ORDINANCE 495
CONCURRENCY MANAGEMENT AND PROPORTIONATE FAIR-SHARE MITIGATION

TABLE OF CONTENTS

168.02 CONCURRENCY MANAGEMENT SYSTEM (CMS) 2
168.02.1: PURPOSE AND INTENT 2
168.02.2: CONSISTENCY WITH TOWN COMPREHENSIVE PLAN 3
168.02.3: DEFINITION OF CONCURRENCY MANAGEMENT TERMS 3
168.02.4: GENERAL PROCEDURES AND LEVEL OF SERVICE STANDARDS 4

A. General Procedures ~~Purpose and Intent~~ 4
B. Level of Service Standards 4

168.02.5: APPLICABILITY, ~~AND~~ EXEMPTIONS, AND REVIEW PROCEDURES 7

A. Applicability of Concurrency Determinations 7
B. Exempt Property 7
C. Review Procedures 8

1. Demand and Supply Analysis. 9
2. Conditional Concurrency Determination 9
3. Final Concurrency Determination 9

a. Final Concurrency Must Occur Prior to the Release of a Building Permit 9
b. Final concurrency Determinations for Single-Family Dwellings 10
c. Final Concurrency Determinations for Proposed Subdivision Plats or Replats 10

4. Approved Concurrency Determinations 10

168.02.6: MEASUREMENT OF LEVEL OF SERVICE 10

A. Water and Wastewater 10
B. Roadways 13
C. Solid Waste 13
D. Drainage 13
E. Recreation 13
F. Public School Facilities 13

168.02.7: AVAILABLE CAPACITY DETERMINATION 14

A. General Formula 14
B. Burden of Showing Compliance on Applicant 14
C. Concurrency Monitoring System 14
D. Concurrency Rights Reservation and Effective Period 15

1. Timing of Capacity Reservations 15
2. Effective Period 15

168.02.8: CRITERIA FOR CONCURRENCY AND FINAL DEVELOPMENT ORDERS 15

A. Solid Waste and Drainage…… 16
B. Parks and Recreations…… 16
C. Sanitary Sewer and Potable Water Services 16
D. Transportation Facilities……..... 16

1. Requisite Conditions to Achieve Concurrency..... 16
2. Exceptions……..... 17

E. Public School Facilities..... 18
1. School Facility Capacity..... 18
2. School Facility Demand; School Concurrency Exemptions..... 18

a. All legal, single family lots of record on July 1, 2008..... 18
b. Valid Residential Developments Approved Prior to July 1, 2008 18
c. Amendments Not Increasing Number of DUs, Size or Type..... 18
d. Certain Age Restricted Communities..... 18
e. School District to Issue Exemption Determination..... 18
f. School District Procedure for Calculating Demand..... 19

3. Formula for Determining Available Public School Facility Capacity..... 19
4. Public School Facilities Concurrency Test 20

F~~E~~. Concurrency Determination Assignability and Transferability 20

1. Concurrency Approval Runs with Land..... 20
2. Application for Assignability and Transferability..... 20
3. Burdens on Transferee Applicant..... 20
4. Suspension of Concurrency Approval..... 20
5. Time Constraints Unaffected..... 20
6. Not Assignable or Transferable to Other Developments..... 20

168.03: PROPORTIONATE FAIR-SHARE OPTION TO MITIGATE DEFICIT TRANSPORTATION FACILITIES AND PUBLIC SCHOOL FACILITIES……. 21

168.03.1: PROPORTIONATE FAIR-SHARE OPTION TO MITIGATE DEFICIT TRANSPORTATION FACILITIES 21

A. Purpose and Intent……..... 21
B. Findings……..... 21
C. Applicability……..... 21
D. General Requirements…… 21
E. Application Process……..... 22
F. Determining Proportionate Fair-Share Obligation…… 23
G. Impact Fee Credit for Proportionate Fair-Share Mitigation..... 25
H. Proportionate Fair-Share Agreements..... 25
I. Appropriation of Fair-Share Revenues 26

168.03.2: PROPORTIONATE FAIR-SHARE OPTION TO MITIGATE DEFICIT PUBLIC SCHOOL FACILITIES..... 26

ORDINANCE 495

AN ORDINANCE OF THE TOWN OF INDIAN RIVER SHORES, FLORIDA, AMENDING §168.02 AND §168.03 OF THE TOWN'S LAND DEVELOPMENT CODE BY ADOPTING CONCURRENCY MANAGEMENT PROCEDURES COMPLYING WITH CURRENT FLORIDA STATUTES INCLUDING, BUT NOT LIMITED TO, SECTION 163.3180 (13), REQUIRING LOCAL GOVERNMENTS TO ADOPT LAND DEVELOPMENT REGULATIONS TO ENFORCE CONCURRENCY MANAGEMENT PROCEDURES FOR PUBLIC SCHOOL FACILITIES CONSISTENT WITH THE ADOPTED INTERLOCAL AGREEMENT FOR COORDINATED PLANNING AND SCHOOL CONCURRENCY; BY AMENDING §168.02.1 PURPOSE AND INTENT AND §168.02.3 DEFINITIONS TO ENSURE CONSISTENCY IN TERMINOLOGY; BY AMENDING §168.02.4 TO CLARIFY GENERAL PROCEDURES AND ESTABLISH CONSISTENT LEVEL OF SERVICE STANDARDS FOR PUBLIC SCHOOLS; BY AMENDING §168.02.5 TO ESTABLISH CONSISTENT CONDITIONAL AND FINAL CONCURRENCY DETERMINATION PROCEDURES, TO ENABLE THE TOWN TO ASSESS FEES FOR TOWN CONSULTANT SERVICES REQUIRED IN REVIEW OF REQUESTS FOR CONCURRENCY DETERMINATIONS, AND TO REFINE EXEMPTED PROJECT DEFINITIONS FOR CONSISTENCY; BY AMENDING §168.02.6 TO SPECIFY SCHOOL DISTRICT RESPONSIBILITY AND STATE FOR EVALUATING PUBLIC SCHOOL FACILITIES CONCURRENCY AND INTERGOVERNMENTAL COORDINATION, INCLUDING EVALUATION OF PUBLIC SCHOOL FACILITIES AS WELL AS COUNTY AND STATE ROADWAY; BY AMENDING §168.02.7 TO ACHIEVE CONSISTENCY IN CONCURRENCY MONITORING AND TIMING OF FINAL CONCURRENCY RESERVATION; BY AMENDING §168.02.8 TO SPECIFY PROCEDURES, METHODOLOGY, AND STANDARDS FOR IMPLEMENTING PUBLIC SCHOOL FACILITIES CONCURRENCY AND INTERGOVERNMENTAL COORDINATION, INCLUDING EVALUATION OF COUNTY AND STATE ROADWAYS AND PUBLIC SCHOOL FACILITIES; BY AMENDING §168.03 BY CLARIFYING INTERGOVERNMENTAL COORDINATION AND ESTABLISHING A PROCEDURE FOR IMPLEMENTING THE STATE LEGISLATIVE MANDATE FOR A PROPORTIONATE FAIR-SHARE OPTION TO MITIGATE DEFICITS IN PUBLIC SCHOOL FACILITIES; AND BY PROVIDING FOR REPEAL OF CONFLICTING PROVISIONS, CODIFICATION, SEVERABILITY, AND AN EFFECTIVE DATE.

SECTION 1: CONCURRENCY MANAGEMENT

Section 168.02 "Public Facility Capacity or Concurrency" and its subsections are hereby deleted and amended to read as follows:

168.02 CONCURRENCY MANAGEMENT SYSTEM (CMS)

168.02.1: PURPOSE AND INTENT

Concurrency is a finding that public facilities and services necessary to support a proposed development are available, or will be made available, concurrent with the impacts of the development. The CMS is intended to provide a systematic process for the review and evaluation of all proposed development for its impact on concurrency facilities and services, as required by the Local Government Comprehensive Planning and Land Development Regulations Act, Chapter 163, Part II, FS, and Rule 9J-5.0055, FAC.

