

ORDINANCE NO. 09- 45

AN ORDINANCE AMENDING ORDINANCE NO. 89-05, AS AMENDED, THE COLLIER COUNTY GROWTH MANAGEMENT PLAN FOR THE UNINCORPORATED AREA OF COLLIER COUNTY, FLORIDA BY PROVIDING FOR A REMEDIAL AMENDMENT RELATING TO PUBLIC SCHOOLS IN THE CAPITAL IMPROVEMENT ELEMENT; PROVIDING FOR SEVERABILITY, AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on February 24, 2009, through the adoption of Ordinance No. 09-07 Collier County adopted its annual amendment to the Capital Improvement Element of the Growth Management Plan; and

WHEREAS, on May 19, 2009, the Department of Community Affairs (DCA) issued its Notice of Intent and Statement of Intent to find a portion of the County's annual amendment to the Capital Improvement Element, Ordinance No. 09-07, "not in compliance" as defined by Section 163.3184(1)(b), Florida Statutes; and

WHEREAS, pursuant to Subsection 163.3184(16), Florida Statutes, the DCA and Collier County Board of County Commissioners entered into a Compliance Agreement on September 15, 2009 to resolve issues raised in the proceedings; and

WHEREAS, to implement the Compliance Agreement remedial amendments to the Capital Improvement Element of the Growth Management Plan have been prepared for consideration and adoption by the Collier County Board of County Commissioners; and

WHEREAS, the Board of County Commissioners of Collier County did take action in the manner prescribed by law and did hold a public hearing concerning the adoption of the Remedial Amendment, including the following: the Collier County Executive Summary; and other documents, testimony and information presented and made part of the record at the meeting of the Collier County Board of County Commissioners held on September 15, 2009; and

WHEREAS, all applicable substantive and procedural requirements of law have been met.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF COLLIER COUNTY, FLORIDA, that:

SECTION ONE: ADOPTION OF A REMEDIAL AMENDMENT TO THE CAPITAL IMPROVEMENT ELEMENT OF THE GROWTH MANAGEMENT PLAN

The Board of County Commissioners hereby adopts the Remedial Amendment to the Capital Improvement Element of the Growth Management Plan in accordance with Section 163.3184, Florida Statutes. The relevant portions of the Capital Improvement Element affected by this amendment are attached hereto as Exhibit "A" and is incorporated by reference herein.

SECTION TWO: SEVERABILITY

If any phrase or portion of this Ordinance is held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion.

SECTION THREE: EFFECTIVE DATE

The effective date of this Remedial Amendment to the CAPITAL IMPROVEMENT ELEMENT shall be the date a final order is issued by the Department of Community Affairs or Administration Commission finding the Element in compliance in accordance with Section 163.3184, Florida Statutes, whichever occurs earlier. No development orders, development permits, or land uses dependent on a portion of this Element may be issued or commence before it has become effective. If a final order of noncompliance is issued by the Administration Commission, this amendment may nevertheless be made effective by adoption of a Resolution affirming its effective status, a copy of which Resolution shall be sent to the Department of Community Affairs, Bureau of Local Planning, 2555 Shumard Oaks Blvd., 3<sup>rd</sup> Floor, Tallahassee, Florida 32399-2100.

PASSED AND DULY ADOPTED by the Board of County Commissioners of Collier County, Florida this 15th day of September, 2009.

ATTEST:  
DWIGHT E. BROCK, Clerk

BY: Debbie Steff O.C.  
Deputy Clerk

Attest as the Chairman:  
signature only.

BOARD OF COUNTY COMMISSIONERS  
COLLIER COUNTY, FLORIDA

BY: Donna Fiala  
DONNA FIALA, Chairman

Approved as to form and legal sufficiency:

Steven Z. Williams  
for Heidi Ashton-Cicko  
Assistant County Attorney  
Land Use Section Chief

**OBJECTIVE 2 (FINANCIAL FEASIBILITY):**

Provide public facilities, as described in Policy 1.1 above, in order to maintain adopted level of service standards that are within the ability of the County to fund, or within the County's authority to require others to provide, or as provided by the School District within their financially feasible Five-Year Capital Improvement Plan, formally adopted by the School Board between July 1 and October 1 of each year. ~~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.~~ With the exception of public school facilities, existing public facility deficiencies measured against the adopted level of service standards will be eliminated with revenues generated by ad valorem taxes and other intergovernmental revenues received based on economic activity. Future development will bear a proportionate cost of facility improvements necessitated by growth. Future development's payments may take the form of, but are not limited to, voluntary contributions for the benefit of any public facility, impact fees, dedications of land, provision of public facilities, and future payments of user fees, special assessments and taxes.

