



Interoffice Memorandum

AGENDA ITEM

September 3, 2015

TO: Mayor Teresa Jacobs
—AND—
Board of County Commissioners

FROM: Jon V. Weiss, P.E., Director *JVW*
Community, Environmental and Development
Services Department

**CONTACT PERSON: John Smogor, Chairman
Development Review Committee
407 836-5616**

SUBJECT: October 6, 2015 — Consent Item
New Independence Planned Development (PD)
Adequate Public Facilities (APF) Agreement
(Related to Case # LUP-15-01-029)

The proposed New Independence Planned Development (PD) contains 61.12 gross acres, and is generally located on the west side of SR 429; north of New Independence Parkway; and west of CR 545 / Avalon Road. More specifically, the subject property is located within the Town Center Specific Area Plan (SAP) of Horizon West, and is designated Urban Residential (UR) on the Town Center SAP Recommended Land Use Plan (LUP). Through rezoning application #LUP-15-01-029, the proposed New Independence PD allows for the development of two hundred eighty-five (285) residential dwelling units.

Pursuant to Orange County Code Section 30-714, each property owner in a Horizon West PD is required to convey their proportionate share of APF lands, which are based on the ratio of required APF acres to net developable acres within the SAP. In the event that APF land requirements cannot be met within a particular PD, an owner may pay a fee to the County equal to the value of the ratio of required APF lands and based upon the average fair market value of land as established by an independent appraiser. For the Town Center SAP, the adopted ratio of APF acres to net developable acres is 1.0 to 5.1.

In order to satisfy the requirements of Chapter 30, Article XIV of the Orange County Code ("APF/TDR Ordinance"), the New Independence PD is subject to the attached APF Agreement that recognizes that the project is accountable for a minimum of 10.18 acres of APF lands. However, as reflected in the Agreement, the property was assigned 6.51 APF credits (acres) through a previously recorded Town Center High School Site APF Agreement (ORB 9281, Page 1081). Therefore, the subject APF

School Site APF Agreement (ORB 9281, Page 1081). Therefore, the subject APF Agreement addresses how the remaining 3.67-acre APF deficit within the PD will be satisfied.

The New Independence APF Agreement received a recommendation of approval from the Orange County Development Review Committee (DRC) on August 26, 2015, and has been placed on the October 6, 2015 BCC consent agenda for concurrent consideration with associated PD rezoning request. Upon approval by the BCC, the Agreement will be recorded in the Public Records of Orange County, Florida.

ACTION REQUESTED: Approval of Adequate Public Facilities Agreement for Daryl M. Carter, Trustee of Carter-Orange 45 SR 429 Land Trust by and between Daryl M. Carter and Orange County, Florida. District 1

JVW/JS:rep

Attachments

OCT 06 2015 JTB/LC

This instrument prepared by and after
recording return to:

Daniel T. O'Keefe, Esq.
Shutts & Bowen LLP
300 S. Orange Avenue, Suite 1000
Orlando, Florida 32801

Tax Parcel I.D. No(s): 17-23-27-0000-00-013
20-23-27-0000-00-009
20-23-27-0000-00-017
20-23-27-0000-00-018

**ADEQUATE PUBLIC FACILITIES AGREEMENT
FOR DARYL M. CARTER, TRUSTEE OF
CARTER-ORANGE 45 SR 429 LAND TRUST**

THIS ADEQUATE PUBLIC FACILITIES AGREEMENT FOR DARYL M. CARTER, TRUSTEE OF CARTER-ORANGE 45 SR 429 LAND TRUST (the "Agreement"), effective as of the latest date of execution (the "Effective Date"), is made and entered into by and between **DARYL M. CARTER, TRUSTEE OF CARTER-ORANGE 45 SR 429 LAND TRUST**, whose mailing address is P.O. Box 568821, Orlando, Florida 32856-8821 ("OWNER"), and **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida whose address is P.O. Box 1393, Orlando, Florida 32802-1393 ("COUNTY").

RECITALS:

A. OWNER is the fee simple owner of certain real property located in Orange County, Florida, as more particularly described in Exhibit "A" and as shown on Exhibit "B" attached hereto and made a part hereof by this reference (the "Property").

