



AGENDA REPORT
May 8, 2018

SUBJECT:

Appeal, Re: Transportation Impact Fee Exemption by Banana Riverfront, LLC (District 2)

FISCAL IMPACT:

FY17/18 – If this appeal is resolved in favor of the applicant, up to \$33,289.06 in transportation impact fees will not be collected in the Merritt Island/North Beaches Benefit District (Fund 1209).

DEPT/OFFICE:

Planning and Development

REQUESTED ACTION:

It is requested that the Board of County Commissioners consider an appeal by Banana Riverfront, LLC of a denial of a transportation impact fee exemption for the Squid Lips Deck Addition project.

SUMMARY EXPLANATION and BACKGROUND:

On December 18, 2017 Banana Riverfront, LLC submitted a letter requesting an exemption to the transportation impact fee code for a 1,970 square foot deck addition at the Cocoa Beach Squid Lips pursuant to Section 62-815 (a) 1. and Section 62-815 (a) 2. based on a claim that no new units were being created, the use was not being changed, and no additional vehicular trips were being created. Further, the application claims the only area that should be used to determine the impact fee amount is the net area where customers have access.

After a review of the information provided, the request for exemption was Administratively denied on January 11, 2018 based on the finding that new units have been created and that absent professionally prepared evidence to the contrary, additional vehicular trips are also being created. Also, there are no impact fees assessed on commercial development that are based on net area. They are all based on gross area. This is standard methodology and is the basis of the entire transportation impact fee study, analysis and recommendations. The proposed "net" area adjustment would disrupt the entire impact fee rate schedule and at best would result in adjusting the rate schedule to have no change to the actual revenues generated.

Further, since the adoption of the smoking ban in restaurants by the State of Florida, it has become common practice to include outside restaurant seating areas in order to accommodate patrons that smoke. Since the transportation impact fee rate schedule is based on gross square feet, it has been a standard practice to include these outside seating areas in the calculation of the transportation impact fees that are due on a particular project. Since the adoption of the smoking ban all restaurants have been

required to pay for additions that provide outside seating.

ATTACHMENTS:

Description

- **Notice of Appeal**
- **Staff Report**



Tammy Rowe, Clerk to the Board, 400 South Street • P.O. Box 999, Titusville, Florida 32781-0999

Telephone: (321) 637-2001
Fax: (321) 264-6972
Tammy.Rowe@brevardclerk.us

May 9, 2018

MEMORANDUM

TO: Tad Calkins, Planning and Development Director

RE: Item VI.A.1., Appeal for Transportation Impact Fee Exemption by Banana Riverfront, LLC

The Board of County Commissioners, in regular session on May 8, 2018, tabled consideration of an appeal by Banana Riverfront, LLC of a denial of transportation impact fee exemption for the Squid Lips Deck Addition Project to the August 14, 2018, Board meeting.

Your continued cooperation is greatly appreciated.

Sincerely yours,

BOARD OF COUNTY COMMISSIONERS
SCOTT ELLIS, CLERK

Tammy Rowe

Tammy Rowe, Deputy Clerk

/ds

cc: County Attorney

Notice of Appeal

Banana Riverfront, LLC, by and through the undersigned attorney, pursuant to Section 82-819 of the Brevard County Code of Ordinances, files this Appeal of the denial of the requested exemptions to the Transportation Impact Fee Assessment of \$33,289.06 for the Squid Lips Deck Addition, Application No. 17BC10869. A copy of the Impact Fee Assessment Form B-2 is attached as **Exhibit "A"**.

On December 18, 2017, Buz Underill, Managing Member of Banana Riverfront, LLC claimed an exemption to the Transportation Impact Fee, specifically exemptions under Section 62-815 (a) (1) and (2). A copy of the letter from Mr. Underill is attached as **Exhibit "B"**.

By letter dated January 11, 2018, Stephen Swanke, Impact Fee Administrator, denied the exemption based upon his assumption that the increase in "units" – square footage – would result in an increase in the number of vehicular trips. A copy of Mr. Swanke's letter is attached as **Exhibit "C"**.

Banana Riverfront, LLC appeals this denial of the exemptions on several grounds.

1. There are few new seats actually generated by the accessory structure, that being the new deck addition. Banana Riverfront, LLC purchased the property with a total of 459 seats. A copy of the Affidavit for Vested Rights Petition, executed by the seller, is attached as **Exhibit "D"**. The impact fee should be calculated on actual potential occupancy, not gross square footage.

2. The "units" of additional square footage is improperly applied. While there was additional decking added, the use of 1,970 square feet, as "units" is inappropriate because some of this includes a bandstand area, a bar and bar-back area, doorway landings, coolers, stairs and corridors, none of which can be utilized for the primary occupation function of the restaurant,

which is the service of patrons. Additional “units” should be based on actual use of restaurant building – “net area” – not “gross area” or “net area”. From the scaled drawings provided to the County, the actual new square footage that is for patrons is approximately 1020 square feet. . A copy of the Minor Exterior Renovations is attached as **Exhibit “E”**.

3. The fee schedule has not been reviewed by the County Commission as required by Section 62-816.

I HEREBY CERIFY that this Notice of Appeal and been sent to County Manager, Frank Abbate, at Frank.Abbate@brevardfl.gov, Impact Fee Administrator, Stephen M. Swanke, at Steve.Swanke@brevardfl.gov and to Clerk to the Board of County Commission, Sally Lewis, at Sally.Lewis@brevardfl.gov on February 12, 2018.

CANTWELL & GOLDMAN, P.A.
Attorneys for Banana Riverfront, LLC



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**BREVARD COUNTY BOARD OF COMMISSIONERS
IMPACT FEE ASSESSMENT
FORM B-2**

Project Name: Squid Lips Deck Addition

Date: 11/28/2017 | **Prep. by:** NJAH

Site Plan No.: 17SP00016

Site Address:
 Unincorporated Incorporated
Street: 2200 S Orlando Ave.
City: Cocoa Beach, FL

Applicant: Construction Eng. Group
Jake Wise, P E
Street: 2651 W Eau Gallie Blvd.
City: Melbourne, FL 32935
Phone: (321) 610-1760

Legal Description: RE#2520254
Twn: 25 **Rng:** 37 **Sec:** 26
Sub-Division: 28
TaxParcel/Blk: **Lot:**

Owner: H J Underill, III
Banana Riverfront, LLC
Street: 490 N Harbor City Blvd
City: Melbourne, FL 32935
Phone: (321) 258-5840

Project Description:
 Quality Restaurant
Size: 1,970 sf
Units: 1

Solid Waste Billing Units: IC
Land Use Code: 2100

Impact Fee Amount:	
Transportation:	\$33,289.06
Fire/Rescue:	\$519.11
Correctional:	\$690.98
Emergency Med. Serv.:	\$370.95
Library Services:	\$0.00
Solid Waste:	\$0.00
Educational Facilities:	\$0.00
Sub-Total:	<u>\$34,870.10</u>
Credits:	
** Est. Impact Fees:	\$34,870.10

**** NOTES:**

- CHANGE OF USE ON THIS PROPERTY MANDATES A REVIEW AND MAY REQUIRE ADDITIONAL IMPACT FEE PAYMENT.**
- Payment is required before C.O. or Pre-Power, however, payment cannot be accepted before Building Permit is Issued.*
- If Permit Plan differs from Site Plan, Impact Fee assessment may change.*
- Fees calculated according to current Brevard County Commissioners approved Impact Fee Schedule.*

Comments:

Permit No.:

Application No. 17BC10869

**Brevard County Impact Fees assessed by:
 Brevard County Land Development Code
 Phone: (321) 633-2065, Fax: (321) 633-2052**

December 18, 2017

Mr. Steve Swanke
Land Development Impact Fees
2725 Judge Fran Jamieson Way, Bldg A
Viera, FL 32940

**RE: Banana Riverfront, LLC (a/k/a Cocoa Beach Squid Lips) Construction Permit
and Transportation Impact Fees, 2200 S. Orlando Avenue, Cocoa Beach**

Dear Mr. Swanke:

Pursuant to Sec. 62-815 (a), Banana Riverfront is claiming an exemption to the transportation impact fee assessed against its Property due to the expansion of the accessory structure, the outdoor deck. The usable areas of the Property have been restructured such that there is no increase in "units" or usable square footage, the use has not changed and there will be no additional trips produced from this deck expansion.

Sec. 62-815. - Exemptions, credits, reimbursements, and deferrals.

(a) *Exemptions.* The following shall be exempted from payment of the transportation impact fee:

- (1) Alteration or expansion of an existing building where no additional units are created, where the use is not changed and where no additional vehicular trips will be produced over and above those produced by the existing use.
- (2) The construction of accessory buildings or structures which will not produce additional vehicular trips over and above those produced by the principal building or use of the land.

Please evaluate this exemption request and provide written acceptance or denial of this claim. If denied, Banana Riverfront, LLC intends to appeal to the County Commission.

Thank you for your attention to this matter.

Sincerely,



Buz Underill
Managing Member

cc: Tad Calkins, Director of Planning & Development (tad.calkins@brevardfl.gov)



CGSD
Planning & Development Department
2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

January 11, 2018

Buz Underill, Managing Member
Banana Riverfront, LLC.
490 N. Harbor City Boulevard
Melbourne, Florida 32935

Dear Mr. Underill:

I have received your letter of December 18, 2017 requesting an exemption to the transportation impact fees assessed on your property pursuant to the terms of Section 62-815(a) of the Brevard County Code of Ordinances. To be considered exempt under that section, your development activity must not increase the number of units, change the use or produce additional vehicular trips above that of the existing use. Therefore, this exemption requires all three of these conditions to be true.

Per Section 62-818, at your request, the deck addition has been assessed as a low turnover, quality restaurant which is the lowest rate that can be assessed on a restaurant. Although you have not expanded the existing building and the deck addition may be considered an accessory structure, you are able to provide food and beverage service to restaurant patrons on the deck and the deck addition must be considered to be a part of the restaurant. The computation of the transportation impact fee is based on the gross square footage of the restaurant including the deck and the deck addition thus represents an increase in the number of units.

You also state that no additional vehicular trips would be produced by this addition. Without professionally prepared, supporting documentation indicating that no additional vehicular trips will be created, I must assume that the increase in the number of units will result in an increase in the number of vehicular trips. At your option, you may retain a qualified traffic consultant to prepare an independent fee calculation study pursuant to the terms of Section 62-809 (b) to calculate a transportation impact fee rate different than that listed in Section 62-818.

I concur that the deck addition does not represent a change of use of this property. However, for the reasons identified above, I have found that the number of units has been increased and additional vehicular trips will be created. Therefore, your request for an exemption pursuant to Section 62-815 (1) & (2) is denied. You may appeal this decision to the Board of County Commissioners per the terms of Section 62-819.

Sincerely,

Stephen M. Swanke
Impact Fee Administration & Cashier Program Manager

AFFIDAVIT FOR VESTED RIGHTS PETITION
Banana Riverfront, LLC

STATE OF New Jersey
COUNTY OF Ocean.