\* \*\* \*\*\* \*\*\*\* \*\*\*\*\* \* \*\* \*

**Policy 5.4:**

- A. The necessary ~~capital~~ facilities and services, ~~including requisite off site improvements,~~ are in place at the time a final site development plan, final plat or functional equivalent is approved; or
- B. The necessary ~~capital~~ facilities and services, ~~including requisite off site improvements,~~ are under construction or the contract for such facilities and services has been awarded, accepted, and duly executed by all parties at the time a final site development plan, or final plat or functional equivalent; or
- C. The necessary ~~capital~~ facilities and services, ~~including requisite off site improvements,~~ are found in the first, second or third year of the School District of Collier County's financially feasible Five-Year Capital Improvement Plan, as identified in Policy 4.2, and as formally adopted by the School Board between July 1 and October 1 each year, and as adopted by reference by December 1 of each year, at the time a final site development plan, final plat or functional equivalent is approved; or
- D. The necessary ~~capital~~ facilities and services, ~~including requisite off site improvements,~~ are the subject of a binding commitment with the developer to contribute proportionate share funding as provided for in Policy 2.4 of the Public School Facilities Element, if applicable, or to construct the needed facilities.

STATE OF FLORIDA  
DIVISION OF ADMINISTRATIVE HEARINGS

DEPARTMENT OF COMMUNITY  
AFFAIRS,

Petitioner,

v.

DOAH Case No. 09-3033GM

COLLIER COUNTY,

Respondent,  
\_\_\_\_\_ /

**STIPULATED SETTLEMENT AGREEMENT**

THIS STIPULATED SETTLEMENT AGREEMENT is entered into by and between the State of Florida, Department of Community Affairs, and Collier County as a complete and final settlement of all claims raised in the above-styled proceeding.

**RECITALS**

WHEREAS, the State of Florida, Department of Community Affairs (DCA or Department), is the state land planning agency and has the authority to administer and enforce the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes; and

WHEREAS, Collier County (Local Government) is a local government with the duty to adopt comprehensive plan amendments that are "in compliance;" and

WHEREAS, the Local Government adopted Comprehensive Plan Amendment 09-CIE1 (Plan Amendment) by Ordinance No. 09-07 on February 24, 2009; and

WHEREAS, the Plan Amendment updated the Capital Improvements Element of the County's comprehensive plan; and

WHEREAS, the Department issued its Statement of Intent on May 19, 2009 and published its Notice of Intent regarding the Amendment on May 20, 2009; and

OFFICE OF THE  
COUNTY ATTORNEY  
JUN 16 2011 05

WHEREAS, as set forth in the Statement of Intent, the Department contends that the Amendment is not “in compliance” because of the inconsistent provisions in Objective 2 and Policy 5.4; and

WHEREAS, pursuant to Section 163.3184(10), Florida Statutes, DCA has initiated the above-styled formal administrative proceeding challenging the Amendment; and

WHEREAS, the Local Government disputes the allegations of the Statement of Intent regarding the Amendment; and

WHEREAS, the parties wish to avoid the expense, delay, and uncertainty of lengthy litigation and to resolve this proceeding under the terms set forth herein, and agree it is in their respective mutual best interests to do so;

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinbelow set forth, and in consideration of the benefits to accrue to each of the parties, the receipt and sufficiency of which are hereby acknowledged, the parties hereby represent and agree as follows:

### **GENERAL PROVISIONS**

1. **Definitions.** As used in this agreement, the following words and phrases shall have the following meanings:

a. **Act:** The Local Government Comprehensive Planning and Land Development Regulation Act, as codified in Part II, Chapter 163, Florida Statutes.

b. **Agreement:** This stipulated settlement agreement.

