ORANGE COUNTY GOVERNMENT FLORIDA

Interoffice Memorandum

AGENDA ITEM

July 15, 2021

TO: Mayor Jerry L. Demings
—AND—
County Commissioners

FROM: Jon V. Weiss, P.E., Director
Planning, Environmental, and Development Services Department

CONTACT PERSON: **Renzo Nastasi, Manager**
Transportation Planning Division
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SUBJECT: July 27, 2021 – Public Workhop #2
Demonstrated Need Study relating to Orange County Code Article IV, Chapter 23, Transportation Impact Fees

On June 4, 2021, Governor DeSantis signed House Bill 337 (HB 337) into law amending Florida Statutes Chapter 163.3801, the Florida Impact Fee Act, by setting additional and more stringent limitations on local government's ability to charge and collect impact fees. Key provisions of the new law establish phase-in limitations for impact fee increases generally as follows:

- Increases between 0 – 25% must be implemented in two equal annual increments;
- Increases between 25 – 50% percent must be implemented in four equal installments;
- An impact fee increase may not exceed 50 percent of the current impact fee rate; and
- An impact fee may not be increased more than once every 4 years.

HB 337 also provides for an option for local governments to exceed the phase-in limitations pursuant to a study demonstrating extraordinary circumstances justifying the need to exceed phase-in limitations. Additionally, the local government jurisdiction must hold not less than two publicly noticed workshops dedicated to the extraordinary circumstances necessitating the need to exceed the phase-in limitations. On July 13, 2021, staff provided the first of two workshops in compliance with the provisions of HB 337, as adopted, relating to a Demonstrated Need Study to exceed the phase in limitations.

This second public workshop will provide a brief background on the Board's recent transportation impact fee decisions, summarize the findings of the Demonstrated Need Study, and present a few options the Board may consider at a future hearing. The public hearing proposing new impact fees is tentatively scheduled in August 2021.

There is no action requested at this workshop.

JVW/ABM/fb

Attachment

c: Byron Brooks, County Administrator
Christopher R. Testerman, AICP, Deputy County Administrator
Joel Prinsell, Deputy County Attorney

Technical Memorandum

July 6, 2021

TO: Mayor Jerry L. Demings
–AND–
County Commissioners

FROM: Jon V. Weiss, P.E., Director
Planning, Environmental, and Development Services Department

SUBJECT: Demonstrated Need Study - Transportation Impact Fees

Executive Summary

Orange County completed an update to its Transportation Impact Fee Study in 2020, with the last update occurring back in 2012. Following two separate public hearings, in late 2020 and early 2021, the Board of County Commissioners (Board) adopted ordinances proposing to increase transportation impact fees significantly from current rates. Those impact fee increases were originally scheduled to be implemented in two phases in July 2021 and July 2022, but were later accelerated to late June 2021 in response to proposed Florida state legislation, known as House Bill 337 (HB 337). Ultimately, HB 337 was passed and subsequently became law, amending Florida Statutes, Section 163.31801, to establish phase-in limitations on local government increases of impact fees, and making those phase-in limitations retroactive to January 2021. The adopted impact fee increases scheduled to take effect in late June 2021 would have been inconsistent with the new State law. Therefore, on June 22, 2021, the Board updated its transportation impact fee ordinance to suspend the scheduled increases before they went into effect.

In addition, HB 337 also provided criteria to be met should a local government desire to increase impact fees beyond the new phase-in limitations. These criteria include the completion of a "Demonstrated Need Study," a requirement that the local government hold not less than two public workshops dedicated to the extraordinary circumstances justifying the need to exceed the phase-in limitations, and a requirement that any impact fee increase be approved by a two-thirds vote of the governing board.

This Demonstrated Need Study has been prepared to meet the requirements of HB 337 to provide the Board with the option to consider increasing impact fees beyond the new phase-in limitations. The required public workshops have been scheduled for July 13, 2021 and July 27, 2021, and a public hearing on an ordinance update is anticipated in August 2021.

This Demonstrated Need Study establishes the extraordinary circumstances in Orange County necessitating the need to exceed the phase-in limitations of Florida Statutes. Based on the data presented in this study:

- Orange County is growing at a rate that outpaces the rate of growth for the State as a whole. The County's high rate of growth has placed a significant demand on its transportation network.
- Over the past several years, the County has seen rapidly increasing levels of transportation congestion, a cost borne by all users of the transportation system.
- Since the previous Transportation Impact Fee Study update in 2012, transportation improvement costs have increased significantly.
- Transportation impact fees are an essential source of funding for the County's Capital Improvement Plan. Transportation needs and funding are so critical that the County had considered a transportation surtax initiative prior to the COVID-19 pandemic.
- The phase-in limitations would prevent effective implementation of tiered impact fees reflecting recent methodology changes that incorporated local data and are based on the County's growth policy objectives.
- When the Board last updated its transportation impact fee ordinance in 2012, it adopted a policy factor discounting impact fees by 44% (the "policy discount factor"). During its recent public hearings, the Board decided to reduce, and later eliminate, the policy discount factor, providing for new construction to pay its fair share cost of needed growth-related infrastructure.
- Implementing increased transportation impact fees in the manner provided for under the phase-in limitations in HB 337 would result in a significant revenue loss to Orange County.