Facilities in Indian River Shores that are subject to these regulations include:

- Potable Water
- Solid Waste
- Recreation
- Drainage
- Sanitary Sewer
- Transportation
- Public School Facilities

The purpose of this CMS is to ensure that development orders and permits are conditioned on the availability of concurrency facilities and services that meet adopted level of service requirements identified in this CMS. The CMS is also intended to describe the requirements and procedures for determining consistency of proposed development with the Indian River Shores Comprehensive Plan.

168.02.2: CONSISTENCY WITH TOWN COMPREHENSIVE PLAN

All development applications shall demonstrate compliance with Indian River Shores' Comprehensive Plan as well as with all applicable provisions of the Town Land Development Code (LDC). Further, development applications shall demonstrate that specified concurrency facilities shall be available at prescribed levels of service concurrent with the impact of the development ~~of those facilities~~.

168.02.3: DEFINITION OF CONCURRENCY MANAGEMENT TERMS

The following definitions shall apply to concurrency management rules and regulations:

Building Permit: For purposes of the concurrency management ordinance, a duly issued permit that may authorize the construction of a new building, expansion of floor area, an increase in the number of dwelling units contained in an existing building, or a change in use.

Capacity: Refers to the availability of a public service or facility to accommodate users, expressed in an appropriate unit of measure, such as gallons per day or average daily trips.

Capacity, Available: Capacity that can be reserved or committed to future users for a specific public facility.

Certificate of Occupancy: A document issued by the Town allowing the occupancy or use of a building and certifying that the structure or use has been constructed or will be used in compliance with all the applicable municipal codes and ordinances.

Concurrency Facilities: Public facilities and services for which a level of service must be met concurrent with the impacts of development or an acceptable deadline, as mandated in the Comprehensive Plan pursuant to Chapter 163, FS, and 9J-5.0055, FAC, shall include:

- Potable Water
- Solid Waste
- Recreation
- Drainage
- Sanitary Sewer
- Transportation
- Public School Facilities

Concurrency Management System: The procedure and process that the Town uses to ensure that no development order or building permit is issued by the Town unless the necessary concurrency facilities are available or are assured to be available consistent with Indian River Shores' Comprehensive Plan. The procedure and process is also intended to ensure that sufficient capacity for concurrency facilities is available to meet and maintain adopted levels of service. As part of the CMS the Town shall operate and maintain a concurrency management monitoring system.

Concurrency Status Report: A status report prepared by the Town identifying available concurrency facility capacity. The status report shall be produced, modified and adjusted from time-to-time as a result of the reservation of capacity or other act that alters the availability of concurrency facility capacity.

Design Capacity: The potential or suitability for holding, storing or accommodating the demands upon a concurrency facility.

Developer's Agreement: An agreement between the Town and another party associated with the development of land, including agreements associated with development orders issued pursuant to §380.01, FS.

Development Order: Any order or permit granting, denying or granting with conditions an application for a preliminary or final development approval ~~order~~, ~~a final development order,~~ a development permit or any other official action of the Town which permits the development of land.

Development Order, Final: This shall mean the last discretionary act of the Town before development can commence. The last discretionary act shall occur through an act of official authorization and with recorded documentation from Indian River Shores thereby approving the final development plans for a proposed development project. The issuance of a final development order after the effective date of the ordinance adopting the Comprehensive Plan shall occur only if the site plan, design and construction plans, and other prerequisite plans and conditions comply with ~~the goals, objectives, and policies established in~~ the Comprehensive Plan, the Land Development Code, and the Building Code. Approval of a final subdivision plat by the Town Council shall not permit construction activity until a duly authorized building permit has been granted based on submittal of required building plans deemed by the Town Building Official consistent with the Town's Land Development Code and adopted building code.

A building permit shall be deemed a final development order. A certificate of occupancy may be deemed a final development order where an application for a proposed change of use for an existing structure is submitted which does not require any approval of buildings or other structures. All other development orders shall be deemed an initial development order since they do not: 1) authorize construction for which a building permit is required; or 2) authorize a change of use for which an initial or new certificate of occupancy (C.O.) is required. ~~Final development orders shall include the Town final approval of the following development procedures:~~

- ~~Final subdivision plat approved subsequent to the adoption of the Comprehensive Plan;~~
- ~~Building permit; and~~
- ~~Developments of Regional Impact (DRI) approval, where applicable.~~

Development Order, Preliminary: Any official action of the Town of Indian River Shores or other public entity with duly authorized jurisdiction that has the effect of approving required plans with or without conditions prior to the issuance of a final development order (i.e., building permit) for construction on land located within the corporate limits of the Town of Indian River Shores. A "preliminary development order" may document duly authorized approval of such requirements as amended comprehensive plan future land use map designations; rezonings; site plans; preliminary subdivision plans; final plats; concurrency determinations, or other preliminary development approvals required by the Town's Land Development Code prior to the release of a building permit.

Level of Service: An indicator of the operational efficiency by a concurrency facility provider.

Level of Service Standard: The adopted volume of demand required for each concurrency facility to achieve acceptable operational efficiency.

Vested Rights: A development order shall be deemed "vested" and not subject to requirements of concurrency management if development circumstances meet criteria for common law or statutory vesting, as defined below. All "non-vested" development or development orders are subject to all requirements of this CMS.

168.02.4: GENERAL PROCEDURES AND LEVEL OF SERVICE STANDARDS

A. **General CMS Procedures ~~Purpose and Intent~~**: The concurrency management system (CMS) shall apply to all development activity in the Town, excepting development exempted pursuant to Section 163.3180(6), F.S. ~~In addition to the development review procedures contained in this chapter, except for approved DRIs and a one- or two-family house (on a lot in ownership separate from adjacent lots), all development projects must also receive a concurrency review to determine public facility capacity adequacy.~~ Concurrency ~~Public~~ facilities ~~and services~~ may be determined to be adequate to serve the needs of a proposed development after the applicant has demonstrated that ~~when~~ traffic circulation, recreation, drainage, potable water, solid waste and sanitary sewer public facilities ~~and services~~, and public school facilities shall ~~will~~ be available to meet the established level of service standards, consistent with Chapter 163, Florida Statutes, and the concurrency management provisions of this chapter. All applicants for a concurrency determination shall be responsible for providing documentation signed by a duly authorized official of each concurrency facility service provider that identifies the provider's: 1) estimated measure of demand generated by the proposed development; 2) estimated measure of available capacity to meet the demand; and 3) commitment to provide the needed services with or without stated conditions. Applicants for conditional concurrency determinations [See §168.02.5(C)(2)] shall provide best available estimates from the service provider. Applicants for a final concurrency determination [See §168.02.5(C)(3-4)] shall provide authorized final commitments to provide the service together with any conditions that may apply to the commitment.

B. **Level of Service Standards:** New development shall not be approved unless there is sufficient available design capacity to sustain the following levels of service as established in the Indian River Shores Comprehensive Plan:

1. **Streets:** "C" for all roads except "D" during peak tourist season; Average Annual Daily Traffic (AADT) shall be the measure.

2. **Sanitary Sewers:** 255 gallons per day per dwelling unit (113 gals. per capita per day).
2500 gallons day per commercial acre (i.e. equivalent to 22 gallons capita per acre per day).

3. **Solid Waste:** 21.0 pounds per capita per week (or 3.0 lbs. per capita/day).

4. **Drainage:** 25-year, 24-hour design storm; post-development conditions shall not increase the amount or rate of run-off beyond predevelopment conditions.