c. **Comprehensive Plan Amendment or Plan Amendment:** Comprehensive plan amendment 09-CIE1 adopted by the Local Government on February 24, 2009, as Ordinance No. 09-07.

d. **DOAH:** The Florida Division of Administrative Hearings.

e. **In compliance or into compliance:** The meaning set forth in Section 163.3184(1)(b), Florida Statutes.

f. Notice: The notice of intent issued by the Department to which was attached its statement of intent to find the plan amendment not in compliance.

g. Petition: The petition for administrative hearing and relief filed by the Department in this case.

h. Remedial Action: A remedial plan amendment, submission of support document or other action described in the statement of intent or this agreement as an action which must be completed to bring the plan amendment into compliance.

i. Remedial Plan Amendment: An amendment to the plan or support document, the need for which is identified in this agreement, including its exhibits, and which the local government must adopt to complete all remedial actions. Remedial plan amendments adopted pursuant to this Agreement must, in the opinion of the Department, be consistent with and substantially similar in concept and content to the ones identified in this Agreement or be otherwise acceptable to the Department.

j. Statement of Intent: The statement of intent to find the Plan Amendment not in compliance issued by the Department in this case.

k. Support Document: The studies, inventory maps, surveys, data, inventories, listings or analyses used to develop and support the Plan Amendment or Remedial Plan Amendment.

2. Department Powers. The Department is the state land planning agency and has the power and duty to administer and enforce the Act and to determine whether the Plan Amendment is in compliance.

3. Negotiation of Agreement. The Department issued its Notice and Statement of Intent to find the Plan Amendment not in compliance, and filed the Petition in this case to that effect. Subsequent to the filing of the Petition the parties conferred and agreed to resolve the issues in the Petition, Notice and Statement of Intent through this Agreement. It is the intent of this Agreement to resolve fully all issues between the parties in this proceeding.

4. Dismissal. If the Local Government completes the Remedial Actions required by this Agreement, the Department will issue a cumulative Notice of Intent addressing both the Remedial Plan Amendment and the initial Plan Amendment subject to these proceedings. The Department will file the cumulative Notice of Intent with the DOAH. The Department will also file a request to relinquish jurisdiction to the Department for dismissal of this proceeding or for realignment of the parties, as appropriate under Section 163.3184(16)(f), Florida Statutes.

5. Description of Provisions not in Compliance and Remedial Actions; Legal Effect of Agreement. Exhibit A to this Agreement is a copy of the Statement of Intent, which identifies the provisions not in compliance. Exhibit B contains Remedial Actions needed for compliance. Exhibits A and B are incorporated in this Agreement by this reference. This Agreement constitutes a stipulation that if the Remedial Actions are accomplished, the Plan Amendment will be in compliance.

6. Remedial Actions to be Considered for Adoption. The Local Government agrees to consider for adoption by formal action of its governing body all Remedial Actions described in Exhibit B no later than the time period provided for in this Agreement.

7. Adoption or Approval of Remedial Plan Amendments. Within 60 days after execution of this Agreement by the parties, the Local Government shall consider for adoption all Remedial Actions or Plan Amendments and amendments to the Support Documents. This may be done at a single adoption hearing. Within 10 working days after adoption of the Remedial Plan Amendment, the Local Government shall transmit 3 copies of the amendment to the Department as provided in Rule 9J-11.011(5), Florida Administrative Code. The Local Government also shall submit one copy to the regional planning agency and to any other unit of local or state government that has filed a written request with the governing body for a copy of the Remedial Plan Amendment and a copy to any party granted intervenor status in this proceeding. The Remedial Plan Amendment shall be transmitted to the Department along with a letter which describes the remedial action adopted for each part of the plan amended, including references to specific portions and pages.

8. Acknowledgment. All parties to this Agreement acknowledge that the "based upon" provisions in Section 163.3184(8), Florida Statutes, do not apply to the Remedial Plan Amendment.