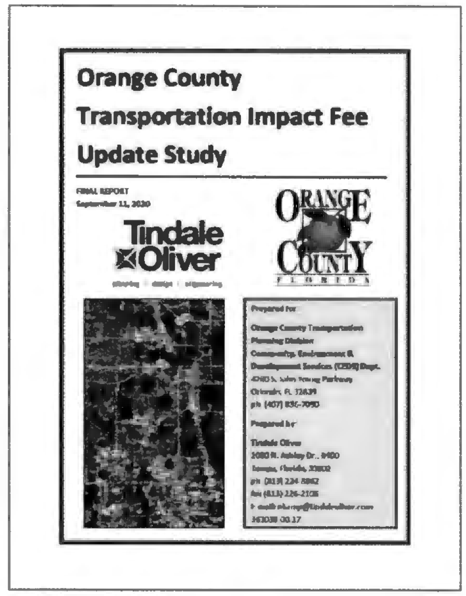
The above-noted findings clearly establish the extraordinary circumstances necessitating the need for Orange County to increase transportation impact fees beyond the phase-in limitations from HB 337. While the magnitude of the potential impact fee increases are significant, they are primarily due to the differences in calculated impact fees between the 2012 and 2020 technical study updates, together with the previous Board's decision to reduce the policy discount factor. The 2012 decision to discount transportation impact fees was made during economic conditions related to the Great Recession, when there were fewer transportation deficiencies and when transportation improvement costs were lower and more stable. The Board's recent decisions to reduce or eliminate the policy discount factor recognize that this economic incentive to the construction industry is no longer necessary or sustainable at the previous level.

Background and Purpose

Florida Statutes, Section 163.31801 (the "Florida Impact Fee Act") establishes the legal framework for the assessment and expenditure of impact fees by local governments in the State of Florida. Generally, impact fees are a capital charge on new development in order to provide the infrastructure necessary to support that new development. The Florida Impact Fee Act places many requirements on a local government's ability to charge and collect impact fees, including that impact fees be proportional to the need for additional capital facilities as a result of the increased impact generated by the new construction, and that the expenditure of the funds collected be used to benefit the new construction. Local governments assess and collect impact fees to fund diverse classes of infrastructure in order to support new growth, including, but not limited to, schools, parks, fire rescue, law enforcement, water/wastewater, library, and transportation. Certain jurisdictions assess transportation impact fees in the form of mobility fees depending on their study methodology. Orange County currently assesses impact fees for schools, parks, fire rescue, law enforcement, and transportation, and has capital charges for water/wastewater infrastructure.

Since 1985, Orange County has collected transportation impact fees in compliance with relevant case law and the Florida Impact Fee Act, which was adopted in 2006. The County recently adopted an update to its Transportation Impact Fee Study, prepared by Tindale-Oliver and Associates dated September 11, 2020 and is incorporated into this Demonstrated Need Study by reference, which reflects the most recent and local data that determines the transportation impact fee rate schedule. This includes updates to:

- the study methodology to better align impact fees with the County's growth policy objectives,
- incorporate the latest travel demand data from local and national sources for each land use category,
- reflect increases in transportation improvement costs since the prior technical study update in 2012, and
- reflect changes in other revenue sources paid by new development incorporated as part of the credit component.



The draft Transportation Impact Fee Study was reviewed with the County's Development Advisory Board (DAB) in July 2020 and presented to the Board at a Worksession in June 2020. As part of the DAB review, members discussed potential market and travel demand changes resulting from COVID-19, and expressed concerns about anticipated impacts of the potential fee increase on attainable housing and the magnitude of a fee increase on the industry as a whole.

At a noticed public hearing on October 27, 2020, the Board approved an ordinance adopting the new study and amending several sections of Orange County Code Chapter 23, Article IV, Transportation Impact Fees, including a new transportation impact fee schedule to be phased-in between November 2020 and July 2022. While some land use categories saw a fee reduction, most saw a significant increase in fees since the County's last update in 2012. However, this increase was due to a combination of technical and policy changes, including a reduction of the Board's policy discount factor (from implementation at 56% of the 2012 study rates to 75% of the 2020 study rates). Prior to the adoption public hearing, the County received correspondence from the development industry (email from Lee Steinhauer representing seven industry groups to Mayor Demings and County Commissioners dated October 23, 2020) in support of the Board's proposed action declaring that it was *"striking a reasonable balance between the County's legitimate need for revenue for transportation infrastructure and the real estate/development industry's ability to plan for, absorb and digest the increased fees and attendant costs."*

During the 2021 Florida Legislative Session, HB 337 was filed which sought to amend the Florida Impact Fee Act in several ways, including changes to the definition of "infrastructure", ensuring that local governments had a plan for the expenditure of collected impact fees, and limiting increases of impact fees by local governments to no more than 3% annually. This last provision prompted the Board to revisit its transportation impact fee phase-in plan, recognizing that the proposed changes to state law could prohibit implementation of its adopted schedule or limit the ability of a future Board to re-evaluate its policy decision. At a noticed public hearing on March 23, 2021, the Board adopted an ordinance amending its phase-in plan to accelerate the effective date of the impact fee increases to June 27, 2021 and eliminated the policy discount factor, effectively moving the rates to the maximum allowed from the adopted technical study.

HB 337 was subsequently revised several times during the legislative session. The final bill, signed into law by Governor DeSantis on June 4, 2021, adopted limitations on the increase of impact fees by local governments and required them to be phased-in according to a defined schedule depending on the magnitude of the increase. It further made the phase-in limitations retroactive to January 1, 2021, effectively preventing implementation of either of the Board's prior actions for implementing increased transportation impact fees from October 2020 and March 2021, respectively.

The new language in the Florida Impact Fee Act from HB 337 regarding the phase-in limitations is below:

> 163.31801(6) A local government, school district, or special district may increase an impact fee only as provided in this subsection.
>
> (a) An impact fee may be increased only pursuant to a plan for the imposition, collection, and use of the increased impact fees which complies with this section.
> (b) An increase to a current impact fee rate of not more than 25 percent of the current rate must be implemented in two equal annual increments beginning with the date on which the increased fee is adopted.
> (c) An increase to a current impact fee rate which exceeds 25 percent but is not more than 50 percent of the current rate must be implemented in four equal installments beginning with the date the increased fee is adopted.
> (d) An impact fee increase may not exceed 50 percent of the current impact fee rate.
> (e) An impact fee may not be increased more than once every 4 years.
> (f) An impact fee may not be increased retroactively for a previous or current fiscal or calendar year.
> *(g) A local government, school district, or special district may increase an impact fee rate beyond the phase-in limitations established under paragraph (b), paragraph (c), paragraph (d), or paragraph (e) by establishing the need for such increase in full*

compliance with the requirements of subsection (4), provided the following criteria are met:

1. *A demonstrated need study justifying any increase in excess of those authorized in paragraph (b), paragraph (c), paragraph (d), or paragraph (e) has been completed within the 12 months before the adoption of the impact fee increase and expressly demonstrates the extraordinary circumstances necessitating the need to exceed the phase-in limitations.*
2. *The local government jurisdiction has held not less than two publicly noticed workshops dedicated to the extraordinary circumstances necessitating the need to exceed the phase-in limitations set forth in paragraph (b), paragraph (c), paragraph (d), or paragraph (e).*
3. *The impact fee increase ordinance is approved by at least a two-thirds vote of the governing body.*

(h) This subsection operates retroactively to January 1, 2021.

