



STATE OF FLORIDA

# DEPARTMENT OF COMMUNITY AFFAIRS

*"Dedicated to making Florida a better place to call home"*

CHARLIE CRIST  
Governor

THOMAS G. PELHAM  
Secretary

May 19, 2009

The Honorable Donna Fiala, Chairman  
Collier County Board of County Commissioners  
3301 E. Tamiami Trail  
Naples, Florida 34112

Dear Chairman Fiala:

The Department has completed its review of the adopted Comprehensive Plan Amendments for Collier County, as adopted on February 24, 2009, by Ordinance Number 09-07 DCA No. 09-CIE1), and has determined that portions of the plan amendments (Capital Improvements Element Objective 2 and Policy 5.4) do not meet the requirements of Chapter 163, Part II, Florida Statutes (F.S.), for compliance, and that the remaining portions of the plan amendments do meet these requirements. The Department is issuing a Notice of Intent to find portions of the Comprehensive Plan Amendments adopted by Ordinance Number 09-07 "Not In Compliance" and the remaining portions of the Comprehensive Plan Amendments adopted by Ordinance Number 09-07 "In Compliance," as previously noted. The Notice of Intent has been sent to the *Naples Daily News* for publication on May 20, 2009. The Department is also issuing the attached Statement of Intent regarding the portions of the Amendments adopted by Ordinance Number 09-07 found not in compliance.

Please note that a copy of the adopted Collier County Comprehensive Plan Amendments, the Statement of Intent, and the Notice of Intent must be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Collier County Comprehensive Planning Department, 2800 N. Horseshoe Drive, Naples, Florida 34104. Please be advised that Section 163.3184(8)(c)2, F.S., requires a local government that has an internet site to post a copy of the Department's Notice of Intent on the site within 5 days after receipt of the mailed copy of the Department's Notice of Intent.

In addition, the Statement of Intent and Notice of Intent will be forwarded along with a petition to the Division of Administrative Hearings for the scheduling of an administrative hearing pursuant to Section 120.57, F.S. We are interested in meeting with you and your staff at your convenience for the purpose of developing an acceptable solution to this not in compliance finding. The issues raised in the attached Statement of Intent include the level of service standard for schools and off-site improvements for schools regarding the amendments to Capital Improvements Element Objective 2 and Policy 5.4.

2555 SHUMARD OAK BOULEVARD ♦ TALLAHASSEE, FL 32399-2100  
850-488-8466 (p) ♦ 850-921-0781 (f) ♦ Website: [www.dca.state.fl.us](http://www.dca.state.fl.us)

♦ COMMUNITY PLANNING 850-488-2356 (p) 850-488-3309 (f) ♦ FLORIDA COMMUNITIES TRUST 850-922-2207 (p) 850-921-1747 (f) ♦  
♦ HOUSING AND COMMUNITY DEVELOPMENT 850-488-7955 (p) 850-922-5623 (f) ♦

The Honorable Donna Fiala, Chairman  
May 19, 2009  
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If you have any questions, please contact Brenda Winningham, Regional Planning Administrator, at (850) 922-1800, or Lynette Norr, Assistant General Counsel, at (850) 488-0410.

Sincerely,  
  
Mike McDaniel, Chief  
Office of Comprehensive Planning

MM/sr

Enclosures: Notice of Intent  
Statement of Intent

cc: Mr. Ken Heatherington, Executive Director, Southwest Florida RPC  
Mr. Randy Cohen, Director, Collier County Comprehensive Planning Department

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS  
NOTICE OF INTENT TO FIND THE COLLIER COUNTY  
AMENDMENTS, ADOPTED BY ORDINANCE NO. 09-07  
CAPITAL IMPROVEMENT ELEMENT (OBJECTIVE 2 AND POLICY 5.4)  
ON FEBRUARY 24, 2009, NOT IN COMPLIANCE,  
AND THE REMAINING AMENDMENT(S) ADOPTED PURSUANT TO  
ORDINANCE 09-07, IN COMPLIANCE  
DOCKET NO. 09-CIE1-NOI-1101-(A)-(N)

The Department gives notice of its intent to find the Collier County amendments adopted by Ordinance No. 09-07 Capital Improvement Element (Objective 2 and Policy 5.4) on February 24, 2009, NOT IN COMPLIANCE, and the remaining amendment(s) adopted by Ordinance No. 09-07 IN COMPLIANCE, pursuant to Sections 163.3184, 163.3187 and 163.3189, F.S.

