

- (d) Other uses as provided for in the School Concurrency Ordinance.
- (e) Any residential development within a fairshare or development agreement which was submitted prior to the effective date of the School Concurrency Ordinance.
- (f) Any residential development vested under Cities concurrency system.
- (g) Any development with a *de minimus impact* defined as any residential development of 20 units or less, subject to land development regulation aggregation criteria.

Section 5.5 Process for Determining School Concurrency

- 5.5.1 In evaluating a proposed residential development for concurrency, any relevant improvements which are committed or planned in the Five-Year Capital Facilities Plan and the Capital Improvement Plan, shall be considered available capacity for the project and factored into the level of service analysis. Any relevant improvements which will commence construction after the 3rd year of the Five-Year Capital Facilities Plan shall not be considered available capacity for the project unless either: (i) funding and a schedule to accelerate the improvement into the first three years is assured through DCPS; (ii) funding for the improvements which are scheduled to commence in years four or five is provided through proportionate share mitigation; (iii) the developer and the DCPS agrees to accelerate the construction and funding of the facility to be moved into first three years; or (iv) some other means. Also, any projected reduction in the number of students enrolled in the CSA or adjacent CSA will be considered as additional available capacity. The City shall not deny an application for site plan, final subdivision approval, or the functional equivalent for a development or phase of a development authorizing residential development for exceeding the adopted level of service, where adequate school facilities will be in place or under construction within three years after the issuance of final subdivision or site plan approval, or the functional equivalent.
- 5.5.2 The Cities will approve final development orders for residential projects, only after the applicant has complied with the terms of the City's School Concurrency Ordinance.
- 5.5.3 The Cities will transmit the application to DCPS for a determination of whether there is adequate school capacity, for each level of school (elementary, middle, and high school), to accommodate the proposed development, based on the LOS standards, CSAs, and other standards set forth herein and the Cities' School Concurrency Ordinances. The Cities shall process school concurrency determinations in a manner consistent with their other concurrency procedures.
- 5.5.4 Within a reasonable time from the date of the initial transmittal as prescribed in the Cities' School Concurrency Ordinance and consistent with the respective Cities development review process, the DCPS will review the completed application, and, report in writing to the appropriate City, whether adequate school capacity exists for each level of school (elementary, middle and high), based on the LOS standards set forth in this Agreement.
- 5.5.5 If sufficient school capacity is not available as described in Section 5.5.1 above, the DCPS shall specify in the Five- Year Capital Facilities Plan how it proposes to meet the**

anticipated student enrollment demand; alternatively, the DCPS, affected City, and developer may collaborate to find means to ensure sufficient school capacity will exist to accommodate the development, such as proportionate share mitigation, developer contributions, project phasing, and required facility improvements.

- 5.5.6 If the DCPS and the appropriate local government determine that adequate capacity does not exist but that mitigation will be an acceptable alternative, the development application will remain active pending the conclusion of the mitigation negotiation period, pursuant to Section 5.6.
- 5.5.7 The Cities will issue a School Concurrency Determination only upon:
- (a) DCPS written determination that adequate school capacity to serve the development (or anticipated phase(s) of the development which will be constructed in the first three years) will be in place or under actual construction within 3 years after the issuance of final subdivision or site plan approval, or the functional equivalent; or
 - (b) The execution of a legally binding mitigation agreement between the applicant, the DCPS, and appropriate local government (s), as provided in Section 5.6.
- 5.5.8 Where a proportionate share agreement is required, capacity shall be reserved as specifically defined by an approved mitigation agreement between DCPS, the developer and the local government that includes a performance schedule and phased payments. In no case shall capacity be reserved longer than 10 years.

Section 5.6 Proportionate Share Mitigation

- 5.6.1 The DCPS shall establish within the Five-Year Capital Facilities Plan, as annually updated, the following standards for the application of proportionate share mitigation:
- (a) Student Generation Rate shall be calculated for each school type by dividing the total number public school students actually enrolled in that school type in Duval County by the number of total housing units for the same year. On or about June 30th, the Student Generation Rate shall be recalculated, using the most recent count for actual student enrollment as reported by DCPS to the FDOE, and the most recent copy of JPDD's Annual Statistical Package for the number of total housing units in Duval County as of December 31st for the same year. Total housing units is calculated by taking the most recent decennial census' total housing units and adding the number of new residential units permitted since the last decennial census, and subtracting the number of demolitions permitted since the last decennial census. Should an applicant believe special circumstances apply; the applicant may provide a site or use specific Student Generation Rate study acceptable to DCPS and request approval of DCPS and the city for a project-specific Student Generation Rate. These standards shall be defined in the Concurrency Handbook.

- (b) Cost per Student Station shall be based on the following: Multiplying the number of deficient student stations needed to serve the proposed development or redevelopment by the cost estimates for resolving such deficiencies in affected school type. Such estimates shall include all costs of providing instructional and core capacity facilities as published in the Educational Specifications, State Requirements for Educational Facilities (SREF), Florida Building Code and designed using the standards listed in the Facilities Services Design Guidelines developed by the School District, including school facility construction cost, hurricane hardening of structures, required on and off-site infrastructure costs including land, professional fees for architects, engineers, construction managers, design, DCPS athletic costs, buildings, equipment, furniture, and site improvements. Should the DCPS own a suitable school site in the impacted CSA, or should a suitable school site and/or facilities be committed to be provided in an approved agreement or development order, the cost of any such land will not be included in the student station cost.
- (c) The cost of ancillary facilities that generally support the DCPS and capital costs associated with the transportation of students shall not be included in the cost per student station used for proportionate share mitigation.
- (d) Within 90 days of the execution of this agreement by all parties, the DCPS shall submit to the ILA Team and Joint Planning Committee the Cost per Student Station to be used upon the implementation of school concurrency, together with supporting data and analysis. The supporting data and analysis shall include: current FDOE student station cost estimates for the corresponding school type; historical cost data for DCPS school facilities, including cost breakdowns for school facility construction costs, hurricane hardening of structures, required on and off-site infrastructure costs, land, professional fees, athletics, buildings, equipment, furniture, and site improvements; and historical cost data and current comparable values for land. The Cost per Student Station will be reviewed annually in coordination with Section 5.6.1 (a) above by the ILA Team and Joint Planning Committee.