The purpose of this Demonstrated Need Study is to satisfy the new requirements of subsection (6)(g) of the Florida Impact Fee Act (the "extraordinary needs") and expressly demonstrate the extraordinary circumstances necessitating the need for the County to exceed the phase-in limitations set forth in subsections (6)(a) – (d) (the "phase-in limitations"). This Demonstrated Need Study will be presented at two publicly noticed workshops, and a future public hearing will be scheduled. These actions should allow the Board to consider adoption of an ordinance that amends Orange County Code Chapter 23, Article IV, Transportation Impact Fees, by implementing a new fee schedule that may exceed the phase-in limitations at the Board's direction, subject to the required two-thirds vote of the Board and the additional 90-day notice requirement for any impact fee increase.

This Demonstrated Need Study is generally organized under the following headings, with each section documenting the extraordinary circumstances justifying exceeding the phase-in limitations of the Florida Impact Fee Act:

- Demand for Transportation Infrastructure
- Transportation Network Metrics
- Increase in Transportation Improvement Costs
- Need for Impact Fees as a Funding Source
- Additional Considerations

Demand for Transportation Infrastructure

Orange County is located in the heart of the Orlando-Kissimmee-Sanford Metropolitan Statistical Area (MSA), which saw the region's population rise from 2,134,406 in 2010 to 2,645,784 in 2020, a 24% increase in the 10-year period. During the same period, the Florida population grew at a lower rate of 16%, from 18.7 million to 21.7 million.

Orange County ranks #5 in the State counties for population growth (1990-2020) behind only Miami-Dade (#1), Broward (#2), Hillsborough (#3), and Palm Beach (#4) counties. Looking more recently from 2010-2020, Orange County's total population growth ranked #2 in absolute increase, with 269,304 new residents and #5 in percent increase (23.5% growth).

Orange County is home to several fast-growing municipalities, including Orlando, Apopka, and Winter Garden, but unincorporated Orange County continues to receive its own share of population growth. In 2020, the County population was estimated to be 1,415,260, with 893,300 (63%) residents in unincorporated areas of the County. The Orlando-Kissimmee-Sanford MSA was the most active MSA in the state for permits issued in 2020 according to the National Association of Home Builders. Over the last 5 years, unincorporated Orange County has averaged 7,000 residential permits and averaged over 1,100 commercial permits annually. One of the region's hottest markets for new construction, Horizon West, is located in unincorporated Orange County.

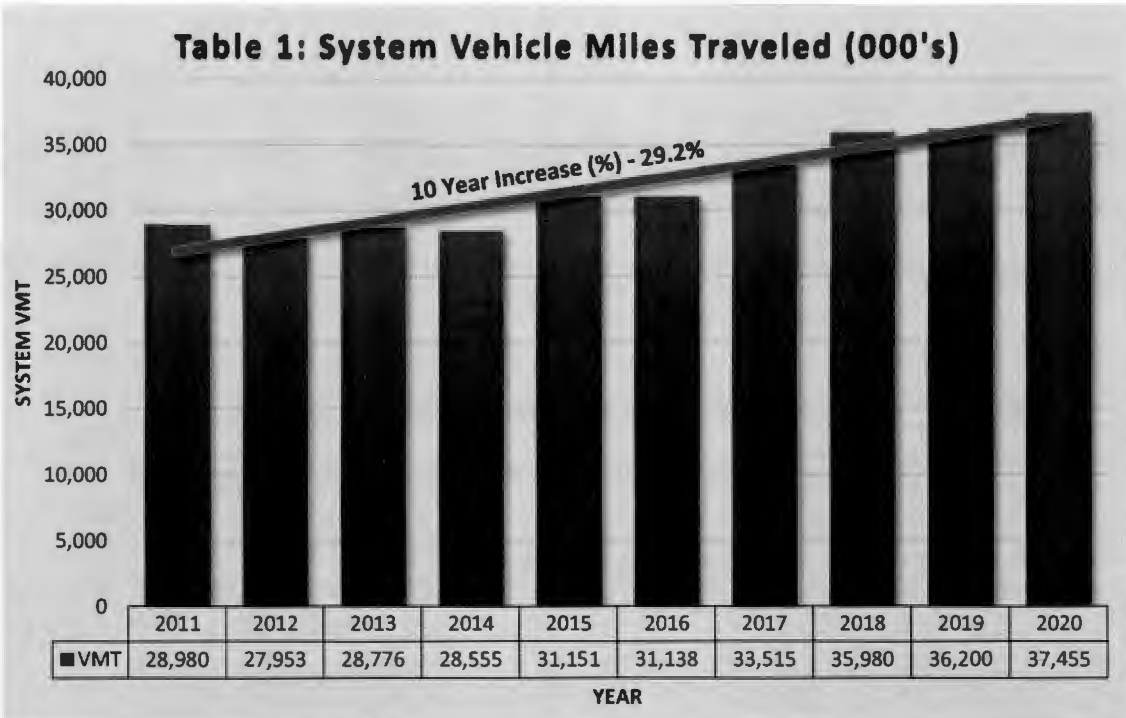
Population growth isn't the only aspect of central Florida's economy that places an increased demand on Orange County's transportation infrastructure at a rate that outpaces the State average. Significant growth in tourism and visitors also drive a large part of the region's economy and the need to provide for transportation mobility. *Visit Orlando* identified a record-setting 76 million visitors to Orlando in 2019, solidifying Orlando's position as America's most-visited destination. While more recent data isn't available due to COVID-19 related travel impacts, visitation in 2010 was estimated to be 41.5 million, showing an increase of 83% in just nine years. Similar increases were observed in passengers traveling through the Orlando International Airport (OIA), the busiest airport in Florida and 10th busiest in the United States. 2019 saw 50.6 million passengers travel through OIA, up 6.1% from 2018 passenger levels, and up from 34.9 million in 2010, an 86% increase.

