

**Department of Planning and Zoning (DP&Z)**  
**Response to the Florida Department of Community Affairs (DCA)**  
**Objections, Recommendations and Comments (ORC) Report**  
**DCA No. 09-1 Addressing the April 2008 Cycle**  
**Applications to Amend the Comprehensive Development Master Plan (CDMP)**

**March 27, 2009**

This report contains the initial responses of the Department of Planning and Zoning (DP&Z), to the objections contained in the referenced Objections, Recommendations and Comments (ORC) Report issued by the Florida Department of Community Affairs (DCA) dated March 13, 2009. DCA issued objections to two (2) private Land Use Plan map change applications (Application Nos. 8 and 9), one (1) private text application (Application No. 11) and one (1) staff text applications (Application No. 15) transmitted for review and comment by the Miami-Dade County Board of County Commissioners.

In the following presentation, the DCA's Objection and corresponding Recommendation are presented, followed by a response of the Department of Planning and Zoning. Immediately after the Objection number, notations are provided indicating which Applications that the Objection and Recommendation address. The issuance of the responses contained herein does not preclude the issuance of other future responses by the Department. Moreover, the responses issued by the Department are not necessarily those of the applicants, Local Planning Agency (Planning Advisory Board), or Board of County Commissioners, which may offer their own responses to points raised in the ORC report.

***DCA Objection #1: Need (Applies to Application Nos. 8 and 9)***

*The amendment does not demonstrate that there is a need for the future land use changes proposed in applications 8 and 9. For both applications, the depletion year for single family and multi-family development is 2011 and 2019, respectively, while the supply depletion year for commercial development is anticipated to be beyond 2025. Therefore, the amendment would replace a land use with a constrained supply (i.e. residential) with a land use with ample supply (i.e. non-residential). The amendment is inconsistent with FLUE Policy LU-8F.*

***DCA Recommendation:***

*The County should either retain the current land use designation or provide data and analysis, which supports the need for the proposed FLUM amendments and demonstrates that the amendments are consistent with Land Use Element Policy LU-8F.*

***DP&Z Response:***

The Department concurs with DCA's objection on "lack of need" for Application Nos. 8 and 9. The applicants for these two applications have not submitted new and acceptable data and analysis to support the need for the proposed Land Use Plan map amendments.

***DCA Objection #2: Road Capacity (Applies to Application No. 9)***

*The amendment causes roadways to operate below their adopted level of service standards. The application will add PM peak hour trips which will further degrade adjacent roadways which are projected to operate below the Miami-Dade County adopted level of service standard. An excerpt*

from page 9-3 of the County staff report is provided below. The Department of Transportation concurs with this assessment.

*The future traffic condition analysis indicates that in the year 2015, the following roadway segments in the vicinity of the Application site are projected to operate below their adopted LOS standards, with and without the Application's impacts: the HEFT, NW 107 Avenue, NW 97 Avenue, NW 87 Avenue, the Palmetto Expressway (SR 826), the Dolphin Expressway (SR 836), West Flagler Street, Fontainebleau Boulevard, Park Boulevard, and NW 12 Street... The magnitude of the proposed commercial development would exacerbate traffic conditions that are projected to fail their adopted LOS at 2015.*

**DCA Recommendation:**

*The applicant should demonstrate how the County will achieve and maintain its adopted level of service standards through the 5-year planning time frame, including the incorporation into the 6-year capital improvement schedule in the Capital Improvements Element of roadway improvements needed to achieve and maintain adopted level of service standards during the 5-year planning time frame. The schedule shall include estimated public facility costs, including a delineation of when facilities will be needed, the general location of the facilities, and projected revenue sources to fund the facilities. The applicant should also depict on the Future Transportation Map and in the Transportation Element the roadway improvements needed to achieve and maintain adopted LOS standards because of the development allowed by Application 9, in order for this application to be consistent with the Comprehensive Development Master Plan.*

**DP&Z Response:**

County staff agrees with the Florida Department of Transportation (FDOT) and the Department of Community Affairs' (DCA) comments that this application will add more PM peak hour trips to the roadway system which will further degrade adjacent roadways projected to operate below their adopted level of service standards. The Applicant's traffic consultant has been provided copies of both DCA's ORC and FDOT's objection and was advised to address those concerns and demonstrate how the applicant will achieve and maintain the County's adopted LOS standards. At the time of the preparation of this response, this department has not received any revised traffic impact study addressing DCA's ORC, FDOT's objection and DP&Z's concerns. Therefore, this department stands by its original recommendation.

In addition to the two objections above, DP&Z staff still has concerns regarding roadway capacity for Application No. 8.

