



# ORANGE COUNTY

PLANNING DIVISION

## 2020-2 OUT-OF-CYCLE REGULAR CYCLE STAFF INITIATED TEXT AMENDMENTS

2010 - 2030 COMPREHENSIVE PLAN

BOARD OF COUNTY  
COMMISSIONERS

JULY 28, 2020  
TRANSMITTAL PUBLIC HEARING

PREPARED BY:  
ORANGE COUNTY PLANNING, ENVIRONMENTAL  
AND DEVELOPMENT SERVICES

PLANNING DIVISION  
COMPREHENSIVE PLANNING SECTION






Interoffice Memorandum

July 28, 2020

TO: Mayor Jerry L. Demings  
-AND-  
Board of County Commissioners (BCC)

FROM: Alberto A. Vargas, MArch., Manager, Planning Division 

THROUGH: Jon V. Weiss, P.E., Director  
Planning, Environmental, and Development Services Department

SUBJECT: 2020-2 Out-of-Cycle Regular Cycle Staff-Initiated Text Amendments  
Board of County Commissioners (BCC) Transmittal Public Hearing

The 2020-2 Out-of-Cycle Regular Cycle Staff-Initiated Text Amendments are scheduled for a BCC transmittal public hearing on July 28, 2020. These amendments were heard by the Local Planning Agency (LPA) at a transmittal public hearing held on July 16, 2020.

The report is also available online in the "AMENDMENT CYCLES" section of: [www.ocfl.net/PlanningDevelopment/ComprehensivePlanning](http://www.ocfl.net/PlanningDevelopment/ComprehensivePlanning). The 2020-2 Out-of-Cycle Regular Cycle Amendments include two staff-initiated text amendments. These amendments include changes to the Goals, Objectives, or Policies of the Comprehensive Plan.

Following the BCC transmittal public hearing, the proposed amendments will be transmitted to the Florida Department of Economic Opportunity (DEO) and other State agencies for review and comment. Staff expects to receive comments from DEO and other State agencies in August 2020. Pursuant to 163.3184, Florida Statutes, the proposed amendments must be considered for adoption within 180 days of the comment letter. The adoption hearings are tentatively scheduled for the LPA on September 17, 2020 and the BCC on September 22, 2020.

Any questions concerning this document should be directed to Alberto A. Vargas, MArch., Manager, Planning Division, at (407) 836-5354 or [Alberto.Vargas@ocfl.net](mailto:Alberto.Vargas@ocfl.net), or Gregory Gologowski, AICP, Chief Planner, Comprehensive Planning Section, Planning Division, at (407) 836-5624 or [Gregory.Gologowski@ocfl.net](mailto:Gregory.Gologowski@ocfl.net).

AAV/sgw

Enc: 2020-2 Out-of-Cycle Regular Cycle Staff-Initiated Text Amendments BCC Transmittal Staff Reports

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Erin Hartigan, Assistant County Attorney  
Gregory Gologowski, AICP, Chief Planner, Planning Division  
Read file

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2.	2020-2-C-PSFE-1 CEA	Text amendment to Public Schools Facilities Element Policy PS6.3.1 addressing the ability of the Board to consider school overcrowding when reviewing certain rezoning and comprehensive plan amendment requests	7

**2020-2 Out-of-Cycle Regular Cycle Comprehensive Plan Amendments**

**Staff-Initiated Comprehensive Text Amendments**

Amendment Number	Sponsor	Description of Proposed Changes to the 2010-2030 Comprehensive Plan (CP)	Project Planner	Rezoner	Staff Rec	LPA Rec
2020-2-C-PSFE-1	Planning Division	Text amendment to Public Schools Facilities Element Policy PS6.3.1 addressing the ability of the Board to consider school overcrowding when reviewing certain rezoning and comprehensive plan amendment requests	Jennifer DuBois	N/A	Transmit	Transmit (7-0)
2020-2-C-FLUE-2	Planning Division	Text amendment to Future Land Use Element Policy FLU8.2.5.1 to not require a rezoning for properties with inconsistent Zoning and Future Land Use Map designations when the proposed use is single-family detached residential; the Zoning and Future Land Use Map designations are both residential; and the lot is a Lot of Record or has been legally subdivided	Jason Sorenson	N/A	Transmit	Transmit (8-0)