It is clear that Orange County is growing at a rate that far exceeds the State average. The rapid pace of growth provides context as to why the new phase-in limitations that apply statewide aren't appropriate in Orange County and are part of the reason why there is an extraordinary need to exceed the limits found in subsection (6) of the Florida Impact Fee Act.

Transportation Network Metrics

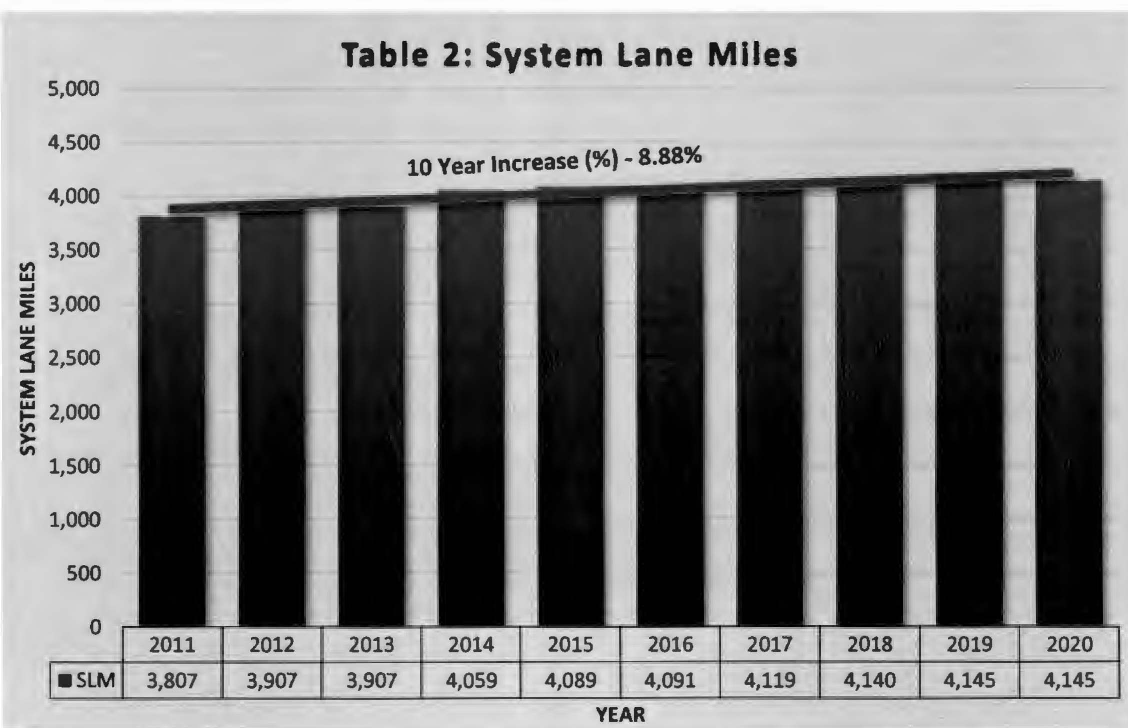
The high rate of population, employment, and visitor growth over the last ten years has placed a significant demand on the County's transportation system. **Table 1** below presents the 10-year growth in system vehicles miles of travel (VMT) on Orange County's transportation network as estimated from the County's annual traffic count program. From 2011 to 2020, the County saw a 29.2% increase in travel across the County's functionally classified transportation network.

The Florida Department of Transportation Data and Analytics Office publishes an annual report of Daily Vehicle Miles Traveled on Public Roads in Florida. For the period from 2011 to 2019, Statewide VMT on all public roads across Florida increased only by 17.7%. While this data source reflects a slightly different system summary and time period, Orange County data from this report showed a 31.6% increase for direct comparison purposes.



	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
■VMT	28,980	27,953	28,776	28,555	31,151	31,138	33,515	35,980	36,200	37,455

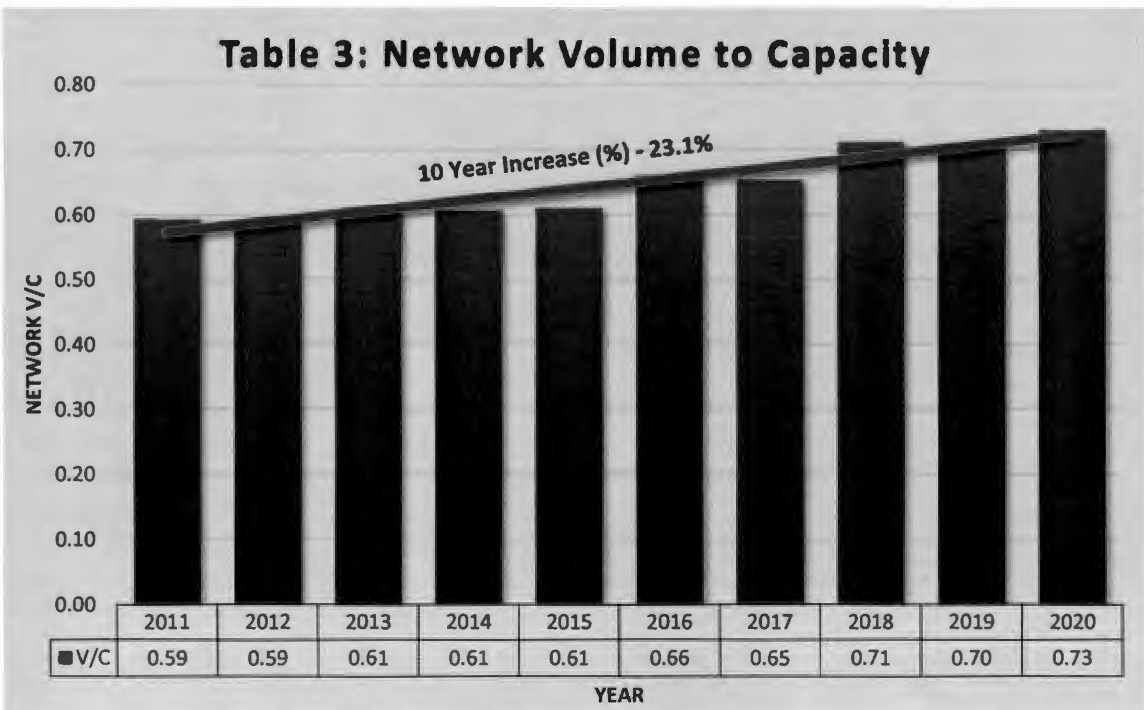
Table 2 below reflects the increase in the number of system lane miles across the County's transportation network from 2011 to 2020. This data comes from the County's Concurrency Management System (CMS). As can be seen from this table, there was an increase in lane miles



