cost shall be recalculated at the time of payment based on the best estimate of the construction cost of the required improvement, pursuant to Section 5.04.05 and adjusted accordingly.

D. If the applicant agrees to construct transportation improvements as authorized by the Agreement, all improvement must be completed prior to issuance of a final development order, or as otherwise established in the Agreement. The Agreement shall be accompanied by a security instrument sufficient to ensure the completion of all required improvements. Any security instrument, in a form acceptable to the County, shall be for at least 150% of the estimated cost of the improvements. The security instrument shall be irrevocable and shall remain in effect until the developer fully completes the required improvements.

E. If an applicant agrees to dedicate right-of-way, dedication must be completed prior to issuance of the final development order.

F. Any requested change to a development order may be subject to additional proportionate fair share contributions to the extent the change would generate additional impacts that would require mitigation.

G. Applicants may submit a letter to withdraw from the Proportionate Fair Share Agreement at any time prior to the execution of the agreement. The application fee will be non-refundable.

H. The County may enter into Proportionate Fair Share Agreements with multiple applicants for selected corridor improvements to a shared transportation facility.
5.04.08 Appropriation of Fair Share Revenues

A. Proportionate fair share revenues shall be placed in the appropriate project account of the CIE, 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.

B. If a scheduled facility improvement is removed from the CIE, the revenues collected for its construction may be applied toward the construction of another improvement within the same corridor or sector that would mitigate the impacts of development pursuant to the requirements of Section 5.04.03(C).

C. Where an impacted facility has been designated as a regionally significant transportation facility on the Lake-Sumter MPO Regionally Significant Corridors Map, the County may coordinate with other impacted jurisdictions and agencies to apply proportionate fair share contributions to seek funding for improving the impacted regional facility under the FDOT Transportation Regional Incentive Program (TRIP). Proportionate fair share revenues may be used as the 50% local match for funding under the FDOT TRIP. Such coordination shall be ratified by the County through an interlocal agreement establishing 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 5.04.05, the County shall reimburse the applicant for the excess contribution using one or more of the following methods:

1. An impact fee credit account may be established for the applicant in the amount of the excess contribution. A portion of the credit may be assigned to subsequent owners of the land to be developed, under terms and conditions acceptable to the County. The credit must run with the land and may not be assigned to the developer of any other parcel of property.

2. An account may be established for the applicant for reimbursing excess contributions with proportionate fair share payments from future applicants on the facility.

3. The County may compensate the applicant for the excess contribution through payment or some combination of means acceptable to the County and the applicant.

Section 7. Severability. If any section, sentence, clause, or phrase of the Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portion of this Ordinance.
Section 8. Inclusion in Code. It is the intent of the Board of County Commissioners that the provisions of this Ordinance shall become and be made a part of the Lake County Code and that the sections of this Ordinance may be renumbered or relettered and the word “ordinance” may be changed to “section”, “article”, or such other appropriate word or phrase in order to accomplish such intentions.

Section 9. Effective Date. This ordinance shall become effective as provided for by law.

Enacted this _____ day of ______________, 2006.

Filed with the Secretary of State __________________________ 2006.

Effective ____________________________.