



CITY COUNCIL AGENDA FORM

REQUESTED COUNCIL MEETING DATE 4/15/08

**SUBJECT: SETTLEMENT AGREEMENT/SCHOOL CONCURRENCY
COMPREHENSIVE PLAN AMENDMENTS (CASE NO. 07-2000006)**

DEPARTMENT: COMMUNITY DEVELOPMENT

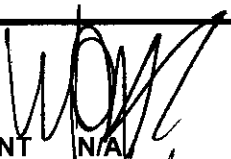
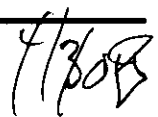


RECOMMENDED MOTION: To approve Resolution No. 08-12, approving the Stipulated Settlement Agreement regarding DCA Docket No. 08-PEFE1-NOI-6414-(A)-(N).

SUMMARY: On January 22, 2008, the City Council approved the adoption of the School Concurrency related Comprehensive Plan Amendments. These include amendments to the Future Land Use Element, Intergovernmental Coordination Element, the Capital Improvements Element, and the creation of the new Public School Facilities Element, as required by State Law.

The City of Port Orange, along with all Volusia County local governments who have already adopted these amendments, received a NOI (Notice of Intent) of non-compliance, concerning a minor disagreement over wording of the text. However, DCA and the Volusia County representatives had already agreed to the settlement terms prior to the issuance of the NOI. DCA also issued a SOI (Statement of Intent), which included the agreed-upon text amendments to the Public School Facility Element. The City is required to approve the Settlement Agreement with DCA and adopt the new language into the Comprehensive Plan. Please note that the remedial plan amendment will be adopted by ordinance as a separate agenda item. After the subject resolution is approved, the Settlement Agreement will be sent to DCA to be executed. Once the City receives the fully executed agreement, then the second reading may be held to adopt the remedial plan amendment.

Exhibit "A" to this Agreement is a copy of the Statement of Intent, which identifies the provisions not in compliance. Exhibit "B" contains the Remedial Actions needed for compliance. This Agreement constitutes a stipulation that if the Remedial Actions are accomplished, the Plan Amendment will be in compliance.

ATTACHMENTS: Ordinance Resolution Budget Resolution
 Other Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD		Wayne Clark, AICP Community Development Director	Date 
FINANCE DEPARTMENT	N/A	Approved as to Budget Requirements	Date
CITY ATTORNEY		Approved as to Form and Legality	Date 4.3.08
CITY MANAGER		Approved Agenda Item For:	4.15.08

COUNCIL ACTION: Approved as Recommended Disapproved
 Tabled Indefinitely Continued to Date Certain Approved with Modification

RESOLUTION NO. 08-12

A RESOLUTION OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, RELATING TO COMPREHENSIVE PLANNING; APPROVING A STIPULATED SETTLEMENT AGREEMENT BETWEEN THE CITY OF PORT ORANGE AND THE STATE OF FLORIDA DEPARTMENT OF COMMUNITY AFFAIRS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Section 163.3184(1), Florida Statutes, the State of Florida, Department of Community Affairs has initiated the formal administrative proceeding challenging Ordinance No. 2008-2 relating to the City's amendment to the '98 Comprehensive Plan to establish the Public Schools Facilities Element and the concurrent amendment for the Capital Facilities Element; and

WHEREAS, the City of Port Orange disputes the allegations of the Statement of Intent regarding the Amendment; and

WHEREAS, the City and the Department of Community Affairs wish to avoid the expense, delay, and uncertainty of lengthy litigation and to resolve this proceeding by adoption of the amendments under the terms set forth herein, and the parties agree it is in their respective mutual best interests to do so.

NOW, THEREFORE, it is hereby resolved by the City Council of the City of Port Orange, Volusia County, Florida as follows:

Section 1: The City Council for the City of Port Orange hereby approves the Stipulated Settlement Agreement attached hereto as Exhibit 1 for execution by the Mayor and City Manager on behalf of the City of Port Orange.

Section 2: This Resolution shall become effective immediately upon passage.

