

INTERLOCAL AGREEMENT
ON SCHOOL CONCURRENCY

This agreement is made this 18th day of March 2008, by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as "County," and the School Board of Lee County, a public agency of the State of Florida, hereinafter referred to as "School Board."

WHEREAS, the School Board of Lee County has constitutional and statutory obligations to provide a uniform system of free public schools on a Countywide basis; and,

WHEREAS, Lee County's land use authority includes the authority to approve or deny Comprehensive Plan amendments, zoning applications, and development orders; and,

WHEREAS, Lee County and the School Board desire to establish mechanisms for coordinating the development, adoption, and amendment of Lee County's public school facilities element with each other and the plans of the School Board to ensure a uniform district-wide school concurrency system; and,

WHEREAS, Lee County and the School Board desire to specify uniform, district-wide level-of-service standards for public schools of the same type and the process for modifying the adopted level-of-service standards; and,

WHEREAS, Lee County and the School Board desire to establish a process for the preparation, amendment, and joint approval of a financially feasible Public School Capital Facilities Program, and a process and schedule for incorporation of the Public School Capital Facilities Program into the County's Comprehensive Plan on an annual basis; and,

WHEREAS, Lee County and the School Board desire to establish a uniform district-wide procedure for implementing school concurrency that provides for:

- a. the evaluation of development applications for compliance with school concurrency requirements, including information provided by the School Board on affected schools, impacts on levels-of-service, programmed improvements for affected schools, and options to provide sufficient capacity; and,
- b. monitoring and evaluation of the School Concurrency System; and,

WHEREAS, Lee County and the School Board desire to develop a process and uniform methodology for determining proportionate share mitigation for projects that are unable to achieve public school concurrency; and,

WHEREAS, Lee County and the School Board desire to establish options for proportionate share mitigation of impacts on public school facilities as contemplated in Florida Statutes, Section 163.3180(13)(e); and,

WHEREAS, Lee County and the School Board entered into an interlocal agreement for public educational facility planning and siting on August 20, 2002, that remains in full force and effect; and,

WHEREAS, that interlocal was subsequently amended on January 11, 2005; and,

WHEREAS, Florida Statutes 163.31777 and 163.3180(g) set forth requirements for school concurrency that must be implemented through interlocal coordination between the County and the School Board; and,

WHEREAS, the County and the School Board have met and coordinated with respect to the statutory requirements for a Countywide, uniform School Concurrency Program; and,

WHEREAS, the County must amend its Comprehensive Plan and Land Development Code in 2008 in order to effectuate its obligations under this agreement and State statutes; and,

WHEREAS, this interlocal agreement does not delegate or transfer land use planning or regulatory authority to the School Board.

NOW, THEREFORE, IT IS mutually agreed between the Lee County Board of Commissioners and the School Board of Lee County that the following requirements and procedures will be followed in connection with the implementation of a School Concurrency Program in Lee County.

1. Definitions.

a. Definitions. The terms used in this subsection are defined as follows:

- i. Available school capacity – the circumstance where there is sufficient school capacity, based on LOS standards, to accommodate the demand created by a proposed development.
- ii. Capacity – “capacity” as defined in the FISH Manual.
- iii. Existing school facilities – school facilities constructed and operational at the time a School Concurrency Application is submitted to the County.