ABBREVIATIONS INDEX:

ABBREVIATIONS INDEX: CP-Comprehensive Plan; FLUM-Future Land Use Map; FLUE-Future Land Use Element; PSFE-Public Schools Facilities Element; GOPS-Goals, Objectives, and Policies; OBJ-Objective

# **2020 SECOND REGULAR CYCLE OUT-OF-CYCLE STAFF-INITIATED TEXT AMENDMENTS**

## **AMENDMENTS TO THE 2010-2030 COMPREHENSIVE PLAN BOARD OF COUNTY COMMISSIONERS TRANSMITTAL BOOK**

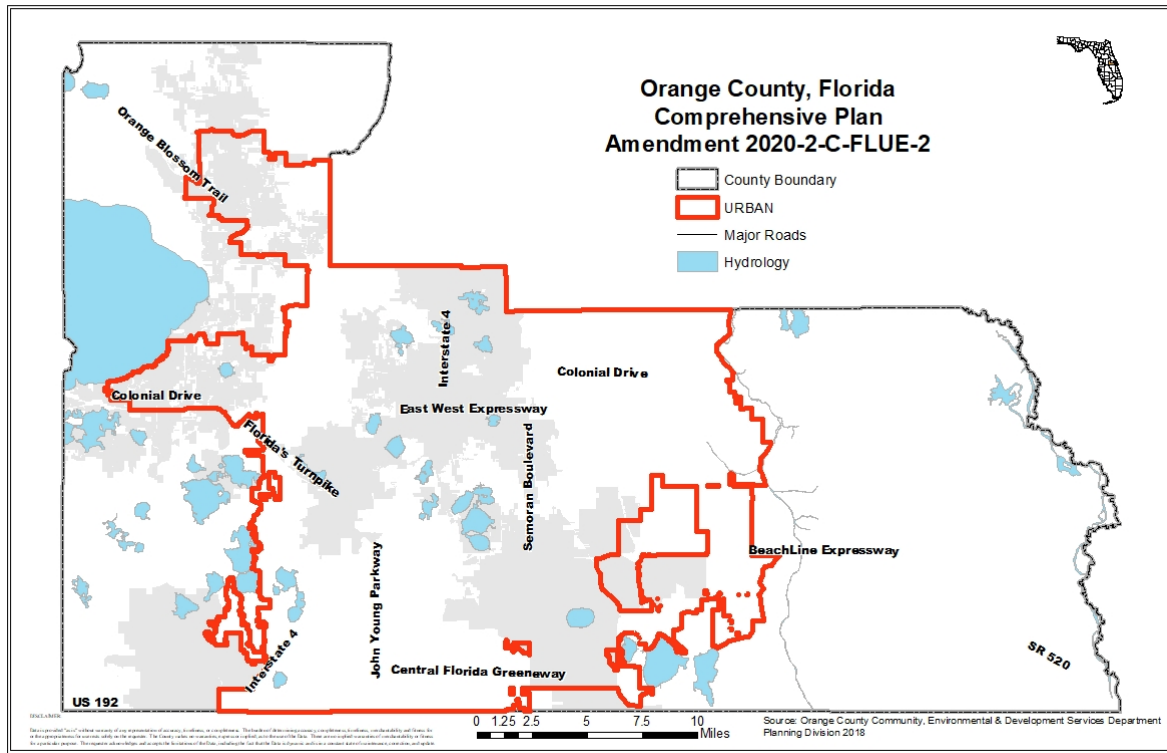
### **INTRODUCTION**

This is the Board of County Commissioners (BCC) transmittal public hearing book for the proposed Out-of-Cycle Second Regular Cycle Staff-Initiated Text Amendments (2020-2) to the Future Land Use Map (FLUM) and Comprehensive Plan (CP). These amendments were heard by the Local Planning Agency (LPA) during a transmittal public hearing held on July 16, 2020. These amendments have been scheduled for a transmittal public hearing before the Board of County Commissioners (BCC) on July 28, 2020.