B. The Property is identified on the Orange County Comprehensive Plan 2010-2020 (the "Comprehensive Plan") Future Land Use map with the "Village" land use designation.

C. The Property constitutes a portion of the Town Center as same is described and depicted in the Town Center Specific Area Plan approved by the Board of County Commissioners of Orange County, Florida (the "BCC") June 15, 2004 (the "Town Center SAP").

D. The Property is included in the Horizon West Village Land Use Classification Area. The BCC adopted the Horizon West Village Land Use Classification Comprehensive Policy Plan ("CPP") amendment on June 5, 1995. The Horizon West Village Land Use Classification was the result of a public-private partnership between the BCC and Horizon West, Inc. The partnership conducted an extensive visioning and community consensus building process that was summarized in the Horizon West Study Report issued February 7, 1995. The Property has

relied on the prior approvals of the Horizon West Study and the Town Center SAP, and on the approvals and studies included in the Town Center SAP.

E. The Town Center SAP contemplates certain detached single family residential uses within the Property.

F. OWNER desires to develop the Property in accordance with the LPA Transmittal Staff Report Amendment 2015-1-A-1-2 ("Plan") submitted by OWNER to COUNTY, swapping the placement of Retail/Wholesale (RW-3) and Urban Residential (UR-3) on-site with no changes to existing entitlements, and with the PD zoning application on file with COUNTY.

G. The Goals, Objectives, and Policies contained in the Future Land Use Element of the Comprehensive Plan have been implemented through Chapter 30, Article XIV of the Orange County Code ("APF/TDR Ordinance") adopted by the BCC on May 20, 1997, as may be amended.

H. Division 2 of the APF/TDR Ordinance requires, in Section 30-712(b), that OWNER enter into a developer's agreement addressing the conveyance to the COUNTY of adequate public facilities lands prior to or in conjunction with PD approval, unless otherwise addressed in the agreement, pursuant to Section 30-714(c).

I. If OWNER is unable to convey sufficient adequate public facilities lands to COUNTY, the APF/TDR Ordinance, at Sections 30-712(b) and 30-714(d), states that OWNER may make payment of an adequate public facility lands fee to COUNTY. Additionally, the APF/TDR Ordinance, in Section 30-714(g), allows for application of APF acreage credits to satisfy an APF deficiency.

J. The parties have agreed that this Agreement constitutes the aforementioned developer's agreement referenced in Division 2 of the APF/TDR Ordinance.

K. It is the intent of the parties that the COUNTY will consider approval of OWNER's PD application with its consideration of this Agreement.

L. The Property contains approximately 51.93 acres of net developable land, and Section 30-714 of the APF/TDR Ordinance requires one acre of public facilities acreage for every 5.1 acres of net developable land (the "APF Ratio").

M. When applied to the Property, the APF Ratio requires approximately 10.18 acres of public facilities lands.

N. The Owner, as successor-in-interest to Sugarloaf, LLC, an original owner of 10.3% of the membership interest in Seidel Investments, LLC, is the owner of 6.51 APF Credits pursuant to that certain Horizon West Town Center High School Site APF Agreement approved by the BCC on May 22, 2007, and recorded in Book 9281, Page 1081, Public Records of Orange County, Florida (the "High School APF Credits").

O. After application of the High School APF Credits to the Property, the APF Ratio requires approximately 3.67 additional acres of public facilities lands.

P. As shown on the Plan for the Property, and as described in this Agreement, OWNER is providing 0.00 acres of adequate public facilities land (the "APF Land") to COUNTY, thereby creating an APF deficiency of 3.67 acres.

NOW THEREFORE, for and in consideration of the above premises, the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. Recitals. The above recitals are true and correct and are hereby incorporated as material provisions of this Agreement by this reference.

2. Non-Dedication of APF Land by OWNER. OWNER shall not convey any land for APF requirements.

3. APF Deficiency. The APF Ratio requires that OWNER convey to COUNTY approximately 3.67 acres of APF Land. This Agreement provides for conveyance of approximately 0.00 acres of APF Land, thereby creating a 3.67 acre APF deficiency.