The applicant of Application No. 8 proffered a Declaration of Restrictions limiting the development on the application site to a total of 240,000 sq. ft. of retail space under the requested "Business and Office" land use designation; and submitted a revised Traffic Impact Analysis (TIA) report (September 2008) in support of the application. The revised TIA's future (2015) analysis indicates that Fontainebleau Boulevard, Park Boulevard, and segments of West Flagler Street, SR 826/Palmetto Expressway, and NW 97 Avenue are projected to operate below their adopted level of service (LOS) standards.

The Florida Department of Transportation (FDOT) in its letter to DCA dated February 13, 2009, raised specific objection and made recommendation for Application No. 8. The FDOT objection to Application No. 8 is based on the traffic impact that the proposed development will have on the adjacent roadways, which will further degrade those roadways projected to operate below the county's adopted LOS standard in the planning horizon year 2015. FDOT recommended that

measures or improvements be developed in order to mitigate the additional traffic generated by Application No. 8.

On March 4, 2009, the applicant's consultant, Kimley-Horn and Associates, Inc., submitted to FDOT a Supplemental Traffic Analysis for Application No. 8. The supplemental traffic analysis examines historical growth rates and growth rates in the study area, revises the trip distribution for amendment trips, and performs capacity analyses based on application of growth rates and revised trip distribution. On March 10, 2009, FDOT sent another letter to DCA withdrawing its objections to Application No. 8. However, FDOT acknowledges in the same letter that the department has been working with the developer to reanalyze the traffic impact, and the reanalysis should lead to a finding that the future traffic impact of this project meets the level of service standards of Miami-Dade County.

DP&Z staff received a copy of the Supplemental Traffic Analysis on March 26, 2009. The Supplemental Traffic Analysis reveals negative growth rates for both the 5- and 10-year periods analyzed. Even though this negative growth trend may partially be attributed to the largely built-out nature of the area, the high gas prices in 2007 and 2008 may have also contributed to the decrease in traffic volumes. Now that the gasoline price has come down, traffic is slightly increasing. DP&Z staff has two concerns: 1) the use of negative growth rates to project future traffic volumes, and 2) the trip distribution and assignment of the trips generated by Application No. 8. FDOT staff has indicated - the applicant's transportation consultant confirmed - that a revised supplemental traffic analysis would be submitted to FDOT. DP&Z staff has requested a copy of the revised supplemental traffic study. Until the revised supplemental traffic impact analysis is submitted, revised and approved by FDOT and County staff, this department stands by its original recommendation.

### ***DCA Objection #3: Charter Schools (Applies to Application No. 11)***

*The objection to the Public School Facilities Element (PSFE) includes the 3 components noted below.*

- a. *Lack of Required Data and Analysis.* Section 163.3177(12)(c), F.S., notes that “A public school facilities element shall be based upon data and analyses that address, among other items, how level-of-service standards will be achieved and maintained. Such data and analyses must include, at a minimum, such items as: the interlocal agreement adopted pursuant to s. 163.3177...” The proposed amendment is not supported by an executed interlocal agreement, which is part of the required data and analysis.
- b. *Inconsistent with the Statutory Definition of the Term “Amendment”.* Section 163.3189(1-2), F.S., states that “The procedure for amendment of an adopted comprehensive plan or plan element which has been found to be in compliance shall be solely as prescribed by this section. A local government which has a comprehensive plan that has been found to be in compliance may amend its comprehensive plan as set forth in s. [163.3184](#)...” Furthermore, Rule 9J-5.003(6), F.A.C., defines the term “amendment” as follows: “...any action of a local government which has the effect of amending, adding to, deleting from or changing an adopted comprehensive plan element or map or map series, including an action affecting a prior plan or plan amendment adoption ordinance...” Amendment 11 does not meet the Rule’s definition of the term “amendment”. It proposes to amend something that is not in effect.

- c. Inconsistent with the PSFEs Adopted by Other Cities. Even if it were appropriate to amend the PSFE at this time, doing so would create an inconsistency with other PSFEs already approved in the District, which is inconsistent with Section 163.3177(12), F.S.

**DCA Recommendation:**

*This amendment should be deferred until after the County's PSFE is determined to be in compliance and until after the interlocal agreement is executed.*

**DP&Z Response:**

The Department of Planning and Zoning is in agreement with the DCA objection and continues to recommend "Denial" of this amendment. It should be noted that the "Interlocal Agreement for Public School Facility Planning Between Miami-Dade County and Miami-Dade County Public Schools" (Agreement) is currently scheduled to be considered by the Board of County Commissioners (BCC) on April 21, 2009 and by the School Board on April 22, 2009. Adoption and execution of the Agreement will complete Miami-Dade County's transmittal package to DCA for public school facilities (review currently pending inclusion of jointly executed Agreement). Therefore, consideration of this amendment, as noted in part (b) of the objection may no longer be valid. However, the DP&Z will continue to recommend denial of this amendment for the following reasons.