The 2020-2 Out-of-Cycle Regular Cycle Staff-Initiated Text Amendments include two staff-initiated text amendments. Since this is the transmittal stage for these amendments, there will be a second round of public hearings for adoption after the Florida Department of Economic Opportunity (DEO) and other State agencies complete their review of the proposed amendments and provide comments, which are expected in August 2020. Adoption public hearings are tentatively scheduled for the LPA on September 17, 2020 and the BCC on September 22, 2020.

If the Out-of-Cycle Amendments are adopted by the BCC, they will become effective 31 days after DEO notifies the County that the plan amendment package is complete, provided no challenges are brought forth for any of the amendments. If adopted, these amendments are expected to become effective in October 2020.

Any questions concerning this document should be directed to Alberto A. Vargas, MArch, Manager, Planning Division, at (407) 836-5802 or [Alberto.Vargas@ocfl.net](mailto:Alberto.Vargas@ocfl.net) or Greg Gologowski, AICP, Chief Planner, Comprehensive Planning Section, at (407) 836-5624 or [Gregory.Gologowski@ocfl.net](mailto:Gregory.Gologowski@ocfl.net).



The following meetings/hearings have been held for this proposal:			Project/Legal Notice Information	
<b>Report/Public Hearing</b>	<b>Outcome</b>		<b>Title:</b> Amendment 2020-2-C-FLUE-2	
✓	Staff Report	Recommend Transmittal	<b>Division:</b> Planning	
✓	LPA Transmittal July 16, 2020	Recommend Transmittal (7-0)	<b>Request:</b> Text amendment to Future Land Use Element Policy FLU8.2.5.1 to not require a rezoning for properties with inconsistent Zoning and Future Land Use Map designations when the proposed use is single-family detached residential, the Zoning and Future Land Use Map designations are both residential, and the lot is a Lot of Record, a lot created through a plat, or a lot split as recognized by Orange County	
	BCC Transmittal	July 28, 2020	<b>Revision:</b> FLU8.2.5.1	
	Agency Comments	August 2020		
	LPA Adoption	September 17, 2020		
	BCC Adoption	October 13, 2020		

### Staff Recommendation

Make a finding of consistency with the Comprehensive Plan, determine that the plan amendment is in compliance, and recommend **TRANSMITTAL** of Amendment 2020-2-C-FLUE-2, revising Future Land Use Element Policy FLU8.2.5.1.

## A. Background

Future Land Use designations establish the vision for future development in Orange County. Additionally, the future land uses establish the permitted density or intensity allowable on parcels of land. Zoning establishes the permitted uses and development standards. Zoning districts are required to correlate, or be consistent with the future land use designations. This correlation table is presented in the Comprehensive Plan’s Future Land Use Element Policy FLU8.1.1. The residential portion of this table is shown below.

<i>Zoning and Future Land Use Correlation</i>		
<i>FLUM Designation</i>	<i>Density/Intensity</i>	<i>Zoning Districts</i>
<b><i>Urban Residential</i></b>		
Low Density Residential (LDR)	(0 to 4 du/ac)	A-1*, A-2*, R-CE* R-1, R-2**, R-1A, R-1AA, R-1AAA, R-1AAAA, R-T-1, R-T-2, R-L-D, PD, U-V
Low-Medium Density Residential (LMDR)	(0 to 10 du/ac) + workforce housing bonus	R-1, R-1A, R-2, R-T, R-T-1, PD, U-V
Medium Density Residential (MDR)	(0 to 20 du/ac) + workforce housing bonus	R-2, R-3, UR-3, PD, U-V
Medium-High Density Residential (MHDR)	(0 to 35 du/ac) + workforce housing bonus	R-2, R-3, UR-3, PD, U-V
High Density Residential (HDR)	(0 to 50 du/ac) + workforce housing bonus	R-2, R-3, UR-3, PD, U-V

As mentioned, the future land use and the zoning must correlate. For example, if a property has a future land use of Low-Medium Density Residential (LDR) and a zoning of R-2 (Residential District) development can occur. However, if the property has the same future land use designation but is zoned R-3 (Multiple-Family Dwelling District) and the owner wishes to construct a single-family residence, they must either amend the Future Land Use Map or rezone.

### HISTORY

In 2012, policy FLU8.2.5.1 was added to the Future Land Use Element (2012-1-B-FLUE-5).