	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
■SLM	3,807	3,907	3,907	4,059	4,089	4,091	4,119	4,140	4,145	4,145

of 8.7%, going from 3,807 lane miles in 2011 to 4,139 lane miles in 2020. Only 338 lane miles were added in the 10-year period, with about one-half of those lane miles added to the County-maintained transportation network.

Table 3 below shows the measured network volume to capacity ratio (transportation system utilization) as established by the County's CMS. Between 2011 and 2020, network congestion increased 23.1%, reflecting falling levels of service and increased travel delays experienced by the public. While capacity improvements were being delivered by the County, State, and other transportation agencies, the added capacity didn't keep pace with the increase in demand for travel.



	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
V/C	0.59	0.59	0.61	0.61	0.61	0.66	0.65	0.71	0.70	0.73

The percentage of roadway miles operating over capacity (below their adopted level of service) increased significantly over the same period. **Table 4** below shows this trend, with an increase in the percentage of road miles over capacity of almost 300% between 2011 and 2020. In 2020, more than 17% of the County's transportation network was over capacity during the peak hour.

Table 4: Percent of Road Miles over Capacity

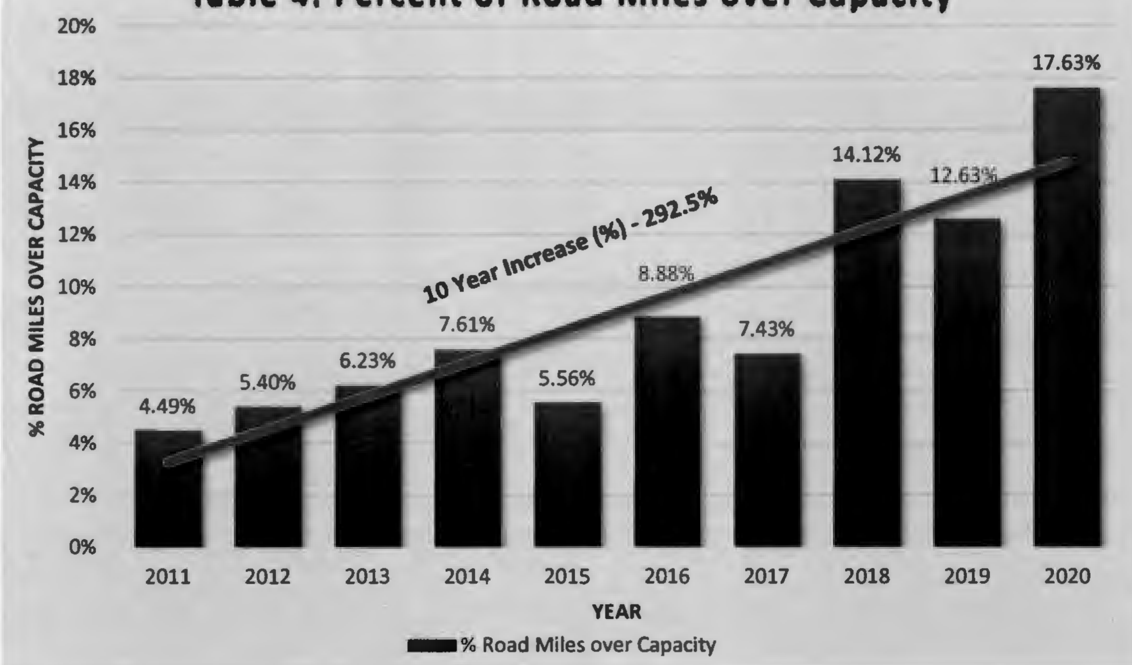


Table 5 below shows the absolute number of adverse roadways (those failing to meet the County's adopted level of service standards) in Orange County between 2011 and 2020. While there were only 30 failing road segments in 2011, there were 118 failing road segments in 2020,

Table 5: Number of Adverse Roadways

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
■ # of Rdwys	30	35	44	39	36	73	63	111	103	118