9. Review of Remedial Plan Amendments and Notice of Intent. Within 30 days after receipt of the adopted Remedial Plan Amendments and Support Documents, the Department shall issue a Notice of Intent pursuant to Section 163.3184, Florida Statutes, for the adopted amendments in accordance with this Agreement.

a. In Compliance: If the adopted Remedial Actions satisfy this Agreement, the Department shall issue a cumulative Notice of Intent addressing both the Plan Amendment and the Remedial Plan Amendment as being in compliance. The Department shall file this cumulative notice with DOAH and shall move to realign the parties or to have this proceeding dismissed, as may be appropriate.

b. Not in Compliance: If the Remedial Actions do not satisfy this Agreement, the Department shall issue a Notice of Intent to find the Plan Amendment not in compliance and shall forward the notice to DOAH for consolidation with the pending proceeding.

10. Effect of Amendment. Adoption of any Remedial Plan Amendment shall not be counted toward the frequency restrictions imposed upon plan amendments pursuant to Section 163.3187(1), Florida Statutes.

11. Purpose of this Agreement; Not Establishing Precedent. The parties enter into this Agreement in a spirit of cooperation for the purpose of avoiding costly, lengthy and unnecessary litigation and in recognition of the desire for the speedy and reasonable resolution of disputes arising out of or related to the Plan Amendment. The acceptance of proposals for purposes of this Agreement is part of a negotiated agreement affecting many factual and legal issues and is not an endorsement of, and does not establish precedent for, the use of these proposals in any other circumstances or by any other local government.



12. Approval by Governing Body. This Agreement has been approved by the Local Government's governing body at a public hearing advertised at least 10 days prior to the hearing in a newspaper of general circulation in the manner prescribed for advertisements in Section 163.3184(16)(c), Florida Statutes. This Agreement has been executed by the appropriate officer as provided in the Local Government's charter or other regulations.

13. Changes in Law. Nothing in this Agreement shall be construed to relieve either party from adhering to the law, and in the event of a change in any statute or administrative regulation inconsistent with this agreement, the statute or regulation shall take precedence and shall be deemed incorporated in this Agreement by reference.

14. Other Persons Unaffected. Nothing in this Agreement shall be deemed to affect the rights of any person not a party to this Agreement. This Agreement is not intended to benefit any third party.

15. Attorney Fees and Costs. Each party shall bear its own costs, including attorney fees, incurred in connection with the above-captioned case and this Agreement.

16. Effective Date. This Agreement shall become effective immediately upon execution by the Department and the Local Government.

17. Filing and Continuance. This Agreement shall be filed with DOAH by the Department after execution by the parties. Upon the filing of this Agreement, the administrative proceeding in this matter shall be stayed by the Administrative Law Judge in accordance with Section 163.3184(16)(b), Florida Statutes.

18. Retention of Right to Final Hearing. Each party hereby retains the right to have a final hearing in this proceeding in the event of a breach of this Agreement, and nothing in this Agreement shall be deemed a waiver of such right. Any party to this Agreement may move to have this matter set for hearing if it becomes apparent that any other party whose action is required by this Agreement is not proceeding in good faith to take that action.

19. Construction of Agreement. All parties to this Agreement are deemed to have participated in its drafting. In the event of any ambiguity in the terms of this Agreement, the

parties agree that such ambiguity shall be construed without regard to which of the parties drafted the provision in question.

20. Entire Agreement. This is the entire agreement between the parties and no verbal or written assurance or promise is effective or binding unless included in this document.

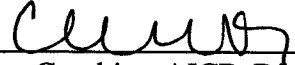
21. Governmental Discretion Unaffected. This Agreement is not intended to bind the Local Government in the exercise of governmental discretion which is exercisable in accordance with law only upon the giving of appropriate public notice and required public hearings.

22. Multiple Originals. This Agreement may be executed in any number of originals, all of which evidence one agreement, and only one of which need be produced for any purpose.

23. Captions. The captions inserted in this Agreement are for the purpose of convenience only and shall not be utilized to construe or interpret any provision of this Agreement.