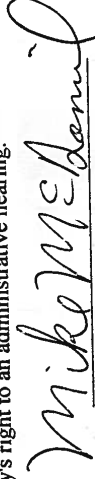
The adopted Collier County Comprehensive Plan Amendment(s), the Department's Objections, Recommendations, and Comments Report (if any), and the Department's Statement of Intent to Find the Comprehensive Plan Amendment Not In Compliance will be available for public inspection Monday through Friday, except for legal holidays, during normal business hours, at the Collier County Comprehensive Planning Department, 2800 North Horseshoe Drive, Naples, Florida 34104 and County Clerk's Office, 4<sup>th</sup> Floor Administration Building, Collier County Government Center, East Naples, Florida 34112.

Any affected person, as defined in Section 163.3184, F.S., has a right to petition for an administrative hearing to challenge the proposed agency determination that the above referenced amendments to the Collier County Comprehensive Plan are In Compliance, as defined in Subsection 163.3184(1), F.S. The petition must be filed within twenty-one (21) days after publication of this notice; a copy must be mailed or delivered to the local government and must include all of the information and contents described in Uniform Rule 28-106.201, F.A.C. The petition must be filed with the Agency Clerk, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399-2100. Failure to timely file a petition shall constitute a waiver of any right to request an administrative proceeding as a petitioner under Sections 120.569 and 120.57, F.S. If a petition is filed, the purpose of the administrative hearing will be to present evidence and testimony and forward a recommended order to the Department. If no petition is filed, this Notice of Intent shall become final agency action.

This Notice of Intent and the Statement of Intent for those amendment(s) found Not In Compliance will be forwarded by petition to the Division of Administrative Hearings (DOAH) of the Department of Management Services for the scheduling of an Administrative Hearing pursuant to Sections 120.569 and 120.57, F.S. The purpose of the administrative hearing will be to present evidence and testimony on the noncompliance issues alleged by the Department in its Objections, Recommendations, and Comments Report and Statement of Intent in order to secure a recommended order for forwarding to the Administration Commission.

Affected persons may petition to intervene in either proceeding referenced above. A petition for intervention must be filed at least twenty (20) days before the final hearing and must include all of the information and contents described in Uniform Rule 28-106.205, F.A.C. Pursuant to Section 163.3184(10), F.S., no new issues may be alleged as a reason to find a plan amendment not in compliance in a petition to intervene filed more than twenty one (21) days after publication of this notice unless the petitioner establishes good cause for not alleging such new issues within the twenty one (21) day time period. The petition for intervention shall be filed at DOAH, 1230 Apalachee Parkway, Tallahassee, Florida 32399-3060, and a copy mailed or delivered to the local government and the Department. Failure to petition to intervene within the allowed time frame constitutes a waiver of any right such a person has to request a hearing pursuant to Sections 120.569 and 120.57, F.S., or to participate in the administrative hearing.

After an administrative hearing petition is timely filed, mediation is available pursuant to Subsection 163.3189(3)(a), F.S., to any affected person who is made a party to the proceeding by filing that request with the administrative law judge assigned by the Division of Administrative Hearings. The choice of mediation shall not affect a party's right to an administrative hearing.



Mike McDaniel, Chief  
Office of Comprehensive Planning  
Division of Community Planning  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399-2100

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: COLLIER COUNTY  
COMPREHENSIVE PLAN AMENDMENTS  
09-1 CIE; AMENDING THE CAPITAL  
IMPROVEMENTS ELEMENT

Docket No. 09-CIE1-NOI-1101

STATEMENT OF INTENT TO FIND A PORTION OF  
COMPREHENSIVE PLAN AMENDMENTS  
NOT IN COMPLIANCE

The Florida Department of Community Affairs, pursuant to Section 163.3184(10), Florida Statutes, and Rule 9J-11.012(6), Florida Administrative Code (F.A.C.), hereby issues this Statement of Intent to find a portion of the Comprehensive Plan Amendment 09-CIE1 (“Amendments”) adopted by Collier County in Ordinance No. 09-07 on February 24, 2009, Not In Compliance. The Department finds that a portion of the Amendments are not “in compliance,” as that term is defined in Section 163.3184(1)(b), Florida Statutes (F.S.), for the following reasons:

I. CAPITAL IMPROVEMENTS ELEMENT AMENDMENT OBJECTIVE 2 AND  
POLICY 5.4

- A. Inconsistent provisions. The inconsistent provisions of the Amendments under this subject heading are as follows:
- Collier County had previously amended the Collier County Growth Management Plan (“Comprehensive Plan”) in October 2008 (Ordinance Number 08-55; Department Number 08-PEFE1) to address public school facility planning and school concurrency. Collier County executed the “Interlocal Agreement For Public School Facility Planning And School Concurrency” (“School Interlocal Agreement”) in October 2008 with the District School Board

of Collier County (“School District”) to address the requirements of Section 163.31777, F.S. In part, the amended Comprehensive Plan adopted by Ordinance Number 08-55 established the Public School Facilities Element, level of service standards for public school facilities, and established plan policies for off-site infrastructure improvements to support school facilities. Pursuant to Section 163.3177(12)(c), F.S., the public school facilities element shall be based upon data and analysis, which must include the interlocal agreement adopted pursuant to Section 163.31777, F.S. The School Interlocal Agreement is data and analysis intended to support the Comprehensive Plan, including the Public School Facilities Element, Capital Improvements Element, and Intergovernmental Coordination Element.

The amendment (Ordinance No. 09-07) to Capital Improvements Element Policy 5.4 provides that “requisite off-site improvements” are included as part of the necessary capital facilities and services that are to be considered when determining concurrency regarding the public school facilities level of service standards. Thus, the amended Policy 5.4 makes “requisite off-site improvements” a part of the school level of service standards. The school level of service standards established in Capital Improvements Element Policy 1.5, Public School Facilities Element Policy 1.1, and the School Interlocal Agreement (Sections 13.2 and 14) are based upon permanent Florida Inventory of School House (FISH) capacity as follows: 95% of permanent FISH capacity for elementary school concurrency service areas; 95% of permanent FISH capacity for middle school concurrency service areas; and 100% of permanent FISH capacity for high school concurrency service areas. Intergovernmental Coordination Element Policy 2.6 requires Collier County to coordinate with the Collier County School District for collaborative planning and decision making on the location and extension of public facilities subject to concurrency and to support existing and proposed public educational facilities in

accordance with the School Interlocal Agreement. The school level of service standards established in Capital Improvements Element Policy 1.5, Public School Facilities Element Policy 1.1, and the School Interlocal Agreement do not include “requisite off-site improvements.” Therefore, the amendment to Capital Improvements Element Policy 5.4 is internally inconsistent with Capital Improvements Element Policy 1.5, Public School Facilities Element Policy 1.1, and Intergovernmental Coordination Element Policy 2.6 regarding the school level of service standards. In addition, the amendment to Capital Improvements Element Policy 5.4 does not establish meaningful and predictable guidelines and standards defining “requisite off-site improvements” in order to guide the concurrency determination regarding the level of service standards.

Because the amendment to Capital Improvements Element Policy 5.4 is inconsistent with the Interlocal School Agreement (Sections 13.2 and 14), Capital Improvements Element Policy 1.5, Public School Facilities Element Policy 1.1, and Intergovernmental Coordination Element Policy 2.6, the several elements (Capital Improvements Element, Public School Facilities Element, and Intergovernmental Coordination Element) of the Comprehensive Plan are not consistent and coordinated, and therefore the amendment to Policy 5.4 is inconsistent with the requirements of Section 163.3177(2), F.S., and Rule 9J-5.005(5), F.A.C.

The amendment to Capital Improvements Element Policy 5.4 is not supported by best available relevant and appropriate data and analysis because the amended Policy 5.4 is inconsistent with the School Interlocal Agreement (Sections 13.2 and 14) regarding school level of services standards. The amendment to Capital Improvements Element Policy 5.4 is not supported by relevant and appropriate data and analysis identifying whether any requisite off-site improvements are needed to achieve and maintain the amended level of service standard of

Policy 5.4 and demonstrating that the requisite off-site improvements are included in a financially feasible Schedule of Capital Improvements in the Capital Improvements Element.