5. **Potable Water:** Residential-450 gallons per dwelling unit/day (200 gallons per capita/day).
Commercial - 2,500 gallons per day per gross acre (i.e. equivalent to 22 gallons per capita per acre per day).

6. **Recreation:** Provide 2.5 acres of Neighborhood Park per 1,000 population plus the following facility standards:

TABLE 1: RECREATION FACILITY STANDARDS

Facility	Median Standard
Tennis Courts	1 court per 2,000 population
Racquetball/Handball Courts	1 court per 10,000 population
Basketball Courts	1 court per 5,000 population
Softball/Baseball Diamond	1 diamond per 3,000 population
Swimming Pool	1 pool per 8,700 population
Golf Course	1 9-hole per 50,000 population
Picnic Tables	1 table per 500 population
Shuffleboard Courts	1 court per 1,500 population
Bicycle/Jogging Path	0.56 miles per 1,000 population

7. **Public School Facilities Countywide Standards.** The below stated Level of Service (LOS) standards are consistent with Public School Facilities Element Policy 1.1 and section 13 of the adopted "Interlocal Agreement for Coordinated Planning and School Concurrency."

Weighted Average	139.07 building square foot per student station
Elementary School	144.71 building square foot per student station
Middle School	117.26 building square foot per student station
High School	147.57 building square foot per student station
School concurrency service area	100% of Florida Inventory of School Houses (FISH) capacity for each public school type (elementary, middle, and high school).

168.02.5: APPLICABILITY, ~~AND~~ EXEMPTIONS, AND REVIEW PROCEDURES

A. **Applicability of Concurrency Determinations**: All preliminary and final development orders required to: 1) construct a new building or residential unit; 2) expand an existing use; or 3) increase the intensity of a use shall comply with concurrency management requirements of Section 168.02, unless specifically exempted by Florida Statutes. No development order shall be approved unless an approved concurrency determination has been rendered or a determination is made that the development proposed is exempt from concurrency review. All redevelopment or additional development of previously improved lands shall be subject to a concurrency ~~an adequacy~~ determination for the additional capacity needed to serve the net additional dwelling units as well as the net additional square footage of non-residential area. ~~difference between the capacity to be consumed by the proposed additional development and the capacity generated or consumed by the existing development~~.

B. **Exempt Property.** Determinations of exemption from concurrency review shall be made by the Town Manager or his designee. Exemptions may be based on vested rights determinations, application of de minimis criteria, or determinations that there will be no increase in density or intensity. For school concurrency also reference Sec. 168.02.8(E)(2). Applications for single-family dwellings will be processed through the Town's concurrency management system and exempted dwellings shall receive an approved concurrency determination. Exemption from concurrency review shall not affect any obligation to pay applicable impact fees and utility capacity charges. Appeals of determinations shall follow the procedures of §165.04(D).

Exempt property includes:

1. Development authorized by an approved Development of Regional Impact (DRI) Development Order.

2. Development found by the Town Attorney to have vested rights with regard to any effected roadway segments or infrastructure capacity reservations; both State statute and common law shall be considered.

3. Permits for single-family homes deemed as "de minimis" under Florida Statutes 163.3180(6). Development of one single family dwelling on a legal lot of record as of July 1, 2008 which is ~~one single family or duplex dwelling~~ on a lot in single and separate ownership from adjacent lots. This exemption shall apply to the permitting of a single-family dwelling on a lawfully created lot or parcel of record that meets minimum size requirements and is not subject to a plat notice which states that there is no guarantee of concurrency for development of the lot. This de minimis exemption will not apply if:

   i. The lawfully created lot or parcel does not meet minimum size requirements and has not received a duly approved variance authorizing the single-family dwelling, thereby ensuring that the lot or parcel is of sufficient size to accommodate a single family dwelling while protecting the health, safety and welfare of the public.
   ii. The impacts of the proposed new single-family dwelling will exceed the adopted level-of-service standard for any affected designated hurricane evacuation routes assigned to the Town of Indian River Shores by the Indian River County Emergency Preparedness Center, or successor agency.

4. Any development or redevelopment which clearly causes no increase in square footage or increase in intensity of use. Where the proposed development or redevelopment of existing residential or nonresidential buildings will increase the square footage or the number of dwelling units, respectively, only the net increase shall be subject to concurrency review. ~~public facility usage due to the similarity in use; however, any increase in the amount of required parking shall require concurrency.~~

5. Modification of a vested final subdivision plat that does not create additional lots or units.

6. Replacement of existing residential units unless there is an increase in number of units.

7. Any development orders, including land use amendments and rezoning applications, which do not increase density or intensity of use. ~~Development which is a government facility which the town council finds is essential to the health or safety of the residents.~~

C. **Review Procedures and Fees:** Each development application requiring a conditional or final concurrency review will be placed in a queue and shall be evaluated in the order in which it was received. The Town Manager or designee shall make a determination that concurrency requirements are satisfied for the type of development order under review. If the Town Manager elects to have a Town consultant review for concurrency, the applicant shall bear the costs for the fees charged by the consultant and such fees shall be commensurate with the contracted fee schedule approved by the Town in the consultant's contract.

1. **Demand and Supply Analysis.** The applicants calculated demand for each application will be compared to available capacity for each facility, respectively per §168.02.6 & §168.02.7.

   Concurrency determinations relating to public school facilities shall be analyzed by the school district in accordance with section 14 of the adopted "Interlocal Agreement for Coordinated Planning and School Concurrency," as may be amended from time to time. The School District of Indian River County must review residential development applications that are not exempt to ensure that sufficient capacity is available to accommodate the demand represented by the application. The applicant, through an enforceable development agreement or proportionate fair-share mitigation agreements with the Town, Indian River County, and/or the School District, may mitigate deficiencies in order to satisfy the concurrency review. Regulations for proportionate fair-share mitigation for transportation facilities are provided in §168.03.1. Regulations for proportionate fair-share mitigation for public school facilities are provided in §168.03.2.

2. **Conditional Concurrency Determination.** A conditional concurrency determination shall be required concurrent with review of an application for approval of a preliminary development order for an amended comprehensive plan future land use map designation, a rezoning, a site plan, preliminary subdivision plan, final plat; or a lot split, whichever occurs first. Approval of a conditional concurrency application shall not guarantee the applicant availability of capacity but rather is a preliminary analysis indicating that at the current time capacity is available with or without conditions. Any concurrency determination delivered prior to Town approval of all building requirements shall be considered a conditional concurrency determination. Upon the Town's approval of an application for a conditional concurrency determination, the Town shall ensure that the records used to monitor the concurrency management system are appropriately updated, including available capacity, encumbered capacity, and committed but unencumbered capacity, as may be required. The monitoring system shall be coordinated with each concurrency facility provider. For instance, approval of conditional concurrency reviews shall cause a reduction in "available" capacity and cause an increase in "committed but unencumbered capacity."