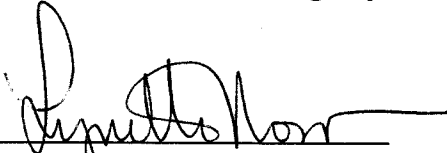
In witness whereof, the parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

**DEPARTMENT OF COMMUNITY AFFAIRS**

By:   
Charles Gauthier, AICP, Director  
Division of Community Planning

6/12/09  
Date

Approved as to form and legality:

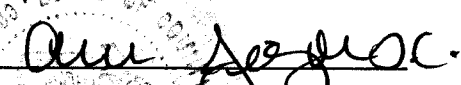
  
Lynette Norr  
Assistant General Counsel

6-12-09  
Date

**COLLIER COUNTY**

ATTEST:

DWIGHT E. BROCK, Clerk

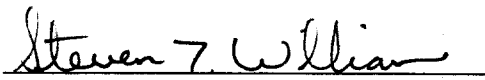
  
Attest as to Chairman's  
signature only  
9-18-2009  
Date

BOARD OF COUNTY COMMISSIONERS  
COLLIER COUNTY, FLORIDA

  
DONNA FIALA, CHAIRMAN

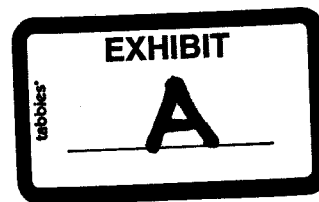
9/18/09  
Date

Approved as to form and legality:

  
Assistant County Attorney

9-16-09  
Date

STATE OF FLORIDA  
DEPARTMENT OF COMMUNITY AFFAIRS



IN RE: COLLIER COUNTY  
COMPREHENSIVE PLAN AMENDMENTS  
09-1CIE; 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(16)(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.

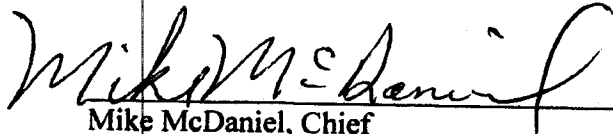
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Mike McDaniel, Chief  
Office of Comprehensive Planning  
Department of Community Affairs  
2555 Shumard Oak Boulevard  
Tallahassee, Florida 32399

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

## Exhibit B

Collier County shall adopt a remedial plan amendment to Capital Improvements Element Objective 2 and Policy 5.4 of the Collier County Growth Management Plan to delete the words shown in strike-through below:

### **OBJECTIVE 2 (FINANCIAL FEASIBILITY):**

Provide public facilities, as described in Policy 1.1 above, in order to maintain adopted level of service standards that are within the ability of the County to fund, or within the County's authority to require others to provide, or as provided by the School District within their financially feasible Five-Year Capital Improvement Plan, formally adopted by the School Board between July 1 and October 1 of each year. ~~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.~~ With the exception of public school facilities, existing public facility deficiencies measured against the adopted level of service standards will be eliminated with revenues generated by ad valorem taxes and other intergovernmental revenues received based on economic activity. Future development will bear a proportionate cost of facility improvements necessitated by growth. Future development's payments may take the form of, but are not limited to, voluntary contributions for the benefit of any public facility, impact fees, dedications of land, provision of public facilities, and future payments of user fees, special assessments and taxes.

### **(IX) Policy 5.4:**

The concurrency requirement of the Public School Facilities level of service standards of the Growth Management Plan will be achieved or maintained if any one of the following standards of the Concurrency Management System is met:

- A. The necessary ~~capital~~ facilities and services, ~~including requisite off site improvements,~~ are in place at the time a final site development plan, final plat or functional equivalent is approved; or
- B. The necessary ~~capital~~ facilities and services, ~~including requisite off site improvements,~~ are under construction or the contract for such facilities and services has been awarded, accepted, and duly executed by all parties at the time a final site development plan, or final plat or functional equivalent; or
- C. The necessary ~~capital~~ facilities and services, ~~including requisite off site improvements,~~ are found in the first, second or third year of the School District of Collier County's financially feasible Five-Year Capital Improvement Plan, as identified in Policy 4.2, and as formally adopted by the School Board between July 1 and October 1 each year, and as adopted by reference by December 1 of each year, at the time a final site development plan, final plat or functional equivalent is approved; or
- D. The necessary ~~capital~~ facilities and services, ~~including requisite off site improvements,~~ are the subject of a binding commitment with the developer to contribute proportionate share funding as provided for in Policy 2.4 of the Public School Facilities Element, if applicable, or to construct the needed facilities.