- iv. FISH Manual – the document entitled “Florida Inventory of School Houses (FISH)”, 2006 edition, that is published by the Florida Department of Education, Office of Educational Facilities.
 - v. Permanent FISH Capacity – capacity that is added by permanent buildings, as defined in the FISH manual.
 - vi. Planned school facilities – school facility capacity that will be in place or under actual construction within three (3) years after the issuance of final subdivision or site plan approval; pursuant to the School Board’s adopted Work Program.
 - vii. Previously Approved Development – development approved as follows:
 - (1) Single family lots having received final plat approval prior to the effective date of the County’s School Concurrency Ordinance.
 - (2) Multi-Family residential development having received final site plan approval prior to the effective date of the County’s respective School Concurrency Ordinance.
 - viii. Concurrency Certificate – A certificate issued by the County stating that there is sufficient capacity by school type and by CSA to adequately serve the projected impacts of a proposed Development Order.
 - ix. Total school facilities – Existing school facilities and planned school facilities.
 - x. Used capacity – School facility capacity consumed by or reserved for preexisting development.
 - xi. Work Program – the financially feasible five-year school district facilities program adopted pursuant to section 1013.35, Florida Statutes. Financial feasibility shall be determined using professionally accepted methodologies.
2. Comprehensive Plan. No later than April 1, 2008, the County will adopt Comprehensive Plan Amendments to address school concurrency matters, including:
- a. A Public Schools Facilities Element, pursuant to Sections 163.3177 (12) and 163.3180, Florida Statutes.

- b. Changes to the Intergovernmental Coordination Element necessary to effectuate school concurrency methodologies and processes, as provided herein.
 - c. Changes to the Capital Improvements Element (CIE) necessary to effectuate school concurrency methodologies and processes, as provided herein.
3. Land Development Code. Following the amendment of the County's Comprehensive Plan to incorporate school concurrency, the County will amend the Land Development Code to implement school concurrency consistent with the Comprehensive Plan, sections 163.3180 and 163.3202, Florida Statutes and this Agreement.
4. Five-Year Facilities Work Program.
- a. Annually, following adoption of this Agreement, but no later than December 1st, the County will amend the CIE of the Comprehensive Plan to incorporate the School Board's adopted Work Program. Following a Work Program update or amendment, the County will consider further amendments to its CIE to incorporate updates or amendments during the immediately subsequent round of Comprehensive Plan Amendments.
5. Level of Service Standards.
- a. Pursuant to Section 163.3180(13)(b) Florida Statutes, the Level of Service (LOS) standards set forth herein will be applied consistently throughout the County for the purposes of implementing school concurrency, including determining whether sufficient capacity exists to accommodate a particular development proposal, and determining the financial feasibility of the School Board's Work Program.
 - b. The LOS standards set forth herein will be included in the CIE and will be applied consistently by the County and the School Board districtwide to all schools of the same type.
 - c. After consultation and agreement with Lee County and the School Board, the LOS standards may be amended only pursuant to an amendment to the Lee Plan and this interlocal agreement.
 - d. The LOS standards to be used by the County and the School Board to implement school concurrency are as follows:
 - i. Elementary: 100% of permanent FISH capacity as adjusted by the School Board annually to account for measurable programmatic changes.

- ii. Middle: 100% of permanent FISH capacity as adjusted by the School Board annually to account for measurable programmatic changes.
- iii. High: 100% of permanent FISH capacity as adjusted by the School Board annually to account for measurable programmatic changes.
- iv. Special Purpose: 100% of permanent FISH capacity as adjusted by the School Board annually to account for measurable programmatic changes.

A "measurable programmatic change" means a change to the operation of a school and measurable capacity impacts including, but not limited to, double sessions, floating teachers, year-round schools and special educational programs.

- v. Relocatable classrooms will be utilized to maintain the level of service on a temporary basis when construction to increase capacity is planned and is in process. The temporary capacity provided by relocatables may not exceed 20 percent of the permanent FISH capacity and may be used for a period of not to exceed three years. Relocatables may also be used to accommodate special education programs as required by law and to provide temporary classrooms while a portion of an existing school is under renovation.