3. **Final Concurrency Determination.** Final concurrency determinations must be obtained prior to issuance of a building permit to construct: 1) A net addition to the dwelling unit total; 2) A net addition to the available floor area for a non-residential use; or 3) An increased density or intensity for a specific use. An application for a final concurrency determination can only be approved after the applicant has completed all requirements for a building permit, including final engineering, architectural, and landscape architectural plans, and payment of requisite fees, including impact fees as applicable. Final concurrency determinations shall be rendered concurrently with building permit approvals. Approval of final concurrency reviews shall cause a reduction in either "available" capacity or "committed but unencumbered" capacity and shall cause an increase in "encumbered capacity."
   a. **Final Concurrency Must Occur Prior to the Release of a Building Permit.** In order to obtain a building permit for a new building, expansion of a use, or increase in the intensity of use, the applicant must have a valid final concurrency approval. A final concurrency approval is valid for twelve (12) months from approval. Upon

issuance of the building permit, the final concurrency approval shall be valid as long as the building permit is active.

b. **Final Concurrency Determinations for Single-Family Dwellings.** Applications for single-family dwellings shall be evaluated to determine if the application: 1) Is exempt from concurrency requirements pursuant to criteria listed in §168.02.5(B); and 2) If not exempt, does the application comply with adopted levels of service standards for each concurrency facility identified in §168.02.06. No building permit shall be issued for a single-family dwelling that has not first received a valid final concurrency approval for the concurrency facilities identified in §168.02.4(B). Only a final concurrency review is required for such single-family dwellings.

c. **Final Concurrency Determinations for Proposed Subdivision Plats or Replats.** When a new non-exempt, final plat application is filed to create single-family lots, the following notice shall appear on the face of the final plat: "*No building permit will be issued for development of any lot or tract unless and until an approved concurrency determination for development of the lot or tract is obtained. The Town does not guarantee that adequate capacity will exist at the time when an applicant or applicant's successor chooses to apply for and obtain an approved concurrency determination.*"

In addition to the notice on the face of the final plat, a separate but similar "*off-plat*" *notice* (i.e., a stand-alone document that is not written on the plat) shall be prepared by the applicant in a manner approved by the Town Attorney. The applicant shall have the off-plat notice recorded in the Indian River County public records at the time that the final plat is recorded. A copy of the off-plat notice shall be attached to and recorded as an exhibit to the first deed that conveys each lot or tract to a party other than the subdivision developer. This deed exhibit requirement shall not apply to any lot or tract conveyed with a single-family residential unit already constructed on the lot at the time of conveyance.

4. **Approved Concurrency Determinations.** The applicant shall meet all the requirements for approval of all required concurrency facilities in order to be eligible for approval of the concurrency portion of a development application. No concurrency approval will be issued until the potable water service, sanitary sewerage service, transportation, drainage, solid waste disposal, and recreation requirements are met together with school concurrency requirements, if applicable. Final concurrency certificates shall be issued at the time of building permit issuance.

168.02.6: MEASUREMENT OF LEVELS OF SERVICE

A. **Water and Wastewater**: Measurement of the water capacity will be based on the design capacities of both the lines serving the property and the Vero Beach potable water supply system. Wastewater capacity will be measured in the same manner. Water demand and sewage generation rates will be based upon Tables 2 and 3 which follow this section or an alternative method acceptable to the Vero Beach Director of Water and Sewer Utility.

TABLE 2: POTABLE WATER DESIGN FLOWS

Facility Type	Water Use in Gallons Per Day
Residential:	
Single-Family House	375
Duplex, Triplex, Townhouse & Apt. per Unit	270
Mobile Home	108
Auditorium per Seat	5
Bar or Cocktail Lounge per Seat	21
Boarding School (Students & Staff per Person)	108
Boarding House per Person	54
Bowling Alleys (Including Bar & Food Services. per Lane)	215
Churches per Sanctuary Seat	3
Churches with Kitchen per Sanctuary Seat	7
Construction Camps (Semi-Permanent per Person)	54
Country Clubs:	
Per Resident Member per Room	108
Per Seat (Bar, Dining)	27
Day Schools:	
With Cafeterias, Gyms & Showers per Pupil	27
Without Cafeterias, Gyms & Showers per Pupil	16
With Cafeterias but no Gyms & Showers per Pupil	21
Factories: (No Processing or Industrial)	
With Showers per Person	37
Without Showers per Person	21
Hospitals:	
With Laundry per Bed	270
Without Laundry per Bed	214
Landscape & Lawn:	
Per square foot of Area	0.35
Laundromats per Machine	428
Motels & Hotels per Room	161
Movie Theaters per Seat	5
Nursing Homes per Bed	108
Offices per Person	21
Picnic Parks:	
With Bathhouse Shower & Toile	11
Toilets Only	5
Public Institutions per Person	108
Restaurants (Including Toilets):	
24 Hour per Seat	54
Not 24 Hour per Seat	39
Drive-in per Car Space	16
Cocktail Lounge per Seat	21
Rooming Houses per Day	39
Service Stations:	
Full Service Stations:	
First Two Bays	810
Each Additional Bay	375
Self Service Stations:	
Per Fuel Pump	108
Shopping Centers:	
(No Food Service or Laundry)	
Per Square Foot of Floor Space	0.10
Stores:	
(No Food Service or Laundry)	
Per Square Foot of Floor Space	0.10
Swimming Pools per Person	10
Warehouses:	
(No Food Service or Laundry)	
Per Square Foot of Floor Space	0.10

In the case where the type of connection is not listed then the most suitable one is to be used.

The Town retains the authority to require appropriate information to be submitted in accordance with American Water Works Association (AWWA) standards to settle any dispute.

TABLE 3: SANITARY SEWER DESIGN FLOWS

Facility Type	Daily Flow in Gallons per Day
Residential:	
Single-Family House	315
Duplex, Triplex, Townhouse & Apt. per Unit	225
Mobile Home	90
Auditorium per Seat	5
Bar or Cocktail Lounge per Seat	18
Boarding School (Students & Staff per Person)	90
Boarding House per Person	45
Bowling Alleys (Including Bar & Food Services. per Lane)	180
Churches per Sanctuary Seat	3
Churches with Kitchen per Sanctuary Seat	6
Construction Camps (Semi-Permanent per Person)	45
Country Clubs:	
Per Resident Member per Room	90
Per Seat (Bar, Dining)	23
Day Schools:	
With Cafeterias, Gyms & Showers per Pupil	23
Without Cafeterias, Gyms & Showers per Pupil	14
With Cafeterias but no Gyms & Showers per Pupil	18
Factories: (No Processing or Industrial)	
With Showers per Person	31
Without Showers per Person	18
Hospitals:	
With Laundry per Bed	225
Without Laundry per Bed	180
Laundromats per Machine	360
Motels & Hotels per Room	135
Movie Theaters per Seat	5
Nursing Homes per Bed	90
Offices per Person	18
Picnic Parks:	
With Bathhouse Shower & Toilet	9
Toilets Only	5
Public Institutions per Person	90
Restaurants (Including Toilets):	
24 Hour per Seat	45
Not 24 Hour per Seat	33
Drive-in per Car Space	14
Cocktail Lounge per Seat	18
Rooming Houses per Day	33
Service Stations:	
Full Service Stations:	
First Two Bays	680
Each Additional Bay	315
Self Service Stations:	
Per Fuel Pump	90
Shopping Centers:	
(No Food Service or Laundry)	
Per Square Foot of Floor Space	0.10
Stores:	
(No Food Service or Laundry)	
Per Square Foot of Floor Space	0.10
Warehouses:	
(No Food Service or Laundry)	
Per Square Foot of Floor Space	0.10

In the case where the type of connection is not listed then the most suitable one is to be used.

The Town retains the authority to require appropriate information to be submitted in accordance with American Water Works Association (AWWA) standards to settle any dispute.

B. **Roadways:** The standard for measuring highway capacities shall be the Florida DOT Table of Generalized Daily Level of Service Maximum Volumes. Capacity may also be measured by engineering studies provided that analysis techniques are technically sound and acceptable to the Town Engineer or, in the case of a County or State maintained road, the methodology for determining demand and capacity shall be consistent with Chapter 910, Indian River Land Development Code (as hereinafter may be amended) and acceptable to the Indian River County Public Works Department. In determining capacity, existing volumes plus "committed" trips from approved site plans and recorded plats shall be included. Traffic generation shall be based upon the Institute of Transportation Engineers Manual. Impacts shall be presumed to be limited to the collector or arterial serving the local street giving access to the lot, or to the collector or arterial giving direct access to the lot.

C. **Solid Waste:** Table 4 may be used to calculate solid waste generation rates. Capacity is determined by the capacity of the Indian River County landfill.