4. Satisfaction of APF Deficiency. Owner acknowledges and agrees that as a prior condition of final approval of the initial plat within the Property, OWNER shall satisfy the APF Deficiency. Satisfaction of the APF Deficiency may be accomplished by either, or a combination of, the following methods:

(i) Payment to the COUNTY of an APF fee in the amount of \$41,256.00 per deficient APF acre or portion thereof; or

(ii) Application of surplus APF acreage credits acquired by OWNER from within the Town Center SAP ("APF Credits").

5. Recording. Within thirty (30) days of the Effective Date, this Agreement shall be recorded in the Public Records of Orange County, Florida, at OWNER's expense.

6. Limitation of Remedies. COUNTY and OWNER expressly agree that the consideration, in part, for each of them entering into this Agreement is the willingness of the other to limit the remedies for all actions arising out of or in connection with this Agreement.

(a) Limitations on COUNTY's Remedies. Upon any failure by OWNER to perform its obligations under this Agreement, COUNTY shall be limited strictly to only the following remedies:

(i) action for specific performance; or

- (ii) action for injunction; or
- (iii) the withholding of development permits and other approvals and/or permits in connection with the Project and/or the Property; or
- (iv) any combination of the foregoing.

In addition to the foregoing, nothing in this Agreement prohibits or estops COUNTY from exercising its power of eminent domain with respect to any portion of the Property as COUNTY may lawfully elect.

(b) Limitations on OWNER'S Remedies. Upon any failure by COUNTY to perform its obligations under this Agreement, OWNER shall be limited strictly to only the following remedies:

- (i) action for specific performance; or
- (ii) action for injunction; or
- (iii) action for declaratory judgment regarding the rights and obligations of OWNER; or
- (iv) any combination of the foregoing.

Both parties expressly waive their respective rights to sue for damages of any type for breach of or default under this Agreement by the other. Venue for any actions initiated under or in connection with this Agreement shall be in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida.

7. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit and burden of the parties hereto and their respective heirs, successors, and assigns and shall run with title to the Property and be binding upon any person, firm, corporation, or other entity acquiring any interest in all or any portion of the Property.

8. Severability. If any provision of this Agreement, the deletion of which would not adversely affect the receipt of any material benefits by any party hereunder nor substantially increase the burden of any party hereunder, shall be held to be invalid or unenforceable to any extent by a court of competent jurisdiction, the same shall not affect in any respect whatsoever the validity or enforceability of the remainder of this Agreement.

9. Notices. Any notice delivered with respect to this Agreement shall be in writing and shall be deemed to be delivered (whether or not actually received) (i) when hand delivered to the person(s) hereinafter designated, or (ii) upon deposit of such notice in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to the person at the address set forth opposite the party's name below, or to such other address or to such other person as the party shall have specified by written notice to the other party delivered in accordance herewith.

COUNTY: Orange County, Florida, c/o County Administrator
Post Office Box 1393
Orlando, Florida 32802-1393
Telephone: 407.836.7370

With copies to: Orange County Community, Environmental,
and Development Services Department
Manager, Planning Division
Post Office Box 1393
Orlando, Florida 32802-1393
Telephone: 407.836.5600

Orange County Community, Environmental,
and Development Services Department
Manager, Transportation Planning Division
Orange County Public Works Complex
4200 S. John Young Parkway
Orlando, Florida 32839-8070
Telephone: 407.836.8070

OWNER: Daryl M. Carter, Trustee
Attn: Daryl M. Carter
P.O. Box 568821
Orlando, Florida 32856-8821
Telephone: 407.422.3144

With copies to: Shutts & Bowen LLP
Attn: Daniel T. O'Keefe, Esq.
300 S. Orange Avenue, Suite 1000
Orlando, Florida 32801
Telephone: 407.835.6956

10. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of the formal parties hereto and no right or cause of action shall accrue by reason hereof to or for the benefit of any third party not a formal party hereto. Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give any person or entity any right, remedy, or claim under or by reason of this Agreement or any provisions or conditions hereof, other than the parties hereto and their respective representatives, heirs, successors, and assigns.