1. Adopted amendments to the Educational Element, that are currently awaiting review, include the following new text:

EDU-2C In the event the adopted LOS standard of a CSA cannot be met as a result of a proposed development's impact, the development may proceed provided at least one of the following conditions is met:

\* \* \*

- b) The development's impact is mitigated, proportionate to the demand for public schools it created, through a combination of one or more appropriate proportionate share mitigation options, as defined in Section 163.3180 (13)(e)1, Florida Statutes, and subject to such provisions in the Interlocal Agreement for Public School Facility Planning with Miami-Dade County Public Schools as may further define the available proportionate share mitigation options. The intent of these options is to provide for the mitigation of residential development impacts on public school facilities, guaranteed by a legal binding agreement, through mechanisms such as: contribution of land; the construction, expansion, or payment for land acquisition or construction of a permanent public school facility; or, the creation of a mitigation bank based on the construction of a permanent public school facility in exchange for the right to sell capacity credits. The proportionate share mitigation agreement, is subject to approval by Miami-Dade County School Board and Miami-Dade County Board of County Commission and must be identified in the Miami-Dade County Public Schools Facilities Work Program.

As noted in this text, proportionate share mitigation can be accomplished through the options in Section 163.3180 (13)(e)1, Florida Statutes, and those that may be "further defined" in the Agreement. Therefore an option, such as Charter Schools, may be used as mitigation only after the appropriate amendment to the Agreement is made. This language was placed into the County's Comprehensive Development Master Plan (CDMP) to ensure consistency between the School Board, Cities and County on mitigation option since the

major components of the Agreement must reflect a uniform districtwide concurrency system.

2. The Agreement that is under consideration by the BCC and School Board states that "Charter Schools may be considered as a mitigation option, only at the sole discretion of the School Board. Criteria associated with this option will be developed by the School Board." Should this Agreement be adopted, Charter Schools as mitigation would be allowed when the School Board decides that their use is appropriate. Additionally, the criteria outlined in Application 11 are unnecessary since the School Board will develop the criteria to be utilized for this option. After such criteria are developed, they will be amended into the Procedures Manual, which was developed to implement concurrency. The criteria outlined in Application 11 may not be consistent with any criteria developed by the School Board and therefore should not be considered for inclusion in the CDMP.
3. Language in Section 3.6 of the Agreement states "To the extent that a proposed school-related element amendment is inconsistent with this Agreement or the Amended and Restated Agreement, an amendment to this Agreement or the Amended and Restated Agreement shall also be required before the amended element becomes effective." Therefore, should Application 11 be approved, it would not be effective until such time as the Agreement is amended. This is also consistent with State statutes since an executed Agreement will be necessary for any CDMP amendment that modifies a major component of school concurrency. Without first amending the Agreement, it is uncertain if the proposed text language of Application 11 would ever become effective or if it would be consistent with any new wording of the Agreement. Therefore the application continues to be premature.

***DCA Objection #4: Density Bonuses for Affordable Housing (Applies to Application No. 15)***

*Section 163.3177(12)(j), F.S., states that "Failure to adopt the public school facilities element, to enter into an approved interlocal agreement... or to amend the comprehensive plan as necessary to implement school concurrency... shall result in a local government being prohibited from adopting amendments to the comprehensive plan which increase residential density until the necessary amendments have been adopted and transmitted to the state land planning agency." Text amendment 15 cannot be adopted pursuant to Section 163.3177(12)(j), F.S.*

***DCA Recommendation:*** *This amendment should be deferred until after the County's PSFE is determined to be in compliance and until after the interlocal agreement is executed.*

**DP&Z Response:**

The Department understands DCA's objection based on state law regarding public school facilities. The County is taking steps regarding this issue. As stated in the response to DCA objection No. 4, the "Interlocal Agreement for Public School Facility Planning Between Miami-Dade County Public Schools" (Agreement) is currently scheduled to be considered by the Board of County Commissioners (BCC) on April 21, 2009 and by the School Board on April 22, 2009. To address this concern, the ordinance adopting the amendment will include language stating that the ordinance shall not take effect until DCA determines the amendment establishing the public school concurrency program in compliance with the state law.