MAYOR ALLEN GREEN

Attest:

Kenneth W. Parker, City Manager

Passed and adopted on first reading on the _____ day of _____

Reviewed and Approved: _____

City Attorney

**STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS**

DEPARTMENT OF COMMUNITY
AFFAIRS,

Petitioner,

v.

DOAH Case No. _____
DCA Docket No. 08-PEFE1-NOI-6414-(A)-(N)

CITY OF PORT ORANGE

Respondent.

_____ /

STIPULATED SETTLEMENT AGREEMENT

THIS STIPULATED SETTLEMENT AGREEMENT is entered into by and between the State of Florida, Department of Community Affairs and the City of Port Orange 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, City of Port Orange (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 08-PEFE1 (Plan Amendment) by Ordinance No. 2008-2 on January 22, 2008; and

WHEREAS, the Plan Amendment proposes to create a new Public School Facilities Element in accordance with SB 360; and

WHEREAS, the Department issued its Statement and Notice of Intent regarding the Amendment on March 11, 2008; and

WHEREAS, as set forth in the Statement of Intent, the Department contends that the Amendment is not “in compliance” because the executed 2007 Interlocal Agreement is inconsistent with the adopted Public School Facilities Element because of the changes to the list of backlogged schools, Public School Facilities Element Policies 2.3.7.2, 2.3.7.3 and 2.3.7.4 lack clarity and consistency in the use of the terms “concurrency service areas” and “school attendance zones” as it relates to the application of the concurrency service area adjacency criteria, the adjacency exemptions outlined in these policies are inconsistent with State law because they are based on school attendance zones instead of school concurrency service areas. Policies 2.3.7.2, 2.3.7.3 and 2.3.7.4 allow adjacency exemptions that are not allowed by State law; 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 herein below 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 08-PEFE1 adopted by the Local Government on January 22, 2008, by Ordinance No. 2008-2.
- 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 5 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. Both parties hereby retain 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, Director
Division of Community Planning

Date

Approved as to form and legality:

Assistant General Counsel

Date

City of Port Orange

By: _____
Kenneth W. Parker, City Manager

Date

Approved as to form and legality:

City Attorney

Date

By: _____
Mayor Allen Green

Date

STATE OF FLORIDA
DEPARTMENT OF COMMUNITY AFFAIRS

IN RE: CITY OF PORT ORANGE
COMPREHENSIVE PLAN AMENDMENT 08-PEFE1;
ADDING NEW PUBLIC SCHOOL FACILITIES
ELEMENT AND AMENDING THE
INTERGOVERNMENTAL COORDINATION AND
CAPITAL IMPROVEMENTS ELEMENTS

Docket No. 08-PEFE1-NOI-6414-(A)-(N)

STATEMENT OF INTENT TO FIND A
COMPREHENSIVE PLAN AMENDMENT
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 the Comprehensive Plan Amendment 08-PEFE1 ("Amendment") adopted by the City of Port Orange by Ordinance No. 2008-2 on January 22, 2008, Not In Compliance based upon the Objections, Recommendations, and Comments Report (ORC Report) issued by the Department on November 10, 2007, which is hereby incorporated by reference, and based upon the changes the City made to the amendment as adopted. The Department finds that the Amendment is not "in compliance," as that term is defined in Section 163.3184(1)(b), Florida Statutes (F.S.), for the following reasons:

I. Public Schools Facilities Element

A. Inconsistent provisions. The inconsistent provisions of the Amendment under this subject heading are as follows:

1. The executed 2007 Interlocal Agreement is inconsistent with the adopted Public School Facilities Element because of the changes to the list of backlogged schools. The adopted City of Port Orange Public School Facilities Element contains three additional schools that are identified as backlogged that are different than those identified in the executed interlocal agreement and the proposed Public School Facilities Element. Therefore, the Department raises a financial feasibility compliance issue because the adopted Port Orange plan amendment contains four (4) backlogged school facilities with no interim level of service standard.