11. Applicable Law. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

12. Interpretation. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that all parties have contributed substantially and materially to the preparation hereof. Captions and section headings in this Agreement are

provided for convenience only and shall not be deemed to explain, modify, amplify, or aid in the interpretation, construction, or meaning of this Agreement.

13. Attorney Fees. Each party to this Agreement agrees to bear its own attorney and other legal fees and costs in connection with all actions to be undertaken in compliance with, and enforcement of, this Agreement.

14. Survival. The obligations of this Agreement shall survive the conveyance of the APF Lands to COUNTY.

15. Amendments. No amendment, modification, or other change to this Agreement shall be binding upon the parties unless in writing and formally executed in the same manner as this Agreement.

16. Entire Agreement. This Agreement embodies and constitutes the entire understanding of the parties with respect to the subject matter addressed herein, and all prior or contemporaneous agreement, understandings, representations, and statements, oral or written, are merged into this Agreement.

17. Counterparts. This Agreement may be executed in up to two (2) counterparts, both of which taken together shall constitute one and the same instrument and any party or signatory hereto may execute this Agreement by signing either such counterpart.

18. Authority to Contract. The execution of this Agreement has been duly authorized by the appropriate body or official of each party hereto.

[SIGNATURES APPEAR ON THE FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.

“COUNTY”

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Teresa Jacobs*
Teresa Jacobs,
Orange County Mayor

Date: 10.7.15



ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: *Jessica Vaupel*
for Deputy Clerk

Print: Jessica Vaupel

“OWNER”

CARTER-ORANGE 45 SR 429 LAND TRUST

By: [Signature]
Daryl M. Carter, Trustee

Date: 08/05/2015

WITNESSES:
[Signature]
Print Name: Joan M Fisher

[Signature]
Print Name: Emily Gentry

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by Daryl M. Carter, Trustee of CARTER-ORANGE 45 SR 429 LAND TRUST, who is known by me to be the person described herein and who executed the foregoing, this 5th day of August, 2015. He is personally known to me or has produced _____ as identification and ~~did~~ did not take an oath.

WITNESS my hand and official seal in the County and State last aforesaid this 5th day of August, 2015.



JOAN M. FISHER
MY COMMISSION # FF 028168
EXPIRES: July 16, 2017
Bonded Thru Budget Notary Services

[Signature]
Notary Public
Print Name: Joan M Fisher
My Commission Expires: 07/16/2017

Exhibit "A"

**Legal Description and Sketch of
Description for the Property**

DESCRIPTIONS:

FROM OFFICIAL RECORDS BOOK 7932, PAGE 3670, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA:

PARCEL 1 (FEE SIMPLE ESTATE)

THE NORTH HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA.

PARCEL 2 (NON EXCLUSIVE EASEMENT ESTATE)

TOGETHER WITH THE NON EXCLUSIVE INGRESS AND EGRESS EASEMENT AS CREATED IN THE WARRANTY DEED REDCORDED OCTOBER 3, 1960, IN OFFICIAL RECORDS BOOK 797, PAGE 176, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

COMMENCE AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 17, TOWNSHIP 23 SOUTH, RANGE 27 EAST; THENCE EAST ALONG THE NORTHERN BOUNDARY OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF AFORESAID SECTION TO THE NORTHWEST CORNER OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SOUTHWEST QUARTER OF THE AFORESAID SECTION; THENCE DUE SOUTH 30 FEET; THENCE RUN WEST PARALLEL TO THE NORTHERN BOUNDARY OF SOUTH HALF OF SOUTHWEST QUARTER OF SAID SECTION TO THE WESTERN BOUNDARY OF THE SAID SECTION; THENCE DUE NORTH 30 FEET TO THE POINT OF BEGINNING.

FROM OFFICIAL RECORDS BOOK 8160, PAGE 2991, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA:

PARCEL 1

THE WEST 287.00 FEET OF THE EAST 307.00 FEET OF THE SOUTH 830.00 FEET OF THE NW 1/4 OF THE NW 1/4 (LESS THE SOUTH 30 FEET FOR ROAD) IN SECTION 20, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA.