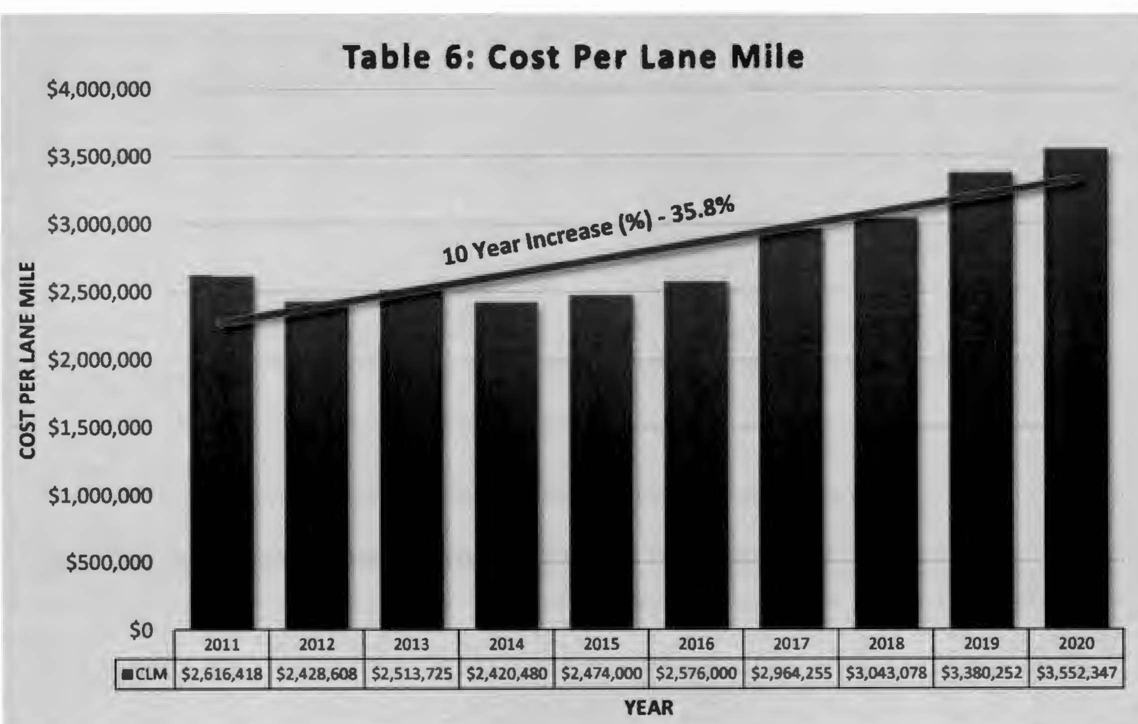
YEAR

an increase of almost 300% in the last 10 years.

While the increase in the demand for travel from 2011 to 2020 mirrors the population and visitor growth, limited transportation funding has hindered the County's ability to add new lane miles, leading to increases in network congestion and an increase in the number of failing roadways during the same period. Furthermore, the annual pace of new failing roadways has accelerated dramatically over the past few years, due to a combination of increased demand for travel caused by new growth and fewer CIP projects being delivered due, in part, to higher transportation improvement costs. The Board's decision in 2012 to implement a policy discount factor was made during a time when the transportation network was much less congested. The current magnitude of the County's transportation needs drove the Board's desire to reduce the policy discount factor, further illustrating the extraordinary circumstances supporting the need to increase transportation impact fees in excess of the new phase-in limitations.

Increase in Transportation Improvement Costs

As discussed above, one of the major drivers of the increase in transportation impact fee rates coming out of the 2020 Transportation Impact Fee Study was the increase in transportation improvement costs between the 2012 and 2020 studies. **Table 6** below summarizes the 10-year change in County observed transportation infrastructure costs between 2011 and 2020. Even though the County observed transportation improvement costs remained relatively flat between 2011 and 2016, significant increases over the last few years caused the 10-year increase to be 35.8%.



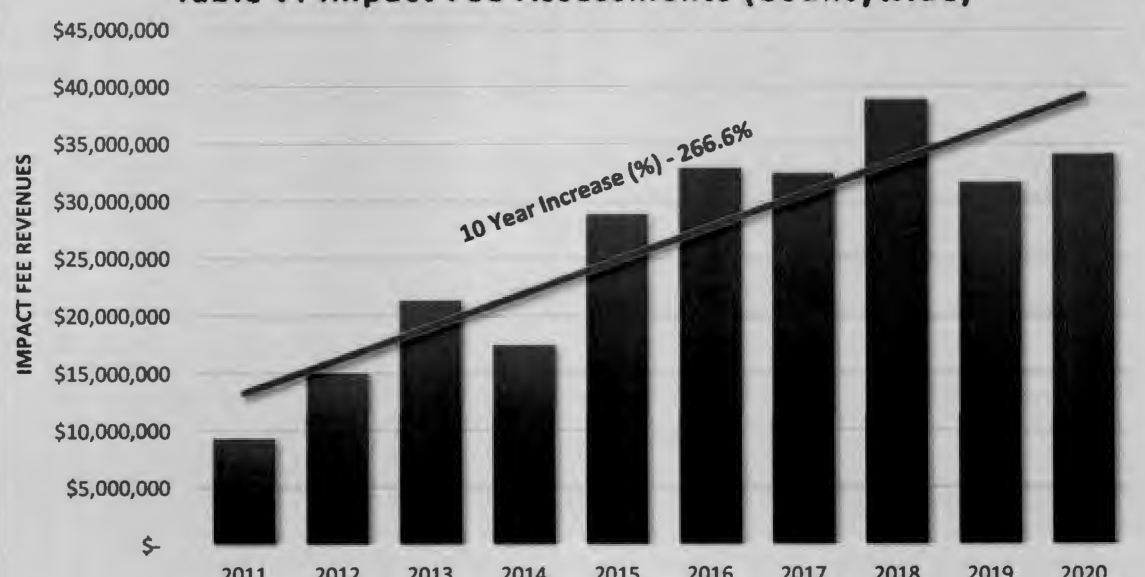
It is important to note that most roadway widening projects require the reconstruction of the entire roadway, and therefore the cost to widen a road from 2 to 4 lanes is actually *4 times the per lane mile cost*. Thus, one mile of a 2 to 4 lane road widening is expected to cost over $14 million in 2020. This cost for road widening was under $10 million as recently as 2015. FDOT transportation improvement costs are similarly up, with nearly a 20% increase in the Construction Cost Indicator between 2017 and 2020.

One of the benefits of regular updates of impact fee studies or indexing of impact fees is to provide more frequent updates that incorporate typical cost increases over time. Increased transportation improvement costs, the length of time between the County's technical study updates, and the lack of indexing all support the extraordinary circumstances that are now causing the Board to consider transportation impact fee increases that exceed the statutory phase-in limitations.