BEFORE ME, the undersigned authority, personally appeared, Robert R. Cooper, President of Chefs International, Inc., who, after fully being duly sworn, deposes and says:

1. Chefs International, Inc. owned the Property at 2200 S. Orlando Avenue, Cocoa Beach, Brevard County, Florida, as more particularly described in Exhibit "A" attached hereto, from September 30, 1981 to October 16, 2015.

2. Chefs International, Inc., is the holder of that certain Mortgage and Security Agreement, dated October 20, 2015, and recorded on October 26, 2015, in O.R. Book 7480, Page 315, Public Records of Brevard County, Florida, and encumbering lands described in said Mortgage.

3. The attached survey, Exhibit "B", dated September 10, 2015 is an accurate depiction of the buildings and structures that existed at the time of the sale of the Property to Banana Riverfront, LLC.

4. At the time of the sale, the restaurant provided for 358 seats inside and 101 on the deck, walkway and gazebo areas on the west side of the restaurant building, for a total of 459 seats.

5. To my knowledge, all structures were properly permitted through Brevard County, or were repairs that Chefs International, Inc. did not believe required permits.

6. The structures and pier sustained substantial damage from the three (3) hurricanes in 2004 and there were many repairs needed.

7. Unfortunately, all records of the permits and structures in the possession of Chefs International, Inc. were destroyed while in storage in New Jersey due to Super Storm Sandy in 2012.

Exhibit "D"



Planning & Development Department
2725 Judge Fran Jamieson Way
Building A, Room 114
Viera, Florida 32940

BOARD OF COUNTY COMMISSIONERS

STAFF REPORT: NOTICE OF APPEAL by Banana Riverfront, LLC of a denial of transportation impact fee exemptions.

On December 18, 2017, Banana Riverfront, LLC claimed an exemption to the imposition of Transportation Impact Fees pursuant to Section 62-815 (a) 1. and Section 62-815 (a) 2. These sections allow exemption to transportation impact fees for expansions that do not increase the number of units, change the use, and do not create additional vehicular trips.

Following submittal of their claim of exemption, the claim was reviewed and a letter of denial was issued on January 11, 2018 based on the finding that additional units are being created and an increase in additional vehicular trips could result. Their request did not include professionally prepared evidence to the contrary.

Banana Riverfront, LLC has now filed a Notice of Appeal to the Board of County Commissioners seeking to overturn the denial of their exemption. Their appeal is based on the following grounds:

1. The impact fee should be based on "actual potential occupancy" not gross square footage.
2. The calculation of additional units is incorrect since it was based on gross square footage which includes the bandstand and bar area.
3. The Board of County Commissioners has not reviewed the transportation impact fee rate schedule contained in Section 62-818 in this fiscal biennium as required by Section 62-816.

Staff's responses to the grounds of this appeal are as follows:

1. On April 24, 2001 the Board of County Commissioners adopted Ordinance 01-21 which amended the transportation impact fee rate schedule contained in Section 62-818 to reflect the rates calculated by the Brevard County Impact Fee Update Study, dated March 2000 and prepared by Tindale Oliver and Associates, Inc. The calculation of the rates for the three restaurant land uses was based on the gross square footage of the facilities and not on the "actual potential occupancy" of the facility. Basing impact fee rates on gross square footage is a common practice in the State of Florida. Utilizing "net area" or "actual potential occupancy" would require a recalculation of the transportation impact fee rate schedule for restaurants and would increase the rate charged for "net area" or "actual potential occupancy" in order to compensate for the reduction in square feet since the actual traffic impact would remain



Planning & Development Department

2725 Judge Fran Jamieson Way
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BOARD OF COUNTY COMMISSIONERS

unchanged. This would result in higher transportation impact fee payments for all new restaurants in order to reduce the transportation impact fee payment for the Squid Lips Deck Addition. Banana Riverfront, LLC was advised that they could perform an independent fee calculation study pursuant to Section 62-809 (b) rather than using the rate contained in Section 62-818. These sections of the code are attached for your information.

2. Brevard County's transportation impact fee code does not provide for assessment of impact fees based on "net area" or "actual potential occupancy". Presumably, liquor sales and live music attract patrons to this restaurant and could result in additional vehicular traffic or the owner would not provide these services. Coolers, stairs and corridors are necessary appurtenances to this facility. The transportation impact fee rates were calculated with such appurtenances included in the gross square footage. Therefore, their exclusion is not sufficient justification for the applicant's claim of an exemption.
3. This expansion project has been assessed at the lowest transportation impact fee rate in effect for any restaurant land use category. This rate was calculated in March 2000. The Board of County Commissioners authorized a new impact fee update study in 2014. This study was completed in March 2015. The Board of County Commissioners reviewed the updated Transportation Impact Fee Rate Schedule from this study but declined to increase transportation impact fee rates at that time. No new information has been submitted since March 2015 that would necessitate further review by the Board.

By way of comparison, the current rate for a low turnover restaurant based on the March 2000 study is \$16.90 per square foot. The rate for a low turnover restaurant recommended by the 2015 study was \$30.55, an increase of 81%.

Sec. 62-809. Computation.

(a) At the option of the fee payer, the amount of the fee required by this division may be determined by the fee schedule set out in section 62-818. If a building permit is requested for mixed uses, then the fee shall be determined through using the fee schedule in section 62-818 by apportioning the space committed to uses specified on the schedule. If the applicant for a building permit neglects or fails to describe such uses, or fails to do so with sufficient specificity in the opinion of the county manager, or if the basis for calculating the transportation impact fee is unclear, then the county manager shall assume maximum impact by imposing the fee from section 62-818 assuming the highest uses for the proposed improvement for which the building permit is sought. If the type of development activity for which a building permit is applied for is not specified on the fee schedule in section 62-818, the county manager shall use the fee applicable to the most nearly comparable type of land use on the fee schedule. The county manager shall be guided in the selection of a comparable type by the report entitled "Trip Generation" (sixth edition) prepared by the Institute of Transportation Engineers. If the county manager determines that there is no comparable type of land use on the fee schedule in section 62-818, then the county manager shall determine the fee by:

- (1) Using traffic generation statistics contained in the report entitled "Trip Generation" (sixth edition), prepared by the Institute of Transportation Engineers; and
- (2) Applying the formula set forth in subsection (b) of this section.

In the case of the conversion of a residential use to a nonresidential use, the impact fee shall be based upon the net increase in the impact fee for the new use as compared to the previous use. The county manager shall be guided in this determination by the report entitled "Trip Generation" (sixth edition) prepared by the Institute of Transportation Engineers.

(b) If a fee payer opts not to have the impact fees determined according to subsection (a) of this section, then the fee payer shall prepare and submit to the county manager an independent fee calculation study for the land development activity for which a building permit is sought. The independent fee calculation study shall follow the prescribed methodologies and formats for such a study established by the county manager. The traffic engineering study and economic documentation submitted shall show the basis upon which the independent fee calculation was made, including but not limited to the following:

- (1) *Traffic engineering studies.*
 - a. Documentation of trip generation rates appropriate for the proposed land development activity.
 - b. Documentation of trip length appropriate for the proposed land development activity.
 - c. Documentation of trip data appropriate for the proposed land development activity.
- (2) *Economic documentation studies.*

- a. Documentation of the cost per lane per mile for roadway construction appropriate for the proposed land development activity.
- b. Documentation of credits attributable to the proposed land development activity which can be expected to be available to replace the portion of the service volume used by the traffic generated by the proposed land development activity. This documentation shall be prepared and presented by qualified professionals in their respective fields.
- (c) The following formula shall be used by the county manager to determine the impact fee per unit of development:
 - (1) New travel = Trips per day per unit \times trip length \times percent new travel.
 - (2) New road capacity = New travel / 2 / lane capacity.
 - (3) Total cost = New road capacity \times cost per lane mile.
 - (4) Credits = (Dollars per gallon \times (annual travel) / (miles per gallon)) \times present value factor.
 - (5) Net cost = Total cost - credits.
 - (6) Impact fee = Net cost.

Sec. 62-810. Payment.

- (a) The person applying for the issuance of a building permit shall pay the fee assessed pursuant to this division to the county manager prior to the issuance of a certificate of occupancy. No certificate of occupancy shall be issued until all assessed impact fees are paid. The obligation to pay the fee shall run with the land.
- (b) All funds collected shall be properly identified by transportation impact fee district and promptly transferred for deposit in the appropriate transportation impact fee trust fund, to be held in separate accounts as determined in section 62-812 and used solely for the purposes specified in this division.
- (c) In lieu of all or part of the transportation impact fees, the board of county commissioners may accept the offer by a feepayer, developer, or community development district to construct all or part of a road improvement project, including right-of-way, shown in the county comprehensive plan or appropriate to the implementation thereof. This offer shall not include the construction of site-related improvements. Such construction must be in accordance with county, municipal or state design standards, whichever are applicable. The feepayer, developer, or community development district shall submit a project description in sufficient detail, including competitive bids if so requested, to allow the county manager to establish an engineering and construction cost estimate. The county manager shall credit this estimated cost or the actual cost of the construction, whichever is the lower, against the transportation impact fee otherwise due as further described in section 62-815. The portion of the fee represented by the road construction shall be deemed paid when the construction is completed and accepted by the county or state for maintenance or when the feepayer posts security as provided in this subsection for the costs of such construction. Security in the form of a performance bond, irrevocable letter of credit or escrow agreement shall be posted with the board of county commissioners in an amount approved by the board equal to 110 percent of the full cost of such

Manufacturing	1,000 square feet	\$1,712.00
Warehouse	1,000 square feet	\$2,223.00
Miniwarehouse	1,000 square feet	\$543.00
Commercial:		
Hotel	Room	\$2,735.00
Motel	Room	\$1,480.00
Resort hotel	Room	\$6,522.00
Office under 10,000 GSF	1,000 square feet	\$8,630.00
Office 10,000 GSF and over	1,000 square feet	\$5,058.00
Office park	1,000 square feet	\$6,228.00
Medical office	1,000 square feet	\$13,024.00
Bank	1,000 square feet	\$13,766.00
Bank with drive-through	1,000 square feet	\$23,331.00
Retail:		
under 50,000 GSF	1,000 square feet	\$5,804.00
50,000 to 99,999 GSF	1,000 square feet	\$6,396.00
100,000 to 299,999 GSF	1,000 square feet	\$5,270.00
300,000 to 499,999 GSF	1,000 square feet	\$5,833.00
500,000 GSF & over	1,000 square feet	\$5,834.00
Service Station	Fuel Position	\$4,269.00
New & Used Auto Sales	1,000 square feet	\$10,933.00
Low Turnover Quality Restaurant	1,000 square feet	\$16,898.00
High Turnover Restaurant	1,000 square feet	\$23,213.00
Restaurant w/Drive-through	1,000 square feet	\$35,791.00
Supermarket	1,000 square feet	\$11,258.00
Car Wash	Wash Stall	\$11,530.00
Auto Repair	1,000 square feet	\$7,703.00
Convenience Market	1,000 square feet	\$34,542.00
Convenience Market with Gas & Fast Food	1,000 square feet	\$22,563.00
Furniture Store	1,000 square feet	\$1,332.00
Recreation		
Marina	acre	\$6,430.00
Golf Course	Hole	\$11,501.00
Tennis Court	Court	\$9,535.00
Racquet Club/Health Spa	1,000 square feet	\$5,761.00
Movie Theater with matinee	Seat	\$44.00
Institutional		
Church	1,000 square feet	\$2,532.00
ACLF or retirement home	Dwelling	\$378.00
Nursing Home	Bed	\$472.00
Day Care Center	1,000 square feet	\$11,769.00
Elementary School	Student	\$273.00
Middle School	Student	\$307.00
High School	Student	\$430.00

Brevard County
Board of County Commissioners

May 8, 2018

VI.A.1

BANANA RIVERFRONT, LLC

Appeal Re: Transportation Impact Fee Exemption

PRESENTED BY:

Kimberly Bonder Rezanka, Esq.
CANTWELL & GOLDMAN, P.A.
96 Willard Street, Ste. 302
Cocoa, FL 32922

TRANSPORTATION IMPACT FEE

Description

A transportation impact fee is charged by the local municipality to new development projects. This fee is used to pay for capital improvements needed as a result of the new development. Impact fees are usually found in the form of one-time fees charged to the developers or to new residents to help raise revenue for transportation projects. The fee attempts to repay a portion of the costs local entities encounter providing the facilities needed to service the new development. The



Shadow Creek Ranch, Pearland, Texas

general purpose of impact fees is to shift the burden of financing new infrastructure from the community at large to owners of developable land, developers, or buyers of new homes.