6. School Concurrency Service Areas.

- a. Pursuant to Section 163.3180 (13)(c), School Concurrency Service Areas (CSAs) are initially established to be coterminous with the existing Student Assignment Zones for elementary, middle, and high schools shown on the attached map (Exhibit A).
- b. CSAs may be subsequently modified to maximize available school capacity and make efficient use of new and existing public school facilities in accordance with the LOS standards set forth in this Agreement. The School Board may amend the CSAs only after review and comment by the County. After the initial three years of implementing school concurrency, the School District may propose an amendment to the CSAs to make them coterminous with the existing Student Assignment sub-zones. Lee County will consider and process a Lee Plan amendment accordingly.
- c. The establishment and modification of CSAs will take into account school policies to:
 - i. minimize student transportation costs;

- ii. limit maximum student travel times;
 - iii. achieve socio-economic, racial and cultural diversity objectives;
 - iv. recognize capacity commitments resulting from local governments' development approvals for the CSA; and,
 - v. recognize capacity commitments resulting from local governments' development approvals for contiguous CSAs
- d. CSAs will be described geographically in the County's Comprehensive Plan pursuant to Section 163.3180(13)(g)(5), Florida Statutes.

7. Demand Monitoring and Evaluation.

- a. The County will provide the following information to the School Board on an annual basis to facilitate the projection of demand and student generation rate trends:
 - i. Geo-referenced building permit and certificate of occupancy data;
 - ii. Summary of actions on preliminary and final plats;
 - iii. Summary of site development plan approvals for multi-family projects; and,
 - iv. Summary of other actions that affect demands for public school facilities.
- b. The School Board will provide the County with a copy of each concurrency determination letter issued to a municipality. The County will reflect the data from the letters in the forecasted capacity commitments for the corresponding CSA.

8. Applicability.

- a. Except as provided in subsection b. below, school concurrency applies to residential uses that generate demands for public school facilities and are proposed or established after the effective date of the LDC amendments incorporating school concurrency.
- b. The following residential uses are exempt from the requirements of school concurrency:

- i. Single family lots having received final plat approval prior to the effective date of the applicable School Concurrency Ordinance.
- ii. Multi-family residential development having received final site plan approval prior to the effective date of the applicable amendments to the LDC incorporating school concurrency.
- iii. Amendments to residential development approvals issued prior to the effective date of the Lee Plan, that do not increase the number of residential units or change the type of residential units proposed.
- iv. Other uses as provided for in the Land Development Code.

9. Process for Determining School Facilities Concurrency.

- a. The School Board will annually compile a School Concurrency Inventory Report. The School Board will inventory current school capacity and current occupancy by school type and by CSA. Current capacity will be adjusted by adding in the expected capacity increase from new or expanded planned school facilities for the next three years, in accordance with the adopted School Board Capital Improvements Program. Current occupancy will then be subtracted from existing and expected capacity to calculate the available capacity by school type by CSA. The School Concurrency Inventory will then be transmitted to the County.
- b. Upon the receipt of a complete School Concurrency Inventory the County will formally incorporate the Inventory in the County's Concurrency Report. This information will be utilized to determine whether there is available school capacity for each level of school, to accommodate the proposed development, based on the LOS standards, CSAs, and other standards set forth herein and in the respective land development codes.
- c. Upon receipt of a Development Order application, the County will review the application and, based on the standards set forth in this Agreement and the information in the County's current Concurrency Report, make a determination as to:
 - i. whether adequate school capacity exists for each level of school, based on the standards set forth in this Agreement; or
 - ii. if adequate capacity does not exist, whether appropriate mitigation can be accepted, and, if so, acceptable options for mitigation, consistent with this Agreement.

- d. If the County determines that adequate capacity will not be in place or under actual construction within three years after the issuance of final subdivision or site plan approval and mitigation is not an acceptable alternative, the County will not issue a School Concurrency Certificate and will not approve the development application.
- e. If the County determines that adequate capacity does not exist but that mitigation is an acceptable alternative, the development application will remain active pending the conclusion of the mitigation negotiation period described below.
- f. The County will issue a School Concurrency Certificate only upon:
 - i. A determination that adequate school capacity for each level of school will be in place or under actual construction within three years after the issuance of the final subdivision or plat approval without mitigation; or,
 - ii. The execution of a legally binding mitigation agreement between the applicant and the School Board, as provided by this Agreement.