2. Public School Facilities Element Policies 2.3.7.2, 2.3.7.3 and 2.3.7.4 lack clarity and consistency in the use of the terms "concurrency service areas" and "school attendance zones" as it relates to the application of

the concurrency service area adjacency criteria. The adjacency exemptions outlined in these policies are inconsistent with State law because they are based on school attendance zones instead of school concurrency service areas. Policies 2.3.7.2, 2.3.7.3 and 2.3.7.4 allow adjacency exemptions that are not allowed by State law.

Therefore, the amendments are not consistent with the following requirements:

Rules 9J-5.005(2), (5) and (6), 9J-5.025(2) and (3), F.A.C., and Sections 163.3177(5)(a) and (12), 163.31777(2) and 163.3180(13)(a), (b)2 and (d)1, F.S.

B. Recommended Remedial Actions.

These inconsistencies may be remedied by:

1. Revising Public School Facilities Element Policy 2.1.3 to adopt policies which establish an interim level of service standard for the backlogged schools as follows:

Policy 2.1.3: The following schools shall achieve the ~~designated~~ adopted level of service no later than the identified date. The level of service presented in the following table is the tiered level of service that shall apply to that school unit the dated noted in the table.

<i>School</i>	<i>LOS</i>	<i>DATE</i>
<i>Orange City Elementary</i>	<i>117%</i>	<i>July 1, 2012</i>
<i>Horizon Elementary</i>	<i>158%</i>	<i>July 1, 2012</i>
<i>Freedom Elementary</i>	<i>126%</i>	<i>July 1, 2012</i>
<i>Osceola Elementary</i>	<i>117%</i>	<i>July 1, 2012</i>
<i>Ortona Elementary</i>	<i>150%</i>	<i>July 1, 2012</i>
<i>Ormond Beach Elementary</i>	<i>116%</i>	<i>July 1, 2012</i>
<i>Southwestern Middle</i>	<i>120%</i>	<i>July 1, 2013</i>
<i>New Smyrna Beach Middle</i>	<i>122%</i>	<i>July 1, 2014</i>

(Note: This policy is ~~intended to~~ designates a tiered LOS for those schools that exceed the desired levels during at the end of the five- year capital improvements program.)

Additionally, to ensure consistency with the Public School Facilities Elements of the other non-exempt local governments within Volusia County, the Department recommends the City include the following policies:

Policy 2.2.7 (County): Within the central concurrency service areas all current and future students shall be

assigned to schools designated for them as part of the School District's normal school assignment procedures. Requests for development orders for new development consistent with the future land use designations and existing residential zoning densities shall be evaluated for concurrency based on the ~~adjacent~~ assigned school and that school's concurrency service area subject to the limitations in Policy 2.3.7. If adequate capacity is not available in the assigned concurrency service area, the proposed development shall be evaluated in comparison to the concurrency service areas adjacent to the assigned concurrency service area, subject to the limitations of Policy 2.3.7. The school district shall maintain a listing of assigned and adjacent concurrency service areas for each central school concurrency service area.

***Policy 2.2.8:** Requests to develop properties within the central school concurrency service areas at residential densities and intensities greater than the current land use or zoning designations shall be done via a comprehensive plan amendment consistent with the Volusia County Charter provision 206 regarding school planning. The comprehensive plan amendment shall demonstrate how school capacity will be met consistent with the terms of the First Amendment to the Interlocal Agreement for Public School Facility Planning effective July 2007 and Section 206 of the Volusia County Charter. If the project area is to be annexed by a municipality, the comprehensive plan amendment shall include an amendment of the central concurrency service area boundary by Volusia County to exclude the subject parcel.*

The Department acknowledges that the policy numbers cited here are based on the model element created by TMH Consulting for Volusia County and that the actual policy number identification may vary from city to city based on how the cities integrate the model element into their individual comprehensive plans.