TABLE 4: SOLID WASTE GENERATION RATES

Facility Type	Generation Per Day
Residential	12.0 lbs. per single-family or two-family unit
	7.0 lbs. per multifamily unit
Industrial & Commercial	
Factory/Warehouse	2 lbs. per 100 square feet
Office Buildings	1 lb. per 100 square feet
Department Store	4 lbs. per 100 square feet
Supermarket	9 lbs. per 100 square feet
Restaurant	2 lbs. per meal per day
Drug Store	5 lbs. per 100 square feet
Institutional	
Schools	
Grade School	10 lbs. per room & ¼ lb. per pupil
High School	8 lbs. per room & ¼ lb. per pupil
Hospital	8 lbs. per bed
Nursing Home	3 lbs. per person
Home for Aged	3 lbs. per person
Rest Home	3 lbs. per person

D. **Drainage:** Drainage shall be measured based on assumed runoff rates (i.e., St. John's River Water Management District or FDOT tables) subject to approval by the Town engineer. Typically, this shall be achieved by a combination of on-site detention and French drains.

E. **Recreation**: Measurement shall be based on data in the Town Comprehensive Plan and latest Town population estimate with any necessary interpretation provided by the Town Manager.

F. **Public School Facilities:** Evaluation of public school facilities levels of service, capacity, and demand shall be determined by the School District of Indian River County. Evaluation of Public School Facilities Supply (Capacity) shall be determined by each public school facility (elementary schools, middle schools, and high schools), not including charter schools or magnet schools. The supply (capacity) for each school shall be its Florida Inventory of School Housing (FISH) Capacity including the FISH Capacity of programmed construction in the first three (3) years of the School District Five-Year Facilities Work Program. Capacity shall include capacity-producing mitigation guaranteed through any proportionate share mitigation agreements approved in accordance with Section 14.8 of the adopted "Interlocal Agreement for Coordinated Planning and School Concurrency," the Public School Facilities Element of the Comprehensive Plan, and §168.03.1.

168.02.7: AVAILABLE CAPACITY DETERMINATION

A. **General Formula:** For purposes of these regulations, the capacity availability shall be determined by:

1. Adding together:
   a. The total design capacity of existing facilities operating at the required level of service; and
   b. The total design capacity of any new facilities that will become available concurrent with the impact of the development. The capacity of new facilities may be counted only if one or more of the criteria stated in 168.02.8 are achieved, for each new facility, respectively.

2. Subtracting from that number the sum of:

   a. The design demand for the service created by existing development; and
   b. The new design demand for the service (by phase or otherwise) that will be created concurrent with the impacts of the proposed site plan or plat by the anticipated completion of other presently approved development projects.

B. **Burden of Showing Compliance on Applicant:** The burden of showing compliance with these levels of service requirements shall be upon the applicant. In order to be approvable, applications for development approval shall provide sufficient and verifiable information showing compliance with these standards.

C. **Concurrency Monitoring System:** The Building Official shall be responsible for monitoring development activity to ensure the development is consistent with the Comprehensive Plan <u>and Land Development Code, and shall enforce any conditions or stipulations contained in concurrency determinations.</u> All existing and committed development and its impact on facilities subject to level of service standards shall be recorded. Monitoring shall include:

1. A quarterly report of all changes in zoning districts.
2. A quarterly summary of all building permits.
3. A quarterly summary of all permits issued for demolition of buildings.
4. A quarterly summary of all certificates of occupancy.

<u>The School District of Indian River County shall monitor the status of concurrency for public school facilities on a continuing basis. In accordance with the adopted "Interlocal Agreement of Coordinated Planning and School Concurrency", the School District of Indian River County shall maintain a database by school service area for existing and programmed school facilities, capacities committed through proportionate share mitigation agreements, Florida Inventory of School Housing (FISH) capacities, student enrollment, vested students by development project together with the duration of time vested, certificates of occupancy issued for vested residential units by project (subdivision), and available capacity.</u>

D. **Concurrency Rights Reservation and Effective Period.**

1. **Timing of Capacity Reservations:** Although conditional concurrency ~~reviews~~ determinations can occur at any stage in the development review process, the compliance will be finally calculated and capacity reserved at time ~~of final action of an approved site plan, final plat building permit if no site plan~~ a final development order is required, and/or pursuant to the terms of an enforceable developer's agreement or proportionate fair-share agreement. Applications for development permits shall be chronologically logged upon approval to determine rights to available capacity.

2. **Effective Period**:

   a. A building permit application must be submitted within twelve (12) months of site plan approval to preserve the capacity reservation. An extension of one (1) year may be issued by the Town Council. Only those dwelling units which have received their building permits will have their capacity reserved.

   b. Developer agreements as described in Chapter 163.3220, the "Florida Local Government Development Agreement Act" or other enforceable development agreement shall have a valid concurrency period not to exceed five (5) years or as may be modified.

168.02.8: CRITERIA FOR CONCURRENCY AND FINAL DEVELOPMENT ORDERS

A final development order shall not be granted for a proposed development unless the Town finds that adequate capacity for concurrency facilities exists at or above adopted level of service in order to accommodate the impacts of the proposed development, or that improvements necessary to bring concurrency facilities up to their adopted level of service will be in place concurrent with the impacts of the development.

A. **Solid Waste and Drainage:** For solid waste, and drainage facilities, the Town shall find that the following criteria have been met for a proposed development to be found in compliance with concurrency management requirements:

1. A development order is issued subject to the condition that, at the time of the issuance of a certificate of occupancy or its functional equivalent, the necessary facilities and services are in place and available to serve the new development; or

2. At the time a development order or permit is issued, the necessary facilities and services are guaranteed in an enforceable development agreement, pursuant to §163.3220, FS, or an agreement or development order issued pursuant to Chapter 380, FS, to be in place and available to serve new development at the time of the issuance of a certificate of occupancy or its functional equivalent [Also reference §163.3180(2)(a), FS].

B. **Parks and Recreations:** For parks and recreation facilities, at a minimum, the Town shall find that the following criteria have been met in order for a proposed development to be found in compliance with concurrency management requirements:

1. At the time the final development order is issued, the necessary facilities and services shall be in place or under actual construction; or

2. A final development order is issued subject to the condition that, at the time of the issuance of a certificate of occupancy, the acreage for the necessary facilities and services to serve the new development shall be dedicated or acquired by the Town, or funds in the amount of the developer's fair-share shall be committed; or

3. A final development order is issued subject to the conditions that the necessary facilities and services needed to serve the new development shall be scheduled to be in place or under actual construction not more than one year after issuance of a certificate of occupancy as provided in the Town Capital Improvements Program.

C. **Sanitary Sewer and Potable Water Services:** Prior to the release of a building permit, an applicant or property owner must provide the Town Manager or designee a notarized letter from the water and sewer service provider stating that the water supplies and potable water and sewer capacities are available and will be reserved for the subject development consistent with the Town's adopted level of service standards. A duly authorized agent of the City of Vero Beach Water and Sewer Utility or successor entity serving the Town shall provide a letter certifying the following:

1. At the time an occupancy permit or its functional equivalent is issued, the necessary facilities and capacity will be in place and available to serve the new development; or

2. Construction of the new facilities is under way at the time of site plan or plat approval and necessary facilities and capacity will be in place concurrent with the impacts of new development; or

3. The new facilities are guaranteed at a specific time in an enforceable development agreement. An enforceable development agreement may include, but is not limited to, development agreements pursuant to Section 163.3220, Florida Statutes, or an agreement or development order pursuant to Chapter 380, Florida Statutes.