How Will This Help?

Ensure new development is “paying its own way.” – In recent years, many Texas communities experienced significant population growth. Local officials in these communities often claim deteriorating roadway infrastructure and dwindling revenues are a result of the strain caused by this new growth. Consequentially, tax payers in the community are left “picking up the tab” for the ensuing infrastructure improvements. Transportation impact fees would help ensure that developers of that land would be responsible for paying for some of those improvements.

Who: Local

Cost to Collect: Moderate

Sustainability: ●○○○○

Reliability: ●●●●○

Implementation: Easy

Provide additional funds for transportation – Creating transportation impact fees would provide funds to counter the cost of servicing new developments with adequate access.

Help funds keep pace with rising highway construction costs – Since 1991, roadway construction costs have almost doubled. Creating transportation impact fees would reduce the amount of existing transportation funds needed to create sufficient access to new developments.

Reduce need for borrowing – Texas has increasingly turned to debt mechanisms such as bonds as a way to finance transportation improvements. Texas could help slow a growing trend of using the “credit card” to pay for roadway projects by allowing for the use of transportation impact fees.

Beneficial to smaller or rapidly growing communities – In smaller communities, the revenue required to support new development may not be available. The use of impact fees enables the development to proceed even when the local government cannot pay for the necessary infrastructure immediately. Impact fees can be a viable means to finance the variety of service needs created by growth.

What’s the Down-Side?

- **General opposition to fee increases** – The legislature and public have recently been opposed to tax or fee increases.

DIVISION 4. - TRANSPORTATION^[4]

Sec. 62-801. - Short title; statutory authority; applicability.

- (a) This division shall be known and may be cited as the Brevard County Transportation Impact Fee Ordinance.
- (b) The board of county commissioners has the authority to adopt this division pursuant to Fla. Const. art. VIII, F.S. chs. 125 and 163 and F.S. § 380.06(16).
- (c) This division shall apply to the unincorporated area of the county and to the incorporated areas of the county to the extent permitted by Fla. Const. art. VIII, § 1(f).

(Code 1979, § 14-201)

Sec. 62-802. - Intent and purpose.

- (a) This division is intended to implement and be consistent with the county comprehensive plan.
- (b) The purpose of this division is to regulate the use and development of land so as to ensure that new development bears a proportionate share of the cost of the capital expenditures necessary to accommodate impacts of developments on roadways, and to assist in limiting further degradation of roadways as contemplated by the county comprehensive plan.

(Code 1979, § 14-202)

Sec. 62-803. - Findings.

The board of county commissioners makes the following findings and determinations:

- (1) The existing road system in the county is not sufficient to accommodate anticipated new development without decreasing the levels of service.
- (2) The preferred standard minimum acceptable road system level of service in the county is level of service E.
- (3) Existing revenue sources are not sufficient to fund capital improvements necessary to accommodate new development.
- (4) New development should contribute its fair share of the costs of providing new facilities necessary to accommodate the new development.
- (5) Impact fees provide a reasonable method of regulating new development in the county to ensure that such new development pays its fair share of the capital costs of governmental services and facilities necessary to accommodate the new development.
- (6) The impact fees set forth in this division are not established at a rate to correct existing deficiencies.
- (7) The impact fees set forth in this division establish a fair and conservative method of assessing new development its fair share costs.
- (8) The impact fees set forth in this division will not fully pay for the costs of capital improvements to the road system necessitated by new development, and the county recognizes that the shortfall will have to come from other revenue sources.
- (9) The impact fee districts established in this division ensure that capital improvements to the road system will benefit the development located within the district.
- (10) The transportation impact fees imposed by this division may create potentially adverse effects on the

Sec. 62-815. - Exemptions, credits, reimbursements, and deferrals.

(a) *Exemptions.* The following shall be exempted from payment of the transportation impact fee:

- (1) Alteration or expansion of an existing building where no additional units are created, where the use is not changed and where no additional vehicular trips will be produced over and above those produced by the existing use.
- (2) The construction of accessory buildings or structures which will not produce additional vehicular trips over and above those produced by the principal building or use of the land.
- (3) The new replacement of a residential land use with a new unit of the same type and use, provided that no additional trips will be produced over and above those produced by the original use of the land.
- (4) The replacement of a nonresidential building or structure with a new building or structure of the same size and use, provided that no additional trips will be produced over and above those produced by the original use of the land.
- (5) The construction of publicly owned government buildings which are utilized in their entirety for public purposes.
- (6) All industrial land uses as defined herein and described in the North American Industry Classification System, 1997 edition, under Sector 21. Mining; Sector 22. Utilities; Sector 23. Construction; Sector 31-33. Manufacturing; Sector. 48-49. Transportation and Warehousing; and Subsector 562. Waste Management and Remediation Services provided, however, that when such uses are conducted in a structure also used as a private residence there shall be no exemption from any residential impact fee that otherwise may be due.
- (7) Changes in the use of an existing non-residential building or structure provided there is no expansion of the existing building or structure.

An exemption must be claimed by the feepayer at the time of the issuance of a building permit or mobile home permit. Any exemption not so claimed shall be deemed to be waived by the feepayer.

(b) *Credits.*

- (1) No credit shall be given for site-related improvements.
- (2) All capital improvements to arterial and collector roads required under a county or city-approved development order for any project, except for those improvements deemed site-related, may be credited to a feepayer, developer, or community development district constructing or contributing capital improvements otherwise required of a developer as a condition of development approval against the transportation impact fee assessed against the project required to provide said capital improvement. Award of the credit shall be made by separate agreement approved by the board of county commissioners. The board of county commissioners reserves the right to determine the amount to be credited by preparing engineering and construction cost estimates or real estate appraisals for those improvements by using the methodology described in section 62-810 and by preparing traffic engineering data utilizing generally accepted traffic engineering practices. No credit given to a feepayer, developer, or community development district constructing or contributing capital improvements otherwise required of a developer as a condition of development approval shall exceed the assessed transportation impact fee for the project. For the purposes of this section the project shall be considered the largest area approved through a DRI, subdivision or site plan. The value of construction eligible for credit or reimbursement for improvements internal to and on the site of the project which also create excess capacity shall be determined by calculating the percentage of the total costs that corresponds to

Segments Functional Classification, Maximum Acceptable Volume (MAV) and Level of Service (LOS)

ID	Road	From	To	Functional Classification	Existing Volume 2016 or Most Recent	Existing MAV	Existing Vol/MAV	Acceptable LOS*
295	SR A/A	INDIAN RIVER COUNTY LINE	STRAWBERRY LANE	Urban Minor Arterial	3,003	24,200	0.12	D
249	SR A/A	STRAWBERRY LANE	HERON DRIVE	Urban Minor Arterial	4,924	24,200	0.20	D
542	SR A/A	HERON DRIVE	MARLEN	Urban Minor Arterial	9,354	24,200	0.39	D
296	SR A/A	MARLEN	OAK	Urban Minor Arterial	14,410	24,200	0.60	D
260	SR A/A	OAK	OCEAN	Urban Minor Arterial	13,182	17,700	0.74	D
248	SR A/A	OCEAN	MIAMI	Urban Minor Arterial	16,833	17,700	0.95	D
383	SR A/A	MIAMI	US 192	Urban Minor Arterial	18,718	17,700	1.06	D
250	SR A/A	US 192	PARADISE	Urban Principal Arterial-Other	24,275	41,790	0.58	D
294	SR A/A	PARADISE	EAU GALLIE	Urban Principal Arterial-Other	26,820	41,790	0.64	D
252	SR A/A	EAU GALLIE	PALM SPRINGS	Urban Principal Arterial-Other	27,346	41,790	0.65	D
254	SR A/A	PALM SPRINGS	PINE TREE	Urban Principal Arterial-Other	25,541	41,790	0.61	D
255	SR A/A	PINE TREE	DESOTO	Urban Principal Arterial-Other	26,770	41,790	0.64	D
256	SR A/A	DESOTO	CASSIA	Urban Principal Arterial-Other	23,629	41,790	0.57	D
257	SR A/A	CASSIA	JACKSON	Urban Principal Arterial-Other	24,157	41,790	0.58	D
543	SR A/A	JACKSON	PATRICK	Urban Principal Arterial-Other	22,115	41,790	0.53	D
258	SR A/A	PATRICK	BERKELEY	Urban Principal Arterial-Other	23,318	41,790	0.56	D
544	SR A/A	BERKELEY	OCEAN	Urban Principal Arterial-Other	20,163	41,790	0.48	D
545	SR A/A	OCEAN	PINEDA CAUSEWAY	Urban Principal Arterial-Other	19,900	41,790	0.48	D
261	SR A/A	PINEDA CAUSEWAY	PATRICK MAIN GATE	Urban Principal Arterial-Other	20,167	41,790	0.48	D
387	SR A/A	PATRICK MAIN GATE	S END OF ONE WAY PAIRS	Urban Principal Arterial-Other	16,737	41,790	0.40	D
269	SR A/A (NB ONLY)	S END OF ONE WAY PAIRS	MINUTEMEN CSWY	Urban Principal Arterial-Other	10,525	19,440	0.54	D
272	SR A/A (NB ONLY)	MINUTEMEN CSWY	N END OF ONE WAY PAIRS	Urban Principal Arterial-Other	13,527	19,440	0.70	D
270	SR A/A (SB ONLY)	N END OF ONE WAY PAIRS	MINUTEMEN	Urban Principal Arterial-Other	12,685	19,440	0.65	D
546	SR A/A (SB ONLY)	MINUTEMEN	S END OF ONE WAY PAIRS	Urban Principal Arterial-Other	11,181	19,440	0.58	D
273	SR A/A	COCOA ISLES	TULIP	Urban Principal Arterial-Other	31,268	34,020	0.92	D
274	SR A/A	TULIP	BAHAMA BLVD.	Urban Principal Arterial-Other	35,708	34,020	1.05	D
275	SR A/A	BAHAMA BLVD.	S BANANA	Urban Principal Arterial-Other	40,857	34,020	1.20	D
276	SR A/A	S BANANA	FISHER DRIVE	Urban Principal Arterial-Other	34,834	34,020	1.02	D
277	SR A/A	FISHER DRIVE	ST. LUCIE	Urban Principal Arterial-Other	34,880	34,020	1.03	D
278	SR A/A	ST. LUCIE	MARION	Urban Principal Arterial-Other	31,901	34,020	0.94	D
279	SR A/A	MARION	SR 520	Urban Principal Arterial-Other	33,872	34,020	1.00	D
280	SR A/A	SR 520	OSCEOLA	Urban Principal Arterial-Other	27,782	39,800	0.70	D
281	SR A/A	OSCEOLA	SHEPARD	Urban Principal Arterial-Other	28,389	39,800	0.71	D
282	SR A/A	SHEPARD	MCKINLEY	Urban Principal Arterial-Other	30,793	39,800	0.77	D
297	SR A/A	MCKINLEY	BUCHANAN	Urban Principal Arterial-Other	32,985	39,800	0.83	D
283	SR A/A	BUCHANAN	N ATLANTIC	Urban Principal Arterial-Other	30,404	39,800	0.76	D
285	SR A/A	N ATLANTIC	CENTRAL	Urban Principal Arterial-Other	25,493	41,790	0.61	D
284	SR A/A	CENTRAL	SR 401	Urban Principal Arterial-Other	30,919	39,800	0.78	D
309	SR 401	SR 528	CCAFS	Urban Minor Arterial	12,858	41,790	0.31	D
288	SR 520	WEST MERRITT ISLAND CAUSEWAY	EAST MERRITT ISLAND CAUSEWAY	Urban Principal Arterial-Other	25,635	39,800	0.64	D
311	SR 520	EAST MERRITT ISLAND CAUSEWAY	SR A1A	Urban Principal Arterial-Other	24,212	34,020	0.71	D
289	US 192	CAUSEWAY	RIVERSIDE	Urban Principal Arterial-Other	34,996	41,790	0.84	D
290	US 192	RIVERSIDE	SR A1A	Urban Principal Arterial-Other	23,386	34,020	0.69	D