2. Revising PSFE Policy 2.3.7 to read as follows:

***Policy 2.3.7:** If the adopted level of service standard cannot be met within a particular concurrency service area as applied to an application for development order and if the needed capacity is available in one or more contiguous concurrency service areas ~~or school attendance zones~~, then this capacity shall be applied to the concurrency evaluation of the application for development approval subject to the following limitations:*

1. Areas established for diversity at schools shall not be considered contiguous.
2. Concurrency service areas ~~or school attendance zones~~ generating excessive transportation costs shall not be considered contiguous. Excessive transportation costs are defined as transporting students ~~beyond the~~

~~abutting school attendance zone or~~ requiring a transport time of fifty minutes one way as determined by School District transportation routing staff.

3. ~~Concurrency service areas or school attendance zones~~ shall not be considered contiguous when the concurrency service areas ~~or school attendance zones~~ are separated by a natural or man-made barrier such as a river, water body, or interstate highway that requires indirect transport of students through a third concurrency service area ~~or school attendance zone~~. (Refer to graphic examples.)
4. When capacity in an adjacent concurrency service area ~~or school attendance zone~~ is allocated to a development application, assignment of the students to the school with available capacity may be accomplished by applying any of the techniques used to establish school attendance zones including modification of existing attendance zone boundaries or creation of island zones.
5. Student transportation not in conformance with the conditions established in items 1 through 4 above shall be permitted to allow student assignments based on specific educational programming options; to comply with State and Federal mandatory transfer opportunities; or for other transfer opportunities that School Board shall deem appropriate for the specific circumstances of an individual student.

II. CONSISTENCY WITH THE STATE COMPREHENSIVE PLAN

A. Inconsistent provisions. Plan Implementation. The Amendment is inconsistent with the Goal set forth in Section 187.201(25), F.S., and the Policy set forth in Section 187.201(25)(b)7, F.S.

B. Recommended remedial action. These inconsistencies may be remedied by revising the Amendment 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 Amendment into compliance, the City may complete the recommended remedial actions described above or adopt other remedial actions that eliminate the inconsistencies.

Executed this 10th day of March 2008, at Tallahassee, Florida.

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

EXHIBIT B

(Underline text indicates additions / ~~strikethrough~~ text indicates deletions)

Capital Improvements Element

Policy 2.1.3: The following schools shall achieve the ~~designated~~ adopted level of service no later than the identified date. The level of service presented in the following table is the tiered level of service that shall apply to that school unit the dated noted in the table.

School	DATE
Freedom Elementary	July 1, 2012
Horizon Elementary	July 1, 2014
Orange City Elementary	July 1, 2012
Ormond Beach Elementary	July 1, 2014
Ortona Elementary	July 1, 2014
Osceola Elementary	July 1, 2014
Southwestern Middle	July 1, 2012
New Smyrna Beach Middle	July 1, 2012

School	LOS	DATE
Orange City Elementary	117%	July 1, 2012
Horizon Elementary	158%	July 1, 2012
Freedom Elementary	126%	July 1, 2012
Osceola Elementary	117%	July 1, 2012
Ortona Elementary	150%	July 1, 2012
Ormond Beach Elementary	116%	July 1, 2012
Southwestern Middle	120%	July 1, 2013
New Smyrna Beach Middle	122%	July 1, 2014

(Note: This policy ~~is intended to~~ ~~designates a~~ ~~backlogged~~ ~~tiered~~ LOS for those schools that exceed the desired levels ~~during~~ at the end of the first five year capital improvements program.)

Public School Facilities Element

Policy 2.1.3: The following schools shall achieve the ~~designated~~ adopted level of service no later than the identified date. The level of service presented in the following table is the tiered level of service that shall apply to that school unit the dated noted in the table.

