

(14) Approved by Schools and Land Use Councils 11/14/01;
Draft completed by staff 2/8/02

**SCHOOLS ADEQUATE PUBLIC FACILITIES
MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding is entered into this _____ day of _____, 200__, by and between the Town of _____, the Town of _____, Orange County, and the _____ (the "School District").

WHEREAS, the portion of Orange County, served by the [Chapel Hill/Carrboro] [Orange County] School System has for the past decade been experiencing rapid growth in population; and

WHEREAS, this growth, and that which is anticipated, creates a demand for additional school facilities to accommodate the children who reside within new developments; and

WHEREAS, the responsibility for planning for and constructing new school facilities lies primarily with the [Chapel Hill/Carrboro] [Orange County] School Board, with funding provided by Orange County; and

WHEREAS, [Chapel Hill, Carrboro, Orange County and the Chapel Hill School District] [Orange County, Hillsborough, and the Orange County School District], have recognized the need to work together to ensure that new growth within the School District occurs at a pace that allows Orange County and the School District to provide adequate school facilities to serve the children within such new developments;

WHEREAS, the parties have worked cooperatively and developed a system wherein school facilities are currently adequate to meet the needs of the citizens of the county and will continue to maintain a Capital Investment Plan (CIP) that is financially feasible and synchronized with historical growth patterns;

NOW, THEREFORE, the parties to this Memorandum hereby agree as follows:

Section 1. The parties will work cooperatively to develop a realistic Capital Improvement Plan for the construction of schools such that, from the effective date of this Memorandum, school membership within each school level (i.e. elementary, middle or high) does not exceed the following:

Elementary School	105% of Building Capacity
Middle School	107% of Building Capacity
High School	110% of Building Capacity

- a. For purposes of this Memorandum, the term "school membership" means the actual number of students attending school as of November 15 of each year. The figure is determined by considering the number of students enrolled (i.e. registered, regardless of whether a student is no longer attending school) and making adjustments for withdrawals, dropouts, deaths, retentions and promotions. Students who are merely absent from

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class on the date membership is determined as a result of sickness or some other temporary reason are included in school membership figures. Each year the School District shall transmit its school membership to the parties to this agreement no later than five (5) school days after November 15.

- b. For purposes of this Memorandum, "building capacity" will be determined by reference to State guidelines and the School District guidelines (consistent with CIP School Construction Guidelines/policies developed by the School District and the Board of County Commissioners) and will be determined by a joint action of the School Board and the Orange County Board of Commissioners. As used herein the term "building capacity" refers to permanent buildings. Mobile classrooms and other temporary student accommodating classroom spaces are not permanent buildings and may not be counted in determining the school districts building capacity.
- c. Prior to the adoption of the ordinances referenced in Section 2, the parties shall reach agreement on the following:
 - (i) A Capital Improvement Program (CIP) that will achieve the objectives of this Memorandum;
 - (ii) A projected growth rate for student membership within the School District's three school levels during the ten year life of the CIP;
 - (iii) A methodology for determining the projected growth rate for student membership; and
 - (iv) The number of students at each level expected to be generated by each new housing type (i.e., the "student generation rate").
- d. After the adoption of the ordinances referenced in Section 2, the Orange County Board of Commissioners may change the projected student membership growth rate, the methodology used to determine this rate, or the student generation rate if the Board concludes that such a change is necessary to predict growth more accurately. Before making any such change, the Board shall receive and consider the recommendation of a staff committee consisting of the planning directors of the Town(s) and the County and a representative of the School District appointed by the Superintendent. The committee shall provide a copy of its recommendation to the governing boards of the other parties to this memorandum at the time it provides such recommendation to the Board of Commissioners. In making its recommendation, the committee shall consider the following, and in making its determination, the Board of Commissioners shall consider the following:

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- (i) The accuracy of the methodology and projected growth rate then in use in projecting school membership for the current school year;
- (ii) The accuracy of the student generation rate then in use in predicting the number of students at each level actually generated by each new housing type;
- (iii) Approval of and issuance of CAPS for residential developments that, individually or collectively, are of sufficient magnitude to alter the previously agreed upon school membership growth projections; or
- (iv) Other trends and factors tending to alter the previously agreed upon projected growth rates.

If any such change is made in the projected growth rate, the methodology for determining this rate, or the student generation rate, the Orange County Board of Commissioners shall inform the other parties to this Memorandum prior to February 1st in any year in which such change is intended to become effective what change was made and why it was necessary.

- e. The Orange County Board of Commissioners shall provide a copy of the updated CIP to each of the parties to the Memorandum as soon as it is revised, annually or otherwise.

Section 2. The towns and the county will adopt amendments to their respective ordinances, in substantially the form attached hereto as Exhibit A, to coordinate the approval of residential developments within the School District with the adequacy of existing and proposed school facilities.