10. Rezoning Review.

When reviewing a proposed rezoning, the County will consider whether the CSA in which the proposed rezoning is situated has available school capacity.

- a. If the CSA where the proposed rezoning is situated does not have available school capacity, the County will determine whether a contiguous CSA (i.e. East Zone, West Zone or South Zone) has available school capacity by identifying the contiguous CSA with the most available school capacity for the particular type of school and assigning the demand from the proposed development to that CSA.
- b. If there is not sufficient capacity in the CSA where the proposed rezoning is situated and there is not sufficient capacity in a contiguous CSA, the County will not issue a concurrency certificate until capacity is in place as contemplated by the agreement, or the applicant provides appropriate mitigation consistent with this agreement.

11. Mitigation Alternatives. If the School Board reports that mitigation may be accepted in order to offset the impacts of a proposed development, the following procedure will be used.

- a. The applicant must initiate, in writing, mitigation negotiation with the School Board to establish an acceptable form of mitigation, pursuant to Section 163.3180(13)(e), Florida Statutes, the Lee Plan, LDC, and this Agreement.
- b. Acceptable forms of mitigation may include:
 - i. The donation of land or funding for land acquisition or construction of a public school facility sufficient to offset the demand for public school facilities anticipated from the proposed development; and,
 - ii. Establishment of a Charter School with facilities constructed in accordance with the State Requirements for Educational Facilities (SREF) on a site that meets the minimum acreage provided in SREF and subject to guarantees that the facility will be conveyed to the School Board at no cost if the Charter School ceases to operate.
- c. The following standards apply to mitigation accepted by the School Board:
 - i. Mitigation must be directed towards a permanent school capacity improvement identified in the School Board's financially feasible Work Program and satisfy the demands created by the proposed development.
 - ii. Relocatable classrooms will not be accepted as mitigation.
- d. In accordance with section 163.3180(13)(e), Florida Statutes, the applicant's proportionate-share mitigation obligation to resolve a capacity deficiency will be based on the following formula, for each school level: Multiply the number of new student stations required to serve the new development by the average cost per student station. The average cost per student station must include school facility development costs and land costs. Pursuant to Section 163.3180(13)(e)(2), Florida Statutes, the applicant's proportionate share mitigation obligation will be credited toward impact fees or exaction imposed by local ordinance for the same need, on a dollar-for-dollar basis, at fair market value.
- e. If within 90 days of the date the applicant initiates mitigation negotiation, the applicant and the School Board agrees to an acceptable form of mitigation, the parties will execute a legally binding mitigation agreement. The mitigation agreement must include the terms of the mitigation, including the amount, nature and timing of donations or funding to be provided by the developer, and any other matter necessary to effectuate mitigation in accordance with this Agreement. The mitigation agreement must specify the

amount and timing of any impact fee credits or reimbursements that will be provided as required by state law.

- f. If, after 90 days, the applicant and the School Board are not able to agree to an acceptable form of mitigation, the School Board will report an impasse to the County in writing. The County will not issue a Concurrency Certificate for the proposed development.
 - g. Mitigation must be proportionate to the demand for public school facilities to anticipated from development of the property.
12. Amendments. This agreement may be amended only by the written consent of the Lee County School Board and the Lee County Board of Commissioners.
13. Oversight. The School Board and the County may appoint citizens to serve on an Oversight Committee to monitor the implementation of this agreement. The Committee may appoint a chairperson and meet annually to report to the County and the School Board and the general public on the effectiveness of the implementation of this interlocal agreement.
14. Termination. Pursuant to Section 1013.33, Florida Statutes, this agreement will be effective on the date it has been executed by all parties, and will continue in full force and affect thereafter. The agreement will automatically be renewed for one-year periods unless the County or the School Board signifies in writing its intent to terminate the agreement at least 120 days prior to the annual renewal date. Notice of Intent to Terminate must be in writing.
15. Dispute Resolution. The adjudication of disputes and disagreements under this agreement will be resolved in accordance with the Government Conflict Resolution Procedures specified in Chapters 164 and 186 of the Florida Statutes.
16. Supplement. This agreement is intended to supplement the interlocal agreement between the County and the School Board dated August 20, 2002, and later amended on January 11, 2005.
17. Counterpart Execution. This agreement may be executed in any number of counterparts, each of which will be deemed an original; but, which together, will constitute one and the same instrument and be the agreement of the parties.
18. Notice. All notices and other communications provided for in this agreement must be in writing. Such notices will be deemed properly delivered when delivered:
- a. Personally;