The amendment to Capital Improvements Element Policy 5.4 makes the school level of service standards in Policy 5.4 inconsistent with statutory requirements (Sections 163.3177(12) and 163.3180(13), F.S.) to have uniform district-wide (school district-wide) level of service standards for school concurrency because the local government comprehensive plans other local governments in Collier County do not include plan policy provisions consistent with the amendment language of Policy 5.4.

Therefore, the amendment to Capital Improvements Element Policy 5.4 is not consistent with the following requirements: Rules 9J-5.005(2), (3), (5) and (6); 9J-5.015(3)(b)1; 9J-5.015(3)(c)1., and 11.; 9J-5.016(1), (2), (3) and (4); 9J-5.025(2)(f); 9J-5.025(3)(b)1., 2., 3., and 5.; 9J-5.025(3)(c)2., 5., and 7., F.A.C.; and Sections 163.3177(2), (3), (8), and (10)(e); 163.3177(4)(a); 163.3177(6)(h); 163.3177(12); 163.3177(12)(c) and (g); 163.3180(13); 163.3180(13)(a), (b), (d), and (g); and 163.31777, F.S.

The amendment (Ordinance Number 09-07) to Capital Improvements Element Objective 2 states that “Any and all off-site improvements associated with new schools and school expansions shall be the sole responsibility of the Collier County School Board unless Collier County and the Collier County School Board agree to an alternative funding mechanism.” The off-site improvements pertain to infrastructure to support new schools and school expansions. School Interlocal Agreement (Section 7) addresses off-site improvements by requiring the off-site improvements be addressed (at the time of the preliminary consistency determination that is done when school sites are identified or schools are expanded or constructed and reviewed for consistency with the Comprehensive Plan) for each new or expanded school through an

agreement between the School District and local government as to the scope, timing, and party (or parties) responsible for funding, constructing, operating and maintaining the off-site improvement. The Public School Facilities Element Policy 3.2 implements the School Interlocal Agreement by requiring the County and School District to enter into an agreement for off-site improvements (address the scope, timing, funding, constructing, operating, and maintaining) prior to commencement of construction of a new school. The School Interlocal Agreement and Public School Facilities Element Policy 3.2 do not establish or determine which party (or parties) is responsible for funding the off-site improvements, but the School Interlocal Agreement and Public School Facilities Element Policy 3.2 establish a process (through the agreement for off-site improvements) to address the issue of which party (or parties) is responsible for off-site improvements. The Comprehensive Plan Intergovernmental Coordination Element Policy 2.6 requires Collier County to coordinate with the Collier County School District for collaborative planning and decision making on the location and extension of public facilities subject to concurrency and to support existing and proposed public educational facilities in accordance with the School Interlocal Agreement.

The amendment to Capital Improvements Element Objective 2 is inconsistent with the School Interlocal Agreement (Section 7), Public School Facilities Element Policy 3.2, and Intergovernmental Coordination Element Policy 2.6 because: (1) the amendment to Capital Improvements Element Objective 2 makes the School District solely responsible for off-site improvements to support new schools and school expansions unless both parties (Collier County and the School District) agree to an alternative funding mechanism, and the School Interlocal Agreement (Section 7), Public School Facilities Element Policy 3.2, and Intergovernmental Coordination Element Policy 2.6 do not establish that the School District is solely responsible for



such off-site improvements; and (2) the amendment to Capital Improvements Element Objective 2 makes the School District solely responsible for off-site improvements to support new schools and school expansions while not requiring that the responsibility for off-site improvements be mutually agreed to through the “off-site improvements” agreement process established in the School Interlocal Agreement (Section 7), Public School Facilities Element Policy 3.2, and Intergovernmental Coordination Element Policy 2.6. Because the amendment to Capital Improvements Element Objective 2 is inconsistent with Public School Facilities Element Policy 3.2 and Intergovernmental Coordination Element Policy 2.6, the Comprehensive Plan as amended does not establish meaningful and predictable guidelines for off-site improvements for schools.

The amendment to Capital Improvements Element Objective 2 is not supported by the best available relevant and appropriate data and analysis of the School Interlocal Agreement because the amendment to Capital Improvements Element Objective 2 is inconsistent with the School Interlocal Agreement. The amendment to Capital Improvements Element Objective 2 is not supported by best available relevant and appropriate data and analysis demonstrating that the School District has agreed to be solely responsible for any and all off-site improvements associated with new schools and school expansions. In addition, based on comments from the School District, the School District has not agreed to be solely responsible for any and all off-site improvements associated with new schools and school expansions.