This amendment addressed process issues related to inconsistencies between a zoning district and Future Land Use Map (FLUM) designation. Prior to this amendment, there were two primary methods to address inconsistent zoning districts and FLUM designations: amend the Future Land Use Map or rezone the property. This amendment allowed for uses that were permitted in a zoning district to be allowed without rezoning or amendment the FLUM. The pertinent language is italicized.

- FLU8.2.5.1 A rezoning may not be required for properties with inconsistent zoning and future land use map (FLUM) designations when:
- A. *The proposed use is permitted in the existing zoning district, and the same use is permitted in a zoning district that is consistent with the adopted FLUM designation; or*
  - B. The proposed use is permitted in the existing zoning district, but the use would require a special exception if the property is rezoned to be consistent with the adopted FLUM designation. In this case, only a special exception would be required.

Any development of such properties shall meet the minimum site and building requirements of the existing zoning district. Subsequent requests for expansions and changes in the permitted uses on the property must conform to this policy. Requests not conforming to this policy shall be subject to a rezoning, special exception, or FLUM amendment.

In 2014, policy FLU8.2.5.1 was amended (2014-1-B-FLUE-4). The amendment narrowed the requirements for not requiring a rezoning to those properties that are non-residential uses. As it was written in 2012 it allowed for the exception for residential and non-residential uses. Upon an analysis by Planning staff it was determined that the most common inconsistency involved properties with C-3 (Wholesale Commercial District) zoning and IND (Industrial) future Land Use. The impetus to create FLU8.2.5.1(A) was to address the effect of an inconsistency on a business owner's ability to obtain an occupational license and because the highest occurrences of inconsistencies involve non-residential uses, the policy was amended so that it would not apply to residential uses.

Also, as noted in the 2014 staff report, there were minor issues with the application of FLU8.2.5.1(A) to residential properties. The revised policy was seen as a proactive measure to prevent future problems and unintended consequences. The policy was also amended to require that the proposed use be permitted in *each* of the zoning districts consistent with the adopted FLUM designation rather than any zoning district.

FLU8.2.5.1 A rezoning may not be required for properties with inconsistent zoning and Future Land Use Map (FLUM) designations under the following circumstances:

- A. For non-residential uses when the proposed use is permitted in the existing zoning district, and the same use is permitted in each of the zoning districts that are consistent with the adopted FLUM designation; or
- B. For non-residential and residential uses when the proposed use is permitted in the existing zoning district, but the use would require a special exception if the property is rezoned to be consistent with the adopted FLUM designation. In this case, however, the same use must be permitted or allowed by special exception in each of the zoning districts that are consistent with the adopted FLUM designation.

Any development of such properties shall meet the minimum site and building requirements of the existing zoning district. Subsequent requests for expansions and changes in the permitted uses on the property must conform to this policy. Requests not conforming to this policy shall be subject to a rezoning, special exception, or FLUM amendment. (Added 6/12, Ord. 2012-14; Amended 6/14, Ord. 2014-12)

#### **PROPOSED AMENDMENT**

Staff is proposing the following language which would exempt a property from being rezoned if the proposed use is a single-family detached residential whose future land use and zoning are both residential. Also, the lot must be a Lot of Record, a lot created through a plat, or a lot split as



recognized by Orange County. The purpose of this provision is to make sure that property owners of large lots do not split their lot into smaller lots in an unofficial manner and then come in to the County for permits for single-family homes on each of the lots.

FLU8.2.5.1 A rezoning may not be required for properties with inconsistent zoning and Future Land Use Map (FLUM) designations under the following circumstances:

- A. For non-residential uses when the proposed use is permitted in the existing zoning district, and the same use is permitted in each of the zoning districts that are consistent with the adopted FLUM designation; or
- B. For non-residential and residential uses when the proposed use is permitted in the existing zoning district, but the use would require a special exception if the property is rezoned to be consistent with the adopted FLUM designation. In this case, however, the same use must be permitted or allowed by special exception in each of the zoning districts that are consistent with the adopted FLUM designation; or.
- C. For residential uses when the proposed use is single-family detached residential and the Zoning and Future Land Use are both residential. The lot upon which the single-family detached residential is proposed must be a Lot of Record, a lot created through a plat, or a lot split as recognized by Orange County.