5.6.2 In the event that there is not sufficient capacity in the affected or adjacent CSA to address the impacts of a proposed residential development, the following steps shall apply:

- (a) If the applicable Capital Improvement Plan demonstrates that adequate facilities to serve the development will be in place or under actual construction in the applicable CSA or adjacent CSAs within three years after the issuance of final subdivision or site plan approval, then school concurrency will be deemed satisfied (see s. 163.3180(13)(e)); or
- (b) If facilities in the approved CIE scheduled for construction in year 4 or later of the CIE are accelerated into the first 3 years of the CIE, and the developer is willing to enter into a binding, financially guaranteed agreement with the DCPS to construct the accelerated facility within the first 3 years, and the cost of the facility is equal to or greater than the develop-

ment's proportionate share, then school concurrency will be deemed satisfied. (see s. 163.3180(13)(e)4); or

- (c) If capacity improvements in the applicable five year Capital Improvement Plan would provide adequate facilities to satisfy the demands created by the development, school concurrency will be deemed satisfied pursuant to sections 163.3180(13)(e) and 163.3180(13)(e)3, Florida Statutes, provided that: (i) those improvements are scheduled for years four and five of the Capital Improvement Plan; (ii) the developer is willing to pay a proportionate share mitigation contribution; and (iii) the developer executes a legally binding commitment to provide mitigation proportionate to the demand for public school facilities to be created by actual development of the property; or
- (d) If approval of the development order is conditioned upon phasing the project's impacts such that development orders shall be delayed to a date when capacity enhancement and LOS can be assured; or
- (e) If other statutorily acceptable mitigation is offered and accepted; or
- (f) The project shall not be approved.

5.6.3 As approved in Section 5.6.2, residential developers may pay proportionate share mitigation to offset costs to the DCPS of the proposed development or redevelopment, in the event concurrency is not available in the affected or adjacent CSA for a particular school type (elementary, middle, high school). A separate calculation shall be made for each school type where capacity is not available in order to offset the impacts of a proposed development.

5.6.4 Mitigation shall be allowed where feasible, for those developments that cannot meet the adopted LOS as set forth in Section 5.2.1. The applicant shall initiate in writing a mitigation negotiation period with the DCPS and the City in order to establish an acceptable form of mitigation, pursuant to Section 163.3180(c), Florida Statutes, the Cities' School Concurrency Ordinance, and this agreement. Mitigation shall be negotiated and agreed to by the DCPS and the City and shall be sufficient to offset the demand for public school facilities projected to be required by the development.

Acceptable forms of mitigation shall include but not be limited to:

- (a) The donation, construction, or funding of school facilities sufficient to offset the demand for public schools created by the proposed development under a mitigation agreement satisfactory to the DCPS and the city. Improvements to existing schools will only be acceptable if they add student station and associated core space capacity.
- (b) Land acquisition or contribution such as: a developer signs a development agreement or is subject to a conditional zoning requiring donation of land satisfactory to the DCPS and the City. Land must be demonstrated to contain the minimum number of buildable acres determined by the DCPS as required for a particular school type, as evidenced by a report by a licensed environmental consultant acceptable to the DCPS.

- (c) Expansion of existing permanent school facilities subject to the expansion being consistent with DCPS standards for a school of the same category;
- (d) Establishment of a Charter School with facilities constructed in accordance with the State Requirements for Educational Facilities (SREF);
- (e) Mitigation banking within designated areas based on the construction of a public school facility in exchange for the right to sell capacity credits. Capacity credits shall be sold to developments within the same CSA or adjacent CSA, as may be provided in Cities' School Concurrency Ordinance;
- (f) Proportionate Share mitigation as set forth in section 163.3180(13)(e), Florida Statutes.

Proposed mitigation must be directed toward school capacity improvement identified in the DCPS financially feasible Five-Year Capital Facilities Plan, which satisfies the demands created by the proposed development.

Relocatable classrooms will not be accepted as mitigation.

5.6.5 The following methodology shall be used to determine proportionate share within the CSAs:

- (a) The number of proposed housing units, multiplied by the Student Generation Rate by affected school type, multiplied by the Cost per Student Station by affected school type.
- (b) Applicable credits shall be deducted to determine the proportionate share mitigation amount.

Applicable credits are:

- 1) Cities' contributions to address co-locations with other public facilities or hurricane shelter provision.
- 2) Valorem Tax Credits– The present value of 50% of that portion of the 2 mils collected by Duval County and distributed. The two mils collected shall be based on the median appraised value per housing unit. The term shall be 25 years. The discount shall be equal to the current rate for DCPS Certificates of Participation (COPs). The result of this present value shall be multiplied by the number of seats mitigated.
- 3) Residential units existing on the site at the time for proportionate share mitigation is proposed, which will be replaced by the proposed project.
- 4) Project phasing considerations.

5.6.6 If within 90 days of the date the applicant initiates the mitigation negotiation period, the applicant, DCPS and the City are able to agree to an acceptable mitigation, a legally binding mitigation agreement shall be executed prior to the issuance of the final development order. This development agreement will set forth the terms of the mitigation,