PARCEL 2

THE SOUTH 830 FEET OF THE NW 1/4 OF THE NW 1/4 (LESS THE WEST 733 FEET AND THE EAST 307 FEET THEREOF AND LESS THE SOUTH 30 FEET FOR ROAD), SECTION 20, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA.

FROM OFFICIAL RECORDS BOOK 9373, PAGE 3380, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA:

THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SECTION 20, TOWNSHIP 23 SOUTH, RANGE 27 EAST (LESS ROAD ON SOUTH), ORANGE COUNTY, FLORIDA.

AND

THE SOUTH 3/4 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 17, TOWNSHIP 23 SOUTH, RANGE 27 EAST, ORANGE COUNTY, FLORIDA.

LESS

THOSE LANDS AS DESCRIBED AND RECORDED IN OFFICIAL RECORDS BOOK 7034, PAGE 1148, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA.

BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHWEST CORNER OF THE SOUTHWEST 1/4 OF SAID SECTION 17; THENCE RUN NORTH 00°08'31" WEST, ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17, A DISTANCE OF 300.14 FEET TO A POINT ON THE WESTERLY LINE OF AN EXISTING RIGHT OF WAY AS RECORDED AND DESCRIBED IN SAID OFFICIAL RECORDS BOOK 7034, PAGE 1148 AND THE POINT OF BEGINNING; THENCE RUN SOUTHERLY ALONG SAID WESTERLY RIGHT OF WAY LINE THE FOLLOWING COURSES AND DISTANCES: RUN SOUTH 70°40'08" WEST, A DISTANCE OF 206.63 FEET; THENCE RUN SOUTH 41°06'22" WEST, A DISTANCE OF 72.08 FEET; THENCE RUN SOUTH 00°32'20" WEST, A DISTANCE OF 134.36 FEET; THENCE RUN SOUTH 11°17'03" WEST, A DISTANCE OF 126.80 FEET TO THE POINT OF CURVATURE OF A CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 5378.56 FEET AND A CENTRAL ANGLE OF 03°41'07"; THENCE ALONG THE ARC OF SAID CURVE, A DISTANCE OF 348.02 FEET TO A POINT; THENCE RUN SOUTH 75°08'16" EAST, A DISTANCE OF 256.01 FEET; THENCE RUN SOUTH 14°31'44" WEST, A DISTANCE OF 805.63 FEET; THENCE RUN SOUTH 88°41'58" WEST, A DISTANCE OF 226.86 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 1286.08 FEET AND A CENTRAL ANGLE OF 15°06'08"; THENCE ON A CHORD BEARING OF SOUTH 61°05'07" WEST, RUN 336.98 FEET ALONG THE ARC OF SAID CURVE TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF MCKINNEY ROAD AS RECORDED IN DEED BOOK 881, PAGE 361, PUBLIC RECORDS OF ORANGE COUNTY, FLORIDA; THENCE RUN SOUTH 89°44'30" WEST, ALONG THE NORTHERLY RIGHT OF WAY LINE OF MCKINNEY ROAD, A DISTANCE OF 458.19 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 20; THENCE RUN NORTH 00°08'33" WEST, ALONG THE WEST LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 20, A DISTANCE OF 1287.75 FEET TO A POINT ON THE NORTH LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 20; THENCE RUN NORTH 89°31'28" EAST, ALONG THE NORTH LINE OF THE NORTHEAST 1/4 OF THE NORTHWEST 1/4 OF SAID SECTION 20, A DISTANCE OF 665.24 FEET TO A POINT ON THE WEST LINE OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17; THENCE RUN NORTH 00°03'32" WEST, ALONG THE WEST LINE OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17, A DISTANCE OF 893.48 FEET TO A POINT ON THE NORTH LINE OF THE SOUTH 3/4 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17; THENCE RUN NORTH 88°52'31" EAST, ALONG THE NORTH LINE OF THE SOUTH 3/4 OF THE EAST 1/2 OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17, A DISTANCE OF 663.80 FEET TO A POINT ON THE EAST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17; THENCE RUN SOUTH 00°08'31" EAST, ALONG THE EAST LINE OF THE SOUTHEAST 1/4 OF THE SOUTHWEST 1/4 OF SAID SECTION 17, A DISTANCE OF 683.15 FEET TO THE POINT OF BEGINNING.