Any development of such properties shall meet the minimum site and building requirements of the existing zoning district, except for substandard Lots of Record. Subsequent requests for expansions and changes in the permitted uses on the property must conform to this policy. Requests not conforming to this policy shall be subject to a rezoning, special exception, or FLUM amendment.

#### **AFFORDABLE HOUSING INITIATIVE**

In 2006, the Florida Legislature passed House Bill 1363 creating Section 125.379, Florida Statutes, to provide for the disposition of county-owned properties for affordable housing (the "Act"). The Act requires each County to prepare an inventory list of County-owned properties appropriate for affordable housing, and it provides several options for disposition of property, with one of the options being to donate the properties to non-profit housing organizations for construction of permanent affordable housing. Orange County Housing and Community Development (HCD) Division currently partners with local non-profit entities to transfer county-owned properties for the purpose of affordable housing.

Furthermore, a Housing for All Task Force, initiated by Mayor Demings to help address the affordable housing crisis, made a number of recommendations to jumpstart production of affordable and attainable housing units. Those recommendations list "active land banking for affordable housing" as one of the strategies. This strategy includes a regular assessment of County-owned properties and making them available for construction of affordable housing units.

In compliance with the Act and recommendations of the Housing for All Task Force, the Real Estate Management Division and HCD Division prepared an inventory list for review by the Board of County Commissioners (BCC). The list was reviewed during the December 17, 2019 BCC meeting, and an updated resolution was adopted by the Board. Properties were identified during the review process, with some properties having an inconsistent Future Land Use and Zoning designations.

The proposed FLU8.2.5.1 text amendment will allow some of these properties to move forward without the need for a FLUM amendment or rezoning. Additionally, there are a multitude of

properties across the County that would benefit from this updated text amendment as they would no longer need to go through the FLUM amendment or rezoning process, thereby reducing the overall cost and time to construct a home.

## B. Policy Amendment

The following is the policy change proposed by this amendment. The proposed changes are shown in underline/~~strikethrough~~ format. Staff recommends transmittal of the amendment.

\* \* \*

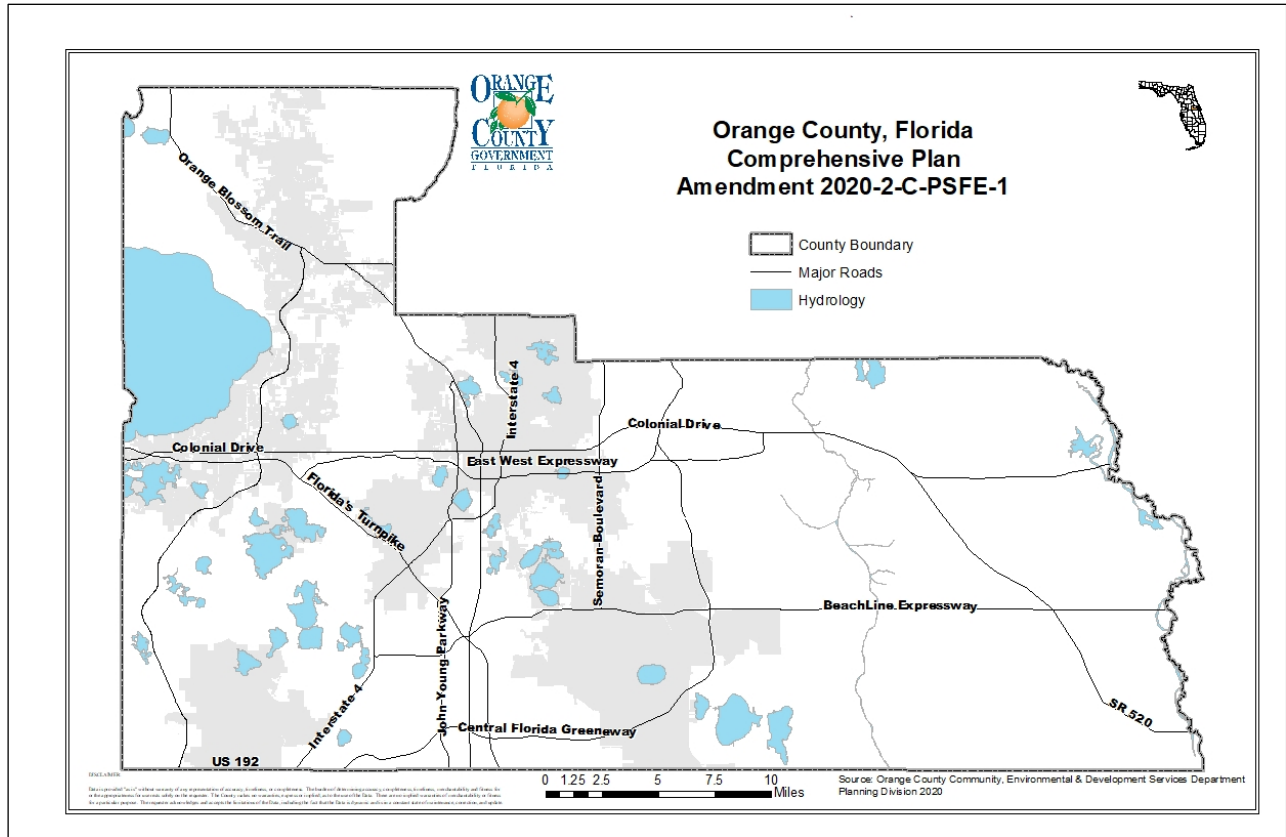
FLU8.2.5.1 A rezoning may not be required for properties with inconsistent zoning and Future Land Use Map (FLUM) designations under the following circumstances:

- A. For non-residential uses when the proposed use is permitted in the existing zoning district, and the same use is permitted in each of the zoning districts that are consistent with the adopted FLUM designation; or
- B. For non-residential and residential uses when the proposed use is permitted in the existing zoning district, but the use would require a special exception if the property is rezoned to be consistent with the adopted FLUM designation. In this case, however, the same use must be permitted or allowed by special exception in each of the zoning districts that are consistent with the adopted FLUM designation; or-
- C. For residential uses when the proposed use is single-family detached residential and the Zoning and Future Land Use are both residential. The lot upon which the single-family detached residential is proposed must be a Lot of Record, a lot created through a plat, or a lot split as recognized by Orange County.

Any development of such properties shall meet the minimum site and building requirements of the existing zoning district, except for substandard Lots of Record. Subsequent requests for expansions and changes in the permitted uses on the property must conform to this policy. Requests not conforming to this policy shall be subject to a rezoning, special exception, or FLUM amendment.

\* \* \*





The following meetings and hearings have been held for this proposal:			Project/Legal Notice Information	
	<b>Report/Public Hearing</b>	<b>Outcome</b>	<b>Title:</b> Amendment 2020-2-C-PSFE-1	
✓	Staff Report	Recommend Transmittal	<b>Division:</b> Planning	
✓	LPA Transmittal July 16, 2020	Recommend Transmittal (8-0)	<b>Request:</b> Text amendment to Public Schools Facilities Element Policy PS6.3.1 addressing the ability of the Board to consider school overcrowding when reviewing certain rezoning and Comprehensive Plan amendment requests	
	BCC Transmittal	July 28, 2020		
	State Comments	August 2020		
	LPA Adoption	September 17, 2020		
	BCC Adoption	September 22, 2020	<b>Revision:</b> PS6.3.1	

### Staff Recommendation

This request involves a staff-initiated text amendment to Public Schools Facilities Element Policy PS6.3.1. Staff recommends that the Local Planning Agency (LPA) make a finding of consistency with the Comprehensive Plan, determine that the plan amendment is in compliance, and recommend **TRANSMITTAL** of Amendment 2020-2-C-PFSE-1.

## A. Background

Public Schools Facilities Element Objective PS6.3 of the Orange County Comprehensive Plan establishes that Orange County and Orange County Public Schools (OCPS) shall develop and maintain a joint process for the implementation of school concurrency, as provided for in the Interlocal Agreement for Public School Facility Planning and Implementation for School Concurrency, adopted in 2008 and subsequently amended in 2010 and 2011 (the “Interlocal Agreement”).