*Acceptable LOS is Level of Service based on FDOT Generalized Tables and is for planning purposes only. Local governments may adopt their own LOS and one should contact the jurisdiction that maintains the segment.



Brevard County

Impact Fee Update Study

FINAL REPORT
March 3, 2015



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Brevard County

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infrastructure available for use by new growth. In addition, per legal requirements, a credit is subtracted from the total cost to account for the value of future tax contributions of the new development toward any capacity expansion projects through other revenue sources. Contributions used to calculate the credit component include estimates of future non-impact fee revenues generated by the new development that will be used toward capacity expansion projects. In other words, case law requires that the new development should not be charged twice for the same service.

Legal Standard Overview

In Florida, legal requirements related to impact fees have primarily been established through case law since the 1980's. Generally speaking, impact fees must comply with the "dual rational nexus" test, which requires that they:

- Be supported by a study demonstrating that the fees are proportionate in amount to the need created by new development paying the fee; and
- Be spent in a manner that directs a proportionate benefit to new development, typically accomplished through establishment of benefit districts and a list of capacity-adding projects included in the County's Capital Improvement Plan, Capital Improvement Element, or another planning document/Master Plan.

In 2006, the Florida legislature passed the "Florida Impact Fee Act," which recognized impact fees as "an outgrowth of home rule power of a local government to provide certain services within its jurisdiction." § 163.31801(2), Fla. Stat. The statute – concerned with mostly procedural and methodological limitations – did not expressly allow or disallow any particular public facility type from being funded with impact fees. The Act did specify procedural and methodological prerequisites, such as the requirement of the fee being based on most recent and localized data, a 90-day requirement for fee changes, and other similar requirements, most of which were common to the practice already.

More recent legislation further affected the impact fee framework in Florida, including the following:

- **HB 227 in 2009:** The Florida legislation statutorily clarified that in any action challenging an impact fee, the government has the burden of proving by a preponderance of the evidence that the imposition or amount of the fee meets the

Pharmacy/Drugstore w/Drive-Thru (ITE LUC 880 & 881)

Location	Size (1,000 sf)	Date	Total # Interviews	# Trip Length Interviews	Trip Gen Rate	Time Period	Trip Length	Percent New Trips	VMT	Source
Pasco Co, FL	11.1	Apr-02	138	38	88.97	-	2.05	27.5	50.23	Tindale-Oliver & Associates
Pasco Co, FL	12.0	Apr-02	212	90	122.16	-	2.04	42.5	105.79	Tindale-Oliver & Associates
Pasco Co, FL	15.1	Apr-02	1192	54	97.96	-	2.13	28.1	58.69	Tindale-Oliver & Associates
Total Size	38.2		3	1,542	Average Trip Length: 2.07					
ITE	196.0		16		Weighted Average Trip Length: 2.08					
Blended total	234.2				Weighted Percent New Trip Average: 32.5					

Average Trip Generation Rate: 103.03
 ITE Average Trip Generation Rate (LUC 880 / 881): 90.06 / 96.91
 Blend of FL Studies and ITE Average Trip Generation Rate: 95.96

Furniture Store (ITE LUC 890)

Location	Size (1,000 sf)	Date	Total # Interviews	# Trip Length Interviews	Trip Gen Rate	Time Period	Trip Length	Percent New Trips	VMT	Source
Largo, FL	15.0	7/28-30/92	64	34	-	-	4.63	52.5	-	Tindale-Oliver & Associates
Tampa, FL	16.9	Jul-92	68	39	-	-	7.38	55.7	-	Tindale-Oliver & Associates
Total Size	31.9		2	132	Average Trip Length: 6.01					
ITE	897.0		13		Weighted Average Trip Length: 6.09					
					Weighted Percent New Trip Average: 54.2					
					ITE Average Trip Generation Rate: 5.06					

Drive-In Bank (ITE LUC 912)

Location	Size (1,000 sf)	Date	Total # Interviews	# Trip Length Interviews	Trip Gen Rate	Time Period	Trip Length	Percent New Trips	VMT	Source
Tampa, FL	-	Mar-85	77	-	-	-	2.40	-	-	Kimley-Horn & Associates
Tampa, FL	-	Mar-85	211	-	-	-	-	54.0	-	Kimley-Horn & Associates
Clearwater, FL	0.4	Aug-89	113	52	-	9a-6p	5.20	46.0	-	Tindale-Oliver & Associates
Largo, FL	2.0	Sep-89	129	94	-	-	1.60	73.0	-	Tindale-Oliver & Associates
Seminole, FL	4.5	Oct-89	-	-	-	-	-	-	-	Tindale-Oliver & Associates
Marion Co, FL	2.3	Jun-91	69	29	-	24hr.	1.33	42.0	-	Tindale-Oliver & Associates
Marion Co, FL	3.1	Jun-91	47	32	-	24hr.	1.75	68.1	-	Tindale-Oliver & Associates
Marion Co, FL	2.5	Jul-91	57	26	-	48hrs.	2.70	45.6	-	Tindale-Oliver & Associates
Collier Co, FL	-	Aug-91	162	96	-	24hr.	0.88	59.3	-	Tindale-Oliver & Associates
Collier Co, FL	-	Aug-91	116	54	-	-	1.58	46.6	-	Tindale-Oliver & Associates
Collier Co, FL	-	Aug-91	142	68	-	-	2.08	47.9	-	Tindale-Oliver & Associates
Hernando Co, FL	5.4	May-96	164	41	-	9a-6p	2.77	24.7	-	Tindale-Oliver & Associates
Marion Co, FL	2.4	Apr-02	70	-	-	24hr.	3.55	54.6	-	Kimley-Horn & Associates
Marion Co, FL	2.7	May-02	50	-	246.66	24hr.	2.66	40.5	265.44	Kimley-Horn & Associates
Total Size	25.2		9	1,407	Average Trip Length: 2.38					
ITE	21.0		7		Weighted Average Trip Length: 2.45					
Blended total	46.2				Weighted Percent New Trip Average: 46.2					
	23.7				Weighted Average Trip Generation Rate: 246.66					
					ITE Average Trip Generation Rate: 148.15					
					Blend of FL Studies and ITE Average Trip Generation Rate: 159.34					

Quality Restaurant (ITE LUC 931)

Location	Size (1,000 sf)	Date	Total # Interviews	# Trip Length Interviews	Trip Gen Rate	Time Period	Trip Length	Percent New Trips	VMT	Source
Tampa, FL	-	Mar-85	76	62	-	-	2.10	82.0	-	Kimley-Horn & Associates
St. Petersburg, FL	7.5	Oct-89	177	154	-	11a-2p/4-8p	3.50	87.0	-	Tindale-Oliver & Associates
Clearwater, FL	8.0	Oct-89	60	40	110.63	10a-2p/5-9p	2.80	67.0	207.54	Tindale-Oliver & Associates
Total Size	15.5		2	313	Average Trip Length: 2.80					
ITE	135.0		15		Weighted Average Trip Length: 3.14					
Blended total	150.5				Weighted Percent New Trip Average: 76.7					
	143.0				Weighted Average Trip Generation Rate: 110.63					
					ITE Average Trip Generation Rate: 89.95					
					Blend of FL Studies and ITE Average Trip Generation Rate: 91.10					