D. **Transportation Facilities:** For transportation facilities, at a minimum, transportation supply shall be determined on a segment by segment basis and segment capacity will be based either on FDOT's generalized capacity tables or individual segment capacity studies approved by the Town Engineer or consultant. Transportation supply for each segment is the segment's existing peak hour, peak season, peak direction capacity; or the segment's new roadway capacity if facility expansion for the segment is proposed and if requisite conditions in subsection 1 below are met.

1. **Requisite Conditions to Achieve Concurrency**: The Town shall ensure that the following standards are met to satisfy concurrency requirements, unless State authorized exceptions are enacted by the Town and duly approved by the State [Cross reference §9J-20055 (4-7), FAC].

   a. At the time the final development order is issued, the necessary facilities and services are in place or under actual construction; or

   b. A final development order or permit is issued subject to the conditions that the necessary facilities' expansion and services needed to serve the new development are scheduled to be in place or under actual construction not more than three years after issuance of a building permit as provided in the Town Five Year Capital Improvements Program. The Town's Capital Improvement Program may recognize

and include transportation projects included in the first three years of the adopted Florida Department of Transportation Five-Year work program or the Indian River County Capital Improvement Program. The Capital Improvements Element must include the following policies:

i. The estimated date of commencement of actual construction and the estimated date of project completion.

ii. A provision that a plan amendment is required to eliminate, defer, or delay construction of any road or public transit facility or service which is needed to maintain the adopted level of service standard and which is listed in the Five Year Capital Improvements Program; or

c. At the time the final development order is issued, the necessary facilities and services are the subject of a binding executed agreement which requires the necessary facilities and services to serve the new development to be in place or under actual construction not more than three years after issuance of a certificate of occupancy; or

d. At the time the final development order is issued, the necessary facilities and services are guaranteed in an enforceable development agreement, pursuant to §163.3220, FS, or an agreement or development order issued pursuant to Chapter 380, FS, to be in place or under actual construction not more than three years after issuance of a certificate of occupancy; or

e. The segment is the subject of a proportionate fair-share agreement. In such case, the segment capacity increase reflected in the proportionate fair-share agreement shall be available only to the parties of said agreement.

2. **Exceptions**: For the purpose of issuing a final development order, a proposed development may be deemed to have a de minimis impact and may not be subject to the transportation concurrency requirements, only if all the following conditions are met:

a. The development proposal is for redevelopment of an existing development and the post-development condition has a density and/or intensity equal to or less than the pre-existing development.

b. A de minimis impact is exempt is the traffic generated would not affect more than 1 percent of the maximum volume at the adopted level of service of the affected transportation facility as determined by the Town Engineer. No impact will be de minimis if the sum of existing roadway volumes and the projected volumes from approved projects on a transportation facility would exceed 110 percent of the maximum volume at the adopted level of service of the affected transportation facility.

c. Existing single family lots shall be exempt from the concurrency management regulations if the lot is a conforming lot or legal non-conforming lot existing prior to 1991 (adoption date of the Comprehensive Plan) regardless of the level of the deficiency of the roadway.

d. No impact will be de minimis if it would exceed the adopted level-of-service standard of any affected designated hurricane evacuation routes.

E. **Public School Facilities:** Evaluation of public school facilities levels of service, capacity, and demand shall be determined by the School District of Indian River County. School concurrency shall be determined for each public school facility (elementary schools, middle schools, and high schools), not including charter schools or magnet schools.

1. **School Facility Capacity:** Capacity for each school shall be its Florida Inventory of School Housing (FISH) Capacity including the FISH Capacity of programmed construction in the first three (3) years of the School District Five-Year Facilities Work Program. Capacity calculations for each school service area shall include capacity-producing mitigation guaranteed through any proportionate fair-share mitigation agreements approved in accordance with §14.8 of the adopted "Interlocal Agreement for Coordinated Planning and School Concurrency," the Public School Facilities Element of the Comprehensive Plan, and §168.03.1 of this ordinance.

2. **School 25Facility Demand; School Concurrency Exemptions.** The School District of Indian River County shall determine public school facility demand. Demand shall be calculated only for residential development with the following exemptions:

   a. A**ll legal, single family lots of record on July 1, 2008.**

   b. **Valid Residential Developments Approved Prior to July 1, 2008.** Any residential development that received a final site plan approval prior to July 1, 2008, where that approval has not expired and the approval remains valid.

   c. **Amendments Not Increasing Number of DUs, Size or Type.** Any amendment to any previously approved residential development which does not increase the number of dwelling units or change the dwelling unit structure type, such and single family or multiple family dwelling unit.

   d. **Certain Age Restricted Communities.** Any age restricted community with no permanent residents under the age of eighteen (18). Exemption of an age restricted community will be subject to a restrictive covenant limiting the age of permanent residents to 18 years and older. Said covenant shall be in a form acceptable to the Town attorney and shall be recorded in the public records prior to site plan approval and where no site plan is required prior to the release of a building permit for constructing improvements to a new subdivision or any dwelling unit.

   e. **School District to Issue Exemption Determination.** Upon request by a developer submitting an application for any new residential development, the School District of Indian River County shall issue a determination as to whether or not the development, lot, or unit, is exempt from the requirements of school concurrency. Residential development that fits into one of the four categories referenced above in subsection 168.02.8(E)(2)(a-d) in this section shall be exempt from public school facilities concurrency review.

f. **School District Procedure for Calculating Demand.** The system demand shall be calculated for each public school facility (elementary schools, middle schools, high schools), not including charter schools or magnet schools, and shall consist of student enrollment as counted for the fall full time equivalent (FTE) students projected to be generated from residential development vested for school concurrency under these school concurrency regulations, and students projected to be generated from approved residential developments that fall within exemption categories pursuant to Sec. 186.02.6 (F)(2)(a & b), and for which a building permit has been issued. Project demand shall be calculated as students projected to be generated from proposed development projects residential units based on the student generation rates contained in the adopted "Intergovernmental Agreement for Coordinated Planning and School Concurrency" and the Public School Facilities Element of the Comprehensive Plan.

3. **Formula for Determining Available Public School Facility Capacity.** The School District of Indian River County shall determine available public school facility capacity using the following formula:

Available School Capacity = (*School Capacity*) - (*Enrollment + Vested*)

Where

School Capacity = Florida Inventory of School Housing (FISH) Capacity, including the FISH Capacity of schools programmed for construction in the first three (3) years of the School District Five-Year Facilities Work Program.

Enrollment = Student enrollment as counted at the fall FTE.

Vested = Students projected to be generated from residential developments approved after the implementation of school concurrency where all school impact fees have been paid, plus students projected to be generated from residential building permits issued since implementation of school concurrency for lots that existed prior to implementation of school concurrency where either (1) no certificate of occupancy has been issued or (2) a certificate of occupancy has been issued since the last fall FTE.

a. At the fall FTE, the vested number of students will be reduced by the number of students represented by the vested residential units that received certificates of occupancy within the previous twelve-month period.

b. If a proposed residential development causes the adopted level of service to be exceeded in the school service area in which the proposed residential development is located, the available capacity in the adjacent school service area(s) shall be used.

c. Available capacity determination shall be stated in a *School Capacity Availability Determination Letter* (SCADL), as required in the adopted "Interlocal Agreement for Coordinated Planning and School Concurrency". Each SCADL shall state the total number and type of residential units for which school capacity is available and shall be sent to the coordinating agency (community development) and the applicant.

4. **Public School Facilities Concurrency Test.** The test for public school facilities concurrency shall be a comparison of project demand and available capacity. A project shall be deemed to meet public school facilities concurrency if available capacity exceeds project demand.

F~~E~~. **Concurrency Determination Assignability and Transferability.**

1. **Concurrency Approval Runs with Land:** Concurrency determination shall run with the land and shall transfer to a successor in interest to the original applicant upon written disclosure of such transfer to the community development department.