School	DATE
Freedom Elementary	July 1, 2012
Horizon Elementary	July 1, 2014

Orange City Elementary	July 1, 2012
Ormond Beach Elementary	July 1, 2014
Ortona Elementary	July 1, 2014
Osceola Elementary	July 1, 2014
Southwestern Middle	July 1, 2012
New Smyrna Beach Middle	July 1, 2012

<u>School</u>	<u>LOS</u>	<u>DATE</u>
Orange City Elementary	117%	July 1, 2012
Horizon Elementary	158%	July 1, 2012
Freedom Elementary	126%	July 1, 2012
Osceola Elementary	117%	July 1, 2012
Ortona Elementary	150%	July 1, 2012
Ormond Beach Elementary	116%	July 1, 2012
Southwestern Middle	120%	July 1, 2013
New Smyrna Beach Middle	122%	July 1, 2014

(Note: This policy ~~is intended to~~ designates a backlogged tiered LOS for those schools that exceed the desired levels during at the end of the first five year capital improvements program.)

Policy 2.2.7: Within the central concurrency service areas all current and future students shall be assigned to schools designated for them as part of the School District's normal school assignment procedures. Requests for development orders for new development consistent with the future land use designations and existing residential zoning densities shall be evaluated for concurrency based on the assigned school and that school's concurrency service area. If adequate capacity is not available in the assigned concurrency service area, the proposed development shall be evaluated in comparison to the concurrency service areas adjacent to the assigned concurrency service area, subject to the limitations of Policy 2.3.7. The school district shall maintain a listing of assigned and adjacent concurrency service areas for each central school concurrency service area.

Policy 2.2.8: Requests to develop properties within the central school concurrency service areas at residential densities and intensities greater than the current land use or zoning designations shall be done via a comprehensive plan amendment consistent with the Volusia County Charter provision 206 regarding school planning. The comprehensive plan amendment shall demonstrate how school capacity will be met consistent with the terms of the First Amendment to the Interlocal Agreement for Public School Facility Planning effective July 2007 and Section 206 of the Volusia County Charter. If the project area is to be annexed by a municipality, the comprehensive plan amendment shall include an amendment of the central concurrency service area boundary by Volusia County to exclude the subject parcel.

Policy 2.2.79: Amendments to the School Concurrency Service Areas shall be completed according to the procedures specified in the Volusia County Interlocal Agreement for School Facilities Planning. Amendments to concurrency service areas shall consider the following

criteria:

1. Adopted level-of-service standards shall not be exceeded within the initial five-year planning period, except as identified in Policies 2.1.3 and 2.1.4 of this Element.
2. The utilization of school capacity is maximized to the greatest extent possible taking into account transportation costs, ethnic and socio-economic diversity, proximity to schools, ethnic and socio-economic diversity, subdivisions and neighborhoods, demographic changes, future land development patterns, crossing guard availability and other relevant factors.

Policy 2.3.7: If the adopted level-of-service standard cannot be met within a particular concurrency service area as applied to an application for development order and if the needed capacity is available in one or more contiguous concurrency service areas ~~or school attendance zones~~, then this capacity shall be applied to the concurrency evaluation of the application for development approval subject to the following limitations (Graphic examples are provided in the data and analysis report.):

6. Areas established for ethnic and socio-economic diversity at schools shall not be considered contiguous.
7. Concurrency service areas ~~or school attendance zones~~ generating excessive transportation costs shall not be considered contiguous. Excessive transportation costs may include the cost of transporting students ~~beyond the abutting school attendance zone~~ or requiring a transport time of fifty minutes one way as determined by School District transportation routing staff.
8. Concurrency service areas ~~or school attendance zones~~ shall not be considered contiguous when the concurrency service areas ~~or school attendance zones~~ are separated by a natural or man-made barrier such as a river, water body, or interstate highway that requires indirect transport of students through a third concurrency service area ~~or school attendance zone~~.
9. When capacity in an adjacent concurrency service area ~~or school attendance zone~~ is allocated to a development application, assignment of the students to the school with available capacity may be accomplished by applying any of the techniques used to establish school attendance zones including modification of existing attendance zone boundaries or creation of island zones.
10. Student transportation not in conformance with the conditions established in items 1 through 4 above shall be permitted to allow student assignments based on specific educational programming options; to comply with State and Federal mandatory transfer opportunities; or for other transfer opportunities that School Board shall deem appropriate for the specific circumstances of an individual student.