Table G-1 (continued)
Calculated Transportation Impact Fee Schedule

ITE/LUC	Land Use	Unit	Trip Rate	Trip Rate Source	Assessable Trip Length	Total Trip Length	Trip Length Source	Percent New Trips	% New Trips Source	Net VMT ⁽¹⁾	Total Impact Cost	Annual Gas Tax	Gas Tax Credits	Net Impact Fee	Current Impact Fee	% Change
RETAIL																
841	New/Used Auto Sales	1,000 sf	28.25	Blend ITE 9th & FL Studies	4.60	5.10	FL Studies	79%	FL Studies	42.45	\$16,308	\$114	\$1,985	\$14,323	\$10,933	31%
850	Supermarket	1,000 sf	103.38	Blend ITE 9th & FL Studies	2.08	2.58	FL Studies	56%	FL Studies	49.79	\$19,129	\$149	\$2,595	\$16,534	\$11,258	47%
851	Convenience Market (24 hour)	1,000 sf	719.18	Blend ITE 9th & FL Studies	1.52	2.02	FL Studies	41%	FL Studies	185.33	\$71,199	\$596	\$10,378	\$60,821	\$34,542	76%
853	Convenience Market w/Gasoline	1,000 sf	775.14	Blend ITE 9th & FL Studies	1.51	2.01	FL Studies	28%	FL Studies	135.52	\$52,063	\$436	\$7,592	\$44,471	\$22,563	97%
880/881	Pharmacy/Drug Store with or w/o Drive-Thru	1,000 sf	95.96	Blend ITE 9th & FL Studies	2.08	2.58	FL Studies	32%	FL Studies	26.41	\$10,146	\$79	\$1,376	\$8,770	n/a	n/a
890	Furniture Store	1,000 sf	5.06	ITE 9th Edition	6.09	6.59	FL Studies	54%	FL Studies	6.88	\$2,643	\$18	\$313	\$2,330	\$1,332	75%
911	Bank/Savings Walk-In ⁽⁴⁾	1,000 sf	121.30	ITE 9th Edition	2.46	2.96	Same as LUC 912	46%	Same as LUC 912	56.76	\$21,805	\$165	\$2,873	\$18,932	\$13,766	38%
912	Bank/Savings Drive-In	1,000 sf	159.34	Blend ITE 9th & FL Studies	2.46	2.96	FL Studies	46%	FL Studies	74.56	\$28,644	\$217	\$3,779	\$24,865	\$23,331	7%
931	Quality Restaurant	1,000 sf	91.10	Blend ITE 9th & FL Studies	3.14	3.64	FL Studies	77%	FL Studies	91.08	\$34,990	\$255	\$4,440	\$30,550	\$16,698	81%
932	High-Turnover Restaurant	1,000 sf	116.60	Blend ITE 9th & FL Studies	3.17	3.67	FL Studies	71%	FL Studies	108.52	\$41,689	\$304	\$5,294	\$36,395	\$23,213	57%
934	Fast Food Rest. w/Drive-Thru	1,000 sf	511.00	Blend ITE 9th & FL Studies	2.05	2.55	FL Studies	58%	FL Studies	251.23	\$96,519	\$756	\$13,164	\$83,355	\$38,791	133%
942	Automobile Care Center	1,000 sf	31.43	Blend ITE 9th & FL Studies	3.62	4.12	FL Studies	72%	FL Studies	33.87	\$13,014	\$93	\$1,619	\$11,395	\$7,703	48%
944/946	Gasoline/Service Station with or w/o Car Wash	fuel pos.	157.33	ITE 9th Edition (944 & 946 Blend)	1.90	2.40	FL Studies	23%	FL Studies	28.43	\$10,922	\$87	\$1,515	\$9,407	\$4,269	120%
947	Self-Service Car Wash	service bay	43.94	Blend ITE 9th & FL Studies	2.18	2.68	FL Studies	68%	FL Studies	26.93	\$10,348	\$80	\$1,393	\$8,955	\$11,530	-27%
INDUSTRIAL																
110	General Light Industrial	1,000 sf	6.97	ITE 9th Edition	5.15	5.65	Same as LUC 710	92%	Same as LUC 710	13.66	\$5,266	\$56	\$627	\$4,639	n/a	n/a
120	General Heavy Industrial	1,000 sf	1.50	ITE 9th Edition	5.15	5.65	Same as LUC 710	92%	Same as LUC 710	2.94	\$1,129	\$8	\$139	\$990	n/a	n/a
150	Warehousing	1,000 sf	3.56	ITE 9th Edition	5.15	5.65	Same as LUC 710	92%	Same as LUC 710	6.97	\$2,680	\$19	\$331	\$2,349	n/a	n/a
151	Mini Warehouse	1,000 sf	2.15	Blend ITE 9th & FL Studies	3.10	3.60	FL Schedules	92%	Same as LUC 710	2.54	\$934	\$7	\$122	\$852	n/a	n/a

(1) Source: Net VMT calculated as (Trip Generation Rate * Trip Length * % New Trips) * (1-Interstate/Toll Facility Adjustment Factor)/2. This reflects the unit of vehicle miles of capacity consumed per unit of development and is multiplied by the cost per vehicle.

(2) The ITE 9th Edition trip generation rate was adjusted to reflect the average occupancy rate of 60 percent based on data provided by the Florida Association of RV Parks and Campgrounds; Peak hour of adjacent street traffic, one hour between 4 and 6pm, multiplied by 10.

(3) The trip generation rate recommended for the office and shopping center uses the end-point regression value.

(4) Walk-in Bank was added back into the 9th Edition; Peak hour of adjacent street traffic (one hr between 4 and 6pm) multiplied by 10.

Table E-17
Brevard County 2035 Long Range Transportation Plan

Jurisdiction	Description	From	To	Improvement	Length	Lanes Added	Lane Miles Added	Initial Capacity	Future Capacity	Added Capacity	Vehicle Miles of Capacity Added		
Regional Roads													
County	Babcock St	Malabar Rd	Foundation Park	Widen Road (2 to 4 Lanes)	1.24	2	2.48	16,830	37,350	20,520	25,445		
County	Babcock St	Foundation Park	Micco Rd	Widen Road (2 to 4 Lanes)	6.80	2	13.60	16,830	37,350	20,520	139,536		
County	Babcock St	Micco Rd	Indian River County	Widen Road (2 to 4 Lanes)	4.20	2	8.40	15,120	34,110	18,990	79,758		
County	Ellis Rd	John Rodes Blvd	Wickham Rd	Widen Road (2 to 4 Lanes)	1.68	2	3.36	16,830	37,350	20,520	34,474		
State	Malabar Rd	Babcock St	US 1	Widen Road (2 to 4 Lanes)	2.99	2	5.98	18,700	41,500	22,800	68,172		
County	Malabar Rd	Bridge	St. Johns Heritage Pkwy	Widen Road (2 to 4 Lanes)	1.02	2	2.04	14,040	30,420	16,380	16,708		
State	South St. (SR 405)	Existing 4 lane section	SR 50	Widen Road (2 to 4 Lanes)	4.51	2	9.02	18,700	41,500	22,800	102,828		
State	SR 524	I-95 Interchange (South)	Industry Rd	Widen Road (2 to 4 Lanes)	2.98	2	5.96	18,700	41,500	22,800	67,944		
County	St. Johns Heritage Pkwy	John Rodes Blvd	US 192	New 2 Lane Road	3.15	2	6.30	0	21,780	21,780	68,607		
County	St. Johns Heritage Pkwy	US 192	Palm Bay City Limits	New 2 Lane Road	3.02	2	6.04	0	21,780	21,780	65,776		
State	US 1	Eyster Blvd	Pineda Causeway	Widen Road (4 to 6 Lanes)	8.96	2	17.92	32,400	50,000	17,600	157,696		
State	US 192	St. Johns Heritage Pkwy	Wickham Rd	Widen Road (4 to 6 Lanes)	2.98	2	5.96	39,800	59,900	20,100	59,898		
Other Corridors													
State	Clearlake Rd	Michigan Ave	Industry Rd	Widen Road (2 to 4 Lanes)	1.10	2	2.20	16,400	35,700	19,300	21,230		
County	Hollywood Blvd	US 192	Palm Bay Rd	Widen Road (2 to 4 Lanes)	3.11	2	6.21	16,830	37,350	20,520	63,725		
City	Powerline Rd	St. Johns Heritage Pkwy	Minton Rd	New 2 Lane Road	3.49	2	6.98	0	16,830	16,830	58,737		
City	Powerline Rd	Minton Rd	Hollywood Dr	New 2 Lane Road	1.02	2	2.04	0	16,830	16,830	17,167		
County	St. Andrews	Judge Fran Jamison	Stadium Pkwy	New 4 Lane Road	1.21	4	4.84	0	30,420	30,420	36,808		
County	Stadium Parkway	Fiske Blvd	Viera Blvd	Widen Road (2 to 4 Lanes)	1.50	2	3.00	16,830	37,350	20,520	30,780		
County	Viera Blvd	Heron's Landing	Schenck Rd	Widen Road (2 to 4 Lanes)	0.94	2	1.88	16,830	37,350	20,520	19,289		
County	Washington Ext	Wickham Rd	St. Johns Heritage Pkwy	New 2 Lane Road (ROW for 4 Lan	9.28	2	18.56	0	16,830	16,830	156,182		
Total (All Roads):													
							132.77			1,290,760			
County/City Roads:													
							85.73	65% (a)		812,992			
State Roads:													
							47.04	35% (b)		477,768			
Urban Section Design:													
							103.77	78% (c)		1,038,112			
Rural Section Design:													
							29.00	22% (d)		252,648			
											VMC Added per Lane Mile:		9,722

Source: Brevard County 2035 Long Range Transportation Plan; Plan includes adjustments based on discussions with County Staff
Note: Letter references (i.e., "a") are used to assist with footnotes and sourcing

9



BASICS OF ITE TRIP GENERATION AND ITS ROLE IN CALCULATING TRANSPORTATION IMPACT FEES

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2011 Growth and Infrastructure Consortium Conference

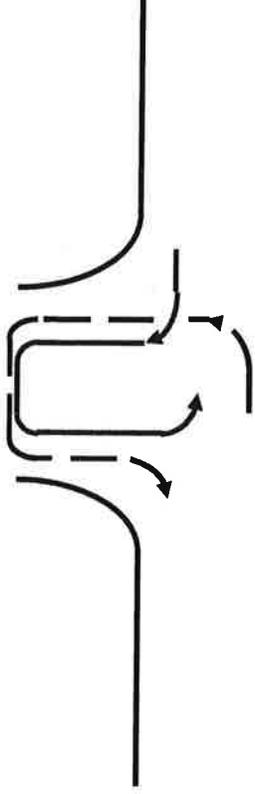
October 27th, 2011

Innovation for better mobility

Basics of ITE Trip Generation - Trip Types

- **Primary trips**

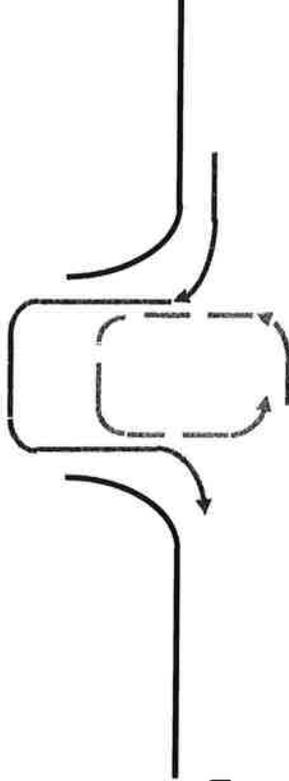
- Main reason for a trip
- Upon exit, trips will travel back in the direction from which they came



Primary Trips

- **Pass-by trips**

- Trips made as an intermediate stop
- Upon exit, trips will continue to travel in the same direction they were traveling before stopping at the site
- NOT a NEW trip



Pass-by Trips

- 10 main land use categories and 162 specific land uses
 - Ports and Terminals
 - Industrial
 - Residential
 - Lodging
 - Recreational
 - Institutional
 - Medical
 - Office
 - Retail
 - Services

- Sample independent variables and time periods
 - No. dwelling units
 - Building area (sq. ft.)
 - No. employees
 - Weekday, Saturday, Sunday
 - Peak hour of adjacent street traffic
 - Peak hour of generator

GETTING TRIP GENERATION RIGHT

Eliminating the Bias Against Mixed Use Development

By Jerry Walters, Brian Bochner, and Reid Ewing



American Planning Association

Making Great Communities Happen



of walking and biking and allows for shared parking.