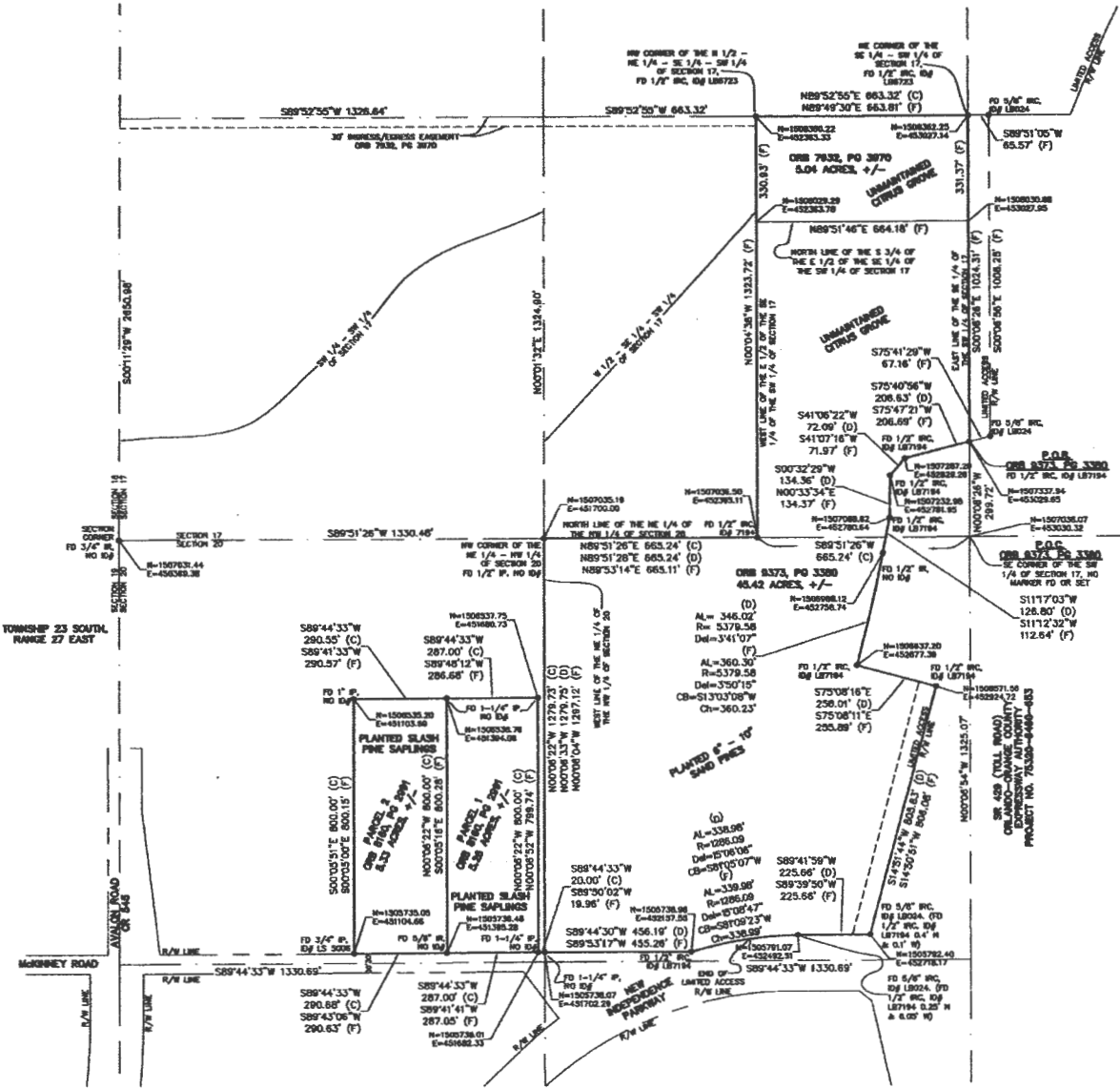


Exhibit "B"

Project Area Location Map