- b. By facsimile transmission providing the sending party received electronic confirmation thereof; or,
- c. By the mailing of such notice by registered or certified mail to the following address:
 - i. If to the School Board:
 - Office of the Superintendent
 - Lee County School District
 - 2855 Colonial Boulevard
 - Fort Myers, FL 33966
 - Telephone - 239-337-8512
 - Fax - 239-337-8683
 - ii. If to the County:
 - Office of the Lee County Attorney
 - 2115 Second Street, Sixth Floor
 - Fort Myers, FL 33901
 - Telephone - 239-533-2236
 - Fax - 239-485-2106

IN WITNESS WHEREOF, this Interlocal Agreement has been executed on March 18, 2008.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: Marcia Wilson
Deputy Clerk

By: Ry Judd
Chair

(Seal)

Date: 3/18/08

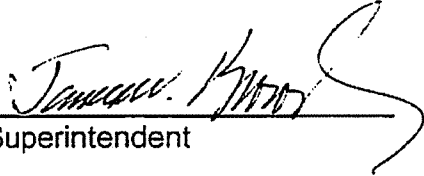


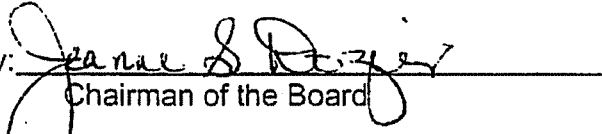
APPROVED AS TO FORM:

By: Donna Marie Collins
Donna Marie Collins
Lee County Attorney's Office

ATTEST:

THE SCHOOL BOARD OF LEE COUNTY,
FLORIDA

By: 
Superintendent

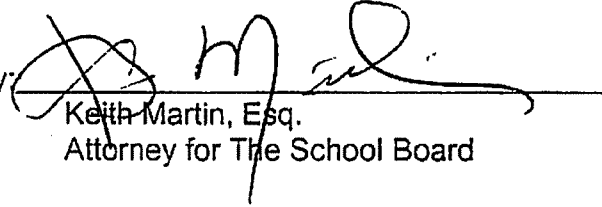
By: 
Chairman of the Board

Date: _____

APPROVED

FEB 26 2008
SCHOOL BOARD OF
LEE COUNTY

APPROVED AS TO FORM:

By: 
Keith Martin, Esq.
Attorney for The School Board

Exhibits: School Attendance Zones

STUDENT ASSIGNMENT ZONES
2007-2008

- Legend**
- ASSIGNMENT ZONES
 - EAST
 - SOUTH
 - WEST
 - Sub-Zones
- SCHOOLS**
- * Staging
 - Elementary
 - Middle
 - High

Please read:
All information taken from this map should be verified by the Parent Information Center.

MAP DISCLAIMER:
Map and associated data available to the public by the Lee County Property Appraiser's Office are not liability certified maps as surveys and courses are not intended to be used as such. The map and documents are created as part of a Geographic Information System (GIS) that receives, stores, information, and data from various departments, such as, county, state and federal agencies. The names, dates and other items shown on this map are intended to represent the information associated with the data on which this map is based for information related to accuracy, currency, and boundaries.