Section 3. The following process shall be followed by the School District to receive and take action upon applications for Certificates of Adequacy of Public School Facilities ("CAPS") submitted by persons who are required by an implementing ordinance conceptually similar to that attached as Exhibit A to have such certificates before the development permission they have received from the town or county becomes effective.

- a. On February 15th of each year, the School District shall calculate the building capacity of each school level and the school membership of each school level as of November 15th of the previous year. Also on February 15th of each year, the School District shall calculate the anticipated school membership for each school level and the anticipated building capacity for each school level as of November 15th in each of the following ten years. These calculations shall be made in accordance with the provisions of Section 1 and also in accordance with the remaining provisions of this section.

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- b. School membership calculations made on February 15th (utilizing the previous November 15th data) for each of the ten years following the year in which the calculation is made (the base year) shall be determined by applying the projected school membership growth rates determined in accordance with Section 1 of this Memorandum to the actual school membership numbers of the base year.
- c. The school building capacity calculations shall be based upon the following:
- (i) A calculation of the existing building capacity within each school level;
 - (ii) The anticipated opening date of schools under construction;
 - (iii) The anticipated opening date of schools on the ten-year CIP for which funding has been committed by the Board of Commissioners as a result of an approved bond issue, an approved installment purchase agreement, or otherwise; and
 - (iv) The anticipated closing dates of any schools within the School District.
- d. By comparing the existing and calculated school membership to the existing and calculated school building capacity each year, the School District shall determine what remaining capacity (if any) exists or is projected to exist to accommodate new development. The School District shall make that information known to the local governments within 15 days of the comparison.
- e. As CAPS are issued for new developments during the course of the twelve month period from February 15th of one year to February 15th of the next year, the School District shall continually reduce the remaining available school building capacity in each of the ensuing years wherein new students are projected to be added to the school system by the developments for which the CAPS are given during that year.
- f. When an application for a CAPS is submitted, the School District shall determine the impact on school membership for each school level as calculated on February 15th in each year of the period during which the development is expected to be adding new students to the school system as the result of such new construction. In making this determination, the School District shall rely upon the figures established under Section 1 of this Memorandum as to the number of students at each level expected to be generated by each housing type, and data furnished by the applicable planning department as to the expected rate at which new dwellings within developments similar in size and type to the proposed development are

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likely to be occupied. Notwithstanding the foregoing, if, upon request of the applicant, the planning jurisdiction approving the development imposes enforceable conditions upon the development (such as a phasing schedule) to limit the rate at which new dwellings within the development are expected to be occupied, then the School District shall take such limitations into account in determining the impact of the development on school membership.

- g. If the School District determines that the projected capacity of each school level is sufficient to accommodate the proposed development without exceeding the building capacity levels set forth in Section 1 of this Memorandum, then the School District shall issue the CAPS. If the School District determines that the projected capacity of each school level is not sufficient to accommodate the proposed development without exceeding the building capacity levels set forth in Section 1, then the School District shall deny the CAPS. If a CAPS is denied, the applicant may seek approval from the appropriate planning jurisdiction of such modifications to the development as will allow for the issuance of a CAPS, and then reapply for a CAPS.
- h. The School District shall issue CAPS on a "first come first served" basis, according to the date a completed application for a CAPS is received. If projected building capacity is not available and an application for a CAPS is therefore denied, the development retains its priority in line based upon the CAPS application date.

Section 4. A CAPS issued in connection with approval of a subdivision preliminary plat, minor subdivision final plat, site plan, or conditional or special use permit shall expire automatically upon the expiration of such plat, plan, or permit approval.

Section 5. The towns and the county will provide to the School District all information reasonably requested by the School District to assist the District in making its determination as to whether the CAPS should be issued.

Section 6. The School District will use its best efforts to construct new schools and permanent expansions or additions to existing schools in accordance with the CIP.

Section 7. Orange County will use its best efforts to provide the funding to carry out the Capital Improvement Plan referenced in Section 1 above.

Section 8. In recognition of the fact that some new development will have a negligible impact on school capacity, a CAPS shall not be required under the following circumstances:

- a. For residential developments restricted by law and/or covenant for a period of at least thirty years to housing for the elderly and/or adult care living and/or adult special needs;

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- b. For residential developments restricted for a period of at least thirty years to dormitory housing for university students.

If the use of a development restricted as provided above changes, then before a permit authorizing such change of use becomes effective, a CAPS must be issued just as if the development were being constructed initially.

Section 9. The parties acknowledge that this Memorandum of Understanding is not intended to and does not create legally binding obligations on any of the parties to act in accordance with its provisions. Rather, it constitutes a good faith statement of the intent of the parties to cooperate in a manner designed to meet the mutual objective of all the parties that the children who reside within the School District are able to attend school levels that satisfy the level of service standards set forth herein.