Presently, any requested Comprehensive Plan amendment and/or rezoning in Orange County (including its municipalities) that entails a proposed increase in residential density must undergo a capacity review by OCPS. If there is insufficient capacity at an impacted elementary, middle, and/or high school, the prospective developer and OCPS must enter into a Capacity Enhancement Agreement (CEA). These agreements typically include provisions requiring the pre-payment of impact fees, a timing mechanism, and payment of a “capital contribution”, in addition to school impact fees. However, House Bill 7103, signed into law on June 28, 2019, and effective as of July 1, 2019, now requires a credit against school impact fees on a dollar-for-dollar basis for any such contribution. This credit, in essence, means OCPS would not receive any additional monies to mitigate the impacts of additional students generated by the increased residential density. As such, at the June 23, 2020, School Board meeting, OCPS issued a Declaration Relating to the HB 7103 Impact on School Overcrowding Mitigation (the “Declaration”). That Declaration declares that OCPS will no longer enter into CEAs, but will only certify whether school capacity exists.

Although a legislative fix was sought in the last legislative session by the County, OCPS, and various stakeholders in the development community, none was approved. Therefore, any project that was required to apply for a CEA on or after July 1, 2019, is on hold. Currently, there are a total of 18 projects, countywide, that have been placed on hold since July 1, 2019.

To resolve the present impasse, staff is proposing this amendment to Public Schools Facilities Element Policy PS6.3.1. That policy currently prohibits the County from approving any developer-initiated Comprehensive Plan amendment or rezoning that would increase residential density for which OCPS has not certified that school capacity exists or for which a CEA has not been executed. If approved, this amended policy will require County staff, in its review of any developer-initiated Comprehensive Plan amendment or rezoning petition that would increase residential density, to seek input from OCPS regarding the existence of sufficient school capacity at the public schools that would serve the development. In cases in which sufficient capacity is not available in the affected school(s), OCPS would provide information to the County on the severity of the overcrowding and the timing of the availability of the needed capacity to accommodate the proposed development. The Orange County Board of County Commissioners (the “Board”) would then have the discretion to weigh school overcrowding and timing of school capacity in its decision to approve or deny developer-initiated Comprehensive Plan amendments or rezonings that would increase residential density.

If adopted, this proposed amendment to Policy PS6.3.1 will provide for continued cooperation between the County and OCPS to address the issues of school overcrowding while allowing for the development of additional housing for Orange County’s growing residential population. Adoption of this amendment may also prompt County staff to propose future amendments to Chapter 30,

Planning and Development, of the Orange County Code and, potentially, to the Interlocal Agreement.

Staff recommends the Local Planning Agency make a finding of **CONSISTENCY** with the Comprehensive Plan and recommend **TRANSMITTAL** of Amendment 2020-2-C-PSFE-1.

## B. Policy Amendments

The following are the policy changes proposed by this amendment. The proposed changes are shown in underline/~~striketrough~~ format. Staff recommends transmittal of the amendment.

PS6.3.1 ~~Orange County shall not approve~~When reviewing a developer-initiated Comprehensive Plan amendment or rezoning that would increase residential density ~~on property that is not otherwise vested,~~ Orange County shall seek input from until such time as OCPS has ~~determined as to~~ whether sufficient school capacity will exist concurrent with the development, ~~or a capacity enhancement agreement is executed that provides for~~ If OCPS indicates there is insufficient capacity in the affected schools, Orange County may take into consideration the severity of the overcrowding and the timing of the availability of the needed capacity to accommodate the proposed development when deciding whether to approve or deny the requested Comprehensive Plan amendment or rezoning. (Added 6/08, Ord. 08-11)

### Clean Version

PS6.3.1 When reviewing a developer-initiated Comprehensive Plan amendment or rezoning that would increase residential density, Orange County shall seek input from OCPS as to whether sufficient school capacity will exist concurrent with the development. If OCPS indicates there is insufficient capacity in the affected schools, Orange County may take into consideration the severity of the overcrowding and the timing of the availability of the needed capacity to accommodate the proposed development when deciding whether to approve or deny the requested Comprehensive Plan amendment or rezoning. (Added 6/08, Ord. 08-11)