Design: connectivity, walkability. Good design improves connectivity, encourages walking and biking, and reduces travel distance.

New Research Evidence for Mixed Use Development Trip Generation

Several hundred studies over the past 20 years have confirmed that the built environment affects travel generation (Ewing and Cervero 2010). Development features associated with reduced trip rates include a series of “D” variables: density, diversity of uses, design of urban environment, distance from transit, destination accessibility, development scale, demographics of inhabitants, and demand management. In the past three years, research has examined more directly the relative influence of each factor and their interactions and has sought to corroborate the research results through field verification. Organizations such as the U.S. Environmental Protection Agency and the National Academy of Sciences Transportation Research Board have sponsored several of the more reputable studies on the subject.

The Eight “D” Variables

The most advanced research has confirmed that trip rate reductions are quantifiably associated with the attributes of mixed use development, defined in terms of these characteristics of urban development patterns:

Density: dwellings, jobs per acre. Higher densities shorten trip lengths, allow for more walking and biking, and support quality transit.

Diversity: mix of housing, jobs, retail. A diverse neighborhood allows for easier trip linking and shortens distances between trips. It also promotes higher levels

Destinations: regional accessibility. Destination accessibility links travel purposes, shortens trips, and offers transportation options.

Distance to Transit: rail proximity. Close proximity to transit encourages its use, along with trip-linking and walking, and often creates accessible walking environments.

Development Scale: residents, jobs. Appropriate development scale provides critical mass, increases local opportunities, and supports transit investment.

Demographics: household size, income. Mixed use development allows self-selection by households into settings with their preferred activities and travel modes, allows businesses to locate convenient to clients, and supports a socioeconomic “fit” among residents, businesses, and activities.

Demand Management: pricing, incentives. Demand management ties incentives to the urban environment and allows alignment of auto disincentives with available alternate modes. It takes advantage of critical mass of travel resulting from density, diversity, and design.

A growing body of evidence indicates that these factors, individually or together, quantifiably explain the number of vehicle trips and vehicle-miles traveled for a development project and for a region as a whole. Each of the D factors influences traffic generation through a variety of mechanisms. There are also important interactions, both synergistic and mutually dampening, among the D factors that call for sophisticated techniques when quantifying the travel generation effects of different combinations proposed in any project or plan.

Traffic engineers are beginning to take notice of the new methods, but we expect that natural sluggishness in adopting new practices will continue to impose unfair penalties on mixed use and other forms of lower-impact development. We recommend activism on the part of all planners, development reviewers, and impact analysts on behalf of the more accurate MXD methods.

Immediate adoption of the improved methods will allow planners to account for a project's regional location, transit availability, density of development, walkability factors, and the characteristics of residents and businesses and on-site adjacencies of land uses including residential, office, retail, restaurants, theaters, and hotels. Accounting for these factors through the MXD+ method will achieve the highest levels of accuracy possible in estimating traffic impacts of mixed use development.

We recommend applying and promoting the MXD+ method for day-to-day project planning and performance-based site-plan refinement, impact analysis, and discretionary review. Doing so will eliminate what is presently a systematic bias in traffic analysis that favors single-use, isolated, suburban-style development.

Conclusion

Standard traffic engineering practices are blind to the primary benefits of smart growth. A plan's development density, scale, design, accessibility, transit proximity, demographics, and mix of uses all affect traffic generation in ways unseen to prescribed methods. The Institute of Transportation Engineers (ITE) *Trip Generation Manual* and *Handbook* overestimate peak traffic generation for mixed-use development by an average of 35 percent. For conventional suburban stand-alone development, ITE rates portray the average for such sites; so hedging mixed-use analysis toward more conservative assumptions creates a systematic bias in favor of single-use suburban development.

ITE overestimation of traffic impacts reduces the likelihood of approval of mixed use and related forms of smart growth such as infill, compact, and transit-oriented development. Such overestimation escalates development costs, skews public perception, heightens community resistance, and favors isolated single-use development.

The methods of evaluating mixed use development described in this report represent a substantial improvement over conventional traffic-estimation methods. They improve accuracy and virtually eliminate overestimation bias, and they are supported by the substantial evidence of surveys and traffic counts at 266 mixed use sites across the U.S. The MXD+ analysis method explains 97 percent of the variation in trip generation among mixed use sites and all but eliminates the ITE systematic overestimation of traffic. We hope planners and other professionals will take advantage of the available spreadsheet tools listed below to help even the playing field between conventional development patterns and more sustainable, walkable, livable places.

About the Authors

Jerry Walters is a principal and sustainability practice leader with Fehr & Peers, transportation consultants. He has more than 30 years of experience in transportation planning, engineering, and travel forecasting and is a registered traffic engineer. Jerry developed project evaluation methods for the U.S. EPA study "Mixed-use Development and Vehicle Trips: Improving the Standard Estimation Methodology." He is a co-author of the book Growing Cooler – the Evidence on Urban Development and Climate Change (Urban Land Institute, 2008).

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Additional Resources

Description, documentation, and spreadsheet tools for the NCHRP 684 method, Enhancing Internal Trip Capture Estimation for Mixed-Use Developments may be found at www.trb.org/Main/Blurbs/165014.aspx.

Description, documentation, and spreadsheet tools for the EPA MXD Trip Generation Tool for Mixed-Use Developments may be found at www.epa.gov/smartgrowth/mxd_tripgeneration.html.

Quick-response analysis tools for applying the EPA MXD method, the combined EPA /NCHRP method MXD+, and MXD in conjunction with analysis of vehicle-miles traveled, GHG emissions, and shared parking, Plan+, may be found at <http://asap.fehrandpeers.com/tools/>.

1-2015

Adjusting ITE's Trip Generation Handbook for Urban Context

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ment of Community Affairs 2006, Virginia Department of Transportation 2010). This review encompassed a wide range of cities from New York City to Bend, Ore., and identified current trends in estimating trip generation rates and conducting traffic impact assessments. Table 2 summarizes this review. Of the jurisdictions, 22 identify the ITE *Trip Generation Handbook* rates and methods as appropriate for their local contexts if local rates or studies are not available, and the 23rd made no recommendation. Six jurisdictions provide local vehicle trip generation rates of some sort. Six jurisdictions have methods that allow for bicycle, pedestrian, or transit adjustments to be applied to trip generation rates from mode share information.

Table 1: Summary of ITE trip rate error findings of 13 studies.

	A.M. Peak	P.M. Peak	Automobile Mode Share
Central business district/urban core/downtown	-93% to +1109%	-99% to +11%	8% to 100%
Eating/restaurant	-93% to -57%	-99% to -70%	17% to 57%
Office	-80% to -22%	-62% to -21%	56% to 95%
Residential	-83% to +15%	-80% to +11%	14% to 85%
* Restaurant	-35%	-26%	34% to 60% *
Retail	-17% to +1109%*	-22% to +8%	8% to 100%
Services	-14%	-66%	
Shopping	+30%	+3%	
Mixed-use development	-109% to +181%	-170% to +61%	
Mixed	-109% to +38%	-80% to +61%	
Town center	-108% to +181%	-170% to -35%	
Transit-oriented development	-90% to +20%	-92% to +35%	50% to 96%
Office			50% to 96%
Residential		-92% to +35%	53% to 93%
Development near transit	-58% to +72%	-36% to +51%	28% to 90%
Office			28% to 90%
Residential	-58% to +72%	-36% to +51%	33% to 82%
Suburban activity centers and corridors	-37% to -5%		54% to 98%
Office	-37% to -20%		
Residential	-5%		
Shopping			54% to 98%

* This retail shop located in Oakland, California, had an observed a.m. peak trip count of 133 vehicle trips and an ITE estimated count of 11 vehicle trips.

From the review of 13 studies comparing the ITE vehicle trip estimates to observed behavior and the review of 23 jurisdictions with trip generation methodology adjustments, it is clear that (1) the ITE *Trip Generation Handbook* does not provide accurate or consistent vehicle trip estimates across different urban contexts; and (2) there is no consensus across the jurisdictions about how to quantify the adjustment to the ITE trip rates for urban context.

Alternative approaches to estimating trip generation or adjusting the rates provided in the ITE *Trip Generation Handbook* are available. In the United States, several models and methods have been developed to address various issues related to estimating vehicle trips or adjustments to the ITE methodologies. URBEMIS (Nelson\Nygaard Consulting Associates 2005) is a pivot model that regionally adjusts the ITE rates at single-use sites based on built environment features. INDEX (Hagler Bailly Services and

**ENVIRONMENTAL LAW & POLICY INSTITUTE
GEORGETOWN UNIVERSITY LAW CENTER**

**LITIGATING REGULATORY TAKINGS CLAIMS
THE 7th ANNUAL CONFERENCE**

OCTOBER 14-15, 2004
University of California at Los Angeles School of Law
Los Angeles, California

Takings Challenges to Development Impact Fees

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Deputy City Attorney
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*The views expressed in this paper are those of the author and not necessarily those of the City Attorney of the City and County of San Francisco.

adjudicatory impact fees were not only subject to the Takings Clause, but should be reviewed under a heightened standard.²¹ To our knowledge, the decision of the Oregon Court of Appeals in *Homebuilders Association of Metropolitan Portland v. Tualatin Hills Park and Recreation District*²² is the only other state court to address the threshold question of the applicability of the Takings Clause following *Eastern Enterprises*.

Rather than claiming that impact fees impose a severe adverse economic impact on their property, takings claimants in state courts challenge impact fees on the ground that the fee obligation fails to advance a legitimate public purpose, or exceeds the cost to mitigate the harm directly caused by the development, or both. This test is known as a "means-ends" test. A means-ends test is concerned with the propriety of the objective of government policy – the ends – and the choice of policy to achieve that end – the means.

The crucial issue raised by takings challenges to impact fees in the state courts is the degree of deference a court must extend to a decision to impose a fee. The choice is generally between heightened scrutiny and deferential review. Most states apply deferential review to legislative fees and heightened scrutiny to adjudicatory fees.

This part begins by providing a background for the means-ends test under the Takings Clause. It discusses the questionable origins of the means-ends test and the evolution of the test in the federal courts. Finally, it reviews the state courts' application of the means-ends test to development impact fees.

A. The Origins of the Means-Ends Test for Takings.

The means-ends test under the Takings Clause owes its existence to confusion as to which branch of government determines economic policy: democratically elected legislatures or courts. *Agins v. City of Tiburon*,²³ contributed to this confusion. *Agins* held that courts are empowered to find that a regulation effects a taking of property under the Takings Clause if the regulation fails to "substantially advance legitimate state interests."²⁴ The substantially advances test conflicts with the plain language of the Takings Clause, which requires the payment of compensation for "taking" of private property for public use. It is difficult to discern how the failure of a regulation to fulfill a valid public purpose could "take" property. Moreover, the substantially advances test lacks any basis in takings jurisprudence. It has been used to justify judicial interference with legislative policymaking.