2. **Application for Assignability and Transferability**: The following information shall be disclosed in all applications pertaining to concurrency:

   a. Full legal name of the person or business entity acquiring the interest in the property;
   b. Nature of the interest;
   c. Address of the principal place of business of the successor;
   d. Telephone number;
   e. Name and address of registered agent if corporation;
   f. Name, address and title of officers or agents authorized to transact business with the Town;
   g. Proof of authorization if other than president or vice-president or general partner; and
   h. Name and address of any new design professional for the project if applicable.

3. **Burdens on Transferee Applicant**: A transferee applicant must also assume in writing on form acceptable to the Town attorney all commitments, responsibilities, and obligations of the prior applicant, including all special conditions of the concurrency determination certificate.

4. **Suspension of Concurrency Approval:** Failure to make the required disclosure and assumption shall suspend a concurrency approval until such time as proper disclosure and assumption are made.

5. **Time Constraints Unaffected:** Transfer of a concurrency approval until concurrency determination shall not toll or modify the calculation of time limits set forth in the concurrency determination approval. Following any transfer, such time limits shall be calculated as if the transfer had not occurred.

6. **Not Assignable or Transferable to Other Developments:** A concurrency determination certificate shall not be assignable or transferable to other developments.

SECTION 2: PROPORTIONATE FAIR-SHARE OPTION

Section 168.03 "Proportionate Fair-Share Option" and its subsections are hereby amended to read as follows:

168.03: PROPORTIONATE FAIR-SHARE OPTIONS TO MITIGATE DEFICIT TRANSPORTATION FACILITIES AND PUBLIC SCHOOL FACILITIES

168.03.1: PROPORTIONATE FAIR-SHARE OPTION TO MITIGATE DEFICIT TRANSPORTATION FACILITIES

A. **Purpose and Intent:** The purpose of this section is to establish a method whereby the impacts of development on transportation facilities can be mitigated by the cooperative efforts of the public and private sectors, to be known as the Proportionate Fair-Share Program, as required by and in a manner consistent with §163.3180(16), F.S.

B. **Findings:** The Town Council finds and determines that transportation capacity is a commodity that has a value to both the public and private sectors, and that the Town's Proportionate Fair- Share Program:

1. Provides a method by which the impacts of development on transportation facilities can be mitigated by the cooperative and creative 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 expanding or improving a transportation facility;

3. Contributes to the provision of adequate public facilities for future growth and promotes a strong commitment to comprehensive facilities planning, thereby reducing the potential for moratoria or unacceptable levels of traffic congestion; and

4. Maximizes the use of public funds for adequate transportation facilities to serve future growth, and may, in certain circumstances, allow the Town to expedite transportation improvements by supplementing funds currently allocated for transportation improvements in the Capital Improvements

C. **Applicability:** The Proportionate Fair-Share Program shall apply to any development project in the Town of Indian River Shores where the project's traffic impact study or the Town engineer determines that there is insufficient capacity on one or more segments to satisfy the development project's transportation concurrency requirements. The Proportionate Fair-Share Program does not apply to developments of regional impact (DRIs) using proportionate fair-share under §163.3180(12), F.S., or to developments exempted from concurrency as provided in §168.02.5(B).

D. **General Requirements.**

1. An applicant whose project meets the criteria of Section 168.03 may choose to satisfy transportation concurrency requirements by making a proportionate fair-share contribution, pursuant to the following requirements:

a. The proposed development is consistent with the comprehensive plan and applicable land development regulations, and

b. The five-year schedule of capital improvements in the Town's Capital Improvements Element (CIE) includes one or more transportation improvements that, upon completion, will provide sufficient capacity for the deficient segments to accommodate the traffic generated by the proposed development.

2. The Town may choose to allow an applicant to satisfy transportation concurrency for a deficient segment, through the Proportionate Fair-Share Program, by the developer contributing to an improvement that, upon completion, will create additional capacity on the deficient segment sufficient to accommodate the additional traffic generated by the applicant's proposed development even if the improvement project for the deficient segment is not contained in the 5-year schedule of capital improvements in the CIE where:

   a. The Town Council holds an advertised public hearing to consider the proportionate share agreement and corresponding future changes to the 5-year CIE, and

   b. The Town adopts, by ordinance, an amendment adding the improvement to the 5-year schedule of capital improvements in the CIE. To qualify for consideration under this section, the proposed improvement must be reviewed by the Town Council, and determined to be financially feasible pursuant to §163.3180(16)(b)1, F.S., consistent with the comprehensive plan, and in compliance with the provisions of this ordinance.

      Financial feasibility for this section means that additional contributions, payments or revenue sources to fund the improvement project are reasonably anticipated during a period not to exceed 10 years.

3. Any improvement project proposed to meet a developer's fair-share obligation must meet design standards of the Town for locally maintained roadways and of the Florida Department of Transportation (FDOT) for the state highway system.

E. **Application Process.**

1. Upon identification of a lack of capacity to satisfy transportation concurrency, and may choose to satisfy transportation concurrency through the proportionate fair-share program pursuant to the requirements of Section 168.3.1.

2. Prior to submitting an application for a proportionate fair-share agreement, the applicant shall attend a pre-application meeting with the Town Manager or designee to discuss eligibility, application submittal requirements, potential mitigation options, and related issues.

3. Eligible applicants shall submit an application to the Town Manager or designee that includes an application fee as established by resolution and the following:

   a. Name, address, and phone number of owner(s), developer and agent;
   b. Property location, including parcel identification numbers;
   c. Legal description and survey of property;
   d. Project description, including type, intensity, and amount of development;
   e. Phasing schedule, if applicable;

f. Description of requested proportionate fair-share mitigation method(s);
g. Copy of concurrency application;
h. Copy of the project's Traffic Impact Statement (TIS) or Traffic Impact Analysis (TIA); and
i. Location map depicting the site and affected road network.

4. The Town Manager or designee shall review the application and certify that the application is sufficient and complete. Should the application require the Town to use the professional services of a consultant, the applicant shall bear all expenses incurred by the Town for use of such consultant services. If an application is determined to be insufficient, incomplete, or inconsistent with the general requirements of the proportionate fair-share program as indicated in §168.02 and §168.03.1, then the applicant shall be notified in writing of the reasons for such deficiencies. If such deficiencies are not remedied by the applicant within 30 days of receipt of the written notification, then the application shall be deemed abandoned. The Town Council may, in its discretion, grant an extension of time not to exceed 60 days to cure such deficiencies, provided that the applicant has shown good cause for the extension and has taken reasonable steps to effect a cure.

5. When an application is deemed sufficient, complete, and eligible, a proposed proportionate fair-share obligation and binding agreement will be prepared by the Town or the applicant with direction from the Town and delivered to the appropriate parties for review.

6. The Town Manager or designee shall notify the applicant regarding the date of the Town Council meeting at which the agreement will be considered for final approval. No proportionate fair-share agreement will be effective until approved by the Town Council.

F. **Determining Proportionate Fair-Share Obligation.**

1. Proportionate fair-share mitigation for concurrency impacts may include, separately or collectively, private funds, contributions of land, and construction and contribution of facilities as provided in §163.3180 (16)(c), F.S.

2. 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 based on the form of mitigation as provided in §163.3180 (16)(c), F.S.

3. The methodology used to calculate an applicant's proportionate fair-share obligation shall be as provided for in Section 163.3180 (12), F. S., as follows: The cumulative number of peak hour, peak direction trips from the complete build-out of the proposed development, or build-out of the stage or phase being approved, that are assigned to the proportionate share program segment divided by the change in the peak hour directional maximum service volume (MSV) of the proportionate share program segment resulting from construction of the proportionate share program improvement, multiplied by the anticipated construction cost of the proportionate share project in the year that construction will occur.