Need for Impact Fees as a Funding Source

Transportation impact fees are an essential source of funding for the County's Capital Improvement Program (CIP), as demonstrated during the 2020 Board transportation impact fee work sessions and public hearings. Over the last 5 years, impact fees have funded only about 30% of the County's CIP for new capacity (impact fees can't be used for operation and maintenance projects), with gas taxes, the County's INVEST program, and other legacy and restricted funding sources making up the balance.

Table 7: Impact Fee Assessments (Countywide)



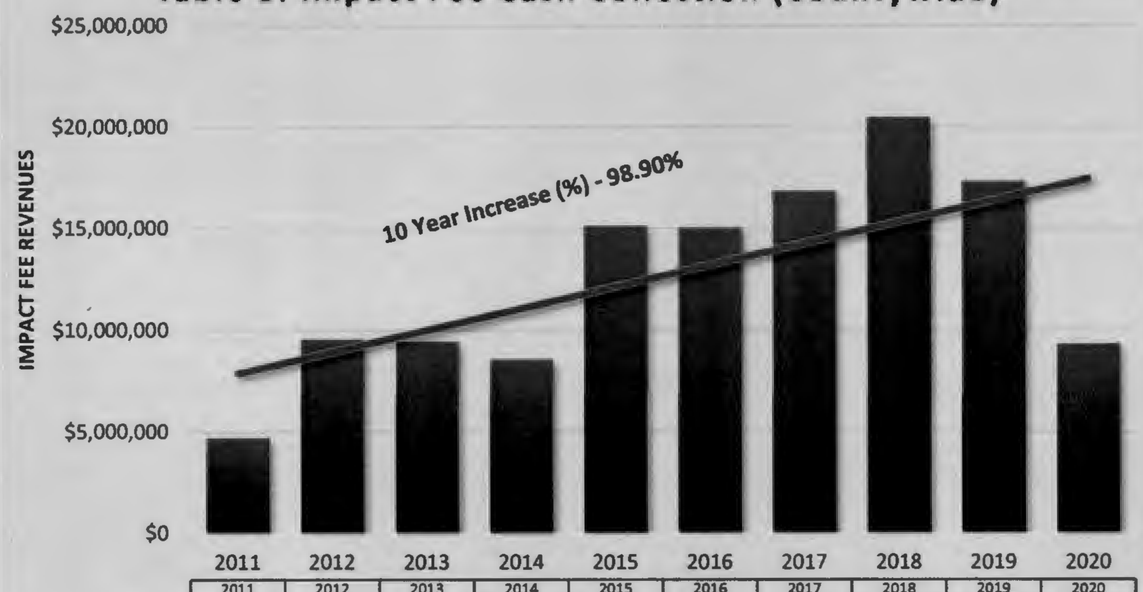
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
IMR	$9,301,337	$15,046,959	$21,373,671	$17,516,005	$28,903,221	$32,914,562	$32,434,269	$38,886,660	$31,646,206	$34,097,623

Impact fee revenues are a direct result of new growth being charged at the adopted fee schedule – no new construction would result in no impact fee revenues. **Table 7** above shows transportation impact fee assessments between 2011 to 2020. Transportation impact fee assessments are up over the 10-year period, but are up primarily because new construction is up, as opposed to any fundamental change in the transportation impact fee schedule. In 2020, the transportation impact fee for a single-family home in the suburban area of the County was $3,898. The rate in 2009 was $3,825.

Despite growth in transportation impact fee assessments overall during this period, they have been flat over the past several years. Increasing improvement costs and the lack of updates to the adopted fee schedule have significantly eroded the value of those assessments over the past several years.

While all new development is assessed transportation impact fees, a significant portion of the County's new construction doesn't make a cash impact fee payment at the time of building permit issuance, and instead redeems transportation impact fee credits earned as a result of public-private partnerships through the private delivery of improvements to the County's transportation system. **Table 8** below shows 10-year cash collections Countywide from new development that was assessed transportation impact fees.

Table 8: Impact Fee Cash Collection (Countywide)



	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
IMR	$4,694,383	$9,585,099	$9,488,004	$8,580,329	$15,140,373	$15,036,799	$16,841,698	$20,459,493	$17,332,830	$9,336,998

YEAR

While these public private partnerships have multiple benefits resulting in some cost savings to the County and accelerated project delivery in areas of critical growth (e.g., Horizon West and Innovation Way), the issuance of impact fee credits reduces the cash collections available to the County's CIP. Recent changes over the past several years to the Florida Impact Fee Act require the County to provide impact fees credits on a dollar-for-dollar basis at fair market value for any contribution, increasing the cost to the County for partnership projects. Low impact fee rates also cause credit accounts to be drawn down more slowly by new development (providing for more development permits for a given value of a credit account), leaving reduced revenues for capital projects in other areas of need within the County.

From Table 8, it is clear that impact fees are not a significant or reliable revenue source for the County's CIP. While cash collections are generally up from 2011 (just coming out of the Great Recession when new construction was at an all-time low), $9.4M of impact fee cash collections *County-wide* in 2020 isn't sufficient to even widen 1 mile of a 2-lane to a 4-lane roadway. The combination of this reduced cash flow, historically flat impact fee assessments on new construction, and recent legislative changes regarding impact fee credits results in a reduced pace of project delivery by the County. Absent increasing funding by increasing impact fee assessments beyond the phase-in limitations of the Florida Impact Fee Act, the County cannot meet the travel demands of its residents and visitors.

Additional Considerations

Findings of 2020 Technical Study

The 2020 Orange County Transportation Impact Fee Study was prepared to comply with existing case law and statutory requirements. The study methodology ensures that impact fees are based on the impacts of new development, not imposed to correct existing deficiencies. The major impact fee components were all updated based on the most recent, available local Orange County data, including the "demand" for travel placed on a transportation system for each land use, the "cost" of building new capacity based on County roadway costs, and "credits" calculated as required under the case law where a new development activity must be reasonably assured that they are not paying, or being charged, twice for the same level of service. Therefore, the adopted technical study meets all technical and legal requirements for the maximum assessment of transportation impact fees in Orange County. The resultant impact fee calculations have not been subject to any challenge.