1. Substantive Due Process.

The substantially advance test, the illegitimate progeny of the Takings Clause, is in fact a reincarnation of a defunct doctrine under the Fifth and Fourteenth Amendments known as "substantive due process." One commentator has described substantive due process as "a peculiarly Social Darwinist-inspired version of laissez-faire."²⁵ A short history of the rise and fall of substantive due process reveals the ideological underpinnings of the means-ends test under the Takings Clause.

In the post-Civil War period, the Supreme Court readily deferred to the policy decisions of state legislatures. The best example of this hands-off policy is the Slaughter-

²¹ 27 Cal.4th at 672.

²² 185 Or.App. 729, 62 P.3d 404 (2003). See discussion, *infra*, at pp. 22-23.

²³ 447 U.S. 255 (1980).

²⁴ *Id.* at 260.

²⁵ Neil Duxbury, PATTERNS OF AMERICAN JURISPRUDENCE 273 (1995).

83-OCT Fla. B.J. 22

Florida Bar Journal
October, 2009

Feature
Introduction to
Wade L. Hopping^{a1}

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A PERSPECTIVE FROM THE DEVELOPMENT COMMUNITY

It seems to be almost universally accepted that Florida's transportation concurrency system does not work. It creates economic winners and losers. It encourages developers to seek existing transportation capacity on the road system wherever possible in order to manage their costs, sometimes in locations where public policy otherwise seeks to discourage development. And it encourages cities, counties, the Department of Transportation (DOT), and developers to "game the system," breeding disrespect for how we pay for development-created impacts to our transportation system.

These are not only my conclusions: The 2009 Florida Legislature found that "the existing transportation concurrency system has not adequately addressed the transportation needs of this state in an effective, predictable, and equitable manner, and is not producing a sustainable transportation system."¹ The legislature set the stage for "fixing" this problem by directing the Department of Community Affairs (DCA) and DOT to complete their current studies on a new mobility fee to replace transportation concurrency. It required that the mobility fee provide for mobility needs, ensure that new development provides mitigation for its impacts, and "promote compact, mixed-use and energy-efficient development."² Implicit in this last command is that a mobility fee takes into account, in some way, vehicle miles or people miles traveled.

Adoption of a mobility fee will not be simple or painless. Nevertheless, it is consistent with the fact that developers in the private sector would prefer certainty and are willing to pay for their new impacts to the transportation system. However, they are neither obligated nor capable of paying for years and years of neglect and backlog on the road system or for financially unrealistic level-of-service standards that have been adopted for many roads. Developers should be asked to pay once for their transportation impacts so they can get on with business. They should not be hit with multiple fees and exactions, or be asked to pay more than one time for the same impacts.

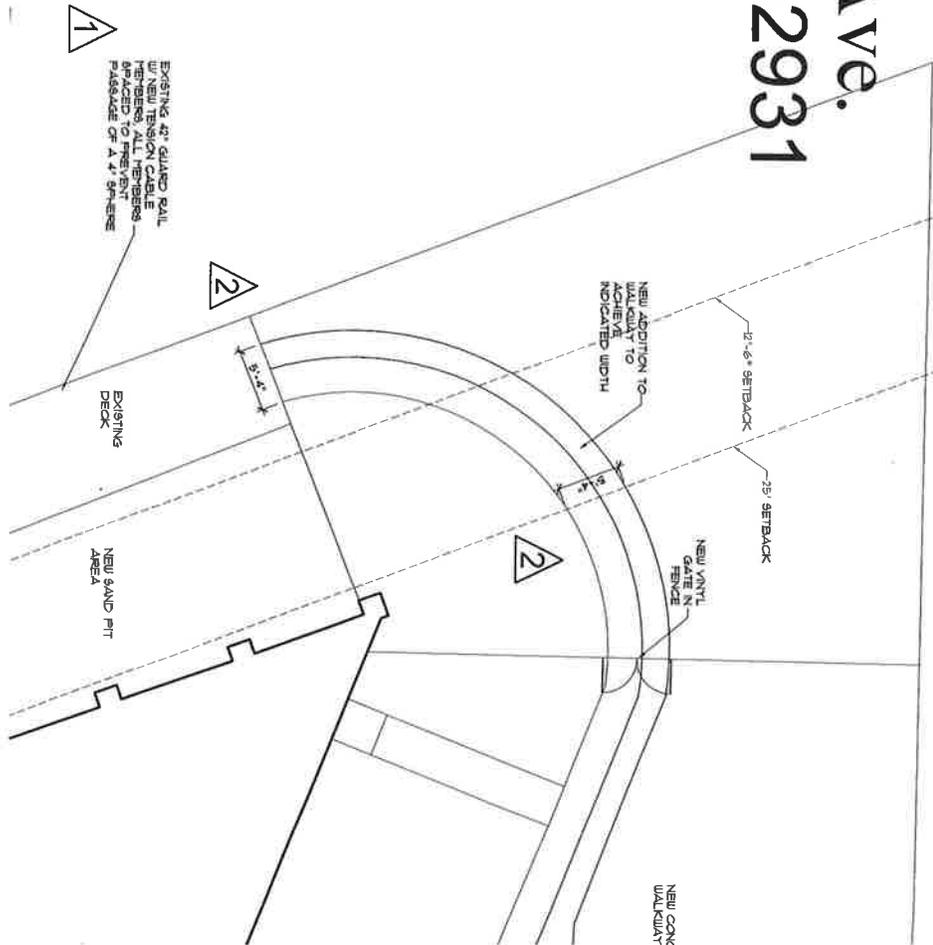
The heart of the challenge in arriving at a policy framework for a mobility fee will be addressing and reconciling several somewhat conflicting goals while respecting the well-developed body of law that governs such matters:

- Adopting a fee high enough to replace both transportation concurrency and local government transportation impact fees so developers only pay once for new impacts while providing sufficient funding to mitigate transportation impacts.
- Adopting a fee with a locational price structure that encourages urban infill, discourages unbridled rural development and is consistent with the legislature's command for local comprehensive plans to foster "energy-efficient land use patterns" and "greenhouse gas reduction strategies."³
- Adopting a fee that meets the dual rational nexus test,⁴ protects private property rights, and avoids the ridiculously excessive amounts that some developers have been asked to pay in recent years.

Exterior Roof Addition and Minor Exterior Renovations

2200 S. Orlando Ave.
Cocoa Beach, FL. 32931

PROJECT SUMMARY	
PROJECT NAME :	9410 LIPS - COCOA BEACH
PROJECT ADDRESS :	2200 S. ORLANDO AVE. COCOA BEACH, FL. 32931
CONTRACTOR :	MAI
BRIEF PROJECT DESCRIPTION:	ADDITION OF ROOF OVER OUTDOOR SEATING, RENOVATION TO EXISTING OUTDOOR BAR, ADDITION OF CONCRETE WALK AND WOOD WALK TO DECK AREA TO SERVE AS BEANS OF EGGS. 1,910 SF. OF DECK ADDED. ROOF ADDED TO 4182 OF EXTERIOR DECK. NO INTERIOR SQUARE FOOTAGE ADDED.
CONSTRUCTION TYPE :	V-B, UN-SPRINKLERED
(PER 2014 FBC)	
OCCUPANCY CLASSIFICATION :	ASSEMBLY (A-2) - RESTAURANT
(PER 2014 FBC)	
(PER 5th EDITION FL. FIRE PREVENTION CODE)	ASSEMBLY (A-2) - RESTAURANT
BUILDING HT. AND AREAS :	ASSEMBLY:
(PER 2014 FBC TABLE 503)	1 STORY MAX ALLOWED
	6,000 SF. MAX ALLOWED
	AREA INCREASE PER FBC 506.3:
	AUTOMATIC SPRINKLER INCREASE FOR ONE STORY BUILDING: 300%
	10,000 SF. MAX ALLOWED
TOTAL SQUARE FOOTAGE :	12,242 SF. TOTAL EXISTING

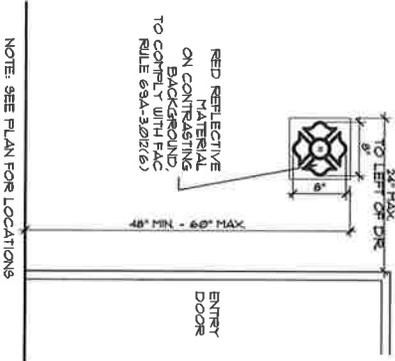


SCHEDULE OF DRAWINGS

SHEET	DESCRIPTION
C-1	COVER SHEET, FLOOR PLAN
A-1	LIFE SAFETY PLAN
9-1	OUTDOOR SEATING ROOF - STRUCTURAL PLAN
9-2	STRUCTURAL DETAILS

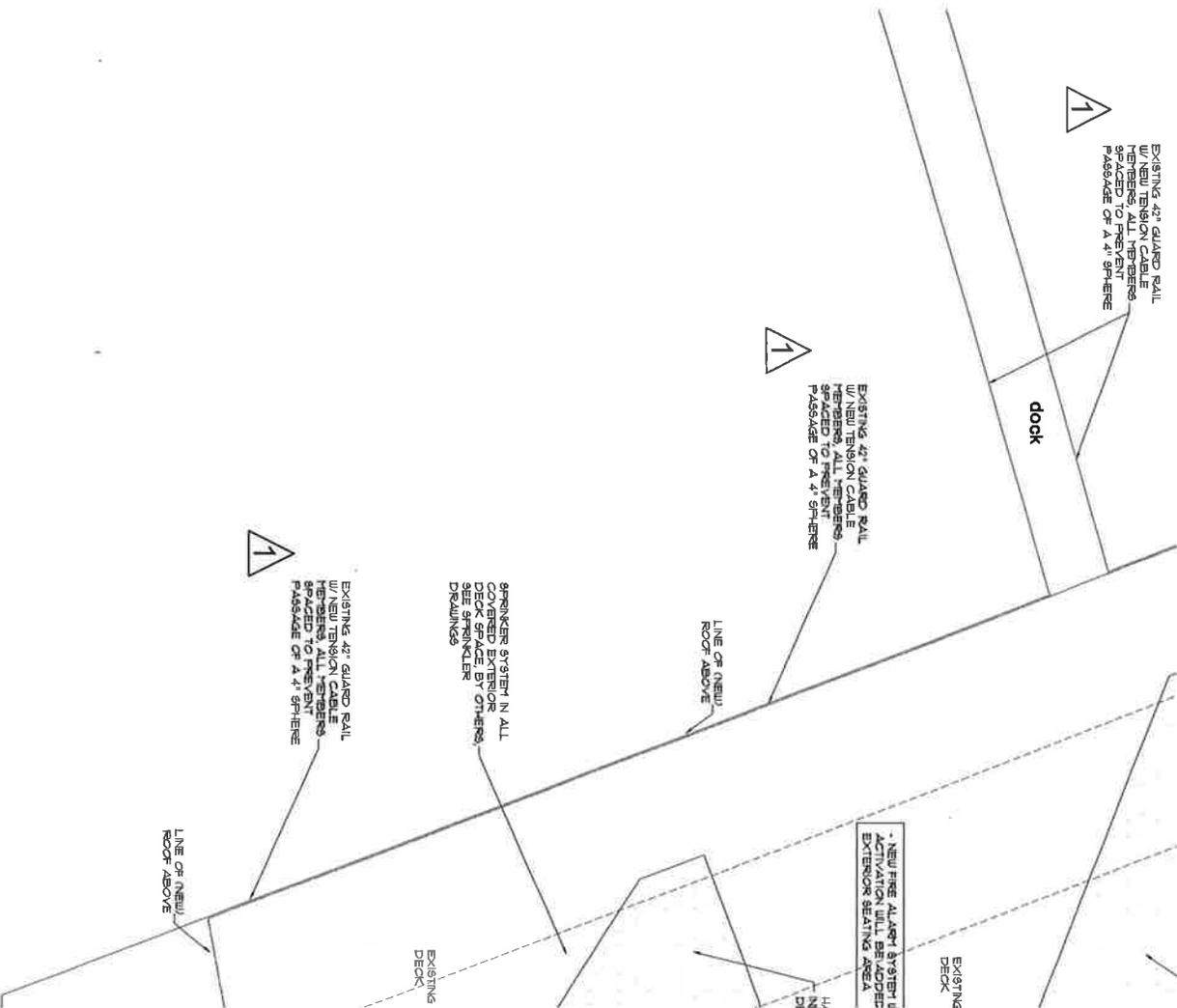
GENERAL NOTES:

1. ALL RULES AND REGULATIONS OF THE 5TH ED. 2014 FLORIDA BUILDING CODE ARE TO BE FOLLOWED ON ALL ASPECTS OF THIS PROJECT.
2. DO NOT SCALE DRAWING FOR ANY REASON. IF YOU NEED A DIMENSION PLEASE ASK.
3. LOCKS, IF PROVIDED, SHALL NOT REQUIRE THE USE OF A KEY, TOOL, OR SPECIAL KNOWLEDGE OR EFFORT TO UNLOCK FROM THE EGRESS SIDE OF THE BUILDING. (PER FLORIDA FIRE PREVENTION CODE, 5TH ADDITION, NFPA 101-1215.3).
4. ANY FASTENING DEVICE ON THE DOOR TO HAVE ONLY ONE KNOB, HANDLE, PANIC BAR OR OTHER SIMPLE TYPE OF RELEASING DEVICE. (PER FLORIDA FIRE PREVENTION CODE, 5TH ADDITION, NFPA 101-1215).
5. THE ELEVATION OF FLOOR SURFACES SHALL BE MAINTAINED ON BOTH SIDES OF THE DOOR OPENINGS FOR A DISTANCE NOT LESS THAN THE WIDTH OF THE WIDEST LEAF. (PER FLORIDA FIRE PREVENTION CODE, 5TH ADDITION, NFPA 101-1213.2).
6. FIRE EXTINGUISHERS TO BE PROVIDED WITH A MINIMUM RATING OF 2A-10-B/C FOR EVERY 3000 SQ. FT. OF FLOOR AREA. VERIFY THAT THE TRAVEL DISTANCE TO A FIRE EXTINGUISHER SHALL NOT EXCEED 15 FEET.
7. ANY NEW DOORS, (EXTERIOR GATES IN EGRESS PATH INCLUDED) TO HAVE ADA APPROVED LEVERSET HARDWARE.



MALTESE CROSS DETAIL

SCALE: NOT TO SCALE

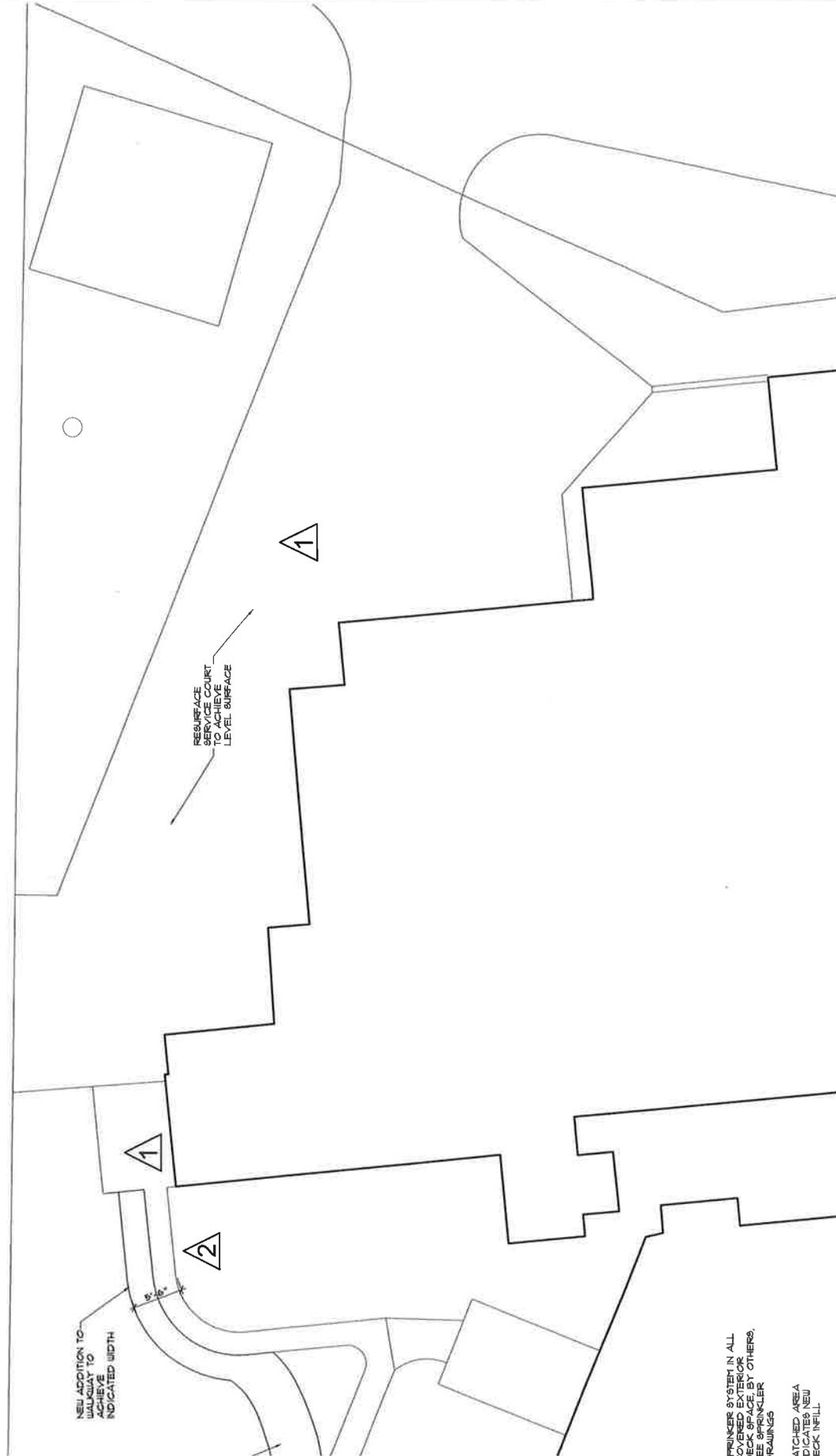


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REVISIONS:

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08.01.17
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PRINKER SYSTEM IN ALL
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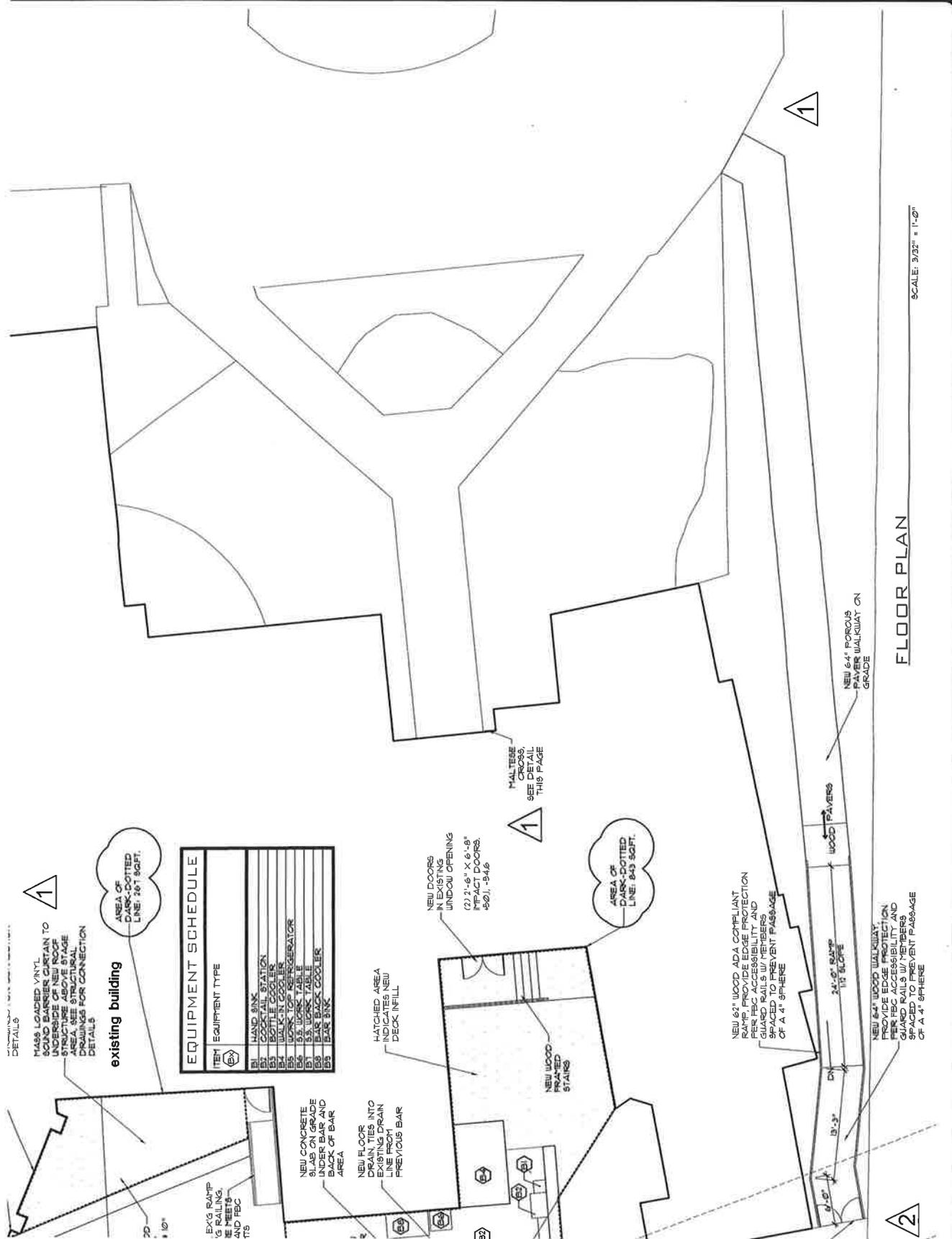
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SHEET TITLE

LIFE SAFETY
 PLAN

SHEET NUMBER

C-1



SCALE: 3/32" = 1'-0"

FLOOR PLAN