This methodology is expressed by the following formula:

Proportionate Fair-Share = Σ [Development Trips$_i$) ÷ (SV Increase$_i$)] X Cost$_i$]

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

Where: Σ = Sum of all deficient links proposed for proportionate fair-share mitigation for a project.

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 concurrency management system;

SV Increase$_i$ = Service volume increase provided by the eligible improvement to roadway segment **"i"**;

Cost$_i$ = Adjusted cost of the improvement to segment **"i"**. Cost shall consist of all improvements and associated costs, including design, right-of-way acquisition, planning, engineering, inspection, and physical development costs, directly associated with construction at the anticipated cost in the year that construction will occur.

4. For purposes of determining proportionate fair-share obligations, the Town shall determine improvement costs based upon the actual and/or anticipated costs of the improvement in the year that construction will occur. The Town shall coordinate the review of impacts to State or County maintained roads with the Indian River County Public Works Department. Any County fees associated with review of impacts or needed improvements to State or County maintained roads, including engineering, design, and cost estimates ~~These costs~~ shall be paid by the applicant. ~~determined by the county's public works department~~.

5. If the Town has accepted an improvement project proposed by the applicant, then the value of the improvement shall be based on an engineer's certified cost estimate provided by the applicant and approved by the County Public Works Director or other method approved by the County Public Works Director.

6. If the Town has accepted right-of-way dedication for the proportionate fair-share payment, credit for the dedication of the non-site related right-of-way shall be valued on the date of the dedication at 120 percent of the most recent assessed value by the County Property Appraiser or, at the option of the applicant, by fair market value established by an independent appraisal approved by the Town and at no expense to the Town. Said appraisal shall assume no approved development plan for the site. 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 Town at no expense to the Town. If the estimated value of the right-of-way dedication proposed by the applicant (based on a Town-approved appraisal) is less than the Town estimated total proportionate fair-share obligation for that development, then the applicant must also pay the difference. If the estimated value of the right-of-way dedication proposed by the applicant (based on a Town-approved appraisal) is more than the Town estimated total proportionate fair-share obligation for the development, then the Town will give the applicant traffic impact fee credit for the difference.

G. **Impact Fee Credit for Proportionate Fair-Share Mitigation.**

1. Proportionate fair-share mitigation payments for a development project shall be applied as a credit toward the traffic impact fees assessed to that development project.

2. Impact fee credits for a proportionate fair-share contribution will be determined when the traffic impact fee obligation is calculated for the proposed development. If the applicant's proportionate fair-share obligation is less than the development's anticipated road impact fee for the specific stage or phase of development under review, then the applicant must pay the remaining impact fee amount.

3. A proportionate fair-share contribution is intended to mitigate the transportation impacts of a proposed development at a specific location. As a result, any traffic impact fee credit based upon proportionate fair-share contributions for a proposed development may not be transferred to any other location.

4. The amount of traffic impact fee (TIF) credit for a proportionate fair-share contribution may be up to but shall not exceed the project's proportionate fair-share amount and will be determined based on the following formula:

   TIF Credit = [(Proportionate fair-share impacted roadways' VMT) ÷ (Total Project VMT)] **X** (Total Project Traffic Impact Fee Liability)

   Where:

   VMT (Vehicle miles of travel on a link) **=** (length of link) **X** (number of trips assigned to that link)

   Total Project VMT = Total vehicle miles of travel on all links impacted by proportionate fair-share project

5. A proportionate fair-share impact fee credit shall be applied consistent with the following formula:

   Applicant payment = [(Total project traffic impact fees assessed) **+** (Proportionate Share Payment)] **–** (TIF CREDIT)

H. **Proportionate Fair-Share Agreements.**

1. Upon executing a Proportionate Fair-Share Agreement (Agreement) and satisfying other concurrency requirements, an applicant shall receive concurrency approval for subject trips. Should the applicant fail to apply for building permits within the timeframe provided for in the Town concurrency approval, then the project's concurrency vesting shall expire, and the applicant shall be required to reapply. Once a proportionate share payment for a project is made and other impact fees for the project are paid, no refunds shall be given. All payments, however, shall run with the land.

2. Payment of the proportionate fair-share contribution for a project and payment of other impact fees assessed to that project shall be due and must be paid prior to the effective date of the proportionate fair-share agreement. The effective date shall be specified in the agreement and shall be the date the agreement is approved by the Town Council.

3. All developer improvements accepted as proportionate fair-share contributions must be completed within 3 (three) years of the issuance of the first building permit for the project which is the subject of the proportionate fair-share agreement and be accompanied by a security instrument that is sufficient to ensure the completion of all required improvements. The security instrument shall conform to specifications set by the Town Council and approved by the Town attorney. It is the intent of this section that any required improvements be completed within 3 (three) years of the issuance of the first building permit for the project which is the subject of the proportionate fair-share agreement.

4. Dedication of necessary right-of-way for facility improvements pursuant to a proportionate fair-share agreement must occur prior to the effective date of the proportionate fair-share agreement.

5. Any requested change to a development project subsequent to issuance of a development order shall be subject to additional proportionate fair-share contributions to the extent the change would increase project costs or generate additional traffic that would require mitigation.

6. Applicants may withdraw from a proportionate fair-share agreement at any time prior to the execution of the agreement. The application fee and any associated advertising costs to the Town are nonrefundable.

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

I. **Appropriation of Fair-Share Revenues.**

1. Proportionate fair-share revenues shall be placed in the appropriate project account for funding of scheduled improvements in the Town capital improvements element, or as otherwise established in the terms of the proportionate fair-share agreement. Proportionate fair-share revenues may also be used as the 50% local match for funding under the FDOT Transportation Regional Incentive Program (TRIP).

2. In the event a scheduled facility improvement is removed from the CIP, then the proportionate fair-share revenues collected for its construction may be applied toward the construction of alternative improvements within that same corridor or sector where the alternative improvement will mitigate the impacts of the development project on the congested roadway(s) for which the original proportionate fair-share contribution was made.

168.03.2 Proportionate fair-share mitigation for public school facilities. The proportionate fair-share mitigation provisions for public school facilities shall apply to any residential development project subject to school concurrency located in Indian River County where the school district has determined that there is insufficient public school facilities capacity to satisfy the development's public school facilities concurrency requirements. The school district shall process for consideration all requests for proportionate fair-share mitigation for public school facilities and shall administer resulting mitigation agreements in accordance with Section 14.8 of the adopted "Interlocal Agreement for Coordinated Planning and School Concurrency" and the public school facilities element of the comprehensive plan.

SECTION 3: REPEAL OF CONFLICTING PROVISIONS

All prior inconsistent ordinances adopted by the Town Council which are in conflict with this ordinance are hereby repealed to the extent of the conflict.

SECTION 4: CODIFICATION

This ordinance shall be incorporated into the Town of Indian River Shores Land Development Code and any paragraph, number or letter, and any header may be changed or modified to implement the ordinance. Grammatical, typographical or other scrivener errors may be corrected and alterations and omissions not affecting the construction or meaning of this ordinance and the Town Land Development Code may be made.

SECTION 5: SEVERABILITY

If any section, subsection, sentence, clause, phrase, word or provision of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, whether for substantive, procedural, or any other reason, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of this ordinance.

SECTION 6: EFFECTIVE DATE

This Ordinance shall become effective immediately upon adoption by the Town Council of the Town of Indian River Shores, Florida.

Date of Planning, Zoning and Variance Public Meeting: January 12, 2009

Date of Town Council First Reading: _January 29, 2009_

Date of Publication: _February 13, 2009_

Date of Town Council Second Reading and Public Hearing: _February 26, 2009_

ADOPTED this _26th_ day of _February_, 2009.

TOWN OF INDIAN RIVER SHORES

__/s_____

THOMAS CADDEN, Mayor

ATTEST:

___/s_____

LAURA ALDRICH, CMC, Town Clerk