To understand the magnitude of the effect of the Board's reduction of the policy discount factor, 2019 development activity was modeled under various impact fee scenarios. 2019 development activity was assessed $27.7M in transportation impact fees using the 2012 study rates. However, without the policy discount factor, that assessment would have been $49.5M. Under a fee schedule from the 2020 study, that same development activity would have been assessed $71.8M, a 45% increase in revenue due in large part to the technical studies being conducted eight years apart. While this comparison didn't analyze the increases in fees per land use category, the 45% increase in revenues generally comports with the new statutory maximum for impact fee increases. The long-term effects of the policy discount factor, coupled with the recent local data contained in the technical study, further illustrate the extraordinary circumstances that justify exceeding the new phase-in limitations.

Board Policy Discount Factor

As noted earlier, the previous Transportation Impact Fee Study was completed in 2012. Following multiple work sessions and public hearings in 2012, the Board adopted a revised impact fee schedule with a significant policy discount factor implementing transportation impact fees at 56% of the 2012 study rates. This policy discount factor was a concession to the construction industry in their request to keep impact fees approximately at then-current levels given the industry was still reeling from the adverse effects of the Great Recession. In fact, the 2012 Board additionally maintained a temporary 25% reduction of transportation impact fees for several more months as an economic incentive tool. Also, transportation impact fees were not indexed, resulting in a much lower fee basis for the 2020 update than if the Board had fully implemented transportation impact fees with regular study updates. Finally, in its attempt to work collaboratively with the development community in 2012, the Board could not have contemplated the new phase-in limitations, leading the Board to reasonably believe that future decisions regarding increased transportation impact fees would be a matter solely of local policy. This important historical context further establishes the extraordinary circumstances regarding the County's need to exceed the phase-in limitations.

Growth Policy and Study Methodology

With the 2020 Transportation Impact Fee Study update, the Board directed staff to review the methodology of how new construction was assessed impact fees within the diverse geographic areas of the County. The Board adopted a methodology for urban, suburban, and rural areas that provides a transportation impact fee differential with higher fees in the suburban and rural areas, generally reflecting the longer travel demand characteristics in the rural area and the community's higher tolerance of congestion in the urban areas of the County. Additional methodology changes included the incorporation of available data reflecting that smaller single family detached homes generate fewer trips than larger ones, and thus have a lesser transportation impact.

The Board's adoption of these methodology changes incorporating recent and local data, ensuring a more appropriate nexus to costs attributable to new growth, can't effectively be realized under the phase-in limitations. The current transportation impact fee schedule does not reflect this more specific methodology; when coupled with the phase-in limitations, the result would be an impact fee schedule that does not provide any meaningful fee differentiation across most land use categories for the geographic zones or for single family home size. The lack of fee differential could undermine the County's technical study and could further violate the nexus requirements of the Florida Impact Fee Act. The impacts of the phase-in limitations on the resultant updated transportation impact fee calculations further support and provide context for the extraordinary circumstances that the Board should consider in exceeding the phase-in limitations.

Transportation Funding Initiative

In May of 2019, Mayor Demings announced his intent to pursue a Charter County and Regional Transportation System Surtax ("surtax") as a means of funding comprehensive transportation solutions to address current and long-term needs within the County. To support that initiative, County staff led an extensive community engagement effort to gain input from citizens and stakeholders regarding their transportation challenges and priorities. From this effort, it became clear the County's transportation needs are significant and diverse, including roadways, transit, safety, and operations/maintenance.

Focusing just on roadway needs, this effort identified the need for $5.4 billion in roadway improvements across all of Orange County and its municipalities, inclusive of 156 major widening projects, 130 corridors targeting intersection improvements, transportation technology projects, and new traffic signals and mast arm upgrades to hundreds of intersections. The transportation system improvement costs and needs far outpaces available revenues, including the ability for new growth to fund its fair share of those costs through transportation impact fees.

The proposed surtax offered numerous benefits, including the flexibility of the revenue to support transportation improvements that impact fees cannot, such as transit, safety, and operations/maintenance improvements beyond roadway improvements detailed above. The surtax had the potential to benefit all users, including new growth being planned for as part of the County's Vision 2050 comprehensive plan update, and had the potential to transform Orange County's transportation system.

However, the surtax initiative was suspended in April 2020 due to the economic impacts from the COVID-19 pandemic. In the event the initiative is restarted, and approved by the voters, the County's impact fee study would need to be re-evaluated at that time to update the "credit" component, as required by supporting case law where new development activity must be reasonably assured that they are not paying, or being charged, twice for the same level of service.

Transportation Impact Fee Revenue Loss

Significant growth in Orange County over the last several decades has placed demands on the regional transportation system that existing revenue sources, including gas taxes and impact fees, have not been able to address. Data reflecting this demand through increased network utilization and in the number of failing roadways was presented earlier in this Demonstrated Need Study. Absent a significant increase in transportation impact fees, the burden of funding needed transportation improvements will shift to general taxpayers.

To estimate the financial impacts of the phase-in limitations on the County's impact fee revenues, the County re-assessed 2019 development activity under the current impact fee schedule, the proposed impact fee schedule, and the impact fee schedule that would result from the phase-in limitations. The 2019 development activity levels were assessed $27.7M under the current impact fee schedule versus $71.8M under the proposed impact fee schedule, resulting in the adopted rate being only 38% of the new 2020 study rate. Under the fee schedule resulting from the phase-in limitations, revenues would only be $44.1M, or 68% of the new rate. Furthermore, these rates would need to be phased in through 2022 and couldn't be increased further until

2025. These limitations result in the County losing in excess of $25M in transportation funding annually, depending on development activity levels and the Board's final decision regarding any policy discount factors or phasing. The potential significant loss in revenue, combined with the County's growing transportation needs, are demonstrative of the extraordinary circumstances for the Board to consider in exceeding the phase-in limitations.

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