Because the amendment to Capital Improvements Element Objective 2 is inconsistent with the Interlocal School Agreement (Section 7), Public School Facilities Element Policy 3.2, and Intergovernmental Coordination Element Policy 2.6, the several elements (Capital Improvements Element, Public School Facilities Element, and Intergovernmental Coordination

Element) of the Comprehensive Plan are not consistent and coordinated, and therefore the amendment to Objective 2 is inconsistent with the requirements of Section 163.3177(2), F.S., and Rule 9J-5.005(5), F.A.C.

The amendment to Capital Improvements Element Objective 2 is not consistent with the requirements of Sections 163.3177(12) and 163.3180(13), F.S., which require consistent, uniform procedures for implementation of school concurrency district wide throughout a school district because the local government comprehensive plans of other local governments within Collier County do not include plan objective/policy provisions consistent with the amendment language of Objective 2.

Therefore, the amendment to Capital Improvements Element Objective 2 is not consistent with the following requirements: Rules 9J-5.005(2), (5) and (6); 9J-5.015(3)(b)1; 9J-5.015(3)(c)1., and 11.; 9J-5.016(1)(a); 9J-5.016(2)(c) and (d); and 9J-5.016(3)(b)1; 9J-5.025(2)(f); 9J-5.025(3)(b)1., and 5.; 9J-5.025(3)(c)5., F.A.C.; and Sections 163.3177(2), (3) and (8); 163.3177(4)(a); 163.3177(6)(h); 163.3177(12); 163.3177(12)(c) and (g); 163.3180(13); 163.3180(13)(a), and (g); and 163.31777, F.S.

**B. Recommended Remedial Actions.**

1. Delete the amendments to Objective 2 and Policy 5.4 from the Comprehensive Plan.

II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. The Amendments are inconsistent with the State Comprehensive Plan goals and policies set forth in Section 187.201, Florida Statutes, including the following provisions:

1. Land Use. The Amendments are inconsistent with the Goal set forth in Section 187.201(15)(a), F.S., and the Policy set forth in Sections 187.201(15)(b)1, F.S.
2. Urban and Downtown Revitalization. The Amendments are inconsistent with the Goal set forth in Section 187.201(16)(a), F.S., and the Policy set forth in Section 187.201(169)(b)8, F.S.
3. Public Facilities. The Amendments are inconsistent with the Goal Set forth in Section 187.201(17)(a), F.S.
4. Plan Implementation. The Amendments are inconsistent with the Goal set forth in Section 187.201(25)(a), F.S., and the Policies set forth in Section 187.201(25)(b)7.

B. Recommended remedial action. These inconsistencies may be remedied by revising the Amendments as described above in Section I.

CONCLUSIONS

1. The Amendments identified above are not consistent with the State Comprehensive Plan;
2. The Amendments identified above are not consistent with Chapter 9J-5, F.A.C.;
3. The Amendments identified above are not consistent with the requirements of Chapter 163, Part II, F.S.;
4. The Amendments identified above are not “in compliance,” as defined in Section 163.3184(1)(b) F.S.; and,
5. In order to bring the Amendments into compliance, the County may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 19th day of May 2009, at Tallahassee, Florida.

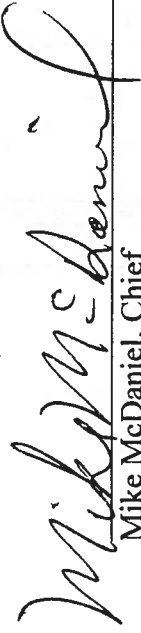
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Mike McDaniel, Chief  
Office of Comprehensive Planning  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399

CONCLUSIONS

1. The Amendments identified above are not consistent with the State Comprehensive Plan;
2. The Amendments identified above are not consistent with Chapter 9J-5, F.A.C.;
3. The Amendments identified above are not consistent with the requirements of Chapter 163, Part II, F.S.;
4. The Amendments identified above are not “in compliance,” as defined in Section 163.3184(1)(b) F.S.; and,
5. In order to bring the Amendments into compliance, the County may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 19th day of May 2009, at Tallahassee, Florida.



Mike McDaniel, Chief  
Office of Comprehensive Planning  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399